

or otherwise in furtherance of the purposes of the Act.<sup>12</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-115 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-115 and should be submitted on or before October 28, 2005.

<sup>12</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. E5-5533 Filed 10-6-05; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52544; File No. SR-NASD-2005-030]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form ("Form BR") and Amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U4") and the Uniform Termination Notice for Securities Industry Registration ("Form U5")

September 30, 2005.

#### I. Introduction

On March 11, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt the Uniform Branch Office Registration Form ("Form BR")<sup>3</sup> and to make conforming changes to the Uniform Application for Securities Industry Registration or Transfer ("Form U4") and the Uniform Termination Notice for Securities Industry Registration ("Form U5"). On May 12, 2005, NASD amended the proposed rule change ("Amendment No. 1").

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal**

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> At the request of the NASD, the Commission staff has made corrections to the title of the Form BR, which was inadvertently shown in the initial filing and Amendment No. 2 to the filing, *see infra* note 7, as "Uniform Branch Office Form." Telephone conversation between Richard Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, NASD, Elizabeth Badawy, Accountant, Division of Market Regulation ("Division"), Commission, and Kate Robbins, Attorney, Division, Commission, on September 20, 2005.

**Register** on June 2, 2005.<sup>4</sup> The Commission received six comment letters on the proposal, as amended.<sup>5</sup> On August 17, 2005, NASD submitted a response to the comment letters.<sup>6</sup> On August 18, 2005, NASD amended the proposed rule change ("Amendment No. 2").<sup>7</sup> This order approves the proposed rule change, as amended by Amendment No. 1; grants accelerated approval to Amendment No. 2; and solicits comments from interested persons on Amendment No. 2.

#### II. Description of Proposed Rule Change

NASD proposes to establish Form BR, a uniform branch office registration form developed by a working group composed of representatives from NASD, the New York Stock Exchange, Inc. ("NYSE"), the North American Securities Administrators Association ("NASAA") and various states (hereinafter referred to as the "Working Group").<sup>8</sup> The proposed Form BR would enable firms to register branch offices electronically with NASD, the NYSE, other self-regulatory organizations ("SROs"), and states, as applicable, through a single filing with the Central Registration Depository ("CRD®," the "CRD system," or "Web CRD"). In addition, the proposed Form BR eliminates the need for Schedule E of

<sup>4</sup> See Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386. *See also* Correction, 70 FR 48802 (August 19, 2005) (including language inadvertently omitted from the first sentence of footnote 3).

<sup>5</sup> See letters from Mario DiTrapani, President, Association of Registration Management, dated June 22, 2005 ("ARM Letter"); Michael Pagano, Chief Compliance Officer, 1st Global, dated June 23, 2005 ("1st Global Letter"); Sandra T. Masek Ray, CRCP, Executive Vice President/Chief Compliance Officer, Rhodes Securities, Inc., dated June 23, 2005 ("Rhodes Letter"); Robert S. Rosenthal, Vice President & Chief Legal Officer, MML Investors Services, Inc., dated June 23, 2005 ("MML Letter"); Franklin L. Widmann, President and Chief, New Jersey Bureau of Securities, North American Securities Administrators Association, Inc., dated July 12, 2005 ("NASAA Letter"); and Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers, dated June 23, 2005 ("ACLI Letter"). In addition, the Commission received a comment letter on SR-NASD-2005-012, a filing dealing with the same substance but that had been rejected by the Commission. The letter raised a number of technical concerns which have been addressed by the NASD or will be addressed during the implementation phase for Form BR.

<sup>6</sup> See letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 17, 2005 ("NASD Response Letter").

<sup>7</sup> See discussion of Amendment No. 2 in Section II, Description of Proposed Rule Change, *infra*.

<sup>8</sup> The NYSE also filed a proposed rule change to adopt the Form BR, which is substantially similar to NASD's proposal. The Commission is simultaneously approving the NYSE's proposed rule change. See Securities Exchange Act Release No. 52543 (September 30, 2005) (SR-NYSE-2005-13).

the Uniform Application for Broker-Dealer Registration ("Form BD"), the current NYSE Branch Office Application Form, and certain state branch office forms.<sup>9</sup>

The Working Group derived the majority of questions on the proposed Form BR from questions currently on one or more of the existing branch office forms and added questions to elicit additional information that it believed would be of regulatory value to SROs and states. To the extent possible, the proposed Form BR uses the same terms as those used in existing uniform forms.<sup>10</sup>

The proposed Form BR is only one component of a broader project regarding the registration of branch offices through the CRD system. NASD is planning enhancements to the CRD system to coincide with the implementation of Form BR that would enable firms to designate, and users to identify, the branch office(s) in which a registered person works. These

<sup>9</sup> Currently, broker-dealers register or report branch offices or other business locations on Schedule E of the Form BD. NYSE member firms are required to submit the NYSE Branch Office Application Form to register a branch office with the NYSE. In addition, Connecticut, Florida, Nevada and Vermont have separate branch office forms that request similar information for firms seeking to register a branch office in those states. Moreover, more than 20 states require broker-dealers to submit a "notice filing" when a firm opens or closes a branch office.

