ATTACHMENT 1.—FY02 ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	Serv	Full cost rate	Interagency rate	IMET rate	TPC rate
0633	48th Med Grp—RAF Lakenheath	F	9,742	9,293	3,958	9,742
0635	39th Med Grp—Incirlik AB	F	9,742	9,293	3,958	9,742
0638	51st Med Grp—Osan AB	F	9,742	9,293	3,958	9,742
0639	35th Med Grp—Misawa	F	9,742	9,293	3,958	9,742
0640	374th Med Grp—Yokota AB	F	9,742	9,293	3,958	9,742
0805	52nd Med Grp—Spangdahlem	F	9,742	9,293	3,958	9,742
0808	31st Med Grp—Aviano	F	9,742	9,293	3,958	9,742

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 2001 and thereafter:

Hospital Care Inpatient Day

General Medical Care.	
Alaska	$2,025
Rest of the United States	1,571
Outpatient Medical Treatment	
Outpatient Visit.	
Alaska	363
Rest of the United States	196

Beginning October 1, 2001, the rates prescribed herein superceded those established by the Director of the Office of Management and Budget October 31, 2000 (FR Doc. 00–27726).

Mitchell Daniels, Jr.,

Director, Office of Management and Budget.

[FR Doc. 01–31663 Filed 12–21–01; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45160; File No. SR–Amex–2001–91]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Balanced Strategy Notes

December 17, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or (''Sec'') a proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Amex amended its proposal on November 21, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade Balanced Strategy Notes (''Balanced Strategy Notes'' or ''Notes''), the return on which is based on the Balanced Strategy Index (''Balanced Strategy Index''). The Balanced Strategy Index is based upon the performance of the Standard & Poor's (''S&P'') 500 Total Return Index (''S&P 500 Total Return Index'') and the U.S. Domestic Master Index (''U.S. Bond Index'' [4] (each, an ''Underlying Index,'' and together, the ''Underlying Indexes'') pursuant to the methodology set forth below. Initially, the Underlying Indexes will each have a weighting of 50% of the Balanced Strategy Index. The Amex will rebalance the Balanced Strategy Index annually to reset the weighting of the Underlying Indexes to 50% each of the weight of the Balanced Strategy Index.

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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III 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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Balanced Strategy Index (''Balance Strategy Notes'' or ''Notes''), as described below. The Balanced Strategy Index will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 20, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex enclosed a draft circular that the Amex will distribute to members. Among other things, the circular described the Balanced Strategy Notes and the suitability requirements applicable to the Balanced Strategy Notes. In addition, the Amex made the following clarifications: (1) with respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Balanced Strategy Notes to determine that such transaction is suitable for the customer, and to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transactions; (2) Merrill Lynch & Co., Inc. has designed the Balanced Strategy Notes for investors who want to participate in the changes in U.S. domestic equity and bond markets and who are willing to forego market interest payments on the Balanced Strategy Notes; (3) the Amex represents that its surveillance procedures are adequate to properly monitor the trading of the Balanced Strategy Notes; and (4) the index divisor referenced in connection with the Standard and Poor's 500 Total Return Index keeps the index comparable over time to its base period (1941–1943) and is the reference point for all maintenance adjustments.

[4] The Amex clarified the definition of the U.S. Bond Index by indicating that it intends to refer to the U.S. Domestic Master Index as the U.S. Bond Index. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on December 7, 2001)''December 7 Conversation''). As discussed more fully below, the U.S. Bond Index, which is comprised of over 4,000 issues, is an indicator of the performance of the investment grade U.S. domestic bond market.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29) (''Hybrid Approval Order'').

determined, calculated and maintained solely by the Amex.[6]

Description of the Notes

The Balanced Strategy Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc (''Merrill Lynch''). Merrill Lynch has designed the Balanced Strategy Notes for investors who want to participate in changes in U.S. domestic equity and bond markets and who are willing to forego market interest payments on the Notes, such as floating interest rates paid on standard senior non-callable debt securities.[7] The Notes will have a term of not less than one, nor more than ten years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption Amount'') less an index adjustment factor, as described more fully below. The ''Starting Index Value'' is the value of the Balanced Strategy Index on the date the issuer prices the Notes for initial sale to the public. The ''Ending Index Value'' is the value of the Balanced Strategy Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid, and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, investors will have the right to require the issues to repurchase the Balanced Strategy Notes at a redemption amount based on the value of the Balanced Strategy Index at such repurchase date. The Balanced Strategy Notes are not callable by the issuer.

