In addition, the Commission is proposing new items to Form BD to enhance the disclosure with respect to U.S. broker-dealers that have foreign owners, broker-dealers that are affiliated with U.S. or foreign banks, and broker-dealers that conduct securities activities on the premises of financial institutions. Finally, the Commission is proposing several technical amendments to Form BD.

The amendments proposed by the Commission are the culmination of discussions between the staff of the Commission, NASAA's Forms Revision Committee, the NASD, the New York Stock Exchange, and representatives of the securities industry. The proposed amendments are discussed below in the order of significance.

II. Proposed Amendments to Form BD

A. Disciplinary History

The principal changes to Form BD concern proposed amendments to current Item 7. This item requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications,6 other relevant history, and the applicant's financial soundness. Under the proposed amendments, Item 7 will be renumbered as Item 11. Consistent with proposed changes to Form U-4, new Item 11 will be reorganized to group related information under four broad disclosure categories: criminal, civil, regulatory, and financial. For example, in the criminal disclosure section, the proposed amendments group pending charges and final convictions, and separate the questions relating to felonies and misdemeanors in order to elicit more precise information from applicants and to facilitate the retrieval

of such information from the CRD.⁷ Moreover, in order to make the criminal history disclosure more comprehensive and complete, military court convictions, perjury, and conspiracy to commit certain misdemeanor offenses will be added to Items 11A and B. At the suggestion of NASAA, settlement agreements in investment-related civil actions brought against the applicant or control affiliate by a state or foreign financial regulatory authority will be added to Item 11H(1).

Currently, disclosure of bankruptcy proceedings has no time limitation. Because bankruptcy is not a basis for statutory disqualification under Sections 3(a)(39) and 15(b)(4) of the Exchange Act,8 the Commission is proposing to require disclosure of bankruptcy proceedings in Item 11I(1) only for those occurring in the past ten years. Finally, technical amendments, such as revising the instructions and renumbering several questions, are proposed.9

The Commission also is proposing amendments to the corresponding DRPs, which are required to be completed when an applicant answers in the affirmative one of the disciplinary questions. Currently, Form BD includes

one generic DRP for all disciplinary history questions. The proposed amendments would replace the single generic DRP with several customized DRPs to reflect more accurately the different classifications of disclosures that are required to be reported under proposed Item 11. For example, the proposed Regulatory DRP will contain specific sections that inquire into whether the applicant is or has been suspended or barred. If the applicant answers in the affirmative, the proposed DRP requires the applicant to specify the duration and capacity affected (e.g., general securities principal, financial and operations principal, or options trading) by the suspension or bar. Moreover, the proposed Regulatory DRP, as well as the proposed Criminal and Civil Judicial DRPs, group together, under the same part and on the same page, final and pending disciplinary actions.

Although these amendments may increase the number of DRPs to be provided, they should not increase the cost and burden of filing Form BD, unless an applicant has an extensive disciplinary history. As discussed above, federal and state securities regulators will have greater access to enhanced regulatory information maintained in the CRD system and will be able to sort and retrieve disciplinary information by category on a more timely and specialized, ad hoc basis. In addition, the proposed new DRPs are largely the same as those recently proposed to be added to Form U-4 by NASAA.

B. Bank Securities Activities

In recent years, banks have become increasingly active in selling securities to the public.¹⁰ The Commission believes that most bank sales of securities are being conducted through registered broker-dealers that are subsidiaries or affiliates of banks.¹¹ The

Continued

⁶Sections 15(b)(4) and 15(b)(6) of the Exchange Act authorize the Commission to deny registration to a broker-dealer if the broker-dealer or an associated person of the broker-dealer has engaged in the activities listed in those sections. 15 U.S.C. §§ 78*o*(b)(4) and (b)(6).

Section 3(a)(39) of the Exchange Act crossreferences the activities enumerated in Section 15(b)(4) (B), (C), (D), (E), and (G). Section 3(a)(39) generally provides that a person is subject to a 'statutory disqualification" if, among other things, that person: has been expelled or suspended from membership in an SRO or barred or suspended from association with an SRO member; has had his or her registration or association denied or suspended by the Commission or other appropriate regulatory agency; has willfully violated the federal securities laws or aided, abetted, or counselled others to do so; is permanently or temporarily enjoined by a court from acting in any capacity within the securities industry; has willfully made or caused to be made a false or misleading statement of material fact in filings required by the SROs; or has been convicted of any felony within the past ten years 15 U.S.C. § 78c(a)(39).

⁷Current Item 7A(1) asks "in the past ten years, has the applicant or a control affiliate been convicted of or plead guilty or nolo contendere ("no contest") in a domestic or foreign court to: (1) a felony or misdemeanor involving: investment or an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion. Current Item 7G asks about pending proceedings. New Item 11A would ask "in the past ten years has the applicant or a control affiliate: (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?; and (2) been charged with any felony?' New Item 11B would ask "in the past ten years, has the applicant or a control affiliate: (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?; and (2) been charged with a misdemeanor specified in 11B(1)?'

⁸ See supra note 6.

⁹Under the amendments, current Items 7B (1) and (2) are proposed Items 11H1 (a) and (b), respectively. Also, current Item 7D(6) will be renumbered as proposed Item 11F. Item 7D(6) currently requests information about whether the applicant or control affiliate's authorization to act as an attorney or accountant has been revoked or suspended. New Item 11F will add federal contractor licenses to this question. In addition, information requested in current Item 7F, relating to whether a foreign government, court, regulatory agency, or exchange has ever entered an order against the applicant or control affiliate related to investments or fraud not previously reported in other Item 7 questions, has been incorporated into other questions in proposed Item 11. Finally, current Items 7H, 7I, and 7J are proposed as Items 11J, 11K, and 11I, respectively.

¹⁰ See Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 3447 and Related Functional Regulation Issues, Before the Subcommittee on Telecommunications and Finance Committee on Energy and Commerce, U.S. House of Representatives, April 14, 1994.

¹¹ Presently, banks can structure their securities sales operations in a number of different ways. First, banks may engage directly in selling activities, outside the regulatory framework established for broker-dealers under the federal securities laws. Second, banks may conduct sales activities through subsidiaries or affiliates registered with the Commission. Finally, banks may enter into contractual arrangements with unaffiliated broker-dealers (*i.e.*, "networking" or "kiosk" arrangements), whereby the registered broker-dealer sells securities and provides brokerage services to bank customers on (and off)