

payments received that have not been previously surrendered; minus (3) the Free Withdrawal Amount, if applicable. To determine the amount of any Surrender Charge, surrenders will be deemed to be taken first from any applicable Free Withdrawal Amount, next from purchase payments (on a first-in, first-out basis), and finally from contract earnings (in excess of any Free Withdrawal Amount). The Company does not expect that the Surrender Charge will cover sales and distribution expenses incurred in connection with the Contracts.

13. Prior to a Contract's maturity date, all or part of the contract value may be transferred between the subaccount without penalty, fee, or charge. Although there currently are no restrictions on the frequency of transfers, the Company reserves the right to limit transfers to no more than one in any six-month period.

#### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts under the Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts to be funded by the Accounts will be materially similar to the Current Contracts. Applicants state that without the requested relief, the Company would have to request and

obtain exemptive relief for the Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.25% mortality and expense risk charge for the Contracts is reasonable in relation to the risks assumed by the Company under the Contracts, and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. The Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, and the methodology used in, and the results of, the comparative review.

6. Applicants acknowledge that the Surrender Charge may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. Notwithstanding this, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund ABD II, the Other Accounts,<sup>1</sup> and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office and will be available to the Commission or its staff upon request.

7. The Company also represents that the Accounts will invest only in underlying mutual funds which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not "interested persons" of such Accounts within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b-1 (under the 1940 Act) to finance distribution expenses.

<sup>1</sup> Applicants represent that they will amend the application during the notice period to include the Other Accounts.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37138; File No. SR-Amex-96-14]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange Board of Governors

April 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 April 18, 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 Amex. 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 Amex proposes to amend Articles II, III, and XII of the Exchange Constitution relating to the Board of Governors ("Board"), including the appointment of a second Vice-Chairman, the inclusion of the second highest ranking Exchange executive officer on the Board, and the eligibility of Governors for nomination to a third term. 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 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 Amex 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**

**Board Position Amendments**

Article II, Section 2 of the Exchange Constitution currently calls for the appointment of one Vice-Chairman from among the Exchange members serving on the Board, and it has been customary over the years to rotate between the trading floor and "upstairs" communities as the source of that Vice-Chairman. Given the importance of both these communities to the Exchange, it is desirable to be able to have one Vice-Chairman from each constituency. Accordingly, the proposed amendments will permit (but not require) the appointment of two member Vice-Chairmen, and will specify that if there are two Vice-Chairmen, one must come from the trading floor and one from upstairs.

The Exchange would also like to create a new position of Executive Vice-Chairman, who will be the second highest ranking officer of the Exchange and who will serve as a member of the Board of Governors. If the Executive Vice-Chairman position is not filled and the Exchange has a President, then the President will serve on the Board.<sup>1</sup> If at any time neither of those offices are filled, then the Chief Executive would be the only non-elected member of the Board.

**Third Term Amendment**

It has become apparent that at times the special limitations in the Constitution relating to which kind of Governors can serve third terms at any given time could be a limitation on having the best possible slate of public Governor candidates. Accordingly, it is proposed that the Exchange increase

<sup>1</sup> The Exchange is also proposing to amend Article XII, Section 2 of the Exchange Constitution, Composition of the Emergency Committee ("Committee"). This Section currently provides that the Committee is to be composed of the Chairman of the Board of Governors, the Vice-Chairman of the Board, and the three senior members of the Board who are regular, options, principal, associate or allied members of the Exchange ("Trading Members"). The proposed amendment would change the composition of the Committee such that any Executive Vice-Chairman or President would be on the Committee, and thus only two Trading Members would be on the Committee.

from two to three the maximum number of third term Governors who can be representatives of the public. There is no change to the overall limitation that no more than four third-term Governors may be serving at one time.

**2. Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it protects investors and the public interest.

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

The Amex does not believe that the proposed rule change will impose any inappropriate 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**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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., 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 in

the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-14 and should be submitted by May 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

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**SOCIAL SECURITY ADMINISTRATION**

**Privacy Act of 1974; Computer Matching Program (SSA/Health Care Financing Administration (HCFA))**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Computer Matching Program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct with HCFA.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 966-5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program and Integrity Reviews as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of

<sup>2</sup> 17 CFR 200.30-3(a)(12).