

registration,²⁴ and it has exercised significant continuing oversight over all aspects of clearing agency operations and functions.²⁵ The market break of October 1989 and the market break of October 1991 demonstrated the central role of clearing agencies in the U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.²⁶ In light of the foregoing, the Commission believes that any applicant that requests an exemption from clearing agency registration should meet standards that are substantially similar to those standards required of registered clearing agencies in order to assure that the fundamental goals of Section 17A of the Exchange Act (*i.e.*, safe and sound clearance and settlement) will be achieved. Therefore, commentators are invited to address whether granting the proposed exemption to ProTrade (1) would further the development of a national clearance and settlement system, (2) would promote linked and coordinated clearing facilities (among options, futures, and other financial instruments), and (3) would promote the maintenance of fair competition.

Specifically, ProTrade's application raises the question of whether the establishment of multiple unlinked securities clearing agencies is consistent with Section 17A of the Act. One of the benefits of a single clearing agency is centralized default administration. Conversely, the introduction of multiple options clearing agencies, including options clearing operations that may seem *de minimis* relative to the overall market may have a fragmentation effect that could increase the risks entailed in liquidating defaulting customers. Commentators should discuss applicable law as well as the costs and benefits of single versus multiple clearing facilities for option securities, including whether the risk exposure to individual clearing organizations would be increased by the fragmentation of the clearing function. Commentators also

should discuss the effects that stress to the marketplace (*e.g.*, high volume and high volatility) possibly could have on such a multiple clearing agency system.

B. Fair Competition

Section 17A of the Exchange Act requires the Commission, in exercising its authority under that section, to have due regard for the maintenance of fair competition among clearing agencies.²⁷ In addition, no clearing agency may be registered or granted an exemption from registration, if its rules "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the federal securities laws.²⁸ Therefore, the Commission must consider an applicant's likely effect on competition in its review of any application for registration as a clearing agency or for an exemption from such registration and must balance any benefits or hindrances to competition against any effects on the other statutory goals.²⁹

The Commission invites commentators to address whether an exemption from registration as a clearing agency for ProTrade would result in increased competition among option broker-dealers and among options clearing agencies and whether such competition would, for example, result in the development of improved systems capabilities, the offering of new services, and the lowering of prices to customers. The Commission also invites commentators to address whether the proposal would impose any burden on competition that is inappropriate under the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by February 16, 1995. Such written data, view, and arguments will be considered by the Commission in deciding whether to grant ProTrade's request for an exemption from registration as a clearing agency. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

²⁷ 15 U.S.C. 78q-1(a)(2) (1988).

²⁸ 15 U.S.C. 78q-1(b)(3)(I) (1988).

²⁹ *In Bradford National Clearing Corporation v. Securities and Exchange Commission*, 950 F.2d 1085, 1105 (D.C. Cir. 1978), the court said:

[T]o the extent the legislative history provides any guidance to the Commission in taking competitive concerns into consideration in its deliberations on the national clearing system, it merely requires the [Commission] to "balance" those concerns against all others that are relevant under the statute.

Reference should be made to File No. 600-28. Copies of the application and all written comments will be made available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36578; File No. SR-Amex-95-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Notes

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 5, 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 Amex proposes to amend Section 107B of the Amex Company Guide to provide greater flexibility for the listing of Equity-Linked Notes ("ELNs").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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

³⁰ 17 CFR 200.30-3(a)(16) (1994).

²⁴ Securities Exchange Act Release No. 16900 (June 17, 1980) 45 FR 41920 (order approving standards for clearing agency registration).

²⁵ Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, National Securities Clearance Corporation, The Options Clearing Corporation, Pacific Securities Depository, Philadelphia Depository Trust Company, and Stock Clearing Corporation of Philadelphia).

²⁶ Division of Market Regulation, *The October 1987 Market Break* (February 1988), Chap. 10 ("Clearance and Settlement"), *esp.* pp. 10-48 to 10-56; Division of Market Regulation, *Market Analysis of October 13 and October 16, 1989*, pp. 118-173 (December 1990).

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.¹ 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:²

Jonathan G. Katz,
Secretary.

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[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

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

² 17 CFR 200.30-3(a)(12)(1994).