the acquiring fund and Franklin Advisers, Inc., investment adviser to applicant and the acquiring fund.

Filing Dates: The application was filed on August 22, 2002, and amended on October 29, 2002.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

North Carolina Daily Municipal Income Fund, Inc. [File No. 811–6344]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2002, applicant made a liquidating distribution to its sole shareholder based on net asset value. Expenses of $4,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 9, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

Alliance International Fund [File No. 811–3130]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 23, 2002, applicant transferred its assets to AllianceBernstein International Value Fund of AllianceBernstein Trust, based on net asset value. Expenses of $324,020 incurred in connection with the reorganization were paid by applicant and Alliance Capital Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on October 9, 2002.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30195 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46883; File No. SR–Amex–2002–88]

Self-Regulatory Organizations; the American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones Industrial Average (''DJIA'')

November 21, 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 November 1, 2002, 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 Exchange proposes to list and trade under section 107A of the Amex Company Guide (''Company Guide''), notes linked to the performance of the Dow Jones Industrial Average (the ''DJIA'' or the ''Market Recovery Notes'' or ''Notes'').

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 the 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 Exchange proposes to list for trading under section 107A of the Company Guide notes, the performance which is linked to the DJIA (the ''Market Recovery Notes'' or ''Notes'').[4] The DJIA is determined, calculated and maintained solely by Dow Jones.[5] The Notes will provide for a multiplier of any positive performance of the DJIA during such term subject to a maximum payment amount or ceiling.

The Notes will initially conform to the listing guidelines under section 107A[6] and continued listing guidelines under sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch. The Notes will have a term of not less than one, nor more, than

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

[2] 17 CFR 240.19b–4.

[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] Merrill Lynch & Co., Inc. (''Merrill Lynch'') and Dow Jones & Co., Inc. (''Dow Jones'') have entered into a non-exclusive license agreement providing for the use of the DJIA by Merrill Lynch and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

[5] The DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal (''WSJ'') as representative of the broad market of U.S. industry. A price-weighted index refers to an index that assigns weights to component stocks based on the price per share rather than total market capitalization of such component stock. The corporations represented in the DJIA tend to be leaders within their respective industries and their stocks are typically widely held by individuals and institutional investors. Changes in the composition of the DJIA are made solely by the editors of the WSJ. In addition, changes to the common stocks included in the DJIA tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. However, over time, changes are made to more accurately represent the broad market of U.S. industry. In choosing a new corporation for the DJIA, the editors of the WSJ focus on the leading industrial companies with a successful history of growth and wide interest among investors. Dow Jones, publisher of the WSJ, is not affiliated with Merrill Lynch and has not participated in any way in the creation of the Notes. The number of common stocks in the DJIA has remained at 30 since 1928, and, in an effort to maintain continuity, the constituent corporations represented in the DJIA have been changed on a relatively infrequent basis.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

10 years. Merrill Lynch will issue the Notes in denominations of whole units (a ''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the DJIA. At maturity, if the value of the DJIA has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three times the amount of that percentage increase, not to exceed a maximum payment (the ''Capped Value'') to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the DJIA 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 DJIA on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 + \left(\$30 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right) \text{not to exceed the Capped}$$

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the DJIA. The Notes are designed for investors who want to participate or gain exposure to the DJIA, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The SEC has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the DJIA.[8]

As of October 29, 2002, the market capitalization of the securities included in the DJIA ranged from a high of $279.3 billion to a low of $10 billion. The average daily trading volume for these same securities for the last six months, as of the same date, ranged from a high of 57.3 million shares to a low of 2 million shares.

Because the Notes are linked to a portfolio of equity securities, 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.[9] Second, the Notes will be subject to the equity margin rules of the Exchange.[10] 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. In addition, Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange 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(b) of the Act, [11] in general, and furthers the objectives of section 6(b)(5),[12] 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 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

[8] *See* Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDS℠ Trust Units, portfolio depositary receipts based on the DJIA).

[9] Amex rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[10] *See* Amex rule 462 and section 107B of the Company Guide.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 the File No. SR-Amex-2002 88 and should be submitted by December 20, 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.[13] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[14] Accordingly, the Commission finds that the listing and trading of the Notes based on the DJIA is consistent with the Act and will promote just and equity 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.[15]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the DJIA. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the DJIA has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the DJIA, subject to a cap.

