Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.d.t. May 27, 2005, through 11:59 p.m. e.d.t., on June 10, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–2807 Filed 6–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51743; File No. SR–CBOE–2005–21]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to the Exchange's Calculation of the National Best Bid or Offer When Another Exchange Is Disconnected From the Intermarket Option Linkage

May 25, 2005.

On March 17, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend its rule regarding the calculation of the National Best Bid or Offer (''NBBO'') when another participant exchange in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') is disconnected from the Linkage.[3] The proposed rule change was published for comment in the **Federal Register** on April 21, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of CBOE be designed to promote just and equitable principles of trade, 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 believes that it is appropriate for CBOE to remove an exchange's disseminated quote from CBOE's determination of the NBBO when an exchange is disconnected from Linkage because access to that exchange's quote is limited during such times. The Commission further believes that CBOE's existing rules establish appropriate procedures to notify promptly the affected exchange and CBOE members of such removal and establish an appropriate standard for when to resume inclusion of the affected exchange's quote in CBOE's NBBO calculation.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2005–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2808 Filed 6–1–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Linkage'' means the systems and data communications network that link electronically the options exchanges to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. *See* Section 2(14) of the Linkage Plan.

[4] *See* Securities Exchange Act Release No. 51540 (April 13, 2005), 70 FR 20780.

[5] 15 U.S.C. 78f.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* CBOE Rule 6.13(e)(ii).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51742: File No. SR–NASD–2005–030]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to 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'')

May 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2005, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. On May 12, 2005, NASD amended the proposed rule change (''Amendment No. 1''). The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to adopt the Form BR and to make conforming changes to the Form U4 and Form U5 (''Forms''). The proposed Forms are available at NASD and at the Commission.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, 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. NASD 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish a uniform branch office registration form (''Form BR'') that would enable broker-dealers to register branch offices electronically with NASD, the New York Stock Exchange, Inc. (''NYSE''), other self-regulatory organizations (''SROs''), and states, (as applicable), through the Central Registration Depository (''CRD(r)'', the ''CRD system'', or ''Web CRD'') via a uniform form. The proposed Form BR would replace Schedule E of the Uniform Application for Broker-Dealer Registration (''Form BD''), the current NYSE Branch Office Application form, and certain state branch office forms.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

This rule change also would make certain technical revisions to the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and Uniform Termination Notice for Securities Industry Registration (''Form U5'').

Background. A working group composed of NASD and NYSE staff and representatives of the North American Securities Administrators Association (''NASAA'') and states (hereinafter referred to as the ''Working Group'') developed the proposed Form BR to enable broker-dealers to register branch offices electronically with NASD, the NYSE, and states that require branch office registration, through a single filing with the CRD system. 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 would be of regulatory value to SROs and states. The proposed Form BR would make the branch office registration process more efficient by eliminating duplicative forms, reconciling inconsistencies among existing branch office forms, and eliminating duplicative questions.[4] To the extent possible, the proposed Form BR would use the same terms as those used in existing uniform forms.[5]

The proposed Form BR was developed on the premise that firms would file the Form through Web CRD. In addition to the filing and cost efficiencies identified above, Web CRD system functionality would enforce certain filing disciplines that would enhance the integrity of the data in the CRD system. For example, system cross-checks between the Form BR and the ''Office of Employment Address'' section of Form U4 would provide greater assurances regarding accuracy of the locations from which registered representatives are conducting business. In addition, regulators would be able to generate reports through CRD based on information reported on the Form BR in conjunction with other information reported in the CRD system. This should enable regulators to gather information and deploy examination resources more efficiently.

Making the Transition to Form BR. Following the implementation date, firms would be required to use the Form BR in place of the existing NYSE's Branch Office Application, Schedule E of the Form BD, and forms required by participating states, and to file a Form BR for each branch. In addition, firms would be required to link registered individuals to each branch with which they are associated.

As part of the transition process, and prior to the implementation date, NASD would pre-populate the Form BR (*i.e.*, have certain information already reported in the CRD system by a firm automatically entered onto the Form BR) with certain data elements based on existing NASD, NYSE, and jurisdiction branch office data, *e.g.*, Branch Address, NASD Branch Number, NYSE Branch Code Number, NASD/NYSE Supervisor/Person-In-Charge Name and CRD Number, Operational Status, and NYSE/Jurisdiction Registration Status. To facilitate the transition process, firms would be able to provide NASD with a data feed of the name and CRD number of the individuals associated with each branch office. Alternatively, after a firm files a Form BR for each of its branches, it would be able to file an amended Form U4 for each individual, to associate that individual with a branch (by providing certain information in the ''Office of Employment Address'' section of Form U4). If a firm were to not have a branch, it would be able to associate an individual (or individuals) with the firm's main office.[6]

Highlights of the Proposed Form BR. There would be nine sections in 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 prior to 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 is an NASD office of supervisory jurisdiction (''OSJ''). If it is not an OSJ, the applicant would be required to provide the branch number for the OSJ that has supervisory responsibility over the branch and the CRD number of the supervisor in charge of that OSJ. Section 2 also would provide applicants with the opportunity to identify a ''person-in-charge'' (who may or may not be a registered principal) who has supervisory responsibilities at the branch. Consistent with the uniform form concept, 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 the applicant to disclose the names being used by any associated person to conduct investment-related business at the branch other than those names disclosed on the applicant's Form BD or Form ADV (''Uniform Application for Investment Adviser Registration''). Section 3 also would ask for the website

Schedule E of the Form BD. NYSE member firms are required to submit the NYSE Branch Office Application 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, NASD anticipates that the Commission would eliminate Schedule E from Form BD, and the NYSE would retire the current NYSE Branch Office Application. Connecticut, Florida, Nevada, and Vermont also have indicated that they plan to retire their respective forms and adopt the Form BR. Other jurisdictions that currently require ''notice filings'' for branch openings and closings have indicated that they also expect to adopt the Form BR.

[4] The proposed Form BR would be 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, each registered person's branch office(s). Firms also would be able to obtain a report via Web CRD that would list individuals who are currently associated with a branch, or were associated with a branch during a specific time period. In addition, regulators would be able to obtain reports on branch offices within a firm and registered individuals in those branches.

[5] 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.'' NYSE has made slight modifications to the definitions of ''small branch'' and ''regular branch.''

[6] Each branch office would be assigned a branch code. The code for the main office will be zero (''0'').

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.[7]

• *Section 5—Associated Individuals*[8]

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.[9] 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 on the Form U4 is amended when an individual leaves a branch for another branch; or (2) the Form U5 is amended when an individual leaves a firm. This functionality should facilitate a firm's ability to comply with one of the requirements contained in Exchange Act Rule 17a–4(l).[10]

• *Section 6—NYSE Branch Information*

Only NYSE-registered firms (*i.e.*, firms registered with the NYSE) would be able to view Section 6 on Web CRD, and only NYSE-registered firms would be required to complete Section 6. The proposed Form BR would incorporate the information elicited on the NYSE's current Branch Office Application and Office Space-Sharing forms. 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, among other things, 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 a branch office may move from one state to another, especially if the office is located near a state border, 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 the branch in another state that also has a registration or notice 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.[11]

• *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 Changes to Forms U4 and U5. NASD is also 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 on the Form U4 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 branch is selected, the Office of Employment screen would populate the Form U4 with the following data elements based on information reported on the Form BR: CRD Branch Number, NYSE Branch Code Number, address, start and end dates, and type of office. The Form U5 would display the same information.[12]

Second, the Working Group would add a question to the Form U4 to elicit whether the individual has an independent contractor relationship with the branch office. This question, which is currently on Schedule E of Form BD, was initially on the proposed Form BR. However, the Working Group determined that the question more appropriately belongs on Form U4. Third, NASD is proposing changes to the Specific Instructions to address the Form U4 and Form U5 changes. Fourth, NASD is proposing other technical changes.[13]

[7] NASD notes that Section 4 would not require applicants to report insurance agency agreements with the main office pursuant to which the branch operates.

[8] 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 with NASD.

[9] Firms would be required to enter the CRD number, and then the name would populate in the field.

[10] Rule 17a–4(l) requires certain records for the most recent two-year period to be maintained at the office to which they relate. Among other reports, firms would be able to print a report that would list individuals who are currently associated with a branch, or who were associated with the branch during a specific time period.

