

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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-32 and should be submitted on or before July 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51923; File No. SR-NYSE-2005-13]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposed Uniform Branch Office Form ("Form BR")

June 24, 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 April 13, 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 adopt proposed new Uniform Branch Office Form ("Form BR"). The text of the proposed Form BR is available on the NYSE's Web site (<http://www.nyse.com/>), at the Exchange's Office of the Secretary, 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to establish a new Form BR that would enable Exchange members and member organizations ("NYSE Membership") to electronically submit branch office application information to the Exchange, the National Association of Securities Dealers, Inc. ("NASD"), and states through the Central Registration Depository ("CRD@" or "CRD system").<sup>3</sup> 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"), and certain state branch office forms.

###### Background

A working group ("Working Group"), composed of Exchange and NASD staff, representatives of the North American Securities Administrators Association ("NASAA"), and states, developed the proposed new Form BR to register and seek approval of branch offices. Form BR is one component of a broader project to provide uniform branch office definitions and registration procedures.<sup>4</sup>

<sup>3</sup> CRD is a computerized database that contains information about most brokers, some investment advisers, their representatives, and the firms for whom they work. Examples of information in CRD include brokers' licenses, regulatory violations, educational backgrounds, employment histories, and records of serious investor complaints.

<sup>4</sup> Although adoption of the proposed Form BR would not be dependent on the adoption of a uniform definition of branch office, both the Exchange and NASD have submitted rule filings to the Commission proposing to adopt definitions of branch office that would be substantially similar in

The Exchange believes that the integration of branch registration into CRD through Form BR would create efficiencies for the NYSE Membership by, among other things, making it easier for them to register branch offices with the Exchange, NASD, and states, and to manage their ongoing registration responsibilities regarding those branch offices (e.g., changes and withdrawals). The NYSE Membership would also benefit from centralized on-line work queues, electronic notifications, and the ability to designate and identify the branch office where a particular registered representative works. Additional CRD enhancements would provide what amounts to a relational "link" between the Form BR and the Uniform Application for Securities Industry Registration or Transfer ("Form U4").<sup>5</sup>

The proposed Form BR would be a "uniform" form, similar to the Form U4 and the Uniform Termination Notice for Securities Industry Registration ("Form U5"). As with Forms U4 and U5, by electronically filing a single Form BR through CRD, the NYSE Membership would be able to update branch application information and seek approval for branch offices from the Exchange, NASD, and states that require branch registration.<sup>6</sup> Form BR would reconcile inconsistencies among existing branch office forms, eliminate duplicative questions, and elicit information to facilitate the branch office registration/approval process. Form BR is intended to combine the current Exchange Branch Office Application form, the existing state branch office forms, and Schedule E of Form BD.<sup>7</sup>

Previously, branch application information was submitted through the Exchange's Electronic Filing Platform

all material respects. See SR-NYSE-2002-34 and SR-NASD-2003-104 and amendments thereto.

<sup>5</sup> 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). The Exchange and NASD expect to make the appropriate technical changes to Form U4 to support this functionality and to facilitate the overall implementation of the branch office registration project.

<sup>6</sup> Currently, Connecticut, Florida, Nevada, and Vermont have separate forms that firms must submit to register a branch office in each of those states.

<sup>7</sup> States that currently require branch office registration or reporting have indicated that they would use the proposed Form BR for those purposes.

<sup>15</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.

(“EFP”).<sup>8</sup> Once the proposed new Form BR becomes effective, branch office applications and amendments would no longer be accepted or processed through 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 back to CRD, where the NYSE Membership could view them.

#### Features of Proposed Form BR

The following are significant features of proposed Form BR:

**Filing Types:** Form BR would permit firms to make: (1) An “initial” filing (to apply for approval of or to report a branch office); (2) an “amendment” filing (to amend information previously filed); and (3) a “closing/withdrawal” filing (to terminate a branch office registration and/or withdraw an initial filing prior to approval by a state or self-regulatory organization (“SRO”).

**NYSE Component:** Form BR would include a section that solicits information exclusively from the NYSE Membership, including certain branch office and office space-sharing information.

**Explanation of Terms:** Form BR would adopt, to the extent possible, the “Explained Terms” used on the existing uniform forms. It would also include definitions of additional terms used in the context of branch office registration and reporting, including “closing,” “person-in-charge,” “regular branch,” “small branch,” “supervisor,” and “withdrawal.”<sup>9</sup>

**Type of Entity:** Consistent with the uniform form concept, Form BR would provide entities with the opportunity to designate whether the branch office filing is being made on behalf of a broker-dealer (“BD”) or an investment adviser (“IA”). This feature would enable firms to register or report IA branches in states that require such registration and reporting.

