of basic events such as equipment failures; and by addressing methods for estimating equipment unavailability. Furthermore, the handbook includes appendices describing the basics of probability and statistics used in performing the more detailed analyses discussed in the main portion of the document.

The handbook provides the basic information needed to generate estimates of the parameters commonly used in PRA analysis. It begins by describing the probability models and plant data used to evaluate each of the parameters. Possible sources for the plant data are identified and guidance on the collection, screening, and interpretation is provided. The statistical techniques (both Bayesian and classical methods) required to analyze the collected data and test the validity of statistical models are described. Examples are provided to help the PRA analyst utilize the different techniques. The handbook also provides advanced techniques that address modeling of time trends. Methods for combining data from a number of similar, but not identical sources are also provided. This includes empirical and hierarchical Bayesian approaches. Examples are provided to guide the analyst. The handbook does not provide guidance on parameter estimation for all of the events included in a PRA. Specifically, common cause failure and human error probabilities are not addressed. In addition, guidance is not provided regarding the use of expert elicitation. However, suggested references regarding these technical areas are provided in the handbook introduction.

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47386; File No. SR–NASD–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Strategic Return Notes Linked to the Select Ten Index

February 20, 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 February 14, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On February 20, 2003, the Amex submitted Amendment No. 1 to the proposed rule change.[3] 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

Nasdaq proposes to list and trade Strategic Return Notes® Linked to the Select Ten Index (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

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

In its filing with the Commission, Nasdaq 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.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2003.

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

1. Purpose

Nasdaq proposes to list and trade notes, the return on which is based upon an approximately equal-dollar weighted portfolio of securities representing the ten highest dividend yielding stocks in the Dow Jones Industrial Average (''DJIA'') from year to year (''Select Ten Index'' or ''Index'').[4]

Under Rule 4420(f), Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.[5] Nasdaq proposes to list for trading notes based on the Select Ten Index under Rule 4420(f). The Select Ten Index is expected to be determined, calculated and maintained solely by the American Stock Exchange (''Amex'').[6]

The Notes will initially be subject to Nasdaq's listing criteria for other securities under Rule 4420(f). Specifically, under Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

[4] The portfolio of securities comprising the Select Ten Index currently consists of the ten common stocks in the DJIA having the highest dividend yield on May 24, 2002, and are as follows: Caterpillar Inc.; Eastman Kodak Company; E.I. du Pont de Nemours and Company; Exxon Mobil Corporation; General Motors Corporation; International Paper Company; J.P. Morgan Chase & Co.; Merck & Co., Inc.; Philip Morris Companies Inc.; and SBC Communications Inc.

[5] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

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

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in Rule 4420(f)(2).[7] Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members 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 of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4450(a)(6). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities of Merrill Lynch that provide for a single payment at maturity. 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 Amount''). The ''Starting Index Value'' is the value of the Select Ten Index on the date on which Merrill Lynch prices the Notes for the initial sale to the public. The ''Ending Index Value'' is the value of the Select Ten 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 may 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 the designated month each year, investors will have the right to require Merrill Lynch to repurchase the Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date. The Notes are not callable by Merrill Lynch.

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 securities, although the return on the investment is based on the aggregate portfolio value of the Select Ten Index securities.

The Select Ten Index will consist of the ten stocks with the highest dividend yields among the thirty stocks that comprise the DJIA, adjusted as described below. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, an index of the top ten dividend yielding stocks of the DJIA.[8] The Commission has also previously approved the listing of securities with a structure identical to that of the Notes.[9]

Components of the Select Ten Index approved pursuant to this filing will 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 Ten 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 million shares, except that up to 10% of the component securities in the Select Ten Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Ten 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 Amex Rule 915; and (4) all component stocks will either be listed on the Amex, the NYSE, or traded through the facilities of Nasdaq and reported National Market System securities.

As of January 22, 2003, the market capitalization of the portfolio of securities representing the Select Ten Index ranged from a high of $124.9 billion to a low of $9.7 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 288 million shares to a low of 45.2 million shares. Moreover, as of January 22, 2003, all of the components comprising the portfolio of securities representing the Select Ten Index were eligible for standardized options trading pursuant to Amex Rule 915.

The value of the Select Ten Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Ten Index and the applicable share multiplier,[10] 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 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 components of the Select Ten 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 Ten 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 dividends allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (May 29th of each year, which is the anniversary of the date the Select Ten Index was originally calculated and disseminated) through the applicable anniversary date in the year preceding the maturity of the Notes, Nasdaq states that the portfolio of securities comprising the Select Ten

[7] Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[8] *See* Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (approving the listing and trading of options on the Dow Jones High Yield Select 10 Index); Securities Exchange Act Release No. 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of Top Ten Yield Market Index Target-Term Securities).

[9] Securities Exchange Act Release No. 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of Select Ten Notes).

[10] The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or Nasdaq, to be included in the calculation of the portfolio.

