

NFT (each a "Plan" and, collectively, the "Plans"), providing for the transfer of all, of the assets of each of Peachtree Equity Fund, Peachtree Bond Fund, Peachtree Georgia Tax-Free Income Fund, Peachtree Government Money Market Fund, and Peachtree Prime Money Market Fund to Nations Capital Growth Fund, Nations Strategic Fixed Income Fund, Nations Georgia Intermediate Municipal Fund, Nations Government Money Market Fund, and Nations Prime Fund, respectively, in exchange for Primary A Shares of each corresponding Acquiring Fund. The aggregate net asset value of Acquiring Fund shares to be issued to shareholders of an Acquired Fund will equal the value of the aggregate net assets of the Acquired Fund as of the close of business on the business day immediately prior to the closing (the "Valuation Date"). Primary A Shares of the Acquiring Funds will be distributed *pro rata* to shareholders of each Acquired Fund in liquidation of the Acquired Fund, and each of the Acquired Funds, and Peachtree, will be dissolved.

8. The board of directors of NFI and the board of trustees of NFT, including the disinterested directors/trustees, considered and unanimously approved each Plan on January 18, 1996. The board of trustees of Peachtree (together with the directors/trustees of NFI and NFT, the "Boards"), including the disinterested trustees, considered and unanimously approved the Plan on February 19, 1996. Each of the Boards has determined that participation in the reorganization is in the best interests of each of the Acquired Funds and the Acquiring Funds, and that the interests of the shareholders of the Acquiring Funds and the Acquiring Funds will not be diluted as a result of the reorganization.

9. Each Board based its decision to approve the reorganization on a number of factors, including: (a) The compatibility of each Acquired Fund's investment objective, policies and restrictions with those of its corresponding Acquiring Fund; (b) the terms and conditions of the reorganizations and whether they would result in a dilution of the existing shareholders' interests; (c) the conditioning of the reorganizations on the receipts of a legal opinion confirming the absence of any adverse federal tax consequences to the Acquired Funds or their shareholders; (d) the similarities between the Acquired Funds' and the Acquiring Funds' respective distribution, administrative, transfer agency, shareholder service and custody

arrangements; (e) the potential expense savings and benefits that could result from combining the assets and operations of the Acquiring Funds and the Acquiring Funds; and (f) information regarding fees and expenses of the Acquired Funds and the Acquiring Funds.

10. Applicants anticipate that special meetings of shareholders of the Acquired Funds will be held on or about September 23, 1996, and, subject to shareholder approval, the reorganizations will be completed on or about September 30, 1996. The registration statements were filed with the SEC on July 3, 1996. Applicants also anticipate that the combined prospectus/proxy statements will be mailed to shareholders of the Acquired Funds after the registration statement becomes effective, on or about August 2, 1996.

11. The expenses incurred in connection with entering into and carrying out the provisions of the Plans will be borne by NationsBank, NBAI, or Stephens.

12. Applicants agree not to make any material changes to the Plans that affect representations in the application without the prior approval of the SEC.

Applicant's Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, in pertinent part, (a) any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are owned, controlled, or held with power to vote by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser thereof.

3. Rule 17a-8 under the Act exempts from section 17(a) mergers,

consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors/trustees and/or common officers provided that certain conditions are satisfied.

4. The reorganization may not be exempt from the prohibitions of section 17(a) pursuant to rule 17a-8 because the Acquiring Funds and the Acquired Funds may be affiliated for reasons other than those set forth in the rule. Bank South and BHC, which are under common control with NBAI, together hold of record more than 25% of the outstanding voting securities of the Acquired Funds. Certain affiliates of NBAI hold of record more than 5% of the outstanding voting securities of each of the Acquiring Funds. Because of this record ownership each Acquiring Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquired Fund, and vice versa, for reasons not based solely on their common adviser, common directors/trustees and/or common officers.

5. Applicants believe that the terms of the proposed reorganizations satisfy the standards set forth in section 17(b). The Boards of NFI, NFT and Peachtree have determined that the reorganizations, including the consideration to be paid or received, are in the best interest of such entities and their shareholders, and that the interests of the shareholders will not be diluted as a result of the reorganizations. Applicants state that the trustees/directors, including the disinterested trustees/directors, have made the findings required by rule 17a-8. Applicants believe that the investment objectives, policies and restrictions of the Acquiring Funds are compatible with, and substantially similar to, those of the Acquired Funds. Accordingly, applicants believe that the reorganizations are consistent with the policies of each of the Acquiring Funds and the Acquired Funds.

