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via electronic mail

September 2, 2004

Ms. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

Re: Proposed Uniform Branch Office Registration Form

Dear Ms. Sweeney:

The Association of Registration Management ("ARM")¹ appreciates the opportunity to comment on the proposed Uniform Branch Office Registration Application ("Form BR"; "form") that was announced in *Notice To Members 04-55*. Form BR is intended to be a single uniform application for the registration of a firm's branch offices.

ARM applauds the working group who developed the form—a group comprised of individuals from NASD, the New York Stock Exchange ("NYSE"), the North American Securities Administrators Association ("NASAA") and staff from various states. Furthermore, ARM appreciates the efforts of all individuals who were involved in bringing uniformity to this area.

ARM strongly endorses the concept of such a uniform form, a form that will enable member firms to electronically register via the Central Registration Depository ("CRD") their branch offices with NASD, NYSE and those states that require the registration of branch offices. Such a process would provide all regulatory agencies with pertinent information while at the same time eliminating the need to separately file Schedule E of Form BD, the NYSE Branch Office Application as well as existing state branch office registration forms and/or other state notifications.

¹ ARM is an industry association founded in 1975 that is comprised of registration managers and compliance professionals at broker-dealers who deal with the regulatory community on matters relating to licensing and registration.

On reviewing the proposed Form BR, we noted that much of the form's content appears to be a combination of that which already exists on current branch registration forms, making certain data fields redundant. We also noted the proposed form elicits information that already exists in CRD. Because of CRD's sophistication, we believe certain data requests on the proposed form can be consolidated, culled from existing CRD data or eliminated altogether. Clearly, data integrity would likely result from drawing on data fields that already exist in CRD—this forces consistency. In addition, ARM noted the inclusion of some new questions designed to elicit information that had never been previously sought on any branch office registration application. It appears these questions were added to reflect both the changes in the manner that the broker-dealer community conducts business and in the manner the regulatory community oversees industry. For example, the proposed form inquires about websites that an applicant might use for promotion of its business. ARM supports the regulatory community in this regard and commends them for their forward-thinking.

With this in mind, ARM believes that with the development of Form BR the time has arrived to reevaluate other data fields that at *one time* may have served a regulatory purpose but that now appear on the proposed form for no apparent reason except for the fact that they existed on *previous* paper versions of various branch office registration applications. In this connection, ARM would respectfully request that such data fields be reevaluated to determine the necessity of their inclusion on the form in order that those that are determined to be of little or no regulatory benefit could be removed. We list the following suggestions for your consideration:

Section 1 - General Information

The entry of *Applicant's CRD number, name and main address* should be *prepopulated* on signing onto CRD with information already on file in CRD.

Section 2 - Registration/Notice Filing/Type of Office

The check box text in section 1 that reads "*By unchecking NYSE registration and checking this box, applicant attests that it is not required under NYSE rules to register this branch location with the NYSE*" is, in our view, unnecessarily confusing. It suggests that *NYSE* is selected by *default* and then outlines a process to affirm the choice *not* to open the branch with the NYSE. ARM suggests a clarification of this section might be in order: change the quoted text from a check box to text that simply reads "*By not checking NYSE above, applicant attests that it is not required under NYSE rules to register this branch location with the NYSE*".

For the question "*Type of Branch Office Registration*", ARM suggests adding a box for "*Both*" (broker-dealer and investment advisor). Also, we remind NASD that several states provide federally-covered broker-dealers an exemption from having to make notice filings. We bring this to NASD's attention so that edits will not be built that might prevent marking the box "investment advisor" or "both" in the case where the branch is located in a state wherein the firm is not a notice filer (as appearing on Form ADV in the Investment Advisor Registration Depository).

The question "*Is the supervisor/person-in-charge currently associated with the applicant?*" is unnecessary. It is ARM's understanding that this is intended to capture persons who are not yet associated with the applicant and as well contemplates that a firm will list names and CRD numbers of persons it intends to hire from another firm.

