petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at lest one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2

Date of application for amendments: April 24, 1995.

Brief description of amendments: the amendments change the Technical Specifications by modifying the surveillance testing periodicity requirements of the automatic actuation logic of engineered safeguards equipment.

Date of issuance: May 5, 1995.

Effective date: May 5, 1995.

Amendment Nos.: 162 and 150.

Facility Operating Licenses Nos. DPR–39 and DPR–48. The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 5, 1995.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Robert A. Capra.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Pant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: April 28, 1995.

Brief description of amendment: The amendment revises the control room emergency ventilation system TS 3.7.6.1, Limiting Condition For Operation. The revision extends the one-time increase in the allowed outage time for loss of emergency power only, from the 30 days previously approved, to 45 days. This extension is necessary to allow time to repair the Number 21 emergency diesel generator which failed its operability tests subsequent to modifications which have been recently completed.

Date of issuance: May 2, 1995.

Effective date: As of the date of issuance to be implemented upon receipt.

Amendment No.: 205.

Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are continued in a Safety Evaluation dated May 2, 1995.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Dated at Rockville, MD, this 17th day of May, 1995.

For the Nuclear Regulatory Commission,

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12538 Filed 5–22–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35723; File No. SR–Amex–95–08]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Membership Structure and Requirements and the Exchange's Gratuity Fund

May 16, 1995.

I. Introduction

On February 17, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Construction, Rules and Membership Lease Plan to allow organizations, including certain pension plans, to own memberships legally as well as beneficially and to allow individuals and organizations to own multiple memberships. The Exchange also is proposing to revise its Gratuity Fund to reflect the above changes, to increase the death benefit paid thereunder, and to allow options principal members to participate therein.

The proposed rule change was published for comment in Securities

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

[2] 17 CFR 240.19b–4.

Exchange Act Release No. 35411 (Feb. 22, 1995), 60 FR 11153 (March 1, 1995). One comment was received on the proposal.[3] This order approves the proposed rule change.

II. Overview of Proposal

A. Changes to Amex Membership Structures

At present, the Exchange's Constitution and Rules require that each member[4] be a natural person who must either own a membership (*i.e.*, a seat on the Exchange) outright, lease a seat from its owner, or hold the seat under a so-called a-b-c agreement.[5] Further, a membership must also be held in the name of a natural person and no individual is permitted to hold more than one seat. A member organization may own beneficially one or more memberships in which case the member organization would be required to designate an individual (typically an officer, general partner, or employee of the member organization) nominally to own the seat on the member organization's behalf.

The Exchange proposes to eliminate the requirements that memberships be individually owned and instead permit both individuals and organizations to own multiple memberships.

Organizations that own memberships could either lease their seats directly to lessees or designate individuals as nominees to ''operate'' their seat.[6] Similarly, individuals who own memberships, but who do not ''operate'' their seats, would also be able to lease their seats or designate nominees to operate the seats as their employees. As a general matter, such nominees and lessees would be deemed to be member of the Exchange and would be subject to all of the obligations and privileges of membership under the Exchange Constitution and Rules except that they would not participate in any distribution of Exchange assets or funds upon liquidation, dissolution, or winding up of the affairs of the Exchange and ultimate control of the membership would rest with its owner.[7]

The proposal also would permit certain pension plans (generally comprised of trusts or custodian accounts, including Keoghs and Individual Retirement Accounts) to acquire ownership of one or more seats for investment purposes and either to lease their seats or to designate nominees to operate them.[8] This option would only be available to a pension plan where the sponsor of the plan is a member organization and at least fifty percent (50%) of the pension trust beneficiaries are active members and/or floor employees of the member organization or the sponsor is an ''active'' member.[9] The trust itself would be the owner of the membership and the trustee would have to become an approved person.[10]

The proposal would make a number of additional changes to the Exchange's Rules and Constitutions to effectuate the foregoing changes. These changes are described below.

Subordination of Membership to Trading Losses and Debts

Currently, in the case of a leased seat, the lessor's liability to the Exchange for his or her lessee's trading losses and other debts incurred in connection with membership is limited to the value of the leased seat. In the case of a seat held pursuant to an a-b-c agreement, however, a member organization is responsible for all such losses and debts incurred by the a-b-c seatholder, even if such obligations exceed the value of the seat used by the a-b-c- seatholder. These requirements would remain the same under the proposal with nominees being treated in the same manner as a-b-c seatholders currently are.

