

Amex will require that members who make recommendations in ComPS determine that the transaction recommended is suitable for the customer and have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. Third, because ComPS are cash-settled, holders will not receive, nor be required to liquidate, the underlying physical commodities or overlying futures contracts. The Commission notes that this provision will effectively terminate a ComPS investor's exposure to commodity market risk at the security's maturity and limit an investor's loss to the amount of his initial investment. Finally, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with ComPS.¹⁶ This will assist members in determining the customers eligible to trade ComPS, formulating recommendations in ComPS, and in monitoring customer and firm transactions in ComPS.

The Commission also believes that several factors significantly minimize the potential for manipulation of ComPS. First, each of the futures contracts overlying the commodities is relatively actively traded, and has considerable open interest. Second, the majority of futures contracts overlying the component commodities trade on exchanges that impose position limits on speculative trading activity, which are designed, and serve, to minimize potential manipulation and other market impact concerns. Third, as discussed below, the Amex has entered into certain surveillance sharing agreements with each of the futures exchanges upon which the underlying designated futures contracts trade. These agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making ComPS less readily susceptible to manipulation.¹⁷ Fourth,

¹⁶ The ComPS circular will be submitted to the Commission for its review and should include, among other things, a discussion of those risks which may cause commodities to experience volatile price movements in addition to details on the pricing methodology to be used for that particular issuance.

¹⁷ The Amex has comprehensive surveillance sharing agreements with all of the exchanges upon which the futures contracts relating to a particular ComPS trade. Specifically, Amex is able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and Comex. Furthermore, under the ISG information sharing agreement, SFA will be able to provide, upon Amex request, surveillance information with respect to trades effected on the LME, including client identity

the price of ComPS (with respect to those commodities traded in the U.S.) will be calculated every 60 seconds and disseminated to vendors of electronic financial information via the Exchange's Network B.¹⁸ Fifth, adequate procedures are in place to prevent the misuse of information by members of the policy committee responsible for replacements with respect to the underlying contract.¹⁹ Accordingly, for the reasons discussed above, the Commission believes that ComPS are not readily susceptible to manipulation and that in any event, the surveillance procedures in place are sufficient to detect and deter potential manipulation.

The Commission notes the ComPS, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a purchaser of ComPS may not be able to receive any cash payment due upon maturity. To some extent this credit risk is minimized by the Exchange's listing guidelines requiring ComPS issuers to possess at least \$100 million in assets and stockholders' equity of at least \$10 million. In any event, financial information regarding the issuer will be disclosed or incorporated in the prospectus accompanying the offering of ComPS.

Based on the above, the Commission finds that the proposal to trade ComPS is consistent with the Act, and, in particular, the requirements of Section 6(b)(5).²⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

information. Finally, if the underlying commodity for an issuance of ComPS changes or if a different market is utilized for purposes of calculating the value of a designated futures contract, the Amex will ensure that it has entered into a surveillance sharing agreement with respect to the new relevant market.

¹⁸ For commodities traded on the LME, as discussed above, prices for ComPS will be continuously disseminated on Network B, however, they will only be updated once per day during U.S. hours.

¹⁹ As discussed above, members of the policy committee are expressly prohibited from trading ComPS and from communicating any knowledge concerning changes in the value of the underlying commodities. Amex will also have surveillance procedures in place to periodically review activity in the securities.

²⁰ The Commission notes that a Rule 19b-4 filing might be required in order to list any other derivative product based upon a commodity interest that differs from the proposed ComPS or previously approved COINs products.

²¹ 15 U.S.C. § 78s(b)(2) (1982).

²² 17 CFR § 200.30-3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-36884; File No. SR-Amex-96-02]

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

February 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 16, 1996 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 Board of the American Stock Exchange, Inc. has made an interpretation of Article IX of the Exchange Constitution with respect to the Gratuity Fund eligibility of individuals who inherited their regular memberships.

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

¹ 15 U.S.C. 78s(b)(1).

