

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44757; File No. SR-NYSE-2001-35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading CP HOLDERS on the Exchange

August 30, 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 August 30, 2001, the New York Stock Exchange, Inc. ("NYSE" 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.

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

The NYSE proposes to list under Paragraph 703.19 of the Listed Company Manual (the "Manual")³ CP HOLDERS issued pursuant to the deposit agreement among Merrill Lynch Canada Inc., as initial depositor and coordinator ("Merrill Lynch"), BNY Trust Company of Canada, as depository, the owners and beneficial owners from time to time of CP HOLDES, and depositors from time to time of the underlying securities represented by CP HOLDERS. CP HOLDERS are depository receipts initially representing ownership in deposited common back stock of Canadian Pacific Limited ("CP") and subsequently representing ownership of the shares of common stock of CP's successor companies that are expected to result from CP's plan of reorganization.⁴ The value of CP

HOLDERS directly relates to the value of the underlying securities.⁵

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 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 Paragraph 703.19 of the Manual, the Exchange may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.⁶ The Exchange is now proposing to list CP HOLDERS, as below described, pursuant to Paragraph 703.19 of the Manual.

Description of CP HOLDERS. CP HOLDERS are depository receipts designed by Merrill Lynch to provide current holders of shares of common stock issued by CP ("CP Shares") with a single exchange traded instrument representing shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization.⁷ CP HOLDERS have been designed without regard for the value, price performance, volatility or investment merit of CP historically or the successor companies prospectively.

CP HOLDERS will be issued by the CP HOLDERS Deposit Facility created by the deposit agreement among BNY Trust Company of Canada, as depository, Merrill Lynch Canada Inc., as initial depositor and coordinator, the owners

and beneficial owners from time to time of CP HOLDERS, and depositors from time to time of underlying securities. The deposit agreement will govern the terms of CP HOLDERS.⁸

Merrill Lynch, as initial depositor, will be deemed the "issuer" of CP HOLDERS for purposes of the Securities Act of 1933, as amended, and the Act. The depository will deliver CP HOLDERS issued by the CP HOLDERS Deposit Facility created by the deposit agreement. The CP HOLDERS Deposit Facility created by the deposit agreement is not a registered investment company under the Investment Company Act of 1940 (the "1940 Act").

Under the deposit agreement, its plan of reorganization, CP HOLDERS will represent shares of the successor companies resulting from the reorganization of CP and received in exchange for CP Shares.

CP HOLDERS will be delivered by the depository to depositing holders of CP Shares pursuant to the deposit agreement. Prior to the reorganization of CP, holders of CP Shares must deposit their CP Shares in order to receive CP HOLDERS. One CP HOLDERS will be issued for each CP Share deposited. The depository will deliver additional CP HOLDERS on a continuous basis to depositing holders of CP Shares (or, following the completion of CP's reorganization, to depositors of the underlying securities).

As discussed more fully herein in "Cancellation of CP HOLDERS," the deposit agreement entitles holders of CP HOLDERS to surrender CP HOLDERS to the depository and receive the underlying securities represented by those CP HOLDERS. Although a beneficial owner of CP Shares will not receive cash in lieu of fractional interests of the successor companies at the time of the reorganization of CP, when a beneficial owner of CP HOLDERS surrenders his or her CP HOLDERS to receive the underlying securities, the depository will deliver cash to the holder in lieu of fractional interests in the underlying securities based on the most recent closing price of the security (*i.e.*, the closing price for the common stock of the underlying security on the trading day before the holder surrenders his or her CP HOLDERS). The depository will reflect that transaction on the books and records of the CP HOLDERS Deposit Facility accordingly. A holder of CP HOLDERS will not have to wait for the depository to sell the aggregate of such fractions and distribute the proceeds to such holder, but will receive cash in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Footnote 80 of the Securities Exchange Act Release No. 40761 (December 8, 1998) notes that an "other security" listing standard (such as Paragraph 703.19) is not intended to accommodate the listing of securities that raise significant regulatory issues without a specific separate filing with the Commission pursuant to Rule 19b-4 under the Act.

