

proposed amendments to rule 10f-3 under the Investment Company Act of 1940 (the "Act").

Rule 10f-3 permits, under certain conditions, purchases of securities from underwriting syndicates whose members include affiliated persons of the purchasing investment company. The proposed amendments to rule 10f-3 would increase the flexibility of funds relying on the rule to purchase greater quantities of securities, foreign securities not registered under the Securities Act of 1933, and municipal securities in group sales. The average additional burden imposed by the proposed amendments to rule 10f-3 would be 0.12 hours per respondent. The Commission estimates that approximately 600 funds rely upon rule 10f-3 each year. The total average annual burden for rule 10f-3 per respondent would be 1.12 burden hours and the total for all respondents would be 670 hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-6004, and the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: April 2, 1996.

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37068; File No. SR-Amex-96-04]

**Self-Regulatory Organizations;  
American Stock Exchange, Inc.; Order  
Granting Approval to Proposed Rule  
Change and Notice of Filing and Order  
Granting Accelerated Approval of  
Amendment No. 1 Relating to Changes  
to Its Membership Admission  
Procedures**

April 4, 1996.

**I. Introduction**

On January 30, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities

and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make several clarifying and "housekeeping" changes to the Admission of Members and Member Organizations section of the Amex rules, including changes with respect to the designation of nominees, and revisions to the requirements applicable to pension plans seeking to own memberships.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36834 (February 13, 1996), 61 FR 6665 (February 21, 1996). One comment letter was received on the proposal.<sup>3</sup> On April 2, 1996, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>4</sup>

**II. Description**

The proposed rule change makes a number of changes to the Admission of Members and Member Organizations section of the Exchange rules and Rule 342. These include changing outdated references to the Exchange's Membership Admission Department to Membership Services, removing an inaccurate reference to a provision in the Amex Constitution from Rule 342, and amending the language of the Designation of Nominee subsection of Para. 9176 to conform it to current Exchange practice and a corresponding provision in the Amex Constitution.<sup>5</sup> Additionally, this subsection is being amended to clarify that all of a nominee's obligations to the Exchange and to other Exchange members or member organizations resulting from Exchange transactions or transactions in other securities made in the name of the nominee as member, are the obligations of the owner of the regular or options principal membership<sup>6</sup> and such owner is responsible for all such obligations.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Jonathan E. Feins, to Jonathan G. Katz, Secretary, SEC, dated March 13, 1996 ("Comment Letter").

<sup>4</sup> See Letter from Linda Tarr, Senior Counsel, Amex, to Glen Barrentine, SEC, dated April 2, 1996 ("Amendment No. 1"). See note 10 and accompanying text for a description of Amendment No. 1.

<sup>5</sup> Specifically, the proposal changes references to the party who is eligible to appoint nominees in this section from "member or member organization" to "owner of a regular or options principal membership." Under the Amex Constitution, only such owners are eligible to designate nominees. See Amex Const., Art. IV, Sec. 4(b)(2).

<sup>6</sup> Under the Amex Constitution and rules, individuals or organizations may own one or more

Furthermore, the proposed rule change revises Para. 9179 as it relates to the provisions relative to membership ownership by pension plans to more accurately and completely represent the procedures to be followed in this regard. In particular, the proposed rule change clarifies that: (i) Sponsors and trustees of such pension plans are responsible for evaluating the inherent risks of owning a membership and must determine the advisability of such without relying on advice from the Amex or any of its officers or employees; (ii) the Amex will have no liability to either the participants in such pension plans or their beneficiaries in the event the purchase, operation or disposition of the membership results in loss to the pension plan and related trust; and, (iii) the plan sponsor and trustee must agree that they shall indemnify and hold the Exchange harmless from all claims, losses, expenses (including all attorney's fees) and taxes arising out of the purchase, operating and disposition of the membership. Additionally, the proposed rule change makes corrections to certain terminology currently used to describe the components of such pension plans.<sup>7</sup>

Finally, the proposed rule change, as originally proposed, mistakenly removed language from Para. 9174 that provided an exception from the Exchange's physical examination requirement for prospective members who desire only to own a regular or options principal membership and who choose not to become Participants in the Exchange's Gratuity Fund.<sup>8</sup> The removal

Exchange memberships (*i.e.*, seats on the Exchange), and instead of "operating" the seats, can either lease their seats or designate nominees to operate the seats as their employees.

<sup>7</sup> For example, Para. 9179 of the Amex rules, inaccurately refers to participants belonging to pension plans eligible to own Exchange memberships as "beneficiaries" of such plans.

