

### Giving Proxies by Member Organization (See Exchange Rule 577)

*Rule 723.* A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting Member Organization Holdings as Executor, etc.

No change.

### Voting Procedure Without Instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state* who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter “designated investment adviser”) to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 576, and which has not received instructions from the beneficial owner or from the beneficial owner’s designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

No further change.

### Transmission of Interim Reports and Other Material (See Exchange Rule 585)

#### Sec. 725

A member organization, when so requested by a company, and upon being furnished with:

(1) Copies of interim reports of earnings or other material being sent to stockholders, and

(2) Satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or materials to each beneficial owner of stock of such company held by such member organization and registered in a name

other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for such beneficial owner.

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### 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Amex Rules 575 (Giving of Proxies Restricted), 576 (Transmission of Proxy Material to Customers), 577 (Giving Proxies by Member Organization), and 585 (Transmission of Interim Reports and Other Material) relate to voting of proxies and transmission of proxy and related issuer material. These rules are also incorporated into Sections 721, 722, 723, and 725, respectively, of the Amex Company Guide. These rules permit beneficial owners of stock to authorize investment advisers registered under the Investment Advisers Act of 1940 (“Advisers Act”)<sup>5</sup> to receive proxy soliciting materials, annual reports and other related issuer material and to vote proxies for beneficial owners. Investment advisers can do so if they exercise investment discretion pursuant to an advisory contract and have been designated in writing by the beneficial owner to perform these activities.

The Exchange proposes to amend the above-noted Amex rules and Company Guide provisions to provide that a designated investment adviser must be registered *either* under the Advisers Act *or under the laws of a state*. These amendments are similar to changes made to comparable New York Stock Exchange (“NYSE”) and National

Association of Securities Dealers (“NASD”) rules approved recently by the Commission.<sup>6</sup> These rule changes take into account rules and rule amendments adopted effective July 1997 by the Commission under the Advisers Act, which implement provisions of Title III of the National Securities Markets Improvement Act of 1996, reallocating regulatory responsibilities for investment advisers between the Commission and the states.<sup>7</sup> The Commission now only regulates advisers with \$25 million or more of assets under management and the states regulate advisers with less than \$25 million of assets. Because the majority of investment advisers manage assets of less than \$25 million and, therefore, are not registered under the Advisers Act, the amendments are needed to apply Exchange proxy transmission and voting rules to the many investment advisers registered under state law that exercise investment discretion pursuant to an advisory contract and have been designated by the beneficial owner to vote and receive proxy materials on their behalf.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5),<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

<sup>6</sup> See Securities Exchange Act Release Nos. 47458 (March 6, 2003), 68 FR 12131 (March 13, 2003) (SR-NYSE-2002-50); and 47459 (March 6, 2003), 68 FR 12120 (March 13, 2003) (SR-NASD-2002-124).

<sup>7</sup> 62 FR 28112 (May 22, 1997); Release No. IA-1633, File No. S7-31-96

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 80b.