

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-2003-91 and should be submitted by November 24, 2003.

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 6(b)(5) of the Act.¹³ The Commission finds that this proposal is similar to several approved notes whose value is linked to an equity index currently listed and traded on the Amex.¹⁴ Accordingly, the Commission finds that the listing and trading of the Notes based on the Technology Index are 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 6(b)(5) of the Act.¹⁵

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the Average Index Value of the Technology Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment based on whether the Average Index Value is greater or less than the Initial Index Value. If the Average Index Value is greater than the

Initial Index Value, the holder of the Notes will receive an amount in cash equal to \$10 plus the Leveraged Upside Payment. The Leveraged Upside Payment is equal to \$10 multiplied by 200% of the percentage increase in the value of the Technology Index, subject to the 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 the Index Performance Factor. The 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, and accordingly will be less than or equal to \$10 for each \$10 principal amount of the Notes.

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Technology Index, subject to a cap.

The Commission notes that the Notes are not leveraged on the downside, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Technology Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Technology Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. 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. Because the final rate of return of the Notes is derivatively priced, based on the performance of the 35 common stocks underlying the Technology Index, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the Amex'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, suitability, disclosure, and compliance requirements noted above, the Amex, in the Commission's view, has addressed adequately the potential

problems that could arise from the hybrid nature of the Notes. The Amex will require members, member organizations and employees thereof 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, and bear the financial risks, of such transaction.

Moreover, the Commission notes that the Amex will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities. The Commission believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products.

Because Morgan Stanley presents Amex with a list of potential component replacements, it is imperative that Morgan Stanley and Amex have policies that prohibit the distribution of material, non-public information by their employees. Morgan Stanley and Amex have represented that they have policies that prohibit the distribution of material, non-public information by their employees. Moreover, 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.

In approving the product, the Commission recognizes that the Technology Index is an equal-dollar index comprised of 35 component stocks designed to measure the performance of a cross-section of highly capitalized U.S. companies that are active in nine technology subsectors: (i) Computer services; (ii) design software; (iii) server software; (iv) PC software and new media; (v) networking and telecommunications equipment; (vi) server hardware; (vii) server hardware; (viii) PC hardware and peripherals; and (ix) specialized systems and semi-conductors. 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

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Securities Exchange Act Release Nos. 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of Merrill Lynch Accelerated Return Notes linked to the performance of the Amex Biotechnology Index); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB contingent principal protection notes linked to the S&P 500).

¹⁵ 15 U.S.C. 78f(b)(5). 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).