**Other Business (“DBA”) Names/Types of Activities/Web Sites:** This section of Form BR would elicit the financial industry activities conducted at the branch office, names under which the branch office is conducting business,

and Web site addresses used by the branch office.

**Office Sharing Arrangements:** Form BR would allow for the submission of all information elicited on both the Exchange’s current Branch Office Application and Office Space-Sharing forms.<sup>10</sup> As noted above, some of this information would be exclusive to the NYSE Membership. The protocol for submission of information regarding office-sharing arrangements pursuant to NYSE Rule 343 would not change.

#### 2. Statutory Basis

The Exchange believes that, insofar as Form BR and the CRD system are used by the Exchange and other various SROs, their use is consistent with Section 6(b)(5)<sup>11</sup> of the Act in that it is designed to foster cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the Exchange believes that the information reported on the Forms would assist the Exchange in its responsibilities under Section 6(c)(3)(B)<sup>12</sup> of the Act in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange, or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange’s Information Memo No. 04–43, issued on August 9, 2004, solicited comments on a preliminary version of Form BR. The only comments the Exchange received were contained in a September 7, 2004 letter from the Association of Registration Management (“ARM”). A copy of the Information Memo and the ARM letter are available at the NYSE and the Commission. The NASD issued a similar notice to its members<sup>13</sup> that elicited comments from other parties, as well as a similar letter

from the ARM. The Exchange, NASD, ARM, and other parties discussed all of the comments, and a consensus was reached to make the changes below to the preliminary Form BR.

#### Pre-Populating the Proposed Form BR

In response to five commenters who suggested that Form BR be pre-populated wherever possible, a number of questions in Section 1 (General Information) would be pre-populated from information already reported in Web CRD. Furthermore, 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 “office of employment” address on that individual’s Form U4, and the Form BR would automatically be populated with that information.

During the transition period (in which information would be moved from the EFP to Form BR on the CRD system), the following Form BR data elements would be pre-populated based on existing NYSE, NASD, and jurisdiction branch office data: Branch Address, NYSE Branch Code Number, NASD Branch Number, NYSE/NASD 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 a data feed of the name and CRD number of the individuals associated with each branch. Once branches have been established in the CRD system, it would be possible to electronically transfer entire branches between firms, or relocate an entire branch within the same firm, via the Form BR.

#### Section 1—General Information

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

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

Six commenters offered remarks about 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. In

<sup>8</sup> 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.

<sup>9</sup> Some of these terms are used on the current NYSE Branch Office Application form.

<sup>10</sup> This information would be consistent with information currently elicited on Schedule E of the Form BD.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>13</sup> See NASD Notice to Members 04–55 (August 2004).

response to a comment that the information in Section 2 was already being reported on the Form U4, the Working Group eliminated the "Disclosure," statutory disqualification ("SD") status, and "Independent Contractor" fields. Applicants would only need to supply the name and/or CRD number of the supervisor/person-in-charge. The other information would be populated based on information already in the CRD system.

#### 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 also considered a commenter's suggestion that disclosure should be limited to information about firms. The commenter had concerns about the costs of gathering information about associated persons' activities, and the potential for firm responsibility for associated persons' outside business activities. The Working Group, nonetheless, concluded that the questions being asked in Section 3, as revised, have significant regulatory value, and should be retained.<sup>14</sup>

#### 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

In the preliminary Form BR, Section 5 requested the CRD number, disclosure information, and SD status of each associated person at a branch, and whether the person is an independent contractor. In response to seven comments that such requests were duplicative and unnecessary, the Working Group eliminated the "Disclosure," "SD," and "Independent Contractor" fields from this section. As modified, firms would be required to enter only each individual's CRD number or, in the alternative, each individual's name. The other information would be populated, as appropriate, based on information already in the CRD system.<sup>15</sup>

#### Section 6—NYSE Branch Information

In response to ARM's comment that the NYSE primarily seeks "a sense of the size of the branch office's business," and that exact figures would be difficult to estimate, the NYSE changed the question "What is the estimated cost of opening and equipping the new office?" to "Is the estimated cost of opening and equipping this branch office greater than 10% of the applicant's most recent excess net capital?" and "If yes, enter the cost of opening and equipping the office."

ARM also commented that the issues sought to be addressed by four questions for branches conducting research and investment banking would be more effectively addressed by one question, "Does the applicant have information barriers in place?" The NYSE agreed, and replaced the four questions with the suggested one.