⁴ CP has announced a plan to split into five separate public successor companies—PanCanadian Petroleum Limited, Canadian Pacific Railway Company, Fording Inc., CP it is anticipated that current holders of CP Shares will hold the equity securities of each of these successor companies.

⁵ The shares of common stock of the successor companies that are held under the deposit agreement at any point in time (together with other securities that may be represented by CP HOLDERS in the future) are collectively referred herein as the "underlying securities."

⁶ See Securities Exchange Act Release No. 28217 (July 18, 1990) ("July 18, 1990 Release"), 55 FR 30056 (July 24, 1990); Securities Exchange Act Release No. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991).

⁷ For the detailed description of CP HOLDERS, see the registration statement on Form F-1 filed by Merrill Lynch with the Commission (File No. 333-63924) (the "Registration Statement").

⁸ For the description of the deposit agreement, see the Registration Statement.

lieu of fractional interests at the time such holder surrenders his or her CP HOLDERS.

CP HOLDERS will present an investor's undivided beneficial ownership of the underlying securities. According to the Registration Statement, owners of CP HOLDERS will have the same rights and privileges as they would have if they owned the underlying securities outside of CP HOLDERS. These include the right to instruct the depository to vote the underlying securities, to receive any dividends and other distribution on the underlying securities that are declared and paid to the depository by an issuer of an underlying security, the right to receive reports and other information required to be distributed by the issuer in respect of the underlying securities, the right to pledge CP HOLDERS and the right to surrender CP HOLDERS to receive the underlying securities. Investors will retain the right to receive any reports and communications that the issuers of underlying securities are required to send to beneficial owners of their securities. As such, investors will receive such reports and communications in the same manner as if such investors beneficially owned their underlying securities outside of CP HOLDERS from the broker through which they hold their CP HOLDERS. These reports currently include annual reports, audited financial statements (including management's discussion and analysis of financial condition and results of operations) and management proxy circulars.

Stock splits and reverse splits of any of the underlying securities will not affect the weightings of the underlying securities. Rather, the share amounts will be adjusted to reflect such splits so that there is no change in weighting solely due to a split. Weightings will change with the relative price changes of the underlying securities. Securities will not be added other than in accordance with stock distributions or reorganizations events outlined in the prospectus. As a result, if an underlying security distributes shares of stock or if a security is acquired by another company, the new shares will remain in CP HOLDERS so long as they are registered under Section 12 of the Exchange Act, are issued by a reporting issuer under Canadian securities laws and are listed for trading on a national securities exchange in Canada and on either a national securities exchange in the United States or the NASDAQ National Market System. (See "Reconstitution Events" below).

The deposit agreement entitles investors to receive, subject to certain limitations and net of any fees of the

depository, any distributions of cash (including dividends), securities or property made with respect to the underlying securities. The depository will not distribute a fraction of one cent but will round to the nearest whole cent before distribution. Distributions will be made by the depository as soon as is practicable following receipt by the depository of such distributions. There may be a delay (which is expected not to exceed one day) between the time any cash or other distribution is received by the depository with respect to the underlying securities and the time such cash or other distributions are distributed to holders of CP HOLDERS due to the need for the depository to process the flow of funds. Events beyond the control of the depository, such as computer failures and other disruptions of banking systems generally may also result in a delay in distributions to holders of CP HOLDERS. Holders of CP HOLDERS will not be entitled to any interest on any distribution by reason of any delay in distribution by the depository. If any tax or other governmental charge becomes due with respect to CP HOLDERS or any underlying securities, holders of CP HOLDERS will be responsible for paying that tax or governmental charge. Holders of CP HOLDERS may elect to receive dividends with respect to underlying securities in either Canadian or U.S. dollars by following the procedures established by the broker through which they hold their CP HOLDERS.

