

●●●● MARCH 2014

Amendments to Uniform Branch Office Registration Form (Form BR)

The Financial Industry Regulatory Authority, Inc. (“FINRA”) recently issued [Regulatory Notice 14-11](#) (the “Notice”), which announced the approval by the Securities and Exchange Commission (“SEC”) of amendments to the Uniform Branch Office Registration Form (Form BR). See Securities Exchange Act [Release No. 71626](#) (February 27, 2014), 79 FR 12547 (March 5, 2014) (Order Approving File No. SR-FINRA-2013-051).

Implementation Date and Impact on New and Existing Offices. The [revised Form BR](#) becomes effective April 7, 2014. On and after such date, firms must use the revised Form BR for all new and amended branch office filings. Significantly, firms are not required to file the revised Form BR with respect to existing offices except to the extent they are otherwise required, in the ordinary course, to update existing information that becomes inaccurate or incomplete. **Put more simply, if a firm updates a Form BR for any reason, the update must comply with the revised Form BR, which means that it must also include the new information required by revised Form BR notwithstanding that there may have been no change to such information.** In general, a firm must file amendments not later than 30 days after learning of facts and circumstances giving rise to the amendment. Firms should be aware that some states require approval of a branch office before business can be conducted at that location and may require filing of amendments less than 30 days after the events giving rise to such amendment.

Overview of Amendments to Form BR. The most significant change to Form BR for many firms is likely to be the requirement that firms identify whether the applicable branch office shares space with or “jointly markets” with any other investment-related entity. This requirement is discussed more fully below under the heading “Space Sharing Arrangements.”

Other amendments include:

- Providing the option to designate a branch as an “OMSJ,” as defined under MSRB rules. This change is intended to assist firms that use Form BR in complying with the MSRB requirement that certain firms identify whether a branch office is designated as an OMSJ.
- Eliminating Section 6 (NYSE Branch Information), which currently is applicable only to NYSE-registered firms.
- Requiring firms to state whether books and records pertaining to the registered branch office are maintained at any location other than that branch office, the main office, or, if applicable, the office of supervisory jurisdiction. If “yes”, the firm must also provide the address of such location and the name and telephone number of a contact person.
- Expanding and revising the list of activity types that firms may select for registered branch offices, including :
 - adding “Public Finance” and “Other;”
 - changing “Market Making” to “Market Making/ Trading;”
 - combining “Investment Banking” and “Underwriting,” which currently are listed as separate items; and
 - including “Retail” and “Institutional” as types of “Sales Activities.”

Space Sharing Arrangements. The revised Form BR requires firms to disclose whether the branch office shares space with or “jointly markets” with any other “investment-related” entity. Firms that answer “yes” to this question must provide the name of the entity and identify the type of investment-related business with which the entity is engaged.

Corporate Practice

The term “investment-related” is a defined term and pertains to securities, commodities, banking, insurance, or real estate. Accordingly, it would include, but not be limited to, acting or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association.

This question seeks disclosure regarding “investment-related” businesses that operate or jointly market services out of the same physical space as the registered branch office. By way of example, the question is meant to capture instances where a registered representative operates an insurance business out of the registered branch office or where the registered branch office occupies the same physical space as an investment adviser or markets the location as providing services with other investment-related entities. The term “jointly market” is not, however, intended to require disclosure of the manufacturer of each insurance product that the branch office may be authorized to offer.

Action Items

Review of Existing Procedures Regarding Form BR.

In response to revised Form BR, firms may want to review current procedures regarding branch office filings:

- to determine whether amendments may be required on account of the changes to revised Form BR; and
- to provide that, in the event of any amendment to an existing Form BR filing, the firm also update the applicable Form BR to bring it into compliance with revised Form BR.

As part of the amendment process, firms should consider that they will need to either have already gathered the additional information required by Form BR or allow sufficient time to confirm and gather the additional information required by revised Form BR.

Inspection Preparation and Procedures. The additional information called for by revised Form BR, particularly the information on space sharing arrangements, will undoubtedly be used by FINRA and other regulators in connection with their examination planning process. Accordingly, firms should anticipate and prepare for additional focus by FINRA and other regulators on regulatory issues related to space sharing arrangements.

In particular, firms may consider whether their current processes and procedures are sufficient with respect to the identification of covered space sharing arrangements. Firms may also want to consider whether they have appropriate oversight of such arrangements. Oversight concerns may include:

- compliance with NASD Rule – 3040 Private Securities Transactions of an Associated Person; and
- FINRA Rule 3200 Outside Business Activities of Registered Persons.

Other concerns may include:

- possible customer confusion as to the entity with which they are dealing;
- compliance with Regulation S-P – Privacy of Consumer Financial Information and inappropriate sharing of customer information more generally;
- need for information barriers or other controls to protect against inappropriate sharing of or exposure to confidential information, including information relating to the customers of any entity with which space is shared;
- need for information barriers or other controls to protect against possible front running or other inappropriate trade practices or coordinated activity; and
- appropriate documentation for financial recordkeeping purposes of economic arrangements between space sharing entities.

Related Professionals

If you have questions regarding the proposal or would like assistance in commenting on the proposal, please contact any of the Winston & Strawn attorneys listed below or your usual contact at Winston & Strawn.

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