SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55766; File No. SR–NYSE–2006–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed New Rule 350A (''Business Entertainment'') Concerning Policies and Procedures Addressing Business Entertainment

May 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. On April 26, 2007, NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes new Rule 350A (''Business Entertainment'') to address conflict of interest issues in connection with the provision of business entertainment by member organizations to representatives of customers or prospective customers. Below is the text of the proposed rule change. Proposed new language is italicized.

Business Entertainment

Rule 350A

(a) General Requirements

No member organization or person associated with a member organization shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with:

(1) The best interests of the customer; or

(2) The best interests of any person to whom the customer owes a fiduciary duty.

(b) Definitions

For purposes of this rule, the following definitions shall apply:

(1) The term ''customer'' means:

(A) a person that maintains a business relationship with a member organization via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity; or

(B) a person whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with a member organization by opening an account with the member organization or by conducting investment banking or other securities-related activity with the member organization.

(2) The term ''customer representative'' means a person who is an employee, officer, director, or agent of a customer, unless such person is a family member of the customer.

(3) The term ''family member'' means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children.

(4) The term ''business entertainment'' means any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose, including business entertainment offered in connection with a charitable event, educational event or business conference, as well as any transportation or lodging related to such activity or event, in which a person associated with a member organization accompanies a customer representative.

(A) If a customer representative is not accompanied by an appropriate associated person of the member organization, any expenses associated with the business entertainment will be considered a gift under Rule 350 unless exigent circumstances make it impractical for an associated person to attend. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

(B) Anything of value given or otherwise provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift under Rule 350.

(C) In valuing business entertainment expenses pursuant to this Rule, a member organization's written policies and procedures must specify the methodology to be used by the member organization to calculate the value of business entertainment. In general, business entertainment expenses should be valued at the higher of face value or cost to the member organization.

(D) For purposes of this Rule, the terms ''person associated with a member organization'' or ''associated person'' are defined to include: (1) A natural person who is registered or has applied for registration under the Rules of the NYSE; (2) a sole proprietor, partner, officer, director, or branch manager of a member organization, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member organization, whether or not any such person is registered or exempt from registration with the NYSE or NASD.

(c) Written Policies and Procedures

(1) Each member organization must have written policies and supervisory procedures that:

(A) define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment; and

(B) make clear that anything of value given or otherwise provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift under Rule 350; and

(C) impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds; and

(D) are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[4] The Commission also is separately publishing a notice by the National Association of Securities Dealers, Inc. (''NASD'') to propose new IM–3060 on business entertainment, which is substantially similar to NYSE's proposed rule text. *See* Securities Exchange Act Release No. 55765 (May 15, 2007) (SR–NASD–2006–044). The NYSE proposal and the NASD proposal primarily differ in that the NYSE proposal contains a ''Notice to Customers'' provision. *See* Section II(A)(1), Purpose section, and Section IV, Solicitation of Comments section, below.

undermine the performance of a customer representative's duty to a customer or to any person to whom the customer owes a fiduciary duty; and

(E) establish standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified; and

(F) require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures.

(2) A member organization's written policies and procedures may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are deemed to be primarily educational, charitable, or philanthropic in nature, provided that such standards comply with the requirements of this rule and are explicitly addressed in the written policies and procedures.

(d) Recordkeeping

(1) Each member organization's written policies and procedures must require the maintenance of detailed records of business entertainment expenses provided to any customer representative. The member organization is not required to maintain records of:

(A) business entertainment when the total value of the business entertainment, including all expenses associated with the business entertainment, does not exceed $50 per day; or

(B) additional expenses incurred in connection with otherwise recorded business entertainment that do not, in the aggregate, exceed $50 per day.

(2) Each member organization's written policies and procedures must include provisions reasonably designed to prevent member organization associated persons from circumventing the recordkeeping requirements in contravention of the spirit and purpose of this rule (e.g., a pattern of providing a customer representative with business entertainment valued at $48).

(3) Each member organization's written policies and procedures must require that, upon a customer's written request, the member organization will promptly make available to the customer any records regarding business entertainment provided to customer representatives of that customer.

(e) Notice to Customers

Each member organization must have a system in place to give notice (e.g., via the member organization's Web site, a disclosure document, or other appropriate means) to customers that utilize customer representatives subject to this rule that, upon a customer's written request, the member organization will promptly provide detailed information regarding the manner and expense of any business entertainment provided to their customer representative(s) by such member organization.