The value of CP HOLDERS directly relates to the value of the underlying securities. Although it is possible that CP HOLDERS may trade at either a discount or a premium to the aggregate value of the underlying securities, historically, HOLDERS products currently listed on the American Stock Exchange LLC and the Exchange have traded at values reflecting the aggregate value of the underlying securities represented by CP HOLDERS. Merrill Lynch believes that this trading equivalency results from the ability to cancel HOLDERS products and receive the underlying securities at any time. As such, arbitrageurs can quickly move between HOLDERS and the underlying securities thereby limiting any such premiums or discounts. Based on the foregoing, the Exchange believes that it is reasonable to expect that CP HOLDERS will not trade at a material discount or premium to the underlying securities. The Exchange believes that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (e.g., CP HOLDERS and the underlying

securities)—increases the efficiency of the markets and should promote correlative pricing between CP HOLDERS and the underlying securities.

CP HOLDERS will be issued in "book-entry only" form and will be represented by one or more global certificates registered in the name of CDS & CO., the nominee of The Canadian Depository for Securities Limited ("CDS"), and deposited with CDS. U.S. holders of CP HOLDERS will hold their interests in the global certificates indirectly through the Depository Trust Company ("DTC"). DTC is, in turn, a participant in CDS. All interests of Canadian and U.S. holders of CP HOLDERS in the global certificates, including those held through DTC, will be subject to the procedures and requirements of CDS. Those interests held through DTC may also be subject to the procedures and requirements of DTC. Investors will not be able to hold CP HOLDERS in individually registered positions, but rather can only hold these positions through a broker-dealer in street name, except as otherwise required by applicable law or if CDS or DTC advises the depository that it is no longer willing or able to act as a depository for CP HOLDERS or the depository is unable to find a successor.

CP HOLDERS will be issued to investors in certificated form only if: (i) That action is required under applicable law; (ii) CDS or DTC advises BNY Trust Company of Canada or its successor that either CDS or DTC is no longer willing or able to properly discharge its responsibilities as depository with respect to CP HOLDERS and BNY Trust Company of Canada or its successor is unable to locate a qualified successor; or (iii) CDS ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and BNY Trust Company of Canada or its successor is unable to locate a qualified successor.

Investors wishing to receive registered shares may surrender their CP HOLDERS at any time (and pay any applicable fees) and receive the underlying securities represented by their CP HOLDERS, and then follow the procedures established by the issuers of each of the underlying securities to become the registered owner of those securities.

Reconstitution Events. The deposit agreement provides for distribution of the underlying securities as promptly as possible to investors in CP HOLDERS in the circumstances referred to in the Registration Statement as "reconstitution events." The reconstitution events will occur under the following circumstances:

(1) If any class of underlying securities ceases to be outstanding as a result of, or is surrendered by the depositary in connection with, a merger, consolidation or other corporate combination of its issuer, the depositary will distribute any securities received as consideration from the acquiring company unless the securities received are registered under Section 12 of the Act, are issued by a reporting issuer under Canadian securities laws, and are listed for trading on a national securities exchange in Canada and on either a national securities exchange in the United States or the NASDAQ National Market System. In that case, the securities received will be treated as additional underlying securities and shall be added to the classes and quantities of securities that must be deposited for issuance of CP HOLDERS.

(2) If any class of underlying securities is delisted from trading on its primary exchange or market in either the United States or Canada and is not listed for trading, as the case may be, on another national securities exchange in Canada or on either a national securities exchange in the United States or the NASDAQ National Market System, within five business days from the date of such delisting, the depositary will, to the extent lawful and feasible, distribute those underlying securities to the owners in proportion to their ownership of CP HOLDERS.

(3) If any class of underlying securities is no longer registered under Section 12 of the Act or if an issuer of underlying securities is no longer a reporting issuer under the Canadian securities laws, the depositary will, to the extent lawful and practicable, distribute the underlying securities of the company to the owners.

