

is, they would be deemed to have met it, even if they never were active for a two-year period. The grandfathering provision would include those lessors who are nominee-lessors on seats beneficially owned by an organization. A person grandfathered could lose his right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which he is not a lessor, lessee, nominee or seat owner.²⁵ As discussed above, for all non-grandfathered individuals, the "active" requirement must be satisfied after June 10, 1993.

Individuals who currently own options principal memberships would have a one-time opportunity to "opt-in" or "opt-out" of the Gratuity Fund. A decision to "opt-out" would be irrevocable for the rest of the person's life (unless the person subsequently buys a regular membership).²⁶ Options principal members who "opt-in" would be grandfathered with respect to the "active" requirement. Current lessees (both regular and options principal membership) would also have the right to "opt-out" of the Gratuity Fund, but such decisions would be effective only for the duration of their current lease, and new leases would require lessee participation in the Gratuity Fund. Lease renewals by the same two parties would not be considered to be new leases. Any new options principal member seat owner (other than an individual owner who previously chose to "opt-out" irrevocably as discussed above)²⁷ would be covered by the new rules.

With respect to the "phase-in" requirement, all those who are Participants in the Gratuity Fund on the date these proposals become effective, and all those who become Participants by virtue of these amendments (e.g., lessees and options principal members), would be deemed to be fully "phased-in," regardless of how long such persons have been Participants or Exchange members. All who become Participants thereafter would be subject to the "phase-in" requirements. If a lessee or options principal member "opted out" of the Gratuity Fund, as described above, and on some other basis later becomes a Participant, he would at that time be subject to the "phase-in."

While the foregoing grandfather provisions are appropriate in most cases, there was a concern that some people might attempt to rush through

the "loopholes" referred to earlier by becoming lessors prior to the date these proposals finally become effective. Accordingly, notwithstanding the above provisions, an individual who was not a regular member or a regular member lessor as of the date of the Board meeting at which these proposals were approved by the Exchange Board of Governors (June 10, 1993), and subsequently became a regular member lessor after June 10, 1993, would not be grandfathered with respect to the two-year active requirement.²⁸ Similarly, an individual who was not a regular or options principal member or a regular or options principal lessor as of June 10, 1993, and subsequently became an options principal lessor after June 10, 1993, would not be allowed to "opt-in" to the Gratuity Fund. Such individuals would be covered by the new rules.

Most of the above described changes in membership structure would expand the choices available to persons and organizations in structuring their relationships. However, the proposed changes would eliminate the existing a-b-c agreement, and certain individuals and organizations may find that disruptive. Accordingly, a member organization would be permitted to continue to utilize its existing a-b-c agreements for so long as the respective individual members remain on their seats.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(3), 6(b)(4) and 6(b)(5) in particular in that it assures a fair representation of Exchange members in the administration of its affairs, provides for the equitable allocation of reasonable dues, fees and other charges among members, and is designed to prevent fraudulent and manipulative acts and practices.

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

The proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 the self-regulatory organization consents, the Commission will:

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

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-08 and should be submitted by March 22, 1995.

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

Margaret H. McFarland,
Deputy Secretary.

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²⁵ See *supra*, note 17 and accompanying text.

²⁶ If that person subsequently buys a different options principal membership, the decision to "opt-out" would apply to that seat as well.

²⁷ See *supra*, note 26.

²⁸ However, in the event that such an individual dies during the period after June 10, 1993 but before the effective date of the changes, his beneficiaries would receive a Gratuity Fund benefit under existing requirements.