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The document is also available at NRC's website at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/>. You may also send comments electronically from this website by clicking on *comment form*. If a hard copy is preferred, a free single copy of the "Yucca Mountain Review Plan, NUREG-1804, Revision 2, Draft Report for Comment," may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Reproduction and Distribution Services Branch, Washington, DC 20555-0001; sending an e-mail to [Distribution@nrc.gov](mailto:Distribution@nrc.gov); or by sending a fax to (301) 415-2289. A copy of the "Yucca Mountain Review Plan, NUREG-1804, Revision 2, Draft Report for Comment," is also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1-F21, 11555 Rockville Pike, Rockville, Maryland.

**FOR FURTHER INFORMATION, CONTACT:** Jeffrey A. Ciocco, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T-7F3, Washington, DC 20555-0001, telephone (301) 415-6391, e-mail: [jac3@nrc.gov](mailto:jac3@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The licensing criteria are contained in the Commission's regulations (part 63), "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV" (November 2, 2001; 66 FR 55732). The Secretary of Energy has recommended to President Bush the Yucca Mountain site for the development of a nuclear waste repository. President Bush has notified Congress that Yucca Mountain is qualified for a construction permit application. The law now gives Nevada the opportunity to disapprove the President's recommendation, and, if they do, then Congress will have an opportunity to act. The Department of Energy (DOE) would submit any license application to the NRC. NRC then must review and either approve or disapprove the license application.

The principal purpose of the "Yucca Mountain Review Plan" is to ensure the quality and uniformity of NRC staff review of a potential license application. The "Yucca Mountain

Review Plan" has separate sections for reviews of repository safety before permanent closure, repository safety after permanent closure, the research and development program to resolve safety questions, the performance confirmation program, and administrative and programmatic requirements. Each of these sections would support NRC's review of DOE's compliance determination with specific regulatory requirements from part 63. The regulations and the Yucca Mountain Review Plan" are risk-informed and performance-based to the extent practical.

Dated at Rockville, Maryland, this 22nd day of March 2002.

For the Nuclear Regulatory Commission.

**Janet R. Schlueter,**

*Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02-7606 Filed 3-28-02; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings; Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 1, 2002: closed meetings will be held on Tuesday, April 2, 2002 and Wednesday, April 3, 2002 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, April 2, 2002, will be: opinions; formal order of private investigation; regulatory matter regarding financial institutions; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, April 3, 2002, will be: formal orders of private investigation; institution and

settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: March 26, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-7777 Filed 3-27-02; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45639; File No. SR-Amex-2002-18]

### 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 Oil and Natural Gas Notes

March 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 8, 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 Amex proposes to list and trade notes, the return on which is based upon the Oil and Natural Gas Index. The Oil and Natural Gas Index is based upon the blended performance of the Amex Oil Index (the "Oil Index") and the Amex Natural Gas Index (the "Natural Gas 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 Oil and Natural Gas Index,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and the Oil and Natural Gas Index will be rebalanced annually to reset the weighting of the Underlying Indices to approximately 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 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.<sup>3</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Oil and Natural Gas Index (the "Notes"). The Oil and Natural Gas Index will be determined, calculated, and maintained solely by the Amex.<sup>4</sup>

The Notes will conform to the initial listing guidelines under Section 107<sup>5</sup> and continued listing guidelines under Sections 1001–1003<sup>6</sup> 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 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 Oil and Natural Gas Index on the date on which the issuer prices the Notes issued for the initial offering of sale to the public. The "Ending Index Value" is the value of the Oil and Natural Gas 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 Oil and Natural Gas 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 the Underlying Securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. oil and natural gas industries and who are willing to forgo market interest payments on the Notes during such term.<sup>7</sup>

The Oil and Natural Gas Index is based upon the combined performance of the Oil Index and the Natural Gas Index. The Oil Index is an index comprised of fourteen (14) stocks of large, widely-held oil companies. The Oil Index is a price-weighted index that

measures the performance of the oil industry through changes in the sum of the prices of its component stocks. The Index was developed with a benchmark level of 125.00 on August 27, 1984. The current component securities in the Oil Index are listed on the New York Stock Exchange Inc. (the "NYSE"). As of March 1, 2002, the market capitalization of the securities included in the Oil Index ranged from a high of \$291.2 billion to a low of \$3.1 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002, ranged from a high of 10.01 million shares to a low of .41 million shares. The Commission has previously approved the listing and trading of options on the Oil and Gas Index, which was later modified and re-named the Oil Index.<sup>8</sup>

The Natural Gas Index is an index comprised of fifteen (15) securities of highly-capitalized companies in the natural gas industry. The Natural Gas Index is calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities are represented in equal dollar amounts in the Index. A benchmark level of 300.00 for the Index was initially established at the close of trading on October 15, 1993. The index portfolio consists of fifteen (15) natural gas industry stocks or American Depositary Receipts ("ADRs") which are listed on the Amex, the NYSE 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 March 1, 2002, the market capitalization of the securities included in the Natural Gas Index ranged from a high of \$21.2 billion to a low of \$1.5 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002 ranged from a high of 5.85 million shares to a low of .151 million shares. The Exchange has previously listed options on the Natural Gas Index.<sup>9</sup>

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

<sup>4</sup> Subject to the criteria described in the prospectus supplement regarding the construction of the Oil and Natural Gas Index, the Exchange has sole discretion regarding changes to the Oil and Natural Gas Index.

