A market maker may register as a market maker in a NNM security and become a PMM immediately if it is a PMM in at least 80% of the securities in which it makes a market. If a market maker does not meet the 80% threshold, it can either comply with the five-day quotation delay rule or it can register in the security as a regular Nasdaq market maker, enter quotes immediately, and satisfy the qualification criteria for the next review period.

The NASD stated in its filing that the five-day quotation delay rule originally was intended to ensure that market makers were not registering in a security to take advantage of momentary short-selling opportunities. However, the NASD expressed concern in its filing that market making affiliates of the same firm are able to use the five-day quotation delay rule to circumvent the application of the PMM standards by ''swapping'' lists of stocks in which they make a market and alternatively receive PMM designation without ever meeting the quantitative PMM standards. The NASD also expressed concern in its filing that market makers are able to use the five-day quotation delay rule to inflate the percentage of stocks in which they are a PMM above the 80 percent level, thereby entitling them to PMM status for all NNM securities in which they register during the next month. In both instances, the five-day quotation delay rule would allow a market maker to become a PMM for reasons wholly unrelated to the quality of its market-making.[10] Therefore, the NASD has proposed to amend the Primary Market Maker (''PMM'') Standards rule by deleting the five-day quotation delay rule.

The Commission finds that the rule change is consistent with the provisions of section 15A(b)(6) of the Act. The rule change is designed to prevent fraudulent and manipulative acts and practices, 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 by ensuring that market makers qualify for PMM status only if they have met certain performance standards. The rule change also is reasonably designed to ensure that a market maker's short sale transactions are made in connection with bona fide market making activity.

[10] The NASD stated in its filing that few market makers have utilized the five-day quotation delay rule to become PMMs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–96–11 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12234 Filed 5–15–96; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–37188; International Series Release No. 976: File No. SR–NYSE–96–08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Commodity Indexed Preferred Securities

May 9, 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 8, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. This Order approves the proposed rule change on an accelerated basis and also solicits 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 Exchange proposes to list under Paragraph 703.19 of the Listed Company Manual (''Manual'') Commodity Futures Index Preferred Securities (''Securities''). The Securities are intermediate term securities whose value will be linked, in part, to changes in the 11 individual commodities (or the futures contracts overlying such commodities) that comprise the J.P. Morgan Commodity Index or its subindices.

The Securities either will be linked: (1) directly to the price of a futures contract on the commodity, (2) to an ''Excess Return Index'' of the commodity, or (3) to a ''Total Return Index'' of the commodity. An Excess Return Index represents the cumulative returns of investing in unleveraged positions in nearby commodity futures contracts and constantly rolling the position forward to the next designated contract as the contract nears expiration. The Total Return Index consists of the Excess Return Index plus the return on three-month Treasury Bills.

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 NYSE 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. NYSE 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

The Exchange proposes to list the Securities pursuant to Para. 703.19 of the Manual. Under Para. 703.19, the issuer will be either a listed company, an affiliate of a listed company or a company that meets NYSE listing criteria. It currently is anticipated that the issuer will be a financing subsidiary of a listed company.

The Securities. The Securities will be preferred securities or debt securities with a term of two to ten years listed pursuant to Para. 703.19 of the Manual. The redemption price of the Securities will be based, in part, on the 10-day average level of the value of the underlying individual commodity (or futures contract) during the 20 days prior to maturity of the Securities. At redemption, holders will receive par value times a percentage calculated by dividing the ending value of the underlying commodity (or futures contract) by the beginning value of the underlying commodity (or futures contract). Such percentage may be greater or less than 100 percent and, therefore, at redemption, the holder could receive less than the original issue amount of the Securities.[1] The following chart describes the linked contracts:

[1] The underwriter of the Securities has advised the NYSE that the Securities will comply with the ''hybrid exemption'' of the Commodity Futures Trading Commission (''CFTC''), 17 CFR part 34. The underwriter has further advised the Exchange that it has presented a description of the structure and sample term sheet of the Securities to the staff of the CFTC, who have not raised any objections.