[11] At the end of each day, the Index will be reduced by a pro rata portion of the annual index adjustment factor, 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Index will reduce the total return to investors upon redeeming the Notes at maturity. 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.

Index will be reconstituted by the Amex so as to include the ten common stocks in the DJIA having the highest dividend yield on the second scheduled index business day prior to such anniversary date. Nasdaq represents that the Amex 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 Ten Index will represent 10% of the value of the Index. To effectuate this, Nasdaq states that 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 Ten Index value at the close of business on such anniversary date. For example, if the Select Ten Index value at the close of business on an anniversary date was 200, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Index equal to 20, and if the closing market price of one such new stock on the anniversary date was 40, the applicable share multiplier would be 0.5. Conversely, if the Select Ten Index value was 80, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Select Ten Index equal to 8, and if the closing market price of one such new stock on the anniversary was 40, the applicable share multiplier would be 0.2. 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 Ten Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Select Ten Index will remain fixed unless 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 Ten 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 Ten Index value prior to the subsequent anniversary date. For example, if a company included in the Select Ten 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 Ten 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 Ten 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 an Index stock due to circumstances including, but not limited to, liquidations, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Select Ten 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 Ten Index, the multiplier of that security in the Select Ten Index may be adjusted to maintain the component's relative weight in the Select Ten Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Select Ten Index continuity.

Nasdaq states that the Amex will calculate the Select Ten Index and, similar to other stock index values published by the Amex, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities. In the event that Amex discontinues the publication of the Select Ten Index, Nasdaq will facilitate the calculation and dissemination every 15 seconds of a value of a successor index either through the facilities of Nasdaq or those of an outside provider that is an independent calculation agent, unless otherwise approved by the Commission.[14] Amex could discontinue publication of the Select Ten Index, and Amex or another entity could publish a successor or substitute index that the calculation agent, in its sole discretion, could deem a comparable successor index. Also, Amex could discontinue publication of the Select Ten Index and the calculation agent could not select a successor index. In such case, the calculation agent will compute a substitute value for the Select Ten Index in accordance with the procedures last used to calculate the Select Ten Index before any discontinuance. If Amex discontinues publication of the Select Ten Index before the period during which the Redemption Amount is to be determined and the calculation agent determines that no successor index is available at that time, then on each business day until the earlier to occur of (1) the determination of the Ending Value or (2) a determination by the calculation agent that a successor index is available, the calculation agent will determine the value that would be used in computing the Redemption Amount as if that day were a calculation day.[15]

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[16] In addition, Nasdaq will distribute a circular to advise members recommending a transaction in the Notes to, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the

[12] Nasdaq states that the Amex 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 Ten 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 Ten 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] *See* Amendment No. 1, *supra* n. 3.

[15] Telephone conference between John Nachmann, Senior Attorney, Nasdaq, and Geoff Pemble, Special Counsel, Commission, dated February 20, 2003.

[16] Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

financial risks of, such transaction. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4 pm will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A of the Act,[17] in general, and furthers the objectives of section 15A(b)(6) of the Act,[18] in particular, in that the proposal 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. Specifically, the proposed rule change, as amended, will provide investors with another investment vehicle based on an index of the top ten dividend yielding stocks of the DJIA.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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, 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 File No. SR–NASD–2003–20 and should be submitted by March 20, 2003.

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, as amended, is consistent with the requirements of section 15A of the Act[19] and the rules and regulations thereunder applicable to a national securities association.[20] Specifically, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act.[21] The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of a publicly-traded debt product linked to the Select Ten 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 Select Ten 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 Nasdaq listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform initially to the Nasdaq listing criteria for other securities under Rule 4420(f), and continued listing criterion for other securities pursuant to Rule 4450(c). 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 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 Notes are non-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Select Ten 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.[22] Thus, if the Select Ten 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 Nasdaq'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 Nasdaq 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

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78o–3(b)(6).

[19] 15 U.S.C. 78o–3.

[20] 15 U.S.C. 78o–3(b)(6). 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).

[21] *Id.*

[22] The Commission recognizes that during a 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 Select Ten Index at such repurchase date.

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. In particular, Nasdaq will advise members 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 of, and is able to bear the financial risks of, such a transaction. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 15(b)(6) of the Act.[23] 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 Nasdaq's listing standards in Rule 4420(f), which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, Nasdaq's ''other securities'' listing standards further require that the Notes have at least $4 million in market value.[24] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Index, will be publicly available.[25]

