

If the Ending Value is less than or equal to the Starting Value, the

Redemption Amount per Unit will equal:

$$\$1,000 + \left[\$1,000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} + 20\% \right) \right]$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio of securities comprising the Biotech Index. The Notes are designed for investors who want to participate or gain exposure to the Biotech Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options, and securities the performance of which have been linked to, or based on, the Biotech Index.¹¹

As of June 12, 2003, the market capitalization of the securities included in the Biotech Index ranged from a high of \$84.1 billion to a low of \$556.2 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 11.6 million shares to a low of 349,268 shares.¹² The value of the Biotech Index will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are linked to an index comprised of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, 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.¹³ Second, the Notes

will be subject to the equity margin rules of the Exchange.¹⁴ Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With 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, Merrill Lynch 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, as amended, is consistent with section 6(b) of the Act¹⁵ in general, and furthers the objectives of section 6(b)(5),¹⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

diligence to learn the essential facts, relative to every customer and to every order or account accepted.

¹⁴ See Amex Rule 462.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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 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, as amended, 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-2003-63 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.¹⁷ The Commission finds that this proposal is similar to several approved instruments

¹¹ See Securities Exchange Act Release Nos. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options ("LEAPS") based on the Amex Biotechnology Index and a reduced value Amex Biotechnology Index); and 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Biotech-Pharmaceutical Index).

¹² As of June 12, 2003 the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation—Celera Genomics Group (CRA); Biogen, Inc. (BGNE); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); Enzon, Inc. (ENZN); Genentech, Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences, Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Invitrogen Corporation (IVGN); Medimmune, Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

¹³ Amex Rule 411 requires that every member, member firm or member corporation use due

¹⁷ 15 U.S.C. 78f(b)(5).