No.	Official commodity name and units	Exchange	Units per contract	Contract used
1	Aluminum $/MT (Metric Tons)	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
2	Copper $/MT	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
3	Nickel $/MT	LME	6 tons	Third Wednesday of Mar, Jun, Sep and Dec.
4	Zinc $/MT	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
5	Heating Oil #2 $/gal	NYMEX	42,000 gal	Every month.
6	Natural Gas $/MM BTU	NYMEX	10,000 MM BTU.	Every month.
7	Unleaded Gas $/gal	NYMEX	42,000 gal	Every month.
8	WTI Light Sweet Crude $/BBL	NYMEX	1,000 bb1	Every month.
9	Platinum $/troy oz	NYMEX	50 troy oz	Jan, Apr, Jul, Oct.
10	Gold	COMEX	100 troy oz	Feb, Apr, Jun, Aug and Dec.
11	Silver	COMEX	5,000 troy oz.	Mar, May, Jul, Sep and Dec.

The Securities will meet the listing criteria of Para. 703.19. Thus, if the Securities are listed and traded as equity securities: there will be at least one million Securities outstanding; the Securities will have a market value of at least $4 million; and there will be at least 400 holders of the Securities. If the Securities are listed and traded as debt securities, there will be a minimum public market value of at least $4 million. Equity margin will apply to all Securities, whether listed as debt or equity.

The Indices. Securities linked to an Excess Return Index will pay dividends or interest (collectively, ''Distributions'') at a specified rate. The value of the Securities will be calculated with reference to the prices of nearby futures contracts on the applicable commodity. An independent calculation agent will calculate and disseminate the value of the Securities every 60 seconds during the trading day. The daily change in value is derived exclusively from the daily profit or loss on such futures positions. Over time, the elements of this change can be described as having two components: the change in price in the nearby contract (''price return'') and the cost of carry imbedded in the futures contract forward curve (''roll return'').[2]

The price return is the change in price on the nearby futures contracts. The roll return is the yield that is potentially available as a result of the difference between the prices for shorter-term futures positions and longer-term futures positions. These prices could differ depending on a variety of factors, including market expectation of price trends and general supply and demand. Historically, many commodity markets have been in ''backwardation'' for extended periods. That creates an opportunity to increase return by creating longer-dated positions and ''rolling'' positions forward as they expire. However, there is no guarantee that such a strategy will produce a positive return. If prices for shorter-dated positions are less than the prices for longer-dated positions (a situation known as ''contango''), there would be a negative return to the roll over time.

If the Securities are linked to a Total Return Index, in addition to price return and roll return, the concept of ''collateral return'' will be included when determining the value of the Securities. Collateral Return incorporates the component of returns on U.S. Treasury Bills that would arise if the face amount of the investment is fully collateralized by Treasury Bills. While commodities investors are not obligated to collateralize their positions fully, this return is included to facilitate accurate comparison of the performance of an investment in commodities relative to an investment in financial assets such as a stock or bond portfolio. Under the Total Return methodology, the Securities would either not have a separate Distribution or the Distribution would be substantially less than if the Excess Return methodology were used.

If the Securities are linked directly to the price of the commodity, there will be no element of roll return, collateral return or total return in the pricing. Rather, the holders of the Securities will receive Distributions on the face value of their Securities. The frequency and rates of such Distributions will vary from issue to issue depending upon prevailing interest rates and other factors, including the price of the linked commodity.

The design, composition and calculation of a Total Return or Excess Return Index is expected to remain unchanged during the term of the Securities. If market developments require changes to these aspects of the product, decisions regarding such changes will be made by the JPMCI Policy Committee, a neutral business committee. This committee consists of senior employees in the commodities and research areas of J.P. Morgan, as well as independent industry and academic experts. Personnel from J.P. Morgan's commodities group serve only in an advisory, non-voting role on the committee. J.P. Morgan immediately will notify the Exchange and vendors of financial information if there is a change in the design, composition or calculation of the Securities.

If it becomes necessary to choose a replacement price source for the Securities, the new price source will meet the following criteria: (i) it will be priced in U.S. dollars, or if priced in a non-U.S. currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible into U.S. currency; (ii) it will be traded on a regulated futures exchange in an OECD country[3] or in Singapore; and (iii) it will have a minimum annual volume of 300,000 contracts or US $500 million. The issuer will notify the Exchange and vendors of financial information immediately if there is a change to the Securities.[4]

Members of the JPMCI Policy Committee and employees of the calculation agent that are involved in the calculation of, or data collection for, the Securities are prohibited from trading the underlying futures positions or the Securities. In addition, the calculation agent has adopted such reasonable and appropriate procedures to ensure that it, its agents, affiliates and

[2] These are accounting terms used to describe the elements comprising the return associated with the Index. Changes in the value of the Securities actually result solely from the cumulative profit and loss on the futures position overlying the applicable commodity.

