

and the New York Stock Exchange, or independent standard setting organizations like the Financial Accounting Standards Board.²

This policy statement is intended only to set forth the Commission's intention and expectation regarding its rulemaking activities during the period indicated above.³ It also shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by any person against the Commission. This policy statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of the Commission with the statement.

III. Regulatory Requirements

This general policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the Administrative Procedure Act ("APA").⁴ Similarly, the provisions of the Regulatory Flexibility Act,⁵ which apply only when notice and comment are required by the APA or another statute, are not applicable.

IV. Conclusion

The Commission believes the foregoing statement of policy provides a sound basis for the Commission's action and makes a significant contribution to meeting the needs of investors and the capital markets.

By the Commission.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40367; File No. SR-Amex-98-24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to the Listing and Trading of Merrill Lynch EuroFund Market Index Target Term Securities

August 26, 1998.

I. Introduction

On June 30, 1998, the American Stock Exchange, Inc. ("Exchange" or "Amex") submitted to the Securities and Exchange Commission ("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 approve for listing and trading under Section 107A of the Exchange's *Company Guide*, Merrill Lynch EuroFund Market Index Target Term SecuritiesSM ("MITTS[®] Securities") based in whole or in part on changes in the value of the Merrill Lynch EuroFund Index ("EuroFund Index").³

The proposed rule change was published for comment in Securities Exchange Act Release No. 40228 (July 17, 1998), 63 FR 40145 (July 27, 1998). No comment letters were received in response to the proposal. The Exchange submitted Amendment No. 1 to the proposed rule change on August 21, 1998.⁴ This order grants approval to the proposed rule change and accelerates approval of Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the "EuroFund Index" (a term defined in the prospectus for the MITTS Securities) reflects the adjusted total return of Class B shares of the Merrill Lynch EuroFund, a mutual fund registered under the Investment Company Act of 1940. The EuroFund Index does not measure the performance of any securities other than Class B shares of the Merrill Lynch EuroFund.

⁴ Amendment No. 1 discusses the surveillance procedures that the Exchange will undertake with regard to trading in the MITTS Securities. The Exchange represented that its Market Surveillance department will monitor trading in the MITTS Securities and shares of the EuroFund underlying the EuroFund Index. If the Market Surveillance department detects unusual trading activity in the MITTS Securities, it will examine, if necessary, trading activity in the EuroFund's component stocks and the redemption activity in shares of the EuroFund. See Letter to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, from Claire P. McGrath, Vice President and Special Counsel, Exchange, dated August 20, 1998.

II. Description of the Proposal

a. Listing Requirements

The Exchange seeks to list the MITTS Securities for trading under Section 107A of the Exchange's *Company Guide*. Section 107A provides for the listing and trading of securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁵ The MITTS Securities are structured as senior, unsecured debt securities, the value of which will be linked, in whole or in part, to the adjusted total return value of Class B shares of the Merrill Lynch EuroFund ("EuroFund").⁶ The EuroFund is an open-end mutual fund registered under the Investment Company Act of 1940 and is a "diversified company" as defined in Section 5(b)(1) of the Investment Company Act of 1940.⁷

The Exchange has represented that both the issue (MITTS Securities) and the issuer (Merrill Lynch & Co., Inc.) will conform to and meet the listing guidelines set forth in Section 107A of the Exchange's *Company Guide*.⁸ In addition: (i) the issuer has a minimum

⁵ See Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990).

⁶ According to the prospectus prepared by the underwriter, the EuroFund is a diversified, open-end management company that seeks to provide shareholders with capital appreciation primarily through investment in equities of corporations domiciled in European countries. While there are no prescribed limits on geographic distribution within the European community, it currently is anticipated that a majority of the EuroFund's assets will be invested in equity securities of issuers domiciled in Western European countries. Current income from dividends and interest will not be an important consideration in selecting portfolio securities. The EuroFund expects that under normal market conditions at least 80% of its net assets will be invested in European corporate securities, primarily common stocks, and debt and preferred securities convertible into common stocks.

⁷ See 15 U.S.C. 80a-5(b)(1). Section 5(b)(1) requires that at least 75% of the value of a diversified company's total assets must represent cash; cash items; government securities; securities of other investment companies; and other securities which, with respect to any single issuer, do not account for more than: (i) 5% of the value of the management company's total assets, and (ii) 10% of the outstanding voting securities of that issuer.