[11] For purposes of the proposed Form BR, NASD would view a change in location simply as an amendment filing, not a request to open a new branch.

[12] NASD 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.

[13] NASD would add to the Forms U4 and U5 registration categories that the Commission has previously approved: *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 Stock Exchange positions Market Maker (44), Floor Broker (45), and Market Maker acting as a Floor Broker (46)). Additionally, NASD would 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. Finally, NASD would amend the Forms U4 and U5 to reflect the change in name of the Cincinnati Stock Exchange (CSE) to the National Stock Exchange (NSX). *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR-CSE–2003–12). In addition, the instructions on the Form U4 with respect to submitting fingerprint cards would be modified to describe the radio button representation. New instructions on the Form U5 would explain the circumstances under which the office of employment address would be prepopulated.

As noted in Section 2 of this filing, NASD proposes to implement the proposed rule change (*i.e.*, make the Form BR effective) in early October 2005. NASD would announce the implementation date of the proposed rule change and a transition schedule in a *Notice to Members* to be published no later than 60 days following Commission approval. The transition schedule would identify key milestones, including: (1) The date branch office functionality would be deployed in the CRD System; (2) the date by which firms would be required to file a Form BR for each branch; and (3) the date by which firms would be required to link all registered individuals to each branch with which they are associated. NASD proposes to give firms a total of approximately six months to complete the transition.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that NASD rules must 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. NASD believes that the proposed rule change is designed to accomplish these ends by establishing the Form BR, a uniform branch office registration form that would (1) permit firms to register their branch offices with NASD, the NYSE, and certain states via the CRD system; (2) make the branch office registration process more efficient by replacing Schedule E of the Form BD, the current NYSE Branch Office Application form, and certain state forms with one uniform form; and (3) allow a more effective mechanism for linking and tracking a registered representative to a particular branch office. The proposed conforming changes to the Form U4 and Form U5 would be made to update these Forms.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[14] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was published for comment in NASD *Notice to Members* 04–55 (August 2004). Twenty-one comments were received in response to the *Notice*. A copy of the *Notice* and copies of the comment letters received in response to the Notice are available at NASD and at the Commission. As more fully described below, 12 of the 21 commenters supported the proposed rule change (six of these commenters had reservations), seven commenters were opposed, and two commenters had questions about the proposed Form BR but did not state a position.

Following receipt of the comments, the Working Group reviewed the proposed Form BR to determine whether each of the proposed questions had sufficient regulatory value to be kept on the Form BR or, in the alternative, should be eliminated or modified, and whether the instructions, terminology, format, and proposed questions were sufficiently clear and understandable. In response to the comments, the Working Group made certain revisions to the proposed Form BR, as discussed below.

• *Comments Relating to Content of the Proposed Form BR*

• *Pre-populating the Proposed Form BR*

In response to the five commenters who suggested that NASD pre-populate the proposed Form BR wherever possible, NASD would pre-populate a number of questions in Section 1 (General Information) from information already reported in Web CRD. Further, applicants would be required to complete Section 5 (Associated Individual) only for initial branch office filings. To associate a registered individual with a branch office after the initial branch office filing, applicants would only need to update the address where the individual is employed on that individual's Form U4. NASD would populate the following Form BR data elements based on existing NASD, NYSE, and jurisdiction branch office data: Branch Address, NASD Branch Number, NYSE Branch Code Number, NASD/NYSE Supervisor/Person-In-Charge Name and CRD Number, Operational Status, and NYSE/Jurisdiction Registration Status. To facilitate the transition process, firms would have the option of providing to NASD a data feed of the name and CRD number of the individuals associated with each branch.

• *Section 1—General Information*

As noted above, seven fields would be pre-populated.

