

SR-NASD-2004-018 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49301; File No. SR-NASD-2004-030]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of 97% Protected Notes Linked to the Dow Jones Industrial Average

February 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2004, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade 97% Protected Notes Linked to the Performance of the Dow Jones Industrial Average (“Notes”) issued by Merrill Lynch & Co., Inc. (“Merrill Lynch”).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade the Notes, the return on which is based upon the Dow Jones Industrial Average (“DJIA”) and for protection of 97% of the principal.³

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.⁴ Nasdaq proposes to list the Notes for trading under NASD Rule 4420(f).

Description of the Notes

The Notes are a series of senior non-convertible debt securities that will be

³ The DJIA is a price-weighted index published by Dow Jones & Company, Inc. A component stock’s weight in the DJIA is based on its price per share rather than the total market capitalization of the issuer of that component stock. The DJIA is designed to provide an indication of the composite price performance of 30 common stocks of corporations representing a broad cross-section of U.S. industry. Nasdaq states that the corporations represented in the DJIA tend to be market leaders in their respective industries, and their stocks are typically widely held by individuals and institutional investors. The corporations currently represented in the DJIA are incorporated in the U.S. and its territories, and their stocks are traded on the New York Stock Exchange, Inc. (“NYSE”) and the Nasdaq. The component stocks in the DJIA are selected (and any changes are made) by the editors of the Wall Street Journal (“WSJ”). Changes to the stocks included in the DJIA tend to be made infrequently. Historically, most substitutions have been the result of mergers, but from time to time, changes may be made to achieve what the editors of the WSJ deem to be a more accurate representation of the broad market of the U.S. industry. As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of \$329.3 billion to a low of \$8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares. The value of the DJIA is the sum of the primary market prices of each of the 30 common stocks included in the DJIA, divided by a divisor that is designed to provide a meaningful continuity in the value of the DJIA. In order to prevent certain distortions related to extrinsic factors, the divisor may be adjusted appropriately. The current divisor of the DJIA is published daily in the WSJ and other publications. Other statistics based on the DJIA may be found in a variety of publicly available sources. The value of the index is publicly disseminated every two seconds if the index value changes. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission (February 20, 2004).

⁴ See Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993), (“1993 Order”).

issued by Merrill Lynch and will not be secured by collateral. The Notes will rank equally with all of Merrill Lynch’s other unsecured and unsubordinated debt. The Notes will be issued in denominations of whole units (“Unit”), with each Unit representing a single Note. The original public offering price will be \$10 per Unit. The Notes will have a term to maturity of seven years. The Notes will not pay interest and are not subject to redemption either by Merrill Lynch or at the option of any beneficial owner before maturity.⁵

At maturity, a beneficial owner will be entitled to receive a payment on the Notes based on the value of the DJIA, but not less than \$9.70 per Unit (“Minimum Redemption Amount”). Thus, the Notes provide investors the opportunity to obtain returns based on the DJIA and they provide for the return of at least 97% of the principal amount per Unit.

Any payment that a beneficial owner may be entitled to receive in addition to the Minimum Redemption Amount (the “Supplemental Redemption Amount”) will depend entirely on: (a) The relation of the average of the values of the DJIA at the close of the market on five business days shortly before the maturity of the Notes (the “Ending Value”) and the closing value of the DJIA on the date the Notes are priced for initial sale to the public (the “Starting Value”), and (b) the Participation Rate, which will be a fixed value determined by Merrill Lynch on the date the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement to be delivered in connection with sales of the Notes. The Participation Rate is expected to be between 1.00 and 1.15.⁶

The Supplemental Redemption Amount per Unit will equal:

⁵ The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

⁶ The Participation Rate is a fixed percentage expected to be between 100% and 115%. Merrill Lynch will determine the Participation Rate on the day the Notes are priced, and it will be disclosed in the Prospectus and Nasdaq’s circular to members, describing this product. The exact value of the Participation Rate will be determined at Merrill Lynch’s discretion. Merrill expects but does not guarantee that the Participation Rate will be between 100% and 115% of the interest rate on the Pricing Date. However, in no event, will the investor receive less than 97% of the principal amount per Unit at maturity. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 20, 2004).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

$$\left(\$10 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \times \text{Participation Rate} \right),$$

but will not be less than zero.

As a result, the DJIA will need to increase by a percentage between 2.61% and 3.00%, depending upon the actual Participation Rate (and assuming that it is, as expected, in the range of 1.00 and 1.15), in order for a beneficial owner to be entitled to receive a total amount at maturity equal to the principal amount. If the value of the DJIA decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of \$10 per Unit. In no event, however, will a beneficial owner be entitled to less than the Minimum Redemption Amount.

