

underlying linked security. 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. Nonetheless, because the final rate of return of the Notes is derivatively priced, based on the performance of a portfolio of securities, and the components of the Industrial 15 Index are more likely to change each year, over the term of the Notes, than products previously issued, there are several issues regarding the trading of this type of product.

The Commission notes that Nasdaq'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 and the suitability, disclosure, and compliance requirements noted above, the Commission believes that Nasdaq has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, Nasdaq will distribute a circular to its membership calling attention to the specific risks associated with the Notes.

In approving the product, the Commission recognizes that the components are likely to change each year over the life of the product. Nevertheless, the Commission believes that this is acceptable because the Amex has clearly stated the guidelines and formula for replacing components from a specific group of well-known and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Industrial 15 Index will represent the fifteen highest dividend yielding Qualifying Stocks in the S&P Industrial Index. Nasdaq represents that the Amex will do the calculation for replacements based on a set formula to determine which of the S&P Industrial Index securities will be in the Index for the following year. The Commission believes that within these confines the potential frequent changes in the components of the Industrial 15 Index are reasonable and will meet the expectation of investors.

In addition, the Commission notes that the Notes are non-principal protected. The Notes may not have a minimum principal amount that will be repaid, and payments on the Notes prior to or at maturity may be less than their original issue price. The Commission also recognizes that during the designated month, investors may require the issuer to repurchase the Notes at a redemption amount based on the value of the Industrial 15 Index at such repurchase date.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent, this credit risk is minimized by Nasdaq's listing standards in NASD Rules 4420(f)(1) and 4420(f)(2), which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, Nasdaq's hybrid listing standards further require that the Notes have at least \$4 million in market value.²² In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Industrial 15 Index, will be publicly available.²³

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the prior approval orders for similar instruments (e.g., the Select Ten Notes and the Industrial 15 Notes for the Amex), the Commission believes this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the underlying securities comprising the Industrial 15 Index. First, the underlying securities comprising the S&P Industrial Index, from which the Industrial 15 Index components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Industrial 15 Index will be equally weighted, initially and immediately following each annual reconstitution of the Industrial 15 Index, no single stock or group of stocks will likely dominate the Industrial 15 Index. Finally, the issuers of the underlying securities comprising the Industrial 15 Index are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, Nasdaq's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Industrial 15 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 Industrial 15 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 of publication of notice thereof in the **Federal Register**. In determining to grant the accelerated approval for good cause, the Commission notes that the Industrial 15 Index is a portfolio of highly capitalized and actively traded securities similar to hybrid securities products that have been approved by the Commission for U.S. exchange trading and is also similar to several other instruments currently listed and traded on the Amex and the NYSE, including the Industrial 15 Notes on the Amex.²⁴ Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds, consistent with Section 15A(b) of the Act,²⁵ that there is good cause for accelerated approval of the product.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASD-2003-115), is hereby approved on an accelerated

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3528]

State of Ohio; (Amendment #2)

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 29, 2003, the above numbered declaration is hereby amended to include Crawford and Pike counties as disaster areas due to damages caused by severe storms and flooding occurring on July 4, 2003 and continuing through July 11, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adams, Highland, Huron, Jackson, Marion, Morrow, Richland, Ross, Scioto, Seneca and Wyandot in the State of

²² See NASD Rule 4420(f)(1)(D).

²³ The companies that comprise the Industrial 15 Index are reporting companies under the Act.

²⁴ See *supra* notes 19–20.

²⁵ 15 U.S.C. 78o–3(b).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30–3(a)(12).