from section 15(a) of the Act and rule 18f–2 under the Act is granted, effective immediately, subject to the conditions contained in the application, as amended.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16879 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44483; File No. SR–Amex–2001–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to the Listing and Trading of Institutional Index Notes

June 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2001, the American Stock Exchange LLC (''Amex'' 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 Annex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving this 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 approve for listing and trading notes, the return on which is based upon an equal-dollar weighted portfolio of twenty securities chosen from the Amex Institutional Index pursuant to the methodology set forth below (the ''Institutional Holdings Index'').[3]

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 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.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Institutional Holdings Index (the ''Institutional Holding Notes'' or ''Notes''). The Institutional Holdings Index will be determined, calculated and maintained solely by the Amex.[5]

The Institutional Holdings notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Institutional Holdings Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch''). The Notes will have a term of not less than one, nor more than ten years. The Institutional Holdings 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 Institutional Holdings Index on the date the issuer prices the Institutional Holdings Notes for the initial sale to the public. The ''Ending Index Value'' is the value of the Institutional Holdings 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 Institutional Holdings Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Institutional Holdings Notes prior to or at the 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 issuer to repurchase the Institutional Holdings Notes at a redemption amount based on the value of the Institutional Holdings Index at such repurchase date. The Institutional Holdings Notes are not callable by the issuer.

The Institutional Holdings 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 of securities comprising the Institutional Holdings Index.

The Institutional Holdings Index will consist of twenty qualifying stocks (''Qualifying Stocks'') selected using the methodology presented below from the Amex Institutional Index (excluding utilities, if any, and the common stock of Merrill Lynch) which is a capitalization-weighted index of seventy-five (75) widely held stocks

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

[2] 17 CFR 240.19b–4.

[3] As of May 31, 2001, the portfolio of securities comprising the Institutional Holdings Index would be: Abbott Laboratories; American Home Products Corporation; Anheuser–Busch Companies, Inc.; Bank of America Corporation; The Bank of New York Company, Inc.; Bank One Corporation; The Boeing Company; Citigroup, Inc.: Colgate–Palmolive Company; Eli Lilly and Company; Emerson Electric Co.; Exxon Mobil Corporation; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association; Microsoft Corporation; Minnesota Mining and Manufacturing Company; PepsiCo, Inc.; Philip Morris Companies Inc.; Tyco International Ltd.; United Technologies Corporation. The actual initial securities will be selected based on this methodology on a date specified in the prospectus supplement.

[4] *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'').

[5] Subject to the criteria in the prospectus regarding the construction of the Institutional Holdings Index, the Exchange has sole discretion regarding changes to the Institutional Holdings Index due to annual reconstitutions and adjustments to the Institutional Holdings Index and the multipliers of the individual components.

[6] 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 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 stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 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 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.

among institutional equity portfolios with market values in excess of $100,000,000. ''Qualifying Stocks'' include those stocks that pass the following screening tests:

• *Price Momentum Screen.* First, the thirty-eight (38) stocks with the greatest 1-year price return are selected from the Amex Institutional Index. From this narrowed universe, the stocks are then ranked in descending order based on 1-year price return improvement.

• *Recovery Screen.* Second, the thirty-eight (38) stocks with the worst 3-year price return are selected from the Amex Institutional Index. These stocks are then ranked in descending order based on 1-year price return.

• *Dividend Yield Screen.* Third, the thirty-eight (38) stocks with the greatest dividend yield are selected from the Amex Institutional Index. These stocks are then ranked in descending order by 1-year price return.

• *Price to Earnings Ratios Screen.* Fourth, the thirty-eight (38) stocks with the lowest price-to-earnings ratio are selected from the Amex Institutional Index. These stocks are then ranked in descending order based on 1-year price return.

The twenty Qualifying Stocks selected to make up the Institutional Holdings Index at the time of initial composition or any reconstitution are chosen in the following order: (1) Price Momentum Screen; (2) Recovery Screen; (3) Dividend Yield Screen; and (4) Price-to-Earnings Ratio Screen. The selection process includes one stock from each screen added to the Institutional Holdings Index in the order set forth above until there are twenty unique stocks. If a stock in a particular screen has already been included in the Institutional Holdings Index, the screen in which the duplicate appears is skipped and a stock from the next screen is then chosen.

