

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51133; File No. SR-Amex-2004-101)

February 3, 2005

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

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 December 10, 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 under Section 107A of the Amex Company Guide (“Company Guide”), notes linked to the performance of 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the places specified in Item III below. The Exchange 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 Company Guide, the Exchange may approve for listing and trading securities that 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 issued by Citigroup, linked to the performance of the DJIA (the “DJIA Notes” or “Notes”).⁴ The DJIA is determined, calculated and maintained solely by Dow Jones.⁵ The Notes will provide for

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 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

a multiplier of 300% (“Upside Participation Rate”) of any positive performance of the DJIA during such term subject to a maximum payment amount or ceiling expected to be 5.7%, which will be determined at the time of issuance (“Capped Value”).⁶ The Capped Value limits the portion of any appreciation in the value of the DJIA in which an investor can participate to approximately 17.1% of the principal amount of the Notes (e.g., a multiplier of 300% of the positive performance of the Index subject to the Capped Value of 5.7%). If the ending value of the DJIA exceeds the starting value by more than the expected Capped Value of 5.7%, then the return on the Notes will be limited to 17.1%; thus, if the DJIA appreciates more than 17.1%, the return on the Notes will be less than an investment in the underlying stocks of the DJIA or a similar security that was directly linked to the DJIA but not subject to an appreciation cap. However, for increases in the value of the Index equal to or greater than 5.7% and less than 17.1%, the appreciation on the Notes will be 17.1%; thus, the Notes provide more appreciation than an investment in an instrument directly linked to the Index. If the DJIA increases by less than 5.7%, the appreciation on the Notes will equal three (3) times the appreciation of an investment in an instrument directly linked to the Index; thus, the Notes will again provide more appreciation than an investment in an instrument directly linked to the Index. If the DJIA decreases during this period, however, the value of the Notes will decline on a one-to-one basis with the Index and there is no floor on the depreciation.

corporations represented in the DJIA have been changed on a relatively infrequent basis.

⁶ Telephone conversation between Jeff Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), SEC, dated January 31, 2005 (as to expected amount payable at maturity under various scenarios).

The Notes will conform to the initial listing guidelines under Section 107A⁷ and continued listing guidelines under Sections 1001-1003⁸ of the Company Guide. The Notes are senior non-convertible debt securities of Citigroup. The Notes will have a term of at least one but no more than ten years.⁹ The original public offering price will be \$10 per Note. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the DJIA. The Notes will not have a minimum principal 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.¹⁰ The Notes are also not callable by the issuer, Citigroup, or redeemable by the holder.

⁷ Section 107A of the Amex Company Guide requires: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders because the Notes are issued in \$10 denominations; (3) a market value of at least \$4 million; and (4) a term of at least one year. 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 that 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.

⁸ 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 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.

⁹ The term of the Notes is expected to be 21 months and will be disclosed in the pricing supplement.

¹⁰ A negative return of the DJIA will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

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 prior to maturity of the Notes (the “Final Index Level”) and the closing value of the Index on the date the Notes are priced for initial sale to the public (the “Initial Index Level”). If there is a “market disruption event”¹¹ when determining the Final Index Level, the Final Index Level maybe deferred up to two (2) business days if deemed appropriate by the calculation agent.

If the percentage change of the Index is positive (i.e., the Final Index Level is greater than the Initial Index Level), the Redemption Amount per Note will equal:

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

not to exceed the Capped Value.

The Upside Participation Rate, determined at the time of issuance, is expected to be approximately 300%.

¹¹ A “market disruption event” is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the principal trading session on such primary market are materially inaccurate; and (iii) the suspension, material limitation, or absence of trading on any major securities market for trading in options contracts, future contracts, or any options on such futures contracts related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market.

If the percentage change of the Index is zero or negative (i.e., the Final Index Level is less than or equal to the Initial Index Level), the Redemption Amount per Note will equal:

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

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 in or gain enhanced upside exposure to the DJIA, subject to a cap, and who are willing to forego principal protection and market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and related options linked to the performance of the DJIA.¹²

As of November 30, 2004, the market capitalization of the securities included in the DJIA ranged from a high of \$373 billion to a low of \$17.9 million.¹³ The average daily trading volume for these same securities for the last six months ranged from a high of 67.123 million shares to a low of 1.861 million shares. The Index value will be widely disseminated at least once every fifteen seconds throughout the trading day.

¹² See Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDSSM Trust Units, portfolio depository receipts based on the DJIA); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) and 49453 (March 19, 2004), 69 FR 15913 (March 26, 2004) (approving the listing and Trading of Contingent Principal Protection Notes Linked to the Performance of the DJIA).

¹³ As reported by Dow Jones & Company at <http://www.averages.dowjones.com>.

Because the Notes are issued in \$10 denominations, 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.¹⁴ Second, the Notes will be subject to the equity margin rules of the Exchange.¹⁵ 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 organizations, and employees thereof recommending a transaction in the Notes: (i) to determine that such transaction is suitable for the customer, and (ii) 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 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.

¹⁴ 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.

¹⁵ See Amex Rule 462 and Section 107B of the Company Guide.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹⁶ in general and furthers the objectives of Section 6(b)(5)¹⁷ 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 impose any burden on competition.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>;
- or
- Send an E-mail to rule-comments@sec.gov. Please include SR-Amex-2004-101 on the subject line.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to SR-Amex -2004-101. This 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site <http://www.sec.gov/rules/sro.shtml>. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available on the Exchange's Web site at <http://www.amex.com> and for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR-Amex-2004-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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.¹⁸ The Commission has approved the listing of securities similar to that of the Notes.¹⁹ 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.²⁰

The requirements in Section 107A in the Company Guide were designed to address the special concerns attendant to the trading of hybrid securities like the Notes. For example, Section 107A of the Company Guide provides that 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.²¹ 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.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 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); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (order approving File No. SR-Amex-2003-74).

²⁰ 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).

²¹ The Commission also 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.

In approving the products, the Commission recognizes that the DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the WSJ as representative of the broad market of U.S. industry, with each stock affecting the DJIA in proportion to its market price. Given the large trading volume and capitalization of 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.

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.

The Commission also believes that any concerns that a broker-dealer, such as Citigroup, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Citigroup.²²

Finally, the Commission notes that the value of the DJIA will be disseminated at least once every fifteen seconds throughout the trading day. The Exchange represents that the DJIA will be determined, calculated, and maintained by the editors of the WSJ.

²² See 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 return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

The Exchange has requested and 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.

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-2004-101) 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).