

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-078 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52275; File No. SR-Amex-2005-003]

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

August 16, 2005.

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"),¹ and Rule 19b-4 thereunder,² 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.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on June 28, 2005.⁴ 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 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 exchange⁵ and, in particular, the requirements of Section 6(b) of the Act⁶ 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 Act⁷ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

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

⁵ 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).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

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 Board Options Exchange, Incorporated ("CBOE") rule⁸ 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,⁹ 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.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-4595 Filed 8-22-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52252; File No. SR-CBOE-2005-17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Adopt a Revenue Sharing Program for Trades in Tape B Securities

August 15, 2005.

On February 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a Revenue Sharing Program for trades in Tape B securities.³ The proposed rule change was published for comment in the **Federal Register** on July 15, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds CBOE's proposal to amend its Fee Schedule to adopt a Revenue Sharing Program for

revenue CBOE receives under the Consolidated Tape Association Plan for trades in Tape B securities consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of the exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Commission notes that CBOE will begin its Revenue Sharing Program upon the launch of its new stock trading platform.⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2005-17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-4583 Filed 8-22-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52278, File No. SR-MSRB-2005-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Solicitation of Municipal Securities Business under MSRB Rule G-38

August 17, 2005.

I. Introduction

On March 22, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or

"Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change deleting existing Rule G-38, on consultants, and replacing it with new Rule G-38, on solicitation of municipal securities business. In addition, the proposed rule change would make related amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, Rule G-8, on recordkeeping, Form G-37/G-38 and Form G-37x, as well as add new Form G-38t. The proposed rule change was published for comment in the **Federal Register** on April 21, 2005.³ The Commission received four comment letters regarding the proposal.⁴ On August 9, 2005, the MSRB filed Amendment No. 1 to the proposed rule change and a response to the four comment letters.⁵ This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposal

The proposal would delete existing Rule G-38, on consultants, and replace it with new Rule G-38, on solicitation of municipal securities business. The MSRB believes that it would be appropriate to apply the basic standards of fair practice and professionalism embodied in MSRB rules to all persons who solicit municipal securities business on behalf of dealers. A full description of the proposal is contained in the Commission's Notice.⁶

In Amendment No. 1, the MSRB provides that the proposed rule change would become effective on the first business Monday at least five business days after Commission approval. Amendment No. 1 also deletes the requirement in proposed Rule G-38(c) relating to transitional payments that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51561 (April 15, 2005), 70 FR 20782 (April 21, 2005).

⁴ See letter from Rick Santorum, Senator, United States Senate, to William H. Donaldson, Chairman, Commission, dated March 31, 2005 ("Senator Santorum's Letter"); letter from Chris Charles, President, Wulff, Hansen & Co. ("Wulff, Hansen"), to Jonathan G. Katz, Secretary, Commission, dated May 6, 2005 ("Wulff, Hansen's Letter"); letter from Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, The Bond Market Association (the "BMA"), to Jonathan G. Katz, Secretary, Commission, dated May 5, 2005 ("BMA's Letter"); and letter from Jonathan Stein, Director of Regulatory Affairs—Fixed Income, Raymond James & Associates, Inc. ("Raymond James"), to Jonathan G. Katz, Secretary, Commission, dated May 24, 2005 ("Raymond James' Letter").

⁵ Amendment No. 1 is described in Section II, *infra*.

⁶ See *supra* note 3.

⁸ See CBOE Rule 3.25.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Tape B securities are securities listed on the American Stock Exchange or the regional national securities exchanges.

⁴ See Securities Exchange Act Release No. 52005 (July 11, 2005), 70 FR 41063.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ The CBOE has filed a proposed rule change (SR-CBOE-2004-21) to adopt a new set of rules to allow for the trading of non-option securities on CBOEdirect, the exchange's screen based trading system.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).