Components of the Institutional Holdings Index approved pursuant to this filing will also 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 Institutional Holdings 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 Institutional Holdings Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Institutional Holdings 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 31, 2001, the market capitalization of the securities that would represent the Institutional Holdings Index would range from a high of $37.2 billion to a low of $2.9 billion. The average monthly trading volume for those same securities for the last six months, as of the same date, ranged from a high of 964.2 million shares to a low of 41.4 million shares. Moreover, as of May 31, 2001, all of the securities that would comprise the Institutional Holdings Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in the Institutional Holdings Index will represent approximately an equal percentage of the Starting Index Value. 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 underlying the Institutional Holdings Index on the date of the Institutional Holdings Notes are priced for initial sale to the public. 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 Institutional Holdings Index. Accordingly, each of the twenty companies initially included in the Index will represent approximately 5% of the total portfolio at the time of business. The Institutional Holdings Index will initially be set to provide a benchmark value of $100 at the close of trading on the day the Institutional Holdings Notes are priced for initial sale to the public.

The value of the Institutional Holdings Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Institutional Holdings 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.[8] 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 underlying the Institutional Holdings Index 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 Institutional Holdings 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 Institutional Holdings 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 can be purchased of each outstanding component based on the amount of the current quarter dividend allocated to each stock and the closing market price on the last day in the immediately preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Institutional Holdings Notes are priced for initial sale to the public) through the applicable anniversary date in the year preceding the maturity of the Notes, the portfolio of securities comprising the Institutional Holdings Index will be reconstituted by the Amex using the same methodology applied at the initial composition of the Institutional Holdings Index. The Exchange will announce such changes to investors at least one day prior to the anniversary date.[9]

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Institutional Holdings Index will represent approximately 5% of the value of the Institutional Holdings 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

[8] At the end of each day, the Institutional Holdings Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to approximately be 1.5% (*i.e.* 1.5%/365 days=0.0041% daily). This reduction to the value of the Institutional Holdings Index will reduce the total return to investors upon exchange or 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.

[9] 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.

market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Institutional Holdings Index value at the close of business on such anniversary date. For example, if the Institutional Holdings Index value at the close of business on an anniversary date was 200, then each of the twenty new stocks comprising the Institutional Holdings Index would be allocated a portion of the value of the Index equal to 10, and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.5. Conversely, if the Institutional Holdings Index value was 80, then each of the twenty new stocks comprising the Institutional Holdings Index would be allocated a portion of the value of the Institutional Holdings Index equal to 4 and if the closing market price of one such new stock on the anniversary date was 20, 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 Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Institutional Holdings Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Institutional Holdings Index will remain fixed until 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,[10] 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 institutional Holdings 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 Institutional Holdings Index value prior to the subsequent anniversary date. For example, if a company included in the Institutional Holdings Index were acquired by another company, a value would 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 Institutional Holdings Index is in the prices of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Institutional Holdings 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 Institutional Holdings 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 Institutional Holdings Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Institutional Holdings Index, the multiplier of that security may be adjusted to maintain the component's relative weight in the Institutional Holdings Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Institutional Holdings Index continuity.

The Exchange will calculate the Institutional Holdings Index and, similar to other stock index values published by the Exchange, the value of the Institutional Holdings 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 the Institutional Holdings Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Institutional Holdings Notes. First, pursuant to AmexRule 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.[11] Second, the Institutional Holdings Notes will be subject to the equity margin rules of the Exchange.[12] Third, in conjunction with the Hybrid Approval Order, the Exchange will, prior to trading the Institutional Holdings 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.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] 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 and a national market system.

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

The proposed rule change will impose no 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. 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, DC 20549–0069. 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 SR–Amex–

[10] If the issuer of a component security in the Institutional Holdings Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Institutional Holdings Index until the subsequent anniversary date. The multiplies 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.

[11] 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.

[12] *See* Amex Rule 462 and Section 107B of the Company Guide.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

2001–40 and should be submitted by July 27, 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.[15] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex and the NYSE.[16] Accordingly, the Commission finds that the listing and trading of Industrial Holdings 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.[17]

Industrial Holdings 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 Industrial Holdings Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate or return of Industrial Holdings Notes is derivatively priced, based on the performance of a portfolio of securities, and the components of the Industrial Holdings Index are more likely to change each year, over the term of the Industrial Holdings 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 addresses the special concerns attendant to the trading of hybrid securities will be applicable to Industrial Holdings 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 Industrial Holdings Notes. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Industrial Holdings Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.[18]

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 well-known and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Industrial Holdings Index will represent twenty qualifying stocks selected using four separate screens: (1) Price Momentum Screen; (2) Recovery Screen; (3) Dividend Yield Screen; and (4) Price-to-Earnings Ratio Screen. Amex will do the calculation for replacements based on a set formula to determine which of the Industrial Holdings Index 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 Industrial Holdings Index are reasonable and will meet the expectation of investors.