Claims Procedures

Under the current rules, all transfers of Exchange memberships must be posted on the Exchange Bulletin Board and published in the Exchange's Weekly Bulletin for at least seven days.[11] During this time, other members and member organizations must file their claims against the seat with the Exchange. These transfer and claims procedures would continue to be utilized under the new membership structure. In addition, the designation of a nominee by a seat owner would be deemed to be a transfer to which the posting and claims procedures would apply.

Fees

Currently, the Exchange imposes an initiation fee of $2,500 for both a regular and options principal membership when a seat is sold. The initiation fee on a nominal transfer (*i.e.*, within a firm pursuant to an a-b-c agreement) is $2,500 for a regular membership but only $500 for an options principal membership. When a membership is transferred to a lessee, the initiation fee is $1,500 for a regular membership but again only $500 for an options principal membership.

The proposal would retain the initiation fee of $2,500 for both regular and options principal memberships when a seat is sold but would impose an initiation fee of $1,500 on all regular and options principal memberships for all nominal transfers and transfers by lease.[12] For the ninety-day period after these changes become effective, no initiation fee would be charged for changes in membership ownership, except for bona fide sales and bona fide changes in lessees or nominees. A $250 processing fee, however, would be imposed on any transfer where no initiation fee is charged.

Voting

Currently, members subject to an a-b-c agreement sign an irrevocable proxy authorizing their member organizations to vote on their behalf. The organization then designates an individual (typically an employee) who is authorized to vote

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[3] Letter from Sam G. Marx on behalf of S.G. Marx & Associates Inc., a member of the Amex, to Brandon Becker, Director, Division of Market Regulation, DEC, dated May 15, 1995 (''Marx Letter'').

[4] Both regular members and options principal member are exchange members as defined in Section 3(a)(3) of the Act. A regular member may effect transactions in both equities and derivatives on the floor of the Exchange. In contrast, an options principal member is limited to trading as principal in options and other derivative products. Currently, the Amex has 661 regular and 203 options principal memberships outstanding.

[5] An a-b-c agreement is an arrangement between the individual who nominally owns a seat and the member organization with which such individual is associated and which is the beneficial owner of the membership. Upon termination of the a-b-c agreement, the individual must either (1) retain the membership and pay the member organization the amount necessary to purchase another membership; (2) sell the membership with the proceeds paid over to the member organization; or (3) transfer the membership to a person designated by the member organization.

[6] The a-b-c agreement would be replaced with another document to authorize the nominee to act on the member organization's behalf in all Exchange matters and to provide that the member organization is responsible for all the nominee's Exchange-related obligations. Member organizations, however, would be permitted to continue to utilize their existing a-b-c agreements for so long as the respective individual members remain in their seats.

[7] As discussed below, the owner would retain the right to vote seats held by nominees and certain lessees.

[8] The Exchange has been advised that the prohibited transaction provisions of the Employee Retirement Income Security Act and the Internal Revenue Code would preclude a member from being the nominee or lessee of the seat owned by his or her own pension trust.

[9] ''Active'' is defined as meeting all Exchange requirements to be active on the Floor, including passing any necessary examinations and being registered as, or associated with, a broker-dealer. See Para. 9176 of the Amex Guide (''Membership Requirements and Admissions Procedures'').

[10] See Art. I, Sec. 3(g) of the Amex Construction for a definition of the term ''Approved Person.''

[11] This includes nominal transfers, *i.e.*, a transfer of membership within an organization.

[12] Except for the above described changes in initiation fees and, as hereafter described, changes in the Exchange's Gratuity Fund assessment, the proposal would not effect any change to annual dues, floor facility fees, or other fees.

on behalf of the membership. In the case of leased seats, the vote is negotiable between the lessor and lessee, provided that if no specification is made, the lessee would vote the seat.

Under the new rules, organizations and individuals would be entitled to vote all of the memberships that they own (and do not lease out). Organizations would have to designate an individual who is authorized to vote on their behalf. With respect to leased seats, the vote would be negotiable between lessor and lessee.

B. Changes to the Gratuity Fund

Currently, the Exchange Gratuity Fund (''Fund'') provides that only families of regular members may receive the death benefit of $100,000. To fund the death benefit, each regular member contributes $152 to the Fund upon becoming a participant in the Fund and is assessed $152 each time a participant dies (subject to reduction in the first assessment of the year to reflect income earned by the Fund in the previous year). In the case of leased seats, the lessor, but not the lessee, participates in the Fund.