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 DJIA. The Notes are designed for investors who want to participate or gain exposure to the DJIA, while protecting 97% of the principal, and who are willing to forego market interest payments on the Notes during the term of the Notes. 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 DJIA.⁷

As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of \$329.3 billion to a low of \$8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares.

Criteria for Initial and Continued Listing

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million.⁸ In the

case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least \$4 million.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).⁹ Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, 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. In particular, Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to NASD Rule 2310(b),¹⁰ prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in

making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least \$1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

Rules Applicable to the Trading of the Notes

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. First, pursuant to NASD Rule 2310, "Recommendations to Customers (Suitability)," and NASD IM-2310-2, "Fair Dealing with Customers," NASD members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.¹¹ In addition, 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. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. 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.

⁷ See Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of notes linked to the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDS Trust Units, portfolio depositary receipts based on the DJIA); and 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA).

⁸ Merrill Lynch satisfies this listing criterion.

⁹ NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the NYSE or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

¹⁰ Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 20, 2004).

¹¹ NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Disclosure and Dissemination of Information

Merrill Lynch 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 Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹² in general, and with section 15A(b)(6) of the Act,¹³ 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 will provide investors with another investment vehicle based on the DJIA.

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

Nasdaq does not believe that the proposed rule change 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 proposal 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-030. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail

but not by both methods. 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 in 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 the File No. SR-NASD-2004-030 and should be submitted by March 22, 2004.

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

Nasdaq requests that the Commission approve the proposal, on an accelerated basis to accommodate the timetable of listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the DJIA.¹⁴ The Commission has also previously approved the listing of securities with a structure substantially the same as that of the Notes.¹⁵

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 association, and, in particular, with the requirements of section 15A(b)(6) of the Act¹⁶ in that it is designed 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.¹⁷ The Commission believes that the Notes will provide investors with the opportunity to obtain returns based on the DJIA and they provide for the return of at least 97% of the principal amount per Unit. Specifically, as described more fully above, if the value of the DJIA decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of \$10 per Unit. However, in no event will a beneficial owner be entitled to less than the Minimum Redemption Amount.

The Notes are a series of senior non-convertible debt securities whose price will be derived from and based upon the value of the DJIA. In addition, as discussed more fully above, the Notes do not guarantee the total amount at maturity equal to the principal amount. Thus, if the DJIA has declined at maturity, a beneficial owner may receive may receive 3% less than the original public offering price of the Notes. Because the final rate of return on the Notes is derivatively priced and based upon the performance of the 30 common stocks underlying the DJIA and because the Notes are debt instruments that do not guarantee a total return of principal, and because investors' potential return is limited by the Participation Rate, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.¹⁸ In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,¹⁹ and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements,

¹⁷ In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See 1993 Order, *supra* note 4.

¹⁹ As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(6).

¹⁴ See *supra* note 7.

¹⁵ See Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of contingent principal protection notes linked to the S&P 500 Index); and 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of partial principal protected notes linked to the S&P 500 Index).

¹⁶ 15 U.S.C. 78o-3(b)(6). Pursuant to Section 15A(b)(6) of the Act, the Commission must predicate approval of Nasdaq trading for new derivative products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee a total return of principal at maturity, that the Participation Rate on the Notes is expected to be between 100% and 115% per unit,²⁰ that the Notes will not pay interest, and that the Notes will provide exposure in the DJIA. The circular will also explain Merrill Lynch's calculation of the Notes' Participation Rate. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least \$4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.²¹

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates. Nasdaq represents that its surveillance procedures are adequate to monitor properly the grading of the Notes.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will

incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,²² the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Nasdaq also represents that index value of the DJIA is publicly disseminate every two seconds if the index valuation changes. The Commission finds that such public dissemination of the index valuation will provide investors with timely and useful information concerning the value of their Notes.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the DJIA or raise manipulative concerns. In approving the product, the Commission recognizes that the DJIA is a price-weighted index of 30 companies listed on Nasdaq and the NYSE. The Commission notes that the DJIA is determined, composed, and calculated by the editors of the WSJ, and not a broker-dealer. As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of \$329.3 billion to a low of \$8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares. Given the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA, should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the DJIA are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, Nasdaq's surveillance procedures should serve to

²² See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.²³ Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,²⁴ to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-NASD-2004-030) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49294; File No. SR-NSCC-2003-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Implement Real-Time Trade Matching for Fixed Income Securities

February 23, 2004.

I. Introduction

On June 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2003-15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on January 16, 2004.² No comment letters

²³ See *supra* note 15.

²⁴ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR.200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49051 (January 12, 2004), 69 FR 2639.

²⁰ The actual Participation Rate date will be determined on the day the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement.

²¹ The companies comprising the DJIA are reporting companies under the Act.