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ART TECHNOLOGY GROUP INC
Form DEF 14A
April 17, 2001

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934

Filed by the Registrant /X/

Filed by a Party other than the Registrant / /

Check the appropriate box:

- / / Preliminary Proxy Statement
- /X/ Definitive Proxy Statement
- / / Definitive Additional Materials
- / / Soliciting Material Under Rule 14a-12
- / / Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e) (2))

ART TECHNOLOGY GROUP, INC.

(Name of Registrant as Specified In Its Charter)

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- /X/ No fee required.
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- (4) Date Filed:

ART TECHNOLOGY GROUP, INC.
 25 FIRST STREET
 CAMBRIDGE, MASSACHUSETTS 02141

Dear Stockholder:

I am pleased to invite you to attend the 2001 Annual Meeting of Stockholders of Art Technology Group, Inc. on May 14, 2001. We will hold the meeting at 10:00 a.m. at the offices of Hale and Dorr LLP, 60 State Street, 26th Floor, Boston, Massachusetts. Annual meetings play an important role in maintaining communications and understanding among our management, board of directors and stockholders, and I hope that you will be able to join us.

On the pages following this letter you will find the Notice of Annual Meeting of Stockholders, which lists the matters to be considered at the meeting, and the proxy statement, which describes the matters listed in the Notice. We have also enclosed our 2000 Annual Report.

If you are a stockholder of record, we have enclosed your proxy card, which allows you to vote on the matters considered at the meeting. Simply mark, sign and date your proxy card, and then mail the completed proxy card to our transfer agent, EquiServe, L.P., in the enclosed postage-paid envelope. You may attend the meeting and vote in person even if you have sent in a proxy card.

If your shares are held in the name of a bank, broker or other holder of record, you will receive instructions from the holder of record that you must follow in order for your shares to be voted.

Sincerely yours,
 Joe Chung
 Chief Technology Officer and
 Chairman of the Board of Directors

THE ABILITY TO HAVE YOUR VOTE COUNTED AT THE MEETING IS AN IMPORTANT STOCKHOLDER RIGHT, AND I HOPE YOU WILL CAST YOUR VOTE IN PERSON OR BY PROXY REGARDLESS OF THE NUMBER OF SHARES YOU HOLD.

ART TECHNOLOGY GROUP, INC.
 25 FIRST STREET
 CAMBRIDGE, MASSACHUSETTS 02109

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

Time and Date..... 10:00 a.m. on Monday, May 14, 2001
 Place..... Hale and Dorr LLP
 60 State Street
 Boston, Massachusetts

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Items of Business..... At the meeting, we will ask you and our other stockholders to:

- (1) Elect two directors to three-year terms.
- (2) Approve an amendment to increase the number of shares of common stock reserved under our Amended and Restated 1996 Stock Option Plan from 19,600,000 to 25,600,000.
- (3) Approve amendments to our by-laws to authorize the use of electronic or remote communications for specific corporate purposes.
- (4) Ratify the selection of Arthur Andersen LLP as our independent accountants for fiscal 2001.
- (5) Transact any other business properly presented at the meeting.

Record Date..... You can vote if you were a stockholder of record at the close of business on March 26, 2001.

Proxy Voting..... It is important that your shares be represented and voted at the meeting. Whether or not you plan to attend the meeting, please mark, sign, date and promptly mail your proxy card to our transfer agent, EquiServe, L.P. in the enclosed postage-paid envelope. You may revoke your proxy at any time prior to its exercise at the meeting.

By Order of the Board of Directors
 Jeet Singh
 Secretary

Cambridge, Massachusetts
 April 17, 2001

INFORMATION ABOUT THE MEETING

THIS PROXY STATEMENT

We have sent you this proxy statement and the enclosed proxy card because our board of directors is soliciting your proxy to vote at our 2001 Annual Meeting of Stockholders and any adjournment or postponement of the meeting. The meeting will be held at 10 a.m., local time, on Monday, May 14, 2001, at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts.

- THIS PROXY STATEMENT summarizes information about the proposals to be considered at the meeting and other information you may find useful in determining how to vote.
- THE PROXY CARD is the means by which you actually authorize another person to vote your shares in accordance with the instructions.

Our directors, officers and employees may solicit proxies in person or by telephone, mail, electronic mail, facsimile or telegram. We will pay the expenses of soliciting proxies, although we will not pay additional compensation to these individuals for soliciting proxies. We will request banks, brokers and

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other nominees holding shares for a beneficial owner to forward copies of the proxy materials to those beneficial owners and to request instructions for voting those shares. We will reimburse these banks, brokers and other nominees for their related reasonable expenses. We have not retained the services of any proxy solicitation firm to assist us in soliciting proxies.

We are mailing this proxy statement and the enclosed proxy card to stockholders for the first time on April 17, 2001. In this mailing, we are including a copy of our 2000 Annual Report to Stockholders.

WHO MAY VOTE

Holders of record of our common stock at the close of business on March 26, 2001 are entitled to one vote per share on each matter properly brought before the meeting.

A list of stockholders entitled to vote will be available at the meeting. In addition, you may contact our Secretary, Jeet Singh, to make arrangements to review a copy of the stockholder list at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, prior to the meeting, between the hours of 8:30 a.m. and 5:30 p.m., local time, on any business day from May 4, 2001 up to the time of the meeting.

