



December 23, 2002

Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

**RE: Proposed Amendment to NYSE Rule 342 (Offices- Approval,
Supervision, and Control)**

Dear Sir or Madam:

The Securities Industry Association (SIA)¹ appreciates the opportunity to comment on a proposed amendment to NYSE Rule 342 (Offices – Approval, Supervision, and Control) providing for a new definition of the term “branch office.”

SIA applauds NYSE for initiating a process intended to achieve uniformity among the SROs and state regulators, reduce the regulatory burdens currently imposed upon firms, and account for advances in technology and changes in the structure, lifestyles and work habits of broker dealers. SIA believes generally in such uniformity and/or consistency and shares the NYSE’s desire for a carefully constructed branch office definition.

SIA, however, has serious concerns about the provision that suggests that a primary residence of an associated person used for more than 50 business days a year is a branch office. SIA believes that branch office registration should be determined by office function and not by the number of days spent at a given location. SIA is also concerned that registering associated persons’ primary residences and other locations used for securities business creates numerous logistical difficulties, imposes substantial costs, and may be inconsistent with the SEC’s Books and Records Rule. These concerns are outlined below.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated \$198 billion in U.S. revenue and \$358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States. (More information about SIA is available on its home page: <http://www.sia.com>.)

1. Branch Office registration should be determined by office function and not by the number of days logged at a given location.

Exclusion (B) of the proposed rule would seem to require firms to register the primary residences of associated persons as branch offices if the associated persons work from home fifty or more days a year. In determining what constitutes a branch office, SIA believes that the amount of time spent at a location is of little significance. What matters is the type of activities performed at a site, the records maintained, the number of registered representatives working there, the ability to conduct supervision, and how the location is held out to the public.

SIA believes that, if an associated person working from his or her primary residence has restrictions placed on the activities performed there, then the residence should not be a branch office regardless of the number of days that a person works there. For example, if an associated person does not hold his or her residence out to the public as an office for the purpose of conducting a securities business, does not handle funds or securities at the location, enters orders electronically or through the designated branch office, routes outgoing mail through the member's electronic network, and is subject to oversight and supervision from a designated branch office, then the location does not perform the same functions as a branch office and clearly should not be treated as such.

The same is true for one-man or two-man offices located at a business location. If the activities of these persons are substantially restricted and closely scrutinized to protect against improper conduct, we believe that such locations should not be placed in the same category as a branch office.

SIA believes that real investor protection comes from limiting the types of activities performed outside the branch office and providing appropriate supervision of all associated persons, regardless of where they are conducting their business. In addition, we are unaware of any pattern or particularly unique abuses in connection with associated persons who work regularly or fairly regularly from home. In light of these factors, we believe the 50-day cap on working from home and the 30-day cap on working at other locations is unnecessary, unduly cumbersome, and provides little value in terms of investor protection.

2. Registering associated persons' primary residences and other locations "used for securities business" creates numerous logistical difficulties.

As a separate but related matter, there are numerous logistical obstacles presented by the new definition. In today's electronic environment, it is not unusual in this industry as in many others to find individuals working outside the traditional business setting. Work can be done – and done well – in such varied places as an airplane, a hotel room, and many other non-office locations.

Imposition of the new definition of branch office would result in firms needlessly having to closely monitor where work was being performed and for how long. Some of the innumerable questions and different scenarios firms would be faced with include the following:

- Does an associated person sometimes work from home? If so, how many days a year and how many hours a day?
- Did the associated person work at the branch office for four or more hours before heading home? If so, his or her work from home needn't be counted.
- Do you register an associated person's primary residence as a branch office at the beginning of the year if he or she expects to spend fifty or more days a year working from home? What if they then don't actually hit the fifty-day mark? Conversely, do you wait until the fiftieth day has been triggered and then register?
- How should one treat temporary dislocations caused by unexpected family emergencies? It would seem time consuming and counterproductive to register these clearly temporary sites.
- What about associated persons who are semi-retired, on maternity leave or working from a non-business location for personal reasons?

Under this proposed rule, firms are faced with three equally unattractive outcomes. First, they can take the substantial time and effort to track each and every person's whereabouts and to register those locations that satisfy the 50-day threshold. Second, several member firms have already indicated that they will not go through the tracking process, but will instead register every associated person's residence as a branch office. This lessens their monitoring costs and assures that there are no gaps, but imposes substantial supervisory costs, and makes the definition less meaningful to NYSE and state regulators. Finally, SIA believes that some member firms will just prohibit people from working outside the office, which is not an attractive option because it is contrary to all employment trends.