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

Jonathan G. Katz,

Secretary.

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[Release No. 34-37533; File No. SR-Amex-96-28]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to Top Ten Yield Market Index Target-Term Securities ("MITTS")

August 7, 1996.

I. Introduction

On July 15, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),³ the return on which is based upon an equal-dollar weighted portfolio of securities of representing the ten highest dividend yielding stocks in the Dow Jones

Industrial Average ("DJIA") from year to year ("Top Ten Yield Index" or "Index").⁴ Notice of the proposal appeared in the Federal Register on July 24, 1996.⁵ No comment letters were received on the proposed rule change. On July 31, 1996, the Amex filed Amendment No. 1 to the proposed rule change.⁶ On August 2, the Amex filed Amendment No. 2 to the proposed rule change.⁷ This order approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

Under Section 107A of the Amex 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.⁸ The Amex proposes to list for trading under Section 107A of the Company Guide, MITTS based on the Top Ten Yield Index ("Top Ten Yield MITTS").⁹ The Top Ten Yield Index will be determined, calculated and maintained solely by the Amex.¹⁰

The MITTS will conform to the initial listing guidelines under Section 107A¹¹ and continued listing guidelines under Sections 1001-1003¹² of the Company Guide. MITTS are non-callable senior hybrid debt securities of the Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. Top Ten Yield MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Index Value" and the "Ending Index Value," subject to a minimum repayment amount. The "Original Index Value" is the value of the Top Ten Index on the date on which the issuer prices the Top Ten Yield MITTS issue for the initial offering to the public. The "Ending Index Value" is the value of the Top Ten Index upon the expiration of the Top Ten Yield MITTS approximately ten years from the pricing date. The Ending Index Value will be used in calculating the amount owners will receive upon maturity.¹³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

⁴ The initial portfolio of securities comprising the Top Ten Yield Index for the first year is as follows: Philip Morris; Texaco; Exxon; J.P. Morgan; Chevron; General Motors; Minnesota Mining; DuPont; International Paper; and AT&T. See Amendment No. 1, *infra* note 6.

⁵ See Securities Exchange Act Release No. 37444 (July 16, 1996), 61 FR 38488 ("Release No. 37444").

⁶ Amendment No. 1 to the proposed rule change provides the initial portfolio of securities comprising the Top Ten Yield Index, various specifications regarding the Top Ten Yield MITTS, and a detailed explanation of the calculation, adjustments, and reconstitution methodologies to be employed for the Top Ten Yield Index, as described more fully herein. Additionally, Amendment No. 1 provides that Top Ten Yield MITTS will be traded under the Exchange's equity rules, subject to equity margin requirements, and subject to Amex Rule 411, as described more fully herein. See Letter from Michael T. Bickford, Vice President, Capital Markets, Amex, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated July 31, 1996 ("Amendment No. 1").

⁷ Amendment No. 2 to the proposed rule change provides that the Top Ten Yield MITTS are subject to continued listing provisions set forth in Sections 1001 through 1003 in the Exchange's Company Guide. Specifically, the Exchange will rely, in part, on the continued listing standards relative to distribution for bonds, as set forth in Section 1003(b). The Exchange intends to submit a proposed rule change in the near future to provide continued listing standards that apply specifically to hybrid securities such as the Top Ten Yield MITTS. See Letter from Michael Bickford, Vice President, Capital Markets Group, Amex, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated August 2, 1996 ("Amendment No. 2"). See also *infra* note 12.

⁸ See Securities Exchange Act Release No. 27753 (March 1, 1990) ("Hybrid Approval Order").

⁹ The Commission has approved the listing and trading on the New York Stock Exchange of MITTS based upon portfolios of securities representing (1) telecommunications companies, (2) European companies, (3) health care companies, (4) U.S. real estate investment trusts, and (5) restructuring companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 34655 (September 12, 1994), 59 FR 47966 (September 19, 1994); 34691 (September 20, 1994), 59 FR 49264 (September 27, 1994); and 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994) ("MITTS Approval Orders"). The Commission has also approved the listing and trading on the Amex of hybrid securities similar to MITTS, based upon portfolios of securities representing various industries, including, among others, (1) telecommunications companies, (2) banking industry stocks, and (3) real estate investment trusts. See Securities Exchange Act Release Nos. 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34848 (October 17, 1994), 59 FR 53217 (October 21, 1994); and 36130 (August 22, 1995), 60 FR 44917 (August 29, 1995).

