

significantly less than \$10 per Note if the Balanced Strategy Index declines. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.³⁰

Second, the Commission notes that the final rate of return on the Notes depends, in part, 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 that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the Notes have at least \$4 million in market value. Financial information regarding Merrill Lynch will be publicly available.

Third, the Notes will be registered under Section 12 of the Act. As noted above, the Amex's existing equity floor trading rules will apply to the Notes, which will be subject to the Amex's equity margin rules. The Amex will rely on its existing surveillance procedures for equities to monitor trading in the Notes.³¹

Fourth, the Commission has systemic concern 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,³² the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Fifth, the Commission believes that the listing and trading of the Notes

should not unduly impact the market for the securities underlying the Balanced Strategy Index or raise manipulative concerns. As discussed more fully above, the Balanced Strategy Index is based upon the return of the Underlying Indexes. Each of the Underlying Indexes will have a weighting of 50% of the weight of the Balanced Strategy Index, initially and immediately following each annual rebalancing of the Balanced Strategy Index. Both of the Underlying Indexes are well-established and broad-based,³³ and the Commission has concluded previously that the Underlying Indexes are not readily susceptible to manipulation. For example, in the 1999 Order, the Commission found that the U.S. Bond Index, and the other bond indexes reviewed in the 1999 Order, were not readily susceptible to manipulation based on the indexes' issue size, market value, and the representative nature of different sectors of the fixed income securities market.³⁴ Similarly, in approving a proposal to eliminate position and exercise limits for S&P 500 Index options, S&P 100 Index options, and Dow Jones Industrial Index options, the Commission noted that the enormous capitalization of and deep, liquid markets for the underlying securities contained in the indexes significantly reduced concerns regarding market manipulation or disruption in the underlying market.³⁵ In addition, the Amex's surveillance procedures should serve to deter as well as detect any potential manipulation of the Balanced Strategy Index.

Finally, the Commission notes that the value of the Balanced Strategy Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that disseminating the value of the Balanced Strategy Index at least once every fifteen seconds throughout the trading date is useful and will benefit investors in the Notes.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. The

Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal, as amended, will allow investors to begin trading the Notes promptly. Amendment No. 1 strengthens the Amex's proposal by, among other things, noting the surveillance procedures that will apply to trading in the Notes and requiring members, member organizations, and employees thereof recommending transactions in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction. Accordingly, the commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act³⁶ to approve the proposal and Amendment No. 1 on an accelerated basis.

The Commission is approving the Amex's proposed listing standards for the Notes. The commission specifically notes that, notwithstanding approval of the listing standards for the Notes, other similarly structured products will require review by the Commission prior to being listed and traded on the Amex.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act³⁷, that the proposed rule change, as amended, (File No. SR-Amex-2001-91) be, and it hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-31564 Filed 12-21-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45162; File No. SR-NASD-2001-89]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

³⁶ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30-3(a)(12).

³⁰ See December 13 Conversation, *supra* note 22.

³¹ See Amendment No. 1, *supra* note 3.

³² See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR-NASD-2001-73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR-Amex-2001-40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR-Amex-96-27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

³³ See Order, *supra* note 12 (concluding that the U.S. Bond Index is well-established and broad-based); and Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (order approving File No. SR-CBOE-83-8) (noting that the S&P 500 Index is a broad-based index).

³⁴ See 1999 Order, *supra* note 12.

³⁵ See Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order approving File No. SR-CBOE-2001-22) ("2001 Order"). In the 2001 Order, the Commission also noted that, as of October 2001, the market capitalization of the S&P 500 Index was \$9.81 trillion.

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Dispute Resolution. For the reasons discussed below, the Commission is publishing this notice is solicit comments on the proposed rule change and to approve the proposal on an accelerated basis.

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

NASD Dispute Resolution is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD, to extend the pilot injunctive relief rule for six months, pending Commission action on a pending rule filing, SR-NASD-00-02, to amend Rule 10335 and make it a permanent part of the Code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

1000. Code of Arbitration Procedure

* * *

10335. Injunctions

(a)-(h) Unchanged.