⁸ Specifically, the MITTS Securities must have: (i) a minimum public distribution of one million trading units; (ii) a minimum of 400 public holders (if traded in thousand dollar denominations then no number of holders is required); and (iii) an aggregate market value not less than \$4 million. In addition, the issuer of the MITTS Securities must have assets in excess of \$100 million and stockholders' equity of at least \$10 million, and must meet the earnings criteria set forth in Section 101 of the Exchange's *Company Guide*. If the issuer of the MITTS Securities did not have pre-tax income of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years, the issuer must have: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

² Rules and standards established by private entities such as the Securities Investor Protection Corporation and the American Institute of Certified Public Accountants similarly are not subject to the moratorium.

³ Accordingly, the moratorium shall not affect any remedies the Commission may seek in an enforcement proceeding against a regulated entity.

⁴ 5 U.S.C. 553.

⁵ 5 U.S.C. 601-602.

tangible net worth in excess of \$250 million; (ii) the EuroFund has total net assets of approximately \$2.16 billion; and (iii) the EuroFund's net asset value ("NAV")⁹ is reported each day through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq"). The Exchange's continued listing guidelines governing the MITTS Securities are set forth in Sections 1001 through 1003 of the Exchange's *Company Guide*. In particular, Section 1003(b) regarding suspensions and delistings with respect to limited distribution and reduced market value will apply to MITTS Securities.¹⁰

b. Description of MITTS Securities on the EuroFund

The MITTS Securities will provide for payment at maturity based in whole or in part on changes in the value of the EuroFund Index, an index based on the adjusted total return of the Class B shares of the EuroFund.¹¹ The total return value reflects the change in the NAV of Class B shares of the EuroFund, plus cash dividends and distributions paid on those shares. After the Exchange calculates the EuroFund Index based on changes in the total return value, the Exchange will reduce the EuroFund Index value each day by a percentage equal to the pro rata portion of an annual reduction factor. The annual reduction factor is expected to be between 2.50% and 2.75% of the value of the EuroFund Index and will be determined on the date that the MITTS Securities are priced for initial sale to the public.¹² The EuroFund Index, as

adjusted by the annual reduction factor, will be calculated by the Exchange once a day after the EuroFund's NAV has been determined. After calculation, the EuroFund Index value will be disseminated over the Consolidated Tape Association's Network B and updated again after the next close of trading and reporting of the EuroFund's NAV.¹³ Likewise, the EuroFund's NAV will be disseminated through the facilities of Nasdaq subsequent to calculation. If the EuroFund does not comply with the Rule 22c-1 under the Investment Company Act of 1940,¹⁴ which requires daily computation of a fund's current NAV, the Exchange will use the last available price in its calculation.

c. Maturity and Settlement of MITTS Securities

A specific maturity date will not be established until the time of the offering, however, the underwriter's preliminary prospectus indicates that the MITTS Securities are expected to mature sometime in February, 2006. Although the value of the MITTS Securities will be derived from the performance of Class B shares of the EuroFund, the MITTS Securities will settle in Class D shares of the EuroFund.¹⁵ Specifically, the MITTS Securities will guarantee holders 100% of principal return plus any additional amount that may be due as a result of appreciation of the adjusted total return of Class B shares to be paid in either the value of Class D shares of the EuroFund or, if such shares are unavailable, cash. The MITTS Securities will settle by delivery of the number of Class D shares of the EuroFund equal in value to the principal amount (\$10 per MITTS Security) plus the Supplemental Redemption Amount,¹⁶ if any, based on

(see Section II(c) *infra*, "Maturity and Settlement of MITTS Securities") based on the adjusted total return of Class B shares of the EuroFund which may be lower, due to the annual reduction factor, than what a holder of Class B EuroFund shares might receive. The Exchange has represented that an explanation of the annual reduction factor will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of MITTS Securities.

¹³ The EuroFund Index is updated only at the close of trading each day because that is the only time when the EuroFund's NAV is determined and disseminated. The Exchange believes this should not pose an obstacle to the trading of the MITTS Securities, any more than it prevents investors from entering intra-day orders to purchase or redeem shares of the EuroFund itself at a closing NAV that is unknown at the time the orders are entered.

¹⁴ 17 CFR 270.22c-1.

¹⁵ See *supra* note 11.

