(b) the respective Fund, in absence of such approval with respect to such Fund.

3. The Company will hold meetings of shareholders to vote on approval of the Interim Agreements within the Interim Period (but in no event later than March 31, 2000).

4. The Adviser or an entity controlling, controlled by, or under common control with the Adviser, not the Funds, will bear the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the Funds necessitated by the Transaction.

5. The Adviser and Subadvisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Company's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided under the Existing Advisory Agreement and Existing Subadvisory Agreements. If personnel providing material services during the Interim Period change materially, the Adviser and Subadvisers, as the case may be, will apprise and consult with the Board to assure that the Directors, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26153 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24065; 812–11242]

Merrill Lynch, Pierce, Fenner & Smith Incorporated; Notice of Application

September 30, 1999

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1) of the Act and under section 6(c) of the Act for an exemption from section 14(a) of the Act.

SUMMARY OF APPLICATION: Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch'') requests and order with respect to the Exchangeable Preferred Trusts and future trusts that are substantially similar and for which Merrill Lynch will serve as a principal underwriter (''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (''Securities'') of any Trust than that permitted by section 12(d)(1) and (ii) exempt the Trusts from the initial net worth requirements of section 14(a). Merrill Lynch also requests an order to amend a prior order (''Prior Order'').[1]

FILING DATES: The application was filed on August 3, 1998. Applicant has agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests would state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281–1318.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

[1] *Merrill Lynch, Pierce Fenner & Smith Incorporated and Merrill Lynch Government Securities, Inc.*, Investment Company Act Release Nos. 22758 (July 22, 1997) (notice) and 22789 (Aug. 18, 1997) (order).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Merrill Lynch or an entity controlling, controlled by, or under common control with Merrill Lynch will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) or placement agent of the Securities. Each Trust will issue Securities that are exchangeable or redeemable for non-cumulative preferred shares (''Shares'') of a non-United States issuer (the ''Share Issuer''). The Securities may be issued through either a public or a private offering.[2]

2. Each Trust will, at the time of the issuance of its Securities, invest the proceeds in and hold debt securities (''Debt Securities'') issued by a special purpose entity (''Debt Securities Issuer'').[3] Each Trust's investment objective will be to distribute to the holders of the Securities (''Holders'') (i) pro rata the interest the Trust receives on the Debt Securities from time to time and (ii) the ultimate proceeds of the redemption of the Debt Securities upon the occurrence of certain events (''Exchange Events'') which will be specified in the agreement establishing the terms of each Trust and the Debt Securities or the instrument or agreement, if any, pursuant to which the Debt Securities are issued. Proceeds will consist of (i) Shares, (ii) depositary shares (''Des'') representing Shares, (iii) cash from the redemption or repurchase of Shares by the Share Issuer, or (iv) any combination of the above (''Proceeds'').[4] The Share Issuer will determine the composition of the Proceeds following an Exchange Event. No other party has discretion to vary the composition of the Proceeds.[5] A Trust will dissolve on or shortly after the occurrence of an Exchange Event.

3. Applicant states that the Trusts' structure is designed to enable the applicable Share Issuer to issue Shares on the date that the Securities are issued. If the Share Issuer is a bank, this

[2] Applicants also seek to amend the Prior Order to state that Securities issued by Structured Yield Products Exchangeable for Stock Trusts (''Structured Yield Trusts'') may be offered in private placements as well as in public offerings.

[3] All of the capital stock of the Debt Securities Issuer will be owned by a charitable trust.

[4] Pursuant to the terms of the Shares, the Share Issuer may be entitled to redeem or repurchase the Shares for cash, subject to regulatory consent or requirement, at its discretion after a designated date or earlier upon certain tax, regulatory or other specified events.

[5] The Share Issuer may provide cash in lieu of fractional shares or make other antidilution or similar arrangements.

structure allows the bank to raise regulatory capital. In addition, by providing a method of making scheduled payments to Holders in lieu of dividends on Shares, the structure enables such payments to be deductible by the Share Issuer for tax purposes under the law of its jurisdiction of organization and/or applicable tax treaty.

4. No Debt Securities will be issued to any other party. The Debt Securities will be issued only in bearer form, will be denominated in and pay interest at a designated annual rate in U.S. dollars and, unless redeemed because of an Exchange Event, will be redeemed on their designated maturity date.