[3] The OECD—the Organization of Economic Cooperation and Development—consists of the United States, Japan, Germany, France, Italy, the United Kingdom, Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

[4] *See* Memorandum from David Seaman, JPMorgan, to Vincent Patten, NYSE, dated May 6, 1996.

employees do not take advantage of, or communicate to any other person, any knowledge concerning changes in the value of an Index.

Surveillance. The Exchange will be able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on the applicable futures exchange pursuant to its information sharing agreement with such exchange. The Exchange will not trade any security unless it has a surveillance agreement with the market trading the underlying futures contract. In the extremely unlikely event that the securities are no longer based on an exchange-traded futures contract (if, for example, that exchange no longer trades a particular futures contract), the J.P. Morgan Policy Committee will seek to substitute a similar futures contract. In that situation, in addition to the conditions listed above, the Exchange would continue to trade the Securities only if the new futures contract underlying the Securities trade on an exchange that has a comprehensive information sharing agreement with the NYSE or if the Commission staff otherwise concurs in the continuation of such trading.[5]

Sales Practices. Because there is an element of derivative pricing regarding the Securities, the Exchange will require members, member organizations and their employees to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the Securities is suitable for such customer. In addition, members, member organizations and their employees recommending a transaction in the Securities will be required: (i) to determine that the recommend transaction is suitable for the customer; and (ii) 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, the recommended transaction.

The Exchange also will distribute a circular to its membership prior to the commencement of trading in the Securities. That circular will provide guidance with respect to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Securities and highlighting the special risks and characteristics thereof.

Basis—The basis under the Securities Exchange Act of 1934 (''1934 Act'') for this propose rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

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

The Exchange believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). In particular, the Commission believes that the availability of exchange-traded Securities will provide an instrument for investors to achieve desired investment objectives (*e.g.,* commodity exposure and portfolio diversification) through the purchase of an exchange-traded securities product linked to one of the single commodities noted above.[6] For the reasons discussed below, the Commission has concluded that the NYSE listing standards applicable to Securities are consistent with the Act.

The Securities are similar in structure to a previous American Stock Exchange (''Amex'') product, Commodity Indexed Preferred Securities (''ComPS''), which the Commission approved in February 1996.[7] ComPS were listed pursuant to Section 107 of the Amex Company Guide, Other Securities, and, like the NYSE Securities, the principal value of ComPS is derived from the performance of futures contracts overlying certain selected physical commodities.

The value of the Securities will be affected partially by certain risks that are associate with the purchase and sale of exchange-traded futures contracts. Furthermore, the Commission notes that the prices of commodities, including the eleven individual commodities which may underlie a particular Securities issuance, may be subject to volatile price movements caused by numerous factors.[8] Accordingly, an investment in Securities may also be subject to volatile price movements due to price changes in the underlying commodities and related futures contracts. In addition, Securities possess many complex features, such as the incorporation of roll return and collateral return into their pricing methodologies.

In order to address the complex and risky nature of Securities, the NYSE has proposed special suitability, disclosure, and compliance requirements. First, the Exchange will require members to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer.[9] This is important given the embedded derivative component of Securities. Second, the NYSE will require that members who make recommendations in Securities determine that the transaction recommended is suitable for the customer and 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 recommended transaction. Third, because Securities are cash-settled, holders will not receive, nor be required to liquidate, the underlying physical commodities or overlying futures

[5] The NYSE has comprehensive surveillance sharing agreements with all of the exchanges upon which the futures contracts relating to a particular Securities trade. Specifically, NYSE is able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and Comex. Furthermore, under the ISG information sharing agreement, SFA will be able to provide, upon NYSE request, surveillance information with respect to trades effected on the LME, including client identity information. Finally, if the underlying commodity for an issuance of Securities changes or if a different market is utilized for purposes of calculating the value of a designated futures contract, the NYSE will ensure that it has entered into a surveillance sharing agreement with respect to the new relevant market.

[6] Pursuant to Section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[7] *See* Securities Exchange Act Release No. 36885 (February 26, 1996).

