

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44375; File No. SR-NYSE-00-58]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to an Interpretation of Rule 342 ("Offices—Approval, Supervision, and Control")

June 1, 2001.

I. Introduction

On December 15, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend interpretations concerning the meaning and administration of NYSE Rule 342 with respect to registered representatives working in small or residence branch offices of Exchange member organizations. The proposed rule change was published for comment in the **Federal Register** on January 22, 2001.³ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposal would amend interpretations of NYSE Rule 342 with respect to the supervision of, and the experience requirements for, registered representatives working in small or residence branch offices of Exchange member organizations. This Interpretation will be published as an Interpretation Memorandum for inclusion in the Exchange's Interpretation Handbook.

NYSE Rule 342 requires that each office, department and business activity be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility. Additionally, the structure and administration of Exchange rules mandate that all member organization employees, including registered representatives ("RR"), be fully subject to the direct and ongoing supervision, control and discipline of their member organization employers. Further, Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established.

NYSE Rule 342.11 and Current Interpretations

NYSE Rule 342.11 provides that an RR may operate out of his or her residence, with Exchange approval, and that if the residence is advertised (through, e.g., business cards or stationery), then the residence constitutes a branch office of the member organization employer. Further, and notwithstanding the above, Interpretation /01 to Rule 342.11 in the NYSE Interpretation Handbook states that if an RR regularly operates from his home during business hours (even on a part-time basis), the member organization employer must register the home as a branch office (a "residence office"). Interpretation /03 to Rule 342.11 currently provides that an RR who will be working from his or her residence must have a minimum of six-months' securities experience before being approved in a residence office.

Proposed Amendment to Interpretation /03 to Rule 342.11

The NYSE represents that the six-month securities industry experience requirement for RRs in residence offices has come to be viewed as unnecessary and restrictive in that member organizations are prohibited from permitting the RR from working for two additional months beyond the prescribed four-month training period of NYSE Rule 345. This six-month experience requirement has particularly affected member organizations structured with multiple one-person offices.

The additional training period for inexperienced RRs was appropriate when the interpretation was implemented in the 1970s because of the remote physical location of supervisors. Now, however, with member organizations increasingly employing advanced technology and electronic communications in the supervision and review of RR activities, supervision can be readily performed without being dependent on close physical proximity of the manager to the RR.

Under the proposed amended Interpretation, the six-month experience requirement will be eliminated, thereby allowing the RR who operates from a residence or one-person office to begin working upon completion of the prescribed four-month training period, provided that the member organization develops and implements special supervisory procedures for heightened supervision for the two-month period immediately following completion of prescribed training.

The special supervision will include procedures such as:

- Daily review of all customer account activity;
- Daily review of all correspondence including prior approval of all outgoing correspondence;
- Review of all incoming and outgoing electronic communications, e.g., internet use and electronic mail; and
- On-site inspection by the branch office manager (or qualified designee) responsible for supervision of the residence office in the two months following the prescribed training period.

Member organizations will be required to inform RRs operating from a residence or small one-person office of the special supervision, and to maintain records evidencing the implementation and conduct of the special supervision.

The Exchange believes the amended interpretation will allow these RRs to begin working immediately after completing the prescribed four-month training period (like all other RRs), while also helping to ensure that, through special supervision, member organizations have appropriate supervision and control of RRs operating from a residence and customer accounts serviced by those RRs. Moreover, while the special supervision is required for a limited time, there is the ongoing responsibility of the member organizations, beyond the two-month special supervision period, to have appropriate policies and procedures in place for the supervision and control of all sales and operational activities of each branch office and of all registered employees and the customer accounts they service.

Proposed Amendments to Interpretations /01, /02, and a New Interpretation /04 to NYSE Rule 342.15

Generally, each location where member organization employees are engaged in activities on behalf of a member organization must be registered as a branch office (excluding locations on the Exchange Floor where member organizations conduct Floor Business).

A "small" office is a branch with three or less registered representatives, one of whom is designated as "RR-in-charge" (this designation is required only if there is more than one registered representative in the small office). A small office may engage in sales activities but may not conduct operational functions, such as cashing (receipt and disbursement of funds and securities).

