

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44437; File No. SR-Amex-2001-39]

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Industrial 15 Notices

June 18, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons 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 Amex proposes to list and trade notes, the return on which is based upon an equal-dollar weighted portfolio of securities representing the fifteen highest dividend yielding stocks from a group of certain stocks in the Standard & Poor's ("S&P") Industrial Index<sup>3</sup> from year to year that meet the additional criteria set forth below (the "Industrial 15 Index" or "Index").<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The S&P Industrial Index is a subset of the S&P 500 Index consisting of the largest 400 industrial stocks of the S&P 500. The S&P Industrial Index is calculated by starting with the S&P 500 Index and then excluding financial, utility and transportation stocks.

<sup>4</sup> As of May 31, 2001, the portfolio of securities comprising the Industrial 15 Index are: Albertson's Inc.; ALLTEL Corporation; Avery Dennison Corporation; Bristol-Myers Squibb Company; The Clorox Company; ConAgra, Inc.; Emerson Electric Co.; Hershey Food Corporation; The Gillette Company; Johnson Controls, Inc.; The Mays Department Stores Company; Newell Rubbermaid Inc.; Pitney Bowes Inc.; Rohm and Haas Company; and Textron Inc. Telephone conversation between Jeffrey P. Burns, Senior Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on June 15, 2001.

The portfolio of securities will include the fifteen highest dividend yielding stocks from a group of certain stocks in the S&P Industrial Index for that year and the Amex will not have any discretion in the selection process.

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

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

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

###### 1. Purpose

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>5</sup> The Amex proposes to list for trading under section 107A of the Company Guide notes based on the Industrial 15 Index (the "Industrial 15 Notes" or "Notes"). The Industrial 15 Index will be determined, calculated, and maintained solely by the Amex.<sup>6</sup>

The Industrial 15 Notes will conform to the initial listing guidelines under Section 107<sup>7</sup> and continued listing guidelines under sections 1001-1003<sup>8</sup>

<sup>5</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>6</sup> Subject to the criteria in the prospectus regarding the construction of the Index, the Exchange has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

<sup>7</sup> The initial listing standards for Industrial 15 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.

<sup>8</sup> 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

of the Company Guide. Industrial 15 Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Industrial 15 Notes will have a term of not less than one nor more than ten years. Industrial 15 Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Industrial 15 Index on the date on which the issuer prices the Industrial 15 Notes issue for the initial offering to the public. The "Ending Index Value" is the value of the Industrial 15 Index over a period shortly prior to the expiration of the Industrial 15 Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Industrial 15 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 Industrial 15 Notes. During the designated month each year, the investors may have the right to require the issuer to repurchase the Industrial 15 Notes at a redemption amount based on the value of the Industrial 15 Index at such repurchase date. Industrial 15 Notes are not callable by the issuer.

Industrial 15 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 securities comprising the Industrial 15 Index.

The Industrial 15 Index will consist of a portfolio of the fifteen qualifying stocks (the "Qualifying Stocks") with the highest dividend yields at the time of initial composition or any reconstitution of the Industrial 15 Index. "Qualifying Stocks" are those stocks from the S&P Industrial Index that are (1) in the top 75% of the Index, as measured by market capitalization after elimination of stocks included in the Dow Jones Industrial Average ("DJIA"), and (2) have an S&P Common Stock Ranking of A or A+.

Components of the Industrial 15 Index approved pursuant to this filing

dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Industrial 15 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.

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 Industrial 15 Index may have a minimum market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Industrial 15 Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Industrial 15 Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all components stocks will either be listed on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and reported National Market System securities.

As of May 31, 2001, the market capitalization of the securities that would represent the Industrial 15 Index would range from a high of \$105.4 billion to a low of \$6.1 billion. The average monthly trading volume of those same securities for the last six months, as of the same date, ranged from a high of 107.8 million shares to a low of 8.9 million shares. Moreover, as of May 31, 2001, all of the securities that would comprise the Industrial 15 Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in the Industrial 15 Index will represent approximately an equal percentage of the Starting Index Value. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio underlying the Industrial 15 Index on the date that the Industrial 15 Notes are priced for initial sale to the public. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, initially each of the fifteen companies included in the Industrial 15 Index will represent approximately 6.67% of the total portfolio at the time of issuance. The Industrial 15 Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Industrial 15 Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Industrial 15 Index and the applicable share multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.<sup>9</sup> Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock underlying the Industrial 15 Index during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding components of the Industrial 15 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 Industrial 15 Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividend allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the date of the initial issuance of Industrial 15 Notes) through the applicable anniversary date in the year preceding the maturity of the Notes, the portfolio of securities comprising the Industrial 15 Index will be reconstituted by the Amex so as to include the fifteen Qualifying Stocks in the S&P Industrial Index having the highest dividend yield on the second scheduled index business day prior to such anniversary date. The Exchange will announce such changes to investors at least one day prior to the anniversary date.<sup>10</sup>

<sup>9</sup> At the end of each day, the Industrial 15 Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*,  $1.5\%/365 \text{ days} = 0.0041\%$  daily). This reduction to the value of the Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

<sup>10</sup> The Exchange will publish a notice to advise investors of changes to the securities underlying the

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Industrial 15 Index will represent 6.67% of the value of the Industrial 15 Index. To effectuate this, the share multiplier for each new stock will be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Industrial 15 Index value at the close of business on such anniversary date. For example, if the Industrial 15 Index value at the close of business on an anniversary date was 150, then each of the fifteen new stocks comprising the Industrial 15 Index would be allocated a portion of the value of the Index equal to 10, and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.5. Conversely, if the Industrial 15 Index value was 60, then each of the fifteen new stocks comprising the Industrial 15 Index would be allocated a portion of the value of the Industrial 15 Index equal to 4, and if the closing market price of one such new stock on the anniversary was 20, 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 Industrial 15 Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Industrial 15 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,<sup>11</sup> 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

Index if any such changes are made following an annual reconstitution.

