

respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, UBS will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) 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 solicit or 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, 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 Exchange. All submissions should refer to the File No. SR-Amex-2003-62 and should be submitted by August 7, 2003.

## 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 instruments currently listed and traded on the Amex that the Commission recently approved.<sup>17</sup> Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>18</sup>

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Index.

Specifically, at maturity, if the value of the Index has increased over the term of the Notes, the beneficial owner will be entitled to receive a payment on the Notes equal to the principal amount plus the percentage change of the Index, subject to a maximum return of 100%. If the Note declines up to 20% during the term, the beneficial owner will receive the full principal amount of \$1,000 per Unit. However, if the return of the Index is less than -20%, a holder will receive a payment at maturity of the original principal amount reduced by 1% for each percentage point that the percentage change in the Index is below -20%.

The Commission notes that the Notes are non-leveraged, "partial principal protection" instruments, with the potential for holders to lose 80% of their investment if the Index sustains a loss of 100%. The Notes are debt instruments whose price will be derived and based upon the value of the Index. The Notes, at a minimum, will pay the beneficial owner 20% of the principal amount at maturity. Thus, if the value of the Index has declined more than 20% at maturity, the holder of the Note will receive less than the original public offering price of the Note. 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 of the Notes is derivatively priced and based upon the performance of an index of securities, and because the Notes are debt instruments that do not guarantee a return of principal beyond 20%, and because investors' potential return is limited by the Maximum Return Amount, if the value of the Index has increased over the term of such note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes the Exchange's proposal adequately addresses the concerns raised by this type of product.

First, 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 the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such

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

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (SR-Amex-2003-45) (approval of the listing and trading of CSFB non-principal protected notes linked to the S&P 500); 47911 (May 22, 2003), 63 FR 32558 (May 30, 2003) (SR-Amex-2003-46) (approving the listing and trading of non-principal protected notes linked to the S&P 500); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (SR-Amex-2002-88) (approving the listing and trading of non-principal protected notes linked to the DJIA).

<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. See 15 U.S.C. 78c(f).