

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-52275; File No. SR-Amex-2005-003)**

**August 16, 2005**

**Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 Thereto, to Expand the Types of Trusts Permitted to Directly Own Amex Memberships**

On January 7, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“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 amend Amex Rule 356 to expand the types of trusts permitted to directly own Amex memberships. On June 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on June 28, 2005.<sup>4</sup> The Commission received no comments on the proposal.

The Exchange proposed to amend Amex Rule 356 to permit grantor trusts to directly own Exchange memberships. Currently, the Exchange permits certain pension trusts (generally comprised of trusts or custodial accounts, *i.e.*, Keoghs and IRAs) to directly own Exchange memberships for investment purposes and either lease the seat or designate a nominee to operate

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

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

<sup>3</sup> In Amendment No. 1, the Exchange revised the proposed rule text to clarify that an Exchange member owner who does not conduct broker-dealer activities on the floor of the Exchange is not required to be registered with the Commission as a broker-dealer. Member owners can be individuals, partnerships, corporations, custodial accounts or, pursuant to the proposed rule change, grantor trusts. Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 51900 (June 22, 2005), 70 FR 37139.

the seat.

Under the proposed rule change, grantor trusts will be able to acquire one or more Amex memberships either by transfer from an existing owner of an Amex membership or by a direct purchase. The grantor of the trust (i.e., either the member transferring a membership to a trust or the grantor of the trust purchasing a membership) will be required during the grantor's lifetime or existence (in the case of a non-natural person) to be a beneficiary of the trust. In the event that the trust terminates or is amended such that it no longer qualifies to own an Amex membership, any memberships held by the trust will revert to the grantor.

As is the case with pension trusts, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange's Constitution and Rules, as well as certain other limitations and indemnifications, and will also be required to provide a legal opinion confirming that the trust was validly created and is authorized to own a membership and that the trustee is vested with all necessary authority to either appoint a nominee to operate the seat on behalf of the trust and/or lease the seat, as well as to enter into the requisite agreement. Additionally, the trustee and the grantor will be required to become allied members or approved persons of the Exchange, as applicable.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>7</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that permitting grantor trusts to directly own Amex memberships is designed to provide Amex members with increased estate and tax planning options and to achieve a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estates and the Exchange's interest in regulating and protecting its membership. The Commission notes that the grantor of the trust would be required during the grantor's lifetime or existence to be a beneficiary of the trust. Moreover, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange's Constitution and Rules. In addition, the trustee and grantor will be required to become allied members or approved persons of the Exchange, as applicable, and will remain subject to the Constitution and Rules of the Exchange. The Commission also notes that the proposal is similar to a Chicago

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<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Board Options Exchange, Incorporated (“CBOE”) rule<sup>8</sup> that was previously approved by the Commission and permits trusts to directly own CBOE seats.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2005-003), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> See CBOE Rule 3.25.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).