¹⁰ 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.

¹¹ The initial listing standards for MITTS 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) asset in excess

of \$100 million and stockholders' equity of at least \$20 million.

¹² 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 MITTS, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iii). Section 1003(b) 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. The Exchange is in the process of developing continued listing standards that apply specifically to hybrid securities such as the MITTS proposed herein. If the Exchange considers delisting the Top Ten Yield MITTS prior to adopting its own guidelines, the Exchange would consider NYSE's recently adopted continued listing standards when making its decision. These guidelines contain minimum criteria for public holders, aggregate market value, and publicly held shares. See Securities Exchange Act Release No. 37238 (May 22, 1996) (Order approving NYSE continued listing guidelines for hybrid securities). See also Amendment No. 2 *supra* note 7.

¹³ The Top Ten Yield MITTS will entitle a holder at maturity to receive the principal amount of the MITTS plus a supplemental redemption amount based on the percentage increase, if any, in the Top Ten Yield Index over the Original Index Value (100). For example, if the Ending Index Value upon maturity is 148, the holder will receive \$14.80 per \$10 principal amount at maturity as follows:

The supplemental redemption amount will in no event be less than an amount equal to \$2.30 to \$2.80 per \$10 principal amount of the MITTS (the actual amount to be determined on the date the MITTS are priced by Merrill Lynch for initial sale to the public).

principal + supplemental redemption amount

$$\text{principal} + \left(\text{principal} \times \frac{\text{Ending Index Value} - 100}{100} \right)$$

$$\$10 + \left(\$10 \times \frac{148 - 100}{100} \right) = \$10 + (\$10 \times 0.48) = \$14.80$$

Top Ten Yield MITTS are cash-settled in U.S. dollars¹⁴ and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Top Ten Index securities.

Components of the Top Ten Yield Index approved pursuant to this filing will meet the following criteria: (1) A minimum market value of at least \$75 million, except that up to 10% of the component securities in the Top Ten Yield Index may have a market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Top Ten Yield Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Top Ten Yield Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities.

As of July 31, 1996, the market capitalization of the initial portfolio of securities representing the Top Ten Yield Index ranged from a high of \$101.5 billion to a low of \$11.2 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 57 million shares to a low of 13 million shares. Moreover, as of July 31, 1996, all of the components comprising the initial portfolio of securities representing the Top Ten Yield Index were eligible for standardized options trading pursuant to Amex Rule 915.¹⁵

At the outset, each of the securities in the Top Ten Yield Index will represent approximately an equal percentage of the starting value of the Index. Specifically, each security included in

the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, initially each of the 10 companies included in the Top Ten Yield Index will represent approximately 10-percent of the total portfolio at the time of issuance. The Top Ten Yield Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding its selection.

The value of the Index at any time will equal (i) The sum of the products of the current market price for each stock underlying the Index and the applicable share multiplier, plus (ii) an amount reflecting current calendar quarter dividends. Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock during the current calendar quarter multiplied by the share multiplier applicable to such stock at the time each such dividend is paid.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding components of the Top Ten Yield Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Top Ten Yield Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividend allocated to each stock can purchase of each stock based on the closing market

price on the last day in the immediately preceding calendar quarter.

At the end of each calendar quarter, the Index will be reduced by a value equal to 0.4375% of the then current Index, provided that (i) there will be no deduction at the end of the calendar quarter ending in September 1996 and the deduction at the end of the calendar quarter ending in December 1996 will be increased to reflect the quarterly rate of 0.4375% prorated for the period from the date of the issuance of the securities through the end of the calendar quarter in December 1996 and (ii) the index will be reduced at the close of business on July 31, 2006 by a value equal to 0.1507% of the closing value of the Index on such date.¹⁶

As of the close of business on each anniversary date (anniversary of the date of the initial issuance of Top Ten Yield MITTS) through the applicable anniversary date in 2005, the portfolio of securities comprising the Top Ten Yield Index will be reconstituted by the Amex so as to include the ten common stocks in the DJIA having the highest dividend yield on the second scheduled index business day prior to such anniversary date. The Exchange will announce such changes to investors at least one day prior to the anniversary date.¹⁷

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Index will continue to represent 10% of the value of the Index. To effectuate this, the share multiplier for each new stock will

¹⁶ This quarterly reduction to the value of the Index may potentially reduce the total return to investors upon redeeming Top Ten Yield MITTS at maturity. The Amex represents that an explanation of this quarterly deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product. Telephone Conversation between Michael Bickford, Vice President, Capital Markets Group, Amex, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on August 7, 1996.