(i) Effective Date.

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [January 4, 2002] *July 1, 2002*, unless extended by the Association's Board of Governors.

* * *

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

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

I. Purpose

Rule 10335, the NASD's pilot injunctive relief rule, provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. The rule has primarily been used in "raiding cases," or cases involving the transfer of an employee from one firm to another firm. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The SEC has periodically extended the initial pilot period in order to permit the NASD to assess the effectiveness of the rule. The pilot rule is currently due to expire on January 4, 2002.³

NASD Dispute Resolution believes that it is in the interest of members and associated persons that the effectiveness of the pilot rule remain uninterrupted pending final Commission action on SR-NASD-00-02. Therefore, NASD Dispute Resolution believes that the pilot rule should be extended to July 1, 2002, or such earlier time as permitted by Commission action on the permanent rule filing, which makes clear that, if approved, the amended rule would supersede the pilot rule in its entirety.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or

appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.⁵ 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-89 and should be submitted by January 16, 2002.

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

NASD Dispute Resolution has requested that the Commission find good cause pursuant to Section 19(b)(2)⁶ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.⁷ Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process request for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes,

⁵ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 15 U.S.C. 78o-3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 12, 2000, NASD Regulation, Inc. filed a proposed rule filing, SR-NASD-00-02 to amend Rule 10335 and to make it a permanent part of the Code. See Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) (File No. NASD-00-02). The NASD has amended the rule filing on several occasions, most recently on August 9, 2001. The most recent amendments were published for comment on October 25, 2001. See Securities Exchange Act Release No. 44950 (October 18, 2001), 66 FR 54041 (October 25, 2001).

⁴ 15 U.S.C. 78o-3(b)(6).

and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending Commission action on the rule filing proposing to amend Rule 10335 and make it a permanent part of the Code.⁸ The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-2001-89) is approved on an accelerated basis through July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-31565 Filed 12-21-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45138; File No. SR-NYSE-2001-42]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

December 18, 2001.

Correction

In FR Document 01-30879 beginning on page 64895 for Friday, December 14, 2001, the release number for File No. SR-NYSE-2001-42 should read 34-45138.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-31566 Filed 12-21-01; 8:45 am]

BILLING CODE 8010-01-M

⁸ See *supra* note 3.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 25, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Saunders Miller, Senior Policy Advisor, Office of Investment Division, Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Senior Policy Advisor, (202) 205-3545 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: SBIC License Application, Part, 1 Incorporating the Management Assessment Questionnaire.

Form No: 2181.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 90.

Annual Burden: 160.

Title: SBIC License Application, Part, II, and Exhibits to the License Application.

Form No: 2182.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Title: SBIC License Application, Part, III, Exhibits to the Management Assessment Questionnaire.

Form No: 2183.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 90.

Annual Burden: 160.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01-31649 Filed 12-21-01; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9N84]

State of Wyoming; Disaster Loan Area

Park County and the contiguous Counties of Big Horn, Fremont, Hot Springs, Teton and Washakie in the State of Wyoming; and Carbon, Gallatin and Park Counties in the State of Montana constitute an economic injury disaster loan area as a result of a forest fire that closed the east entrance to Yellowstone National Park from July 29 through August 13, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on September 17, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, FT. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The number assigned for economic injury for this disaster is 9N8400 for the State of Wyoming and 9N8500 for the State of Montana.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: December 17, 2001.

Hector V. Barreto,
Administrator.

[FR Doc. 01-31648 Filed 12-21-01; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region IV—North Florida District Advisory Council; Public Meeting

The Small Business Administration Region IV North Florida District Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting at 11 a.m. Eastern Standard Time on Thursday, January 17, 2002, at the Gainesville Technology Enterprise Center, 2153 Hawthorne Rd, Gainesville, FL 32641, to discuss such matters as may be presented by Advisory Council members, staff of the Small Business Administration, and/or others present.

Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than January 10th, 2002, in order to be put on the agenda. Please direct requests to: