interrupted that period. Individuals would lose their right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which the person is not a lessor, lessee, nominee or seat owner.17 Lessors who lose their prior active status would have to be active for another two continuous years in order to requalify for the Gratuity Fund. Members and nominees would either have to be currently active or active for another two continuous years in order to be eligible for the Gratuity Fund

Further, under the proposal, the Exchange would implement, for new Gratuity Fund Participants, a four year 'phase-in' schedule based upon the length of time the individual in question had been a Participant. 18 The "phasein" would operate as follows:

Upon the death of a Participant, a payment would be made based upon the length of time such person had been a Participant, according to the following schedule:

- 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 was "phasing-in" ceases to be a Participant for a period of less than five years, and such individual thereafter again becomes a Participant, he would be able to aggregate his 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 if he were again to become a Participant, he would be credited with the amount of time he previously spent as a Participant for purposes of the "phase-in" schedule.

If an individual who was a Participant ceases to be a Participant for a period of five years or more, and such individual thereafter again becomes a Participant, he would not be able to aggregate his periods of participation for purposes of the "phase-in" described above (i.e., regardless of the length of time he had previously been a Participant, the phase-in" schedule would be applied as if he had never been a Participant in the past).

Each membership would pay at least one assessment, regardless of whether the owner or a lessee or nominee qualifies for the Gratuity Fund. 19 In some instances, there would be one assessment per seat and on others two (i.e., when both lessor and lessee are qualified). Gratuity Fund assessments would be based in all cases on the amount of the benefit payable and would be the same for all 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 Gratuity 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. The 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

The individuals who are nomineelessors on behalf of member organizations would no longer be qualified for the Gratuity Fund under the proposed system (although, as discussed below, there would be a grandfather clause). This is because the member organization itself would be the lessor. Under the proposal, however, the individual who would have been named as lessor most likely would not qualify for the Gratuity Fund anyway, since member organizations typically named an upstairs executive as lessor and such person would not be "active" and may not have been "active" in the past, at least within the last five years.

The trustees of the Gratuity Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.20

Pension Trusts

Currently, the Exchange does not permit ownership of seats by trusts.21 The proposal would permit pension plans (generally comprised of trusts or custodial accounts, including Keoghs and Individual Retirement Accounts) of "active" members (as defined above) to acquire ownership of one or more seats for investment purposes, and either to lease the seat or to designate a nominee to operate it.²² The intent is to make this available only to pension trusts where the trust sponsor is an active member, or where the sponsor 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. The trust itself would be the owner of the membership, and the trustee would have to become an approved person.²³ Only the nominee or lessee would be eligible for the Gratuity Fund, provided he or she is not already eligible for the Gratuity Fund with respect to another seat (e.g., as the owner of that seat). As is the case for other member organizations, the trust would be entitled to vote all of the seats that it owns (and does not lease out) and may designate who may vote on its behalf. If the seat is leased, the vote would be negotiable between the trust and the lessee.

Transition Arrangements

The proposal includes a grandfathering provision for the Gratuity Fund revisions.²⁴ All regular members ad existing regular member lessors would be grandfathered with respect to the "active" requirement, that

¹⁷ This provision would apply to a person who had satisfied the active requirement and thus was eligible for the Gratuity Fund based on prior status and who thereafter disposed of his membership. If, within five years of leaving the Exchange, such person becomes a lessor or other inactive seat owner, he would retain his right to participate in the Gratuity Fund. If, however, more than five years pass, such person would lose his prior active status and would have to requalify for the Gratuity Fund. A person who leaves the Exchange would not be eligible for the Gratuity Fund benefit during any period when he is not a lessor, lessee, nominee or

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.

The Amex's proposed "phase-in" schedule would be applied only on a prospective basis and would not be applicable to persons who are already Gratuity Fund Participants or who become Gratuity Fund 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. However, an existing options principal member or lessee who "opts out" of the Gratuity Fund and on some other basis later becomes eligible would at that time be subject to the "phase-in." See infra notes 26-27 and accompanying text.

¹⁹ 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 Gratuity Fund under the transition provisions discussed below. For such a person's "opt-out" to be able to have any practical effect, his options principal seat would have to be exempt entirely from the obligation to pay assessments to the Gratuity Fund for so long as he remains the owner and user of that seat.

²⁰ For further discussion of rules governing trustees of the Gratuity Fund, see Art. IX of the Amex Constitution.

 $^{^{21}\,\}mathrm{Both}$ the Phlx and the Chicago Mercantile Exchange permit pension trusts to own seats.

²² 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 own pension trust.

²³ See Art. I, Sec. 3(g) of the Amex Constitution. ²⁴ For further discussion of the cut-off date for eligibility for the transition arrangements, see infra note 28 and accompanying text.