

quotation vendors through the OPRA System.

By modifying the OPRA Plan to incorporate the previously granted exemptions from the OPRA Plan's exclusivity clause, OPRA believes that the proposed amendment would place all of the parties to the OPRA Plan on equal footing with respect to the right to disseminate their market data to their members. OPRA believes that this would allow any of the parties to the OPRA Plan to make market information available to those of its members who enter or transmit orders or quotes in or to its market, while at the same time assuring that all persons who have access to market information also have equal access to consolidated market information disseminated by OPRA. OPRA represents that because parties that operate an electronic market or an electronic trading facility must be allowed to disseminate market information to their members who enter orders or quotes in their markets, the proposed amendment would provide parties who do not maintain such electronic facilities with the same right to disseminate market information to their members, thereby fostering fair and equal competition among all of the parties.

## II. Implementation of Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.<sup>10</sup>

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan Amendment is 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from

the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2001-02 and should be submitted by June 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44342; File No. SR-Amex-2001-28]

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Select Ten Notes

May 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal 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 notes, the return on which is based upon an equal-dollar weighted portfolio of securities representing the ten highest dividend yielding stocks in the Dow Jones Industrial Average ("DJIA") from year to year (the "Select Ten Index" or "Index").<sup>3</sup>

#### 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 III below. The Exchange 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.<sup>4</sup> The Amex proposes to list for trading under section 107A of the Company Guide notes based on the Select Ten Index (the "Select Ten Notes" or "Notes"). The Select Ten Index will be determined, calculated and maintained solely by the Amex.<sup>5</sup>

The Select Ten Notes will conform to the initial listing guidelines under Section 107<sup>6</sup> and continued listing guidelines under sections 1001-1003<sup>7</sup>

Proctor & Gamble Co.; and Minnesota Mining & Manufacturing Co. The portfolio of securities will include the ten highest dividend yielding stocks in the DJIA for that year and the Amex will not have any discretion in the selection process.

<sup>4</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>5</sup> Subject to the criteria in the prospectus regarding the construction of the Index, the Exchange has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

<sup>6</sup> The initial listing standards for Select Ten 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 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 which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, 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 stockholder's equity of at least \$20 million.

<sup>7</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10

<sup>10</sup> 17 CFR 24.0.11Aa3-2. OPRA requested that the Commission approve the amendment prior to May 26, 2001, to avoid disrupting the markets of the two exchanges that are now operating under the previously granted temporary exemptions, which are scheduled to expire on that date. However, in order to allow for a full comment period on this proposal, the Commission has extended the previously granted temporary exemptions for another 90 days. See note 5, *supra*.

<sup>11</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The initial portfolio of securities comprising the Select Ten Index for the first year will be the highest dividend yielding stocks as of May 1, 2001, and are as follows: Philip Morris Co., Inc.; Eastman Kodak Co.; General Motors Corp.; DuPont El De Nemours; J.P. Morgan Chase & Co.; Caterpillar Inc.; International Paper Co.; SBC Communications, Inc.;

of the Company Guide. Select Ten Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch") that provide for a single payment at maturity. The Select Ten Notes will have a term of not less than one, nor more than ten, years. Select Ten 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"). The "Starting Index Value" is the value of the Select Ten Index on the date on which the issuer prices the Select Ten Notes issue for the initial offering to the public. The "Ending Index Value" is the value of the Select Ten Index over a period shortly prior to the expiration of the Select Ten Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Select Ten Notes may 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 Select Ten Notes. During the designated month each year, the investors may have the right to require the issuer to repurchase the Select Ten Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date. Select Ten Notes are not callable by the issuer.

Select Ten Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Select Ten Index securities.

The Select Ten Index will consist of the ten stocks with the highest dividend yields among the thirty stocks that comprise the DJIA, adjusted as described below. The Index will be composed and calculated in a similar manner as the Top Ten Yield Index previously approved by the Commission.<sup>8</sup>

to the Exchange's 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 to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Select Ten Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) 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 is less than \$400,000.

<sup>8</sup> See Securities Exchange Act Release No. 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996)

Components of the Select Ten Index approved pursuant to this filing will meet the following criteria: (1) A minimum market value of at least \$75 million, except that up to 10% of the component securities in the Select Ten Index may have a minimum market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Select Ten Index may have an average monthly trading volume of 500,00 shares or more in the last six months; (3) 90% of the Select Ten Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and reported National Market System securities.

