

transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such a transaction. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes and the compliance responsibility when handling transactions in the Notes. The Commission also notes that UBS will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of June 11, 2003, the market capitalization of the securities included in the S&P 500 ranged from a high of \$305.3 billion to a low of \$388.5 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 50.3 million shares to a low of 148,223 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, the Exchange equity margin rules and debt trading rules will apply to the securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the

Commission believes that the potential for manipulation of the underlying securities is minimal, thereby protecting investors and the public interest.

Furthermore, the Commission notes that the Notes are dependant upon the individual credit of the issuer, UBS. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide* which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In any event, financial information regarding UBS, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.¹⁹

The Commission also has a systemic concern, however, that a broker-dealer such as UBS, or a subsidiary providing a hedge for the issuer, will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,²⁰ the Commission believes that this concern is minimal given the size of the Notes issuance²¹ in relation to the net worth of UBS.

Finally, the Commission notes that the value of the 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 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

¹⁹ The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

²⁰ See Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 5032 (June 11, 2003) (SR-Amex-2003-45) (approving the listing and trading of notes whose returns are based on the performance of the Index); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (SR-Amex-2003-46) (approving the listing and trading of notes whose returns are based on the performance of the Index); 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (SR-NASD-2001-73) (approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (SR-Amex-2001-40) (approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (SR-Amex-96-27) (approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

²¹ The Commission notes that the issuance will be \$10 million. Telephone conversation between Jeffery P. Burns, Associate General Counsel, Amex and Tim Fox, Attorney, Commission on July 7, 2003.

of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.²² The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good cause, consistent with Section 6(b)(5) and 19(b)(2) of the Act,²³ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-Amex-2003-62), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-18066 Filed 7-16-03; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48151; File No. SR-Amex-2003-63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Amex Biotechnology Index

July 10, 2003.

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 June 17, 2003, 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.

²² See *supra* note 17.

²³ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.