The Balanced Strategy Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indexes or any other ownership right or interest in the component securities of the Underlying Indexes.

At the outset, the Underlying Indexes will each approximate 50% of the Starting Index Value. Specifically, both the S&P 500 Total Return Index and the U.S. Bond Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents approximately an equal percentage of the value of the Balanced Strategy Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Balanced Strategy Index. The Balanced Strategy Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public. The value of the Balanced Strategy Index at any time will equal the sum of values of each Underlying Index multiplied by their respective multiplier less a pro rata portion of the annual index adjustment factor.[8]

The S&P 500 Total Return Index is a broad-based stock index that provides an indication of the performance of the U.S. equity market. The S&P 500 Total Return Index is a capitalization-weighted index reflecting the total market value, including the reinvestment of dividends, of 500 widely-held component stocks relative to a particular base period. The S&P 500 Total Return Index is computed by dividing the total market value, plus dividends reinvested,[9] of the 500 companies in the S&P 500 Total Return Index by an index divisor.[10] The securities included in the S&P 500 Total Return Index are listed on the Amex or the New York Stock Exchange, Inc. (''NYSE''), or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation (''Nasdaq'') System and listed as Nasdaq National Market securities. As of October 22, 2001, the market capitalization of the securities included in the S&P 500 Total Return ranged from a high of $373,58 billion to a low $329.04 million. The average daily trading volume for these same securities for the last six months, as of the same date, ranged from a high of 22 million shares to a low of 1.1 million shares. The Amex and other options exchanges previously have listed options and other securities whose performance has been linked to or based on the S&P 500 Composite Stock Price Index (''S&P 500 Index''),[11] which is identical to the S&P 500 Total Return Index except that the S&P 500 Total Return Index includes dividends paid on the underlying component stocks of the S&P 500 Index.

The Commission previously approved an Amex proposal to list and trade seven bond index-linked term notes under Section 107A of the Company Guide.[12] One of the bond indexes included in the 1999 Order was the U.S. Bond Index. The U.S. Bond Index, established in 1975 and sponsored and calculated by the Merrill Lynch Research Portfolio Strategy Group, is an indicator of the performance of the investment grade U.S. domestic bond market. It is a broad-based index consisting of over 4,000 bonds with a market value of over $5 trillion. For a bond to qualify for inclusion in the U.S. Bond Index, the bond must meet a pre-established and defined list of objective criteria.[13] The bonds included in the U.S. Bond Index also meet or exceed the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide.[14] The U.S. Bond Index

[6] Subject to the criteria in the prospectus supplement of the Notes regarding the construction of the Balanced Strategy Index, the Exchange has sole discretion regarding changes to the Balanced Strategy Index.

[7] *See* Amendment No. 1, *supra* note 3.

[8] At the end of each day, the Balanced Strategy Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.0% (*i.e.,* 1.0% 365 days = 0.0027% daily). This reduction of the value of the Balanced Strategy Index will reduce the total return to investors upon exchange or maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other material circulated to investors regarding the trading of this product.

[9] The S&P 500 Total Return Index assumes the reinvestment of dividends on a daily basis. Monthly, quarterly, and annual total return numbers are calculated by daily compounding of reinvested dividends.

[10] The index divisor keeps the S&P 500 Total Return Index comparable over time to its base period (1941–1943) and is the reference point for all maintenance adjustments. *See* Amendment No. 1, *supra* note 3.

[11] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (File No. SR–CBOE–83–08) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (File No. SR–Amex–92–18) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); No. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (File No. SR–NYSE–89–05) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); and 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (File No. SR–AMEX–90–06) (approving the listing and trading of a unitinvestment trust linked to the S&P 500 Index).

[12] *See* Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (order approving File No. SR–Amex–99–03) (''1999 Order'').

[13] Information as to how the U.S. Bond Index is calculated, including the inclusion rules, is published on Bloomberg and the Merrill Lynch public web site. Changes in any rules are generally published approximately 30 days in advance of the change.