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

1. Purpose

Effective May 16, 1995, the Commission approved various amendments to the Exchange Constitution and Rules relating to the Gratuity Fund.² These changes, among other things, include options principal members and options principal and regular member lessees in the Gratuity Fund, increase the Gratuity Fund benefit to \$125,000, subject to a "phase-in" schedule for new Gratuity Fund Participants ("Participants"), and include a two-year "active" requirement for participation.³ The changes also include a grandfathering provision, which provides that all individuals who were regular members or regular member lessors on June 10, 1993 are grandfathered with respect to the "active" requirement (i.e., they are deemed to have met it, even though they were never active for a two-year period).⁴

Except for those who are grandfathered, inactive owners of memberships are not Gratuity Fund Participants, and thus are generally not subject to assessments upon the death of a Participant.⁵ The Constitution, however, does require that each membership pay at least one assessment upon the death of a Gratuity Fund Participant.⁶ Accordingly, a non-Participant does have to pay an assessment when there is no lessee or nominee on the seat who is a participant.⁷

An ambiguity arose making it appropriate to interpret these provisions. Pursuant to Article II, Section 2 of the Exchange Constitution,

² See Securities Exchange Act Release No. 35723 (May 16, 1995), 60 FR 27353 (May 23, 1995) (Order approving File No. SR-Amex-95-08).

³ *Id.*

⁴ 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. See Securities Exchange Act Release No. 36585 (Dec. 13, 1995), 60 FR 65701 (Dec. 20, 1995) (Order approving File No. SR-Amex-95-49). An election to "opt-out" is irrevocable for the rest of the person's life, unless he or she subsequently buys a regular membership. *Id.* 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. *Id.*

⁵ Inactive members are those that do not meet all Exchange requirements to be active on the Floor. See Para. 9176 of the Amex Guide ("Membership Requirements and Admissions Procedures").

⁶ See Amex Constitution, Article IX, Section 4.

⁷ *Id.*

the Exchange's Board of Governors has the authority to interpret the Exchange Constitution and Rules.

It has for many years been the case that an individual who inherited a regular seat (after collecting a Gratuity Fund benefit) would not be eligible to participate in the Gratuity Fund himself or herself unless he or she fulfilled all membership requirements (except taking the Floor examinations), including paying the \$2,500 transfer fee. This was considered analogous to the beneficiary selling the inherited seat and purchasing a new one.⁸

There are currently ten beneficiaries who inherited their memberships prior to June 10, 1993, and chose to retain the memberships and lease them out. Of the ten, five beneficiaries qualified for membership and paid the \$2,500 transfer fee, and five did not. The five who did not take steps to qualify for membership and pay the \$2,500 transfer fee were still required to pay a Gratuity Fund assessment every time that a regular member or regular member lessor died.⁹

The question has now arisen whether the beneficiaries who did not take steps to qualify for membership must still pay Gratuity Fund assessments in light of the Gratuity Fund provisions which were adopted in May 1995.¹⁰ It is arguably inappropriate for the Exchange to continue to assess these non-Participants for contributions since other non-Participants do not have to pay assessments if there is a Participant affiliated with a seat.

On December 14, 1995 the Exchange's Board of Governors adopted an interpretation of Article IX of the Exchange Constitution regarding the situation described above. This interpretation provides that the Exchange will continue to take the position that each of the five individuals

⁸ It is the Exchange's understanding that the New York Stock Exchange treats individuals who inherit memberships in the same manner.

⁹ Note that under the new rules, the ambiguity being dealt with here is not likely to arise. Pursuant to Article IX, Section 23(a), an individual must be a regular member or regular member lessor on June 10, 1993 to be grandfathered from the requirement that one must have been an "active" member to be a Gratuity Fund Participant. A previously active exchange member, however, would again become a participant in the Gratuity Fund upon becoming a lessor so long as no more than five years has elapsed since such individual last participated in the fund. Typically, however, it can be expected that those who inherit seats upon the death of the owner will not have previously been active Exchange members themselves, so that if they hold on to the seats as owners they will not be eligible to be Participants under the new rules, and thus will not be subject to assessments unless there is no lessee or nominee Participant on the seat.