¹⁶ The Supplemental Redemption Amount, which may not be less than zero, will equal the principal amount (\$10) multiplied by the percentage difference between the ending value of the

the NAV for Class D shares determined on a specified date prior to the stated maturity of the MITTS Securities.¹⁷ If the issuer is unable to deliver the Class D shares because the EuroFund is not issuing Class D shares to new investors in the EuroFund as of the date immediately prior to the stated maturity date, it will pay the equivalent amount in cash.

d. Exchange Rules Applicable to MITTS

Because the MITTS Securities are linked to the EuroFund, which holds a portfolio of equity securities, the Exchange has decided to apply its equity floor trading rules. Regular equity trading hours (9:30 A.M. to 4:00 P.M. Eastern Standard Time) will govern the trading of the MITTS Securities. In addition, the MITTS Securities will be subject to the equity margin rules of the Exchange.¹⁸

In accordance with Exchange Rule 411,¹⁹ the Exchange shall impose a duty of due diligence on its members and member firms to determine the essential facts relating to customers prior to their purchasing and trading MITTS Securities. Furthermore, consistent with the offering of other structured products, the Exchange will distribute a circular to its membership prior to the commencement of trading in the MITTS Securities to provide guidance regarding member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular shall require that before an Exchange member, member organization, or employee of such member organization, undertakes to recommend a transaction in the MITTS Securities, such member or member organization should make a determination that the MITTS Securities are suitable for such customer. As part of that determination, the person making the recommendation should have a reasonable basis for believing at

EuroFund Index and the starting value [\$10 ((ending EuroFund Index value—starting EuroFund Index value)/starting EuroFund Index value)]. The ending and starting EuroFund Index values used to calculate the Supplemental Redemption Amount shall reflect the application of the annual reduction factor.

¹⁷ The specified date shall be two business days prior to the stated maturity of the MITTS Securities. Telephone conversation between Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission; Claire McGrath, Vice President and Special Counsel, Exchange; and Thomas Lee, Vice President of Customized Investments, Merrill Lynch & Co. (July 16, 1998).

¹⁸ See Exchange Rule 462, "Minimum Margins."

¹⁹ Exchange Rule 411, "Duty to Know and Approve Customers," requires every Exchange member or member organization to "use due diligence to learn the essential facts relative to every customer and to every order or account accepted."

⁹ The EuroFund's prospectus states that the net asset value per share is computed by dividing the sum of the value of the securities held by the EuroFund plus any cash or other assets (including interest and dividends accrued but not yet received) minus all liabilities (including accrued expenses) by the total number of shares outstanding at such time, rounded to the nearest cent. Expenses, including the fees payable to the EuroFund's investment adviser and any account maintenance and/or distribution fees payable to the EuroFund's distributor, are accrued daily.

¹⁰ Under Section 1003(b)(iii), the Exchange may consider suspending or delisting the MITTS Securities if: (i) the aggregate market value or the principal amount of the MITTS Securities publicly held is less than \$400,000; or (ii) the issuer is unable to meet its obligations on the MITTS Securities.

¹¹ The EuroFund consists of Class A, Class B, Class C, and Class D shares. Each class of shares represents an identical interest in the investment portfolio of the EuroFund and has the same rights. However, each class of shares varies with regard to: (i) sales charges; (ii) account maintenance fees; (iii) distribution fees; and (iv) conversion features.

¹² Holders of Class B shares receive the value of their shares plus cash dividends and distributions paid on those shares less fees. Holders of the MITTS Securities receive at maturity the principal amount of their investment plus a Supplemental Redemption Amount in the form of Class D shares

the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and that the customer is financially able to bear the risks of the recommended transaction. Lastly, as with other structured products, the Exchange has stated that it will monitor closely the trading activity in the MITTS Securities to identify and deter any potential improper trading activity. In this regard, the Exchange has submitted an amendment that discusses in more detail surveillance for the MITTS Securities.²⁰

III. Discussion

For the reasons discussed below, 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)²¹ that the rules of an exchange market be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²² The Commission believes providing for exchange-trading of the MITTS Securities will offer investors a new and innovative means of participating in a mutual fund that invests in foreign securities. Specifically, the Commission believes that the MITTS Securities will permit investors to gain equity exposure in European exchange markets²³ while at the same time limiting the down side risk of their original investment as a result of the issuer's 100% principal guarantee.

The Commission recognizes that the MITTS Securities have certain characteristics that are similar to previously approved hybrid products linked to individual and/or indexes of securities. For example, like other market index target term securities, the

MITTS Securities are not leveraged instruments.²⁴ Nevertheless, the Commission has not previously approved for listing and trading a hybrid product like the MITTS Securities that is physically settled and linked to a single, open-end investment company. In addition, the MITTS Securities linked to the EuroFund Index are unlike other previously approved market index target term securities because the final rate of return of the MITTS Securities is derivatively priced based upon the performance of a generally undisclosed portfolio of securities. Finally, the Commission notes that the MITTS Securities have raised potential conflict of interest concerns because the issuer of the MITTS Securities is an affiliate of the investment adviser to the EuroFund. The Commission believes that these factors, along with certain other features of the MITTS Securities, raise unique and novel issues.²⁵ As discussed in more detail below, the Commission believes that the Exchange and the issuer have adequately addressed these issues.

