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August 17, 2005

Ms. Katherine A. England  
Assistant Director  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-02001

**RE: File No. SR-2005-030 – Proposed Rule Change Relating to Proposed Form BR (Uniform Branch Office Form): Response to Comments**

Dear Ms. England:

NASD hereby responds to the six comment letters<sup>1</sup> received by the Securities and Exchange Commission ("Commission" or "SEC") in response to the publication in the Federal Register of Notice of Filing of SR-2005-030 relating to the proposed Form BR.<sup>2</sup>

Two commenters supported the adoption of the proposed Form BR without reservation. One of these two commenters favored the proposed Form BR on the basis that it would eliminate duplicative filings and procedures.<sup>3</sup> The other commenter also

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<sup>1</sup> Mario DiTrapani, President, Association of Registration Management (June 22, 2005); Michael Pagano, Chief Compliance Officer, 1st Global (June 23, 2005); Sandra T. Masek Ray, CRCP, Executive Vice President/Chief Compliance Officer, Rhodes Securities, Inc. (June 23, 2005); Robert S. Rosenthal, Vice President & Chief Legal Officer, MML Investors Services, Inc. (June 23, 2005); Franklin L. Widmann (President and Chief, New Jersey Bureau of Securities), North American Securities Administrators Association, Inc. ("NASAA") (July 12, 2005); Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers (June 23, 2005).

<sup>2</sup> See Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386 (June 2, 2005) (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")) (SR-NASD-2005-030).

<sup>3</sup> Sandra T. Masek Ray, CRCP, Executive Vice President/Chief Compliance Officer, Rhodes Securities, Inc. (June 23, 2005).

stated that the adoption of Form BR would promote efficiency in the branch office registration and notice-filing process.<sup>4</sup> This commenter noted that the proposed Form BR would assist regulators by assigning registered persons to various branches and would also give them the ability to generate reports about branch offices using the information contained on the Form. This commenter also noted that because the filing the proposed Form BR electronically through the Central Registration Depository (CRD®, CRD system, or Web CRD) will provide greater accuracy of information filed not only on the proposed Form BR, but on the Forms U4 and U5 as well, because certain CRD functionalities cross-check registration filings made by a firm.

A third commenter strongly supported the concept of the proposed Form BR because it would enable broker-dealers to electronically register, with a single filing effected through the CRD system, their branch offices with NASD, the New York Stock Exchange, Inc. ("NYSE"), and those states that require branch registration.<sup>5</sup> This commenter noted that such a form would serve to provide all regulatory agencies with pertinent information needed to perform their mandate, would eliminate the need for multiple, redundant filings, and likely improve data integrity.

This commenter, however, raised three concerns. First, although this commenter was pleased to note that the proposed Form BR will allow for more than one supervisor to be assigned to a single office location, the commenter was concerned that the proposed Form BR will not allow the entry of more than one billing code per branch. This commenter suggested that if NASD would like to implement this change, but could not do so without delaying the current rollout schedule, it should consider enhancing the Form BR to include this capability as soon as possible. In response, NASD notes that it will maintain its current schedule for implementing the proposed Form BR, but it will ask the Working Group (composed of NASD and NYSE staff and representatives of NASAA and states) to consider modifying the Form BR to permit a single branch office to report multiple billing codes.

Second, this commenter urged that the question eliciting whether an individual has an independent contractor relationship with the branch office (which the Working Group determined would be part of the Form U4 rather than the proposed Form BR) be placed in a section of the Form U4 that would not require a registered representative

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<sup>4</sup> Franklin L. Widmann (President and Chief, New Jersey Bureau of Securities), North American Securities Administrators Association, Inc. (July 12, 2005).

