

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 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, as amended, is consistent with section 15A of the Act,<sup>17</sup> in general, and furthers the objectives of section 15A(b)(6) of the Act,<sup>18</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, as amended, will provide investors with another investment vehicle based on an index of the top ten dividend yielding stocks of the DJIA.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in 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 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, as amended, 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 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 Exchange. All submissions should refer to File No. SR-NASD-2003-20 and should be submitted by March 20, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities association.<sup>20</sup> Specifically, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act.<sup>21</sup> The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of a publicly-traded debt product linked to the Select Ten Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the Select Ten Index. In addition, the Notes are non-principal protected; they do not have a minimum principal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Nasdaq listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform initially to the Nasdaq listing criteria for other securities under Rule 4420(f), and continued listing criterion for other securities pursuant to Rule 4450(c). The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change

between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer.

The Notes are non-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Select Ten Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.<sup>22</sup> Thus, if the Select Ten Index has declined at maturity, the holder of the Note may receive significantly 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 Underlying 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.

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

<sup>19</sup> 15 U.S.C. 78o-3.

<sup>20</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).

<sup>21</sup> *Id.*

<sup>22</sup> The Commission recognizes that during a designated month each year investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date.

<sup>17</sup> 15 U.S.C. 78o-3.

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