

product of: (i) \$10, (ii) the upside participation rate, and (iii) the index return. The upside participation rate is expected to be approximately 500% to 600%.¹⁰ Thus, if the ending value of the Nasdaq-100 Index exceeds its starting value by approximately 5% to 6% or less, the appreciation on an investment in the Notes will be approximately 5 to 6 times the return on an instrument directly linked to the Nasdaq-100 Index because of the upside participation rate. However, because the appreciation cap, together with the upside participation rate, limits the maximum index return amount at maturity to approximately 25% to 36% of the principal amount of the Notes, in no circumstances will the payment received by a beneficial owner at maturity be more than approximately \$2.50 to \$3.60 per Index LASERS.

If the index return is negative and the value of the Nasdaq-100 Index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity (whether intra-day or at the close of trading on any index business day) is less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will equal the product of (i) \$10, (ii) the downside participation rate, and (iii) the index return. The downside participation rate is expected to be approximately 200%.¹¹ Thus, the return on the Notes will be less than the return from an investment in an instrument directly linked to the Nasdaq-100 Index because the downside participation rate increases the participation in the index's depreciation by approximately 200%. Because of the downside participation rate, the payment at maturity will be zero if the ending value of the Nasdaq-100 Index is less than or equal to approximately 50% of its starting value. Consequently, investors could lose all or a significant portion of their investment if the Nasdaq-100 Index decreases as described above.

If the index return is negative and the value of the index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity is not less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will be

zero and the maturity payment will be \$10 per Index LASERS.

If the index return is zero, then the index return amount will be zero and the maturity payment will be \$10 per Index LASERS.

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 or index of securities comprising the Nasdaq-100 Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the Nasdaq-100 Index.¹² These options and other securities, however, do not have a downside participation rate as described above.

As of May 31, 2003, the adjusted market capitalization of the securities included in the Nasdaq-100 Index ranged from a high of \$170.3 billion to a low of \$2.2 billion. The average daily trading volume for these same securities for the last five months, as of the same date, ranged from a high of 68.1 million shares to a low of 527,400 shares.

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. Specifically, the Notes will be subject to the equity margin rules. In addition, the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in the Notes.

Due to the leveraged nature of the Notes, Nasdaq proposes requiring that the Notes only be sold to investors whose accounts have been approved for options trading pursuant to NASD Rule 2860(b)(16). In addition, the NASD's options suitability standards will apply to recommendations regarding the Notes.¹³ Furthermore, discretionary

orders in the Notes must be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal.¹⁴ Lastly, as previously described, 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.

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.

CGMHI will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as CGMHI's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Nasdaq-100 Index.

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

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

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

Written comments on the proposed rule change were neither solicited nor received.

¹⁴ See NASD Rule 2860(b)(18).

¹⁵ 15 U.S.C. 78f(b).

¹² See Securities Exchange Act Release No. 45429 (February 11, 2002), 67 FR 7438 (February 19, 2002) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 45024 (November 5, 2001), 66 FR 56872 (November 13, 2001) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of Performance Leveraged Upside Securities based upon the performance of the Nasdaq-100 Index); Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approving the listing and trading of options based upon one-tenth of the value of the Nasdaq-100 Index); Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approving the listing and trading of Portfolio Depositary Receipts based on the Nasdaq-100 Index); Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (approving the listing and trading of options on the Nasdaq-100 Index).

¹³ See NASD Rule 2860(b)(19).

¹⁰ The upside participation rate will be determined on the date the Notes are priced for initial sale to the public.

¹¹ The downside participation rate will be determined on the date the Notes are priced for initial sale to the public.