First, the Commission notes that the Exchange's rules and procedures addressing the special concerns attendant to the trading of hybrid securities will be applicable to the MITTS Securities. In particular, by imposing the hybrid listing standards, heightened suitability for recommendations in MITTS Securities, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the MITTS Securities. In addition, the Exchange will distribute an information circular to its membership calling attention to the specific risks associated with the MITTS Securities, as well as suitability

requirements and compliance responsibilities. The circular also will highlight certain unusual features of the MITTS Securities including the annual reduction factor, the relationship between the issuer of the MITTS Securities and the investment adviser to the EuroFund, and the physical settlement in a class of shares different than the class underlying the EuroFund Index.²⁶

Second, the MITTS Securities remain a non-leveraged product with the issuer guaranteeing 100% of principal return. The Commission realizes that the final payout on the MITTS Securities is dependent in part upon the individual credit of the issuer. To some extent, however, this credit risk is minimized by the Exchange's hybrid listing standards in Section 107A of the *Company Guide* which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as MITTS Securities.²⁷ In addition, these standards require that the MITTS Securities have at least \$4 million in aggregate market value. Furthermore, financial information regarding the issuer, as well as the MITTS Securities and the underlying EuroFund, that is required to be disclosed under the federal securities laws will be publicly available to investors.

Third, the history and performance of the EuroFund should be available through a variety of public sources. In particular, the EuroFund's NAV will be disseminated through the facilities of Nasdaq after the close of trading each business day. The Commission believes this information will be useful and beneficial for investors in the MITTS Securities. The Commission notes that the Exchange has represented that the value of the EuroFund Index will be calculated by the Exchange once each business day after the close of trading and after the NAV for the EuroFund has been reported. This value will be disseminated over the Consolidated Tape Association's Network B throughout the trading day and shall be updated again after the next close of trading when a new NAV is calculated and reported. The result of this is that the EuroFund Index value disseminated during the trading day is based on the prior day's NAV. The Commission generally believes that updating values on a real-time basis throughout the trading day is essential to any securities

²⁰ See Amendment No. 1 *supra* note 4, and discussion *infra*.

²¹ 15 U.S.C. 78f(b)(5).

²² In approving this proposed rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ The EuroFund can invest in Western or Eastern European exchange markets. According to information provided by Amendment No. 1, the five most recent semi-annual reports filed by the EuroFund pursuant to Section 30(e) of the Investment Company Act of 1940 indicate that on average, 96.38% of the EuroFund's assets were invested in Western European countries.

²⁴ Certain characteristics of the MITTS Securities being approved herein more closely resemble equity linked notes under Section 107B of the Exchange's *Company Guide* rather than market index target term securities listed under Section 107A for "Other Securities." Generally, equity linked notes are based on the performance of one security, either a common stock or non-convertible preferred stock, and are settled in the underlying linked security. Market index target term securities, on the other hand, have traditionally measured the performance of a known portfolio of securities and are generally cash settled. Because equity linked notes listed under Section 107B of the Exchange's *Company Guide* can only overlie common stock or non-convertible preferred stock, the Exchange has appropriately relied on its broader "Other Securities" listing standard for the listing of the MITTS Securities.

²⁵ For example, the settlement value of the MITTS Securities is based on changes in one class of EuroFund shares while the holder will receive settlement in another class.

²⁶ Telephone conversation between Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission; and Scott Van Hatten, Legal Counsel, Exchange (Aug. 24, 1998).

²⁷ See *supra* note 8.

product.²⁸ Nevertheless, the Commission believes that disseminating the static value of the EuroFund Index is acceptable because the EuroFund's NAV is only available once a day after the close of trading, and the portfolio of securities held by the EuroFund is not publicly available and is not disclosed on a real-time, intra-day basis.²⁹

Fourth, as discussed above, the settlement value of the MITTS Securities is based on changes in one class of EuroFund shares while the holder will receive physical settlement in another class. This is an unusual feature of the MITTS Securities. Nevertheless, because the differences among the EuroFund classes are not related to the portfolio held by the EuroFund, but instead appear to be related to differences in fees and this fact has been disclosed and will be highlighted in the Exchange's information circular to members, the Commission believes any concerns about this feature have been adequately addressed.

