

or capital that a member must maintain for a large position held by itself or by its customer. Further, the Amex, under its rules, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Amex Rule 906(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help Amex to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged position, as provided under its rules. In this regard, the Commission believes the Amex's adoption of Commentary .11 under Amex Rule 906 is appropriate and will reiterate its authority under Amex Rule 462 to require additional margin for under-hedged positions.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.⁸

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date

of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Amex rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,⁹ to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-AMEX-2001-42), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-1903 Filed 1-24-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45305; File No. SR-Amex-2001-108]

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

January 17, 2002.

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 December 20, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Amex proposes to list and trade notes, the return on which is based upon the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index is based upon the blended performance of the Amex Biotechnology index (the "Biotech Index") and the Amex Pharmaceutical Index (the "Pharmaceutical Index") (each, an "Underlying Index" and together, the "Underlying Indices"), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Biotech-Pharmaceutical Index, and the Biotech-Pharmaceutical Index will be rebalanced annually to reset the weighting of the Underlying Indices to 50% each.

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

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in

⁸ Of course, the Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ should any unanticipated adverse market effects develop due to the increased limits.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.³ The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Biotech-Pharmaceutical Index (the "Notes"). The Biotech-Pharmaceutical Index will be determined, calculated, and maintained solely by the Amex.⁴

The Notes will conform to the initial listing guidelines under Section 107⁵ and continued listing guidelines under Sections 1001–1003⁶ of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch") that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to

³ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁴ Subject to the criteria described in the prospectus supplement regarding the construction of the Biotech-Pharmaceutical Index, the Exchange has sole discretion regarding changes to the Biotech-Pharmaceutical Index.

⁵ The initial listing standards for Industrial 15 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.

⁶ 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 Industrial 15 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.

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 Biotech-Pharmaceutical Index on the date on which the issuer prices the Notes issue for the initial offering to the public. The "Ending Index Value" is the value of the Biotech-Pharmaceutical 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 Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in these securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. biotechnology and pharmaceutical industries and who are willing to forgo market interest payments on the Notes during such term.

The Biotech-Pharmaceutical Index is based upon the combined performance of the Biotech Index and the Pharmaceutical Index. The Biotech Index is designed to measure the performance of a cross section of companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. The Biotech Index is an equal-dollar weighted index, designed to ensure that each of its component securities is represented in approximate equal dollar value. Equal-dollar weighting was established by designating the number of shares of each component security that represented approximately \$10,000 in market value, based on closing prices on October 18, 1991.⁷ The aggregate value of the stocks was reduced by a divisor⁸ to establish a Biotech Index benchmark value of 200.00. To ensure

⁷ For example, a stock that closed at \$20 per share would be represented in the Biotech Index by 500 shares for a total market value of \$10,000.

⁸ The divisor for the Biotech Index was initially set to 750.1506 on October 18, 1991.

that each component stock continues to represent approximate equal market value, adjustments are made quarterly after the close of trading on the third Friday of January, April, July and October. As of December 13, 2001, the market capitalization of the securities included in the Biotech Index ranged from a high of \$59.3 billion to a low of \$1.7 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 8.9 million shares to a low of .531 million shares.⁹ The Commission has previously approved the listing and trading of options on the Biotech Index.¹⁰

The Pharmaceutical Index is designed to represent a cross section of widely held, highly capitalized companies involved in various phases of the pharmaceutical industry. The Pharmaceutical Index is a market-value (capitalization) weighted index reflecting the total market value of fifteen stocks.¹¹ The Pharmaceutical Index was developed with a base value of 200.00 as of July 31, 1999. A 2-for-1 split of the Pharmaceutical Index occurred on March 23, 1999. The securities included in the Pharmaceutical Index are listed on the Amex, New York Stock Exchange, Inc. or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System ("Nasdaq") and reported National Market System securities. As of December 13, 2001, the market capitalization of the securities included in the Pharmaceutical Index ranged from a high of \$247.7 billion to a low of \$3.9 billion. The average daily trading

⁹ As of December 13, 2001, the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); COR Therapeutics, Inc. (CORR); Genentech Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Immunex Corporation (IMNX); Medimmune Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

¹⁰ See Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options ("LEAPS") based on the Biotech Index and a reduced value Biotech Index) ("Biotech LEAPS Order").

