

200% of the percentage increase in the value of the Technology Index Notes, subject to a maximum payment amount

(or "Capped Amount") determined at the time of issuance. The calculation of

this Redemption Amount is set forth below:

$$\$10 + \left[\$10 \times 200\% \times \left(\frac{\text{Average Index Value} - \text{Initial Index Value}}{\text{Initial Index Value}} \right) \right], \text{ subject to Capped Amount}$$

If the Average Index Value is less than or equal to the Initial Index Value, a holder of the Notes will receive a Redemption Amount in cash equal to the principal amount multiplied by an "Index Performance Factor." This Index Performance Factor is the relationship between the Average Index Value and the Initial Index Value, and will be a number equal or less than 1.0. The calculation of this Redemption Amount is set forth below:

$$\$10 \times \left(\frac{\text{Average Index Value}}{\text{Initial Index Value}} \right)$$

The Redemption Amount in this case would accordingly be less than or equal to \$10 for each \$10 principal amount of the Notes.

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 of securities comprising the Technology Index. The Notes are designed for investors who want to participate in or gain exposure to the companies involved in various technology subsectors and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on the Technology Index.⁸

As of October 14, 2003, the market capitalization of the securities that would represent the Technology Index would range from a high of \$314.4 billion to a low of \$3.14 billion. The average monthly trading volume of the securities comprising the Index for the last six months, as of the same date, ranged from a high of 742.5 million shares to a low of 36.02 million shares. The aggregate market capitalization of all securities in the Index was approximately \$1.714 trillion. The Amex would continue to calculate and disseminate the value of the Notes every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to an equity index, the Amex's existing equity floor trading rules would apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Amex would 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.⁹ Second, the Notes would be subject to the equity margin rules of the Amex.¹⁰ Third, the Amex would, 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 Amex would 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, Morgan Stanley will deliver a prospectus in connection with the initial purchase of the Notes.

The Amex represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. Because the Index is maintained by a broker-dealer or an affiliate of a broker-dealer, it is imperative that there be a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the Index. Morgan Stanley has represented to the Commission that such a firewall exists. Moreover, because Morgan Stanley presents Amex with a list of potential

component replacements, it is imperative that both Morgan Stanley and Amex have policies that prohibit the distribution of material, non-public information by its employees. Morgan Stanley and Amex have represented that they have policies that prohibit the distribution of material, non-public information by their employees.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act¹¹ and furthers the objectives of Section 6(b)(5) of the Act¹² 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.

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

The Amex 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 Amex 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 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

⁸ See Securities Exchange Act Release Nos. 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (approving the listing of options on the Morgan Stanley High Technology 35 Index); and 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999) (approving a reduction in the Morgan Stanley High Technology Index Value).

⁹ Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

¹⁰ See Amex Rule 462 and Section 107B of the Amex Company Guide.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).