(f) Exemptions

(1) General Exemptions

This rule does not apply to any member organization that does not engage in business entertainment. For any member organization that engages in business entertainment, this rule applies only with respect to business entertainment provided to customer representatives.

(2) Specific Exemption for Member Organizations with Business Entertainment Expenses Below $7,500

A member organization whose business entertainment expenses in the course of its fiscal year are below $7,500 shall be subject only to paragraphs (a), (b), (c)(1)(D) and (E) of this rule and shall otherwise be exempt from paragraphs (c), (d) and (e). Each member organization that relies on this exemption must be able to evidence that its business entertainment expenses are below the $7,500 threshold.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing new Rule 350A (''Business Entertainment'' or the ''Rule'') to address conflict of interest issues in connection with the provision of business entertainment by member organizations to representatives of customers or prospective customers. Specifically, the proposed rule addresses the concern that customer representatives' decisions to direct business (*e.g.*, order flow) to a given member organization may be influenced by lavish entertainment provided by a member organization or a person associated with a member organization (''associated person''), rather than on the basis of the brokerage services to be provided. Such conduct is potentially violative of both Commission and self-regulatory organization rules (*e.g.*, best execution obligations).[5]

The Exchange has worked closely with industry representatives and the NASD to develop a substantially uniform industry business entertainment standard to address the potential for such conflicts of interest. The Exchange initially contemplated a strictly prescriptive approach that established specific quantitative dollar standards for all broker-dealers. However, for the reasons discussed in detail below, such an approach was ultimately deemed impracticable as it neither reasonably addressed the regulatory issue in question nor the business realities of Exchange membership. In light of the practical difficulties associated with the imposition of a single quantitative standard across the spectrum of broker-dealer business models, the proposed rule takes a more principle-based approach with flexible prescriptive elements and guidelines.

Background

In attempting to codify business entertainment guidelines, the Exchange was faced with developing an approach that addresses regulatory concerns, is practical, and does not unreasonably nor unduly interfere with broker-dealers' legitimate commercial and business relationships. The primary merit of adopting a strictly prescriptive approach with fixed dollar limits is that it provides bright line standards that, arguably, could facilitate industry compliance. However, imposing a fixed dollar standard is not without practical problems. For example, it does not take into account regional differences—which is to say that what might be considered ''lavish'' or ''excessive'' in one city might not necessarily be deemed so in another. Further, what might be considered appropriate entertainment for an investment banking/institutional client base might be considered lavish and/or excessive in a retail customer context.

Since terms such as ''lavish'' or ''excessive'' can be subjective and standards of appropriateness may vary

[5] Although not explicitly defined by the Commission, when acting as an agent for its customers, a broker-dealer owes such customers a duty of best execution. *See* NYSE Rule 123A.41 which provides that a broker handling a market order is to use due diligence to execute the order at the best price or prices available under the published market procedures of the Exchange.

according to factors noted above, the NYSE concluded that the idea of prescribing industry-wide dollar amount standards was impracticable. A specific dollar threshold could not be established that would justifiably apply to all broker-dealers, taking into account variances in size and business model, and the range of customer types (*e.g.*, investment banking, institutional, retail, and those with fiduciary obligations such as investment advisers and pension fund representatives).

Further, a uniform standard would give rise to unintended effects related to firm participation in, or sponsorship of, charitable events. There is also frequent linkage between education and entertainment that would likely become problematic. In many instances, firms combine legitimate educational functions with lodging, meals and entertainment, making it difficult to separate business expenses from entertainment expenses under a prescriptive regulatory scheme.

Thus, the Exchange is proposing a more flexible, principle-based approach that would require each firm to develop, within a prescribed regulatory framework, standards that are effective and appropriate for its business model that would be administered via procedures that are transparent and well documented.

Outline of the Proposed Rule

General Prohibition

Subsection (a) of proposed Rule 350A imposes the general prohibition that ''no member organization or person associated with a member organization shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with: (1) The best interests of the customer or (2) the best interests of any person to whom the customer owes a fiduciary duty.''

The general nature of this prohibition recognizes that no rule of this type can identify and specifically address each and every potential conflict-of-interest scenario that may arise. Note, however, that the prohibition against provision of entertainment ''directly or indirectly'' is intended to prevent circumvention of the spirit of the rule. For instance, it would be a violation of the Rule if an associated person of a member organization were to either utilize his or her personal funds in an effort to evade the dictates of the Rule, or to encourage an employee of a member organization subsidiary to provide entertainment on behalf of the member organization. Note also that the purpose of the proposed Rule is to address customer representative conflicts of interest that could adversely affect the customer. The Rule would not apply to business entertainment provided by an associated person directly to individual (natural person) customers or potential customers.