¹⁰ See Securities Exchange Act Release No. 35723, *supra*, note 2.

is not a Gratuity Fund Participant, but that the Exchange should treat them equally with other owners who are non-Participants, and not subject them to assessments, so long as the membership is leased to (or has a nominee who is) a Participant in the Gratuity Fund. This interpretation is retroactive to May 16, 1995, the date that the new rules were implemented.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5)¹² in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

The proposed rule change does not impose any 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 neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (e) of Rule 19b-4 thereunder.¹⁴

At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4.

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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR-Amex-96-02 and should be submitted by March 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-4888 Filed 3-1-96; 8:45 am]

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[Release No. 34-36883; File No. SR-PSE-96-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Options Firm Quote Rule

February 23, 1996.

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 January 16, 1996, the Pacific Stock Exchange, Inc. ("PSE" of "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 PSE. 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 proposes to amend its Options Firm Quote Rule (Rule 6.86, the "rule") in order to codify some related floor policies and also to clarify certain provisions of the rule.

The text of the proposed rule change is available at the Office of the

Secretary, the PSE, 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 Exchange 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 PSE 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

The Exchange is proposing to modify its Options Firm Quote Rule as follows:

Order Identification

Subsection (a) of the rule currently provides that members and member organizations who enter orders for execution on the Options Floor must ascertain the account origin of such orders and provide a notation of the account origin on the order ticket. The Exchange is proposing to modify this provision to provide that such members and member organizations would be required to communicate such account information to the executing member organization. Accordingly, the member or member organization entering the order must indicate to the executing member organization whether the order is for the account of a customer, firm or market maker.

The proposal would also set forth the duty of executing floor brokers to inquire personally as to the account origin of each eligible order upon receipt thereof or prior to its execution and to note such information on the order ticket.

Finally, under the proposal, the executing member organization and the clearing member organization would bear greater responsibility with respect to the proper identification of orders that are executed on behalf of non-members of the Exchange.

Commentary .05

Proposed Commentary .05 sets forth certain types of orders that are subject to the rule and the extent to which the rule applies to such orders. The rule specifically addresses the treatment of combination orders, spread orders,

straddle orders and contingency orders. With respect to combination orders, market Makers in a trading crowd would only be responsible for providing an aggregate of 20 contracts on one side of the market; however, Market Makers would be required to provide a depth of twenty contracts on both sides of the market for spread and straddle orders.

The proposed Commentary also enumerates the types of contingency orders that are subject to the rule, *i.e.*, "minimum" orders of 20 contracts or less and market not-held, limit not-held and delta orders that can be executed immediately. The types of contingency orders that are not subject to the rule include: "minimum" orders for more than 20 contracts, buy-writes, all-or-none orders for more than 20 contracts, delta orders traded with stock and contingency orders that have been partly executed.

The proposed Commentary also provides that in executing contingency orders pursuant to the rule, the order ticket must be time stamped upon being taken into the trading crowd. The Commentary also states that such orders are entitled to 20 contracts on the market disseminated at that time.

Commentary .06

Proposed Commentary .06 provides that Market Makers must be afforded a "reasonable" opportunity to update their disseminated markets for the execution of consecutive eligible customers orders in options on the same underlying security. The Commentary further provides that orders shall be executed on a time priority basis so that the order with the earliest time stamp will receive a guaranteed fill of 20 contracts.

Commentary .07

Proposed Commentary .07 provides that a Floor Broker may be held liable for an entire order if such Floor Broker attempts to solicit a better price than the limit price stipulated on the order ticket and such attempt creates a change in the market that does not result in an immediate execution.

Commentary .08

Proposed Commentary .08 designates those Market Makers to whom the Order Book Official may, pursuant to current Subsection (d), allocate the balance of contracts necessary to provide an execution of 20 contracts when the response of the members present at the trading post is insufficient to provide a depth of 20 contracts. Specifically, such allocations may be made to Market Makers who: (1) Are present at the trading post at the time of a call for a

¹⁵17 CFR 200.30-3(a)(12).