As of May 1, 2001, the market capitalization of the initial portfolio of securities representing the Select Ten Index ranged from a high of \$145 billion to a low of \$12.8 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 188 million shares to a low of 34 million shares. Moreover, as of May 1, 2001, all of the components comprising the initial portfolio of securities representing the Select Ten Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in Select Ten Index will represent approximately an equal percentage of the starting value of the Select Ten Index. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, initially each of the ten companies included in the Select Ten Index will represent approximately ten percent of the total portfolio at the time of issuance. The Select Ten Index will initially be set to provide a benchmark value of 100.00 at the close of trading

(order granting accelerated approval to File No. SR-Amex-96-28).

on the day the Select Ten Notes are priced for initial sale to the public.

The value of the Select Ten Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Ten Index and the applicable share multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.<sup>9</sup> Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding component of the Select Ten Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Select Ten Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividend allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the date of the initial issuance of Select Ten Notes) through the applicable anniversary date in the year preceding the maturity of the Select Ten Notes, the portfolio of securities comprising the Select Ten Index will be reconstituted by the Amex so as to include the ten common stocks in the DJIA having the highest dividend yield on the second scheduled index business day prior to such anniversary date. The Exchange will announce such changes to investors

<sup>9</sup> At the end of each day, the Index will be reduced by a pro rata portion of the annual index adjustment factor, 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). Telephone conversation between Jeffrey P. Burns, Senior Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on May 22, 2001. This reduction to the value of the Index will reduce the total return to investors upon redeeming Select Ten Notes at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

at least one day prior to the anniversary date.<sup>10</sup>

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Select Ten Index will represent 10% of the value of the Index. To effectuate this, the share multiplier for each new stock will be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Select Ten Index value at the close of business on such anniversary date. For example, if the Select Ten Index value at the close of business on an anniversary date was 200, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Index equal to 20, and if the closing market price of one such new stock on the anniversary date was 40, the applicable share multiplier would be 0.5. Conversely, if the Select Ten Index value was 80, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Select Ten Index equal to 8, and if the closing market price of one such new stock on the anniversary was 40, the applicable share multiplier would be 0.2. The last anniversary date on which such reconstitution will occur will be the anniversary date in the year preceding the maturity of the Select Ten Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Select Ten Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Select Ten Index will remain fixed unless adjusted for quarterly dividend adjustments, annual reconstitutions or certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to its shareholders,<sup>11</sup> stock split, reverse stock split, and reorganization.

The multiplier of each component stock may be adjusted, if necessary, in the event of a merger, consolidation,

dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. If the issuer of a stock included in the Select Ten Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Select Ten Index value prior to the subsequent anniversary date. For example, if a company included in the Select Ten Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Select Ten Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Select Ten Index so long as a market price for such security is available or until the subsequent anniversary date. If a market price is no longer available for an Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Select Ten Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Select Ten Index, the multiplier of that security in the Select Ten Index may be adjusted to maintain the component's relative weight in the Select Ten Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Select Ten Index continuity.

The Exchange will calculate the Select Ten Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities.

Because Select Ten Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Select Ten Notes. First, 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 Select Ten Notes.<sup>12</sup> Second, Select Ten Notes will be subject to the equity margin rules of the Exchange.<sup>13</sup> Third, the Exchange, will, prior to trading Select Ten Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Select Ten Notes and highlighting the special risks and characteristics of the Select Ten Notes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>14</sup> in general and furthers the objectives of section 6(b)(5)<sup>15</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 corporation 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*

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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, 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

<sup>10</sup> The Exchange will publish a notice to advise investors of changes to the securities underlying the Index if any such changes are made following an annual reconstitution.

<sup>11</sup> If the issuer of a component security in the Select Ten Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Select Ten Index until the subsequent anniversary date. The multiplier for the new component will equal the product of the original issuer's multiplier and the number of shares of the new component issued with respect to one share of the original issuer.

<sup>12</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer to every order or account accepted.

<sup>13</sup> See Amex Rule 462 and section 107B of the Company Guide.

<sup>14</sup> 15 U.S.C. 78f(b).

