

be adjusted, if necessary, to ensure Industrial 15 Index continuity.

Nasdaq represents that the Amex will calculate the Industrial 15 Index and, similar to other stock index values published by the Amex, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.<sup>14</sup> The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities.

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to Rule 2310 and IM-2310-2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.<sup>15</sup> In addition, Nasdaq will distribute a circular to advise members recommending a transaction in the Notes to, among other things, 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. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

<sup>14</sup> Nasdaq will prohibit the continued listing of the Notes if the Amex discontinues publication of the Industrial 15 Index and a successor index or index value is not disseminated every 15 seconds during calculation days. 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.

<sup>15</sup> Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

provisions of Section 15A of the Act,<sup>16</sup> in general, and with Section 15A(b)(6) of the Act,<sup>17</sup> in particular, in that the proposal 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. Specifically, the proposed rule change will provide investors with another investment vehicle based on an index of the fifteen highest dividend yielding stocks from a group of certain stocks in the S&P Industrial Index.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

## 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-115 and should be submitted by August 26, 2003.

<sup>16</sup> 15 U.S.C. 78o-3.

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

## 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 15A(b)(6) of the Act.<sup>18</sup> The Commission notes that it has previously approved the listing of Industrial 15 Index notes on the Amex.<sup>19</sup> Furthermore, the Commission finds that this proposal is similar to several other approved instruments currently listed and traded on the Amex and the NYSE.<sup>20</sup> Accordingly, the Commission finds that the listing and trading of the Notes on Nasdaq is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 15A(b)(6) of the Act.<sup>21</sup>

The Notes are not leveraged instruments; however, their price will still be derived and based upon the

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> See Securities Exchange Act Release No. 44437 (June 18, 2001) 66 FR 33585 (June 22, 2001) (accelerated approval for listing and trading of Industrial 15 Index on the Amex).

<sup>20</sup> See Securities Exchange Act Release Nos. 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR-Amex-99-42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR-Amex-99-15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR-Amex-97-47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR-Amex-96-28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR-Amex-93-40); 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993) (accelerated approval order for the listing and trading of MITTS on the NYSE) (File No. SR-NYSE-93-31); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR-Amex-92-42).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).