(4) If the Commission determines that an issuer of an underlying security is an investment company under the 1940 Act, and the depositary has actual knowledge of such Commission determination, then the depositary will, to the extent lawful and practicable, distribute the underlying securities of such issuer to the owners in proportion to their ownership of CP HOLDERS.

(5) If there is any other change in nominal value, change in par value, split-up, consolidation or any other reclassification of any underlying securities, or any recapitalization, reorganization, merger or consolidation or sale of assets affecting the issuer of any underlying securities in connection with which the depositary receives securities that are not registered under Section 12 of the Act, are not issued by a reporting issuer under Canadian securities laws and are not listed on a

national securities exchange in Canada and either a national securities exchange in the United States or through the NASDAQ National Market in connection with such event, the depositary will, to the extent lawful and practicable, distribute any securities so received by the depositary to the owners in proportion to their ownership of CP HOLDERS.

Cancellation of CP HOLDERS. The deposit agreement entitles holders of CP HOLDERS to surrender CP HOLDERS to the depositary and receive the underlying securities represented by those CP HOLDERS. The depositary will deliver the underlying securities to surrendering owners of CP HOLDERS as promptly as practicable. Merrill Lynch expects, absent unforeseeable difficulties or difficulties outside of the depositary's control, that the depositary will deliver the underlying securities to surrendering owners of CP HOLDERS within one business day of the business day they surrender their CP HOLDERS. In addition, if any fractional interests in underlying securities are represented by CP HOLDERS at the time of the surrender of CP HOLDERS, the depositary will deliver cash in lieu of such fractional interests, as described herein under "*Description of CP HOLDERS.*"

Withdrawal of underlying securities upon surrender of CP HOLDERS is also subject to the payment of applicable fees (including the payment to the depositary of a cancellation fee of up to \$0.10 per CP HOLDER surrendered), taxes or governmental charges, if any. Cancellation fees will be rounded up to the nearest 100 CP HOLDERS cancelled.

Termination of the Depositary. The depositary will terminate the deposit agreement by mailing notice of termination to the owners of CP HOLDERS if: (i) The depositary is notified that CP HOLDERS are no longer listed on a national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System and CP HOLDERS are not approved for listing on another national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System within five business days of their delisting; (ii) 60 days have passed after the depositary has delivered to Merrill Lynch a written notice of its election to resign and no successor has been appropriately appointed; or (iii) 75% of the owners of outstanding CP HOLDERS (other than Merrill Lynch or its affiliates) notify the depositary that they elect to terminate the deposit agreement.

Registration under the Act. To be included in CP HOLDERS, the underlying securities must always be registered under Section 12 of the Act; must be issued by a reporting issuer under Canadian securities laws; and each underlying security must be listed for trading on a national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System.

CP Shares are currently listed on the Exchange and The Toronto Stock Exchange (the "TSE") under the symbol "CP."

Full and complete information regarding CP HOLDERS, including risks associated with investing in CP HOLDERS, is provided in the Registration Statement.

Criteria for Initial and Continued Listing. CP HOLDERS will be subject to the Exchange's listing criteria for equities under Paragraph 703.19 of the Manual.

Merrill Lynch represented to the Exchange that CP HOLDERS will comply with the listing standards for equities set forth in Paragraph 703.19 of the Manual. Specifically:

- (i) There will be one million CP HOLDERS outstanding;
- (ii) There will be at least 400 holders of CP HOLDERS;
- (iii) CP HOLDERS will have a minimum life of one year; and
- (iv) CP HOLDERS will have a minimum market value of at least U.S. \$4 million.

CP HOLDERS will be subject to the Exchange's continued listing criteria for specialized securities pursuant to Paragraph 802.01D of the Manual. Accordingly, the Exchange will consider suspending and delisting CP HOLDERS from trading under the following circumstances:

- (i) If the number of publicly-held CP HOLDERS is less than 100,000;
- (ii) If the number of holders of CP HOLDERS is less than 100;
- (iii) If CP HOLDERS will have the aggregate market value of less than U.S. \$1 million;
- (iv) The issuer of any underlying security is no longer subject to the reporting obligations of the Exchange Act; or
- (v) If any underlying security no longer trades in a market in which there is last sale reporting.

