

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Rule 10A-1, SEC File No. 270-425, OMB Control No. 3235-0468

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10A-1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104-67. Under section 10A and Rule 10A-1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is expected that satisfaction of these conditions precedent to the reporting requirements will be rare and, therefore, it is estimated that Rule 10A-1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: May 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-13465 Filed 5-26-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41423; File No. SR-AMEX-99-17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Term Notes Linked to an Index of Select Sector SPDRs

May 18, 1999.

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 May 7, 1999, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposal was amended on May 10, 1999.³ The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6)⁴ under

the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange seeks to list and trade term notes linked to the Select Sector SPDR Fund Growth Portfolio Index. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Exchange 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 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 Listing Standards, Policies and Requirements ("Amex Listing Standards"), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁵ In this proposal, the Exchange seeks to list term notes ("Notes") reflecting the performance of the Select Sector SPDR Fund Growth Portfolio Index ("Index") under Section 107A. The eight Select Sector SPDRsSM included in the Index, to which the notes will be linked, are shares issued by an open-end management investment company registered under the Investment Company Act of 1940 and have been approved for trading on the Exchange.⁶

The Notes will be issued by Merrill Lynch & Co., Inc. ("Merrill") and underwritten by Merrill Lynch Pierce Fenner & Smith Incorporated. The Commission approved the listing and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated May 10, 1999.

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

⁶ See Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) ("Release No. 34-40749").

trading of: Select Sector SPDRs on December 4, 1998;⁷ notes linked to individual Select Sector SPDRs on January 20, 1999;⁸ and options overlying Select Sector SPDRs on July 1, 1998.⁹

The Notes will be senior, unsecured debt securities that will conform to the listing guidelines of Section 107A of the Amex Listing Standards.¹⁰ Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note will provide for payment at maturity based in whole or in part on changes in the value of the components of the Index.

Merrill proposes to issue the Notes in an amount of between \$10 and \$25 per unit with an aggregate offering in an amount equal to at least \$10 million. Merrill has prepared a preliminary prospectus for the Notes which will be available for distribution to investors.

The Exchange believes that the Notes are appropriately linked to the Index because the component Select Sector SPDRs are shares of an open-end management investment company, and have been previously approved to underlie notes similar to those being proposed. Further, all the component Select Sector SPDRs are approved for options trading. For these reasons, the Exchange believes that any concerns with respect to potential manipulation or market impact upon settlement of the Notes at maturity are minimized.¹¹

The Index, to which the Notes will be linked, comprises eight Select Sector SPDRs which are shares of a management investment company holding liquid and highly capitalized stocks included in the S&P 500 Index. A comprehensive discussion of the composition and maintenance of each of the Select Sector SPDRs in the Index is contained in the order approving their listing and trading on the Amex.¹² In

addition, copies of the prospectus pertaining to the Select Sector SPDRs are available.

Index Calculation. The Index will be calculated by the Amex based on fixed component weightings. The following is a description of the methodology. Each of the Select Sector SPDR components will account for the following percentage of the Index's value:

Select sector SPDR	Initial weight (percent)
Technology	25
Consumer Services	18
Consumer Staples	16
Financials	15
Energy	8
Industrials	7
Basic Industries	6
Cyclical/Transportation	5

Although the foregoing weightings may be revised, all such revisions to Index component weightings, in the aggregate, will not exceed 5% of the value of the Index (e.g., the initial weighting for Basic Industries may be revised to 8% and for Cyclical/Transportation to 3%). A multiplier will be determined for each Select Sector SPDR based on the initial weights set forth above and the then current sale prices of each Select Sector SPDR so that the Index value on the pricing data equals 100 and the Index value at any time will equal the sum of the Select Sector SPDRs' last sale prices multiplied by the number of shares in the Index for each Select Sector SPDR. There will be no periodic rebalancing of the Index to reflect changes in relative performance among the Select Sector SPDRs. Because the Notes are designed to provide investors with a percentage of the appreciation in the Index as measured over a specified period of time, and are essentially a passive investment, the Index will not be actively maintained like other derivatively-based index products, except as discussed below. The shares for each component Select Sector SPDR remain fixed during the life of the Note, except in the event of certain actions, taken by the management investment company, such as anti-dilution events including a split in the value of the Select Sector SPDR or capital gains distributions. In the event the Index is adjusted for a dilution event, the Amex will adjust the multiplier of the affected Select Sector SPDR in the Index so that the Index value remains unchanged after the share

price is adjusted to reflect the distribution. In the event a Select Sector SPDR ceases to trade, the Exchange may determine to replace it with a substitute Sector SPDR or a successor Sector SPDR (if available), or undertake to include the index value relating to the former Select Sector SPDR's value.

