

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

1. Purpose

On May 20, 1993 and December 13, 1993, the SEC approved amendments to Section 107 of the Amex Company Guide ("Section 107") to provide for the listing and trading of ELNs.<sup>1</sup> ELNs are intermediate term, nonconvertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. common stock ("linked security"). In order to list an ELNs product, Section 107B currently requires the linked security to meet one of the following criteria:

| Market capitalization |     | Annual trading volume |
|-----------------------|-----|-----------------------|
| \$3 billion .....     | and | 2.5 million shares.   |
| \$1.5 billion .....   | and | 20 million shares.    |
| \$500 million .....   | and | 80 million shares.    |

Amex now proposes to amend Section 107(B) to provide for greater flexibility in the listing criteria for ELNs. The proposed rule change will lower the trading volume requirements criteria such that ELNs may be listed where the linked security meets one of these revised criteria:

| Market capitalization |     | Annual trading volume |
|-----------------------|-----|-----------------------|
| \$3 billion .....     | and | 2.5 million shares.   |
| \$1.5 billion .....   | and | 10 million shares.    |
| \$500 million .....   | and | 15 million shares.    |

The Exchange believes this revision strikes an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the markets for the underlying linked security in view of the requirements that the linked security have a large minimum market capitalization and a fairly large trading volume over the preceding twelve months. The Exchange will continue to require that the issuer have a minimum tangible net worth of \$150 million and that the total issue price of the ELNs combined with all of the issuers' other listed ELNs shall not be greater than 25% of the issuer's tangible net worth at the time of issuance. The rule change will also delete the current provision of the rule

that allows the Exchange to list ELNs that do not meet these criteria if the Division of Market Regulation of the SEC concurs.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes the proposed rule change will impose no 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 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 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, DC 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, DC 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-95-48 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>2</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 95-30911 Filed 12-19-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36585; File No. SR-Amex-95-49]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Gratuity Fund**

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1995, the American Stock Exchange, Inc. ("Amex" 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 prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend the Admission of Members and Member Organizations section of its rules to require that all persons who are entitled to make an election to either "opt-in" or "opt-out" of participation in the

<sup>1</sup> See Securities Exchange Act Release Nos. 32345 (May 20, 1993) and 33328 (Dec. 13, 1993).

<sup>2</sup> 17 CFR 200.30-3(a)(12)(1994).

Gratuity Fund must make such an election by March 29, 1996.

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

In its filing with the Commission, the self-regulatory organization 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.

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

#### 1. Purpose

On May 16, 1995, the Commission approved a number of changes to the Amex Constitution and rules regarding membership structure and requirements, including significant changes to the Gratuity Fund.<sup>1</sup> The changes with respect to the Gratuity Fund increased the benefit to \$125,000, subject to a "phase-in" schedule for new Participants, included an "active" requirement for participation, and expanded the categories of individuals who are included in the Gratuity Fund to include both regular and options principal member lessees, as well as options principal members and some lessors.

The changes also included a grandfathering provision with respect to the Gratuity Fund revisions.<sup>2</sup> All regular members and existing regular member lessors were "grandfathered" with respect to the "active" requirement (*i.e.*, they would be deemed to have met it, even if they were never active for a two-year period). Individuals who owned options principal memberships on May 16, 1995 were given a one-time opportunity to elect to "opt-in" or "opt-out" of the Gratuity Fund, and those who choose to "opt-in" are grandfathered with respect to the "active" requirement as well. An election to "opt-out" is irrevocable for the rest of the person's life, unless he or she subsequently buys a regular membership. In addition, those individuals who were either regular or options principal member lessees on

May 16, 1995 have the right to "opt-out" of the Gratuity Fund for the duration of their lease (including any renewals).<sup>3</sup>

All individuals who have a right to "opt-in" or "opt-out" of the Gratuity Fund have received extensive written communications from the Exchange's Membership Services Department requesting that such individuals indicate their election thereof on the appropriate form(s). In addition, for a total of three weeks, staff members from the Membership Services Department were stationed in the Exchange lobby to answer questions and distribute forms and information, and signs have been posted on the trading floor alerting the affected membership of the need to notify the staff of their election. Notwithstanding this effort, as of November 7, 1995, almost 40% of eligible individuals<sup>4</sup> had not completed the necessary paperwork or indicated their election to the staff.

In order to efficiently administer the Gratuity Fund it is imperative that each eligible individual's status in this regard be definitively resolved. The lack of complete information has resulted in significant record keeping problems in terms of determining who is subject to an assessment upon a Participant's death, as well as the amount that should be assessed to other Participants.<sup>5</sup> Moreover, interpretative difficulties are presented by the death of an individual who has not yet made an election.