[8] Such factors include, but are not limited to, international economic, social and political conditions and levels of supply and demand for the individual commodities.

[9] Such a requirement is more than the duty to know and approve customers, and entails an obligation to make a determination that the transaction is suitable for the customer.

contracts. The Commission notes that this provision will effectively terminate a Securities investor's exposure to commodity market risk at the security's maturity and limit an investor's loss to the amount of his initial investment. Finally, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with Securities.[10] This will assist members in determining the customers eligible to trade Securities, formulating recommendations in Securities, and in monitoring customer and firm transactions in Securities.

The Commission also believes that several factors significantly minimize the potential for manipulation of Securities. First, each of the futures contracts overlying the commodities is relatively actively traded, and has considerable open interest. Second, the majority of futures contracts overlying the component commodities trade on exchanges that impose position limits on speculative trading activity, which are designed, and serve, to minimize potential manipulation and other market impact concerns. Third, as discussed below, the NYSE has entered into certain surveillance sharing agreements with each of the futures exchanges upon which the underlying designated futures contracts trade. These agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making Securities less readily susceptible to manipulation. Fourth, the price of Securities (with respect to those commodities traded in the U.S.) will be calculated every 60 seconds and disseminated to vendors of electronic financial information. Fifth, adequate procedures are in place to prevent the misuse of information by members of the policy committee responsible for replacements with respect to the underlying contract.[11] Accordingly, for the reasons discussed above, the Commission believes that Securities are not readily susceptible to manipulation and that in any event, the surveillance procedures in place are sufficient to detect and deter potential manipulation.

The Commission notes that Securities, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a purchaser of Securities may not be able to receive any cash payment due upon maturity. To some extent this credit risk is minimized by the Exchange's listing guidelines requiring Securities issuers to comply with the listing requirements of Para. 703.19(1).[12] In addition, financial information regarding the issuer will be disclosed or incorporated in the prospectus accompanying the offering of Securities.

Based on the above, the Commission finds that the proposal to trade the Securities is consistent with the Act, and, in particular, the requirements of Section 6(b)(5).[13]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow NYSE to list the Securities without delay. The proposal will provide the Exchange with increased flexibility in the listing of commodity linked products without compromising investor protection concerns. In addition, the NYSE proposal is nearly identical to the Amex ComPS proposal, with the securities being based on the same commodities underlying the futures contracts, and subject to the same valuation methods used for ComPS. The Amex proposal was subject to the full notice and comment period and the Commission notes that no comment letters were received. Accordingly, the Commission does not believe the NYSE proposal raises any new or unique regulatory issues. For these reasons, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

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 NW., 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 6, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–96–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12235 Filed 5–15–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Request for Comments

The U.S. Small Business Administration's (SBA) Office of Government Contracting requests comments on a possible Agency initiative to develop a concept for the provision of Value Added Services (VAS) to small businesses seeking Federal procurement opportunities through electronic commerce and electronic data interchange (EC/EDI). It is envisioned that these services would be priced using a fee schedule determined through negotiations with the SBA. It is important to note that the Agency does not intend to compete with existing value-added-network (VAN) service providers. Rather, the SBA seeks to increase substantially the exposure of

[10] The NYSE circular will be submitted to the Commission for its review and should include, among other things, a discussion of those risks which may cause commodities to experience volatile price movements in addition to details on the pricing methodology to be used for that particular issuance.

[11] As discussed above, members of the policy committee are expressly prohibited from trading Securities and from communicating any knowledge concerning changes in the value of the underlying commodities. The NYSE has advised that it has surveillance procedures in place to periodically review activity in the Securities, including the ability to monitor any activity in the Securities by members of the JPMCI. Telephone conversation between Vincent Patten, NYSE, and Stephen M. Youhn, SEC, on May 7, 1996.

[12] Paragraph 703.19(1) of the Manual states that if the issuer is a NYSE-listed company, the issuer must be a company in good standing (*i.e.,* above Continued Listing Criteria): if an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; if not listed, the issuer must meet NYSE specific original listing standards. These standards, among other things, set forth minimum requirements for net tangible assets, net income, and aggregate market value of publicly held shares.

[13] The Commission notes that a Rule 19b–4 filing might be required in order to list any other derivative product based upon a commodity interest that differs from the proposed Securities.

[14] 15U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12).