The proposal would exclude from participation in the Fund certain lessors who currently participate in the Fund and would include as participants, in addition to regular members, options principal members and both options principal and regular member lessees and nominees. Under the new rules, lessors would only participate to the extent they were previously active [13] on the Floor for at least two continuous years [14] commencing on or after June 10, 1993,[15] or they were regular members or regular member lessors prior to such date. Accordingly, the proposal would exclude lessors who were not regular members or regular member lessors as of June 10, 1993 from participation in the Fund, notwithstanding that such lessors currently are participants in the Fund.

An individual who satisfies the above active requirement but who then ceases to be a member, lessor, lessee, or nominee, nevertheless, once again would become a participant in the Fund upon becoming a lessor so long as no more than five years has elapsed since such individual last participated in the Fund. To the extent more than five years has elapsed, however, the individual then would have to be active for another two continuous years to participate in the Fund as a lessor.

Individuals who currently own options principal memberships would have a one-time opportunity to ''opt-in'' or ''opt-out'' of the 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.[16] Options principal members who ''opt-in'' would also be grandfathered for purposes of the active requirement. Current lessees (both regular and options principal membership) would also have the right to ''opt-out'' of the Fund, but such decisions would be effective only for the duration of their current lease, and new leases would require lessee participation in the 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) would be covered by the new rules.

Further, under the proposal, the death benefit would be increased to $125,000. The Exchange, however, would phase-in the full death benefit over a four-year period. The proposed ''phase-in'' schedule would be applied only on a prospective basis and would not be applicable to persons who are already participants or who become participants by virtue of the proposed amendments (*e.g.*, options principal members and lessees) regardless of whether such persons have been participants or members for four years or more.[17] For participants subject to the phase-in, the full death benefit would be based upon the length of time such person had been a participant, according to the following schedule: [18]

- Less than one year—$25,000 (20% ''phase-in'')
- One year or more but less than two years—$50,000 (40% ''phase-in'')
- Two years or more but less than three years—$75,000 (60% ''phase-in'')
- Three years or more but less than four years—$100,000 (80% ''phase-in'')
- Four years or more—$125,000 (100% ''phase-in'')

If a participant who has not completed the phase-in period ceases to be a participant for a continuous period of less than five years, and thereafter again becomes a participant, he or she would be able to aggregate his or her periods of participation for purposes of the ''phase-in.'' For example, if an individual is a participant for one year and then ceases to be a participant for four years, and thereafter again becomes a participant, such individual would be credited with the amount of time previously spent as a participant for purposes of the ''phase-in'' schedule. If a participant ceases to be such for a period of five years or more, however, and thereafter becomes a participant, he or she would not be able to aggregate his or her prior periods of participation for purposes of the ''phase-in'' described above. That is, the ''phase-in'' schedule would be applied to such participant as if he or she had never been a participant in the past.

Under the proposal, the amount of each assessment would fluctuate because the number of participants in the Fund would vary based on who is eligible at the time of a member's death and because the extent to which participants were ''phased-in'' would vary. As is currently the case, participants would have to pay both an initial assessment upon becoming a participant and an assessment each time an eligible individual dies. The first group of persons to become newly eligible for the Fund upon the adoption of these changes would be required to pay an initial assessment of $300.[19] Thereafter, persons who become eligible would be required to pay an initial assessment based on the number of participants in the Fund at that time.

Each membership would pay at least one assessment.[20] In some instances, there would be one assessment per seat and on others two (*i.e.*, when both lessor and lessee are qualified). Fund assessments would be based in all cases on the amount of the benefit payable and would be the same for all

[13] See note 9, *supra*, for a definition of the term ''active.''

[14] A person would not have to maintain the same status for the two-year period. For example, a person who is a lessee for one and a half years and who then buys the seat (or another seat) and remains on it for at least six months would satisfy the active requirement. In addition, a person may be off the seat for up to sixty consecutive days during the two-year period without being considered to have interrupted that period.

[15] June 10, 1993 was the date that the Exchange's Board approved these proposals.

[16] If that person subsequently buys a different options principal membership, the decision to ''opt-out'' would apply to that seat as well.

[17] An existing options principal member or lessee who ''opts-out'' of the Fund and on some other basis later becomes eligible, however, would become subject to the phase-in at that time.

[18] This schedule is similar to that used by the New York Stock Exchange (''NYSE'') regarding payments from its Gratuity Fund. See Art. XV, Sec. 3 of the NYSE Constitution.