With the implementation of Form BR, the NYSE would retire the current NYSE Branch Office Application Form. Seven states, Connecticut, Florida, Maine, Nevada, Texas, Vermont and West Virginia, also have indicated that they plan to use the Form BR. Other jurisdictions that currently require "notice filings" for branch openings and closings, including Alabama, Alaska, Hawaii, Idaho, Indiana, Illinois, Kansas, Michigan, New Mexico, Ohio, Rhode Island, South Dakota, Tennessee and Wisconsin, have indicated that they also expect to use the Form BR. Telephone conversation between John Veator, Director, Regulatory User Liaison, NASD, Elizabeth Badawy, Accountant, Division, Commission and Kate Robbins, Attorney, Division, Commission, on September 20, 2005.

The Division has granted no-action relief indicating that it will not recommend enforcement action to the Commission under Rules 15b1-1, 15b3-1, 15Ba2-2, and 15Ca2-1 under the Act for broker-dealers that file the Form BR, and do not complete Schedule E, or file amendments to Schedule E, of the Form BD, as of the date on which the transition to the Form BR begins and the CRD® no longer accepts Schedule E filings, which is currently anticipated to be October 15, 2005. See letter from Catherine McGuire, Chief Counsel, Division, Commission, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, dated September 30, 2005.

<sup>10</sup> The "Explanation of Terms" section of proposed Form BR would include definitions of additional terms used in the context of branch office registration and reporting, such as "closing," "person-in-charge," "regular branch," "small branch," "supervisor," and "withdrawal." The NYSE made slight modifications to the definitions of "small branch" and "regular branch" that were published in NASD's *Notice to Members* 04-55 to conform to its interpretive materials.

enhancements would enable registered persons to submit the name of the branch office(s) with which they are associated via the Form U4. Firms would be able to obtain a report via Web CRD that would list individuals who are currently associated with a branch or who were associated with a branch during a specific time period. Regulators also would be able to obtain reports that would list branch offices within a firm as well as registered individuals in those branches. NASD also proposes to make certain conforming and technical changes to the current Form U4 and Form U5.

#### *Highlights of the Proposed Form BR*

There are nine sections of the proposed Form BR, as described below. The Form BR would permit applicants (*i.e.*, firms) to: (1) Apply for approval of or report a branch office (an "initial" filing); (2) amend information previously reported (an "amendment" filing); (3) terminate a branch office registration (a "closing" filing); or (4) withdraw an initial filing before approval by a jurisdiction or SRO (a "withdrawal" filing).

#### Section 1—General Information

Section 1 would report the applicant's CRD number, name, address, billing code, branch address, and telephone number. NASD would pre-populate the applicant's CRD number, name, and address.

#### Section 2—Registration/Notice Filing/Type of Office

Section 2 would ask the applicant to state where the branch would be registered (or notice filed), the type of branch office registration, and whether it would be an NASD Office of Supervisory Jurisdiction ("OSJ"). If it is not an OSJ, the applicant would be required to provide the CRD branch number, or firm billing code, for the OSJ that has supervisory responsibility over the branch and the CRD number of the supervisor in charge of that OSJ. Consistent with the concept of a uniform form, Section 2 of the proposed Form BR would give applicants the opportunity to designate whether the branch office filing is being made on behalf of a broker-dealer ("BD"), an investment adviser ("IA"), or both. This feature would enable firms to register or report IA branches in states that require such registration and reporting. Section 2 also would ask for NYSE Small Branch information.

#### Section 3—Types of Activities/Other Business Names/Websites

Section 3 would collect information with respect to the types of financial industry activities conducted by the applicant and any investment-related activities conducted by associated persons at the branch location. Section 3 also would ask for the names being used by any associated person to conduct investment-related activities at the branch office other than those names disclosed on the applicant's Form BD or Uniform Application for Investment Adviser Registration ("Form ADV"). Section 3 also would ask for the website addresses used by the branch office other than the applicant's primary Web site address.

#### Section 4—Branch Office Arrangements

Consistent with questions currently asked on Schedule E of the Form BD, Section 4 of the proposed Form BR would elicit information on branch office arrangements, including space sharing arrangements and liability for expenses. Section 4 would not require applicants to report insurance agency agreements with the main office pursuant to which the branch operates.