<sup>11</sup> If the issuer of a component security in the Industrial 15 Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Industrial 15 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.

shareholders. If the issuer of a stock included in the Industrial 15 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 Industrial 15 Index value prior to the subsequent anniversary date. For example, if a company included in the Industrial 15 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 Industrial 15 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 Industrial 15 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 Industrial 15 Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Industrial 15 Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Industrial 15 Index, the multiplier of that security in the Industrial 15 Index may be adjusted to maintain the component's relative weight in the Industrial 15 Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Industrial 15 Index continuity.

The Exchange will calculate the Industrial 15 Index and, similar to other stock index values published by the Exchange, 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.

Because Industrial 15 Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Industrial 15 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 Industrial 15 Notes.<sup>12</sup>

<sup>12</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to

Second, Industrial 15 Notes will be subject to the equity margin rules of the Exchange.<sup>13</sup> Third, the Exchange will, prior to trading Industrial 15 Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Industrial 15 Notes and highlighting the special risks and characteristics of the Industrial 15 Notes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>14</sup> in general and furthers the objectives of Section 6(b)(5)<sup>15</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

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

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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

every customer and to every order or account accepted.

<sup>13</sup> See Amex Rule 462 and Section 107B of the Company Guide.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-39 and should be submitted by July 13, 2001.

## 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.<sup>16</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex and the NYSE.<sup>17</sup> Accordingly, the Commission finds that the listing and trading of Industrial 15 Notes is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and

<sup>16</sup> *Id.*

<sup>17</sup> See Securities Exchange Act Release Nos. 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR-Amex-99-42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR-Amex-99-15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR-Amex-97-47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR-Amex-96-28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR-Amex-93-40); 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993) (accelerated approval order for the listing and trading of MITTS on the NYSE) (File No. SR-NYSE-93-31); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR-Amex-92-42).

the public interest consistent with section 6(b)(5) of the Act.<sup>18</sup>

Industrial 15 Notes are not leveraged instruments; however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of Industrial 15 Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of Industrial 15 Notes is derivatively priced, based on the performance of a portfolio of securities, and the components of the Industrial 15 Index are more likely to change each year, over the terms of the Industrial 15 Notes, than products previously issued, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Industrial 15 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 Industrial 15 Notes. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Industrial 15 Notes.

In approving the product, the Commission recognizes that the components are likely to change each year over the life of the product. Nevertheless, the Commission believes that this is acceptable because the Amex has clearly stated its guidelines and formula for replacing components from a specific group of well-known and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Industrial 15 Index will represent the fifteen highest dividend yielding Qualifying Stocks in the S&P Industrial Index. Amex will do the calculation for replacements based on a set formula to determine which of the S&P Industrial Index securities will be in the Index for the following year. The Commission believes that within these confines the potential frequent changes in the components of the Industrial 15 Index are reasonable and will meet the expectation of investors.

In addition, the Commission notes that the Industrial 15 Notes are non-principal protected. The Notes may not

have a minimum principal amount that will be repaid and that payments on the Notes prior to or at maturity may be less than the original issue price of the Industrial 15 Notes. The Commission also recognizes that during the designated month Industrial 15 Notes at a redemption amount based on the value of the Industrial 15 Index at such repurchase date.

The Commission notes that Industrial 15 Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as Industrial 15 Notes. In addition, the Exchange's hybrid listing standards further require that Industrial 15 Notes have at least \$4 million in market value.<sup>19</sup> In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Industrial 15 Index, will be publicly available.<sup>20</sup>

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. As discussed in the prior approval orders for similar instruments (e.g., the Select Ten Notes), the Commission believes this concern is minimal given the size of Industrial 15 Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of Industrial 15 Notes should not unduly impact the market for the underlying securities comprising the Industrial 15 Index. First, the underlying securities comprising the S&P Industrial Index, from which the Industrial 15 Index components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Industrial 15 Index will be equally weighted, initially and immediately following each annual reconstitution of the Industrial 15 Index, no single stock or group of stocks will likely dominate the Industrial 15 Index. Finally, the issuers of the underlying securities comprising the Industrial 15 Index, are subject to reporting requirements under the Act, and all of the portfolio securities 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.

Finally, the Commission notes that the value of the Industrial 15 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 Industrial 15 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 notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex and the NYSE.<sup>21</sup> In determining to grant the accelerated approval for good cause, the Commission notes that the Industrial 15 Index is a portfolio of highly capitalized and actively traded securities similar to hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, Industrial 15 Notes will be listed pursuant to existing hybrid security listing standards as described above. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation method. Based on the above, the Commission finds, consistent with Section 6(b) of the Act,<sup>22</sup> that there is good cause for accelerated approval of the product.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Amex-2001-39), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>18</sup> 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).

<sup>19</sup> See Company Guide Section 107A.

<sup>20</sup> The companies that comprise the Industrial 15 Index are reporting companies under the Act.

<sup>21</sup> See *supra* note 17.

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).