[19] The Fund currently maintains a reserve of $200,000, the amount necessary to pay two death benefits. If the benefit is increased, the reserve would be increased accordingly. The initial assessment of $300 on new participants is necessary to allow the Fund to achieve this goal.

[20] The only exception to this would be in the case of an individual who is both the independent owner of and the user of a particular options principal membership and who ''opts-out'' of the Fund under the transition provisions. For such a person's ''opt-out'' to be able to have any practical effect, his or her options principal seat would have to be exempt entirely from the obligation to pay assessments to the Fund for so long as he or she remains the owner and user of that seat.

memberships assessed, regardless of whether or to what extent a particular participant being assessed has already ''phased-in'' to full eligibility.

No member's beneficiaries would be entitled to receive more than one Fund benefit upon the member's death by virtue of the deceased member's status as both lessor and lessee, or for any other reason. The family of a member who owns multiple memberships would be able to collect only one benefit. A member would be eligible on only one seat, and must designate that seat to the Exchange. The lessees or nominees of the other seats, of course, would be eligible on those seats. The trustees of the Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.[21]

III. Comments Received by the Commission

The Commission received one comment letter from S.G. Marx & Associates Inc., a member of the Exchange.[22] The commenter alleged that the Exchange had delayed approval of the membership of one of the company's nominees until after June 10, 1993 so that, under the proposal, such member would not be able to participate in the Gratuity Fund. Additionally, the commenter objected to the fact that, under the proposal, certain of its memberships would be required to pay an assessment to the Fund, notwithstanding that no one connected with such membership would be a participant in the Fund.

IV. Discussion

The Commission believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Sections 6(b) (2), (4), and (5) of the Act.[23] Section 6(b)(2) of the Act requires the rules of an exchange, subject to the provisions of Section 6(c) of the Act,[24] to ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange. Section 6(b)(4) of the Act requires the rules of an exchange to provide for the equitable allocation of reasonable dues and fees among members and persons using exchange facilities. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

A. Changes to Amex Membership Structure

Currently, the Exchange allows organizations to own beneficially multiple memberships. As beneficial owners, member organizations are able to vote the memberships that they own (and do not lease out) and otherwise enjoy all of the financial advantages of membership. Because they are only beneficial holders, however, member organizations must designate individuals nominally to own the seat on their behalf.

The Commission believes that the amendment of the Exchange's rules to permit organizations to own memberships directly and to permit individuals and organizations to own multiple memberships should not result in any substantive changes in the operation of the Exchange. Such changes should have the beneficial effect of allowing member organizations to simplify the arrangements that they have made with regard to their ownership and operation of Exchange memberships. Moreover, several other exchanges permit organizations, as well as individuals, to own memberships and the Commission is not aware of any problems that have resulted from such membership structure.[25]

The Commission believes that the amendments to the Exchange's rules to permit certain pension plans to acquire ownership of one or more seats for investment purposes and either to lease their seats or to designate nominees to operate them reasonably balances the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership with the regulatory interests in protecting the financial and structural integrity of the Exchange. In the event such an entity designated a nominee to operate its seat, the pension plan would have to be a broker or dealer registered with the Commission pursuant to the Act, because this is a prerequisite to becoming an Exchange member organization,[26] and would be subject to all other membership approval requirements generally applicable to member organizations. If the pension plan leased the seat, the plan would be subject to all approval requirements generally applicable to lessors. In either event, the pension plan's trustee would have to be approved as an approved person under the Constitution and Rules of the Exchange.

The Commission believes that the changes to the Exchange's fees relating to the transfer of memberships are consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities. The proposed amendments would make two changes to the Exchange's fee structure. The first change would equalize the initiation fee for nominal transfers, (*i.e.*, intra-firm) and transfers by lease of regular memberships and options principal memberships. The Commission believes that such equalization is proper in view of the Exchange's representation that the administrative expenses attributable to the two types of membership are identical. The second change would impose a substantially reduced processing fee for changes in membership during the ninety-day period following the effective date of these changes, except for bona fide sales and bona fide changes in leases or nominees. The Commission believes that it is appropriate for the Exchange to offer a reduced fee for a limited period of time as a means of encouraging members to take advantage of the new alternatives available in structuring ownership of Amex seats.