Definition of Key Terms

Proposed Rule 350A(b) defines the terms ''customer,'' ''customer representative'' and ''business entertainment'' as follows:

''Customer''

The term ''customer'' means ''(1) A person [6] that maintains a business relationship with a member organization via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity, or (2) a person whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with a member organization by opening an account with the member organization or by conducting investment banking or other securities-related activity with the member organization.''

''Customer Representative''

The term ''customer representative'' means ''a person who is an employee, officer, director, or agent of a customer, unless such person is a family member [7] of the customer.'' The ''family member'' exemption is proposed to exclude instances where an individual has power of attorney over the account of a close family member's account, such accounts opened under the Uniform Gifts to Minors Act or instances where a person exercises discretion over their spouse's account. The Exchange does not believe such arrangements are likely to result in the types of conflicts the proposed rule is intended to address and their inclusion would thus constitute an undue regulatory burden on membership.

''Business Entertainment'' [8]

The term ''business entertainment'' means ''any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose, including business entertainment offered in connection with a charitable event, educational event or business conference, as well as any transportation or lodging related to such activity or event, in which an associated person of a member organization accompanies a customer representative'' (absent ''exigent circumstances,'' discussed below). Anything of value given or otherwise provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift subject to NYSE Rule 350 (''Compensation or Gratuities to Employees of Others'').

''Associated Person''

The terms ''person associated with a member organization'' or ''associated person'' are defined to include: (1) A natural person who is registered or has applied for registration under the Rules of the NYSE; (2) a sole proprietor, partner, officer, director, or branch manager of a member organization, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member organization, whether or not any such person is registered or exempt from registration with the NYSE or NASD.

The Exchange has been asked about the extent to which the proposed rule change reaches business entertainment conducted outside the United States, particularly entertainment provided by persons who are employed in commonly controlled affiliates of a financial services company operating in the United States and/or foreign jurisdictions. As an initial matter, proposed Rule 350A reaches all business entertainment of a member organization and persons associated with a member organization, even if such entertainment occurs outside of the United States or is provided to foreign individuals. However, the Exchange does not believe that all persons who are employed in commonly controlled affiliates of a financial services company operating in the United States and/or foreign jurisdictions are necessarily associated persons of the member organization, even if they report to a person who, in

[6] NYSE Rule 2 defines the term ''person'' to mean ''a natural person, corporation, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

[7] The term ''family member'' is defined as ''a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children.''

[8] *See also* sections titled ''Exigent Circumstances'' and ''Valuation of Business Entertainment'' below.

another capacity, is an associated person of a member organization.

An associated person of a member organization may have management and supervisory responsibilities for non-member affiliates of a financial services company, located within or outside of the United States, without the result that the persons being managed and supervised in the non-member affiliates would necessarily be deemed associated persons of the member organization. It is the view of the Exchange that in such instances the following factors establish that an employee of a non-member affiliate is not an associated person of the member organization: (1) The manager/supervisor of that employee is recognized in the member organization as having a scope of responsibilities outside of the member organization; (2) the exercise of the management and supervision over that employee by such manager/supervisor is not controlled by the member organization, is reviewable for purposes of performance and compensation outside of the member organization, and is not conducted for the benefit of the member organization; and (3) the employee of the non-member affiliate is not otherwise employed or engaged in the investment banking or securities business of the member organization or controlled by the member organization in respect of such activities.

Undefined Terms

Any term not specifically defined in Rule 350A shall have the meaning ascribed to it as otherwise defined or understood within the rules of the Exchange and the interpretations thereof.

Exigent Circumstances

As noted above, the definition of ''business entertainment'' generally prescribes that if a customer representative is not accompanied by an appropriate associated person of the member organization, any expenses associated with the business entertainment will be considered a gift under NYSE Rule 350. An exception to this requirement is proposed to address instances when exigent circumstances make it impractical for an associated person to attend a business entertainment event.[9] All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

The Exchange believes that the ''exigent circumstances'' exception provides necessary flexibility in light of real-world, last minute emergency situations that could arise that would make it difficult, if not impossible, for an appropriate member organization associated person to attend a business entertainment event with a customer representative. Examples of exigent circumstances would be a sick child, an accident, or some other sudden overriding circumstance. The Exchange does not believe this provision would lead to circumvention of the spirit or substance of the proposed rule since all such occurrences are subject to detailed documentation such that any patterns of abuse would become quickly apparent to supervisory personnel.