HOW TO VOTE

You may vote your shares at the meeting in person or by proxy:

- TO VOTE IN PERSON, you must attend the meeting, and then complete and submit the ballot provided at the meeting.
- TO VOTE BY PROXY, you must mark, sign and date the enclosed proxy card and then mail the proxy card to our transfer agent, EquiServe, L.P. Your proxy will be valid only if you complete and return the proxy card before the meeting. By completing and returning the proxy card, you will direct the designated persons to vote your shares at the meeting in the manner you specify in the proxy card. If you complete the proxy card with the exception of the voting instructions, then the designated persons will vote your shares for the election of the nominated director,

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the amendment of the 1996 Stock Option Plan, the amendment of the by-laws and the ratification of the independent accountants. If any other business properly comes before the meeting, the designated persons will have the discretion to vote your shares as they deem appropriate.

Even if you complete and return a proxy card, you may revoke it at any time before it is exercised by taking one of the following actions:

- send written notice to Jeet Singh, our Secretary, at our address as set forth in the Notice appearing before this proxy statement;
- send us another signed proxy with a later date; or
- attend the meeting, notify our Secretary that you are present, and then vote by ballot.

IF YOUR SHARES ARE HELD IN THE NAME OF A BANK, BROKER OR OTHER NOMINEE HOLDER, you will receive instructions from the holder of record explaining how your shares may be voted. Please note that, in such an event, you must obtain a

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proxy, executed in your favor, from the holder of record to be able to vote at the meeting.

QUORUM REQUIRED TO TRANSACT BUSINESS

At the close of business on March 26, 2001, 68,315,484 shares of our common stock were outstanding. Our by-laws require that a majority of the shares of our common stock outstanding on that date be represented, in person or by proxy, at the meeting in order to constitute the quorum we need to transact business. We will count abstentions and broker non-votes in determining whether a quorum exists. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner.

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PROPOSAL ONE: ELECTION OF CLASS II DIRECTORS

The first proposal on the agenda for the meeting is the election of two individuals to serve as Class II directors for three-year terms beginning at the meeting and ending at our 2004 Annual Meeting of Stockholders. Our by-laws provide that the board is to be divided into three classes serving for staggered three-year terms.

The board has nominated Scott A. Jones and Thomas N. Matlack, current Class II directors, for re-election. Brief biographies of Messrs. Jones and Matlack, each as of March 31, 2001, follow. You will find information about Messrs. Jones' and Matlack's stock holdings on page 13.

SCOTT A. JONES..... Mr. Jones has served as a director since November 1997. Since co-founding Escient, Inc., a company focusing on Internet applications related to entertainment in the home, in July 1996, Mr. Jones has served as its Chief Executive Officer and Chairman. After co-founding Boston Technology, Inc. in 1986, Mr. Jones served as its Chairman and Chief Scientist until 1992. Since 1994, he has also been a principal of Threshold Technologies, Inc., a consulting firm, and King Air Charters, Inc., an air charter company. Mr. Jones is 39 years old.

THOMAS N. MATLACK..... Mr. Matlack has served as a director since November 1997. Since August 1998, he has been a Managing Partner at Megunticook Management LLC, a private investment fund. From 1992 to February 1997, he held various positions with the Providence Journal Company, including Chief Financial Officer from April 1996 to February 1997, Vice President, Finance from September 1995 to April 1996, and Director, Financial Planning and Analysis from 1992 to September 1995. Mr. Matlack is 36 years old.

We expect that both Mr. Jones and Mr. Matlack will be able to serve if elected. If either one is not able to serve, proxies may be voted for a substitute nominee. The board of directors may, following the Annual Meeting, elect an additional Class II director, as provided in our by-laws.

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The nominees receiving the greatest number of votes cast will be elected as directors. We will not count abstentions when we tabulate votes cast for the directors election. Brokers have discretionary voting power with respect to director elections.

BACKGROUND INFORMATION ABOUT DIRECTORS CONTINUING IN OFFICE

Our Class I and Class III directors will continue in office following the Meeting. The terms of our Class I directors will expire upon our 2003 Annual Meeting of Stockholders, and the terms of our Class III directors will expire upon our 2002 Annual Meeting of Stockholders. Brief biographies of these directors, as of March 31, 2001, follow. You will find information about their holdings of common stock on page 13.