#### Section 5—Associated Individuals<sup>11</sup>

Section 5, which would have to be completed only for initial branch office registration filings, would ask for the names and CRD numbers of registered persons associated with a branch.<sup>12</sup> Individuals identified by the firm in this section would populate a dynamic "branch roster" of registered persons in Web CRD, which would be made available to firms. Once the branch has been established, changes to the branch roster would automatically be made through Web CRD when: (1) The "Office of Employment Address" question on the Form U4 is amended when an individual leaves a branch for another branch; or (2) the Form U5 is filed when an individual leaves a firm. Firms would be able to print a report, among other reports, that would list registered individuals who are currently associated with a branch, or who were associated with the branch during a specific time period. This functionality should facilitate firms' compliance with

<sup>11</sup> NASD notes that the title of Section 5—"Associated Individuals"—refers to registered individuals who are associated with the particular branch office. Applicants would not be required to report the names of associated persons who are not registered.

<sup>12</sup> Firms would be required to enter the CRD number, and then the name would populate in the field.

one of the requirements contained in SEC Rule 17a-4(l).<sup>13</sup>

#### Section 6—NYSE Branch Information

Only firms registered with the NYSE would be able to view and would be required to complete Section 6. The proposed Form BR would incorporate the information elicited on the NYSE's current Branch Office Application Form and Office Space-Sharing Form. The CRD system would interact with the NYSE's branch office system on NYSE branch office registration filings.

The NYSE's current protocol for requesting approval for new branch offices would continue with the proposed Form BR. NYSE members would use Form BR to request such approvals, and the information provided by NYSE members would be transmitted to the NYSE, which, in turn, would communicate its determinations (e.g., approvals) to the requesting NYSE firms through the CRD system.

#### Section 7—Branch Closing

Section 7 would be completed by a firm only upon the closing of a branch office registered with a jurisdiction or an SRO. Information in Section 7 would include the date operations ceased, or will cease, the location of the branch's books and records, and the name and telephone number of the contact person.

Because branch offices located close to state borders often move from one state to another, the proposed Form BR and the CRD system have been designed to accommodate such moves through amendment filings. Specifically, a firm would be able to file a single Form BR amendment that would both close the branch in one state and register or notice file the branch in another state that also has a registration or notice filing requirement. The Specific Instructions and notifications (the latter triggered by the state address change) in Section 1 (General Information) and Section 2 (Registration/Notice Filing/Type of Office) would advise applicants that the amendment has both changed the branch address to another state and closed the branch in the first state. In addition, the amendment would serve as a request to open a branch in the state to which the branch has moved if it is a state that requires registration or notice filing of branches.<sup>14</sup>

<sup>13</sup> 17 CFR 240.17a-4(l). SEC Rule 17a-4(l) requires certain records for the most recent two-year period to be maintained at the office to which they relate.

<sup>14</sup> NASD states that it would view a change in location simply as an amendment filing, not a request to open a new branch.

#### Section 8—Branch Withdrawal

Firms would be required to complete Section 8 only upon withdrawal of a pending application. Information in this section would include the date of withdrawal, the reason for withdrawal, and the name and telephone number of the contact person.

#### Section 9—Signature

Section 9 would be the signature page. The language on the signature page would be consistent with the current attestations on the Form U4 and the Form BD.

#### *Conforming and Technical Changes to Forms U4 and U5*

NASD is proposing conforming changes to the Forms U4 and U5 to fully integrate the branch office registration and reporting process through the CRD system. First, NASD is proposing changes to the "Office of Employment Address" to parallel the information reported on the Form BR, and to ensure the accuracy and integrity of the link between registered representatives and their branches. When completing the Form U4, the firm/individual would be asked to select the branch office(s) from which the registered person will work based on the list of branch offices identified by the firm (through the filing of Forms BR). Once the registered locations are selected, CRD<sup>®</sup> would populate the "Office of Employment Address" on the General Information screen on the Form U4 for each registered person with the following data elements based on information reported on the Form BR: CRD Branch Number, NYSE Branch Code Number, address, and start and end dates. The Form U5 would display the same information.<sup>15</sup> If the individual is not located at a registered branch office, the firm must enter the business address of the location at which the individual is employed and the location from which the individual is supervised.

NASD is also proposing to add a question to the Form U4 to elicit whether the individual has an independent contractor relationship with the firm. Information regarding independent contractors currently is elicited on Schedule E of Form BD. The Working Group initially proposed to include this question on the Form BR but subsequently decided that the independent contractor question would

<sup>15</sup> NASD states that it would remove from the Forms U4 and U5 the Specific Instructions and form fields that currently require reporting of information that would be provided via Form BR and would pre-populate the appropriate fields on the Forms U4 and U5.

be more appropriately placed on the Form U4.