• *Section 2—Registration/Notice Filing/Type of Office*

Six commenters commented on Section 2. One commenter recommended that the Form ask for information only about one supervisor. The Working Group decided not to limit the question to one supervisor, since there could be more than one supervisor in a branch office. However, in response to a comment that it was duplicative to ask whether a supervisor was currently associated with the firm, the Working Group eliminated that question. The Working Group left intact the requirement to check a box requiring the applicant to attest that it is not required to register the branch with the NYSE. With respect to a comment that the information in Section 2 was already being reported on the Form U4, the Working Group eliminated the ''Disclosure,'' ''SD'' status, and ''Independent Contractor'' fields. Applicants would only need to supply the name and/or CRD number of the supervisor/person-in-charge.[15]

• *Section 3—Types of Activities/Other Business Names/Websites*

Section 3, among other things, would include a question about the outside activities of associated persons. Six commenters had concerns about the scope of information being elicited and the difficulty of updating the information when persons join or leave a firm. After considering the comments, the Working Group determined that there is a regulatory need for information regarding the ''investment-related'' activities of associated persons conducted at the branch. Therefore, the Working Group eliminated the checklist of financial industry activities, business, or services conducted by any associated person of the applicant at the branch and replaced it with a question limited to a description of any outside ''investment-related'' activities, a term that is defined in the Form U4. The Working Group made a corresponding change to the Section 3 question eliciting information about business conducted by associated persons under names other than those disclosed on the applicant's Form BD or Form ADV. That question is now limited to ''investment-related'' business as well.

The Working Group also considered a commenter's concerns about the costs of gathering information about associated

[15] The individual's firm and regulators would be able to access the individual's entire CRD record by selecting the individual's CRD number from the current list of individuals associated with the branch.

persons' activities, and the potential for firm responsibility for associated persons' outside business activities. The commenter suggested that disclosure should be limited to information about firms. The Working Group nonetheless concluded that the questions being asked in Section 3, as revised, have significant regulatory value and should be retained.

• *Section 4—Branch Office Arrangements*

Section 4 elicits information about branch office arrangements and payment of expenses. There were eight comments about this section, which generally asked for clarification of the questions. Initially, a question in Section 4 (taken essentially verbatim from the Schedule E) asked whether the branch had a written agreement with the main office and whether five percent or more of its registered representatives were deemed to be ''independent contractors.'' The Working Group eliminated this question in its entirety because: (1) Another question in Section 4 would ask whether the business location operates under a written agreement; and (2) as previously discussed, information about independent contractors would be elicited on the Form U4. The Working Group added a question that permits applicants to explain any expense payment or financial interest arrangement in their own words.

• *Section 5—Associated Individuals*

Section 5, as initially proposed, requested, as to each associated person at the branch, the person's CRD number, disclosure information, SD status, and whether the person is an independent contractor. Seven commenters noted that the requested information was duplicative and unnecessary. In response, the Working Group eliminated the ''Disclosure,'' ''SD,'' and ''Independent Contractor'' fields from this section. As modified, firms would be required to enter only the individual's CRD number (or in the alternative, the individual's name).[16]

• *Section 6—NYSE Branch Information*

In response to comments, the Working Group eliminated two questions and clarified others.

• *Section 7—Branch Closing*

This section elicits information about the date operations would cease at the branch office, the location of the branch's books and records, and the name and telephone number of a contact person. One commenter stated the view that Section 7 made branch closing or withdrawal more complicated. Another commenter suggested pre-populating Section 7. A third commenter stated that the information being asked was already available on the Form U5. The Working Group eliminated a question asking whether the office closing was to be listed in the NYSE Bulletin, but did not otherwise change the questions on the basis that this information has regulatory value.

In response to comments, the Working Group clarified the instructions applicable to this section to indicate that Question 7 would be asking for the name and telephone number of the contact person (not the address of the contact person), as well as the location of the books and records of the closed branch. In addition, Question 7 would permit a firm to provide multiple locations for the books and records of the closed firm if they are being maintained at more than one location.

• *Section 8—Branch Withdrawal*

Although one commenter questioned the need for this information, the Working Group determined to keep the proposed question, which would ask for the date and reason for withdrawal and the name and telephone number of a contact person, on the basis that this information would be of value to regulators.