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- JOSEPH T. CHUNG..... Mr. Chung co-founded our company with Jeet Singh in 1991 and is our Chief Technology Officer, Treasurer and Chairman of the Board. He is one of our Class III directors. Previously, Mr. Chung was the technical director and chief technology designer of the hyperinstrument group at the MIT Media Lab and held engineering positions at Apple Computer and Digital Equipment Corporation. Mr. Chung is 36 years old.
- JEET SINGH..... Mr. Singh co-founded our company with Joseph Chung in 1991 and is our Chief Executive Officer and a Class III director. Previously, Mr. Singh held marketing positions with Boston Technology, Inc., a manufacturer of advanced voice processing computers, Team Technologies, a Washington, D.C.-based consulting firm specializing in workgroup productivity, and Groupe Bull/Bull Corporation of America. Mr. Singh is 37 years old.
- PHYLLIS S. SWERSKY..... Ms. Swersky has been one of our Class I directors since May 2000. Since 1995 she has been President of The Meltech Group, a consulting firm specializing in business advisory services for high-growth potential businesses. She was President of The Net Collaborative, Inc., an Internet systems integration company, from 1996 to 1997. She served as President of Work/Family Directions, Inc., a provider of employee benefits programs, from 1992 through 1995. Prior to 1992, she was Executive Vice President and Chief Financial Officer of AICorp, Inc., a computer software company. Ms. Swersky also serves as a director of Investor Financial Services, Inc. Ms. Swersky is 49 years old.
- ROBERT F. WALTERS..... Mr. Walters has been one of our Class I directors since May 2000. Since 1995 he has been Senior Vice President and Chief Information Officer of the John Hancock Financial Services. Prior to Hancock, Mr. Walters held various key positions at Citibank, both domestically and overseas. Before joining Citibank, Mr. Walters held various senior technology management positions at Bankers Trust Co. and Marine Midland Bank. Mr. Walters is 52 years old.

BOARD AND COMMITTEE MEETINGS

Our board of directors met 11 times in 2000. Mr. Jones attended 73% of the total number of board meetings, and each of the other directors attended at least 75% of those meetings. The board has three standing committees: an Audit Committee, a Compensation Committee and an Employee Stock Option Committee.

The Audit Committee reviews our financial reporting and internal controls and policies, recommends the selection of independent accountants, reviews the overall plan and scope of the independent audit, and provides the opportunity for direct contact between our independent accountants and the board. The Audit Committee acts under a written charter first adopted and approved on June 12, 2000 and attached to this proxy statement as Appendix A. The Audit Committee met 6 times during 2000. The current Audit Committee members are Mr. Matlack and Ms. Swersky.

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Each of the members of the Audit Committee attended at least 75% of the meetings of the Audit Committee in 2000.

The Compensation Committee reviews, and recommends to the board for approval, the compensation programs for the Chief Executive Officer, other executive officers and key employees. The Compensation Committee also administers our bonus and incentive plans and programs, including stock option and stock purchase plans. The Compensation Committee met 7 times during 2000, either in person, by telephonic meeting or by means of written consent. The current members of the Compensation Committee are Messrs. Jones, Lax and Matlack and Ms. Swersky. Each of the members of the Compensation Committee attended at least 75% of the meetings of the Compensation Committee in 2000.

The Employee Stock Option Committee is responsible for granting stock options to our employees, other than our executive officers. The current member of the Employee Stock Option Committee is Mr. Singh.

AUDIT COMMITTEE REPORT

The Audit Committee of the board of directors is composed of two members and acts under a written charter adopted by the board of directors and attached to this proxy statement as Appendix A. The members of the Audit Committee are independent directors, as defined by the charter and the rules of the Nasdaq Stock Market.

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The Audit Committee reviewed our audited financial statements for the year ended December 31, 2000 and discussed these financial statements with our management. The Audit Committee also reviewed and discussed the audited financial statements and the matters required by Statement on Auditing Standards 61, COMMUNICATION WITH AUDIT COMMITTEES, with Arthur Andersen, our independent auditors. SAS 61 requires our independent auditors to discuss with our Audit Committee, among other things, the following:

- methods to account for significant unusual transactions;

- the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus;

- the process used by management in formulating particularly sensitive accounting estimates and the basis for the auditors' conclusions regarding the reasonableness of those estimates; and

- disagreements, of which there were none, with management over the application of accounting principles, the basis for management's accounting estimates and the disclosures in the financial statements.

Our independent auditors also provided the Audit Committee with the written disclosures and the letter required by Independence Standards Board Standard No. 1, INDEPENDENCE DISCUSSIONS WITH AUDIT COMMITTEES. This Standard requires auditors annually to disclose in writing all relationships that in the auditor's professional opinion may reasonably be thought to bear on independence, confirm their perceived independence and engage in a discussion of independence. In addition, the Audit Committee discussed with the independent auditors their independence from our company.

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Based on its discussions with management and the independent auditors, and its review of the representations and information provided by management and the independent auditors, the Audit Committee recommended to the board of directors that the audited financial statements be included in our annual report on Form 10-K for the year ended December 31, 2000.

AUDIT COMMITTEE
Thomas N. Matlack
Phyllis S. Swersky

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

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Messrs. Jones, Matlack and Lax and Ms. Swersky served on the Compensation Committee during 2000. None of these directors was, during or before 2000, an officer or employee of our company or of any of our affiliates. None of our executive officers serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as members of our board of directors or Compensation Committee.

COMPENSATION OF DIRECTORS

During 2000, we paid no cash compensation to any of our directors. In order to attract and retain directors in a competitive environment, as of January 1, 2001, we began paying a cash retainer of \$10,000 per year to our non-employee directors and additional payments of \$1,000 for each meeting attended by those directors. In order to attract new directors from larger and more sophisticated companies and to compensate committee chairpersons for the additional work imposed by this role, on March 26, 2001, the board of directors voted to increase the annual retainer for each non-employee director to \$25,000; to provide an additional annual retainer of \$10,000 to each non-employee committee chairperson; and to continue paying each non-employee director \$1,000 for each meeting attended by that director. We do not reimburse directors for travel and living expenses for attending regular board meetings and committee meetings.