In addition, NASD is proposing changes to the Specific Instructions on the Forms U4 and U5 to reflect the proposed changes to the forms. NASD is proposing other technical changes to the Forms U4 and U5 as well. Specifically, NASD proposes to: (1) Add to the Forms U4 and U5 registration categories that the Commission has previously approved;<sup>16</sup> (2) reorganize the electronic filing representations on the Form U4, Section 6 (Regulatory Requests with Affiliated Firms) for submitting a fingerprint for registration with an affiliated firm, so that the representations would follow a more logical order (the content of the representations would not change) and modify the Specific Instructions regarding the same; (3) amend the Forms U4 and U5 to reflect the change in name of the Cincinnati Stock Exchange (CSE) to the National Stock Exchange (NSX);<sup>17</sup> and (4) add new instructions on the Form U5 explaining the circumstances under which the "Office of Employment Address" would be pre-populated.

#### *Making the Transition to Form BR*

NASD expects that the effective date of the proposed rule change will be October 31, 2005. NASD plans to announce the effective date of the proposed rule change, along with a timetable for the transition to the Form BR, in a *Notice to Members* to be published no later than 30 days following Commission approval.

NASD has designated October 15, 2005 through October 30, 2005 as a "lock-out" period for the CRD system, during which time NASD would help firms with branch offices in existence as of the close of business on October 14, 2005 to register these offices. During the "lock-out" period, NASD would create a "conversion" Form BR on the CRD system for all branch offices in existence as of the close of business on October 14, 2005. NASD would assign a unique branch CRD number to each of these branches and pre-populate the "conversion" Forms BR with limited information for each of these

<sup>16</sup> See Securities Exchange Act Release Nos. 50162 (August 6, 2004), 69 FR 50406 (August 16, 2004) (SR-NASD-2004-078) (Research Analyst (RS) and Research Principal (RP)) and 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004) (SR-PCX-2003-51) (Pacific Exchange positions Market Maker (44), Floor Broker (45), and Market Maker acting as a Floor Broker (46)).

<sup>17</sup> See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR-CSE-2003-12).

branches.<sup>18</sup> During this “lock-out” period, the CRD system would not accept any branch office forms or amendments via any of the current forms or Form BR.

Starting on October 31, 2005, the new branch office functionality would be available in the CRD system. Beginning on that date, firms with branch offices in existence before the close of business on October 14, 2005 could: (1) Complete the data fields for each “conversion” Form BR created by NASD during the “lock-out” period; and (2) file through CRD® the completed Forms BR.

In addition, firms would be able to amend Forms U4 to assign each registered person to a registered branch office. Firms could assign registered persons to branches by means of either individual Form U4 filings or an electronic file transfer (*i.e.*, a “batch” filing) established exclusively for this purpose.

Firms with branch offices in existence before the close of business on October 14, 2005 would have until May 1, 2006 to comply with the Form BR and Form U4 filing requirements for those branch offices. Therefore, by May 1, 2006, these firms would have to have: (1) Completed and filed the “conversion” Form BR for each such branch; and (2) with respect to the registered persons employed by such branches, amended all applicable Forms U4 to assign these registered persons to the branch office(s) (or other locations) from which they work.

Starting on October 31, 2005, firms would have to file a Form BR to register any new branch office opened on or after October 15, 2005.<sup>19</sup> Once a firm has filed a Form BR, the new branch would be established on the CRD system, and CRD® would automatically populate the “Office of Employment Address” of the Form U4 for each person identified in Section 5 (Associated Individuals) of the Form BR. Individuals identified in this section would populate a dynamic “branch roster” of registered persons in CRD®. Thereafter, firms would be required to submit amended Forms U4 to assign additional registered persons to the branch, and CRD® would

automatically update the “branch roster” of registered persons in Web CRD.<sup>20</sup> The “branch roster” would be made available to firms.

#### *Amendment No. 2*

In Amendment No. 2, NASD: (1) Indicated that it expects that October 31, 2005 will be the effective date of the proposed rule change, and that the *Notice to Members* announcing the effective date (to be published no later than 30 days following Commission approval) will provide the timetable for the transition to the Form BR; (2) replaced the “Making the Transition to Form BR” subsection of the “Purpose” section in its entirety; (3) modified the “Conforming Changes to Forms U4 and U5” discussion in the “Purpose” section with respect to (i) Changes to the “Office of Employment Address” section of the Form U4, (ii) reporting independent contractor relationships on the Form U4, (iii) the procedures to be followed if an individual is not located at a registered branch office, and (iv) the effective date of the proposed rule change; (4) clarified in footnote 10 that the referenced report concerns registered individuals; and (5) made other minor edits to the proposal, including technical, non-substantive changes to the proposed Form BR, modifications to Sections 1 and 6 and related Specific Instructions on the Form U4 and modifications to Sections 1 and 6 and related Specific Instructions and other technical, non-substantive changes to the Form U5.