¹⁷ The Exchange will publish a ticker notice and issue a press release to advise investors of changes to the securities underlying the Index if any such changes are made following an annual reconstitution. Telephone Conversation between Michael Bickford, Vice President, Capital Markets Group, Amex, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on August 6, 1996. See Amendment No. 1, *supra* note 6.

¹⁴ See Amendment No. 1, *supra* note 6.

¹⁵ See Amendment No. 1, *supra* note 6.

be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Index value at the close of business on such anniversary date. For example, if the Index value at the close of business on an anniversary date was 200, then each of the ten new stocks comprising the Top Ten Yield Index would be allocated a portion of the value of the Index equal to 20, and if the closing market price of one such new stock on the anniversary date was 40, the applicable share multiplier would be 0.5. Conversely, if the Index value was 80, then each of the ten new stocks comprising the Top Ten Yield Index would be allocated a portion of the value of the Index equal to 8, and if the closing market price of one such new stock on the anniversary date was 40, the applicable share multiplier would be 0.2. The last anniversary date on which such reconstitution will occur will be the anniversary date in 2005, which will be approximately one year prior to the maturity date of the Top Ten Yield MITTS. As noted above, investors will receive information on the new portfolio of securities comprising the Top Ten Yield Index at least 1 day prior to each anniversary date.

The multiplier of each component stock in the Top Ten Yield Index will remain fixed unless adjusted for quarterly dividend adjustments, annual reconstitutions or certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to its shareholders,¹⁸ stock split, reverse stock split, and reorganization.¹⁹

The multiplier of each component stock may be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. If the issuer of a stock included in the Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Index value prior to the subsequent

anniversary date. For example, if a company included in the Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Index so long as a market price for such security is available or until the subsequent anniversary date. If a market price is no longer available for an Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Index, the multiplier of that security in the Index may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Index continuity.

The Exchange will calculate the Top Ten Yield Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities.

Top Ten Yield MITTS may not be redeemed prior to maturity and are not callable by the issuer.²⁰ Holders of Top Ten Yield MITTS will only be able to cash-out of their investment by selling the security on the Amex.

Because Top Ten Yield MITTS are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Top Ten Yield MITTS. 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 Top Ten Yield MITTS.²¹ Second, Top Ten Yield MITTS will be subject to the equity margin rules of the Exchange.²² Third, in accordance with

the Amex's Hybrid Approval Orders, the Exchange will, prior to trading Top Ten Yield MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Top Ten Yield MITTS and highlighting the special risks and characteristics of the Top Ten Yield MITTS.

III. Commission Findings and Conclusions

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, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Top Ten Yield MITTS will offer a new and innovative means of participating in the market for high dividend yielding securities. In particular, the Commission believes that Top Ten Yield MITTS will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of the original investment. Accordingly, for the same reasons as discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of Top Ten Yield MITTS is consistent with the Act.²³

As with other MITTS products, Top Ten Yield MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Top Ten Yield MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the performance of a portfolio of securities, and the components of the Index are more likely to change each year, over a ten-year period, than other similar type MITTS products previously issued, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Top Ten Yield MITTS. 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

¹⁸ If the issuer of a component security in the Top Ten Yield Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Top Ten Yield Index until the subsequent anniversary date. The multiplier for the new component will equal the product of the original issuer's multiplier and the number of shares of the new component issued with respect to one share of the original issuer.

¹⁹ See Amendment No. 1, *supra* note 6.

²⁰ See Amendment No. 1, *supra* note 6.

²¹ See Amendment No. 1, *supra* note 6. 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.

²² *Id.*

²³ See MITTS Approval Orders, *supra* note 9.

the hybrid nature of Top Ten Yield MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Top Ten Yield MITTS.

In approving the product, the Commission recognizes that unlike other previously approved MITTS, the components are more likely to change each year over the 10-year life of the product. Nevertheless, the Commission believes that this is acceptable because the Amex has clearly stated its guidelines and formula for replacing components from a specific, group of 30 well-known, and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Top Ten Yield Index will represent the ten highest dividend yielding securities in the DJIA. Amex will do the calculation for replacements based on a set formula to determine which of the DJIA securities will be in the Index for the following year. The Commission believes that within these confines the potential frequent changes in the components of the Index are reasonable and will meet the expectation of investors.

