price of the buy order. Unless marked ''Do Not Increase'', the size of the order will be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.[26] Finally, odd lot orders in ITS Securities that result from partial execution rather than order entry will be canceled rather than adjusted.

Implementation

When the proposed enhancements to SuperMontage are approved, Nasdaq proposes to set and publish a phase-in schedule for transitioning from CAES to SuperMontage. When an ITS Security begins trading through SuperMontage, it will simultaneously cease trading through CAES. When all ITS Securities are trading through SuperMontage, no stocks will be trading through CAES and CAES will be retired.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the rules cannot be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes that improvements to SuperMontage are designed to increase the liquidity and opportunities for price improvement in SuperMontage by facilitating greater participation and trading interest interaction.

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

Nasdaq 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–149 and should be submitted by November 18, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27089 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48677; File No. SR–NASD–2003–155]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Accelerated Return Notes Linked to the S&P 500® Index

October 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 October 9, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

Nasdaq proposes to list and trade Accelerated Return Notes Linked to the S&P 500® 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[26] *See* Proposed NASD Rule 4715(b and c).

[27] 15 U.S.C. 70o–3(b)(6).

[28] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 the S&P 500® Index (''Index'').[3]

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list for trading the, as described below, under NASD Rule 4420(f).

[3] The Index is published by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (''Standard & Poor's'' or S&P'') and is intended to provide an indication of the pattern of common stock price movement. The Index is a capitalization-weighted index, with each stock's weight in the Index proportionate to its market value. The value of the Index is based on the relative value of the aggregate market value of the common stocks of 500 companies as of a particular time compared to the aggregate average market value of the common stocks of 500 similar companies during the base period of the years 1941 through 1943. The market value for the common stock of a company is the product of the market price per share of the common stock and the number of outstanding shares of common stock. As of August 29, 2003, 424 companies, or 83.6% of the market capitalization of the Index, traded on the New York Stock Exchange (''NYSE''); 74 companies, or 16.2% of the market capitalization of the Index, traded on Nasdaq; and 2 companies, or 0.2% of the market capitalization of the Index, traded on the American Stock Exchange (''AMEX''). As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database, which Standard & Poor's uses as an assumed model for the composition of the total market. Relevant criteria employed by Standard & Poor's include the viability of the particular company, the extent to which that company represents the industry group to which it is assigned, the extent to which the market price of that company's common stock is generally responsive to changes in the affairs of the respective industry and the market value and trading activity of the common stock of that company. Ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%). Standard & Poor's may from time to time, in its sole discretion, add companies to, or delete companies from, the Index to achieve the objectives stated above.

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

Description of the Notes

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will have a term of not less than one and not more than four years. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity in 2005.[5]

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on triple the amount of that percentage increase, not to exceed a maximum payment per Unit (the ''Capped Value'') that is expected to be between $11.60 and $12.00.[6] Thus, the Notes provide investors the opportunity to obtain leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 16% to 20% over the original public offering price of the Notes. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity, a beneficial owner will receive less, and possibly significantly less, than the original public offering price of $10 per Unit.[7]

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

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

$$\$10 \times \left(\frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

[5] The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

[6] The actual Capped Value will be determined at the time of issuance of the Notes.

[7] Any amount the beneficial owner would receive at maturity (which is less than the original offering price) would correspond to any decline in value of the Index. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Hong-Anh Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 15, 2003.

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

$$\$10 + \left(\$30 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right)$$

provided, however, the Redemption Amount cannot exceed the Capped Value.

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 or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the 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 on, and securities the performance of which have been linked to or based on, the Index.[8]

Criteria for Initial and Continued Listing

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[9] 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;

[8] *See* Securities Exchange Act Release No. 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500 ® Index); Securities Exchange Act Release No. 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 ® Index); Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 ® Index); Securities Exchange Act Release No. 31591 (December 11, 1992), 57 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depository Receipts based on the S&P 500 ® Index); and Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 ® Index).

[9] Merrill Lynch satisfies this listing criterion.

(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.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[10] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding member firm 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 have reasonable grounds for believing that the recommendation 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. In addition, pursuant to NASD Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD 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 NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

Rules Applicable to the Trading of the Notes

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310, ''Recommendations to Customers (Suitability),'' and NASD IM–2310–2, ''Fair Dealing with Customers,'' NASD 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.[11] In addition, as previously described, 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. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4:00 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.

Disclosure and Dissemination of Information

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] in general, and with Section 15A(b)(6) of the Act,[13] 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 will provide investors with another investment vehicle based on the Index.