The board of directors adopted our 1999 Outside Director Stock Option Plan in May 1999, and it was approved by our stockholders in June 1999. Under the plan, individuals who become directors and are not our employees receive an option to purchase 10,000 shares of common stock on the date of his or her initial election to our board. The exercise price of such option is equal to the closing price per share of our common stock on the date of such director's election. In addition, each of our continuing non-employee directors receives an option to purchase 10,000 shares of common stock on the date of each annual meeting of stockholders, at an exercise price equal to the closing price per share of the common stock on the date of the annual meeting. All options granted under the director plan are fully vested upon grant.

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INFORMATION ABOUT EXECUTIVE OFFICERS

BACKGROUND INFORMATION ABOUT EXECUTIVE OFFICERS

Our executive officers are elected by the board of directors and hold office until the first meeting of the board following the annual meeting of stockholders. Brief biographies of our executive officers follow. The ages of the executive officers are given as of March 31, 2001. You will find information about their holdings of common stock on page 13.

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JEET SINGH..... Chief Executive Officer. You will find background information about Mr. Singh on page 5.

JOSEPH T. CHUNG..... Chief Technology Officer, Treasurer and Chairman of the Board. You will find background information about Mr. Chung on page 5.

ANN C. BRADY..... Ms. Brady has been Chief Financial Officer since April 1999 and Vice President, Finance since January 1998. From May 1997 to January 1998 she was Director of Finance. From 1992 to May 1997, Ms. Brady was head of Finance and Accounting for HPR, Inc., a software and consulting services company, subsequently acquired by McKesson/HBOC. Ms. Brady is 37 years old.

PAUL G. SHORTHOSE..... Mr. Shorthose has been Chief Operating Officer since June 1999 and President since February 2000. From July 1998 to June 1999, he was Vice President of Marketing and Business Development for Context Integration, Inc., a software-related consulting services company. From August 1997 to July 1998, Mr. Shorthose served as our Vice President, Worldwide Services. From April 1992 to August 1997, Mr. Shorthose was Vice President/General Manager for the Northeast U.S. and Canada Professional Services Organization of Sybase, Inc., a software and consulting services company. Mr. Shorthose is 44 years old.

WILLIAM WITTENBERG..... Mr. Wittenberg has been Senior Vice President, Product Development since March 1998. From April 1996 to March 1998, he was Vice President, Engineering. From 1991 to January 1995, Mr. Wittenberg was Director of Product Management and User Interface Design for Lotus Development Corporation. Mr. Wittenberg is 42 years old.

LAUREN J. KELLEY..... Ms. Kelley has been Senior Vice President, Worldwide Sales since February 2000. From December 1996 to February 2000, she was Vice President, Sales. From September 1996 to December 1996, she worked as a consultant to our company on the European market. From July 1995 to December 1996, Ms. Kelley was a Principal with TechConnect Strategies, Inc., an international business development firm. From January 1994 to July 1995, Ms. Kelley was General Manager at Borland International in Paris, France. Ms. Kelley is 41 years old.

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IAN REID..... Mr. Reid has been Vice President, Marketing since March 2000. From November 1998 to March 2000, he was an independent marketing consultant for internet industry companies. From May 1996 to October 1998, he was Vice President, Field and Channel Marketing for Open Market, Inc., an internet e-commerce company. From January 1996 to May 1996, Mr. Reid was a consultant to Open Market. Mr. Reid is 48 years old.

BERNARD BAILEY..... Mr. Bailey has been Senior Vice President, Worldwide

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Services since January 2001. From April 1984 to January 2001, he held various positions with IBM Corporation in which he was responsible for the sales and delivery of services offerings. In particular, from October 2000 to January 2001, he was Sector Operations and Strategy Executive, IBM Global Services, Business Innovation Services, Public Sector. From January 2000 to October 2000 he was Director of Delivery Operations, IBM Global Services, Business Innovation Services, Southern Region. From January 1997 to January 1999, Mr. Bailey was Director, Integration Services, Chesapeake Bay Marketplace. From August 1995 to January 1996, he was Solution Executive, EDMS Group, Process and Petroleum Industry Solution Unit. Mr. Bailey is 47 years old.

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EXECUTIVE COMPENSATION

The following table sets forth information with respect to the annual and long-term compensation that we paid for the past three years to the following persons, who are referred to as our named executive officers:

- Jeet Singh, our chief executive officer; and
- Joseph T. Chung, Paul G. Shorthose, Ann C. Brady and William Wittenberg, our four other most highly compensated executive officers.

We did not grant stock options to any of the named executive officers during 2000.

