## 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 Section 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

#### **Background**

The Exchange Member Ownership Issues Committee was established in June of 1992 to examine the need for changes and revisions in the Exchange's membership structure and requirements. Following an extensive review, the Committee recommended certain changes in order to update the membership structure and respond to the expressed needs of the membership. These changes, which have been approved by the Exchange's Board of Governors and membership, are described below.

### **Seat Ownership**

Currently, each of the 661 regular memberships and 203 options principal memberships are held in the name of an individual member.<sup>2</sup> Member firms and member corporations may beneficially own these memberships by designating an individual (typically a general partner or employee of a member firm or an officer or employee of a member corporation) nominally to own the seat in their behalf. This is accomplished by either using a lease <sup>3</sup> or an a-b-c agreement.<sup>4</sup> In the case of a lease, a

member organization must also place the lease in the name of an individual nominee as lessor.

Individuals are not permitted to own more than one seat. Member organizations, on the other hand, may own multiple seats beneficially, but each seat must be nominally owned by an individual member.

The Exchange proposes to eliminate the requirement that seats be individually owned. The Amex believes that this requirement is outdated and not responsive to the needs of the member community. Several other exchanges permit organizations, as well as individuals, to own memberships (e.g., the Chicago Board Options Exchange ("CBOE"), the New York Futures Exchange and the Pacific Stock Exchange ("PSE")).

Under the proposal, an organization would be able to be both legal and beneficial owner of one or more memberships. The organization would be able to lease a seat to a lessee or to designate an individual as nominee to "operate" the seat. As a general matter, nominees (like lessees) would be deemed to be members of the Exchange and would be subject to all of the obligations and enjoy all the privileges of membership under the Exchange Constitution and Rules, except (1) for purposes of participating in any distribution of Exchange assets or funds upon liquidation, dissolution or winding up of the affairs of the Exchange and (2) ultimate control of the membership would rest with the organization owner.5 The a-b-c agreement would no longer be required. It 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.

The proposal also would permit both individuals and organizations to own multiple memberships. Individuals would be able to lease their additional seats, or to designate nominees to "operate" the seats and act as their employees.

A number of members have indicated that they would be interested in

acquiring more than one membership. The Exchange finds no compelling reason to continue to prohibit multiple memberships. In this regard, it should be noted that the CBOE, the PSE, the Philadelphia Stock Exchange (''Phlx'') and virtually all commodities exchanges permit multiple ownership.

### Leasing

Currently, both the lessor and the lessee of a leased seat must be individuals. Because, under the proposal, organizations would be permitted to own seats directly, as well as beneficially, the member organization may be the lessor. Such member organization would not be required to designate a nominee as the lessor on the seat.

#### **Claims Procedure**

Under the current rules, no member may sell or transfer his membership unless he does so pursuant to established Exchange procedures. All transfers must be posted on the Exchange Bulletin Board and published in the Weekly Bulletin for at least seven days. During this time, other members and member organizations must file their claims against the seat with the Exchange. The same procedures are used for intrafirm transfers. Before the seat can be transferred to another employee in the firm, the firm is required to satisfy any outstanding claims.

Basically, the same transfer and claims procedures would 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, and the posting and claims procedures would apply.

# Subordination of Membership to Trading Losses and Debts

Currently, all memberships are subordinated to (*i.e.*, "stand behind") the trades of the member in whose name the seat is held. In the case of a leased seat, the lessor's seat is at risk for his lessee's's trading losses and other debts incurred in connection with membership. In the case of seats held pursuant to a-b-c agreements, member organizations are responsible for obligations that their a-b-c seatholders incur.<sup>6</sup>

The above requirements would remain the same under the proposal. If an individual or organization owns multiple memberships that are held subject to one or more leases, only the

<sup>&</sup>lt;sup>2</sup> Both regular members and options principal members are exchange members as defined in Section 3(a)(3) of the Act. A regular member may execute transactions in both equities and derivatives. In contrast, an options principal member is limited to trading as principal in options and other derivative products. For further discussion of types of memberships, *see* Art. IV. Sec. 1 of the Amex Constitution.

<sup>&</sup>lt;sup>3</sup> As noted below, the lease must be executed by the nominal seat owner, rather than the member organization with which such individual is associated and which is the beneficial owner of the membership.

<sup>&</sup>lt;sup>4</sup> 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.

<sup>&</sup>lt;sup>5</sup> As discussed below, *see infra* note 9 and accompanying text, the owner would retain the right to vote seats held by nominees and certain lesses.

 $<sup>^6\</sup>mathrm{A}$  member organization is responsible even if its a-b-c seatholder's obligations exceed the value of the seat.