There are several problems with this. First, it presupposes firms are one hundred percent certain of the future employment status of those individuals it expresses an interest in and of those *interested* in joining the firm. For example, firms routinely abandon interest in candidates during the discussion stage when an applicant who, to date, has a clean record but then has a form amendment filed at the time the firm is ready to extend an offer of employment, an amendment that contains disclosure information. Here, such a scenario would require the firm to reevaluate the desirability of employing the candidate. Second, creating an official record (that, incidentally, some states *might* consider to be a public record) would likely compromise the integrity of the interview process. Third, it could expose a firm and possibly NASD to lawsuits by the employment candidate if, for example, the candidate loses his/her current employment because it was learned of their intention to seek employment elsewhere while at the same time the firm who had initially expressed its interest in employing the person reconsidered extending its employment offer.

ARM suspects this feature would either not be used at all or would be used by someone who is unaware of the possible aforementioned risks. Only associated persons should be listed on CRD as managers or supervisors of branch offices. With that said, ARM believes this question should be removed in its entirety.

ARM also believes that branch offices should be allowed to have more than one supervisor or person-in-charge. It is not uncommon for a full-service firm to have various businesses supervised by different individuals at a single location. For example, a branch office could have a retail department and an institutional sales and trading department in the same location. Industry practice is to have such an area supervised by different individuals since the businesses, while in some respects similar, are typically vastly different. ARM believes that to limit to *one* the number of supervisors that could be assigned to a location would be inaccurate, yet the alternative would be to register the same business location multiple times which would be cost-prohibitive and also would constitute an administrative burden. Besides, we are unaware of any enforcement case involving a *failure to supervise* complaint wherein the regulator relied exclusively on the name of the supervisor as it appears in CRD without first inquiring and verifying with the firm the identify of the supervisor or supervisors and the period of time that such individuals held supervisory responsibility.

Section 3 - Other Business (DBA) Names/ Types of Activities/ Websites

DBA is an acronym for “Doing Business As” and should be spelled out on the form.

The proposed question reads “*Indicate any other types of financial industry activities, business, or services conducted by any associated person of the applicant at this branch (Check all that apply)*”

ARM believes the question is out of context since it asks “*Indicate any other types...*” For the sake of clarity, the question should read “***Other than the businesses identified on Form BD, indicate any other types of financial industry activities, business, or services conducted by any associated person of the applicant at this branch (Check all that apply)***”

All check-box items in Section 3 should be *defined terms*, as some categories will likely create confusion. For example, investment bankers underwrite securities. As well, investment advisory services and, to some extent, research activities may include sales. ARM also believes that “*back office operations*” would be excluded from the definition of branch office, thereby making this box unnecessary.

For clarity, ARM suggests limiting the types of activities to the following: (i) *sales*, (ii) *trading*, (iii) *research*, (iv) *investment banking* and (v) *other*, permitting firms to describe “*other*”. If a location engaged in back office operations ultimately required branch office registration, this event could then be captured under “*other*”.

Likewise, terms like “*pension consultant*”, “*real estate broker or dealer*”, etc. need to be defined. One might well confuse pension consultant with a firm that establishes Individual Retirement Accounts for customers or provides investment advice consistent with an investor’s objectives for a comfortable retirement. Similarly, “*real estate broker or dealer*” could be confused with a firm that sells Real Estate Investment Trusts. Of course, ARM doesn’t object if this is indeed the information being sought by the form but we request that the questions and/or definitions be clear.

Sections 4 - Office Sharing Arrangements - and 6 - NYSE Branch Information - Office Sharing

Both Sections 4 and 6 solicit information about office sharing. These sections should be consolidated into one section with the first question reading “*Does the branch office share space?*” If the answer is “*no*”, the system should prompt the filer to go to the next section.

The second and third questions seem strikingly similar in that both ask if the business will operate pursuant to a written agreement—except the third question focuses on “*independent contractors*”. ARM believes these questions can be consolidated into one, one that reads, for example, “*Will the business location operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office?*” (Yes or No). “*If Yes, will it be deemed to have 5% or more of its total registered representatives to be independent contractors for tax purposes?*” (Yes or No)

Likewise, Section 4 contains two questions with respect to whether or not the applicant will assume liability for its own expenses. One question reads “*Does applicant assume liability for its own expenses?*” The following question reads “*Does any person other than the applicant have responsibility, directly or indirectly, for paying the expenses of this branch or otherwise have a financial interest in this branch office or its activities?*” Since the first question is subsumed in the second, ARM recommends the first question be eliminated entirely. Also, we ask that the second question be rewritten to recognize that a *parent* or *affiliate* might share expenses, especially in the event that there is space-sharing. ARM recommends the question read “*Does any person other than the applicant or a control affiliate have responsibility, directly or indirectly, for paying the expenses of this branch or otherwise have a financial interest in this branch office or its activities?*”

Section 5 - Associated Individuals Section

Firms should only have to enter CRD numbers of those individuals associated with a branch. Their names, whether or not they have disclosure and whether or not they are statutorily disqualified, should be automatically populated with data that currently resides in CRD. If not, there will be future discrepancies should registrants develop disclosure history and/or if disclosure history becomes archived.