SUMMARY COMPENSATION TABLE

NAME AND PRINCIPAL POSITION	YEAR	ANNUAL COMPENSATION	
		SALARY (\$)	BONUS (\$)
Jeet Singh..... Chief Executive Officer	2000	\$220,000	\$105,871
	1999	150,000	80,000
	1998	150,000	3,038

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	2000	220,000	
Joseph T. Chung.....	1999	150,000	80,000
Chief Technology Officer and Treasurer	1998	150,000	--
	2000	200,769	--
Paul G. Shorthose.....	1999	92,769	55,000
President and Chief Operating Officer	1998	88,846	60,000
	2000	181,538	--
Ann C. Brady.....	1999	131,560	--
Vice President, Finance and Chief Financial Officer	1998	125,000	--
	2000	180,000	--
William Wittenberg.....	1999	148,462	--
Senior Vice President, Product Development	1998	138,846	--

The amount reflected as a bonus for Mr. Singh in 1998 represents imputed interest on an interest-free loan extended to him. Mr. Shorthose resigned as our Vice President, Services in August 1998 and rejoined us as Chief Operating Officer in June 1999.

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The following table sets forth information regarding options exercised in 2000 by the named executive officers. The per-share value of unexercised in-the-money options is calculated by subtracting the option exercise price from \$30.56, the last reported sale price of the common stock on December 29, 2000.

TOTAL OPTION EXERCISES DURING 2000 AND YEAR-END VALUES

NAME	SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED (\$)	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 31, 2000		EXERCISABLE AT
			EXERCISABLE (#)	UNEXERCISABLE (#)	
Jeet Singh.....	--	--	--	--	
Joseph T. Chung.....	--	--	--	--	
Paul G. Shorthose....	130,000	9,029,000	355,000	625,000	9,074,
Ann C. Brady.....	125,000	9,262,332	69,587	233,315	1,965,
William Wittenberg...	251,000	21,547,673	211,438	108,750	6,341,

REPORT OF THE COMPENSATION COMMITTEE

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The Compensation Committee consists entirely of directors who are not officers or employees of our company or of any of our affiliates. The Compensation Committee establishes the salaries and other compensation for our executive officers, including our Chief Executive Officer and the other named executive officers. The Compensation Committee also administers our stock option and stock purchase plans.

GENERAL COMPENSATION PHILOSOPHY. Our executive compensation program is designed to:

- retain executive officers by paying them competitively, motivating them to contribute to our success and rewarding them for their performance;
- link a substantial part of each executive officer's compensation to our performance; and
- encourage ownership of our common stock by executive officers, to further tie the interests of management to the interests of our stockholders.

The Compensation Committee applies these principles in determining annual compensation opportunities and payments for the named executive officers and our other executive officers.

ESTABLISHING TOTAL COMPENSATION OPPORTUNITIES. In determining total annual compensation opportunities for the named executive officers, the Compensation Committee considers many factors, including:

- the experience and compensation history of the executive officer;
- our performance as measured by revenues, earnings and total stockholder return compared to that of other companies in the Internet software industry; and
- the total annual compensation paid by competitors in the Internet software industry to their senior management.

BALANCING THE ELEMENTS OF COMPENSATION. The Compensation Committee seeks to balance three elements--salaries, bonuses and stock options. The Compensation Committee also tries to align the compensation opportunities of executive

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officers closely with the interests of our stockholders in allocating compensation opportunities among these elements. Therefore, bonuses are tied to our performance, as measured by revenues and earnings. The Compensation Committee also relies on recommendations made by executive compensation specialists from an outside consulting firm.

Salaries for each of the named executive officers are based on the Compensation Committee's evaluation of:

- the executive officer's job performance;
- the executive officer's contribution to our growth and profitability;
- any increase in the executive officer's responsibilities, whether as a result of our growth or a reassignment of responsibilities;
- the success of the management team in achieving our short-term and long-term goals;
- the importance of the executive officer to the future growth and profitability;
- the salaries and total compensation mix paid to executive officers holding equivalent positions by companies in our peer group; and
- the experience and compensation history of the executive officer.

To determine the size of option grants to our executive officers, the Compensation Committee relies on recommendations made by the executive compensation specialists at an outside consulting firm. The exercise price for all stock options granted to executive officers equals the market value of the underlying shares on the date of grant. Therefore, ultimately, the stock options have value only if the value of the underlying shares increases.

As Chief Executive Officer for 2000, Jeet Singh received salary compensation of \$220,000 and a cash bonus of \$105,871. Mr. Singh's annual salary for 2000 was determined based on an assessment of comparative industry salaries using established executive compensation surveys. Mr. Singh's cash bonus was determined objectively based on our performance in 2000.

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Section 162(m) of the Internal Revenue Code generally disallows us from taking any tax deduction for compensation exceeding \$1,000,000 paid to any of the named executive officers. The limit does not apply, however, to compensation we pay upon our attainment of performance goals under a program approved by the stockholders. The Compensation Committee intends that compensation attributable to stock options granted under the 1996 plan meet the requirements of Section 162(m), and therefore believes that these amounts will be deductible by us for federal income tax purposes.

COMPENSATION COMMITTEE

Thomas N. Matlack
 Scott A. Jones
 Charles R. Lax
 Phyllis S. Swersky

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INFORMATION ABOUT STOCK OWNERSHIP AND PERFORMANCE

The following table sets forth certain information as of January 31, 2001, with respect to the beneficial ownership of our common stock by:

- each person known by us to own beneficially more than five percent of the outstanding shares of common stock;
- each of our directors;
- each of our named executive officers; and
- all directors and executive officers as a group.

