



FINANCIAL
SERVICES

Via Electronic Mail

September 3, 2004

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

Re: Proposed Uniform Branch Office Form ("Form BR")

Dear Ms. Sweeney:

Linsco/Private Ledger Corp. ("LPL") appreciates the opportunity to comment on the proposed Uniform Branch Office Form, Form BR, which was published in NASD Notice to Members 04-55. LPL appreciates the efforts of the working group that was comprised of the NASD, the New York Stock Exchange ("NYSE"), the North American Securities Administrators Association and staff from the various states who developed Form BR (the "Working Group"). Subject to the comments included in this letter, LPL endorses the concept of Form BR, which would enable member firms to register branch offices electronically with NASD, NYSE, and states that require branch registration through the Central Registration Depository ("CRD").¹

Form BR, as proposed, entails four fundamental changes from the current manner by which branch offices are registered:

- Uniformity in meeting current regulatory requirements;
- Organization of information maintained currently in CRD at the branch office level;
- Substantial expansion of registered representative ("RR") specific information required under Form BR to be gathered and maintained by member firms at the branch office level; and
- Imposition of a certification requirement previously not required in connection with submission of branch office related information.

¹ LPL is not an NYSE member firm, therefore we have not commented on NYSE-specific parts of Form BR.

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LPL believes that the effect of the first bullet point above is salutary, unless and to the extent that in an effort to promote uniformity, the negative effects of the last three bullet points outweigh the presumed benefits of uniformity. Our general comments are set forth below in the order of the last three bullet points above. Following these general comments are question-specific comments that may be helpful to the Working Group.

1. **Organization of Current CRD Information at a Branch Office Level**

The proposed Form BR includes information that is already maintained in CRD. LPL understands from informal conversations with NASD staff that Form BR, as currently proposed, is designed to automatically populate these data fields. LPL urges the Working Group to ensure that all opportunities to leverage information currently maintained on CRD are pursued. To the extent that information currently captured on CRD via Form U4 is automatically captured on Form BR, the burden of implementing and maintaining the form will be greatly reduced.

LPL also requests that the Working Group, as soon as practicable, make explicit the extent to which the Form BR will in fact automatically populate. If there are to be substantial areas where information that is captured on Form U4 is going to be required to also be submitted on Form BR, the costs associated with implementing and maintaining the Form BR increase substantially. Further, such duplicate reporting will create unnecessary opportunities for conflicting data being maintained on CRD.

2. **Substantial Expansion of Registered Representative-Specific Information Required Under Form BR to be Gathered and Maintained by Member Firms at the Branch Office Level**

The Form BR requires that substantial RR-specific information be maintained and filed on a branch office basis. Item 3 of the Form BR requires the disclosure of both member firm activities (*Sales, Investment Advisory Series, etc.*) and information regarding RR outside business activities ("OBA") conducted away from the member firm (*Insurance, Sponsor or Syndicator of Limited Partnerships, etc.*). The member firm activity information does not appear to impose a substantial burden for member firms to compile and track. The RR information, however, may impose significant compliance costs on member firms.

The RR information requested in Item 3 currently is disclosed via Form U4, item 13, *Other Business*. However, this information is captured in a text field on the current form, not in the automated fashion on proposed Form BR. Capturing this data at the branch office level will require significant labor-intensive work by member firms with large numbers of RRs, both to implement this requirement, and to maintain the information. Each time an RR joins a branch office, the RR's OBA disclosure would need to be checked to determine whether the OBA conducted by this RR has previously been disclosed on Form BR. In addition, each time an RR leaves a branch office, member firms would be required to determine whether the OBA conducted by that RR continues to be conducted by at least one other RR in the branch office, to determine whether the existing OBA disclosed for the branch office continued to be appropriate. These same reviews would be necessary any time an RR amends OBA disclosure.

Each of the concerns described above also applies to the next part of Item 3, use of names at the branch office "other than those disclosed on the applicant's Form BD or Form ADV" and for the disclosure of website addresses other than the applicant's. Also, as a point of clarification, LPL assumes that the only websites required to be disclosed under Item 3 are those that would include the branch office address on the website. LPL asks that the Working Group confirm this assumption.

LPL requests that the Working Group delay the implementation of Item 3 unless and until the Form U4 is amended to capture OBA disclosure in an automated fashion like Form BR. LPL believes that implementation of Item 3 prior to capturing this information on Form U4 in an automated fashion will impose substantial costs on many member firms, and LPL is unaware of any time sensitivity surrounding this issue that would justify these costs.

3. Imposition of a Certification Requirement Currently not Required in Connection with Submission of Branch Office Related Information

Form BR as proposed includes a certification requirement that currently is not required when filing new or amended branch office information. The certification language appears to be modeled on the current Form BD Execution Page certification, but is much broader than even that. LPL believes that the certification as currently drafted may be, as a practical matter, impossible to make, is unnecessary in light of the administrative purpose of the Form BR, and will impose significant administrative burdens on member firms.

The certification may be practically impossible to make for two reasons. First, the certification requires that the Appropriate Signatory, on behalf of him/herself and the member firm, represent that "the applicant promptly will file any required amendments to this form." This representation relates to the taking of a future action. LPL does not believe that either the applicant or the Appropriate Signatory can make a factual representation regarding future actions. LPL believes that this issue should be addressed, if at all, by requiring an undertaking, on behalf of the member firm only, regarding future filings.