<sup>5</sup> Mario DiTrapani, President, Association of Registration Management (June 22, 2005).

signature, to avoid triggering an NASD Rule 3080 notification.<sup>6</sup> NASD notes that this question will be located in the "Office of Employment" part of Section 1 (General Information) of the Form U4, and amendments to Section 1 do not require a registered person's signature. This commenter also recommended that NASD default to "no" the answer to the independent contractor question that was added to Form U4 in connection with the implementation of Form BR. NASD does not plan to default this question to "no"; however, it does plan to assist member firms by enabling them to answer this question through the submission of an electronic data file when they assign their registered persons to branch offices, *i.e.*, member firms will be able to submit a data file (essentially a "batch" submission) to assign their registered persons to established branch offices. This data file will also allow firms to indicate whether the registered person is an independent contractor.

Third, this commenter questioned the need for the proposed signature requirement. As NASD has previously noted, the Working Group that developed the proposed Form BR believes that the integrity of the data to be reported on the proposed Form BR requires an attestation that the statements are "current, true and complete." This is consistent with the current signature requirements on the Forms U4 and U5.

Two commenters expressed concern over the effect of the proposed Form BR on the insurance industry.<sup>7</sup> Both commenters stated that NASD's proposed branch office definition, if approved by the Commission, would result in the creation of a substantially greater number of branch offices for broker-dealers affiliated with insurance companies and, hence, greater cost to the insurance industry of registering each branch. They ask that NASD withdraw its proposed rule change pending Commission approval of the branch office definition. A third commenter, representing an insurance-affiliated broker-dealer, asserted that the proposed Form BR is extremely burdensome, and solicits information beyond that necessary to register a branch office.<sup>8</sup>

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<sup>6</sup> NASD Rule 3080 requires certain disclosures regarding the predispute arbitration clause contained in the Form U4 to be made whenever an associated person is asked to sign a new or amended Form U4.

<sup>7</sup> Michael Pagano, Chief Compliance Officer, 1st Global (June 23, 2005); Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers (June 23, 2005).

<sup>8</sup> Robert S. Rosenthal, Vice President & Chief Legal Officer, MML Investors Services, Inc. (June 23, 2005).

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In response, NASD notes, as it has previously, that the proposed Form BR is not linked to NASD's proposed rule change regarding the definition of branch office.<sup>9</sup> NASD additionally notes that the Working Group developed the proposed Form BR to enable firms to register branch offices electronically with NASD, the NYSE, and states that require branch office registration, through a single filing with the CRD system.<sup>10</sup> 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 self-regulatory organizations ("SROs") and states. In addition, in conjunction with the adoption of the Form BR, the CRD system will be able to assign all registered persons to the locations from which they work. Enhancements to the CRD system will enable firms to designate, and users to identify, the locations in which a registered person works. Regulators (and firms) will be able to obtain reports via Web CRD on branch offices within a firm and registered individuals in those branches.

NASD believes that the foregoing fully responds to the issues raised by the commenters to the rule filing. Please feel free to call me at (202) 728-8844 if you wish to discuss this further.

Sincerely,

Shirley H. Weiss

cc: Elizabeth Badawy

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<sup>9</sup> NASD is addressing the impact of its proposed definition of branch office in a separate rule filing. *See* Amendment No. 4 to SR-2003-104 (Proposed Rule Change Relating to Proposed Amendments to Rule 3010(g)(2)(A) to Revise the Definition of the Term "Branch Office"), as published on NASD's Web site at [http://www.nasd.com/web/groups/rules\\_regs/documents/rule\\_filing/nasdw\\_013629.pdf](http://www.nasd.com/web/groups/rules_regs/documents/rule_filing/nasdw_013629.pdf).

<sup>10</sup> With the implementation of Form BR, the NYSE will retire the current NYSE Branch Office Application Form. Connecticut, Florida, Vermont and Nevada also have indicated that they plan to retire their respective forms and adopt the Form BR, and other jurisdictions that currently require notice filings for branch openings and closings have indicated that they also expect to adopt the Form BR. NASD also anticipates that the SEC will eliminate Schedule E from Form BD. By eliminating duplicative forms, reconciling inconsistencies among existing branch office forms, and eliminating duplicative questions, the branch office registration process will be more efficient.