Commission believes that the proposal may increase order flow to the Exchange, which should enhance liquidity on the Amex.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. Specifically, the Commission notes that accelerated approval will allow the Amex and its member firms to close its books for the year 2003 without unnecessary delay. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(4)[11] and 19(b)(2) of the Act,[12] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2003–106), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–613 Filed 1–12–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49017; File No. SR–Amex–2003–93]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Annual Performance of the Standard & Poor's 500 Stock Index

January 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2003, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which the Amex has prepared. 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 Amex proposes to list and trade, under Section 107A of the Amex Company Guide, Targeted Efficiency Equity Securities (or ''Notes'') of Wachovia Corporation, the return on which is based on the performance of the Standard & Poor's 500 Stock Index,[3] (''S&P 500 Index''), subject to an annual reset provision and cap.

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 had 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, the Amex 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.[4] The Amex proposes to list Notes for trading based on the S&P 500 Index.[5] The Notes are senior non-convertible debt securities of Wachovia that will have a term of three years.[6] The Notes will conform to the listing guidelines under section 107A of the Amex Company Guide[7] and the continued listing guidelines under sections 1001–1003 of the Amex Company Guide.[8]

Wachovia will issue the Notes in denominations of whole ''Units,'' with each Unit representing a single Note. The original public offering price will be $5 per Note. The Notes will provide for an annual calculation of the percentage change of the S&P 500 Index so that any positive performance of the S&P 500 Index during each Annual Calculation Period will be doubled subject to a maximum payment amount or ceiling. An investor in the Notes will be subject to the full extent of a negative return of the S&P 500 Index in any Annual Calculation Period. According to the Amex, the S&P 500 Index value is disseminated at least once every fifteen seconds throughout the trading day over the Consolidated Tape Association's Network B.[9]

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra* note 8.

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)12).

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

[2] 17 CFR 240.19b–4.

[3] The S&P 500 Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The S&P 500 Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The S&P 500 Index is computed by dividing the total market value of the 500 stocks by an S&P 500 Index Divisor. The Index Divisor keeps the S&P 500 Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the S&P 500 Index are listed on the Amex, the New York Stock Exchange, Inc., or traded through the Nasdaq Stock Market, Inc. (''Nasdaq''). The S&P 500 Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29).

[5] The S&P 500 Index is determined, calculated, and maintained by Standard & Poor's, a division of the McGraw-Hill Companies, Inc.

[6] Wachovia Corporation and Standard & Poor's have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Wachovia and certain affiliates and subsidiaries in connection with certain securities, including these Notes. Standard and Poor's is not responsible for and will not participate in the creation and issuance of the Notes.

[7] 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 that is unable to satisfy the earning criteria stated in section 101 of the Amex Company Guide, the Amex 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 Amex's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Amex Company Guide. Section 1002(b) of the Amex Company Guide states that the Amex will consider removing from listing any security where, in the opinion of the Amex, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Amex inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Amex will rely, in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Amex 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] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Patrick M. Joyce, Special Counsel, Division of

The Notes will entitle the owner at maturity to receive an amount based upon the sum of annual percentage changes of the S&P 500 Index during the term of the Notes, not to exceed a maximum payment (the ''Capped Amount''), to be determined on the date of issuance of the Notes. During each Annual Calculation Period, if the value of the S&P 500 Index has increased as compared to the Initial Index Value, the annual return will equal two times the amount of that percentage increase, not to exceed the Capped Amount. If the value of the S&P 500 Index has decreased as compared to the Initial Index Value during the annual calculation period, the annual return will equal the full negative or downside percentage change. This negative return will not be limited by a floor. The Notes will not have a minimum principal amount that will be repaid, and accordingly, are fully exposed to any decline in the level of the S&P 500 Index.[10] The Notes are not callable by the Issuer.

The Redemption Amount is the payment that the holder or investor will receive based on the sum of the annual returns (''Index Return'') of the S&P 500 Index determined at each Annual Calculation Period. For each Annual Calculation Period, the Initial Index Value will be the closing level of the S&P 500 Index on the first day of the Annual Calculation Period. The Final Index Value is the closing value of the S&P 500 Index on the last day of the Annual Calculation Period. If the Final Index Value is greater than the Initial Index Value, the calculation of the Index Return is set forth below:

$$\left[200\% \times \left(\frac{\text{Final Index Value} - \text{Initial Index Value}}{\text{Initial Index Value}}\right)\right], \text{ subject to Capped Amount.}$$

If the Final Index Value is less than the Initial Index Value, the calculation of the Index Return is set forth below:

$$\left(\frac{\text{Final Index Value} - \text{Initial Index Value}}{\text{Initial Index Value}}\right)$$

The Redemption Amount for a Note equals the principal amount per Note multiplied by the sum of one plus the Index Return: $5 × [1 + Index Return]

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 S&P 500 Index. The Notes are designed for investors who want to participate or gain exposure to the S&P 500 Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on the S&P 500 Index, as well as securities the performance of which is linked to or based on the S&P 500 Index.[11]

As of November 20, 2003, the market capitalization of the securities included in the S&P 500 ranged from a high of $289.478 billion to a low of $629 million. The average daily trading volume for these same securities for the last six months ranged from a high of 44.909 million shares to a low of 10.673 million shares and from a high of 1.966 million shares to a low of 0.127 million shares, respectively.