As noted above, each underlying security will be registered under Section 12 of the Act. Each of the successor companies is expected to be listed on the Exchange and the TSE. As such, information regarding the trading history of these companies will be

available to the same extent as any other equity security that is listed on a national securities exchange and registered under Section 12 of the Act. Going forward, trading history on CP HOLDERS will be available on a similar basis as any other exchange-traded security (e.g., Bloomberg, Reuters, ILX).

Because the listing of CP HOLDERS is expected to precede listing of the underlying securities, it is impossible to provide historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security. However, information is available in respect of CP Shares (which, as described above, will initially be represented by CP HOLDERS) indicating that there is a broad and liquid market for CP Shares.⁹ In addition, PanCanadian Petroleum Limited, one of the successor companies to CP, currently is listed on the TSE under the symbol "PCP." Information available from the TSE indicates that there is also a broad and liquid market for PanCanadian Petroleum Limited.¹⁰ Based on this information, the Exchange anticipates that each of the underlying securities will have an average daily trading volume and U.S. dollar value of shares traded adequate to support listing and trading in CP HOLDERS.

The Exchange will, prior to trading CP HOLDERS, distribute a circular to the membership, as described herein under "Disclosure and Dissemination of Information."

Exchange Rules Applicable to Trading of CP HOLDERS. Since CP HOLDERS will be deemed equity securities for the purpose of Paragraph 703.19 of the Manual, the NYSE's existing equity floor trading rules will apply to the trading of CP HOLDERS. First, pursuant to NYSE Rule 405, 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 CP HOLDERS.¹¹ Second, CP HOLDERS will be subject to the equity margin rules of the Exchange. Third, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to

transactions in CP HOLDERS. Fourth, the Exchange's surveillance procedures for CP HOLDERS will be similar to those used for investment company units and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

Disclosure and Dissemination of Information. Merrill Lynch will deliver a prospectus to each holder of CP Shares in connection with the solicitation for deposits of CP Shares in connection with the initial issuance of CP HOLDERS. After the initial issuance of CP HOLDERS, the depository will deliver a prospectus, and any applicable supplements, to depositors of CP Shares or the shares of the successor companies upon such depositor's surrender of the requisite amount of CP Shares or shares of the successor companies to create CP HOLDERS. The Exchange will note in its circular to membership (as described below) that the Commission staff takes the position that under the Securities Act of 1933 and rules thereunder,¹² member organizations that acquire CP HOLDERS from the depository for resale to customers must deliver a prospectus to such customers.

Pursuant to Paragraph 703.19, the Exchange will, prior to trading CP HOLDERS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) with handling transactions in CP HOLDERS and highlighting the unique characteristics and risks of CP HOLDERS. In addition, the circular will advise members of Exchange about policies relating to trading halts in CP HOLDERS. Specifically, the circular will inform that the Exchange may consider factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Based on the foregoing, the Exchange finds it appropriate to approve CP HOLDERS for listing and trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹³ of the Act, 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 remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 proposed rule change between the Commission and any person, other than 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-NYSE-2001-35 and should be submitted by September 28, 2001.

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

A. Generally

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).¹⁵ Specifically, the Commission finds that the proposal to list and trade CP HOLDERS will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should

⁹During the sixty-day trading period of June 4, 2001 to August 27, 2001, the average daily trading volume of CP Shares was 767,832 shares (on the NYSE) and 1,393,024 shares (on the TSE), while the average daily U.S. dollar value of CP Shares traded was U.S. \$29,661,350.16 (on the NYSE) and U.S. \$53,911,421.82 (on the TSE).

¹⁰During the sixty-day trading period of June 1, 2001 to August 27, 2001, the average daily trading volume on the TSE of PCP was 609,249 shares, while the average daily U.S. dollar value of PCP traded was U.S. \$17,688,326.17.