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

Nasdaq 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.

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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 number SR–NASD–2003–155 and should be submitted by November 18, 2003.

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

Nasdaq has asked the Commission to approve the proposal, on an accelerated basis to accommodate the timetable for listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked

[10] NASD Rule 4420(f)(2) generally requires that issuers of securities designated pursuant to this paragraph [sic] to be listed on The Nasdaq National Market or the NYSE or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis. The Commission notes that there is a typographical error in NASD Rule 4420(f)(2), which the NASD, through its subsidiary, Nasdaq, will have to submit a filing, pursuant to the provisions of Section 19(b) under the Act, to delete any reference to paragraph (e) under this Rule.

[11] 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.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(6).

to or based on, the Index.[14] The Commission has also previously approved the listing of securities with a structure identical to that of the Notes.[15]

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 association, and, in particular, with the requirements of Section 15A(b)(6) of the Act [16] in that it is designed 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.[17] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exist at the maturity of the Notes, subject to the Capped Value. Specifically, as described more fully above, if the value of the Index has increased, a beneficial owner will be entitled to receive at maturity a payment of the Notes based on triple the amount of any percentage increase in the Index, not to exceed the Capped Value.

The Notes are leveraged debts instruments whose price will be derived from and based upon the value of the Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Index has declined at maturity, a beneficial owner may receive significantly less than the original public offering price of the Notes.[18] 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 on 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 Value, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[19] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[20] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee any return of principal at maturity, that the maximum return on the Notes is limited to $11.60 and $12 per unit,[21] that the Notes will not pay interest, and that the Notes will provide exposure in the Index. 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.

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 NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.[22]

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4:00 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates. Nasdaq represents that its surveillance procedures are adequate to monitor properly the grading of the Notes.

Fourth, the Commission has a 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 the hybrid instruments issued by broker-dealers,[23] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. 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, composed, and calculated by Standard & Poor's. As of October 7, 2003, the market capitalization of the securities included in the Index ranged from a high of $313.8 billion to a low of $568.4

[14] *See* note 8, *supra.*

[15] *See* Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of Market Recovery Notes linked to the S&P 500® Index); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500® Index); 47009 (December 16, 2002), 67 FR 78540 (December 24, 2002) (approving the listing and trading of Market Recovery Notes linked to the Nasdaq-100 Index); and 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes linked to the Dow Jones Industrial Average).

[16] 15 U.S.C. 78*o*–3(b)(6).

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

[18] Any amount the beneficial owner would receive at maturity (which is less than the original offering price) would correspond to any decline in value of the Index. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Hong-Anh Tran, Special Counsel, Division, Commission, on October 15, 2003.

[19] *See* 1993 Order, *supra* note 4.

[20] As discussed above, Nasdaq will advise members recommending a transaction 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.

[21] The actual Capped Value will be determined at the time of issuance of the Notes.

[22] The companies comprising the Index are reporting companies under the Act.

[23] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (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) (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) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

million. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 60.0 million shares to a low of 138.7 thousand shares. As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database. Furthermore, as of August 29, 2003, ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%).

Given the large diversification, capitalization, and relative percentage weightings of the companies included in each group of companies comprising the Index, the Commission continues to believe, as it has concluded previously, that the listing and trading of securities 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 Commission also believes that the relative percentage weightings of the ten groups of companies comprising the Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. 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 with listed on Nasdaq, the NYSE, or the AMEX. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date 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 will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.[24] Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[25] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASD–2003–155) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27091 Filed 10–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48675; File No. SR–NASD–2003–143]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Establish a New ''Auto-Ex'' Order in Nasdaq's SuperMontage System

October 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 September 24, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on October 3, 2003.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on October 21, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to establish a new ''Auto-Ex'' order in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq intends to implement the proposed rule change as soon as possible following Commission approval and will inform market participants of the exact implementation date via a Head Trader alert on *http://www.nasdaqtrader.com.* The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)–(jj) No change.

(kk) The term ''Auto-Ex'' shall mean, for orders so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

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[24] *See* note 15, *supra.*

[25] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

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

[27] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 2, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq amended the proposal to designate the proposed rule change as filed under section 19(b)(2) rather than section 19(b)(3)(A) of the Act and replaced the original filing in its entirety.

[4] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 21, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq amended the proposed rule text and clarified certain aspects of the proposed rule change which included, in part, stating that all Nasdaq market participants would be permitted to enter Auto-Ex orders and that Auto-Ex orders would access liquidity available at multiple price levels, but under no circumstances would the order ''trade through'' the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee).