

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55248; File No. SR-Amex-2006-90)

February 6, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, to List and Trade Notes Linked to the Performance of the Hang Seng China Enterprises Index

On September 22, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade notes linked to the performance of the Hang Seng China Enterprises Index ("Index"). Amex amended the proposal on November 15, 2006 and subsequently on December 12, 2006.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on December 26, 2006.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, as amended.

Under Section 107A of its Company Guide ("Company Guide"), Amex proposes to list notes issued by Citigroup Funding, Inc. (the "Issuer") under the name "Stock Market Upturn Notes" that are based on the value of the Index (the "Notes"). The Index is currently based on 37 common stocks that are listed and traded on the Stock Exchange of Hong Kong and are among the largest companies in the 200-stock Hang Seng Composite Index

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240. 19b-4.

<sup>3</sup> Amendment No. 2 replaced and superseded the original rule filing and Amendment No. 1 in their entirety.

<sup>4</sup> Securities Exchange Act Release No. 54943 (December 15, 2006), 71 FR 77422 ("Notice").

("HSCI"). The Index is compiled by HSI Services Limited (the "Index Calculator"), a wholly owned subsidiary of Hang Seng Bank. The Index is capitalization-weighted and revised twice each year to eliminate any components whose weight might exceed 15% of the Index.

The Notes would offer investors exposure to certain stocks traded on the Stock Exchange of Hong Kong. The Notes would be cash-settled in U.S. dollars, must be held to maturity, and would pay out according to a formula set forth in the notice of Amex's proposal.<sup>5</sup> Unlike traditional debt securities, the Notes would not have a minimum principal amount that would be repaid at maturity and thus the return could be less than the original issue price. The Notes would entitle the holder at maturity to receive an amount based on the percentage change of the Index, subject to a maximum payment determined at the time of issuance.

The Notes would be senior non-convertible debt securities of the Issuer. Like traditional debt securities, therefore, the Notes are dependent upon the creditworthiness of the Issuer. This credit risk is addressed by the listing standards in Amex Rule 107A, which provide that a security may not be listed on the Exchange unless its issuer satisfies certain financial requirements.

Section 107A of the Company Guide also requires a market value of \$4 million for initial listing. In addition, the Notes would have to comply with continued listing standards in Sections 1001-1003 of the Amex Company Guide. Under Section 1002(b) of the Company Guide, the Exchange would consider removing from listing any security where, in

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<sup>5</sup> See Notice, supra note 4, 71 FR at 77423-24.

the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable.<sup>6</sup>

The Notes would trade as equity securities subject to Amex rules governing, among other things, priority, parity, and precedence of orders; specialist responsibilities; margin; and customer suitability requirements. In addition, the Exchange would halt trading in the Notes if the circuit breaker parameters of Exchange Rule 117 are reached. In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider the factors set forth in Exchange Rule 918C(b), and other factors that may be relevant. In particular, if the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Amex has represented that it would rely on its existing surveillance procedures governing index-linked securities, which Amex represents are adequate to properly monitor trading in the Notes. The Exchange has an information-sharing agreement with the Stock Exchange of Hong Kong for the purpose of providing information in connection with trading in or related to the components comprising the Index.

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

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<sup>6</sup> In this case, the Exchange would look for guidance to Section 1003(b)(iv)(A) (relating to bonds) which states that the Exchange would normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of the bonds publicly held is less than \$400,000.

applicable to a national securities exchange.<sup>7</sup> In particular the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>8</sup> which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the listing and trading of other index-linked securities that have a structure similar to the Notes.<sup>9</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>10</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Notes will be disseminated through the Consolidated Quotation System. The index value is calculated and disseminated daily and may be

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<sup>7</sup> In approving the rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-01) (approving generic listing standards for index-linked securities); Securities Exchange Act Release No. 51227 (February 18, 2005), 70 FR 9395 (February 25, 2005) (SR-Amex-2005-010) (approving the listing and trading of notes linked to the performance of the Nikkei 225 Index); and Securities Exchange Act Release No. 50016 (July 14, 2004), 69 FR 43639 (July 21, 2004) (SR-Amex-2004-43) (approving the listing and trading of notes linked to the performance of the Nikkei 225 Index).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

verified by a number of independent sources.<sup>11</sup> Furthermore, financial information regarding the Issuer would be publicly available, thus allowing investors to confirm the creditworthiness of the Issuer. The Commission believes that Amex's proposal is reasonably designed to promote transparency in the pricing of the Notes, and to prevent trading when a reasonable degree of transparency cannot be assured. The proposal also appears reasonably designed to prevent conveyance of inside information from the Index Calculator to market participants who may trade the Notes.

In support of this proposal, the Exchange has made the following representations:

- (1) Amex has received a representation from HSCI Services Limited, the Index Calculator, that: (a) appropriate firewalls exist to ensure independence of operations among different units within the Hang Seng Group; and (b) policies and procedures are in place containing, among other things, insider trading prohibitions, designed to prevent conflicts of interest.
- (2) Amex would distribute a circular to its 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. In addition, the Issuer would deliver a prospectus in connection with the initial sale of the Notes.
- (3) Amex would rely on its existing surveillance procedures governing index-linked securities, which are adequate to properly monitor trading in the Notes.

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<sup>11</sup> See e-mail dated January 30, 2007 from Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, to Mitra Mehr, Special Counsel, Division of Market Regulation, Commission.

- (4) Amex prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.<sup>12</sup>

This order is conditioned on Amex's adherence to these representations.

In addition, Amex has represented that it would file a proposed rule change pursuant to Rule 19b-4 under the Act if: (1) HSCI substantially changes either the index component selection methodology or the weighting methodology; (2) a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance-sharing agreement; or (3) a successor or substitute index is used in connection with the Notes. The Commission believes that each of these circumstances represents material changes to the characteristics of the Index described herein and on which the Commission is basing its findings. Under these circumstances, the Exchange could not rely on this approval to list and trade the Notes.

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<sup>12</sup> See 17 CFR 240.10A-3(c)(1).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2006-90), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).