

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

NYSE proposes to amend its *Interpretation Handbook* by eliminating from an existing Interpretation of NYSE Rule 345, a prohibition on persons designated as "Registered-Representative-In-Charge" from associating with members and member organizations as independent contractors. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

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Rule 345 Employees—Registration, Approval, Records

(a) Registration

/01 Exceptions

No change.

/02 "Independent Contractors"

The Exchange will not object to the assertion by a natural person registered representative of "independent contractor" status if such status will not preclude his or her characterization and treatment as an "employee" for purposes of the Constitution and Rules of the Exchange. Such salesperson and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and is covered by its fidelity bond.

Once a member organization approves a registered representative's status of "independent contractor" the following conditions must be met:

1. No change.
2. No change.
3. No change.
4. No change.

Written notification of the cessation of "independent contractor" status is to be given to the Qualifications and Registrations Department of the Exchange.

This interpretation does not apply to persons delegated supervisory functions (e.g., Branch Office Manager[, Registered Representative-In-Charge]), pursuant to Rule 342(b)(1) nor does it permit the incorporation of registered representatives. (See Interpretation Memo No. 78-7 dated December 27, 1978.)

This interpretation does not preclude a registered representative who is the sole employee in a small office (e.g., a residence office) or a registered representative who is designated as "in-charge" pursuant to Rule 342.15, provided such person has not been assigned or delegated supervisory

duties, from asserting and obtaining approval for independent contractor status.

A registered representative who is designated as "in-charge" and who seeks status as an independent contractor must submit all of the documentation required in items 1 through 4, above, as well as a written statement by the member or member organization that it has not assigned or delegated any supervisory responsibilities to the registered representative-in-charge.

(Also see Rule 342.15/02, page 3414.)

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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. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Rule 342 ("Offices "Approval, Supervision and Control") requires, in part, that each office of a member or member organization shall be under the supervision and control of the member or member organization establishing it and of the person delegated such authority and responsibility. Further, the structure and administration of Exchange rules mandate that all employees of members and member organizations, including registered representatives, be subject to the direct and ongoing supervision and control of their member organization employer.

In addition, Rule 342.15 provides that small offices (those with three or fewer registered representatives) may be in the charge of a qualified principal or manager who is either resident or non-resident in that location. Interpretation /02 to Rule 342.15 provides that where a qualified supervisor is not on the premises of a small office, a resident registered representative is to be designated as "in charge." However, it is still required that all supervisory functions (e.g., approval of accounts, review of account activity and

correspondence, etc.) are to be conducted by qualified supervisors.

Interpretation /02 to Rule 345(a) permits a registered representative to be associated with a member or member organization as an "independent contractor" provided such status does not preclude the independent contractor's characterization and treatment as an employee for purposes of the Constitution and Rules of the Exchange (e.g., registration, qualification, supervision by the member or member organization, and being subject to the Exchange's jurisdiction). However, Interpretation /02 to Rule 345(a) prohibits persons delegated supervisory responsibilities including persons designated as "registered representative-in-charge," from claiming the status of independent contractor.

The Exchange believes that persons delegated supervisory responsibilities for members and member organizations generally must be full-time employees (the Exchange has exemption authority under Rule 346(e)).

Member organizations have stated that the prohibition against a registered representative-in-charge from being an independent contractor is creating unnecessary burdens in small offices with two or three registered representatives, all of whom may wish to be independent contractors. Typically, the type of office that would have independent contractors is one with limited securities sales activities, e.g., the registered representatives work part-time for their member or member organizations and part-time selling products or services for affiliated or non-affiliated companies, such as banking, tax preparation, or accounting services. These individuals usually are employed by the non-member organization and conduct their limited securities activities through an independent contractor relationship with the member or member organization.

The Exchange proposes the elimination of "registered representative-in-charge" as a category of registered person precluded from being an independent contractor under this interpretation. In this regard, the Exchange has determined that members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge. Pursuant to an existing written interpretation (Rule 342.15/02), primary supervision is carried out by qualified branch managers, (persons who have passed the General Securities Sales Supervisor Qualification