¹¹ As of December 13, 2001, the Pharmaceutical Index was composed of shares of the following companies: Abbott Laboratories (ABT); American Home Products Corporation (AHP); Amgen, Inc. (AMGN); AstraZeneca PLC (AZN); Bristol-Myers Squibb Company (BMY); Forest Laboratories Inc. (FRX); Glaxo Smith Kline Plc (GSK); IVAX Corporation (IVX); Johnson & Johnson (JNJ); King Pharmaceuticals, Inc. (KG); Lilly (Eli) & Company (LLY); Merck & Company, Inc. (MRK); Pfizer, Inc. (PFE); Pharmacia Corporation (PHA) and Schering-Plough Corporation (SGP).

volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 10.6 million shares to a low of .458 million shares. The Commission has previously approved the listing and trading of options on the Pharmaceutical Index.¹²

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Biotech Index and Pharmaceutical Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Biotech-Pharmaceutical Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Biotech-Pharmaceutical Index at any time will equal: (1) The sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.¹³ Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index 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 respective Underlying Index in the Biotech-Pharmaceutical Index. Thus, the value

of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Biotech-Pharmaceutical Index was initially calculated and set to 100) the Biotech-Pharmaceutical Index will be rebalanced so that each Underlying Index will represent approximately 50% of the value of the Biotech-Pharmaceutical Index. To effectuate this, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage for each index, given the closing value of each index on the anniversary date, so that each index represents an equal percentage of the Biotech-Pharmaceutical Index value at the close of business on such anniversary date. For example, if the Biotech-Pharmaceutical Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Biotech-Pharmaceutical Index value was 80, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Biotech-Pharmaceutical Index and, similar to other stock index values published by the Exchange, the value of the Biotech-Pharmaceutical Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.¹⁴ Second, the Notes

will be subject to the equity margin rules of the Exchange.¹⁵ Third, the Exchange will, prior to trading the 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. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.¹⁶

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹⁷ in general and furthers the objectives of Section 6(b)(5)¹⁸ 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.

every customer and to every order or accounted accepted.

¹⁵ See Amex Rule 462 and Section 107B of the Company Guide.

¹⁶ Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹² See Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992) (approving the listing and trading of long-term options ("LEAPS") based on the Pharmaceutical Index and a reduced value Pharmaceutical Index) ("Pharmaceutical LEAPS Order").

¹³ At the end of each day, the Biotech-Pharmaceutical Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Biotech-Pharmaceutical Index will reduce the total return to investors upon the 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.

¹⁴ Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to

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

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

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

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

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-108 and should be submitted by February 15, 2002.

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.¹⁹ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.²⁰ Accordingly, the Commission

finds that the listing and trading of the Notes based on the Biotech-Pharmaceutical Index 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.²¹

As described more fully above, at maturity, or upon redemption, the holder of a Note will receive an amount based upon the percentage change in the value of the Biotech-Pharmaceutical Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. biotechnology and pharmaceutical industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not leveraged, non-principal protected instruments. The Notes are debt instruments whose price will still be derived and based upon the value of the Biotech-Pharmaceutical Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the

Index) (File No. SR-Amex-2001-40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR-Amex-2001-39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001), (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR-Amex-2001-28); 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); 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).

²¹ 15 U.S.C. 78f(b)(5). 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).

Notes.²² Thus, if the Biotech-Pharmaceutical Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the 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 the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the 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 the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have at least \$4 million in market value.²³ In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Biotech-Pharmaceutical Index, will be publicly available.²⁴

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary

²² The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date.

²³ See Company Guide Section 107A.

²⁴ The companies that comprise the Biotech-Pharmaceutical Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

¹⁹ *Id.*

²⁰ See Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR-Amex-2001-91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings

providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,²⁵ the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Biotech-Pharmaceutical Index or raise manipulative concerns. As discussed more fully above, the Biotech-Pharmaceutical Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Biotech-Pharmaceutical Index, initially, and immediately following each annual rebalancing of the Biotech-Pharmaceutical Index. In addition, the Biotech Index's equal-dollar weighting and the Pharmaceutical Index's market-value (capitalization) weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.²⁶ In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.²⁷ In addition, the

²⁵ See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

²⁶ See Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

²⁷ Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. See Biotech LEAPS

Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Biotech-Pharmaceutical 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 Biotech-Pharmaceutical Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.²⁸ The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act²⁹ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-Amex-2001-108), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-1905 Filed 1-24-02; 8:45 am]

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Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

²⁸ See *supra* note 20.

²⁹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45309; File No. SR-CBOE-2001-44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Increasing Position and Exercise Limits on QQQ Options

January 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange act of 1934,¹ and rule 19b-4 thereunder,² notice is hereby given that on August 9, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. On December 19, 2001, the CBOE filed Amendment No. 1 to the proposed rule change,³ and on January 14, 2002, the CBOE filed Amendment No. 2 to the proposed rule change.⁴

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The Exchange hereby proposes to increase position and exercise limits for Nasdaq-100 Index Tracking StockSM ("QQQ") options. The Exchange represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

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 CBOE included statements concerning the purpose of and basis for the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 supercedes and replaces the original 19b-4 filing in its entirety.

⁴ Amendment No. 2 removes language added to Rule 4.13(b) by the proposed rule change that increased the reporting requirement level specified in Rule 4.13 for QQQ options.