BENEFICIAL OWNER -----	SHARES BENEFICIALLY OWNED (1) -----	SHARES ACQUIRABLE WITHIN 60 DAYS -----	TOTAL BENEFICIAL OWNERSHIP -----	PERCENT OWNERSHIP (2) -----
FMR Corp. (3)..... 82 Devonshire Street Boston, Massachusetts 02109	10,161,520	--	10,161,520	15.0%
Jeet Singh.....	6,379,000	--	6,379,000	9.4
Joseph T. Chung.....	6,358,000	--	6,358,432	9.3
Putnam Investments, LLC(4)..... One Post Office Square Boston, Massachusetts 02109	3,587,270	--	3,587,270	5.3

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Putnam Investment Management, LLC(4).....	3,448,570	--	3,448,570	5.1
One Post Office Square Boston, Massachusetts 02109				
Scott A. Jones.....	640,683	15,000	655,683	*
William Wittenberg.....	197,741	263,938	461,679	*
Paul G. Shorthose.....	2,281	357,500	359,781	*
Ann C. Brady.....	45,027	61,772	106,799	*
Charles R. Lax.....	--	15,000	15,000	*
Phyllis S. Swersky.....	2,200	10,000	12,200	*
Robert F. Walters(5).....	28	10,000	10,028	*
Thomas N. Matlack.....	--	5,000	5,000	*
All directors and executive officers as a group (11 persons).....	13,658,117	910,983	14,569,100	21.1

* Less than 1%.

(1) The inclusion of any shares of common stock deemed beneficially owned does not constitute an admission of beneficial ownership of such shares. Unless otherwise indicated, each person listed above has sole voting and/or investment power with respect to the shares listed.

(2) In calculating the percent of our common stock beneficially owned by each person or entity listed, the number of shares deemed outstanding consists of the 68,047,122 shares actually outstanding as of January 31, 2001, plus, for that person or entity only, any shares subject to options that were exercisable on, or within 60 days after, January 31, 2001.

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(3) Beneficial ownership as reported in an amendment to a Schedule 13G filed with the SEC on February 13, 2001.

(4) Beneficial ownership as reported in an amendment to a Schedule 13G filed with the SEC on February 15, 2001.

(5) Includes 28 shares held by Mr. Walters' son. Mr. Walters disclaims beneficial ownership for these shares.

COMPLIANCE WITH REPORTING REQUIREMENTS

Section 16(a) of the Securities Exchange Act of 1934 requires our directors and executive officers to file reports of holdings and transactions in our

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equity securities with the SEC. We are also required to identify any director or executive officer who fails to timely file with the SEC any required report relating to ownership or changes in ownership of our equity securities. Certain securities held by Lauren Kelley, our Senior Vice President, Worldwide Sales, were inadvertently omitted from her Form 3 in February 2000. The omission was corrected on Form 5 filed in April 2001, which was after the Form 5 filing deadline, for year end 2000. Twenty-eight shares held by the son of Robert Walters, one of our directors, which may be attributed to Mr. Walters, were omitted from his Form 3 which was due in May 2000 but was filed in July 2000. These shares were reported on a Form 4 filed in October 2000. Due to an administrative error, an option exercise and a subsequent sale of securities in May 2000 by Ann Brady, our Chief Financial Officer, was not filed on a timely basis. These transactions were reported on Form 5 filed in April 2001 for year end 2000. The Form 3 for Phyllis Swersky, one of our directors, due in May 2000, was filed in September 2000. Forms 5 for year 2000 for Joseph Chung, our Chief Technology Officer, Charles Lax, one of our directors and Ian Reid, our Vice President, Marketing, were filed in April 2001. Messrs. Scott Jones, Thomas Matlack, Jeffrey Newton, Paul Shorthose, Jeet Singh, William Wittenberg, and Mesdames Brady and Kelley each reported on Form 5 filed in April 2000 for year end 2000, information to correct administrative or mathematical errors that appeared in various Form 4 reports filed during 2000. In addition, required reports for all of our directors and executive officers were mailed, rather than filed, on the filing deadline and therefore were filed with the SEC one to four days late.

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STOCK PERFORMANCE GRAPH

The following graph compares the cumulative total stockholder return on our common stock during the period from January 1, 2000 to December 31, 2000 with the cumulative total return of (i) the Nasdaq National Market Index and (ii) a Peer Group Index* over the same period. This comparison assumes the investment of \$100 on July 21, 1999 in our common stock, the Nasdaq National Market Index and the Peer Group Index and assumes dividends, if any, are reinvested.

EDGAR REPRESENTATION OF DATA POINTS USED IN PRINTED GRAPHIC

DOLLARS
DOLLARS

	7/21/99	9/30/99	12/31/99	3/31/00	6/30/00	9/29/00	12/29/00
ART TECHNOLOGY GROUP, INC.	100.00	210.73	719.72	727.33	1117.64	1049.13	338.41
INTERNET SOFTWARE AND SVCS	100.00	118.68	215.87	211.09	132.38	118.81	51.24
NASDAQ MARKET INDEX	100.00	103.58	152.98	174.07	149.71	138.16	92.84

* Peer Group Index reflects the stock performance of the 339 publicly traded companies which comprise the Media General Index Group 852 (Internet Software and Services).