<sup>5</sup> The initial listing standards for will 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.

<sup>6</sup> 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.

<sup>7</sup> Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Steven G. Johnston, Attorney, Division of Market Regulation, Commission, on March 3, 2002. ("March 3, 2002 Telephone Conversation").

<sup>8</sup> See Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37556 (August 18, 1983) (approving the listing and trading of options on the Oil and Gas Index) ("Oil and Gas Index Approval Order"); Securities Exchange Act Release No. 21409 (October 19, 1984), 49 FR 43011 (October 25, 1984) (approving change of index from market-weighted to price-weighted index; reduction in number of component stocks by eliminating companies engaged in substantial gas exploration, drilling, and production activities; and changing name to the Oil Index).

<sup>9</sup> See Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994) (approving listing and trading of options based on the Natural Gas Index) ("Natural Gas Index Approval Order").

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Oil Index and Natural Gas 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 Oil and Natural Gas 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 Oil and Natural Gas Index. The Oil and Natural Gas 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 Oil and Natural Gas 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.<sup>10</sup> 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.<sup>11</sup>

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 Oil and Natural Gas 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.<sup>12</sup>

<sup>10</sup> March 3, 2002 Telephone Conversation. At the end of each day, the Oil and Natural Gas 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 Oil and Natural Gas 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.

<sup>11</sup> March 3, 2002 Telephone Conversation.

<sup>12</sup> March 3, 2002 Telephone Conversation.

As of the close of business each anniversary date (anniversary of the day the Index was initially calculated and set to 100), the Index will be rebalanced by the Amex so that each Underlying Index will represent approximately 50% of the value of the Index. To effectuate this result, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage allocated to each Underlying Index, given their respective closing values on the anniversary date, so that each Underlying Index represents an equal percentage of the Oil and Natural Gas Index value at the close of business on an anniversary date. For example, if the Oil and Natural Gas 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 Oil and Natural Gas 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 Oil and Natural Gas Index value was 80, then each of the Underlying Indices would be allocated the value of the 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 Oil and Natural Gas Index and, similar to other stock index values published by the Exchange, the value of the Oil and Natural Gas Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to a portfolio of 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.<sup>13</sup> Second, the Notes will be subject to the equity margin rules of the Exchange.<sup>14</sup> 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

<sup>13</sup> 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.

<sup>14</sup> See Amex Rule 462 and Section 107B of the Company Guide.

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.<sup>15</sup>

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 Act<sup>16</sup> in general and furthers the objectives of Section 6(b)(5)<sup>17</sup> 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.

### *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

<sup>15</sup> March 3, 2002 Telephone Conversation.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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-2002-18 and should be submitted by April 19, 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.<sup>18</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.<sup>19</sup> Accordingly, the Commission

finds that the listing and trading of the Notes based on the Oil and Natural Gas 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.<sup>20</sup>

As described more fully above, at maturity, or upon exchange, the holder of a Note will receive an amount based upon the percentage change in the value of the Oil and Natural Gas 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. oil and natural gas 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 be derived and based upon the value of the Oil and Natural Gas 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 Notes.<sup>21</sup> Thus, if the Oil and Natural Gas 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 the 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.<sup>22</sup> In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Oil and Natural Gas Index, will be publicly available.<sup>23</sup>

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,<sup>24</sup> the Commission believes that

<sup>18</sup> *Id.*

<sup>19</sup> See Securities Exchange Act Release Nos. 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Bio-Tech Pharmaceutical Index); 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 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).

<sup>20</sup> 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).

<sup>21</sup> 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 Oil and Natural Gas Index at such repurchase date.

<sup>22</sup> See Company Guide Section 107A.

<sup>23</sup> The companies that comprise the Oil and Natural Gas Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

<sup>24</sup> 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,

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 Oil and Natural Gas Index or raise manipulative concerns. As discussed more fully above, the Oil and Natural Gas 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 Oil and Natural Gas Index, initially, and immediately following each annual rebalancing of the Oil and Natural Gas Index. In addition, the Oil Index's price-weighting and the Natural Gas Index's equal dollar-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.<sup>25</sup> 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.<sup>26</sup> In addition, 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 Oil and Natural Gas 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 Oil and Natural Gas 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.<sup>27</sup> 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<sup>28</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-Amex-2002-18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-7608 Filed 3-28-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45628; File No. SR-Amex-2001-94]

### Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Two Hundred and Fifty the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO-EX

March 22, 2002.

## I. Introduction

On October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO-EX. On November 15, 2001, the proposed rule change was published for public comment in the **Federal Register**.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

In 1985, the Exchange implemented its AUTO-EX system for options, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File ("AOF"). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO-EX, was recently increased to allow for the entry of orders of up to 2,500 option contracts.<sup>4</sup> AUTO-EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.<sup>5</sup> Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO-EX system. It is proposed that this increase to 250 contracts as the permissible order size for AUTO-EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size and AUTO-EX parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO-EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations

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).

<sup>25</sup> See Oil and Gas Index Approval Order, *supra* note 9; and Natural Gas Approval Order, *supra* note 10.

<sup>26</sup> 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 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).

<sup>27</sup> See *supra* note 20.

<sup>28</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 45045 (November 7, 2001), 66 FR 57495.

<sup>4</sup> See Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

<sup>5</sup> See Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving amendment to Amex Rule 933).