5. The Debt Securities Issuer will use the proceeds from the sale of the Debt Securities to purchase, at a price equal to their liquidation preference, fully paid, non-dividend paying preference shares (''Subsidiary Preference Shares'') issued by another special purpose entity (the ''Subsidiary''). The Subsidiary will use the proceeds from the sale of the Subsidiary Preference Shares to make a payment to the Share Issuer in consideration for the issuance to the Subsidiary of Shares or DSs representing fully paid Shares. The Share Issuer will use the proceeds from the issue of the Shares to make a capital contribution to a business trust established under the laws of Delaware (the ''Distribution Trust''). The Distribution Trust will use the Share Issuer's capital contribution to make one or more loans to the Share Issuer and/or one or more of its wholly owned subsidiaries or branches (each a ''Borrower''). Interest payments on the loans to the Borrowers will be distributed by the Distribution Trust to the Debt Securities Issuer, which will in turn use such payment to pay interest on the Debt Securities and the operating expenses of the Trust, the Debt Securities Issuer, and its affiliates.

6. If the Securities are publicly offered, they will be listed on a national securities exchange or traded on the National Association of Securities Dealers Automated Quotation System. Thus, such Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets.

7. If the Securities are not publicly offered, pricing and trading information will be that normally provided in the private markets. It is expected that the best source of such information will be available from the dealer or dealers making a market in the Securities. Whether or not the Securities are publicly offered, Merrill Lynch currently intends, but will not be obligated, to make a market in the Securities of each Trust.

8. Each Trust will be internally managed by its trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. Each Trust will adopt a fundamental policy that 100% of its portfolio will be invested in Debt Securities and that the Debt Securities may not be disposed of during the term of the Trust other than in connection with an Exchange Event. The day-to-day administration of a Trust will be carried out by a bank or trust company which also will act as custodian for the Trust's assets and as paying agent and registrar with respect to the Securities.

9. The trustees of each Trust will be selected initially by Merrill Lynch, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. The Holders will be entitled to a vote for each Security held on all matters to be voted on by the Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each trust may be changed only with the approval of a majority of the Trust's outstanding Securities or any greater number required by the Trust's constituent documents. Unless the Holders so request, it is not expected that the Trusts will hold any meeting of Holders, or that Holders will ever vote. The Subsidiary, as holder of the Shares or DSs, will or will cause the collateral agent to direct Shares to be voted as directed by the Holders on matters in which the Shares have a right to vote.

10. Each Trust's organizational costs will be paid directly or indirectly by the Share Issuer or an affiliate. Each Trust will be structured so that its ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by the parties to the transactions as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to the administrator, the custodian, and the paying agent, and to each trustee, fees over the term of the Trust. Such fees will be paid from the interest on the Debt Securities, which will be establish at a rate designed to provide a spread for the purpose of paying such expenses.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and 3(c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, such exemption is consistent with the public interest and protection of investors. Merrill Lynch requests an order under section 12(d)(1)(J) to permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act, to own a great percentage of the Securities of any Trust than that permitted by section 12(d)(1).[6]

3. Merrill Lynch states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Merrill Lynch states that large investment companies and investment company complexes seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities that prove attractive. Conversely, it may not be economically rational for such investors, or their advisers to take the time to review an investment opportunity if the amount that they would ultimately be permitted

[6] The requested order also would amend the Prior Order to permit companies excepted from the definition of investment company by sections 3(c)(1) and 3(c)(7) of the Act to own a greater percentage of the Securities of any Structured Yield Trust than that permitted by section 12(d)(1) of the Act. In all other respects, the terms and conditions of the Prior Order are unchanged.

to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Merrill Lynch argues that in order for the trusts to be economically attractive to large investment companies and investment company complexes, such investors must be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C).

4. Merrill Lynch states that section 12(d)(1) was enacted in order to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Merrill Lynch also states that section 12(d)(1) was intended to address two principal abuses: the ''pyramiding'' of control by fund-holding companies and the layering of costs to investors.

5. Merrill Lynch assets that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Merrill Lynch argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trust that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) (including companies excepted from the definition of investment companies by section 3(c)(1) and 3(c)(7) of the Act) to vote their Securities in proportion to the votes of all other Holders. Merrill Lynch also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Merrill Lynch states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by the Share Issuer or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, because the organizational expenses (including underwriting expenses) of the Trusts. Merrill Lynch asserts that the organizational expenses will be borne by a Trust from the facility fee it receives in connection with the investment in Debt Securities. Thus, a Holder will not pay duplicative charges to purchase Securities in any Trust. Finally, there will be no duplication of advisory fees because the Trust will be internally managed by their trustees.

