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SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC (telephone (202) 942-8090).

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a trust under the laws of the Commonwealth of Massachusetts. On November 9, 1995, applicant filed a Notification of Registration under section 8(a) of the Act on Form N-8A and an initial registration statement on Form N-1A under section 8(b) of the Act. Applicant has not filed any registration statements with respect to its shares under the Securities Act of 1933 ("1933 Act"). Applicant has sold its shares solely in private placement transactions within the meaning of section 4(2) of the 1933 Act, to institutional investors that are "accredited investors" within the meaning of Regulation D under the 1933 Act, as well as to certain investment funds organized outside the United States.

2. Applicant's shares currently are held only by Old Mutual South Africa Growth Assets Fund Limited (the "SAGA Fund"), which owns 10.50% of applicant's shares, and Old Mutual Fund Holdings (Bermuda) ("Old Mutual"), which owns 89.50% of applicant's shares. Old Mutual is a wholly owned subsidiary of the South Africa Mutual Life Assurance Society. The SAGA Fund is organized under the laws of Bermuda, has 20 beneficial owners, and invests all of its investable assets in applicant. Each investor in the SAGA Fund that is, based on its representations, a U.S. person (as defined in Regulation S under the 1933 Act) received prior to the date of its investment in the SAGA Fund written disclosure stating that applicant would seek to deregister under the Act and would, upon completion of the deregistration, no longer be subject to regulation as an investment company under the Act. Each investor in the SAGA Fund may redeem its interest on any day on which the New York Stock Exchange is open for trading.

3. As of December 14, 1998, applicant's assets totaled approximately U.S. \$570 million and applicant had liabilities of approximately \$6,600,000, consisting primarily of investment advisory fees, custodian and administrative charges, and legal and accounting expenses. Applicant intends to continue investing its assets primarily in equity securities of South African issuers.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not presently propose to make a public offering of its securities.

3. Applicant states that it is not an investment company within the meaning of section 3(c)(1) of the Act because its outstanding securities are owned by fewer than 100 persons and it is not making and does not presently propose to make a public offering of its securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99-2000 Filed 1-27-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40956; File No. SR-Amex-98-48]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Term Notes Linked to Select Sector SPDRSM

January 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit 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 seeks to list and trade term notes linked to Select Sector SPDRSM,³ traded on the Amex (the "Notes"). Each Note issuance will be linked to a separate Select Sector SPDRSM approved for trading on the Amex. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission

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

The purpose of the proposed rule change is to permit the Amex to list term notes, each of which shall be separately linked to one of nine Select Sector SPDRSM approved for trading on the Amex. Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily

³ The Select Sector SPDRsSM, to which the Notes will be linked, comprise liquid and highly capitalized stocks included in the S&P[®] 500 Index. The nine Select Sector SPDRsSM currently approved for trading on the Exchange are the Basic Industries, Consumer Services, Consumer Staples, Cyclical/Transportation, Energy, Financial, Industrial, Technology and Utilities Select Sector SPDRsSM. Each is offered by the Select Sector SPDRsSM Trust ("Fund"), an open-end management investment company registered under the Investment Company Act of 1940 and has been approved for trading on the Amex pursuant to Amex Rules 1000A through 1003A (Index Fund Shares Rules). Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998). In addition, Select Sector SPDRsSM may underlie options pursuant Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998).

categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁴ Similar to other Exchange traded Index-linked Notes, the Amex represents that both the issues and the issuer will meet the general criteria set forth in Section 107A of the Amex *Company Guide*. Furthermore, the issuer will have a minimum tangible net worth in excess of \$100,000,000 and otherwise substantially exceed the earnings requirements set forth in Section 101 of the Amex *Company Guide*.⁵

The Notes will be issued by Merrill Lynch & Co., Inc. ("Merrill") and underwritten by Merrill Lynch Pierce Fenner & Smith Incorporated. The Notes will be senior, unsecured debt securities. Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note will provide for payment at maturity based in whole or in part on changes in the net asset value of the corresponding Select Sector SPDRSM. The Amex represents that Merrill will issue the Notes in various amounts, between \$10 and \$25 per unit, with aggregate offerings in an amount equal to between \$15 and \$100 million. The Amex represents that Merrill is currently undertaking to prepare a preliminary prospectus for the Notes which will be available for distribution to investors.

The Exchange believes the Notes are appropriately linked to Select Sector SPDRsSM because Select Sector SPDRsSM are open-ended investment companies. For this reason, the Exchange believes that any concerns

with respect to potential manipulation or market impact upon settlement of the Notes at maturity are minimized. Similar to the exercise of an option overlying a Select Sector SPDRSM, which would require physical delivery of the underlying Select Sector SPDRSM, and as was discussed in the order approving the trading of options on Select Sector SPDRsSM⁶ concerns with respect to potential manipulation or market impact upon settlement are minimized because Select Sector SPDRsSM even though some or all of the necessary securities needed to be deposited are not available, the Exchange believes that the underlying Select Sector SPDRsSM will be available in the secondary market upon settlement. Further, although there is no absolute assurance that market participants will create Select Sector SPDRsSM, it is likely that arbitrage opportunities will create an incentive to do so.

