OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice; Board of Directors Meeting

TIME AND DATE: Thursday, July 29, 2004, 10 a.m. (Open Portion) 10:15 a.m. (Closed Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of April 29, 2004 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.)

1. Insurance Project—Bolivia.
2. Finance Project—Bangladesh, India, Indonesia, Malaysia, Philippines, Sri Lanka, Thailand, and Vietnam.
3. Finance Project—Russia.
4. Approval of April 29, 2004 Minutes (Closed Portion).
6. Pending Major Projects.
7. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: July 15, 2004.

Connie M. Downs,

Corporate Secretary, Overseas Private investment Corporation.

[FR Doc. 04–16417 Filed 7–15–04; 10:25 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49999; File No. SR–Amex–2004–42]

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 Contingent Principal Protection Notes Linked to the Performance of the Nikkei 225 Index

July 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("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 notes linked to the performance of the Nikkei 225 ("Nikkei 225" or "Index") that provide for contingent principal protection ("Notes"). The Notes also provide for enhanced appreciation, such that if the ending value of the Index exceeds its starting value, the Notes' participation in the appreciation of the Index will be increased by an Upside Participation Rate expected to be 127%. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

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 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 the Notes, which will be issued by Citigroup under the name "Index LASERS." [4] The Nikkei 225 is a stock index determined, calculated and maintained solely by NKS.[5] The Notes will provide for participation [6] in the positive performance of the Nikkei 225 during their term while also reducing the risk exposure to the principal investment amount as long as the Index does not decline at any time during the term of the Notes 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 65% of the initial value of the Index.[7] A decline of the Index to the Contingent Level is referred to as a "Contingent Event."

The Contingent Principal Protection Notes, which will be registered under section 12 of the Act,[8] will conform to the initial listing guidelines under

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[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 Nihon Keizai Shimbun, Inc. ("NKS") have entered into a non-exclusive license agreement providing for the use of the Nikkei 225 by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. NKS is not responsible and will not participate in the issuance and creation of the Notes.

[5] The Notes are not sponsored, endorsed, sold or promoted by NKS. NKS is a recognized service with business information in Japan and publishes a large business daily, The Nihon Keizai Shimbon, and four other financial newspapers. NKS is not affiliated with a securities broker or dealer. The Index measures the composite price performance of selected Japanese stocks. The Index is currently based on the 225 Underlying Stocks trading on the Tokyo Stock Exchange ("TSE") and represents a broad cross-section of Japanese industry. All 225 of the stocks underlying the index are stocks listed in the First Section of the TSE. Stocks listed in the First Section are among the most actively traded stocks on the TSE. The Index is a modified, price-weighted index. Each component stock's weight in the Index is based on its price per share rather than the total market capitalization of the issuers. NKS calculates the Index by multiplying the per share price of a component stock by the corresponding weighting factor for the stock (a "Weight Factor"), calculating the sum of all these products and dividing that sum by a divisor. The divisor, initially set on May 16, 1949 at 225, was 23.156 as of July 9, 2004, and is subject to periodic adjustments. Each Weight Factor is computed by dividing [yen] 50 by the par value of the relevant component stock, so that the share price of each component stock when multiplied by its Weight Factor corresponds to a share price based on a uniform par value of [yen] 50. Each Weight Factor represents the number of shares of the related component stock, which are included in one trading unit of the Index. The stock prices used in the calculation of the Index are those reported by a primary market for the component stocks, which is currently the TSE.

[6] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004 (removal of reference to "uncapped" participation since the Notes have an Upside Participation Rate expected to be 127%).

[7] *Id.*

[8] *Id.*

Section 107A [9] and continued listing guidelines under Sections 1001–1003 [10] of the Company Guide. The Notes are unsecured senior non-convertible debt securities of Citigroup. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. The Notes will not pay interest and are not subject to redemption prior to maturity by Citigroup or at the option of any beneficial owner. The Notes will have a term of not less than one but not more than ten (10) years.[11] The Notes will mature on June 19, 2008.[12] 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 Nikkei 225 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 Nikkei 225 during the term and the Upside Participation Rate (expected to be 127%). 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 at any time 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 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 Nikkei 225.[13] The Notes are also not callable by the Issuer.

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 Nikkei 225 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 Nikkei 225 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:

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

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:

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

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 Nikkei 225. The Notes are designed for investors who want to participate or gain exposure to a broad representation of the Japanese stock market while partially limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities linked to the performance of the Nikkei 225, including products traded on the Exchange.[14]

As of May 26, 2004, the market capitalization of the securities included in the Nikkei 225 ranged from a high of approximately 14 trillion yen ($128 billion) to a low of approximately 30 billion yen ($257 million). The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 8.257 million shares (7 trillion yen) to a low of approximately 1.696 million shares (1.2 trillion yen). The Index is composed of 225 securities and is broad-based. The highest weighted stock has a weight of 3.5% while the top five (5) stocks in the Index account for 14.2 %. The level or value of the Index is calculated once per minute during TSE trading hours [15] and is readily accessible

[9] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (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 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.

[10] 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.

[11] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004.

[12] *Id.*

[13] A negative return of the Nikkei 225, 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.

[14] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (approving the listing and trading of Accelerated Return Notes linked to the Nikkei 225 for Nasdaq); 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of notes based on the Major 11 International Index); 34821 (October 11, 1994), 59 FR 52568 (October 18, 1994) (approving the listing and trading of warrants on the Nikkei 300); and 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (approving the listing and trading of warrants based on the Nikkei 225 and noting the existence of a Memorandum of Understanding between the Commission and the Japanese Ministry of Finance for surveillance purposes).

[15] TSE trading hours are currently 9 a.m. to 11 a.m. and from 12:30 p.m. to 3 p.m. Tokyo time, Monday through Friday. Due to time zone differences, on any normal trading day the TSE will close prior to the opening of business in New York City on the same calendar day. Therefore, the closing level of the Index on a trading day will generally be available in the U.S. by the opening of business on the same calendar day.

The TSE has adopted certain measures, including daily price floors and ceilings on individual stocks, intended to prevent any extreme short-term price to U.S. investors at *http://www.nni.nikkei.co.jp* and *http://www.bloomberg.com.* NKS is under no obligation to continue the calculation and dissemination of the Index. In the event that NKS ever ceases to maintain the Index, the Exchange will contact the Commission staff to consider prohibiting the continued trading of the Notes.[16]

In order to maintain continuity in the level of the Index in the event of certain changes due to non-market factors affecting the Underlying Stocks, such as the addition or deletion of stocks, substitution of stocks, stock dividends, stock splits or distributions of assets to stockholders, the divisor used in calculating the Index is adjusted in a manner designed to prevent any instantaneous change or discontinuity in the level of the Index. The divisor remains at the new value until a further adjustment is necessary as the result of another change. As a result of each change affecting any Underlying Stock, the divisor is adjusted in such a way that the sum of all share prices immediately after the change multiplied by the applicable Weight Factor and divided by the new divisor, *i.e.*, the level of the Index immediately after the change, will equal the level of the Index immediately prior to the change.[17]

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.[18] Second, the Notes will be subject to the equity margin rules of the Exchange [19] and will be subject to the regular equity trading hours of the Exchange. 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: (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 in accordance with its standard prospectus delivery procedures.

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 that include additional monitoring on key pricing dates,[20] which have been deemed adequate under the Act. In addition, the Exchange has an effective surveillance sharing agreement with the TSE that may be used as a basis for listing and trading securities linked to the Nikkei 225.[21] The Exchange also notes that the TSE is a member of the Intermarket Surveillance Group (''ISG'').[22] As a result, the Exchange asserts that market surveillance information is available from the TSE, if necessary, due to regulatory concerns that may arise in connection with the component stocks. In the event that it becomes necessary, the Exchange will seek the Commission's assistance pursuant to memoranda of understanding or similar inter-governmental agreements or arrangements that may exist between the Commission and the Japanese securities regulators.