ARM believed that the question "Is the officer or partner responsible for the inspection of this office at least annually a registered representative?" served no regulatory purpose. The NYSE agreed, and removed it.

Furthermore, agreeing with ARM's observation that "Name and address

where branch office certificates will be sent" might not require a response if it were worded "Name and address where branch office certificates will be sent, if different from this branch office address," the NYSE added the suggested, conditional wording.

#### 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 noted that the information being asked was already available on the Form U5. The NYSE eliminated the question "Is this office closing to be listed in the NYSE Bulletin?" However, the Working Group did not change any other questions due to the regulatory value of the requested information.

#### Section 8—Branch Withdrawal

Despite one comment questioning the need for this information, the Working Group decided to keep this section's request for date and reason for withdrawal, and name and telephone number of contact person, because the Working Group felt the 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 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 removed "under penalty of perjury," as well as the statement regarding future amendments on behalf of the signatory and firm, from the attestation. However, the Working Group concluded that the

<sup>14</sup> The Exchange believes that the Commission had suggested that the policies and procedures for closely monitoring outside business activities and selling away could form part of an effective supervisory system. See Commission's Staff Legal Bulletin No. 17, March 19, 2004.

<sup>15</sup> 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.

integrity of the data being reported 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. The Exchange notes that, as of this date, Connecticut, Florida, Vermont, and Nevada 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 to use the proposed Form BR in place of their forms. The Exchange notes that NASAA, which, as part of the Working Group, was involved in the creation of the Form BR, has indicated that it expects to formally endorse the Form BR.

The Exchange has also considered comments concerning the costs to firms of filing the proposed Form BR for each of their branches. Two commenters indicated that their firms have more than 1,000 branch offices. The Working Group carefully weighed the regulatory value of branch office registration against the additional costs that would be incurred by members that heretofore were not required to register certain offices (e.g., home offices), and determined that the regulatory value of registering each office that could in the future qualify as a branch office outweighed the increased financial costs to certain members. In reaching this decision, the Working Group considered the fact that large multi-service firms with branch offices throughout the United States have long been required to register a significant number of branch offices.

### 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 publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-13 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-NYSE-2005-13. 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 Exchange. 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-NYSE-2005-13 and should be submitted on or before July 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51926; File No. SR-Phlx-2004-65]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to Back-up Trading Arrangements

June 27, 2005.

#### I. Introduction

On October 18, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 establish rules covering emergency procedures for Phlx members and back-up trading arrangements in the event that the Exchange's main facility is unavailable. On April 29, 2005, the Exchange submitted Amendment No. 1 to the proposal.<sup>3</sup> On May 12, 2005, the Exchange submitted Amendment No. 2 to the proposal.<sup>4</sup> On May 16, 2005, the Exchange submitted Amendment No. 3 to the proposal.<sup>5</sup> The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on May 25, 2005.<sup>6</sup> The Commission received no comment letters regarding the proposed rule

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

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

<sup>3</sup> In Amendment No. 1, the Exchange substantially revised the proposed rule text and added a new paragraph (d), Member Proceedings, to establish disciplinary jurisdiction as between the Disabled Exchange and the Back-up Exchange in situations where there is an ongoing disciplinary action involving a member of the Disabled Exchange at the time of termination of the back-up period. The Exchange also proposed amendments to its fee schedules, which incorporate Rule 99.

<sup>4</sup> In Amendment No. 2, the Exchange made minor revisions to the proposed rule text and corresponding description of the proposal. Phlx also refiled corrected versions of the exhibits submitted with the proposal. Amendment No. 2 replaces and supersedes Phlx's earlier submissions in their entirety. Additionally, Phlx submitted with its Amendment No. 2 a copy of the back-up trading agreement between itself and the Chicago Board Options Exchange, Incorporated ("CBOE") as Exhibit 3A to its Form 19b-4 filing, together with a copy of a first amendment to the agreement as Exhibit 3B. This back-up trading agreement is available for viewing on the Commission's Web site, <http://www.sec.gov/rules/sro.shtml>, and at the Exchange and the Commission.

<sup>5</sup> In Amendment No. 3, the Exchange submitted a revised Exhibit 5 to its amended Form 19b-4 to correctly identify the new rule text in the proposal, including Exchange Rule 99 and changes to the Phlx Fee Schedule.

<sup>6</sup> See Securities Exchange Act Release No. 51718 (May 19, 2005), 70 FR 30171 ("Notice").