Section 6 - NYSE Branch Information

ARM realizes the current NYSE branch office application ask the questions “*What is the estimated cost of opening and equipping the new office?*” and “*What is the estimated number of accounts to be serviced?*”; however, ARM questions the continued need to provide this information. ARM understands the information regarding the cost of opening an office was originally sought because the NYSE wanted to ensure such an opening would not adversely effect a member organization’s net-capital requirements. Inasmuch as most firms file FOCUS reports monthly and others quarterly (electronically and in paper form), we believe the former question no longer serves any regulatory purpose. Likewise, we understand the latter question’s inclusion was in order to provide the NYSE with a sense of the size of the branch office’s business. We respectfully submit that there is no way to predict with any degree of accuracy the answer to this latter question; we believe, rather, that the Exchange should use as a gauge of size the number of registered representative assigned to a branch. ARM suggests these two questions be eliminated entirely.

Question 5 of this section asks “*Will Options Business be conducted from this location? If yes, enter the CRD number if the Series 4, Series 8 or Series 9/10 qualified individual who is responsible for the supervision of the Options business at this location*”. ARM reminds NASD that business rules applicable to this question should allow an individual with options business supervision responsibilities to be present in *another* office, as such an individual may be a registered representative-in-charge or a branch manager of a non-Office of Supervisory Jurisdiction.

Question 6 asks “*If both...Research and Investment Banking activities are indicated on the activity section of this form answer the following questions*”. ARM believes this is a reasonable question to ask; however, the question appears in an incorrect place and the ensuing questions seem to have obvious answers, answers that may provide the regulatory community with a false sense of comfort. For example, would a firm represent that they have adequate information barriers in place while at the same time indicating that equipment such as printers and fax machines is shared? By contrast, the question asking “*Are the doors locked?*” is overly broad, especially since a branch office should be holding itself out to the public as a place of business. ARM believes that if research and investment banking activities are indicated in the activity section of this form, the CRD system should prompt a new question in Section 3 to read “*Does the applicant have information barriers in place*” (“*Yes*” or “*No*”). Knowing that a “*No*” response would likely create delays in a branch office’s approval would compel a firm to ensure that information barriers are in place prior to completing and submitting the form. Regulators could then focus examination efforts in this regard by ensuring that those firms that have research and investment banking together do in fact have adequate information barriers in place. Frankly, after recent issues that prompted new research rules, we can’t image any firm putting research and investment banking together in the same location without physical partitions.

Question 7 asks “*Are any of the records pertaining to this office and/or to the personnel assigned thereto maintained at any other location?*” ARM proposes excluding a *main office* from this question, as certain records may be maintained by a main office (i.e., human resource, payroll, etc.). Also, we are not sure what is meant by “*...or to the personnel assigned thereto maintained at any other location?*” Persons operating from other locations should have their office of employment reflected in their CRD record. ARM suggests the question be worded “*Other than the main office, are any of the records pertaining to this office maintained at any other location?*”

Question 8 reads “*Is the officer or partner responsible for the inspection of this office at least annually a registered representative?*” ARM believes this question should be deleted, as it serves no regulatory purpose. Typically, a person responsible for branch office inspections is a senior officer in a firm’s

compliance or audit area and has been delegated that responsibility at a particular point in time. Should that individual leave the firm and the firm in turn then consequently assigns a new officer to the branch office inspection function, a member firm having six hundred branches would have to amend six hundred branch office registration records. Indeed, in the current NYSE electronic branch office application, this information is sought although it is not a data field that can later be amended. It therefore in our view has no utility. If the regulatory community determines that it must absolutely be provided with this information, ARM asks that functionality be built so as to apply a single individual's name (*one who is responsible for inspections*) to all branch offices. We also believe the question would read more clearly if worded "*Is the officer or partner responsible for the annual inspection of this office a registered representative?*"

Question 9 reads "*Name and address where branch office certificates will be sent*". Typically, branch certificates are sent directly to the branch address and to the branch office manager's attention. ARM suggests the question read "*Name and address where branch office certificates will be sent, if different from this branch office address*". Consequently, the CRD system should not require this section to be completed.