### **III. Comment Summary and NASD Response Letter**

As noted above, the Commission received 6 comment letters with respect to the proposed rule change.<sup>21</sup> NASD filed a response letter to address concerns raised by the commenters.<sup>22</sup>

Most of the commenters generally supported uniform electronic registration of branch offices through the CRD system.<sup>23</sup> The commenters

<sup>20</sup> Article V, Section 2 of the NASD By-Laws requires amendments to the Form U4 to be filed within 30 days after learning of the facts or circumstances giving rise to the amendment. The “Specific Instructions” for completing the Form U4, as amended, address procedures for updating the Form U4 to include all branch office addresses at which the individual is employed.

<sup>21</sup> See *supra* note 5.

<sup>22</sup> See NASD Response Letter, *supra* note 6.

<sup>23</sup> One commenter stated that it “strongly supports the efforts of NASD and other working group members to integrate branch office registration into the CRD in order to create efficiencies for member firms,” however, the commenter later stated that it “cannot support the Form BR as it is currently proposed.” See MML Letter, *supra* note 5. Another commenter noted that “[w]e see no viable explanation for how this

discussed many of the benefits of Form BR. Three commenters indicated that the Form BR would eliminate duplicative or redundant filings;<sup>24</sup> one of these commenters noted that Form BR would still provide regulators with pertinent information,<sup>25</sup> and another noted that it would promote efficiency.<sup>26</sup> Another commenter also praised the efficiencies that would result from Form BR, including “registration of both state and NASD branch offices through CRD, centralized fee collection and on-line work queues.”<sup>27</sup> Two commenters indicated that the Form BR would improve data accuracy.<sup>28</sup> One of these commenters felt that a single filing would reduce the number of clerical oversights,<sup>29</sup> while the other thought that the cross-checks of filings in the CRD system would serve to improve the accuracy of the data.<sup>30</sup> The latter commenter also stated that Form BR will assist regulators by allowing them to generate reports about branch offices and, since it will link registered persons to branches, will allow regulators to better track complaints to branches.<sup>31</sup>

Of the commenters who voiced support for the proposal, two of the commenters supported the proposed rule change without qualification.<sup>32</sup> As discussed below, the other four commenters expressed concerns about the proposed form.<sup>33</sup>

One of the commenters’ main concerns was the potential increase in costs and administrative burden.<sup>34</sup> A commenter stated that “a more reasonable amount of information should be included on the Form BR that would result in less of an administrative burden for broker-dealers.”<sup>35</sup> Another commenter stated that “the complexity of the proposed Form BR is extremely burdensome and solicits information beyond that necessary to register a branch office,” and requested that

initiative will result in any enhancement to any objective related to customer protection,” and indicated that “two things are necessary before this initiative becomes one that it can support.” See 1st Global Letter, *supra* note 5.

<sup>24</sup> See ARM Letter, Rhodes Letter and NASAA Letter, *supra* note 5.

<sup>25</sup> See ARM Letter, *supra* note 5.

<sup>26</sup> See NASAA Letter, *supra* note 5.

<sup>27</sup> See MML Letter, *supra* note 5.

<sup>28</sup> See ARM Letter and NASAA Letter, *supra* note 5.

<sup>29</sup> See ARM Letter, *supra* note 5.

<sup>30</sup> See NASAA Letter, *supra* note 5.

<sup>31</sup> *Id.*

<sup>32</sup> See Rhodes Letter and NASAA Letter, *supra* note 5.

<sup>33</sup> See ARM Letter, 1st Global Letter, MML Letter and ACLI Letter, *supra* note 5.

<sup>34</sup> See 1st Global Letter, MML Letter and ACLI Letter, *supra* note 5.

<sup>35</sup> See 1st Global Letter, *supra* note 5.

<sup>18</sup> NASD noted that the conversion process would download the following data in CRD® or the Investment Adviser Registration Depository (IARD<sup>SM</sup>), as well as data provided from the NYSE and participating states: Branch Address, CRD Branch Number, NYSE Branch Code Number, NASD/NYSE Supervisor/Person-In-Charge Name and CRD Number, Operational Status, and NYSE/Jurisdiction Registration Status.

<sup>19</sup> Article IV, Section 8 of the NASD By-Laws requires firms to report the opening of a branch office not later than 30 days after the branch is opened.

