

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 fifteen highest dividend yielding stocks from a group of certain stocks in Standard & Poor's ("S&P") Industrial Index³ from year to year that meet the additional criteria set forth below ("Industrial 15 Index" or "Index").⁴

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.⁵ Nasdaq proposes to list for trading the Notes under NASD Rule 4420(f). Nasdaq represents that the Industrial 15 Index is to be determined, calculated and maintained solely by the American Stock Exchange LLC ("Amex").⁶

The Notes will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):⁷

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally

will require the issuer to have the following:

(i) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least \$4 million.

In addition, Nasdaq represents that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).⁸ Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) 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.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least \$1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also prohibit the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.⁹

The Notes are a series of senior non-convertible debt securities of Merrill Lynch that provide for a single payment at maturity. The Notes will have a term of not less than one, nor more than ten, years. The Notes will entitle the owner at maturity to receive an amount based

upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Industrial 15 Index on the date on which Merrill Lynch prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Industrial 15 Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes may not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During the designated month each year, the investors may have the right to require Merrill Lynch to repurchase the Notes at a redemption amount based on the value of the Industrial 15 Index at such repurchase date. The Notes are not callable by Merrill Lynch.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Industrial 15 Index securities.

The Industrial 15 Index will consist of the a portfolio of the fifteen qualifying stocks ("Qualifying Stocks") with the highest dividend yields at the time of initial composition or any reconstitution of the Industrial 15 Index. Qualifying Stocks are those stocks from the S&P Industrial Index that are (1) In the top 75% of the Index, as measured by market capitalization after elimination of stocks included in the Dow Jones Industrial Average ("DJIA"), and (2) have an S&P Common Stock Ranking of A or A+.

Components of the Industrial 15 Index approved pursuant to this filing will meet the following criteria: (1) A minimum market value of at least \$75 million, except that up to 10% of the component securities in the Industrial 15 Index may have a minimum market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Industrial 15 Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Industrial 15 Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; and (4) all component

³ The S&P Industrial Index is a subset of the S&P 500 Index consisting of the largest 400 industrial stocks of the S&P 500. The S&P Industrial Index is calculated by starting with the S&P 500 Index and then excluding financial, utility and transportation stocks.

⁴ As of June 24, 2003, the portfolio of securities comprising the Industrial 15 Index are as follows: Abbott Laboratories; Albertson's, Inc.; Anheuser-Busch Companies Inc.; Bristol-Myers Squibb Company; The Clorox Company; ConAgra Foods, Inc.; Colgate-Palmolive Company; Emerson Electric Co.; Ingersoll-Rand Company Limited; Johnson Controls, Inc.; Paychex, Inc.; Pfizer, Inc.; Rohm and Haas Company; Schering-Plough Corporation; and Wm. Wrigley Jr. Company.

The portfolio of securities will include the fifteen highest dividend yielding stocks from a group of certain stocks in the S&P Industrial Index for that year and Nasdaq represents that the Amex will not have any discretion in the selection process.

⁵ See Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

⁶ Subject to the criteria in the prospectus supplement regarding the construction of the Index, Nasdaq represents that the Amex has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

⁷ Nasdaq represents that Merrill Lynch and the Notes satisfy these listing criteria. Telephone call between Sapna C. Patel, Attorney, Division of Market Regulation, Commission, and John Nachmann, Senior Attorney, Office of the General Counsel, Nasdaq, on July 29, 2003.

⁸ NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on Nasdaq or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

⁹ Telephone call between Sapna C. Patel, Attorney, Division of Market Regulation, Commission, and John Nachmann, Senior Attorney, Office of the General Counsel, Nasdaq, on July 29, 2003.