Interpretation /02 to NYSE Rule 342.15 currently requires small offices to be under the close supervision and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43834 (January 10, 2001), 66 FR 6721.

control of the member organization's main office or to be supervised by a manager of another office within short travel distance. The manager may be responsible for only two small offices.

The proposed amendments to the Interpretation will require that small offices be controlled and supervised by either the main office or another designated branch office having a qualified (*i.e.*, Series 9 and 10 exam-qualified) Branch Office Manager on the premises. Further, such supervisory arrangements must be made part of the member organization's written plan of supervision. Adoption of the Interpretation will eliminate the current provision under Interpretation /01 to NYSE Rule 342.15 that a manager may be responsible for only two small offices that are in close geographical proximity. Given modern electronic surveillance and monitoring techniques, the Exchange believes this limitation regarding number of offices and geographical location is no longer necessary. New Interpretation /04 to NYSE Rule 342.15 provides that RRs operating from small, one-person branch offices must be subject to the same special supervision prescribed in Interpretation /03 to NYSE Rule 342.11 for residence offices.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds the proposal is consistent with the section 6(b)(5)⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that by amending its Interpretations to NYSE Rule 342, the Exchange will enhance the process for member organization supervision and control of small and residence branch offices, while also permitting RRs to engage in activities upon completion of a prescribed training period.

The proposal would amend Interpretation /03 to NYSE Rule 342.11 to permit RRs in residence offices to begin working after the four-month training period required in NYSE Rule 345, instead of a six-month securities

industry experience requirement in Interpretation /03. The proposal would require member organizations to develop and implement special supervisory procedures for heightened supervision for the two-month period immediately following completion of prescribed training, and to inform RRs operating from a residence or small one-person office of the special supervision, as well as to maintain records evidencing the implementation and conduct of the special supervision. Notwithstanding the proposed special supervision period, member organizations must always have appropriate policies and procedures in place for the supervision and control of all sales and operational activities of each branch office and of all registered employees and the customer accounts they service. The Commission believes that this interpretation establishes a good foundation for Exchange members to develop sufficient procedures for continuous and meaningful supervision of their RRs operating from a residence or small one-person office.

The proposal also would amend Interpretations /01 and /02 of NYSE Rule 342.15 to require that small offices be controlled and supervised by either the main office of another designated branch office having a qualified Branch Office Manager on the premises, and that such supervisory arrangements must be made part of the member organization's written plan of supervision. Further, the proposal would create Interpretation /04 to NYSE Rule 342.15 which would require that RRs operating from small, one-person branch offices must be subject to the same special supervision prescribed in Interpretation /03 to NYSE Rule 342.11 for residence offices. The Commission believes that these proposed changes are consistent with the Act in that they will aid the Exchange in supervising member firms that have small offices and the RRs who work therein without reducing any of the currently established oversight mechanisms.

IV. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NYSE-00-58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44370; File No. SR-OCC-00-10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Adjustments of Options Contracts

May 31, 2001.

On October 3, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-00-10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 1, 2000.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the rule change is to add new language to paragraph (b) of Article VI, Section 11 of OCC's By-Laws to clarify that neither OCC nor OCC's securities committee will be liable for any failure to adjust outstanding option contracts or for any delay in adjusting such contracts when the securities committee does not learn in a timely manner of an event for which it would otherwise have directed an adjustment. While OCC believes that this should be the result under the By-Laws in its present form, OCC believes it is advisable to cover this situation specifically.

Normally, OCC is notified of the occurrence of a section 11(a) adjustment event³ by its internal stock watch

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 43612, (November 22, 2000), 65 FR 75331.

³ Section 11(a) of Article VI of OCC's By-Laws states that whenever there is a dividend, stock split, reorganization, recapitalization, or similar event with respect to an underlying security or whenever there is a merger, consolidation, dissolution, or liquidation of the issuer of an underlying security, the number of option contracts, unit of trading, exercise price, and the underlying security of all outstanding options contracts open for trading in that underlying security may be adjusted.

⁴ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).