

The Exchange currently applies its regular execution fees to complex orders. Because these trades generally are effected on low margins, the imposition of the regular execution fees may render some trades uneconomical. Accordingly, the Exchange proposes to charge its regular execution fees only on one leg of the complex order (as opposed to charging on each leg). Specifically, the Exchange would charge a fee on the leg with the most contracts.

For example, if there is a simple two-legged spread to buy 100 contracts of one series and to sell 100 contracts of another series, ISE would charge a fee for 100 contracts. In a three-legged trade of 100 contracts, 50 contracts and 50 contracts, ISE also would charge a fee for 100 contracts. In a complex trade with both an option and a non-option leg, ISE would charge a fee for the option leg.

In addition, the Exchange is proposing to waive all execution fees for complex orders through June 30, 2003.

## 2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>3</sup>

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder. At any time within 60 days of the filing of such 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 furtherance of the purposes of the Act.

## 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 in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-08 and should be submitted by April 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47464; File No. SR-NASD-2003-22]

### **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 Market Recovery Notes Linked to the S&P 500 Index**

March 7, 2003.

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 February 26, 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 Market Recovery Notes<sup>SM</sup> 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.

#### *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").<sup>3</sup>

<sup>3</sup> 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 January 31, 2003, 424 companies, or 85.5% of the market capitalization of the Index, traded on the New York Stock Exchange ("NYSE"); 74 companies, or 14.3% of the market capitalization of the Index traded on The Nasdaq Stock Market; and

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 19b-4(f)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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