In addition, the Commission notes that the Industrial Holdings 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 Industrial Holdings Notes. The Commission also recognizes that annually, during a two-week period of the designated month, investors may have the right to require the issuer to repurchase the Industrial Holdings Notes at a redemption amount based on the value of the Industrial Holdings Index at such repurchase date.

The Commission notes that Industrial Holdings 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 such as Industrial Holdings Notes. In addition, the Exchange's hybrid listing standards further require that Industrial Holdings Notes have at least $4 million in market value.[19] In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Industrial Holdings Index, will be publicly available.[20]

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 Select Ten Notes), the Commission believes this concern is minimal given the size of Industrial Holdings Notes issuance in relation to the next worth of Merrill Lynch.

The Commission also believes that the listing and trading of Industrial Holdings Notes should not unduly impact the market for the underlying securities comprising the Industrial Holdings Index. First, the underlying securities comprising the Industrial Holdings Index, from which the Industrial Holdings Notes components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Industrial Holdings Index will be equally weighted, initially

[15] *Id.*

[16] *See* Securities Exchange Act Release Nos. 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (accelerated approval order for the listing and trading of Industrial 15 Notes); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes); 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 of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiently, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The Commission also notes that Amex has a general policy which prohibits the distribution of material, non-public information by its employees. Telephone conversation between Jeffrey Burns, Senior Counsel, AMEX and Mare McKayle, Special Counsel, Division of Market Regulation, Commission on June 26, 2001.

[19] *See* Company Guide Section 107A.

[20] The companies that comprise the Industrial Holdings Index are reporting companies under the Act.

and immediately following each annual reconstitution of the Industrial Holdings Index, no single stock or group of stocks will likely dominate the Industrial Holdings Index. Finally, the issuers of the underlying securities comprising the Industrial Holdings 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 Industrial Holdings Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Industrial Holdings 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 publications 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 NYSE. In determining to grant the accelerated approval for good cause, the Commission notes that the Industrial Holdings Index is a portfolio of highly capitalized and actively traded securities similar to hybird securities products that have been approved by the Commission for U.S. exchange trading. Additionally, Industrial Holdings Notes will be listed pursuant to existing hybird security listing standards as described above. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation need. Based on the above, the Commission finds, consistent the Section 6(b) of the Act,[21] that there is good casue for accelerated approval of the product.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–2001–40), is hereby approved on an accelerated basis.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16885 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44490; File No. SR–CBOE–2001–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Automatic Step-up Based on Order Size Parameters

June 28, 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 June 11, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a ''non-controversial'' rule change under rule 19–4(f)(6).[3] 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 proposes to allow the appropriate floor procedure committee (''FPC'') to establish the size of the automatic step-up amount applicable to orders entered through the Exchange's Retail Automatic Execution System (''RAES'') based upon order size parameters. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 Exchange included statements concerning the purpose of and basic 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation .02 to CBOE Rule 6.8 establishes the process for the automatic execution of orders through RAES when the Exchange's best bid or offer is inferior to that of another market. Under this provision, the Exchange automatically fills any equity option order submitted through RAES at any better price being quoted in another market, so long as the price on the away market is better by no more than one tick (''automatic step-up'').[4] If the price on the away market is better by more than the automatic step-up amount (*i.e.,* more than one-tick), the order is rerouted to the DPM for non-automated handling.[5] The purpose of this rule filing is to provide for the step-up parameters to be based upon order size (''order size parameters'').

Under the proposal, the appropriate FPC shall have the authority to establish the size of the step-up amount based upon order size parameters. This enhancement will allow automatic execution on RAES at the NBBO when the price displayed on a competing market is within a designated number of ticks of the price displayed by CBOE, provided the size of the order falls within the specified order size parameters. For example, the order size parameters might be established such that orders of 1–3 contracts receive 3-tick step-up, orders of 4–6 contracts receive 2-tick step-up, orders of 7–10 contracts receive 1-tick step-up, and orders of 11 or more contracts receive no step-up.[6] If the CBOE price is not within the designated step-up amount to

[4] CBOE Rule 6.42 establishes the minimum trading increments for bids and offers.

[5] The Commission approved the CBOE automatic step-up plan in Securities Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (order approving SR–CBOE–98–13)(''automatic step-up Approval Order''). Pursuant to CBOE Rule 6.42, the trading increment for option series quoted at or below $3 per contract is 5 cents. For option series quoted above $3, the trading increment shall be 10 cents.

[6] In this instance, orders of 1–3 contracts would be executed within RAES at the NBBO provided the price displayed on CBOE is within 3-ticks of the price displayed by the competing market.