

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52543; File No. SR-NYSE-2005-13)

September 30, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (“Form BR”)

I. Introduction

On April 13, 2005, 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 proposal to adopt the Uniform Branch Office Registration Form³ (“Form BR”).⁴ The proposed rule change was published for comment in the Federal Register on July 1, 2005.⁵ The Commission received no comments regarding the proposal.⁶ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ At the request of the NYSE, the Commission staff corrected the title of the Form BR, which was inadvertently shown in the initial filing as “Uniform Branch Office Form.” Telephone conversation between Stephen Kasprzak, Senior Special Counsel, NYSE and Elizabeth Badawy, Accountant, Division of Market Regulation (“Division”), Commission, on September 28, 2005.

⁴ The National Association of Securities Dealers, Inc. (“NASD”) also filed a proposed rule change proposing to establish the Form BR, which is substantially similar to the Exchange’s proposal. The Commission is simultaneously approving NASD’s proposed rule change. See Securities Exchange Act Release No. 52544 (September 30, 2005) (SR-NASD-2005-030) (“NASD Release”).

⁵ See Securities Exchange Act Release No. 51923 (June 24, 2005), 70 FR 38229 (“Notice”).

⁶ The Commission notes that it received six comment letters on the NASD’s proposed rule change and the NASD addressed the comments. 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”). See NASD Release, supra note 4, for a summary of the comments and the NASD Response Letter.

II. Description of Proposed Rule Change

The NYSE proposes to adopt Form BR, developed by a working group composed of representatives from the Exchange, NASD, the North American Securities Administrators Association (“NASAA”) and various states. The proposed Form BR would enable Exchange members and member organizations (“NYSE Membership”) to submit branch office application information to the Exchange, NASD, other self-regulatory organizations (“SROs”), and states, as applicable, by electronically filing a single Form BR through the Central Registration Depository (“CRD[®]” or “CRD system”).⁷ The NYSE Membership would be able to use the proposed Form BR to submit information that is currently furnished through the NYSE Branch Office Application form, Schedule E of the Uniform Application for Broker-Dealer Registration (“Form BD”),⁸ and certain state branch office forms.⁹

⁷ As discussed in the Notice, some significant features of the Form BR would include a section that solicits information exclusively from the NYSE Membership. See Notice, supra note 5.

⁸ The Division, in response to a request from NASD, 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.

⁹ The NYSE notes that states that currently require branch office registration or reporting have indicated that they would use the proposed Form BR for those purposes. Seven states that require branch office registration, Connecticut, Florida, Maine, Nevada, Texas, Vermont and West Virginia, 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 Form BR is one component of a broader project to provide uniform branch office definitions and registration procedures.¹⁰ Enhancements to the CRD system would provide what amounts to a relational “link” between the Form BR and the Uniform Application for Securities Industry Registration or Transfer (“Form U4”).¹¹

Previously, branch application information was submitted through the Exchange’s Electronic Filing Platform (“EFP”).¹² Once the proposed new Form BR becomes effective, branch office applications and amendments would no longer be accepted or processed through the EFP. Form BR information submitted through CRD[®] would be automatically transmitted to the NYSE branch office system, from which the Exchange would review branch applications per its current protocol. The NYSE branch office system would then transmit approval/rejection determinations directly to CRD[®], where the NYSE Membership could view them.

III. Discussion and Commission’s Findings

After careful consideration of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations

¹⁰ The Commission recently approved the NYSE’s and the NASD’s proposed definition of “branch office.” See Securities Exchange Act Release Nos. 52402 (September 9, 2005), 70 FR 54788 (September 16, 2005) (SR-NYSE-2002-34) and 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104).

¹¹ For example, while firms would continue to report changes to an individual registered person’s branch office assignment by filing an amended Form U4, firms would also be able to report a new office of employment address for multiple registered persons assigned to a particular branch office that has moved to a new location by filing an amended Form BR (rather than filing multiple Form U4 amendments for the registered persons affected).

¹² The EFP is an extranet built by the NYSE to support authenticated, encrypted, two-way communications between the NYSE and its membership. It is currently being used for applications such as branch office approvals and short interest reporting.

thereunder applicable to a national securities exchange.¹³ Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5),¹⁵ 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 the NYSE, NASD, 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 the NYSE, NASD, 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. 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 the planned enhancements to the CRD system, which will coincide with the implementation of the Form BR, that will enable registered persons to submit

¹³ 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).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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[®] 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[®] database, thereby improving data integrity, via cross-checks between the Form BR and the corresponding sections of the Form U4.

IV. Conclusion

For the foregoing reasons, 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, and, in particular, with Section 6(b)(5) of the Act.¹⁶

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-2005-13) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz
Secretary

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).