Dissemination of Index. Similar to other index values which underlie exchange-traded products, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Surveillance. Surveillance procedures similar to those in place and used to surveil the trading in Merrill Lynch Euro Fund MITTS¹³ ("Eurofund MITTS") and notes linked to individual Select Sector SPDRs¹⁴ will be used to surveil trading in the term notes linked to the Index. Accordingly, the Exchange will monitor trading in the Notes and in the Select Sector SPDRs. Similar to the Euro Fund MITTS and the notes linked to individual Select Sector SPDRs, if the Exchange detects unusual activity in the Notes, it will examine, if necessary, activity in the stocks held by the Select Sector SPDRs as well as the redemption activity in the SPDRs themselves. As discussed in the order approving the trading of Select Sector SPDRs, Merrill currently has in place procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the component Select Sector SPDRs.¹⁵

Settlement. Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity settlement payment equal to the principal amount of the Notes plus a "Supplemental Redemption Amount," based on the percentage increase, if any, in the Index value from the starting value to the adjusted ending value.

The starting value will equal the value of the Index at the close of business on the pricing date and the adjusted ending value will equal the average value of the closing Index value on five consecutive trading days shortly prior to maturity,¹⁶ as reduced by an annual adjustment factor. The adjustment factor, generally in an amount between .5% to 3%, will be applied to the Index value on a pro rata basis each day for purposes of determining the adjusted ending value. The actual adjustment factor will be

¹³ Securities Exchange Act Release No. 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998).

¹⁴ Release No. 34-40956.

¹⁵ See Release No. 34-40749.

¹⁶ This five day period is described in the prospectus.

⁷ *Id.*

⁸ Securities Exchange Act Release No. 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) ("Release No. 34-40956").

⁹ Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) ("Release No. 34-40157").

¹⁰ Section 107A of the Amex Listing Standards states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security satisfies the capitalization, distribution and other criteria described therein.

¹¹ The risks associated with trading of the Index components are discussed in detail in previous released. See Release Nos. 34-40749, 34-40956 and 34-40157.

¹² The nine Select Sector SPDRs currently approved for trading on the Exchange include the Basic Industries, Consumer Services, Consumer

Staples, Cyclical/Transportation, Energy, Financial, Industrial, Technology and Utilities Select Sector SPDRs. See Release No. 34-40749. The Utilities Select Sector SPDR will not be a component security of the Notes.

determined on the pricing date and disclosed in the prospectus to investors. Upon maturity, the Notes will be cash settled. The Exchange notes that the formula may produce a total return at maturity that is lower than the return a holder of all of the corresponding Select Sector SPDRs might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

Similar to other Exchange traded index-linked notes, both the issue and the issuer will meet the general criteria set forth in Section 107A of the Amex Listing Standards. Furthermore, the issuer will have a minimum tangible net worth in excess of \$100,000,000 and otherwise substantially exceed the earnings requirements set forth in Section 101 of the Amex Listing Standards.¹⁷

Exchange Rules Applicable to the Notes. Because the Notes are linked to a portfolio of Select Sector SPDRs, which are subject to the Exchange's equity floor trading rules, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Standard Time) will apply to the trading of the Notes. Pursuant to Amex Rule 411, the exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.¹⁸ In addition, consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommendation transaction, including

those highlighted, and is financially able to bear the risks of the recommended transaction. Lastly, as with other structured products, the Exchange will closely monitor activity in the Notes to identify and deter any potential improper trading activity in the Notes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) ¹⁹ of the Act in general and furthers the objectives of Section 6(b)(5) ²⁰ 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 represents that the proposed rule change will impose no burden on competition.

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

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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act ²¹ and Rule 19b-4(f)(6) thereunder ²² because 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; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.²³

The Exchange has requested that the rule change be accelerated to become operative fifteen days from filing of the proposal, because such proposal contemplates a hybrid derivative product that changes only the composition of the underlying securities without raising new regulatory issues. Since the proposed derivative product is sufficiently similar to previously approved and currently traded products, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates May 25, 1999 as the operative date of this filing.

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, 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 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-99-17 and should be submitted by June 17, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Jonathan G. Katz,

Secretary.

[FR Doc. 99-13467 Filed 5-26-99; 8:45 am]

BILLING CODE 8010-01-M

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ Section 101 of the Amex Listing Standards requires that an issuer have pre-tax income of \$750,000 in its last fiscal year, or in two of its last three fiscal years.

¹⁸ See Amex Rule 462.

²³ 15 U.S.C. 78s(b)(3)(C).

²⁴ 17 CFR 200.30-3(a)(12).