PROPOSAL TWO: APPROVAL OF AMENDMENT OF 1996 STOCK OPTION PLAN

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On April 5, 2001, the board of directors voted to increase the number of shares authorized for issuance under our Amended and Restated 1996 Stock Option Plan by 6,000,000, from 19,600,000 shares to 25,600,000 shares. The board determined that this amendment, referred to below as the Plan Amendment, was critical to our future success for the reasons described below and that the Plan Amendment therefore should not be subject to stockholder approval.

The board has submitted the Plan Amendment for approval by our stockholders in order to enable us to issue additional incentive stock options intended to qualify under Section 422 of the Internal Revenue Code. If the Plan Amendment is not approved by our stockholders by April 5, 2002, we will

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be able to issue only non-statutory stock options, and not incentive stock options, to purchase the additional 6,000,000 shares reserved for issuance pursuant to the Plan Amendment. Incentive stock options offer tax benefits that can make them more valuable than non-statutory stock options to many of our employees, at no incremental cost to our company.

AS A RESULT, THE BOARD BELIEVES THAT APPROVAL OF THE PLAN AMENDMENT BY THE STOCKHOLDERS IS IN THE BEST INTERESTS OF OUR COMPANY AND OUR STOCKHOLDERS AND THEREFORE RECOMMENDS THAT STOCKHOLDERS VOTE FOR THIS PROPOSAL.

An affirmative vote of a majority of the common stock voting on the matter, in person or by proxy, is necessary to approve the Plan Amendment. Abstentions effectively count as votes against approval of the plan. Brokers have discretionary voting power with respect to this proposal.

RATIONALE FOR PLAN AMENDMENT

The 1996 plan is intended to advance the interests of our stockholders by improving our ability to attract and retain qualified individuals who are in a position to contribute to our management and growth and to provide additional incentive for such individuals to contribute to our future success. Immediately prior to the board's approval of the Plan Amendment, a total of 4,321,852 shares of common stock remained available for grant under the 1996 plan.

The board determined that it was necessary to have the ability to grant additional options in order to meet our goals of retaining key employees and attracting the best new employees by providing competitive compensation. We hired over 700 new employees during 2000, to whom we granted options to acquire a total of 4,866,643 shares of common stock. Due to the volatility of the stock market during the past year, the exercise prices of all of these options are above recent market prices of our common stock. The market price of our common stock on the Nasdaq National Market at the close of business on April 12, 2001 was \$5.59 per share. The table below presents the numbers of options granted during 2000 at various levels of exercise prices:

EXERCISE PRICE	NUMBER OF SHARES SUBJECT TO OPTIONS GRANTED
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\$27.00 - \$ 39.99	147,193
40.00 - 49.99	359,350
50.00 - 59.99	1,622,800
60.00 - 69.99	452,900
70.00 - 79.99	655,800
80.00 - 89.99	1,011,800
90.00 - 99.99	161,400
101.00 - 119.99	49,600
120.00 or more	405,800

Total	4,866,643
	=====

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Since these options have exercise prices significantly greater than recent market prices of our common stock, they have a limited ability to motivate and help retain the employees to whom they were issued. Moreover, applicable accounting principles make it highly undesirable for us either to lower the exercise prices of these options or to exchange the outstanding options for new options having lower exercise prices.

In spite of the unpredictability of the stock market, employees in the technology sector continue to expect and require stock options as part of their total compensation packages. Our board therefore believes that it will be necessary to issue additional options to existing employees in the near future, in order to encourage their continued employment with our company and to serve as meaningful compensatory motivation. In addition, based on our projected hiring for the next two years, the directors believe that additional shares will be required under the 1996 plan in order to allow us to attract qualified new employees in accordance with our business plans.

SUMMARY OF 1996 STOCK OPTION PLAN

The following summary is qualified in all respects by reference to the full text of the Amended and Restated 1996 Stock Option Plan. You can obtain a copy of the 1996 plan by writing to Jeet Singh, our Secretary, at our address as set forth in the Notice appearing before this proxy statement.

The 1996 plan was adopted by our board of directors in April 1996 and approved by our stockholders in May 1996. On March 26, 2001 the board voted to amend and restate the 1996 plan in order to, among other things, permit grants to be evidenced electronically, conform the plan to changes in the law since its adoption, permit tax withholding on exercises when required by law, and permit the addition of a second director to the Employee Stock Option Committee, who may act independently in the absence of the other director.

The 1996 plan provides for the grant of incentive stock options intended to qualify under Section 422 of the Internal Revenue Code and non-statutory stock options.

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Our officers, employees, directors, consultants and advisors are eligible to receive awards under the 1996 plan. Under present law, however, incentive stock options may only be granted to employees. No employee may receive any award for more than 500,000 shares in any calendar year.

Optionees receive the right to purchase a specified number of shares of common stock at a specified option price and subject to such other terms and conditions as are specified in connection with the option grant. We may grant options at an exercise price less than, equal to or greater than the fair market value of our common stock on the date of grant. Under present law, incentive stock options and options intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code may not be granted at an exercise price less than the fair market value of the common stock on the date of grant or less than 110% of the fair market value in the case of incentive stock options granted to optionees holding more than 10% of the voting power of the company. The 1996 plan permits our board of directors to determine how optionees may pay the exercise price of their options, including by cash, check or in connection with a "cashless exercise" by surrender to us of shares of common stock, by delivery to us of a promissory note, or by any other means that the board determines is consistent with the 1996 plan and applicable rules and regulations.