Written Policies and Supervisory Procedures Required

Pursuant to the general directive of proposed Rule 350A(a), Rule 350A(c) would require that each member organization have written policies and supervisory procedures applicable to business entertainment that incorporate prescribed elements. The following prescribed elements, outlined under subsection (c)(1), are applicable to all member organizations except those with business expenses below $7,500, which are subject only to subsection (c)(1)(D) and (c)(1)(E):[10]

(A) The policies and procedures must define forms of business entertainment that are ''appropriate'' and ''inappropriate,'' using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment. This provision recognizes that, in order to establish meaningful standards that are enforceable, firms must have objective bases upon which to determine the appropriateness of business entertainment. It also recognizes that, given the wide range of broker-dealer business models, it is impractical to require a single, industry-wide set of standards. Further, by placing the responsibility on firm personnel to develop firm-specific standards has the benefit of fostering internal discussion and serious consideration of issues related to the provision of business entertainment in both an ethical and practical context.

(B) The policies and procedures must make clear that anything of value given or otherwise provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift under NYSE Rule 350.

(C) The policies and procedures must impose either specific dollar limits on business entertainment or require prior written supervisory approval when such entertainment expenses will exceed certain specified dollar thresholds. This provision would require firms to make objective, ''hard number'' value determinations regarding generally acceptable levels of business entertainment. Not only would this approach have the benefit of establishing unambiguous standards, it would also encourage the self-comparison of such standards among firms of similar size and circumstance. This, in conjunction with feedback from regulatory organizations, would likely result in the establishment of ''unofficial,'' but generally accepted industry standards over time.

(D) The policies and procedures must be designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest, or undermine the performance of a customer representative's duty to a customer or to any person to whom the customer owes a fiduciary duty. In addition to highlighting the core purpose of the Rule, this provision is intended to make clear that member organizations are expected to take a proactive approach with respect to potential violations of their business entertainment policy.

(E) The policies and procedures must establish standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified. Since the Rule does not prescribe exam qualifications or other standardized qualification requirements for supervisors or administrators of business entertainment policies and procedures, member organizations must formalize a process to ensure that informed determinations are made with regard to the ability of persons assigned such responsibilities.[11]

[9] *See* Rule 350A(b)(4)(A).

[10] *See* proposed Rule 350A(f) and section below entitled ''Specific Exemptions for Member Organizations with Business Entertainment Expenses Below $7,500.''

[11] *See* NYSE Rule 345A(b). Note also that although Rule 350A, as proposed in Amendment No. 1, does not include a specific requirement that

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(F) The policies and procedures must provide appropriate education and training to all personnel who supervise, administer, or are subject to the written policies and procedures prescribed by the proposed Rule. This provision is intended to ensure that all relevant personnel are familiar with, and have a clear understanding of, the firm's business entertainment policies and procedures. Such education and training could be provided as part of the ''Firm Element'' requirement of NYSE Rule 345A (''Continuing Education for Registered Persons'').[12]

Certain ''Business Entertainment'' Standards May Be Distinguished

In addition to the above requirements, the proposed Rule[13] would make clear that the written policies and supervisory procedures may distinguish, and set specifically tailored standards for, business entertainment deemed to be primarily educational in nature or closely associated with a charitable event or philanthropic cause. This provision recognizes that certain types of events that could be characterized as business entertainment, or that include entertainment as an element, might serve a larger purpose than those strictly or primarily intended to solicit business. Any such standards to be utilized must be explicitly addressed in the member's organization policies and procedures, and must still comply with all requirements of the proposed Rule.

Recordkeeping Requirements

In order to ensure that expenses can be tracked and analyzed for potential improprieties, proposed Rule 350A(d) makes clear that each member organization's written policies and procedures must require maintenance of detailed records of business entertainment expense provided to any customer representative. Further, such policies and procedures must require that, upon a customer's written request, each member organization will promptly make available to a customer any records regarding business entertainment provided to customer representatives of that customer.

