trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[19] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act[20] to approve the proposal on an accelerated basis.

V. Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

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

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

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

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

November 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

1. Purpose

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

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

[19] *See supra* note 14.

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

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

[22] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b-4.

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

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

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

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

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

Amount''). The ''Starting Index Value'' is the value of the Select Fifty Index on the date the issuer prices the Notes for the initial sale to the public. The ''Ending Index Value'' is the value of the Select Fifty 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 an approximately 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 Select Fifty Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the Select Fifty Index. The Notes are designed for investors who want to participate or gain exposure to a broad section of large capitalization companies and who are willing to forego market interest payments on the Notes during such term.

The Select Fifty Index will consist of a portfolio of stocks (excluding Merrill Lynch and its affiliates) of the fifty companies with the largest market capitalization in the S&P 500 Index [8] at the time of initial composition or any reconstitution of the Select Fifty Index. The Securities and Exchange Commission (''Commission'' or ''SEC'') has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the S&P 500 Index.[9] In addition, the Commission in 1994 granted approval to the listing and trading of options on an index comprised of the fifty largest U.S. stocks as measured by market capitalization.[10]

Components of the Select Fifty Index approved pursuant to this filing will also 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 Select Fifty Index may have a minimum 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 Select Fifty Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Fifty 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, Inc. (''NYSE'') or traded through the facilities of the National Association of Securities Dealers Automated Quotation System (''NASDAQ'') and reported National Market System securities.

If calculated as of September 16, 2002, the market capitalization of the securities that would represent the Select Fifty Index would range from a high of $269.1 billion to a low of $35.2 billion. The average monthly trading volume of those same securities for the last six months, as of the same date, ranged from a high of 463.5 million shares to a low of 87.9 million shares. Moreover, as of September 16, 2002, all of the securities that would comprise the Select Fifty Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in the Select Fifty Index will represent approximately an equal percentage of the Starting Index Value. 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 underlying the Select Fifty Index on the date the Notes are priced for initial sale to the public. 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 fifty companies included in the Select Fifty Index will represent approximately 2.00% of the total portfolio at the time of issuance. The Select Fifty 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 Select Fifty Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Fifty Index and the applicable share multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[11] 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 underlying the Select Fifty Index during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding component of the Select Fifty 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 Select Fifty 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.

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[8] The S&P 500 Index is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The S&P 500 Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. (''NYSE'') or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

[9] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index)(SPDR); and 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index).

[10] *See* Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994) (approving the listing and trading of options on the Big Cap Index).

[11] At the end of each day, the Select Fifty 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 Select Fifty Index will reduce the total return to investors upon 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.

As of the close of business on each anniversary date (anniversary of the day the Notes are priced for initial sale to the public) through the applicable anniversary date in the year preceding the maturity of the Notes, the portfolio of securities comprising the Select Fifty Index will be reconstituted by the Amex so as to include the fifty stocks (excluding Merrill Lynch and its affiliates) having the largest market capitalization in the S&P 500 Index 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.[12]

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Select Fifty Index will represent approximately 2.00% of the value of the Select Fifty Index. To effectuate this, the share multiplier for each new stock will 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 Select Fifty Index value at the close of business on such anniversary date. For example, if the Select Fifty Index value at the close of business on an anniversary date was 150, then each of the fifty new stocks comprising the Select Fifty Index would be allocated a portion of the value of the Select Fifty Index equal to 3, and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.15. Conversely, if the Select Fifty Index value was 50, then each of the fifteen new stocks comprising the Select Fifty Index would be allocated a portion of the value of the Select Fifty Index equal to 1 and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.05. The last anniversary date on which such reconstitution will occur will be the anniversary date in the year preceding the maturity of the Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Select Fifty Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Select Fifty Index will remain fixed until 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,[13] stock split, reverse stock split, and reorganization.

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 Select Fifty 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 Select Fifty Index value prior to the subsequent anniversary date. For example, if a company included in the Select Fifty 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 Select Fifty 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 Select Fifty 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 a Select Fifty 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 Select Fifty Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Select Fifty Index, the multiplier of that security may be adjusted to maintain the component's relative weight in the Select Fifty Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Select Fifty Index continuity.

The Exchange will calculate the Select Fifty Index and, similar to other stock index values published by the Exchange, the value of the Select Fifty 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 securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

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 that 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,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] 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

[12] The Exchange will publish a notice to advise investors of changes to the securities underlying the Index if any such changes are made following an annual reconstitution.

[13] If the issuer of a component security in the Select Fifty Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Select Fifty 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.

[14] 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.

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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–76 and should be submitted by December 20, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of Section 6 of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act.[20] The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the Select Fifty Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the S&P 500 Index. In addition, the Notes are non-principal protected: they do not have a minimum principal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform initially to the Amex listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001–1003 of the Company Guide. The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors 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, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The Select Fifty Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

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 Select Fifty 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.[21] Thus, if the Select Fifty 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 Index, 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 circular should include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange 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. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with Section 6(b)(5) of the Act.[22] 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,

[18] 15 U.S.C. 78f.

[19] 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).

[20] *Id.*

[21] 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 Select Fifty Index at such repurchase date.

[22] 15 U.S.C. 78f(b)(5).

the Exchange's "Other Securities" listing standards further require that the Notes have at least $4 million in market value.[23] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Index, will be publicly available.[24]

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

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Index or raise manipulative concerns. The Commission notes that the Exchange maintains the Select Fifty Index and states that it has sole discretion in determining, calculating, and maintaining the Index. However, the prospectus provides that guidelines under which the Exchange will perform such functions. The Commission also notes that the Index is equal-dollar weighted but is only rebalanced on an annual basis; however, the Commission notes that the S&P 500 Index is broad-based and composed of stocks with significant market capitalization and average daily trading volume. The Commission further 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. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying Index on which the Select Fifty Index is based (the S&P 500 Index), is broad-based and independent of both the Exchange and the Issuer, factors that the Commission believes should act to minimize the possibility of manipulation.

The Commission notes that the Select Fifty Index is equal-dollar weighted index and that the portfolio of securities underlying the Index will be rebalanced annually—rather than quarterly—by the Amex so as to include the fifty stocks (excluding Merrill Lynch and its affiliates) having the largest market capitalization in the S&P 500 Index on the second scheduled index business day prior to the anniversary date. Although quarterly rebalancing is generally required with respect to options and futures linked to an equal-dollar weighted index,[26] Amex maintains, and the Commission believes, that there are relevant distinctions between the Notes and index options and futures. Specifically, unlike options and futures, debt products, such as the Notes, do not provide a leveraged "play" on the value of the index and are not generally actively traded, but instead are a "buy and hold" investment.[27] Although the Commission has significant concerns about the frequency of rebalancing in the cases of options and futures linked to an equal-dollar weighted index (because of their leveraged nature and active trading), the Commission believes that the Amex's proposal to rebalance the Select Fifty Index on an annual basis is consistent with the Act.

Amex has requested that the Commission find 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 traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the underlying Index on which the Select Fifty Index is based (the S&P 500) is a broad-based index providing an indication of the performance of the U.S. equity market. The Commission further notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on the S&P 500 Index. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, (SR–Amex–2002–76) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30199 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

[23] *See* Company Guide Section 107A.

[24] 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.

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

[26] *See, e.g.,* Amex Rule 901C, Commentary .02.

[27] Telephone conference among Jeffrey Burns, Assistant General Counsel, Amex, Florence Harmon, Senior Special Counsel, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on November 19, 2002.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).