“more information be made available regarding the workflow and data maintenance that would be required of firms before the Form BR is finalized.”<sup>36</sup> One of the commenters stated that the proposed Form BR is duplicative of Schedule E of Form BD and, “[w]ithout a formal SEC action eliminating Schedule E,” the Form BR, “would exacerbate administrative burdens.”<sup>37</sup> NASD responded to comments regarding the burdensome nature of the proposed Form BR by reiterating the benefits of the Form BR and the enhancements to the CRD system, including making the registration process more efficient and allowing regulators and firms to obtain reports showing branch offices within a firm and the registered individuals in each branch office.<sup>38</sup>

Two of the commenters were concerned about the effect of the adoption of the proposed “branch office” definition<sup>39</sup> on the instant proposal, indicating that the new definition would greatly increase the number of branch offices that had to be registered on Form BR.<sup>40</sup> One of these commenters indicated that NASD’s proposed branch office definition would have a “significantly disproportionate impact on broker-dealers affiliated with life insurers.”<sup>41</sup> The same commenter also expressed concern that the NASD proposal “does not evaluate the burdensome economic impact” of the proposed 30-day time frame for amendments to the Form BR, and stated that, “[t]he sheer number of offices and filings that would need updates on a very short time horizon is daunting \* \* \*.”<sup>42</sup> NASD responded to comments regarding the proposed branch office definition by stating that “the proposed Form BR is not linked to

NASD’s proposed rule change regarding the definition of branch office.”<sup>43</sup> However, the Commission notes that, in fact, the Form BR is predicated upon a uniform branch office definition and views the two rule filings to operate in concert. Additionally, the NASD has delayed the effective date of the branch office definition until early 2006 to allow firms a smooth transition to the Form BR and associated filing protocols before making the new definition effective.<sup>44</sup>

Furthermore, some of the commenters voiced concerns about the specific sections of the form. One of the commenters requested that the fields requiring the branch telephone number and facsimile number be removed because “they are unnecessarily burdensome to enter and maintain.”<sup>45</sup> Another commenter indicated a need for multiple firm billing code fields to allow the entry of more than one billing code per branch, noting that “different supervisors (those running different businesses in a single location) would likely possess different ‘billing codes,’” and that “a scenario could exist wherein a single office being managed by a single individual will have more than one billing code.”<sup>46</sup> The commenter suggested that, if necessary, this change be made as an enhancement after the Form BR is initially implemented so that NASD can maintain its planned rollout schedule. One of the commenters recommended that “supervisor information be limited to one person who would be the primary supervisor \* \* \*.”<sup>47</sup> while another commenter applauded the NASD for allowing for multiple supervisors at a single office location.<sup>48</sup> NASD responded by indicating that it plans to maintain the current implementation schedule but that it would ask the Working Group “to consider modifying the Form BR to permit a single branch office to report multiple billing codes.”<sup>49</sup>

One commenter suggested that Section 3 be eliminated in its entirety “since the information is beyond that needed to register a branch office and because business activities at a branch location, use of DBA names and websites are already subject to regulatory compliance.”<sup>50</sup> Additionally, the commenter recommended that Section 4 be eliminated or changed to apply only to OSJs since “requiring this information for all locations where a registered representative is located will cause an undue burden on firms to provide complete, accurate information and to monitor any type of change to such operations.”<sup>51</sup> NASD responded to these comments by indicating that it believes that the information being elicited by these questions has significant regulatory value and that the questions should be retained.<sup>52</sup>

One commenter firmly disagreed with the requirement that the Form BR be signed, and noted that “neither the current NYSE Branch Office Application nor the amendment of Schedule E of Form BD require signature. \* \* \*.”<sup>53</sup> The commenter stated that “[r]equiring a signature on Form BR is taking a step backwards and is tantamount to suggesting that the person submitting the filing is not accountable for the accuracy of the data contained in that filing.”<sup>54</sup>

NASD responded that the Working Group “believes that the integrity of the data to be reported on the proposed Form BR requires an attestation that the statements are ‘current, true and complete.’”<sup>55</sup> NASD further indicated that the signature requirement on Form BR is consistent with the signature requirements on the Forms U4 and U5.<sup>56</sup>

One commenter discussed the placement of a question regarding an individual’s status as an independent contractor, which was added to the Form U4 and removed from the originally proposed Form BR in response to comments received in response to NASD’s Notice to Members 04–55 published in August 2004.<sup>57</sup> The commenter urged that “the independent contractor question be placed in a section of Form U4 that does not require

<sup>36</sup> See MML Letter, *supra* note 5. NASD indicated that this commenter is an insurance-affiliated broker-dealer. See NASD Response Letter, *supra* note 6.

