

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49453; File No. SR-Amex-2004-13)

March 19, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Contingent Principal Protection Notes Linked to the Performance of the Dow Jones Industrial Average (DJIA)

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 18, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade, contingent principal protected notes (“Notes”), the return which is based upon the performance of which is linked to the Dow Jones Industrial Average (“DJIA” or “Index”).

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

In its filing with the Commission, the Amex 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.³ The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance of which is linked to the DJIA that provide for contingent principal protection ("Contingent Principal Protected Notes" or "Notes").⁴ Citigroup will issue the Notes under the name "Index Leading StockMarket Securities" or "Index LASERS." The DJIA is determined, calculated and maintained solely by Dow Jones.⁵ The Notes will provide for an uncapped participation in the

³ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁴ Citigroup Global Markets Holdings, Inc. ("Citigroup") and Dow Jones & Co. ("Dow Jones") have entered into a non-exclusive license agreement providing for the use of the DJIA by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

⁵ The DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal ("WSJ") as representative of the broad market of U.S. industry. A price-weighted index refers to an index that assigns weights to component stocks based on the price per share rather than total market capitalization of such component stock. The corporations represented in the DJIA tend to be leaders within their respective industries and their stocks are typically widely held by individuals and institutional investors. Changes in the composition of the DJIA are made solely by the editors of the WSJ. In addition, changes to the common stocks included in the DJIA tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. However, over time, changes are made to more accurately represent the broad market of U.S. industry. In choosing a new corporation for the DJIA, the editors of the WSJ focus on the leading industrial companies with a

positive performance of the DJIA during their term while also reducing the risk exposure to the principal investment amount as long as the Index does not at any time decline to a pre-established level to be determined at the time of issuance (the “Contingent Level”). This Contingent Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are priced for initial sale to the public (the “Initial Level”). The Issuer expects that the Contingent Level will be between 70-75% of the initial value of the Index. A decline of the Index to the Contingent Level is referred to as a “Contingent Event.”

The Notes will conform to the initial listing guidelines under Section 107A⁶ and continued listing guidelines under Sections 1001-1003⁷ of the Company Guide. The Notes are

successful history of growth and wide interest among investors. Dow Jones, publisher of the WSJ, is not affiliated with Citigroup and has not participated in any way in the creation of the Notes. The number of common stocks in the DJIA has remained at 30 since 1928, and, in an effort to maintain continuity, the constituent corporations represented in the DJIA have been changed on a relatively infrequent basis.

⁶ The initial listing standards for the Notes require: (1) a market value of at least \$4 million; and (2) a term of at least one year. Because the Notes will be issued in \$1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of \$100 million, stockholder’s equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders’ equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders’ equity of at least \$20 million.

⁷ The Exchange’s continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange’s Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in 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. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section

senior non-convertible debt securities of Citigroup. The Notes will have a term of no more than ten (10) years. Citigroup will issue the Notes in denominations of whole units (a “Unit”), with each Unit representing a single Note. The original public offering price will be \$10 per Unit. The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the DJIA never experiences a Contingent Event. In the case of a positive Index return, the holder would receive the full principal investment amount of the Note plus the product of \$10, the percentage change of the DJIA during the term, and the upside participation rate (expected to be between 110-120%). Accordingly, even if the Index declines but never reaches the Contingent Level, the holder will receive the principal investment amount of the Notes at maturity. If however, the Notes experience a Contingent Event during the term, the holder loses the “principal protection” and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. In this case, the Notes will not have a minimum principal investment amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, if the Index experiences a negative return and a Contingent Event, the Notes would be fully exposed to any decline in the level of the DJIA.⁸ The Notes, however, are not leveraged on the downside.⁹ The Notes are also not callable by the Issuer.

1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

⁸ A negative return of the Global Titan Index, together with a Contingent Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

⁹ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 19, 2004.

The payment that a holder or investor of a Note will be entitled to receive (the “Redemption Amount”) will depend on the relation of the level of the DJIA at the close of the market on a single business day (the “Valuation Date”) shortly before maturity of the Notes (the “Final Level”) and the Initial Level. In addition, whether the Notes retain “principal protection” or are fully exposed to the performance of the Index is determined by whether the DJIA ever experiences a Contingent Event during the term of the Notes.