However, in order not to impose an undue regulatory burden, the proposed Rule includes an exemption to the recordkeeping requirement for de minimis or incidental expenses that would not reasonably be expected to influence the behavior of a customer representative. Specifically, records would not be required to be maintained for:

(1) Business entertainment when its total value, including all associated expenses, does not exceed $50 per day (such as a $45 dinner, or an inexpensive dinner and movie which, in the aggregate, cost less than $50); or

(2) Additional expenses incurred in connection with otherwise recorded business entertainment that do not, in the aggregate, exceed $50 per day (such as a hot dog and soda purchased at a professional sporting event where the cost of the ticket—presuming it is greater than $50—has been duly recorded as a business entertainment expense).[14]

Each member organization's written policies and procedures must include provisions reasonably designed to prevent member organization associated persons from circumventing the recordkeeping requirements in contravention of the spirit and purpose of this rule (*e.g.*, a pattern of providing a customer representative with business entertainment valued at $48, or the disaggregation of events—such as a $40 dinner followed by a $40 sporting event—required by the Rule to be aggregated and recorded).

As discussed more fully below, the recordkeeping requirements of proposed Rule 350A(d) shall not apply to member organizations with annual business entertainment expenses below $7,500.

Valuation of Business Entertainment

The definition of the term ''business entertainment'' states that each member organization's written policies and procedures must specify the methodology to be used by the member organization to calculate the value of business entertainment.[15] In general, business entertainment expenses should be valued at the higher of face value or cost to the member organization. Thus, if a theatre ticket with a face value of $100 is obtained at a cost to the member organization of $300, the ticket would be valued at the higher purchase price.

Provision of Business Entertainment Records to Customers/Notice Requirement

Proposed Rule 350A(e) requires that each member organization's written policies and procedures provide that, upon a customer's written request, the member organization will promptly make available to the customer any business entertainment records regarding business entertainment provided any customer representative of that customer. Further, each member organization must have a system in place to give notice (*e.g.*, via the member organization's Web site, a disclosure document, or other appropriate means) to customers that utilize customer representatives subject to this rule that, upon a customer's written request, the member organization will promptly provide such information. The Exchange notes that the ''notice'' provision will encourage the expansion of monitoring and controls on business entertainment beyond broker-dealers to the employers of business entertainment recipients.

Application of Proposed Rule 350A

General Application

Subsection (f)(1) makes clear that the proposed Rule does not apply to any member organization that does not engage in business entertainment. Thus, for example, if a member organization provides no business entertainment as defined by the proposed Rule, it would not be required to establish otherwise applicable policies and procedures. This subsection further clarifies that the proposed rule applies only with respect to business entertainment provided to customer representatives. Thus, as noted above, it would not be applicable to situations where a member organization directly provides business entertainment to natural person customers or potential natural person customers.[16]

Specific Exemptions for Member Organizations With Business Entertainment Expenses Below $7,500

The concerns that the proposed rule seek to address are not presented by those member organizations that, in the aggregate, do not devote significant resources to business entertainment. Consequently, the proposed rule provides for a partial exemption, under subsection (f)(2), for those member organizations with annual business entertainment expenses below $7,500.

members test business entertainment policies and procedures, such policies and procedures are subject to NYSE Rule 342.23 which requires the development and maintenance of adequate controls over each business activity and the establishment of procedures for independent verification and testing of those business activities. Telephone call between Rebekah Liu, Special Counsel, Division of Market Regulation (''Division''), Commission, and Steve Kasprzak, Principal Counsel, NYSE, May 15, 2007.

[12] *See* NYSE Rule 345A(b).

[13] *See* Rule 350A(c)(2).

[14] Member organizations should be aware, however, that they may need to track such expenses under other NYSE or Commission rules.

[15] *See* Rule 350A(a)(4)(C).

[16] Telephone call between Steve Kuan, Special Counsel, Division, Commission, and Steve Kasprzak, Principal Counsel, NYSE, May 7, 2007.

The provision prescribes that the $7,500 ceiling be measured on a fiscal year basis. Each member organization that relies on the exemption must evidence that its business entertainment expenses are below the threshold.

Specifically, member organizations below the $7,500 threshold would be exempt from the written ''Policies and Procedures'' provisions of proposed Rule 350A(c)(1) except for subsections (D) and (E). Subsection (D) requires written policies and procedures to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest, or undermine the performance of a customer representative's duty to a customer or to any person to whom the customer owes a fiduciary duty. Subsection (E) requires the establishment of standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified.

Member organizations below the $7,500 threshold would also be exempt from the prescribed recordkeeping provisions of proposed Rule 350A(d). As noted above, however, member organizations must be able to evidence that its business entertainment expenses were below the threshold over the course of their fiscal year.

In addition, member organizations below the $7,500 threshold would be exempt from the requirement, under Rule 350A(e) to have a system in place to give notice (*e.g.*, via a website, disclosure document, or other appropriate means) to customers that utilize customer representatives that, upon a customer's written request, the member organization will promptly provide detailed information regarding the manner and expense of any business entertainment provided to their customer representatives by such member organization.