¹¹NYSE Rule 405 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 15 U.S.C. 77e; 17 CFR 230.174.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(5).

advance the public interest by providing investors with increased flexibility in satisfying their investment needs by providing current holders of CP Shares with a single exchange traded instrument representing shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization, and allowing subsequent investors to purchase and sell such instruments in the secondary market. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁶

The Commission believes that CP HOLDERS will provide investors with an alternative to trading, on an individual basis, shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization, and will give investors the ability to trade a single exchange traded instrument representing these companies' common stock continuously throughout the business day in secondary market transactions at negotiated prices. CP HOLDERS will allow investors to: (i) Respond quickly to changes in the overall securities markets generally and for the industry represented by the underlying securities; (ii) trade, at a price disseminated on a continuous basis, a single security representing five securities that the investor owns beneficially; (iii) engage in hedging strategies similar to those used by institutional investors; (iv) reduce transaction costs for trading a portfolio of securities; and (v) retain beneficial ownership of the securities underlying the CP HOLDERS.

Although CP HOLDERS are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived from and based upon the value of the underlying securities. Accordingly, the level of risk involved in the purchase or sale of CP HOLDERS is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for CP HOLDERS is based upon the aggregate value of the five underlying securities represented

by CP HOLDERS. Nevertheless, the Commission believes that the unique nature of CP HOLDERS, related to, among other things, the lack of historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security, raises, certain product design, disclosure, trading, and other issues that must be addressed.

B. Characteristics of CP HOLDERS

The Exchange has represented that each underlying security will be registered under Section 12 of the Exchange Act. Each of the successor companies is expected to be listed on the Exchange and the TSE. Consequently, information regarding the trading history of these companies will be available to the same extent as any other equity security that is listed on a national securities exchange and registered under Section 12 of the Exchange Act and, going forward, trading history on CP HOLDERS will be available on a similar basis as any other exchange-traded security (e.g., Bloomberg, Reuters, ILX).

Additionally, the Exchange has represented and the Commission notes that, because the listing of CP HOLDERS is expected to precede listing of the underlying securities, it is impossible to provide historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security. The available information regarding CP Shares (which is the only security that will initially be represented by CP HOLDERS) shows that there is a broad and liquid market for CP Shares.¹⁷ In addition, the Exchange has highlighted the breadth and liquidity of the market for Pan Canadian Petroleum Limited, one of the successor companies to CP, currently is listed on the TSE under the symbol "PCP."¹⁸ Based on this information and the Exchange's assertion that it anticipates that each of the underlying securities will have an average daily trading volume and U.S. dollar value of shares traded adequate to support listing and trading in CP HOLDERS, the Commission believes that this information about the liquidity of the CP Shares market is a sufficient proxy for the expected liquidity of the future market for CP HOLDERS.

As represented by the Exchange above, CP HOLDERS will represent an investor's undivided beneficial ownership of the underlying securities. Owners of CP HOLDERS will have the same rights and privileges as they would have if they owned the

underlying securities outside of CP HOLDERS. These include the right to instruct the depositary to vote the underlying securities, to receive any dividends and other distributions on the underlying securities that are declared and paid to the depositary by an issuer of an underlying security, the right to receive reports and other information distributed by the issuer in respect of the underlying securities, the right to pledge CP HOLDERS and the right to surrender CP HOLDERS to receive the underlying securities. As beneficial holders of the underlying securities, investors will receive reports and communications, including management proxy circulars, in the same manner as if such investors beneficially owned their underlying securities outside of CP HOLDERS from the broker through which they hold their CP HOLDERS. CP HOLDERS also are subject to certain reconstitution events that are set out in the depositary agreement.

C. Listing and Trading of CP HOLDERS

The Commission finds that the NYSE's proposal contains adequate rules and procedures to govern the trading of CP HOLDERS. CP HOLDERS are equity securities that will be subject to the full panoply of NYSE rules governing the trading of equity securities on the NYSE, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.