Finally, the Commission believes that the Exchange and the issuer of the MITTS Securities have adequately addressed the potential manipulation concerns raised by the listing and trading of the MITTS Securities.³⁰ First, as previously noted, the issuer of the MITTS Securities is an affiliate of the investment adviser to the underlying EuroFund. The Commission believes that the Exchange, the issuer of the MITTS Securities, and the investment adviser to the EuroFund have established adequate safeguards to ensure the integrity of the MITTS Securities and the EuroFund. In particular, Merrill Lynch & Co. has represented that its wholly owned

affiliate, Merrill Lynch Asset Management (the investment adviser to the EuroFund), does not provide information with respect to the investments contained in the EuroFund to any proprietary trading operations of its Merrill Lynch affiliates or employees engaged in such trading operations, except at such time as such information is disseminated to the public-at-large. Further, any such dissemination is effected in compliance with applicable laws including the Investment Company Act of 1940. Merrill Lynch & Co. has also represented that Merrill Lynch Asset Management maintains adequate procedures to assure compliance with this policy. These informational barrier procedures, as represented, should help prevent and deter the misuse of any informational advantages with respect to changes in the securities held by the EuroFund.

Secondly, the Exchange has developed surveillance procedures to monitor trading activity in the MITTS Securities and EuroFund shares and will examine trading activity in the component stocks of the EuroFund if necessary. In this regard, the Exchange has noted that based on previous disclosure, the EuroFund invests a substantial percentage of its assets in companies that are domiciled in countries with which the Exchange or the Commission has information sharing agreements.³¹ Further, the Commission notes that the size of the EuroFund in comparison to the MITTS Securities offering, coupled with the fact that the securities held by the EuroFund are only disclosed semi-annually and the EuroFund is a diversified investment company under the Investment Company Act of 1940,³² reduces concerns that the EuroFund's underlying portfolio would be manipulated to affect the MITTS Securities.³³ Nevertheless, the Exchange has stated it will be able to monitor activity in the securities held by the EuroFund if necessary.

³¹ According to information provided by Amendment No. 1, the five most recent semi-annual reports filed by the EuroFund pursuant to Section 30(e) of the Investment Company Act of 1940 indicate that on average, 77.46% of the EuroFund's assets were invested in countries where the Exchange or the Commission has in place a comprehensive surveillance sharing agreement.

³² With respect to 75% of its assets, the EuroFund is prohibited from investing more than 5% of its assets in the securities of a single issuer. In addition, Amendment No. 1 notes that based on the EuroFund's most recent semi-annual disclosures, it appears the EuroFund held between 106 to 138 securities, and that each quarter the make-up of the EuroFund's portfolio changed between 22% to 50%.

³³ See Amendment No. 1 *supra* note 4.

The Commission has also been concerned that the price of the MITTS Securities may be improperly influenced by large redemptions or purchases of shares in the EuroFund, especially near the date of settlement and valuation. The Commission believes that this concern has been reduced by certain factors such as the size of the EuroFund in relation to the MITTS Securities offering, and the EuroFund's practice of maintaining a cash position to avoid having to immediately liquidate assets to cover redemptions.³⁴ Nevertheless, the Exchange has committed to monitor trading activity in the MITTS Securities and shares of the EuroFund, and has stated it will be able to obtain, if necessary, the identity of investors who have made EuroFund redemptions if it detects unusual trading activity in the MITTS Securities.

Based on the above, the Commission believes the Exchange has developed adequate surveillance procedures to monitor trading activity in the MITTS Securities and shares of the EuroFund. The Exchange's surveillance procedures, in combination with the policies outlined by Merrill Lynch & Co., should help to deter and detect any potentially inappropriate or manipulative trading activity in the MITTS Securities, or in the EuroFund shares or the securities held by the EuroFund that affects the MITTS Securities.³⁵

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides additional information concerning the surveillance procedures the Exchange will employ to monitor trading activity in the MITTS Securities and shares of the EuroFund. The information provided by Amendment No. 1 strengthens the Exchange's proposal and indicates the Exchange is committed to monitoring trading activity in the MITTS Securities and EuroFund shares and has implemented procedures capable of detecting unusual trading activity that is designed to affect the price of such securities. Accordingly, the Commission believes that it is consistent with Section 6(b)(5)

³⁴ *Id.*

³⁵ The Commission notes that its conclusions on the MITTS Securities are based on a variety of factors including the size of the MITTS Securities offering in relation to the size of the underlying EuroFund. A similar type of market index target term security on a different open-end mutual fund may raise new or novel issues and may have to be separately reviewed under Section 19(b) of the Act.

