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 a transaction. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes and the compliance responsibility when handling transactions in the Notes. The Commission also notes that UBS will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of June 11, 2003, the market capitalization of the securities included in the S&P 500 ranged from a high of $305.3 billion to a low of $388.5 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 50.3 million shares to a low of 148,223 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, the Exchange equity margin rules and debt trading rules will apply to the securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange 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 underlying securities is minimal, thereby protecting investors and the public interest.

Furthermore, the Commission notes that the Notes are dependant upon the individual credit of the issuer, UBS. 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 securities such as the Notes. In any event, financial information regarding UBS, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.[19]

The Commission also has a systemic concern, however, that a broker-dealer such as UBS, 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,[20] the Commission believes that this concern is minimal given the size of the Notes issuance [21] in relation to the net worth of UBS.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[22] 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 there is good cause, consistent with Section 6(b)(5) and 19(b)(2) of the Act,[23] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Amex–2003–62), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18066 Filed 7–16–03; 8:45 am]

BILLING CODE 8010–01–U

[19] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[20] *See* Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 5032 (June 11, 2003) (SR–Amex–2003–45) (approving the listing and trading of notes whose returns are based on the performance of the Index); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (SR–Amex–2003–46) (approving the listing and trading of notes whose returns are based on the performance of the Index); 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (SR–NASD–2001–73) (approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (SR–Amex–2001–40) (approving the listing and trading of notes 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) (SR–Amex–96–27) (approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[21] The Commission notes that the issuance will be $10 million. Telephone conversation between Jeffery P. Burns, Associate General Counsel, Amex and Tim Fox, Attorney, Commission on July 7, 2003.

[22] *See supra* note 17.

[23] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48151; File No. SR–Amex–2003–63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Amex Biotechnology Index

July 10, 2003.

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 June 17, 2003, 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.

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

[2] 17 CFR 240.19b–4.

On June 23, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade under section 107A of the Amex Company Guide (''Company Guide''), notes linked to the performance of the Amex Biotechnology Index (the ''Biotech Index'' or Index'').

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

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

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

1. Purpose

Under section 107A of the 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, the performance of which is linked to the Biotech Index (the ''Accelerated Return Notes'' or ''Notes'').[5] The Biotech Index is determined, calculated and maintained solely by the Amex.[6] The Notes will provide for a multiplier of any positive performance of the Index during such term subject to a maximum payment amount or ceiling.

The Notes will conform to the listing guidelines under section 107A [7] and continued listing guidelines under sections 1001–1003 [8] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch. The Notes will have a term of not less than one, nor more than ten years. Merrill Lynch will issue the Notes in denominations of whole units (a ''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the Biotech Index. At maturity, if the value of the Index has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three (3) times the amount of that percentage increase, not to exceed a maximum payment (the ''Capped Value'') to be determined at the time of issuance of the Notes.[9] The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the Notes are not ''principal protected,'' and are fully exposed to any decline in the level of the Biotech Index.[10] The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Biotech Index at the close of the market on the five (5) business days shortly before the maturity of the Notes (the ''Ending Value'') and the closing value of the Biotech Index on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$1{,}000 + \left[\$1{,}000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right)\right], \text{ subject to the Maximum Return Amount.}$$

[3] *See* Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 20, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified its policy regarding the use of non-public information by employees. Employees involved in the selection and maintenance of the index are part of the marketing staff and are also covered by the insider trading prohibitions. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Mia C. Zur, Attorney, Division of Market Regulation, Commission, on July 7, 2003.

[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] Merrill Lynch & Co., Inc. (''Merrill Lynch'') and the Amex have entered into a non-exclusive license agreement providing for the use of the Index by Merrill Lynch and certain affiliates and subsidiaries in connection with certain securities including these Notes. Amex is not responsible and will not participate in the issuance and creation of the Notes.

[6] The Biotech Index is an equal dollar weighted index designed to measure the performance of a cross section of companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. Such processes include, but are not limited to, recombinant DNA technology, molecular biology, genetic engineering, monoclonal antibody-based technology, lipid/liposome technology, and genomics. The Index was established with a benchmark value of 200.00 on October 18, 1991. The Index is rebalanced quarterly based on closing prices on the third Friday in January, April, July & October to ensure that each component stock continues to represent approximately equal weight in the Index. The securities included in the Biotech Index are listed on the Amex, New York Stock Exchange, Inc. (''NYSE'') or traded through the Nasdaq Stock Market, Inc. (''Nasdaq'').

[7] 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.

[8] 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.

[9] The capped value is expected to represent an appreciation of 16% to 20% over the original public offering price of the Notes. Thus, maximum payment is not expected to exceed between $11.60 and $12.00 per Note. *See* Merrill Lynch & Co., Inc., Accelerated Return Notes Linked to the Amex Biotechnology Index℠, Preliminary Prospectus Supplement dated June 16, 2003.

[10] A negative return of the Index will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$1{,}000 + \left[\$1{,}000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} + 20\% \right) \right]$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio of securities comprising the Biotech Index. The Notes are designed for investors who want to participate or gain exposure to the Biotech Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options, and securities the performance of which have been linked to, or based on, the Biotech Index.[11]

As of June 12, 2003, the market capitalization of the securities included in the Biotech Index ranged from a high of $84.1 billion to a low of $556.2 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 11.6 million shares to a low of 349,268 shares.[12] The value of the Biotech Index will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are linked to an index comprised 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.[13] Second, the Notes will be subject to the equity margin rules of the Exchange.[14] 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 sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[15] in general, and furthers the objectives of section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 the File No. SR–Amex–2003–63 and should be submitted by August 7, 2003.