The Exchange also has a general policy that 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 Act [23] in general and furthers the objectives of Section 6(b)(5) [24] 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 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

The Exchange did not solicit or receive any written comments on the proposed rule change.

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fluctuations resulting from order imbalances. In general, any stock listed on the TSE cannot be traded at a price lower than the applicable price floor or higher than the applicable price ceiling. These price floors and ceilings are expressed in absolute Japanese yen, rather than percentage limits based on the closing price of the stock on the previous trading day. In addition, when there is a major order imbalance in a listed stock, the TSE posts a ''special bid quote'' or a ''special asked quote'' for that stock at a specified higher or lower price level than the stock's last sale price in order to solicit counter-orders and balance supply and demand for the stock. Prospective investors should also be aware that the TSE may suspend the trading of individual stocks in certain limited and extraordinary circumstances, including, for example, unusual trading activity in that stock. As a result, changes in the Index may be limited by price limitations or special quotes, or by suspension of trading, on individual stocks that comprise the Index, and these limitations may, in turn, adversely affect the value of the Notes. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004.

[16] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004.

[17] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004 (pertaining to discussion of the continuity of the level of the Index). Underlying Stocks may be deleted or added by NKS. However, to maintain continuity in the Index, the policy of NKS is generally not to alter the composition of the Underlying Stocks except when an Underlying Stock is deleted in accordance with the following criteria. Any stock becoming ineligible for listing in the First Section of the TSE due to any of the following reasons will be deleted from the Underlying Stocks: bankruptcy of the issuer; merger of the issuer into, or acquisition of the issuer by, another company; delisting of the stock or transfer of the stock to the ''Seiri-Post'' because of excess debt of the issuer or because of any other reason; or transfer of the stock to the Second Section of the TSE. Upon deletion of a stock from the Index, NKS will select, in accordance with certain criteria established by it, a replacement for the deleted Underlying Stock. In an exceptional case, a newly listed stock in the First Section of the TSE that is recognized by NKS to be representative of a market may be added to the Underlying Stocks. As a result, an existing Underlying Stock with low trading volume and not representative of a market will be deleted.

[18] 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.

[19] *See* Amex Rule 462 and Section 107B of the Company Guide.

[20] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 9, 2004 (pertaining to key pricing dates).

[21] *See* Information Sharing Agreement between the Amex and the TSE dated September 25, 1990.

[22] ISG membership obligates an exchange to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information or responses thereto.

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

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. 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 File Number SR–Amex–2004–42 on the subject line.

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 File Number SR–Amex–2004–42. 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 for inspection and copying at the principal offices of Amex. 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 File Number SR–Amex–2004–42 and should be submitted on or before August 9, 2004.

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

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. The Commission notes that it has previously approved the listing of securities the performance of which have been linked to, or based on, the Index.[25] The Commission has also previously approved the listing of securities with a structure similar to that of the Notes.[26]

After careful consideration, the Commission finds that the proposed rule change, as amended, 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,[27] 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.[28] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exists at the maturity of the Notes, subject to the Capped Value, while also reducing the risk exposure to the principal investment amount as long as the Index does not decline at any time during the term of the Note to a pre-determined percentage decline, expected to be 65% of the initial value of the Index—the Contingent Level. Specifically, as described more fully above, if the value of the Nikkei 225 Index has increased, a beneficial owner will be entitled to receive at maturity a payment on the Notes based on the appreciation of the Index by an Upside Participation Rate of 127%. 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 at any time 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.

