

remain direct employees of the member organization given their unique senior principal executive responsibilities over the various areas of their associated member organization.¹²

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, the requirements of Section 6 of the Act.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should reduce unnecessary administrative burdens on the NYSE as well as member organizations. Persons who assert independent contractor status are subject to the member organizations' internal policies and procedures and the jurisdictional reach of the Exchange to the same extent as any other registered person. The Exchange would still receive notice of independent contractor arrangements. The Rule helps ensure that member organizations are aware of their responsibility to supervise independent contractors.

Specifically, the revised Form U4: (1) Obviates the need to submit duplicative notice because the Form U4 provides the Exchange prompt notice and an up-to-date record of such persons¹⁶ by requiring the identification by registered persons of independent contractor status; and (2) establishes jurisdictional

reach by requiring registered persons who seek to become associated with a member organization to "submit to the authority of the jurisdictions and SROs and agree to comply with all provisions, conditions and covenants of the statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the jurisdictions and SROs as they are or may be adopted, or amended from time to time."¹⁷

The Exchange believes that permitting supervisors to assert independent contractor status should not affect the individual's ability to supervise, nor would it reduce accountability for failure to fulfill their supervisory, regulatory, and other professional obligations. The Commission notes that regardless of whether an individual is deemed an independent contractor, he will be required to have the same qualifications and act in the same capacity as any other person similarly charged with supervisory responsibilities.

Finally, the Commission reiterates its longstanding position that the designation of an independent contractor has no relevance for purposes of the securities laws.¹⁸ In this regard, the Commission notes that member organizations may not avoid their obligation to control and supervise the activities of their registered persons by designating them as independent contractors.¹⁹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (File No. SR-NYSE-2006-05), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53951A; File No. SR-NYSEArca-2006-23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Pilot Program for NYSE Arca BBO Data

June 20, 2006.

Correction

In FR Document No. 06-5301 beginning on page 33500 for Friday, June 9, 2006, the 34 Release number was incorrectly stated. The correct number is 34-53951.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53952A; File No. SR-NYSE Arca-2006-21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Approval of Market Data Fees for NYSE Arca Data

June 20, 2006.

Correction

In FR Document No. 06-5300 beginning on page 33496 for Friday, June 9, 2006, the 34 Release number was incorrectly stated. The correct number is 34-53952.

Nancy M. Morris,
Secretary.

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 25, 2006.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the

¹² See NYSE Rule 311(b)(5) and its Interpretation.

¹³ In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ NYSE Rule 345.12 provides, in part, that an application for a natural person required to be registered with the Exchange shall be submitted on Form U4 and that information on Form U4 must be kept current and shall be updated by filing with the Exchange an amendment to that filing.

¹⁷ See Form U4, Subsection 2 of Section 15A (Individual/Applicant's Acknowledgement and Consent).

¹⁸ See letter to Gordon S. Macklin, President, NASD, Charles J. Henry, Chicago Board Options Exchange, Robert J. Birnbaum, American Stock Exchange and John J. Phelan, NYSE from Douglas Scarff, Director, Division of Market Regulation, dated June 18, 1982.

¹⁹ See Section 15(b)(4)(E) of the Act, 15 U.S.C. 78o(b)(4)(E).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).