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

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-28 and should be submitted by June 21, 2001.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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, with the requirements of section 6(b)(5) of the Act.<sup>16</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex and the NYSE.<sup>17</sup> Accordingly, the Commission finds that the listing and trading of Select Ten Notes is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.<sup>18</sup>

<sup>16</sup> *Id.*

<sup>17</sup> See Securities Exchange Act Release Nos. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR-Amex-99-42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR-Amex-99-15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR-Amex-97-47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR-Amex-96-28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR-Amex-93-40); 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993) (accelerated approval order for the listing and trading of MITTS on the NYSE) (File No. SR-NYSE-93-31); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading on non-principal protected notes linked to a single equity security) (File No. SR-Amex-92-42).

<sup>18</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the

Select Ten Notes are not leveraged instruments; however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Select Ten Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a Select Ten Notes is derivatively priced, based on the performance of a portfolio of securities, and the components of the Select Ten Index are more likely to change each year, over the term of the Select Ten Notes, than products previously issued, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Select Ten Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Select Ten Notes. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Select Ten Notes.

In approving the product, the Commission recognizes that the components are likely to change each year over the life of the product. Nevertheless, the Commission believes that this is acceptable because the Amex has clearly stated its guidelines and formula for replacing components from a specific group of thirty well-known, and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Select Ten Index will represent the ten highest dividend yielding securities in the DJIA. Amex will do the calculation for replacements based on a set formula to determine which of the DJIA securities will be in the Index for the following year. The Commission believes that within these confines the potential frequent changes in the components of the Select Ten Index are reasonable and will meet the expectation of investors.

In addition, the Commission notes that the Select Ten Notes are non-principal protected. The Notes may not have a minimum principal amount that will be repaid and that payments on the Notes prior to or at maturity may be less than the original issue price of the Select Ten Notes. The Commission also

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

recognizes the during the designated month each year, the investors may have the right to require the issuer to repurchase the Select Ten Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date.

The Commission notes that Select Ten Notes are dependent 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 the only issuers satisfying substantial asset and equity requirements may issue securities as Select Ten Notes. In addition, the Exchange's hybrid listing standards further require that Select Ten Notes have at least \$4 million in market value.<sup>19</sup> In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Select Ten Index, will be publicly available.<sup>20</sup>

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the prior approval orders for similar instruments (e.g., the MITTS), the Commission believes this concern is minimal given the size of Select Ten Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of Select Ten Notes should not unduly impact the market for the underlying securities comprising the Select Ten Index. First, the underlying securities comprising the DJIA, from which the Select Ten Index components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Select Ten Index will be equally weighted, initially and immediately following each annual reconstitution of the Select Ten Index, no single stock or group of stocks will likely dominate the Select Ten Index. Finally, the issues of the underlying securities comprising the Select Ten Index, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Select Ten Index will

<sup>19</sup> See Company Guide section 107A.

<sup>20</sup> The companies that comprise the Select Ten Index are reporting companies under the Act.

be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Select Ten Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

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**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex and the NYSE.<sup>21</sup> In determining to grant the accelerated approval for good cause, the Commission notes that the Select Ten Index is a portfolio of highly capitalized and actively traded securities similar to hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, Select Ten Notes will be listed pursuant to existing hybrid security listing standards as described below. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation method. Based on the above, the Commission finds, consistent with section 6(b) of the Act,<sup>22</sup> that there is good cause for accelerated approval of the product.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Amex-2001-28), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-13634 Filed 5-30-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44349; File No. SR-ISE-2001-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC to Conform Its Rules to Reflect Decimal Pricing

May 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 ISE proposes to amend its rules to conform to decimal pricing. The text of the proposed rule change is available at the ISE 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 ISE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

The options markets (along with the markets for the underlying equity securities) have completed their conversion to decimal pricing. The ISE is proposing amendments to its rules to reflect the fact that it has phased out fractional increments and that all pricing is now in decimals. The ISE is not proposing any changes to the current trading increments.

##### 2. Statutory Basis

The ISE believes that the proposal is consistent with the provisions of section 6(b)(5) of the Act<sup>6</sup> which requires 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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 ISE does not believe that the proposed rule change will impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> ISE provided written notice to the Commission on May 14, 2001 of its intent to file this proposal. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> See *supra* note 17.

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).