Accordingly, the Exchange is proposing to amend the Admission of Members and Member Organizations section of its Rules to require that all individuals who have a right to elect to "opt-in" or "opt-out" of the Gratuity Fund must make such election by March 29, 1996. An individual who does not make an election by that date will be conclusively deemed to have elected to "opt-out" of participation in the Gratuity Fund. This date has been selected to give the Exchange a period of time during which persons can receive ample warning of the new deadline.<sup>6</sup>

<sup>3</sup> New leases require lessee participation in the Gratuity Fund.

<sup>4</sup> As of November 7, 1995, 452 individuals had not completed the necessary paperwork or indicated their election to the staff. Subsequently, as a result of a concerted drive, an additional 216 individuals have indicated their election, leaving 236 individuals who have not done so as of December 7, 1995.

<sup>5</sup> Because the pool of Participants is now variable, the amount of each assessment is determined by dividing \$125,000 by the number of Participants.

<sup>6</sup> The Exchange will take the following steps to notify affected persons of the deadline: A certified letter will be sent to the latest address for each such individual in the files of the Exchange's Membership Services Department, and if necessary a second follow-up certified letter will be sent to

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members.

#### 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from December 7, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(e)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

such address. In addition, unless an individual has previously responded to such written notification, if such person does business on the Floor of the Exchange and can be found on the Floor of the Exchange, an Exchange staff member will personally speak to the individual to inform him or her of the deadline. For all other individuals who have not responded to a written notification, to the extent the files of the Membership Services Department contain a telephone number for such individual, an Exchange staff member will place one telephone call to such number to attempt to orally notify the individual of the deadline.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(e)(6).

<sup>1</sup> See Securities Exchange Act Release No. 35723 (May 16, 1995); 60 FR 27353 (May 23, 1995) (File No. SR-AMEX-95-08).

<sup>2</sup> See Amex Constitution, Article IX, Section 23.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-95-49 and should be submitted by January 10, 1996.

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

Jonathan G. Katz,  
Secretary.

[FR Doc. 95-30856 Filed 12-19-95; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-36588; File No. SR-CBOE-95-63]

**Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Adoption of Rule 9.24 and an Interpretation With Respect to Proposed Rule 9.24**

December 13, 1995.

**I. Introduction**

On October 19, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new Rule 9.24 and to add Interpretation and Policy .01 thereunder with respect to the meaning and administration of proposed Rule 9.24.

The proposed rule change appeared in the Federal Register on November 9, 1995.<sup>3</sup> No comments were received on

the proposed rule change. This order approves the CBOE's proposal.

**II. Description**

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list. The CBOE's proposal would also add an interpretation concerning the meaning and administration of proposed Rule 9.24 as well as serve as a reminder<sup>4</sup> that members and member organizations are subject to compliance with the relevant Federal Communications Commission ("FCC") and Commission rules relating to telemarketing practices.<sup>5</sup>

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>6</sup> Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. Proposed Rule 9.24 and the interpretation thereunder require a specific practice, the maintenance of a do-not-call list. The purpose of maintaining such a list is to prevent members and member organizations from engaging in such manipulative acts as persistently calling investors who have expressed a desire not to receive telephone solicitations.

The Commission also believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to protect investors and the public interest. Proposed Rule 9.24 and the interpretation thereunder protect

<sup>4</sup> The Commission notes that the CBOE intends to include this Interpretation in a Circular that will be distributed to members and member organizations.

<sup>5</sup> Pursuant to the Telephone Consumer Protection Act (1991), the FCC developed rules to protect the rights of telephone consumers while allowing legitimate telemarketing practices. The FCC rules include a requirement that a person or entity making telephone solicitations must maintain a do-not-call list. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act (1994) ("Prevention Act"), requires the Federal Trade Commission ("FTC") to adopt rules on abusive cold calling. The Prevention Act also requires the Commission to engage in its own rulemaking or, alternatively, to require the self-regulatory organizations to promulgate telemarketing rules consistent with the legislation.

<sup>6</sup> 15 U.S.C. 78f(b) (1988).

investors and the public interest by enforcing members' and member organizations' compliance with investors' desire not to receive such calls. In addition, the proposed interpretation reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

**IV. Conclusion**

For the foregoing reasons, the Commission finds that the CBOE's proposal to adopt a new rule concerning telephone solicitation and record-keeping is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CBOE-95-63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 95-30909 Filed 12-19-95; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-36590; File No. SR-CHX-95-24]

**Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Agency Crosses Between the Disseminated Exchange Market**

December 13, 1995.

On October 11, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the execution of agency cross transactions at a price between the disseminated Exchange market.<sup>3</sup> On October 17, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In a cross transaction, a member or member organization that holds an order to buy and an order to sell an equivalent amount of the same security executes the orders against each other.

<sup>4</sup> See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Team Leader, SEC, dated

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 36455 (November 3, 1995), 60 FR 56624 (November 9, 1995).