7. Merrill Lynch asserts that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Merrill Lynch asserts that the Securities are intended to provide Holders with an investment equivalent to an investment in Shares, while providing the Shares Issuer with tax benefits normally associated with debt instruments.

8. Merrill Lynch believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Merrill Lynch argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a traditional unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Merrill Lynch believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Merrill Lynch states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, or in a transaction exempt from such registration, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters or placement agents will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Merrill Lynch states that the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Merrill Lynch also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Merrill Lynch requests that the SEC issue an order under section 6(c) exempting the Trusts from any requirements of section 14(a). Merrill Lynch believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

Applicant's Condition

Merrill Lynch agrees that the order granting the requested relief will be subject to the following condition:

1. Any investment company (including companies excepted from the definition of investment companies by sections 3(c)(1) and 3(c)(7) of the Act) owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–26122 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41968; File No. SR–CHX–99–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Access to an After-Hours Trading Session

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 August 2, 1999, the Chicago Stock Exchange, Inc. (''CHX'' 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. On September 28, 1999, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

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

The Exchange proposes to add new Article I.B. to provide rules that would govern access to the CHX trading floor (and related trading privileges) during an after-hours trading session (''E-Session'').[4] The text of the proposed rule change and Amendment No. 1 is available at the Exchange and at the Commission.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Alton S. Harvey, Chief, Office of Market Watch, Division of Market Regulation, SEC, September 27, 1999 (''Amendment No. 1''). In Amendment No. 1, the CHX proposes several technical amendments to its filing, including substituting the term ''E-Session'' for the term ''night trading'' and deleting all references to market makers.

[4] The Exchange is proposing these access rules at this time so that they will be in place if the Exchange's filing, submitted under separate cover, to initiate an E-Session, is approved by the Commission. *See* File No. SR–CHX–99–16, currently pending with 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

The Exchange proposes to amend its rules to include provisions for persons desiring to obtain trading privileges for an E-Session that would operate after the Primary Trading Session and Post Primary Trading Session. At this time, the Exchange is only proposed rules relating to trading privileges and is not proposing any trading rules.

Under the proposed rules, a person or entity may access the E-Session through his or its own existing Exchange membership or by leasing the rights to a membership. The rights and privileges that can be leased for the E-Session will be limited to access rights to the trading floor during the E-Session in the capacity of a floor broker or co-specialist only (''night trading privileges''). To lease the E-Session trading privileges of a membership, a person or entity would be required to register with and be approved by the Exchange as a member or member organization under the Exchange's Constitution and Rules. The lessee would not be entitled to sublease the privileges and rights and would not be able to vote such interest.[5] Further, the lessee of the E-Session trading privilege will be required to provide proof of an agreement with a registered clearing firm that is approved by the Exchange and provide evidence that such clearing firm will guarantee the lessee's obligations for any and all losses incurred through his or its lease of the E-Session trading privileges.[6] The lessee will be required to execute a lease agreement (which would be required to be approved by the Exchange) in which the lessee must make certain representations with respect to the rights and privileges acquired. The lessee shall be considered a ''member'' or ''member organization'' for purposes of the federal securities laws, and the Exchange's Certificate of Incorporation, Constitution and Rules, except in certain circumstances set forth in the rules.

With respect to lessors, the proposed rules would require that the lessor be either: (i) An Approved Lessor, as defined in Article I.A of the Exchange rules; (ii) a member of member organization that leases its membership privileges to a lessee for the Primary Trading Session; or (iii) a member or member organization that owns a membership and uses the membership for his or its own purposes during the Primary Trading Session.

Finally, the proposed rules would permit the Exchange to terminate the E-Session trading privileges if the Exchange determines that it is in the best interests of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, 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.

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 has neither solicited nor received written comments on the proposed rule change.

[5] The voting right would be retained by the person who is designated as the Voting Designee on the seat.

[6] With respect to a person leasing a membership for the Primary Trading Session, the membership is considered an asset of the lessee and, therefore, the Exchange may sell the membership to satisfy any debts of such person. Because the membership is viewed as an asset of the person leasing the membership during the Primary Trading Session, it will not be viewed as an asset of the person leasing the membership during the E-Session, unless such person is leasing the membership for both the Primary Trading Session and the E-Session.

[7] 15 U.S.C. 78f(b)(5).