<sup>8</sup> An Exchange member is not required to pass any physical examination in order to become a Participant in the Amex's Gratuity Fund. In Securities Exchange Act Release No. 34968 (November 10, 1994), 59 FR 59804 (November 18, 1994) (File No. SR-Amex-94-23), the Commission published for comment a proposed rule change by the Amex which included amendments to the provisions applicable to the Exchange's Gratuity Fund. Among other things, the Amex proposed to amend the Amex Constitution to require prospective Participants in the Gratuity Fund to pass a physical examination and add a reference to this requirement to Para. 9176. The filing was subsequently withdrawn. In Securities Exchange Act Release No. 35723 (May 16, 1995), 60 FR 37523 (May 23, 1995) (File No. SR-Amex-95-08), the Commission approved changes to the Amex's membership structure and requirements, including revisions to the requirements for participation in the Gratuity Fund, while these requirements did not include a physical examination requirement. Para. 9176, as amended by Amex 95-08, mistakenly included language from Amex 94-23 that

of this exception would have subjected applicants who desire only to become owners of Amex memberships (whether or not they chose to participate in the Gratuity Fund) to the Exchange's physical examination requirement.<sup>9</sup>

The Exchange, however, did not intend this result. To the contrary, the Exchange intended to remove the provision in Para. 9176 requiring Participants in the Gratuity Fund to pass a physical examination and thereby to do away with the physical examination requirement altogether as it applies to members who will not be active on the Floor of the Exchange. In order to achieve this end, the Exchange submitted Amendment No. 1 to the proposed rule change, which revises Para. 9174 to exempt applicants who desire only to own a regular or options principal membership from the Exchange's physical examination requirement.<sup>10</sup>

### III. Summary of Comments

The Commission received one comment letter from Jonathan E. Feins (the "Comment Letter").<sup>11</sup> The Comment Letter objected to the fact that the effect of the original proposal would have been to make all prospective members subject to the Exchange's physical examination requirement. The commenter stated that such a requirement was particularly unnecessary in the case of applicants who desired to own memberships solely for investment purposes. In addition, the commenter raised the possibility of a potential for abuse in the application of this requirement, given the lack of

criteria in the Amex rules for "passing" or "failing" the physical examination.

In response, the Amex submitted Amendment No. 1 to the proposed rule change, which specifically exempts applicants who desire only to own regular or options principal memberships from the Exchange's physical examination requirement.<sup>12</sup>

### IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>13</sup> Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission finds that the proposed rule change to the requirements applicable to the designation of a nominee and the owner's responsibility for his or its nominee's obligations add clarity to these provisions without altering their substantive content. The proposed rule change states that only an owner of a regular or options principal membership can authorize an individual to act as his or its nominee, which conforms the language of this section both to the Exchange's current practice and the nominee designation provision of the Amex Constitution.

In addition, the proposed rule change sets forth, in a more direct fashion than the existing provision, an owner's responsibility for his or its nominees' obligations to the Exchange and other members or member organizations.

The Commission believes that the proposed rule change revising the procedures under which pension plans can acquire ownership of one or more memberships reasonably balances the Exchange's interest in having the flexibility to approve such entities for Exchange membership with the regulatory interests in protecting the financial and structural integrity of the Exchange. Most significantly, the proposal clarifies that a pension plan seeking to become a member must agree that: (i) its fiduciaries were responsible for deciding to invest in a membership and that the plan sponsor and trustee evaluated the inherent risks and advisability of owning a membership without relying on advice from the Exchange; (ii) that the Exchange will

have no liability to either the plan's participants or their beneficiaries in the event the purchase, operation or disposition of the membership results in loss to the plan and related trust; and, (iii) to indemnify the Exchange from all claims, losses, expenses (including attorney's fees) and taxes arising out of the member's purchase, operation or disposition.

The Commission also finds that the proposed rule change adds clarity to the requirements applicable to pension plans seeking to own exchange memberships by correcting inaccuracies in the terminology currently used to describe the necessary components of such pension plans.

Furthermore, the Commission finds that the proposed rule change, as amended, has no substantive effect on the Exchange's existing practice with regard to the applicability of its physical examination requirement to prospective members. The proposed rule change, as amended, specifically states that those applicants who desire only to own a membership are not required to pass the physical examination. As a result, the physical examination requirement found in Para. 9178 only applies to those prospective members who will be active on the Floor of the Exchange, which is in accord with current Exchange practice.<sup>14</sup>

Moreover, the Commission believes that the proposed rule change, as amended, adequately addresses the concerns raised in the Comment Letter. In light of Amendment No. 1, the concern that the physical examination requirement would apply to those applicants who wish only to own a membership is eliminated. As for the commenter's concern that the requirement is subject to potential abuse because of a lack of stated criteria with regard to "passing" or "failing" the examination, the Commission notes that in the event this requirement is utilized to deny a prospective applicant membership on the Exchange, the Act provides the applicant with recourse to the Commission for a review of the Exchange's determination.<sup>15</sup>

referenced such a requirement. For a list of the requirements applicable to becoming a Participant in the Gratuity Fund, see Amex Const., Art. IX, Sec. 1.