• *Section 9—Signature*

As initially proposed, Section 9 required the signatory to certify ''under penalty of perjury'' that he or she had signed the form on behalf of, and with the authority of, the applicant. The attestation also required the signatory and the applicant to represent that the applicant would promptly file any required amendments to the Form BR. One commenter contended that the signer should not be required to attest on behalf of himself and the firm as to the truth of information supplied by associated individuals or as to future amendments. Another commenter noted that neither the current NYSE Branch Office Application nor Schedule E amendments require a signature and suggested that the Form BR limit the attestation to ''the best of the member's knowledge the application is accurate and complete in all material respects.'' The Working Group carefully considered these comments and revised the attestation to remove ''under penalty of perjury'' and the statement regarding future amendments on behalf of the signatory and the firm. The Working Group, however, believes that the integrity of the data to be reported on Form BR requires an attestation that the statements are ''current, true and complete.''

• *Other Comments*

Four commenters favored the proposed Form BR only if all states were to accept the Form in place of state registration requirements. NASD notes in this filing that Connecticut, Florida, Nevada, and Vermont have indicated that they plan to retire their respective branch registration forms and adopt the Form BR. Several of the states that require a ''notice filing'' also have agreed at this time to use the proposed Form BR in place of their forms. Although NASD cannot speak for other states, it notes that NASAA, which has been an integral part of the Working Group involved in the creation of the Form BR, has indicated that it expects to formally endorse the Form BR.

NASD has also considered comments concerning the costs to firms of filing the proposed Form BR for each of their branches. One commenter contended that the proposed Form BR would have a disproportionate and negative impact on broker-dealers affiliated with life insurers if NASD's proposed definition of ''branch office'' is implemented. The proposed Form BR is not, as this commenter suggests, linked to NASD's proposed rule change regarding the definition of branch office. NASD is addressing the impact of its proposed definition of branch office in a separate rule filing.[17] As explained above, the purpose of the proposed Form BR is to enable broker-dealers to register branch offices electronically with NASD, the NYSE, other SROs, and states (as applicable) via one uniform form through Web CRD. The proposed Form BR would combine in one form Schedule E of the Form BD, NYSE's Branch Office Application, and forms required by certain states. As this commenter correctly notes, this concept offers the opportunity for efficient regulatory compliance.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[16] The individual's firm and regulators would be able to access the individual's entire CRD record by ''clicking'' on the individual's CRD number when viewing Section 5 of the Form BR in Web CRD.

[17] *See* Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059 (December 16, 2003) (SR–NASD–2003–104) (Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of ''Branch Office'' Under NASD Rule 3010(g)(2)).

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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*. 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, 450 Fifth Street, NW., Washington, DC 20549–0609.

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 June 23, 2005.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51744; File No. SR–NYSE–2005–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretation of Exchange Rules

May 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2005 the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 proposed rule change is an Information Memo providing certain interpretations of Exchange rules concerning the application of those rules in connection with the Pilot Program established by the Commission under Rule 202T[3] of Regulation SHO (the ''Pilot'').[4] The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the places specified in Item IV below.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is issuing an Information Memo to provide guidance to its members and member organizations that are engaged in trading on the floor of the Exchange concerning the impact the Pilot will have with respect to certain rules of the Exchange governing such trading. The Information Memo reminds members and member organizations that, even though tick tests will not apply to short sales in Pilot securities, short sales in these securities must still be conducted in a manner consistent with all other applicable Exchange rules and Federal securities laws regarding market manipulation, fraud, market maintenance and other violative trading situations. The Information Memo also identifies specific Exchange rules, which have tick-sensitive components, but which are not affected by the suspension of tick tests for short sales outlined in the Pilot. For example, Exchange Rule 80A (Index Arbitrage Trading Restrictions) requires in certain circumstances that index arbitrage orders in certain stocks be entered on the Exchange as ''sell plus,'' meaning the orders must be executed on a plus or zero-plus tick. This requirement will continue to apply even if the order is a short sale entered in a stock that is part of the Pilot. The Exchange identifies several other tick-sensitive rules that will not be affected by the Pilot.

The Exchange is alerting specialists and other floor members as to the manner in which it is interpreting certain provisions of Exchange Rule 104 (Dealings by Specialists) once the Pilot begins. As the Exchange anticipates that trading in certain stocks may see an increase in speed and volatility, the Exchange is advising specialists that, in such circumstances, Floor Official approval required under the Rule may be sought after a trade has taken place, but, in any case, as soon as possible. The Exchange is advising Floor Officials in these situations to review requests for approval as quickly as possible, and that they should complete their review and

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.202T.

[4] 17 CFR 242.200 through 203.