heightened interest in national treatment of foreign international markets, including foreign ownership of U.S. broker-dealers,²⁰ the Commission is proposing to collect on Schedules A, B, and C information concerning foreign ownership of U.S. broker-dealers.

In some instances, because of their complex organizational structures, U.S. applicants may not know or may not be able to obtain detailed information regarding remote foreign owners. Accordingly, rather than require applicants to provide on Schedule D detailed information concerning their foreign owners, which may be unavailable to the applicant, the Commission is proposing to require only that the applicant check a box on Schedules A and B to indicate if an owner is a domestic entity, an entity incorporated or domiciled in a foreign country, or an individual.

B. Other Schedules

1. Schedule D—Miscellaneous Disclosure

The proposed amendments restructure the contents and increase the specificity of the information required to be reported on Schedule D, which currently requires disclosure of details relating to Items 1C(2), 5, 7, 8, 9, 10, 12Z, and 13B. Descriptions of events resulting in an affirmative answer to these Form items currently are set forth in free form, non-structured text in Schedule D.²¹ In order to organize this information into a format useful for electronic filing and retrieving Schedule D will be revised to add separate sections for each Form item that requires applicants to disclose details of an event or occurrence. For example, an applicant providing an affirmative answer to Items 7 and 8, relating to introducing and clearing arrangements, will be required to complete Section IV of proposed Schedule D. Section IV will require the

In recent years, a growing number of brokerdealers with foreign owners have applied for registration in the United States. In 1990, foreign persons had equity interests of 25 percent or more in approximately 130 registered broker-dealers. See National Treatment Study at 86.

²¹ For example, details regarding a succession reported under Item 5 must be disclosed on Schedule D. applicant to include the clearing or custodial entity's name, business address, CRD number (if applicable), and the effective and termination date of the arrangement.

2. Schedule E—Branch Office Disclosure

The proposed amendments would add two new items to Schedule E, which requires applicants to disclose information regarding all business locations apart from the applicant's main office, including the location and name of the supervisor of each branch office, and any closing or opening of an office. The Commission is proposing amendments to Schedule E that are designed to elicit information concerning branch offices and other business locations that are considered by the broker-dealer to be franchised 22 or that employ a significant number of independent contractors engaging in securities activities.23 The use of franchised branch offices or large numbers of independent contractors raises concerns that such offices may not be properly supervised and may be operating outside the scope of federal and state securities laws.²⁴ By

²³ The designation of registered representatives as independent contractors has no effect on a brokerdealer's responsibilities under the federal securities laws, including Section 15(b) of the Exchange Act [15 U.S.C. § 780(b)]. See, e.g., Letter regarding Titan Capital Corporation (Sept. 30, 1988); and Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1572–76 (9th Cir. 1990), cert. denied, 111 S.Ct. 1621 (1991).

²⁴ Section 15(a) of the Exchange Act provides that it is unlawful for a broker or dealer that is a person other than a natural person to use the means of interstate commerce to effect transactions in securities, unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act, or unless an exemption applies. The registration requirements of Section 15(a)(1) of the Exchange Act apply only to brokerage firms or natural persons not associated with a brokerage firm. Natural persons associated with a brokerdealer are not required to register separately as broker-dealers.

Section 3(a)(18) of the Exchange Act defines "associated person of a broker or dealer" in relevant part to mean "any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer." Thus, under a franchised branch office arrangement, where the branch manager and registered representatives are not subject to the supervisory control of the registered broker-dealer, they are not associated persons of such broker-dealer, and accordingly the franchised branch office would be required to register separately as a broker-dealer. *See Roth* v. *Securities and Exchange Commission*, 22 F.3d 1108 identifying and monitoring so-called franchised branch offices through disclosure in Schedule E, the Commission and the SROs' examination and enforcement functions will be enhanced.

Accordingly, the proposed amendment to Item 10 in Schedule E will ask if a business location will operate pursuant to a written agreement or contract (other than an insurance agency agreement) ²⁵ with the main office, and the location: (a) assumes liability for its own expenses or has its expenses paid by a party other than the applicant; (b) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (c) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (d) engages in separate market making and/or underwriting activities.

In addition, the amendments to Schedule E propose revisions to Item 5, which will require an applicant to provide the name of the financial institution if the branch office or other business location occupies or shares space within a bank, savings bank or association, or credit union.

IV. Other Proposed Amendments

In addition to the substantive amendments to Form BD discussed above, the Commission is proposing several technical amendments to the Form. Item 1 will be revised to expressly inform applicants that branch offices and other business locations from which an applicant may be conducting business must be reported on Schedule E. Also, current Items 12 and 13, concerning government securities activities, will become a subset of SEC registration under Item 2.²⁶ In addition, the proposed

²⁵ Proposed Item 12Y(2) relates to securities activities of broker-dealers that have networking arrangements with an insurance company or agency. *See supra* note 14. The Commission requests comment on whether insurance agency agreements should be required to be disclosed in proposed Item 10 of Schedule E.

²⁶ Proposed changes to Item 2 also remove the instruction "if any registration, license, or membership listed is of a restricted nature, explain fully on Schedule D." The redesigned CRD system will allow the Commission, SROs, and states to enter directly in the CRD system any restrictions placed on an applicant's securities business.

have contributed twenty-five percent or more of a partnership's capital. Schedule C is used to amend Schedules A and B.

²⁰ For example, the Treasury Department, with the assistance of the Commission, prepares, on a periodic basis, a study for Congress entitled the National Treatment Study: Report to Congress on Foreign Government Treatment of U.S. Commercial Banking and Securities Organizations (Nov. 30, 1990) ("National Treatment Study"). This report is required to include information about foreign ownership of U.S. broker-dealers.

²² Typically, in a franchise arrangement, the registered broker-dealer allows the franchised office to use its broker-dealer registration and its name to conduct a securities business in return for a percentage of the commissions and fees generated from the securities transactions executed by the franchised office. The registered broker-dealer generally is not responsible under the agreement for paying any of the operating expenses of the franchised office, including licensing fees for registered representatives.

⁽D.C. Cir. 1994), Fed.Sec. L. Rep. ¶98,206, cert. denied, 115 S.Ct. 575 (1994) (upholding the Commission's interpretation of Section 15(a) of the Exchange Act that the exclusion from registration for associated persons of a broker-dealer only applies to the extent associated persons act within the scope of their employment with a registered broker-dealer and are subject to supervisory control of such broker-dealer).