

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.¹ 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.² 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).³

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 individuals⁴ 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.⁵ 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.⁶

³ New leases require lessee participation in the Gratuity Fund.

⁴ 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.

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

⁶ 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 Act⁷ 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 Act⁸ and Rule 19b-4(e)(6) thereunder.⁹

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(e)(6).

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

² See Amex Constitution, Article IX, Section 23.