

creating their corporate action message. Regardless of whether or not custodians use information supplied by DTC, custodians remain responsible for the content of the messages. Using event-specific templates with standardized election options, each custodian will provide or validate the terms and conditions, then add account and position information for each customer. GCAH will route these announcements, along with those generated by other custodians, to the specified investment managers. DTC will ensure that mandatory fields are completed but will not edit, change, or validate the terms and conditions of the announcements that remain unique to the custodians.

Each investment manager will receive all of its custodians' (and, where available, DTC's) announcements for a single event on a single display. Investment managers will select their election option for voluntary offers. Investment managers will have the opportunity to make their election decisions for all accounts, for accounts handled by individual custodians, or by customer account, and their election decisions will be sent back to the custodians using GCAH. Investment managers will receive status updates reflecting the state of the message (e.g., unread).

GCAH contains built-in, real-time status flow monitoring that keeps all parties informed of a transaction's status at all times, with each party seeing changing status indicators that effectively track the progressive stages in the communication process. The GCAH home page includes summary alerts to highlight pending transactions and deadlines with additional protection provided by e-mail alert built into the system that also provide warning messages well in advance of transaction deadlines. Each party, therefore, sees both status indicators and affirmative messages warning of any problem.

Users of GCAH who are not DTC participants will sign an agreement substantially in the form of the agreement attached hereto as Exhibit B to DTC's filing. "Participant Operating Procedures," containing more detailed information about GCAH, are attached hereto as Exhibit C to DTC's filing.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it will increase the speed of data transmission between investment managers and custodians, thereby promoting efficiencies in corporate actions matters.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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, in the public interest, and for the protection of investors.

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

Written comments from DTC Participants or others have not been solicited or received on the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register**, or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-04 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45020; File No. SR-NASD-2001-80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

November 5, 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 November 2, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to extend through January 14, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110-2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on November 5, 2001. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through January 14, 2002. Nasdaq requests that the

³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)⁵ of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,⁶ the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvements required is \$0.01; and

(2) For customer limit orders priced outside the best inside market displayed

in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01).⁷

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on November 5, 2001. Nasdaq selected the termination date of its Manning Interpretation pilot to coincide with deadline for submitting rule filings related to decimalization contained in the Commission's June 8th, 2000 Order directing the submission of a Decimals Implementation Plan for the Equities and Options Markets.⁸

Subsequent to the Interpretation pilot's approval, the Commission extended the deadline for the submission of decimal-related rule filings to January 14, 2002.⁹ As such, Nasdaq has determined to seek an extension of its current Manning Interpretation pilot until that date. Nasdaq believes that such an extension will provide needed additional time for Nasdaq and the Commission to analyze data and the many complex issues related to customer limit order protection in a decimalized Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act¹⁰ in that it is designed to: (1) Promote just and equitable principles of trades; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

⁷ Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is \$0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

⁸ See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

⁹ See Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001), see also Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001) (order extending the deadline for submission of decimal-related rule filings to November 5, 2001).

¹⁰ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organizations' Statement on Burden on Competition

Nasdaq 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. 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 may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)-(6)¹³ and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 14, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.¹⁴

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110-2—Trading Ahead of Customer Limit Order).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 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 Nasdaq. All submissions should refer to file number SR-NASD-2001-08 and should be submitted by December 4, 2001.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45024; File No. SR-NASD-2001-79]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Enhanced Return Notes Linked to the Nasdaq 100-Index

November 5, 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 October 31, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

Nasdaq proposes to list and trade Enhanced Return Notes Linked to the Nasdaq-100 Index (the "Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 NASD Rule 4420(f), "Other Securities," Nasdaq may approve for listing and trading innovative securities that cannot be categorized readily under traditional listing guidelines.³ Nasdaq proposes to list for trading the Notes, as described below, under NASD Rule 4420(f).

Description of the Notes

The Notes⁴ are a series of senior debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units ("Units"), with each Unit representing a single Note. The original public offering price will be \$10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the

³ See Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (order approving File No. SR-NASD-93-15) ("1993 Order").

⁴ For a detailed description of the Notes, including the risks associated with investing in the Notes, see the registration statement Merrill Lynch filed with the Commission (File No. 333-52822).

option of any beneficial owner before maturity in February 2003.⁵

At maturity, if the value of the Nasdaq-100 Index ("Index")⁶ has increased, a beneficial owner will be entitled to receive a payment on the Notes based on twice the amount of that percentage increase, not to exceed a maximum payment of \$14.00 per Unit (the "Capped Value").⁷ Thus, the Notes provide investors with an opportunity to obtain leveraged returns based on the Index. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity, a beneficial owner will receive less, and possibly significantly less, than the original public offering price of \$10 per Unit.

The payment that a beneficial owner will be entitled to receive (the "Redemption Amount") depends entirely on the relation of the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes (the "Ending Value") and the closing value of the Index on the date the Notes are priced for initial sale to the public (the "Starting Value").

⁵ The maturity date will be determined on the day the Notes are priced. After Nasdaq filed its proposal, Merrill Lynch revised the terms of the Notes to establish a maturity date of February 2003, rather than January 2003, and to provide for a maximum payment on the Notes of \$14.00 per Unit. Telephone conversation between John Nachmann, Senior Attorney, Nasdaq, and Yvonne Fraticelli, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on November 5, 2001.

⁶ The Index is a modified capitalization-weighted index of 100 of the largest non-financial companies listed on The Nasdaq National Market tier of Nasdaq. The Index constitutes a broadly diversified segment of the largest and most actively traded securities listed on Nasdaq and includes companies across a variety of major industry groups. To limit domination of the Index by a few large stocks, the Index is calculated under a "modified capitalization-weighted" methodology. This capitalization weight distribution is evaluated on a quarterly basis and is rebalanced if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization security must be less than or equal to 24.0%, and (2) the "collective weight" of those Index component securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%. Index securities are ranked by market value and are evaluated annually to determine which securities will be included in the Index. Moreover, if at any time during the year an Index security is no longer trading on Nasdaq, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index that meets the Index eligibility criteria. For a detailed description of the Index, see the registration statement filed by Merrill Lynch with the Commission (File No. 333-52822).

⁷ The final Capped Value will be determined on the day the Notes are priced.