<sup>37</sup> See ACLI Letter, *supra* notes 5 and 9.

<sup>38</sup> See NASD Response Letter, *supra* note 6.

<sup>39</sup> The Commission recently approved the NASD’s and the NYSE’s proposed definition of “branch office.” See Securities Exchange Act Release Nos. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104) and 52402 (September 9, 2005), 70 FR 54788 (September 16, 2005) (SR–NYSE–2002–34).

<sup>40</sup> See 1st Global Letter and ACLI Letter, *supra* note 5. One of these commenters also stated that it was “premature” to publish Form BR for comment given the uncertainty surrounding the definition of branch office. See ACLI Letter, *supra* note 5.

<sup>41</sup> See ACLI Letter, *supra* note 5. NASD indicated in its response letter that both of these commenters were concerned about the effect of the proposed Form BR on the insurance industry. The Commission notes that, according to its review, only the ACLI Letter specifically addressed the impact on the insurance industry.

<sup>42</sup> *Id.*

<sup>43</sup> See NASD Response Letter, *supra* note 6. NASD also indicated that it was addressing the impact of the proposed branch office definition in a separate rule filing, SR–NASD–2003–104. As noted above, NASD’s proposed branch office definition has been approved by the Commission. See *supra* note 39.

<sup>44</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104).

<sup>45</sup> See MML Letter, *supra* note 5.

<sup>46</sup> See ARM Letter, *supra* note 5.

<sup>47</sup> See MML Letter, *supra* note 5. This commenter further noted that, once the supervisor’s CRD number is entered, the field for the supervisor’s name could be populated from the supervisor’s Form U4. *Id.*

<sup>48</sup> See ARM Letter, *supra* note 5.

<sup>49</sup> See NASD Response Letter, *supra* note 6.

<sup>50</sup> See MML Letter, *supra* note 5.

<sup>51</sup> *Id.*

<sup>52</sup> Telephone conversation between Shirley Weiss, Associate General Counsel, NASD, Elizabeth Badawy, Accountant, Division, Commission, and Kate Robbins, Attorney, Division, Commission, on September 22, 2005.

<sup>53</sup> See ARM Letter, *supra* note 5.

<sup>54</sup> *Id.*

<sup>55</sup> See NASD Response Letter, *supra* note 6.

<sup>56</sup> *Id.*

<sup>57</sup> See ARM Letter, *supra* note 5.

a registered representative signature so as to avoid triggering a [NASD] Rule 3080 notification,"<sup>58</sup> and that NASD should "set a 'no' default to the response to that question" so that, when the independent contractor question is added to the Form U4, every registered person will not immediately have an incomplete Form U4.<sup>59</sup>

NASD responded by confirming that the independent contractor question will be located in a section of the Form U4 that does not require a registered person's signature if amended.<sup>60</sup> With regard to the request for a "no" default response to the independent contractor question, NASD indicated that it would not set a default response but that it would allow member firms to provide the answers to the independent contractor question as part of a "batch" data file that firms will be able to submit to assign registered persons to established branch offices.<sup>61</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-030 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-030 and should be submitted on or before October 28, 2005.

#### V. Discussion and Commission's Findings

After careful consideration of the proposed rule change, the comment letters, and NASD's responses to the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>62</sup> The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,<sup>63</sup> in general, and furthers the objectives of Section 15A(b)(6),<sup>64</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission supports NASD, the NYSE, and state securities regulators' joint regulatory effort to develop a uniform branch office registration form that will enable firms to register branch offices electronically with NASD, the NYSE, other SROs and states. The Commission believes that utilizing a

single form, Form BR, will make the branch office registration process more efficient by eliminating duplicative forms and questions and reconciling inconsistencies among existing forms, while retaining or adding questions that elicit information that will be of regulatory value to SROs and states, as well as the Commission. The conforming and technical changes to the Form U4 and the Form U5 will also ensure that the information elicited by such forms is of regulatory value to SROs and states. In this regard, the Commission believes that, by significantly streamlining the branch office registration process, such regulatory coordination and cooperation should result in an effective and efficient regulation that will serve the entire broker-dealer community.

The Commission also supports NASD's planned enhancements to the CRD system, which will coincide with the implementation of the Form BR, that will enable registered persons to submit via the Form U4 the name of the branch office(s) with which they are associated. From this information, firms and regulators will be able to generate reports showing, for example, the individuals who are currently associated with a branch, or were associated with a branch during a specific time period. The Commission believes that this is an important improvement to the CRD<sup>®</sup> database and will allow regulators to gather information and deploy examination resources more efficiently. The enhancements to the CRD system also will serve to reconcile inconsistencies in the CRD<sup>®</sup> database, thereby improving data integrity, via cross-checks between the Form BR and the corresponding sections of the Form U4.