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 that 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 the Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees.

In approving the product, the Commission recognizes that the DJIA is a price-weighted index comprised of 30 component common stocks, representing a broad market of the U.S. industry, with each stock affecting the DJIA in proportion to its market price. The Commission notes that the changes in the composition of the DJIA are made solely by the editors of the WSJ. The changes to these common stocks tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. Further, the Commission notes that the DJIA has remained at 30 since 1928. As of October 29, 2002, the 30 stocks in the DJIA ranged in capitalization from a high of $279.3 billion to a low of $10 billion. In addition, the average daily trading volume for the component stocks over the six-month period from May 2002 to October 2002 ranged from a high of 57.3 million shares to a low of 2 million shares. Given the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA, should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the DJIA are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending 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 a market value of at least $4 million.[16] In any event, financial information regarding Merrill Lynch, in addition to the information on the 30 common stocks comprising the DJIA, will be publicly available.[17]

The Commission also has a systemic concern, however, that a broker-dealer such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[18] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission notes that the value of the DJIA will be disseminated at least once every 15 seconds throughout the trading day. The Commission believes that providing access to the value of the DJIA at least once every 15 seconds throughout the

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release Nos. 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select European 50 Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Oil and Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Biotech-Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); and 44342 (May 23, 2001); 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

[15] 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).

[16] *See* Company Guide section 107A.

[17] The SEC notes that the 30 component stocks that comprise the DJIA are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[18] *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).

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 30th 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.[19] 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 the 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 Act [20] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR-Amex-2002–88), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30198 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

[19] *See supra* note 14.

[20] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46882; File No. SR–Amex–2002–76]

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

November 21, 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 September 20, 2002, 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.

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

The Amex proposes to approve for listing and trading notes, the return on which is based upon the performance of an equal-dollar weighted portfolio of securities representing the fifty stocks with the largest market capitalization in the S&P 500 Composite Stock Price Index (the ''S&P 500 Index'' or ''Underlying Index''), as reduced by an adjustment factor as described below (the ''Select Fifty Index'' or ''Index'').[3]

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

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

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

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Select Fifty Index. The Select Fifty Index will be determined, calculated and maintained solely by the Amex.[5]

The Notes will initially conform to the listing guidelines under Section 107A [6] and continued listing guidelines under Sections 1001–1003 [7] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch''). The Notes will have a term of not less than one, nor more than ten years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption

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

[2] 17 CFR 240.19b-4.

[3] As of September 3, 2002 the portfolio of securities comprising the Select Fifty Index consists of: Abbott Laboratories; American Express Company; American International Group, Inc.; Amgen Inc.; Anheuser-Busch Companies, Inc.; AOL Time Warner Inc.; AT&T Corp.; Bank of America Corporation; Bank One Corporation; Bellsouth Corporation; Bristol-Meyers Squibb Company; ChevronTexaco Corporation; Cisco Systems, Inc.; Citigroup Inc.; The Coca-Cola Company; Dell Computer Corporation; E.I. du Pont de Nemours and Company; Eli Lilly and Company; Exxon Mobil Corporation; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association; Fifth Third Bancorp; General Electric Company; The Goldman Sachs Group, Inc.; Hewlett-Packard Company; The Home Depot, Inc.; International Business Machines Corporation; Intel Corporation; J.P. Morgan Chase & Co.; Johnson & Johnson; Medtronic, Inc.; Merck & Co., Inc.; Microsoft Corporation; Minnesota Mining and Manufacturing Company; Morgan Stanley, Dean Witter, Discover & Co.; Oracle Corporation; PepsiCo, Inc.; Pfizer Inc.; Pharmacia Corporation; Philip Morris Companies Inc.; The Procter & Gamble Company; SBC Communications Inc.; Texas Instruments Incorporated; U.S. Bancorp; Verizon Communications Inc.; Viacom Inc.; Wachovia Corporation; Wal-Mart Stores, Inc.; Wells Fargo & Company; and Wyeth.

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

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

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.