The likelihood that firms will choose not to track but rather to register everybody or preclude all activity outside the branch is increased by the serious consequences for an inadvertent failure to register. Currently, failure to register a branch office in a state may provide a basis not only for regulatory action by a state regulator, but also for rescission or damages by plaintiff attorneys. The imposition of requirements for residences that are not held out as places of business to the public to be registered as branch offices if more than a certain amount of days or hours are spent at a site results in additional and unnecessary uncertainty and risks for inadvertent failure to register.

3. Registering primary residences and other locations used for securities businesses imposes substantial costs.

If the recently proposed definition is adopted, the number of registered branch offices will increase dramatically. This will result in substantially increased costs for large and small firms alike.

Perhaps the most significant and costly impact will be related to branch office inspections. Under NYSE rules, branch offices generally are required to be inspected at least annually. The additional supervisory costs associated with inspecting home offices annually would be significant, with little obvious benefit to consumers or regulators. This is particularly true given the limited scope of work performed at the home office. Quite simply, if an associated person does not hold his or her residence out to the public as an office for the purpose of conducting a securities business, does not handle funds or securities at the location, enters orders electronically or through the designated branch office, routes outgoing mail through the member's electronic network, and is subject to oversight and supervision from a designated branch office, then there is little need for mandated annual inspections.

In addition, SIA is concerned that proposed rules designed to enhance members' supervisory control procedures will increase the annual inspection burden exponentially.² The proposed rule changes would, among other things, require that office inspections be conducted by a person who is independent of the ongoing supervision, control or performance evaluation of the branch office. Indeed, the NYSE's proposed rule change expressly states that the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function, cannot perform the inspections. As described in separate SIA comments, this would impose a huge burden for independent contractors and firms with far-reaching branch networks.

The substantial costs associated with this proposed branch office definition, however, are not limited to branch office supervision. Additional costs include costs associated with tracking employees' activity to determine whether or not they fall within the fifty or thirty day exclusions and a substantial increase in registration costs and fees.

Indeed, it is quite possible that the registration, bonding, personnel and supervisory costs associated with this proposed definition will outweigh any cost savings through centralized registration. We are also concerned that tracking, additional registration, and increased supervisory requirements may actually increase our regulatory burden. SIA does not believe this was the intention of the proposed rule.

4. The 50 Day Limitation Raises Potential Inconsistencies with the SEC's Books and Records Rules.

The Securities and Exchange Commission's newly adopted Books and Records Rules make clear that records need not be kept at private residences, but can instead be maintained at another location within the same state. Rule 17a-4(k) states:

"If an office is a private residence where only one associated person . . . regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need

² See Securities Exchange Act Release No. 46858 (November 20, 2002), 67 FR 70994; Securities Exchange Act Release No. 46859 (November 20, 2002), 67 FR 70990.

not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select (emphasis added).”

The proposed NYSE Statement of Purpose states that “the core (branch office) definition is consistent with the term “office” as it is defined in the SEC’s new amendments to its books and records rules . . .”³ SIA is concerned that the mere act of registering a primary residence as a branch office could be misinterpreted as satisfying the “holding out” requirement. We encourage NYSE and/or the SEC to clarify that this is not the case.

Conclusion

In conclusion, SIA believes that investors are adequately protected by existing regulations and best practices which dictate that a primary residence or other non-office location does not have to be registered as a branch office if an associated person: (i) does not hold the location out to the public; (ii) does not meet clients there; (iii) does not accept or custody funds or securities there; (iv) maintains records in a registered location; (v) enters trades electronically or at a designated branch office; and, (vi) the firm maintains a list of all residence locations, which would be available to regulators as needed.

We would strongly encourage the SEC and the NYSE not to require the registration of primary residences and other non-office locations as branch offices, in all but the most limited of circumstances. Specifically, branch office registration should only be required when the activities occurring at the site are truly those of a branch office location.

Please do not hesitate to contact me at 212-720-0611 should you have any questions.

Sincerely,



Kimberly H. Chamberlain
Vice President and Counsel
State Government Affairs

³ Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Amendment of Rule 342 (Offices – Approval, Supervision and Control), December 4, 2002, at 77258.