[14] The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuance provided the issue has an aggregate market value or principal amount of at least $5 million and either: The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE); an issuer of equity securities listed on Exchange (or on the NYSE) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the NYSE) has guaranteed the debt security; a nationally recognized statistical rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (i) An investment grade rating to an

is rebalanced on the last calendar day of the month. Bonds meeting the U.S. Bond Index's inclusion criteria on the last calendar day of the month are included in the U.S. Bond Index for the following month. Issues that no longer meet the criteria during the course of the month remain in the U.S. Bond Index until the next month-end rebalancing, at which point they are dropped from the U.S. Bond Index. Bonds included in the U.S. Bond Index are held constant throughout the month until the following monthly rebalancing. Bond weightings for the U.S. Bond Index are based on a bond's total outstanding capitalization (sum of the product of total face value currently outstanding multiplied by the price and accrued interest). Returns and weighted average characteristics are published daily.

As of the close of business on each anniversary date (the anniversary of the day the Balanced Strategy Index was initially calculated and set to 100), the Amex will rebalance the Balanced Strategy Index so that each Underlying Index will represent approximately 50% of the value of the Balanced Strategy Index. To effectuate this result, the Amex will determine the multiplier for each Underlying Index and will indicate the percentage allocated to each Underlying Index, given their respective closing values on the anniversary date, so that each Underlying Index represents an equal percentage of the Balanced Strategy Index value at the close of business on an anniversary date. For example, if the Balanced Strategy Index value at the close of business on an anniversary date was 200, then each of the Underlying Indexes would be allocated a portion of the value of the Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Balanced Strategy Index value was 80, then each of the Underlying Indexes would be allocated the value of the Balanced Strategy Index equal to 40, and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will continuously calculate the Balanced Strategy Index and, similar to other stock index values published by the Exchange, the value of the Balanced Strategy Index will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Criteria for Initial and Continued Listing

The Balanced Strategy Notes will conform to the initial listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001–1003 of the Company Guide. Specifically, under Section 107A of the Company Guide, the initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer shall have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, Section 107A of the Company Guide provides that the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

The continued listing guidelines are set forth under Sections 1001 through 1003 of Part 10 to the Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced as to make further dealings on the Exchange inadvisable. With respect to the continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv) of the Company Guide. Section 1003(b)(iv)(A) of the Company Guide provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held less than $400,000.

The Notes will be registered under Section 12 of the Act.[15]

Lastly, in conjunction with the Amex's Hybrid Approval Order,[16] the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, with respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.[17]

Rules Applicable to the Trading of the Notes

Because the Notes are linked, in part to a portfolio consisting of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, ''Duty to Know and Approve Customers,'' the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[18] Second, the Notes will be subject to the equity margin rules of the Exchange. Third, as discussed earlier, in conjunction with the Amex's Hybrid Approval Order,[19] the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes.

Furthermore, the Amex represents that its surveillance procedures are adequate to properly monitor the trading of Balanced Strategy Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities to monitor trading in the Notes.[20] In addition, the Amex also has a general policy that prohibits the distribution of material, non-public information by its employees.[21]

Disclosure and Dissemination of Information

The Amex will issue a circular to the membership providing guidance with regard to member firm compliance

---

immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

[15] *See* December 7 Conversation, *supra* note 4.

[16] *See* note 5, *supra.*

[17] *See* Amendment No. 1, *supra* note 3.

[18] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[19] *See* note 5, *supra.*

[20] *See* Amendment No. 1, *supra* note 3.

[21] Id.

responsibilities when handling transactions in the Notes and explaining the special characteristics and risks of the Notes. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[22]

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [23] in general, and furthers the objectives of Section 6(b)(5) [24] 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, and to remove impediments to and perfect the mechanism of a free and open market an a national market system.

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.

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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2001–91 and should be submitted by January 16, 2002.

IV. Commissions Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Amex has asked the Commission to approve the proposal and Amendment No. 1 on an accelerated basis because the Amex believes that the Notes are similar to several instruments listed and currently trading on the Amex.[25]

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 and, in particular, with the requirements of Section 6(b)(5) of the Act,[26] in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.[27] The Commission believes that the Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. domestic equity and bond markets.[28] Specifically, as described more fully above, at maturity, or upon exchange, the holder of a Note will receive an amount based upon the percentage change in the value of the Balanced Strategy Index, less the index adjustment factor.

The Notes are debt instruments whose price will be derived from and based upon the value of the Balanced Strategy Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Balanced Strategy Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return on the Notes is derivatively priced and based upon the performance of an index of securities and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that the Amex's proposal, as amended, adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of Section 107A of the Company Guide were designed to address the special concerns attendant to the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, heighted suitability for recommendations,[29] and compliance requirements, noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that the Amex will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular notes that the issuer will make no payments prior to maturity, that the value of the Balanced Strategy Index must increase for holders to receive at least the original public offering price of $10 per Note upon exchange or at maturity, and that holders will receive less, and possibly

[22] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on December 13, 2001 (''December 13 Conversation'').