Surveillance procedures similar to those in place and used to surveil the trading in Merrill Lynch Euro Fund MITTS⁷ ("Euro Fund MITTS") will be used to surveil trading in the term notes linked to the various Select Sector SPDRsSM. Accordingly, the Exchange will monitor trading in the Notes and in the Select Sector SPDRsSM. And similar to the Euro Fund MITTS, if the Exchange detects unusual activity in the Select Sector SPDRSM Notes, it will examine, if necessary, activity in the stocks held by the Select Sector SPDRSM as well as the redemption activity in the Select Sector SPDRSM itself. The net asset values of the Select Sector SPDRsSM will be calculated continuously by Amex and disseminated every 15 seconds on Network B of the Consolidated Tape Association ("CTA"). As discussed in the order approving the trading of Select Sector SPDRsSM, Merrill currently has in place procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the Select Sector SPDRsSM.⁸

Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity settlement payment equal to the principal amount of the notes plus a "Supplemental Redemption Amount", based on the percentage increase in the Select Sector SPDRSM from the starting value to the adjusted ending value. The starting value will equal the net asset

value of the Select Sector SPDRSM on or prior to the pricing date, the adjusted ending value will equal the average value of the Select Sector SPDRSM on five consecutive trading days shortly prior to maturity, as reduced by an adjustment factor and as adjusted for certain anti-dilution events. The annual adjustment factor, generally in an amount between 0.5% and 3%, will be applied to the net asset value of the Select Sector SPDRSM on a pro rata basis each day for purposes of determining the adjusted ending value. The actual adjustment factor will be determined on the pricing date. Upon maturity, at Merrill's option, the Notes will settle into either shares of the Select Sector SPDRSM or cash. The exchange notes that the formula may produce a total return at maturity which is lower than the return a holder of the corresponding Select Sector SPDRsSM might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

Because the Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Standard Time) will apply to the trading of the Notes. Pursuant to Amex Rule 411, 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. Further, pursuant to Amex Rule 462, the Notes will be subject to the equity margin rules of the Exchange. In addition, consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommend transaction, including those highlighted, and is financially able to bear the risks of the recommended transaction. Lastly, as with other

⁴ Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990). Section 107A of the Amex *Company Guide*, states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security satisfies the following criteria: Assets/Equity—the issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in Section 101 (*i.e.*, pre-tax income of \$750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least \$400,000), the Exchange generally will require the issuer to have either assets in excess of \$200 million and stockholders' equity of at least \$10 million or assets in excess of \$100 million and stockholders' equity of at least \$20 million; Distribution—minimum public distribution of 1,000,000 trading units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders; and Principal Amount/Aggregate Market Value—not less than \$4 million.

⁵ Section 101 of the Amex *Company Guide*, requires, among other things, that an issuer have stockholders' equity of at least \$4 million and pre-tax income of \$750,000 in its last fiscal year, or in two of its last three fiscal years.

⁶ Supra note 3.

⁷ Securities Exchange Act Release No. 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998).

⁸ Supra note 3.

structured products, the Exchange will closely monitor activity in the Notes to identify and deter any potential improper trading activity in the Notes.

2. Basis

The proposed rule change is consistent with Section 6(b)⁹ of the Act in general and furthers the objectives of Section 6(b)(5)¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, 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 and 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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹¹ and Rule 19b-4(e)(6)¹² of the Act. The proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition; and does not become operative prior to 30 days after the date the proposed rule change was filed with the Commission.

Rule 19b-4(e)(6) also provides that the SRO provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission. The Amex requested that the Commission waive the notification period in order to expedite the listing and trading of term notes linked to Select Sector SPDRsSM. The Commission finds good cause to waive the notification period because it

previously reviewed and approved the composition and maintenance of the nine Select Sector SPDRsSM underlying the term notes.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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. 20549. 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-98-48 and should be submitted by February 18, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2003 Filed 1-27-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40951; File No. SR-CBOE-98-33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Exercise Advice Procedures

January 15, 1999.

I. Introduction

On July 27, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities 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. The Exchange proposes to clarify certain existing exercise procedures for cash-settled and noncash-settled options and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to summary fines set forth in CBOE Rule 17.50. Amendment No. 1 was submitted to the Commission on November 3, 1998.³ The proposed rule change was published for comment in the **Federal Register** on November 16, 1998.⁴ The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

Restrictions on the Exercise of Cash-Settled Index Options

Currently, a cash-settled index option cannot be exercised during a trading delay, halt or suspension. This policy does not apply if the trading delay, halt, or suspension occurs on the last business day prior to expiration or if the President of the Exchange or his designee determines otherwise. The Exchange proposes to amend CBOE Rule 11.1.05 to codify this policy.⁵ In

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated October 27, 1998 ("Amendment No. 1"). Amendment No. 1 clarifies the Business Conduct Committee's authority to impose sanctions under proposed rules 17.50(c)(2) and (d)(2); makes technical corrections to the proposed rule language; clarifies amendments to proposed rules 11.1.05 and 11.1.07; and elaborates on the statutory basis for the proposed rule change.

⁴ Exchange Act Release No. 40645 (November 6, 1998) 63 FR 63761 (November 16, 1998).

⁵ The Exchange note that the restriction of the exercise of cash-settled index options is currently reflected in Exchange Regulatory Circular RG-91-11.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(e)(6).

¹³ Supra note 3.

¹⁴ 17 CFR 200.30-3(a)(12).