Note that member organizations that avail themselves of the specified exemptions under proposed subsection (f)(2) would still be fully subject to proposed Rule 350A(a) which imposes the general prohibition that ''no member organization or person associated with a member organization shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with: (1) The best interests of the customer or (2) the best interests of any person to whom the customer owes a fiduciary duty.''

Interpretive Guidance/Practical Criteria

As discussed above, required written policies and procedures addressing business entertainment must include criteria that the member organization will utilize to evaluate the propriety of business entertainment in various contexts. Although not included in the Rule text itself, the Exchange intends to include in an Information Memo released in conjunction with the approval of proposed Rule 350A the following factors to be considered when establishing such criteria:

With Respect to the Entertainment

(a) Whether the nature, cost, or extent of the entertainment could reasonably give rise to an actual or perceived conflict of interest, or encourage a quid pro quo business transaction;

(b) Whether the nature, cost, and extent of the entertainment is consistent with the nature of the business relationship and the relationship of the parties involved;

(c) Whether the provision of any transportation, lodging, or other accommodations is appropriate;

(d) Whether the entertainment would be considered usual and customary within the industry;

(e) Whether the cost of the entertainment is consistent with the location (city and/or establishment) in which the entertainment takes place;

(f) Whether the entertainment extends to the client's spouse or to guests of the client;

(g) Whether the entertainment might otherwise reasonably be perceived to be improper.

With Respect to the Client

(a) Whether the recipient of the entertainment has fiduciary duties (*e.g.*, to a public company, a state, or a municipality) that may give rise to specific legal or ethical considerations;

(b) The frequency of entertainment provided to the client;

(c) The frequency of firm contact with the client in the ordinary course of business.

With Respect to the Business Purpose

(a) Whether the entertainment is in recognition of a completed deal;

(b) Whether the entertainment is educational/philanthropic in nature, or strictly recreational.

In closing, the Exchange believes that the proposed Rule is an effective and practical approach to address the conflict-of-interest issues related to business entertainment, therefore approval of the proposal is requested. The Exchange further requests an effective date of 6 months from approval in order to give membership sufficient time to sufficiently upgrade systems and develop procedures to effectively comply with the Rule's requirements. The Exchange will announce the effective date in an Information Memo.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes the proposed amendments are consistent with this section in that they permit firms to develop and maintain business relationships while requiring controls that mitigate potential conflicts of interest that can arise in such relationships.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

The Commission notes that the NYSE's proposed Rule 350A(e) provides that the NYSE member organization must have a system in place to give notice (*e.g.*, via the member organization's Web site, a disclosure document, or other appropriate means) to customers that use customer representatives that upon a customer's written request, the NYSE member will provide detailed information regarding the manner and expense of any business entertainment provided by the NYSE member to the customer representative,[19] while the NASD's proposal does not contain a similar notice provision.[20] The Commission is soliciting comment on this difference between the NYSE and NASD proposed rules and specifically whether NASD should have a similar notification provision for customers utilizing customer representatives.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–06 and should be submitted on or before June 11, 2007. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

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[19] As noted above, according to the Exchange the notice provision will encourage the expansion of monitoring and controls on business entertainment beyond broker-dealers to the employers of business entertainment recipients.

[20] *See infra* footnote 3.

[21] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202–395–6974. E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. eData Registration/Account Modification—20 CFR 401.45—0960-NEW

Collection Background

Section 5 U.S.C. 552a, (e)(10) of the Privacy Act of 1974 requires agencies to establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. Also, Section (f)(2) & (3) requires agencies to establish requirements for identifying an individual who requests a record or information pertaining to that individual and to establish procedures for disclosure of personal information. SSA promulgated Privacy Act rules in the Code of Federal Regulations, Subpart B. Procedures for verifying identity are at 20 CFR 401.45.

Collection Description

The eData Services Web site allows various external organizations to submit files to a variety of SSA systems and in some cases receive return files. The users include State/local government agencies, other Federal agencies, and some nongovernmental business entities. The SSA systems that process data transferred via eData include, but are not limited to, systems responsible for disability processing and benefit determination or termination. The information collected on form SSA–118 (Government to Government Services Online Web site Registration Form) to register organizations is used exclusively to maintain the identity of the requester within eData. The requestor is already a known entity to a sponsor within SSA. The SSA sponsor completes the registration forms and the information is submitted to SSA's User Interface Team (UIT). Once this is completed, SSA provides the requestor