[23] 15 U.S.C. 78f(b)

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Securities Exchange Act Release Nos. 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (File No. SR–Amex–2001–40) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (File No. SR–Amex–2001–39) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (File No. SR–Amex–2001–28) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); and 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (File No. SR–Amex–99–42) (approving the listing and trading of notes linked to a basket of no more than twenty equity securities). *See also* 1999 Order, *supra* note 12.

[26] 15 U.S.C. 78f(b)(5).

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

[28] *See* Amendment No. 1, *supra* note 3. Although holders of the Notes will not receive interest payments during the term of the Notes, holders of the Notes will have the right, during a two-week period in the designated month each year, to require the issuer to repurchase the Notes at a redemption amount based on the value of the Balanced Strategy Index at the repurchase date.

[29] As discussed above, the Amex will require members, member organizations, and employees thereof recommending a transaction in the Notes to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction. *See* Amendment No. 1, *supra* note 3.

significantly less than $10 per Note if the Balanced Strategy Index declines. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.[30]

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide, which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch will be publicly available.

Third, the Notes will be registered under Section 12 of the Act. As noted above, the Amex's existing equity floor trading rules will apply to the Notes, which will be subject to the Amex's equity margin rules. The Amex will rely on its existing surveillance procedures for equities to monitor trading in the Notes.[31]

Fourth, the Commission has systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[32] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Fifth, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the securities underlying the Balanced Strategy Index or raise manipulative concerns. As discussed more fully above, the Balanced Strategy Index is based upon the return of the Underlying Indexes. Each of the Underlying Indexes will have a weighting of 50% of the weight of the Balanced Strategy Index, initially and immediately following each annual rebalancing of the Balanced Strategy Index. Both of the Underlying Indexes are well-established and broad-based,[33] and the Commission has concluded previously that the Underlying Indexes are not readily susceptible to manipulation. For example, in the 1999 Order, the Commission found that the U.S. Bond Index, and the other bond indexes reviewed in the 1999 Order, were not readily susceptible to manipulation based on the indexes' issue size, market value, and the representative nature of different sectors of the fixed income securities market.[34] Similarly, in approving a proposal to eliminate position and exercise limits for S&P 500 Index options, S&P 100 Index options, and Dow Jones Industrial Index options, the Commission noted that the enormous capitalization of and deep, liquid markets for the underlying securities contained in the indexes significantly reduced concerns regarding market manipulation or disruption in the underlying market.[35] In addition, the Amex's surveillance procedures should serve to deter as well as detect any potential manipulation of the Balanced Strategy Index.

Finally, the Commission notes that the value of the Balanced Strategy Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that disseminating the value of the Balanced Strategy Index at least once every fifteen seconds throughout the trading date is useful and will benefit investors in the Notes.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register.** The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal, as amended, will allow investors to begin trading the Notes promptly. Amendment No. 1 strengthens the Amex's proposal by, among other things, noting the surveillance procedures that will apply to trading in the Notes and requiring members, member organizations, and employees thereof recommending transactions in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction. Accordingly, the commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[36] to approve the proposal and Amendment No. 1 on an accelerated basis.

The Commission is approving the Amex's proposed listing standards for the Notes. The commission specifically notes that, notwithstanding approval of the listing standards for the Notes, other similarly structured products will require review by the Commission prior to being listed and traded on the Amex.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[37], that the proposed rule change, as amended, (File No. SR-Amex-2001-91) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31564 Filed 12–21–01; 8:45 am]

BILLING CODE 8010–01–M

---

[30] *See* December 13 Conversation, *supra* note 22.

[31] *See* Amendment No. 1, *supra* note 3.

[32] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR–NASD–2001–73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR–Amex–2001–40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR–Amex–96–27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[33] *See* Order, *supra* note 12 (concluding that the U.S. Bond Index is well-established and broad-based); and Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (order approving File No. SR–CBOE–83–8)(noting that the S&P 500 Index is a broad-based index).

[34] *See* 1999 Order, *supra* note 12.

[35] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order approving File No. SR–CBOE–2001–22) (''2001 Order''). In the 2001 Order, the Commission also noted that, as of October 2001, the market capitalization of the S&P 500 Index was $9.81 trillion.

[36] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45162; File No. SR–NASD–2001–89]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934