The Commission realizes that Top Ten Yield MITTS 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 MITTS. In addition, the Exchange's hybrid listing standards further require that Top Ten Yield MITTS have at least \$4 million in market value.²⁴ In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Top Ten Yield Index, will be publicly available.²⁵

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Top Ten Yield MITTS issuance in relation to the net worth of Merrill Lynch.²⁶

The Commission also believes that the listing and trading of Top Ten Yield MITTS should not unduly impact the market for the underlying securities

comprising the Top Ten Yield Index. First, the underlying securities comprising the DJIA, from which the Index components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Top Ten Yield Index will be equally weighted, initially and immediately following each annual reconstitution of the Index, no single stock or group of stocks will likely dominate the Top Ten Yield Index. Finally, the issuers of the underlying securities comprising the Top Ten Yield Index, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Top Ten Yield Index will be disseminated at least once every 15 seconds throughout the trading day. The Commission believes that providing access to the value of the Top Ten Yield Index at least once every 15 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 and Amendment Nos. 1 and 2 to 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, in part, so that the product can be issued prior to the implementation of pending changes in the tax treatment of these products. In determining to grant the accelerated approval for good cause, the Commission notes that the Top Ten Yield Index is a portfolio of highly capitalized and actively traded securities similar to hybrid securities products that have been approved by the Commission for U.S. exchange trading.²⁷ Additionally, Top Ten Yield MITTS will be listed pursuant to existing hybrid security listing standards as described above. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation method. Finally, no comments to date have been received on the proposal, which was subject to a portion of the full 21 day notice and comment period.²⁸ Based on the above, the Commission finds, consistent with Section 6(b) of the Act,

that there is good cause for accelerated approval of the product.

Amendment No. 1 to the proposed rule change provides the initial portfolio of securities comprising the Top Ten Yield Index, various specifications regarding the Top Ten Yield MITTS, and a detailed explanation of the calculation, adjustments, and reconstitution methodologies to be employed for the Top Ten Yield Index, as described above. Additionally, Amendment No. 1 provides that Top Ten Yield MITTS will be traded under the Exchange's equity rules, subject to equity margin requirements, and subject to Amex Rule 411, as described above. The Commission believes that Amendment No. 1, as described herein, clarifies and strengthens the Exchange's proposal by providing additional information, similar to that provided for other MITTS products previously approved by the Commission.

Amendment No. 2 to the proposed rule change provides that the Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Among other things, the amendment notes that for distribution of the Top Ten Yield MITTS, the Exchange will rely on the continued listing guidelines for bonds in Section 1003(b)(iii). The Commission believes that Amendment No. 2 clarifies and strengthens the Exchange's proposal by stating the specific continued listing guidelines that will apply to these MITTS and should help to ensure a minimal level of depth and liquidity for continued trading of the product on the Amex.

Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve the proposed rule change and Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change and Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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

²⁴ See Amex Company Guide § 107A.

²⁵ The companies that comprise the Top Ten Yield Index are reporting companies under the Act.

²⁶ See MITTS Approval Orders, *supra* note 9.

²⁷ See *supra* note 9.

²⁸ See Release No. 37444, *supra* note 5.

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-28 and should be submitted by September 3, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (File No. SR-Amex-96-28), as amended, is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37532; File No. SR-CHX-96-15]

Self-Regulatory Organizations; the Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Assignment and Reassignment of Nasdaq National Market Issues

August 6, 1996.

I. Introduction

On May 16, 1996, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Interpretation and Policy .01 of Rule 1 of Article XXX relating to assignments and reassignments of Nasdaq Market ("NM") securities.

The proposed rule change was published for comment in the Federal Register on June 25, 1996.³ No comments were received on the proposal.

II. Background

In 1987, the Commission approved the trading of Nasdaq/NM Securities (previously known as NASDAQ/NMS Securities) on the Exchange on a pilot basis.⁴ When these stocks were initially

allocated, the Exchange's Committee on Specialist Assignment and Evaluation ("CSAE") established certain guidelines for assignment of Nasdaq/NM stocks. These guidelines required a firm that desired to trade these stocks to assign a separate co-specialist that only trades Nasdaq/NM stocks. As a result, only a small number of firms could receive allocations of Nasdaq/NM stocks. In part because of this limitation, the CSAE also determined to re-post any Nasdaq/NM stocks when they list on an exchange.