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[17] The Commission finds that this proposal is similar to several approved instruments

[11] *See* Securities Exchange Act Release Nos. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Amex Biotechnology Index and a reduced value Amex Biotechnology Index); and 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Biotech-Pharmaceutical Index).

[12] As of June 12, 2003 the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation—Celera Genomics Group (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); Enzon, Inc. (ENZN); Genentech, Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences, Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Invitrogen Corporation (IVGN); Medimmune, Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

[13] 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.

[14] *See* Amex Rule 462.

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

[16] 15 U.S.C. 78f(b)(5).

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

currently listed and traded on the Amex.[18] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote, among other things, just and equitable principles of trade and will facilitate transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[19]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Biotech Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the Biotech Index has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to a cap.

The Commission notes that 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 Biotech Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Biotech Index has declined at maturity, the holder of the Note will receive 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 and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Amount, if the value of the Biotech Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Exchange's proposal adequately addresses the concerns raised by 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 that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees, which is necessary given Amex's role in selecting components and maintaining the Index.

In approving this product, the Commission recognizes, that Biotech Index is an equal dollar weighted index listed on Nasdaq, the NYSE and the Amex. The Commission notes that the Biotech Index is determined, calculated, and maintained by Amex. As of June 12, 2003, the market capitalization of the securities included in the Biotech Index ranged from a high of $84.1 billion to a low of $556.2 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 11.6 million shares to a low of 349,268 shares.[20]

Given the relatively large trading volume and capitalization of the compositions of the stocks underlying the Biotech Index, the Commission believes that the listing and trading of the Notes that are linked to the Biotech Index, should not unduly impact the market for the underlying securities comprising the Biotech Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Biotech Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Biotech Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending 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 issues securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[21] Furthermore, financial information regarding Merrill Lynch, in addition to the information on the common stocks comprising the Biotech Index, will be publicly available.[22]

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,[23] the Commission believes that this concern is minimal given the size

[18] *See* Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of non-principal protected notes linked to the S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of non-principal protected notes linked to the S&P 500); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the DJIA); and 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Biotech-Pharmaceutical Index).

[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] As of June 12, 2003 the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation-Celera Genomics Group (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); Enzon, Inc. (ENZN); Genentech, Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences, Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Invitrogen Corporation (IVGN); Medimmune, Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

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

[22] The Commission notes that the component stocks that comprise the Biotech Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[23] *See* 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).

of the Notes issuance [24] in relation to the net worth of Merrill Lynch.

Finally, the Commission notes that the value of the Biotech Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Biotech Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.** The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[25]

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 there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[26] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2003–63), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18067 Filed 7–16–03; 8:45 am]

BILLING CODE 8010–01–P

[24] The Commission notes that the issuance is $10 million. *See* Merrill Lynch & Co., Inc., Accelerated Return Notes Linked to the Amex Biotechnology Index SM, Preliminary Prospectus Supplement dated June 16, 2003.

[25] *See* supra note 17.

[26] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48145; File No. SR–DTC–2003–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modifications to Settlement Progress Payments Procedures

July 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 13, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–2003–03) described in Items I, II, and III below, which Items have been prepared primarily by DTC. 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 proposed rule change will modify DTC's settlement progress payment (''SPP'') procedures to allow DTC participants, including issuing/paying agents (''IPAs''), to direct that the proceeds from a specific SPP be used to fund a particular transaction, including the maturity presentments of maturing securities from a particular money market instrument (''MMI'') program.

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

In its filing with the Commission, DTC 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 IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

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

Recently, DTC and the Bond Market Association (''BMA'') sought industry comment on a series of possible revisions to DTC's MMI settlement system that were designed to enhance efficiency and reduce the liquidity risk that IPAs incur when making daily payments of billions of dollars on maturing MMIs.[3] Among the several problems that were identified, one is that the intraday funds paid by one commercial paper issuer may be used to pay off the maturity presentments of another issuer because IPAs cannot control how their issuers' obligations are processed against their accounts and because IPAs cannot align specific issuer intraday credits from the issuance of new commercial paper to a specific debt due to that same issuer's maturing commercial paper. Although this typically does not cause any problems because all obligations are settled, events such as those of September 11, 2001, can severely disrupt the process.

Under DTC's current procedures for processing of maturity presentments, DTC delivers the maturing commercial paper from the accounts of participants having positions in the maturing instrument to the IPA's MMI participant account early on the maturity date (generally around 2:00 a.m.). Since maturity presentments are processed as the equivalent of book-entry deliveries versus payment, a maturity presentment may recycle (*i.e.* may pend in DTC's system) just as any delivery would if the net debit cap or collateralization controls applicable to the IPA's account prevent the delivery from taking place. In such a situation, the maturity presentment would be processed only when additional funds are credited to the IPA's account. Recycling maturity presentments are processed in the order they are in DTC's recycling queue. This order is without regard to any offsetting payment or reissuance transaction because, as mentioned above, there is no provision in DTC's current procedures that enables an IPA to allocate settlement credits derived from an intraday SPP to a specific issuer's maturity presentment.

DTC's new procedures will enable the IPA to direct settlement credits from an intraday SPP to a specific issuer's maturity presentments. To do so, when an IPA wires funds to DTC's account at the Federal Reserve Bank of New York, the IPA will designate the CUSIP number of the issuer's MMI. DTC will use this information to process recycling transactions containing the designated CUSIP. (Previously, upon receipt of an intraday SPP, DTC would process the

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

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] While DTC's filing focuses on commercial paper, the issues and revised procedures are for all instruments settled through the MMI settlement system.