Thus, the Notes are non-principal protected instruments, but are not leveraged. The Notes are debt instruments, the price of which will be derived from and based upon the value of the Nikkei 225 Index. 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 225 common stocks underlying the Nikkei 225 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. However, for the reasons discussed below, the Commission believes that Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Amex Rule 107A were designed to address the concerns attendant to the trading hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Amex 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 Index is a stock index calculated, published and disseminated by NKS, which measures the composite price performance of selected Japanese stocks. The Index is currently based on 225 common stocks traded on the TSE and represents a broad cross-section of Japanese industry. All 225 underlying stocks are listed in the First Section of the TSE and are, therefore, among the most actively traded stocks on the TSE. The Nikkei is

[25] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (approving the listing and trading of Accelerated Return Notes linked to the Nikkei 225 for Nasdaq); and 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities, the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including the Nikkei 225 Index).

[26] *See* Securities Exchange Act Release Nos. 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500 Index); 47009 (December 16, 2002), 67 FR 78540 (December 24, 2002) (approving the listing and trading of Market Recovery Notes linked to the Nasdaq-100 Index); and 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes linked to the Dow Jones Industrial Average).

[27] 15 U.S.C. 78f(b)(5).

[28] 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).

a modified, price-weighted index, which means a component stock's weight in the Nikkei is based on its price per share rather than total market capitalization of the issuers. NKS calculates the Index by multiplying the per share price of a component stock by the corresponding weighting factor for the stock, calculating the sum of all these products, and dividing that sum by a divisor.

As stated above, NKS is under no obligation to continue the calculation and dissemination of the Index. In the event the calculation and dissemination every minute of the Index is discontinued, Amex represents that it will contact Commission staff and consider prohibiting the continued listing of the Notes. The Commission notes that the changes in the composition of the Nikkei 225 Index is made solely by NKS. The changes to these common stocks tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. As of May 26, 2004, the average daily trading volume for the securities included in the Nikkei 225 for the last six (6) months ranged from a high of approximately 8.257 million shares (7 trillion yen) to a low of approximately 1.696 million shares (1.2 trillion yen). As of the same date, the market capitalization of the components ranged from 14 trillion yen ($128 billion) to 30 billion yen ($257 million). The highest-weighted stock in the Index has the weight of 3.5% while the top five (5) stocks in the Index account for 14%. Given the composition of the stocks underlying the Nikkei 225 Index, the Commission believes that the listing and trading of the Notes that are linked to the Nikkei 225 Index should not unduly impact the market for the underlying securities comprising the Nikkei 225 Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Nikkei 225 Index are well-capitalized, highly liquid stocks.

In light of the fact that the Nikkei is a foreign index, the Commission believes adequate surveillance sharing agreements between the Amex and the TSE are a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading involving the Notes. While many of the issuers of the underlying securities comprising the Nikkei 225 are not subject to reporting requirements under the Act, Amex represents that an adequate surveillance sharing agreement exists through the ISG between the Amex and the TSE to deter and detect potential manipulations or other improper trading in the underlying components. Therefore, Amex's surveillance procedures will serve to deter as well as detect any potential manipulation. This agreement obligates the Amex and TSE to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information. Accordingly, the Commission believes that the surveillance sharing agreement through ISG is adequate for the Amex to surveil the components of the Nikkei 225 for potential manipulation or other trading abuses between the markets with respect to the trading of the Notes based on the Nikkei 225.

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 Amex's listing standards in Amex Rule 107A, which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's hybrid listing standards further require that the Notes have a market value of at least $4 million. In any event, financial information regarding Citigroup, in addition to the information on the 225 common stocks comprising the Nikkei 225 Index, including the dissemination of the Index value once per minute, will be publicly available.[29]

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,[30] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Citigroup.

Finally, as the Commission noted, the value of the Nikkei 225 Index will be disseminated at least once every minute throughout the trading day. Because the Nikkei 225 Index contains foreign securities and is composed of highly liquid and well-capitalized securities, the Commission believes that providing access to the value of the Index at least once every minute throughout the trading day is sufficient 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 other derivative securities based on the Index and securities with a structure similar to that of the Notes.[31] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[32] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–2004–42) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16321 Filed 7–16–04; 8:45 am]

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[29] *See http://www.nni.nikkei.co.jp* and *http://www.bloomberg.com.*

[30] *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 return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[31] *See supra* notes 25 and 26.

[32] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).