²⁸ See e.g., Securities Exchange Act Release Nos. 38940 (Aug. 15, 1997), 62 FR 44735 (Aug. 22, 1997); 38819 (July 7, 1997), 62 FR 37320 (July 11, 1997); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996).

²⁹ As discussed in its order approving the listing and trading of options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes, the Commission recognizes that only an investment adviser should have knowledge of a fund's component securities and their values on a regular basis throughout the trading day. In accordance with the Investment Company Act of 1940, we note that information regarding the securities held by the EuroFund will only be generally available to the public on a semi-annual basis and all investors should have equal access to this information when it is disseminated. See discussion *infra* on informational barriers. Unless certain factors are present, the Commission may determine it is not appropriate to allow a product to trade without real-time dissemination of values. See Securities Exchange Act Release No. 39244 (Oct. 15, 1997), 62 FR 55289 (Oct. 23, 1997).

³⁰ The Commission notes that by approving this proposed rule change the Commission is not approving the EuroFund Index for options or warrants trading.

of the Act³⁶ to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposal, including whether the proposed rule change as supplemented by Amendment No. 1 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. Copies of the submissions, 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 persons, 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-98-24 and should be submitted by September 24, 1998.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-Amex-98-24), as supplemented by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:³⁸

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40369; File No. SR-CHX-98-13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Exchange's Clearing the Post Policy

August 26, 1998.

I. Introduction

On June 10, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with 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 make the Exchange's clearing the post policy permanent.³ The proposed rule change was published for comment in the **Federal Register** on July 16, 1998.⁴ The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange proposes to amend interpretation and policy .02 of CHX Rule 10 of Article XX and amend CHX Rule 11 of Article XX relating to clearing the post and to make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers on cabinet securities⁵ to clear the post by phone. Prior to the pilot program's approval, the Exchange's clearing the post policy required a floor broker or market maker to clear the post by his or her physical presence at the post. The proposed rule change does not require the floor broker's or market maker's physical presence to clear the post. Instead, a floor broker or market maker may clear the post by phone. The bids and offer made to clear the post by phone are

audibly announced at the cabinet post through a speaker system maintained by the Exchange.

The proposed rule change will also expand the clearing the post policy to bids and offers in all securities traded on the trading floor. Interpretation and policy .02 of CHX Rule 10 of Article XX, as amended, will allow a floor broker or market maker to clear the post by phone for bids and offers in any security traded on the trading floor provided they are audibly announced at the post through a speaker system maintained by the Exchange, and the floor broker or market maker is physically present on the Exchange floor.

III. Discussion

After careful review, 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. The Commission believes that the proposed rule change is consistent with Section 6 of the Act, in general,⁶ and Section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁸

The Commission believes that allowing floor brokers or market makers to clear the post for cabinet securities while remaining at their post will ensure that these floor brokers or market makers will be at their post when they need to respond to orders in more liquid securities at a much faster pace. The Commission also believes that expanding the policy to all securities traded on the trading floor, provided that the bid or offer is audibly announced at the post and floor broker or market maker is physical present on the Exchange floor, is consistent with the Act. Expanding the policy should extend the efficiencies experienced during the clearing the post for cabinet securities pilot program to all securities on the CHX floor.⁹ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 39519 (January 6, 1998), 63 FR 1985 (January 13, 1998) (order approving proposed rule change CHX-97-28 amending the Exchange's clearing the post policy for cabinet securities for a six-month pilot program) and 40144 (June 30, 1998), 63 FR 27157 (July 9, 1998) (order approving proposed rule change CHX-98-17 extending the Exchange's pilot program relating to the clearing the post policy for cabinet securities for a five-month period or until the approval of the instant proposed rule change).

⁴ See Securities Exchange Act Release No. 40187 (July 9, 1998), 63 FR 38442.

⁵ A cabinet security is any security that is either listed or available to be traded on the CHX pursuant to unlisted trading privileges that is not assigned a specialist. Telephone conversation between Andrea Svehala, Manager, Equity Floor Surveillance, CHX, and Marc McKayle, Attorney, Division of Market Regulation, Commission (July 24, 1998).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ The CHX submitted a report to the Commission representing that the policy has been well received by the floor brokers and market makers of the

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30-3(a)(12).