Because of the recent expansion of the number (from 100 to 500) of Nasdaq/NM securities that are eligible for trading on the CHX,⁵ the Exchange believes that a more equitable balance is needed between the ability of the current specialist firm in the Nasdaq stock to continue to trade the stock after it lists on an exchange and other specialists that desire to trade the stock. Thus, the purpose of the proposed rule change is to amend the Exchange's allocation policy in order to achieve this equitable balance.

III. Description of Proposal

As discussed in the Notice, the proposal would amend Interpretation and Policy .01 of Rule 1 of Article XXX to provide new guidelines for the

Market System Securities traded on an exchange); 24406 (April 29, 1987), 52 FR 17495 (May 8, 1987) (order granting Unlisted Trading Privileges ("UTP") in 25 issues).

Prior to the enactment of the UTP Act of 1994 ("UTP Act"), Section 12(f) of the Act required exchanges to apply to the Commission, and receive Commission approval of the exchange's application, before extending UTP to a particular security. When an exchange "extends UTP" to a security, the exchange allows its members to trade the security as if it were listed on the exchange. The Commission was required to provide interested parties with at least ten days notice of the application and the Commission had to determine whether the extension of UTP to each security named met certain criteria. If so, the Commission published an approval order in the Federal Register. Accordingly, Exchange Interpretation and Policy .01 of Rule 1 of Article XXX reflects this statutory scheme in that it references "obtaining" UTP from the Commission. The UTP Act, however, removed the application, notice, and Commission approval process from Section 12(f) of the Act. For this reason, as requested in the Notice, the Commission again requests that the Exchange submit a rule proposal that appropriately amends Exchange Interpretation and Policy .01 of Rule 1 to reflect the current statutory scheme.

In addition, the Commission noted in the Notice that NASDAQ/NMS Securities are now known as Nasdaq/NM Securities. In response, the Exchange submitted a rule proposal that amends all appropriate Exchange Rules and Interpretations to reflect this new terminology. See File No. SR-CHX-96-22 (received by the Commission on July 29, 1996).

⁵ See Securities Exchange Act Release Nos. 28146 (Jun. 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500).

reassignment of Nasdaq/NM securities currently assigned to a CHX specialist when they become a Dual Trading System Issue. Under the proposed policy, the 500 Nasdaq/NM stocks that are eligible for trading on the CHX would be divided into two groups: the 100 original issues and the 400 recently added issues.

1. 100 Original Issues

Under the proposal, a specialist unit that trades one or more of the original 100 Nasdaq/NM issues would be permitted to designate up to five of these issues as "Non-Reassignment Issues." In the event that a Non-Reassignment Issue became listed, *i.e.*, a Dual Trading System Issue,⁶ CSAE under normal circumstances would not post the issue for reassignment. Instead, the existing Nasdaq/NM specialist unit would be permitted to continue to trade the issue assuming the proposed co-specialist for the issue is qualified. A specialist unit could change the issues it designates as Non-Reassignment Issues no more than once a year. Every time a Non-Reassignment Issue becomes a Dual Trading System Issue, however, the total number of stocks that the specialist unit can designate as a Non-Reassignment Issue is decremented. For example, if two Non-Reassignment Issues become Dual Trading Issues, the specialist will only be able to designate a total of three issues as Non-Reassignment Issues going forward.

For all other Nasdaq/NM issues that are part of the initial 100 issues, a specialist unit can nonetheless designate its interest to continue trading the issue as a Dual Trading System Issue. This designation can only be made at the time that an issue becomes a Dual Trading System Issue and can only be made for one out of every three issues that the specialist unit trades that becomes a Dual Trading System Issue. If this designation is made, the CSAE, under normal circumstances, will not post the issue or initiate reassignment proceedings. If a designation is not made, the CSAE will post the issue and initiate reassignment proceedings. The specialist unit that traded the issue will not be eligible to apply for the security in these proceedings. Finally, if the specialist unit does not make this designation for any of three consecutive issues that become Dual Trading System

⁶ According to the Exchange, Dual Trading System Issues are issues that are traded on the CHX and listed on either the New York Stock Exchange or American Stock Exchange. Telephone conversation on June 5, 1996 between David T. Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 37327 (June 19, 1996), 61 FR 32870 (June 25, 1996) (notice of File No. SR-CHX-96-15) ("Notice").

⁴ See Securities Exchange Act Release Nos. 24407 (April 29, 1987), 52 FR 17349 (May 7, 1987) (order approving proposed Reporting Plan for National