Finally, the Commission believes it is reasonable for NASD to implement the proposed Form BR pursuant to the schedule set forth by NASD. The creation of "conversion" Forms BR for branch offices already in existence before the launch of the branch office functionality in CRD<sup>®</sup> should allow for a smooth transition to the new branch office registration system. In addition, the transition will be facilitated by NASD's allowing firms to make "batch" filings to assign registered persons to branch offices, thereby amending multiple registered persons' Forms U4 with one filing. Furthermore, the six-month period for firms to complete the Forms BR for such branch offices and amend the Form U4 for each registered person should give firms ample time to comply with their filing requirements.

<sup>58</sup> *Id.* NASD notes that "NASD Rule 3080 requires certain disclosures regarding the predispute arbitration clause contained in the Form U4 to be made whenever an associated person is asked to sign a new or amended Form U4." See NASD Response Letter, *supra* note 6.

<sup>59</sup> See ARM Letter, *supra* note 5.

<sup>60</sup> See NASD Response Letter, *supra* note 6.

<sup>61</sup> *Id.*

<sup>62</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>63</sup> 15 U.S.C. 78o-3(b).

<sup>64</sup> 15 U.S.C. 78o-3(b)(6).

*Accelerated Approval of Amendment No. 2*

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>65</sup> Amendment No. 2 clarified: (1) The effective date of the proposed rule change and the process for transitioning to Form BR; (2) the description of conforming changes to be made to Forms U4 and U5; and (3) the description of the reports that will be able to be generated in the CRD system. Amendment No. 2 also included other minor edits, including technical, non-substantive changes to the proposed Form BR, modifications to Sections 1 and 6 and related Specific Instructions on the Form U4, and modifications to Sections 1 and 6 and related Specific Instructions and other technical, non-substantive changes to the Form U5. The Commission believes that Amendment No. 2 provides for a clearer understanding of the implementation schedule of the proposed Form BR, the proposed changes to Forms U4 and U5, and the new functionality in the CRD system and notes that the technical and clarifying changes made to the Form BR and Forms U4 and U5 raise no new issues of regulatory concern.

Accordingly, the Commission believes that accelerated approval of Amendment No. 2 is appropriate.

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b)(6) of the Act.<sup>66</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>67</sup> that the proposed rule change (SR-NASD-2005-030), as amended by Amendment No. 1, is hereby approved and that Amendment No. 2 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>68</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-5534 Filed 10-6-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52550; File No. SR-NYSE-2005-64]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Add Rules Regarding Time Tracking Requirements of Specialists and Specialist Organizations to Its Minor Rule Violation Plan

October 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 476A in order to include NYSE Rule 103.12, which relates to time tracking requirements of specialists and specialist organizations, in its Minor Rule Violation Plan. The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.nyse.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On August 12, 2005, the Exchange filed with the Commission a proposed rule change relating to NYSE Rule 103.12,<sup>3</sup> which requires specialists and specialist organizations to record and report the actual time individuals spend working as a specialist or clerk while on the trading floor of the Exchange. NYSE Rule 103.12 requires specialists and specialist member organizations to make and keep, in the regular course of business, records of the times that each of the member organization’s specialists and clerks work in such capacities on the floor. The specialists and specialist member organizations must be able to provide such records to the Exchange within the time frame and in a format determined by the Exchange. In addition, NYSE Rule 103.12 requires specialists and clerks to log in to the Exchange’s IDTrack system and register their presence with respect to specialty stocks in which they are working. The IDTrack system provides reports and information pertaining to specialist and clerk activity to the Exchange’s Division of Market Surveillance and to specialist firms.

NYSE Rule 103.12 allows the Exchange to more accurately track the identity of specialists and their clerks and the times when each specialist and clerk act in such capacities while on the floor. This proposed rule change seeks to add NYSE Rule 103.12 to NYSE Rule 476A’s Supplementary Material, List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A, as an enforcement tool.

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. NYSE Rule 476A’s procedures for the imposition of fines are designed to provide meaningful sanctions for certain rule violations when the initiation of a formal disciplinary procedure under NYSE Rule 476 would be more costly and time consuming than would be warranted given the minor nature of the violation or when the violation calls for a stronger response than an admonition letter. The Exchange believes that

<sup>65</sup> 15 U.S.C. 78s(b)(2).

<sup>66</sup> 15 U.S.C. 78o-3(b)(6).

<sup>67</sup> 15 U.S.C. 78s(b)(2).

<sup>68</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 52251 (August 12, 2005), 70 FR 48790 (August 19, 2005) (SR-NYSE-2005-47).