Section 6 - NYSE branch office information – office sharing

As stated previously, this section should be combined with Section 4. It should also permit multiple entries if the applicant is sharing space with more than one entity in a kindred business.

Section 7 - Branch Closing

As with Section 1, the entry of a branch address should be prepopulated with information already on file on CRD for that specific branch. Also, we are unclear why the question "*Is the office closing to be listed in the NYSE Bulletin?*" is being asked. If the firm has indicated in Question 10 - Section 6 that they wished to have the office listed in the NYSE Bulletin then why would the firm object to any announcement of its closing? In addition, logic might have to be systemically built to address any offices that are not *initially* listed in the Bulletin: when a request is later made by a firm to have an office closing listed in the Bulletin, the system must be able to account for this. Again, we believe if an opening was listed, a closing should also be listed. Conversely, a closing should not be announced if an opening was not announced.

Section 9 - Signature

ARM is extremely disappointed that the introduction of a "*Signature of Appropriate Signatory*" section has even been considered. It is unprecedented—neither the current NYSE Branch Office Application nor Form BD Schedule E amendments require signature. Individuals who are delegated responsibilities by their employing broker-dealer to make such filings are granted NYSE and CRD entitlements; the CRD system is capable of identifying individuals at member firms who have submitted any filing. To have a firm train and entitle an individual to perform a filing task and then not trust his or her ability to accurately carry out that task frankly seems inane. Moreover, ARM is very concerned at representations firms must make in the signature section. We are not suggesting that firms do not sign off on the accuracy of their filings. We ask, though, that you recognize that the personal data of those assigned to a branch office may not be amended through Form BR but rather only through the registered representative's form. Conversely, when a registered representative terminates employment, Form U5

will be filed. It would constitute a major administrative burden to have to amend Forms U4 (offices of employment section) and then file Forms U5 only to have to add new and relocated employees to Form BR while also having to delete employees from the same form. Similarly, personnel assigned to the proposed office may not have disclosure at the time of the filing but then may later become the subject of an incident requiring a U4 amendment.

We realize that the aforementioned process was never intended to be and yet the form does not support what *was* intended—namely, that certain information and updates would be drawn elsewhere from CRD. Further, there are certain disclosure filings for which it is the registered representative's responsibility—not a firm's—to ensure the accuracy and timeliness of the filing thereof. If a firm, for example, learns a registered representative (who had been employed with the firm for several years) had recently petitioned for bankruptcy but did not notify the firm, the firm would have no way of knowing of the existence of the event. ARM suggests amending Form BR's language to include statements such as "*unless reported elsewhere in CRD*" in order to capture amendments to pages two and three of Form U4 and Form U5—as might be amended periodically—and "*to the best of the member's knowledge the application is accurate and complete in all material respects*". We believe this is a reasonable request.

Finally (but not at all of least importance), ARM is somewhat concerned that the systematic introduction of this great magnitude of information might lengthen the amount of time that it would take to register a branch office. It is our sincere hope that logic that mimics the automatic approval process can be built into the CRD system if certain criteria are met. Such filtering functionality would enable regulators to then target for further review those items that may be of concern to them and/or those items that may require additional information *while at the same time assuring expeditious approvals*. Branch office approvals should be issued virtually immediately, for example, for a new location with a Series 9/10 qualified manager that does not share space, does not commingle research and investment banking personnel, that does not use a "Doing Business As" (DBA) and that does not operate under any agreements/independent contractors.

ARM once again strongly endorses the concept of a single branch office registration form. It is our hope, though, that in addition to bringing about uniformity in this area, the expeditious approval of branch office applications will be another benefit that will be derived from the introduction of the proposed form. We again firmly believe CRD's filtering and streamlining capabilities will assist regulators in reviewing that information *most pertinent* to an application when it is being considered for approval—certainly (and for the foregoing reason), CRD was the obvious choice to house Form BR.

ARM again applauds the effort of all involved in development of Form BR and again thanks you for the opportunity to allow us to comment on this very significant initiative.

Sincerely,

Mario DiTrapani
President