B. Gratuity Fund

The Commission is unaware of any reason why the Exchange's proposal to expand participation in the Gratuity Fund to all active Exchange members and to increase the death benefit provided thereunder should not be approved. The Exchange's proposal, however, also limits participation in the Fund. Specifically, the proposal excludes inactive members from participation in the Fund, except for such members who have been active on the Exchange for at least two years or who were participants in the Fund (or options principal members) as of the date the Exchange's Board approved such proposal. As a result, the proposal would exclude lessors who are currently participants in the Fund but who were

[21] Options principal members, lessees, and nominees also would be eligible to become trustees of the Fund. For further discussion of rules governing trustees of the Fund, *see* Art. IX of the Amex Constitution.

[22] See Marx Letter, *supra,* note 3.

[23] 15 U.S.C. 78f(b)(2), (4), (5).

[24] 15 U.S.C. 78f(c). Section 6(c) of the Act allows an exchange to deny membership to certain classes of persons.

[25] See *e.g.*, Art. I, Sec. 1.1 and Sec. 2.2 of the Constitution of the Chicago Board Options Exchange, Inc. and Art. II, Sec. 1 of the Constitution of the Chicago Stock Exchange, Incorporated.

[26] See Art. IV., Sec. 2(d) of the Amex Constitution.

not regular members or regular member lessors as of June 10, 1993 from participation in the Fund. With regard to these participants, the Commission notes that, before they become lessors, the Exchange gave them written notice that they would no longer be participants in the Fund if this proposal were approved. Further, the Commission previously published this rule change for comment and received no adverse comments regarding this disparate treatment.[27] Additionally, the Commission believes that it is reasonable for the Exchange to make a distinction in treatment between participants who became inactive members of the Exchange with the expectation that they would be participants in the Fund and members who had no such expectation.[28] Similarly, the Commission is unaware of any reason why the Exchange's proposal to phase-in the full death benefit over a four year period for all new members should not be approved.[29]

Finally, the Commission believes that the changes in the Fund assessment are consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities.[30] The Commission notes that, with one exception, the assessment applies equally to all members[31] and that there is always at least one individual connected to each membership who has the right to participate in the Fund.

IV. Conclusion

In summary, the Commission believes that the changes relating to the Exchange's membership structure will provide the Exchange and its members with increased flexibility without causing any substantive changes in the operation of the Exchange. Further, the Commission believes that the changes relating to the Exchange's Gratuity Fund should provide enhanced benefits to a wider range of members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–95–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12517 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[27] See Securities Exchange Act Release No. 35411 (Feb. 22, 1995), 60 FR 11153 (March 1, 1995).

[28] In approving this provision, the Commission does not mean to dismiss the comment of S.G. Marx and Associates Inc. regarding the Exchange's alleged delay in the approval of the membership of one of the company's nominees until after June 10, 1993 so that, under the proposal, such member would not be able to participate in the Gratuity Fund. The Commission believes that such allegation speaks to whether the Exchange applied its rules in a fair and impartial manner, rather that the advisability of the provision in question and on that basis is approving this order. The Commission emphasizes that such approval should not be interpreted as addressing the merits of the above allegation in any manner.

[29] As discussed *supra* at note 17 and the accompanying text, the phase-in schedule does not apply to persons who are already participants or who become participants by virtue of these amendments.

[30] The Commission notes that the proposed change, when combined with the provision that allows current lessees to ''opt-out'' of participation in the Fund, could result in a membership being required to pay an assessment to the Fund, notwithstanding that no one connected with such membership would be a participant in the Fund. The comment letter of S.G. Marx & Associates Inc. discussed this situation. See Marx Letter, *supra,* note 3.

[31] See note 20, *supra,* for a discussion of the exception regarding certain options principal memberships.

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[Release No. 34–35711; File No. SR–CHX–95–12]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 26, 1995, the Chicago Stock Exchange, Incorporated (''CHX'') 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 prepared primarily by CHX. The Commission is publishing this notice to solicit comments from interested persons.

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

CHX proposes to amend Rule 7 of Article XXVIII of its rules relating to the depository eligibility requirements for issuers that desire to list their securities on CHX.

[1] 15 U.S.C. 78s(b)(1) (1988).

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

In its filing with the Commission, CHX 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. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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

Under the proposed rule change, CHX will adopt a uniform depository eligibility rule for issuers that desire to list their securities on the CHX. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchange and the National Association of Securities Dealers (''NASD''). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to CHX's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day (''T+5'') to a three-day (''T+3'') settlement cycle. The transition is set to occur June 7, 19995.[3]

The proposed rule change will require issuers to ensure that securities to be listed on CHX have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be ''depository eligible,'' as such term is used in Article XXII, Rule 37 of the CHX rules (''Book-Entry Settlement

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).