Secondly, the certification requires that the Appropriate Signatory and the applicant represent that "the information and statements contained herein, and all materials filed in connection with this form, are current true and complete." The RR-specific information required to be filed on Form BR is not of the type that a member firm can conclusively determine to be "true and complete". Because of the nature of the RR-specific information being included on the Form BR, there always will be a fundamental reliance on the candor of RRs joining a member, and a reliance on the member firm's hiring and screening process. Such an absolute representation in this context is unreasonable. LPL notes that member firms currently are not required to make such a certification on Form U4.

LPL also believes that, as a general matter, a Form BD-type certification is not appropriate for Form BR. LPL bases this position primarily on the administrative nature of the form and the substantial operational burden such a requirement will impose on member firms. For large member firms, changes in branch offices occur all the time, from opening and closing

of branches, address changes, and changes in supervisors. Under the proposed Form BR, the number of branch-related filings will increase dramatically, especially if the RR OBA disclosures are included in the Form. For example, any RR departure from a branch office could trigger a Form BR filing obligation, if the RR was: the only RR conducting a certain type of OBA, if the RR had his own dba name for a certain OBA, or a website associated with an OBA. The number of such filings that likely will be required under Form BR (assuming that Form U4 is not amended to capture OBAs and related information in an automated fashion) will be substantial.

For the foregoing reasons, LPL respectfully suggests that the certification be removed from Form BR, and the current Form BD Schedule E approval procedure be maintained. If the Working Group determines that the certification is necessary, LPL suggests it be modified to remove the representation as to future actions, and also so that member firms are required only to make the same certification that is required on Form U4, in connection with RR-specific information.

4. Question-Specific Comments.

Form BR Item 3

All check-box items in section 3 should be "defined terms", as some categories will likely create confusion. If member firms will be subject in the future to examinations for the accuracy of Form BR filings, all material terms of the form should be defined.

Form BR Item 4

Item 4 appears to deal only with office-sharing arrangements; however, some of the questions can be read to apply to branch office locations that do not share office space. If the intent is that Item 4 applies only to office-sharing arrangements, the text of the questions should be modified to so indicate. Also, an initial automated question as to whether the branch office participates in an office-sharing arrangement, and that would auto-populate all following questions "No" if the first is answered "No", would greatly aid clarity and efficiency.

The second and third Item 4 questions appear to ask the same question, with the latter of the two also asking about independent contractor status of individuals at the branch office. LPL respectfully suggests that these questions be combined, or that the intent of these two questions be clarified, and instructions to the form indicate their intended meaning. Likewise, the last two questions in Item 4 ask whether the applicant will assume liability for its own expenses. The first of these questions 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". The first question is not by its terms limited to the branch office in question, so LPL is unclear as to its intended meaning. The second question appears to reiterate the prior question in a more detailed manner. LPL respectfully suggests that Working Group clarify the intended purpose of these questions.

Form BD Item 5

LPL assumes that these fields will automatically populate from CRD, and that only the CRD number of an individual RR would need to be entered to populate the remaining fields. LPL respectfully requests confirmation of these assumptions.

Form BD Item 6

LPL assumes that for NASD-only member firms that no action will be required on this Item, as CRD will automatically populate that the member firm is not an NYSE member. LPL respectfully requests confirmation of these assumptions.

Form BD Item 7

As in Section 1, the entry of branch address should be pre-populated with information already on file on CRD for that specific branch.

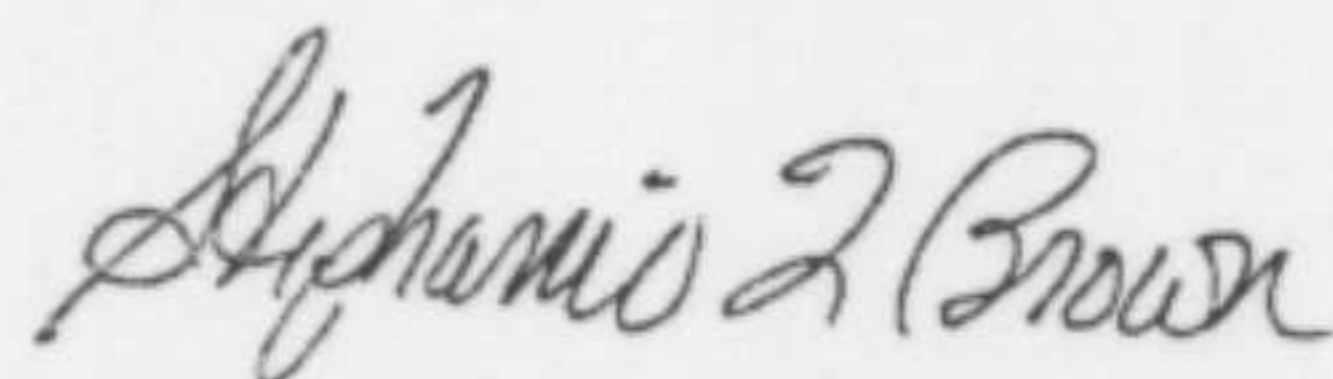
Form BD Item 9

Please see comments above regarding the certification.

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Thank you for allowing us the opportunity to comment on this very important initiative.

Sincerely,



Stephanie L. Brown
Managing Director and
General Counsel