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,[26] 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 Amex maintains the Select Ten Index and states that it has sole discretion in determining, calculating, and maintaining the Index. The Commission notes that Nasdaq is relying on Amex to calculate continuously and disseminate the Index value every fifteen seconds over the Consolidated Tape Association's Network B. The Commission considers the dissemination of this Index value important to this product's approval and expects Nasdaq to be ultimately responsible for such dissemination.[27] The Commission also notes that Amex could discontinue publication of the Select Ten Index and Amex or another entity could publish a successor or substitute index that the calculation agent,[28] in its sole discretion, could deem a comparable successor index. Also, Amex could discontinue publication of the Select Ten Index and the calculation agent could not select a successor index. In such a case, the calculation agent will compute a substitute value for the Select Ten Index in accordance with the procedures last used to calculate the Select Ten Index before any discontinuance. If Amex discontinues publication of the Select Ten Index before the period during which the Redemption Amount is to be determined and the calculation agent determines that no successor index is available at that time, then on each business day until the earlier to occur of (1) the determination of the Ending Value or (2) a determination by the calculation agent that a successor index is available, the calculation agent will determine the value that would be used in computing the Redemption Amount as if that day were a calculation day. The Commission notes that these risks should be disclosed in the circular that Nasdaq provides to its members.

The Commission also notes that, at the outset, securities in the Select Ten Index will represent approximately an equal percentage of the starting value of the Index, but the Index will only be rebalanced on an annual basis. The Commission notes that the Select Ten Index is composed of stocks with significant market capitalization and average daily trading volume. The portfolio of securities underlying the Index will be rebalanced annually so as to include the ten highest dividend yielding stocks in the DJIA.

In addition, Nasdaq's 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 Nasdaq 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 measure on which the Select Ten Index is based (the DJIA), is broad-based and independent of both Nasdaq and the Issuer, factors that the Commission believes should act to minimize the possibility of manipulation.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Nasdaq has requested accelerated approval because this product is similar to several other instruments currently traded on Nasdaq. In determining to grant the accelerated approval for good cause, the Commission notes that it has previously approved the listing of securities and options on securities the performance of which has been linked to or based on an index of the top dividend yielding stocks of the DJIA. 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, as amended, 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,[29] that the proposed rule change, as amended (SR–NASD–2003–20) is hereby approved on an accelerated basis.

[23] 15 U.S.C. 78o–3(b)(6).

[24] *See* NASD Rule 4420(f)(1).

[25] The companies that comprise the Select Ten Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[26] *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).

[27] Nasdaq represents that, in the event that Amex discontinues the publication of the Select Ten Index, Nasdaq will facilitate the calculation and dissemination every 15 seconds of a value of a successor index either through the facilities of Nasdaq or those of an outside provider that is an independent calculation agent (*e.g.,* not Merrill Lynch), unless otherwise approved by the Commission. *See* Amendment No. 1, *supra* n. 3.

[28] The Commission notes that in approving this product any such calculation agent that calculates and disseminates the value of a comparable successor index should be independent of the issuer of the Notes.

[29] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4577 Filed 2–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47388; File No. SR–PCX–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Determination of Top 120 and 250 Issues

February 21, 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 January 27, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

PCX proposes to amend PCX Rule 6.37(b)(5), PCX Rule 6.87(b), the PCX Schedule of fees, and RBO 02–08 in order to change the calculation period for determining the top 120 and top 250 issues. The text of the proposed rule change is available for inspection and copying in the Commission's Public Reference Room and at the principal office of the PCX.

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 PCX 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. The PCX 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

In evaluating the type and quality of issues traded on the Exchange, the Exchange ranks issues based upon the total national volume. A common benchmark that the Exchange uses is called ''top 120'' and ''top 250,'' indicating that equity option issues falling within these groups would qualify as being among the top 120 or top 250, respectively, of the most actively-traded equity option issues. Because the Exchange relies on the top 120 and top 250 rankings with respect to many of its processes, it believes it needs to define them in such a way as to provide greater accuracy and meaning to the point of reference. Currently, the Exchange defines ''top 120'' as:

for each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month.

The Exchange determines the top 250 rankings in the same manner. Accordingly, the current approach would use September's national equity option volumes to determine November's rankings.

The Exchange represents that it has observed that volumes fluctuate from month to month and as a result, an issue may fall out of, or into, the top 120 or top 250 ranking somewhat sporadically. Moreover, the Exchange believes that evaluating the option volumes over a one-month period does not provide great accuracy in determining the long-term performance of an issue and its rank. Accordingly, the Exchange proposes to adopt a trailing three-month average, starting with the most currently completed calendar month, in order to determine the rankings of issues. For example, under the proposed rule change, the Exchange would determine its November ranking in October and base the ranking on the national volumes of the September, August and July trade months. Consistently, it would determine its December ranking in November and base it on the October, September and August national volumes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[5] in general, and furthers the objective of section 6(b)(5),[6] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX represents that it submitted a draft of this filing, including the proposed new rule text, to the Commission on January 9, 2003 in fulfillment of the five-day draft notice period of Rule 19b–4(f)(6).[7] The PCX has further designated that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designated if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to section

[30] 17 CFR 200.30–3(a)(12).

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

[2] 2 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The PCX requests that the Commission waive the 30-day operative delay. The PCX provided the Commission with notice of its intention to file this proposal on January 9, 2003.

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

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.19b–4(f)(6).