Because the Notes are linked to an equity index and are issued in a denomination other than $1,000, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Amex would 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.[12] Second, the Notes would be subject to the equity margin rules of the Amex.[13] Third, the Amex would, 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 Amex would 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, Wachovia will deliver a prospectus in connection with the initial sales of the Notes.

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

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act[14] and furthers the objectives of section 6(b)(5) of the Act[15] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Market Regulation, Commission, on November 10, 2003.

[10] A negative return of the S&P 500 Index reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

[11] *See* Securities Exchange Act Release No. 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of Wachovia ''TEES'' Notes linked to the S&P 500 Index). *See also* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of SPDR, a unit investment trust linked to the S&P 500 Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to S&P 500 Index); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Protection Notes linked to the S&P 500 Index); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of contingent principal protection notes linked to the S&P 500 Index).

[12] 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.

[13] *See* Amex Rule 462 and section 107B of the Amex Company Guide.

[14] 15 U.S.C. 78f(b).

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

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

The Amex 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 Amex 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 proposed rule change 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 a the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–93. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–93 and should be submitted by February 3, 2004.

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.[16] The Commission finds that this proposal is similar to several approved notes whose value is linked to an equity index currently listed and traded on the Amex.[17] Accordingly, the Commission finds that the listing and trading of the Notes based on the S&P 500 Index are 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.[18]

As described more fully above, the Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the S&P 500 Index, subject to a cap. At maturity, the holder of a Note will receive an amount based upon the Index Return determined at each Annual Calculation period of the S&P 500 Index. Specifically, the holder of a Note will be entitled to receive a payment based on whether the Final Index Value is greater or less than the Initial Index Value. If the Final Index Value is greater than the Initial Index Value, the holder of the Notes will receive the Index Return equal to two times the amount of that percentage increase, not to exceed the Capped Amount. If the Final Index Value is less than or equal to the Initial Index Value, the annual return will equal the full negative or downside percentage change.

The Commission notes that the Notes are not leveraged and are not principal-protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the S&P 500 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. Thus, if the value of the S&P 500 has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. 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 500 common stocks underlying the S&P 500 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. For the reasons discussed below, however, the Commission believes that the Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the Amex's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Amex, in the Commission's view, has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Amex will require members, member organizations, and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics and bear the financial risks of such transaction.

Moreover, the Commission notes that the Amex will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Wachovia 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. The Commission believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products.

As discussed more fully above, the underlying stocks that make up the S&P 500 Index are well-capitalized, highly liquid securities. Moreover, the issuers of the underlying securities that make up the S&P 500 Index 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, the NYSE, the Amex, or the Nasdaq National Market. The Commission notes that the S&P 500 Index is determined, calculated, and

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release Nos. 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB contingent principal protection notes linked to the S&P 500).

[18] 15 U.S.C. 78f(b)(5). 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).

maintained by Standard and Poor's. As of November 20, 2003, the market capitalization of the securities included in the S&P 500 ranged from a high of $289.478 billion to a low of $629 million. The average daily trading volume for these same securities for the last six months ranged from a high of 44.909 million shares to a low of 10.673 million shares and from a high of 1.966 million shares to a low of 0.127 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 Index, the Commission believes that the listing and trading of Notes based on the performance of the S&P 500 Index should not unduly impact the market for the underlying securities comprising the S&P 500 Index or raise manipulative concerns. Additionally, the Commission believes that the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes depend upon the individual credit of the issuer, Wachovia. To some extent this credit risk is minimized by the listing standards in section 107A of the Amex Company Guide, which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[19] In any event, financial information regarding Wachovia, in addition to the information on the 500 common stocks comprising the S&P 500 Index, will be publicly available.[20]

The Commission does have a concern, however, that a broker-dealer such as Wachovia, or a subsidiary providing a hedge for the issuer, will incur position exposure. As the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[21] however, the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Wachovia.

Finally, the Commission notes that the value of the S&P 500 Index will be disseminated at least once every fifteen seconds throughout the trading day over the Consolidated Tape Association's Network B. The Commission believes that providing access to the value of the S&P 500 Index at least once every fifteen seconds throughout the trading day is extremely 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 thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex. 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. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[22] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–2003–93) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–614 Filed 1–12–04; 8:45 am]

BILLING CODE 8010–01–U

[19] *See* Amex Company Guide Section 107A.

[20] The Commission notes that the 500 stocks that make up the S&P 500 Index are reporting companies under the Act, and that the Notes will be registered under Section 12 of the Act.

[21] *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).

[22] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49019; File No. SR–Amex–2003–104]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Cap Monthly Options Transactions Fees Incurred by Specialists and Registered Options Traders (''ROTs'') in any Single Options Class at $72,000, and Implement Market Share Fee Program for Specialists and ROTs in the Top 300 Equity Options

January 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2003, 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, II, and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt the following changes to its Options Fee Schedule: (i) A transaction fee cap of $72,000 per month in any single options class, exclusive of the options licensing fee, for specialists and registered options traders (''ROTs''), and (ii) a market share fee program for the top 300 equity options that would reduce transaction fees paid by specialists and ROTs in such classes if a 20% or greater monthly market share is maintained. The text of the proposed rule change is available at 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

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).