If the percentage change of the Index is positive and the Index never experiences a Contingent Event, the Redemption Amount per Unit will equal:

$$\$10 + [\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right) \times \text{Participation Rate}]$$

If the percentage change of the Index is zero or negative and the Index never experience a Contingent Event, the redemption amount per unit will equal the principal investment amount of \$10.

If the Index experiences a Contingent Event, the Redemption Amount per Unit will equal:

$$\$10 + [\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right)]$$

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 partially limiting their investment risk, 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 securities and options linked to the performance of the DJIA.¹⁰

As of February 6, 2004, the market capitalization of the securities included in the DJIA ranged from a high of approximately \$333.2 billion to a low of approximately \$8.4 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 127.74 million shares to a low of approximately 0.31 million shares. The Index levels will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will 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.¹¹ Second, the Notes will be subject to the equity margin rules of the Exchange.¹² Third, the Exchange will, 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 Exchange will require members, member

¹⁰ See Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDSSM 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).

¹¹ 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.

¹² See Amex Rule 462 and Section 107B of the Company Guide.

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, Citigroup will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange 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. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹³ in general and furthers the objectives of Section 6(b)(5)¹⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange 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 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-Amex-2004-13. 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-Amex-2004-13 and should be submitted by [insert date 21 days from date of publication].

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.¹⁵ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.¹⁶ Accordingly, the Commission finds that the listing and trading of the Notes based on the DJIA is 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.¹⁷

As described more fully above, at maturity, the holder of the Note will receive an amount of at least 100% of the principal investment amount as long as the DJIA never experiences a Contingent Event. If the Index has a negative or positive return and the Index never experience a Contingent Event, the holder would receive the full principal investment amount of the Notes plus the product of \$10, the percentage change of the DJIA during the term, and the upside participation rate (which is expected, according to Amex, to be between 110-120%). If the Index declines but never reaches the Contingent Level, the holder will receive the principal investment amount of the Notes at maturity. However, if the Notes experience a Contingent Event during the term, the holder loses the principal protection and will be entitled to receive a payment based on the percentage change of the Index. Accordingly, a negative return, together with a

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See, e.g., Securities Exchange Act Release No. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (order approving File No. SR-Amex-2003-62); Securities Exchange Act Release No. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (order approving File No. SR-Amex-2003-74).

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).

Contingent Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose their entire investment amount.

The Amex 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.¹⁸ The Commission has also previously approved the listing of securities with a structure substantially the same as that of the Notes.¹⁹

The Commission notes that the Notes are non-principal protected instruments, but are not leveraged on the downside. The Notes are debt instruments, the price of which will be derived from and based upon the value of the DJIA. 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. 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 30 common stocks underlying the DJIA, 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 Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In

¹⁸ See supra note 10.

¹⁹ See supra note 16.

particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Citigroup 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, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal (“WSJ”) as representative of the broad market of U.S. industry, with each stock affecting the DJIA in proportion to its market price. The Commission notes that the changes in the composition of the DJIA as made solely by the editors of the WSJ. The changes to these common stocks tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. Further, the Commission notes that the DJIA has remained at 30 since 1928. As of February 6, 2004, the market capitalization of the securities included in the DJIA ranged from a high of approximately \$333.2 billion to a low of approximately \$8.4 billion. In addition, the average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 127.74 million shares to a low of approximately 0.31 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. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Citigroup. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.²⁰ In any event, financial information regarding Citigroup, in addition to the information on the 30 common stocks comprising the DJIA, will be publicly available.²¹

The Commission also has a systemic concern, however, that a broker-dealer such as Citigroup, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other 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 Citigroup.

²⁰ See Company Guide Section 107A.

²¹ The SEC notes that the 30 component stocks that comprise the DJIA are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

²² See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose

Finally, the Commission notes that the value of the DJIA will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the DJIA at least once every fifteen seconds throughout the trading day is important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change 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 6(b)(5) and 19(b)(2) of the Act,²⁴ to approve the proposal, on an accelerated basis.

return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

²³ See supra note 22.

²⁴ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-Amex-2004-13) 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

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR.200.30-3(a)(12).