<sup>9</sup> Para. 9174 subjects applicants who desire only to own a membership to the same requirements and procedures specified in the remainder of the Admission of Members and Member Organizations section of the Amex rules. Para. 9176 of this section requires that each applicant for membership must pass a physical examination. Therefore, the original proposal, by removing the inoperative language of Para. 9174 that limited the application of the physical examination requirement to those prospective owners of Amex memberships who choose to become Participants of the Gratuity Fund, made all prospective owners of Amex memberships subject to the physical examination requirement of Para. 9176.

<sup>10</sup> See Amendment No. 1, *supra* note 4. In Amendment No. 1 the Amex represented that the purpose of this amendment was to clarify that the physical examination requirement is only applicable to individuals who will be active on the Floor of the Exchange. The Amex further represented that this requirement is a long-standing one, which has been applied to Floor members routinely and without controversy for many years.

<sup>11</sup> See Comment Letter, *supra* note 3.

<sup>12</sup> See *supra* note 10 and accompanying text.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> See *supra* note 10. The Commission notes that the rules of the New York Stock Exchange ("NYSE") require prospective members who will be active on the Floor of the NYSE to take a physical examination. See NYSE Rule 301.22. In addition, the NYSE rules require that floor employees of NYSE member organizations must pass a yearly physical examination in order to exercise the privilege, granted by his or her floor ticket, to be admitted to the NYSE Floor. See NYSE Rule 35.

<sup>15</sup> See 15 U.S.C. 78s (d) and (f). These provisions allow for the initiation of Commission proceedings, either on the motion of the applicant or the Commission, where an exchange denies

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the publication of notice thereof in the Federal Register. Amendment No. 1 made clarifying, technical changes to the text of the existing rule, and did not propose new substantive provisions to the proposed rule change. Accordingly, the Commission believes that consistent with Section 19(b)(2), good cause exists to accelerate approval of Amendment No. 1.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR-Amex-96-04 and should be submitted by May 2, 1996.

#### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-96-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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membership to any applicant. In such proceedings, the Commission will review the exchange's decision and has the authority to set aside the decision and require the Exchange to admit such applicant to membership.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

[Release No. 34-37076; File No. SR-PSE-96-07]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the General Reorganization and Revision of the Exchange's Membership Rules

April 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 5, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 PSE proposes to reorganize and revise PSE Rule 1, *Membership*, and to revise PSE rules 2, 4, 5, and 9.

Exhibit A contains the text of Revised PSE Rule 1, Chart I (which depicts the sources of Revised Rule 1), and Chart II (which depicts where the current rules appear in Revised Rule 1). Exhibit B contains the text of the proposed revisions to PSE rules 2, 4, 5, and 9. Although the exhibits are not being published with this notice, they are available for copying at 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 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

The Exchange is proposing these revisions to Rule 1 because much of its language is outdated, inapplicable, or both. Revised Rule 1 more accurately reflects the current procedures and requirements of the Exchange's membership department. While many of the provisions of existing Rule 1 have been kept, they have been reorganized so that the provisions concerning Exchange membership are presented in a more logical and chronological order. In addition, much of Rule 1's language has been rephrased for ease of comprehension. The Exchange has made these changes in order to enable readers to quickly identify the provisions related to a particular membership issue.

As part of its review of the existing provisions of Rule 1, the Exchange's staff also reviewed the membership rules of other exchanges. As described more particularly below, certain provisions from the New York Stock Exchange, Inc. ("NYSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), and the Chicago Stock Exchange, Incorporated ("CHX") are incorporated in Revised Rule 1.

The Exchange also is proposing to make conforming changes to certain provisions in PSE rules 2, 4, 5, and 9, as well as retitling Rule 9. A summary of the changes, organized by reference to the proposed section numbers, is set forth below.

##### Rules 1.1(a)-(o); Definitions

A "Definitions" section was added to Revised Rule 1 to provide an explanation of the terms used by the PSE in relation to membership. Many of the definitions already were contained in the PSE Constitution and PSE Rule 4, but the Exchange determined that it would be more practical to place these definitions in alphabetical order at the beginning of Revised Rule 1. The sources for the definitions contained in the proposal are listed in Chart I. The discussion below notes any significant additions or changes to these defined terms.

The definition for "Affiliate" is based on the same definition in SEC Rule 405.<sup>2</sup> The proposed definition of an "Allied Member" utilizes language from Article V, Section 6, of the PSE Constitution and adds language to cover

<sup>2</sup> 17 CFR 230.405 (setting forth the definitions applicable to the registration of securities).

<sup>1</sup> 15 U.S.C. 78s(b) (1).