In addition, the NYSE has developed specific listing and delisting criteria for CP HOLDERS that will help to ensure that a minimum level of liquidity will exist for CP HOLDERS to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the NYSE to consider the suspension of trading and the delisting of a CP HOLDERS if an event occurred that made further dealings in such securities inadvisable. This will give the NYSE flexibility to delist CP HOLDERS if circumstances warrant such action.

Moreover, in approving this approval, the Commission notes the Exchange's belief that CP HOLDERS will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a CP HOLDERS comparable to the overall value of the deposited securities.

Finally, the NYSE has developed surveillance procedures for CP HOLDERS

¹⁶ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ See *supra*, footnote 9.

¹⁸ See *supra*, footnote 10.

that incorporate and rely upon existing NYSE surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and CP HOLDERS. Accordingly, the Commission believes that the rules governing the trading of CP HOLDERS provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

D. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading CP HOLDERS. The prospectus will address the special characteristics of CP HOLDERS, including a statement regarding its redeemability and method of creation. The Commission notes that all original investors in CP HOLDERS who obtain CP HOLDERS by surrendering their CP Shares will receive a prospectus. Finally, the Securities Act of 1933 and rules thereunder¹⁹ require all broker-dealers who acquire CP HOLDERS from the depository for resale to customers to deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of CP HOLDERS, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in CP HOLDERS. The circular also will inform members of Exchange policies regarding trading halts in CP HOLDERS.

E. Scope of the Commission's Order

The Commission is approving in general the NYSE's proposed listing standards for CP HOLDERS and, specifically, the listing of the CP HOLDERS described herein. The Exchange has represented that the unique nature of its proposed CP HOLDERS product makes the promulgation of generic listing standards impractical. The Commission specifically notes that CP HOLDERS arise from a corporate reorganization, that there is a broad and liquid market for CP shares, and that the five underlying securities that result from this corporate reorganization are registered under Section 12 of the Act. Consequently, the Exchange has incorporated the listing standards for equities set forth in

Paragraph 703.19 of the Manual, as well as the continued listing criteria for specialized securities pursuant to Paragraph 802.01D of the Manual, as the appropriate listing standards for CP HOLDERS. Although the Commission finds that these standards satisfy Section 6(b)(5) of the Act with respect to CP HOLDERS, the Commission specifically notes that this approval order, which incorporates the listing standards for equities in Paragraph 703.19, is limited to this unique product. Other similarly structured products will require separate review by the Commission prior to being traded on the Exchange.

F. Accelerated Approval

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** pursuant to Section 19(b)(2) of the Act.²⁰ The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the NYSE filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility and convenience afforded by this new instrument by listing and trading them as soon as possible. The Commission notes that the Exchange has indicated that it will have adequate surveillance procedures in place to monitor the trading of this new HOLDERS product. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²¹ to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NYSE-2001-35) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-22510 Filed 9-6-01 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC-14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC-14) will hold a meeting on September 24, 2001, from 9 a.m. to 4 p.m. The meeting will be opened to the public from 9 a.m. to 10 a.m. and again from 10:45 a.m. to 4 p.m. The meeting will be closed to the public from 10 a.m. to 10:45 a.m.

DATES: The meeting is scheduled for September 24, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 4830, of the Department of Commerce, located at 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Pam Wilbur, (principal contacts), at (202) 482-4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230 or myself on (202) 395-6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following topics will be addressed:

- Briefing by the new Assistant Secretary for Trade Development, Linda Conlin, on her goals and on Trade Promotion Authority.
- Discussion of the APEC SME Ministerial.
- Committee Business
- Update on SBA programs
- Discussion of the TPCC benchmarking initiative.
- Discussion of new initiatives for minority and underserved outreach, the closing of the MBDO office, and status of the District Export Council program.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01-22544 Filed 9-6-01; 8:45 am]

BILLING CODE 3190-01-M

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹⁹ See *supra*, footnote 12.