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As of March 26, 2001, approximately 1,165 persons were eligible to receive awards under the 1996 plan, including six executive officers and five non-employee directors. The granting of options under the 1996 plan is discretionary and we cannot now determine the number or type of options to be granted in the future to any particular person or group.

Our board of directors administers the 1996 plan and has the authority to adopt, amend and repeal the administrative rules, guidelines and practices relating to the 1996 plan and to interpret its provisions. The board may delegate authority under the 1996 plan to one or more committees of the board of directors. Our board of directors has authorized the Compensation Committee to administer the 1996 plan, including the granting of options to our executive officers. In addition, the board has authorized an Employee Stock Option Committee to grant options under the 1996 plan for up to 300,000 shares in any quarter. Such options may not cover more than 10,000 shares per employee per year. Subject to any applicable limitations contained in the 1996 plan, our board of directors, this committee and any other committee to whom our board of directors delegates authority, may select the recipients of awards and determine the number of shares of common stock covered by options, the dates upon which such options become exercisable, the exercise price of options and the duration of options.

In the event of a merger, liquidation or other acquisition event, our board of directors is authorized to take one or more of the following actions:

- provide that outstanding options be assumed or substituted for by the acquirer;
- provide that all unexercised options terminate immediately prior to the event unless exercised within a time period specified in written notice to the option holder;
- in the event of a merger in which holders of common stock would receive a cash payment for each share surrendered, provide for a cash payment to each option holder equal to the per share amount by which the amount paid to common stock holders exceeds the option's exercise price, multiplied by the total number of shares underlying the option; or

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- provide that any or all outstanding options become fully exercisable immediately prior to the event.

No award may be granted under the 1996 plan after April 2006, but the vesting and effectiveness of awards previously granted may extend beyond that date. Our board of directors may at any time amend the 1996 plan, except that no award granted after an amendment of the 1996 plan and for which stockholder approval is required under Section 422 of the Internal Revenue Code shall become exercisable, realizable or vested to the extent such amendment was required to grant such award, unless and until such amendment is approved by our stockholders.

See Appendix B to this proxy statement for a discussion of the U.S. federal income tax consequences of the 1996 plan.

PROPOSAL THREE: APPROVAL OF AMENDMENTS OF BY-LAWS

On March 26, 2001, the board of directors voted to approve a number of changes to our by-laws in order to authorize the use of electronic or remote communications, including e-mail, for many

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corporate purposes. These purposes include attendance at meetings, establishment of a quorum, voting by stockholders and written consents of directors.

See Appendix C to this proxy statement for the text of the amendments.

The affirmative vote of the holders of 75% of our issued and outstanding shares of common stock is required to approve the amendments to our by-laws. Abstentions will effectively count as votes against approval of the amendments. Brokers have discretionary voting power with respect to this proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF THE AMENDMENTS TO OUR BY-LAWS.

PROPOSAL FOUR: RATIFICATION OF SELECTION OF INDEPENDENT ACCOUNTANTS

The board of directors, upon the recommendation of the Audit Committee, has selected Arthur Andersen LLP to serve as our independent accountants for the year ending December 31, 2001. Arthur Andersen has served as our independent accountants since 1996. Although stockholder ratification of the selection of Arthur Andersen is not required by law, the board of directors believes that it is desirable to give stockholders the opportunity to ratify this selection. If this proposal is not approved at the meeting, the board will reconsider the selection of Arthur Andersen.

The affirmative vote of a majority of the shares present or represented by proxy and voting at the meeting is required to ratify the selection of Arthur Andersen as our independent accountants for the year ending December 31, 2001. Abstentions are effectively counted as votes against this proposal. Brokers have discretionary voting power with respect to this proposal.

THE BOARD RECOMMENDS A VOTE FOR THE RATIFICATION OF THE SELECTION OF ARTHUR ANDERSEN LLP AS OUR INDEPENDENT ACCOUNTANTS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2001.

AUDITORS' FEES AND OTHER MATTERS

AUDIT FEES

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Arthur Andersen billed us an aggregate of \$371,000 in fees for professional services rendered in connection with the audit of our financial statements for the fiscal year ended December 31, 2000 and the reviews of the financial statements included in each of our three quarterly reports on Form 10-Q prepared during fiscal year 2000.

ALL OTHER FEES

Arthur Andersen billed us an aggregate of \$920,000 in fees for other services rendered to us and our affiliates for the fiscal year ended December 31, 2000. These fees consisted of:

- \$404,000 for tax compliance and advisory services, including state and local tax compliance, transfer pricing analysis and sales tax compliance;
- \$451,000 for services related to a review of company-wide business applications and processes, including financial software consulting and implementation; and
- \$65,000 for services in connection with a proposed public offering.

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LEASED EMPLOYEES

In connection with its engagement to audit our financial statements for the most recent fiscal year, Arthur Andersen has informed us that no work was performed by persons other than their full-time, permanent employees.

FINANCIAL INFORMATION SYSTEMS DESIGN AND IMPLEMENTATION FEES

Arthur Andersen did not bill us for any professional services rendered to us or our affiliates for the fiscal year ended December 31, 2000 in connection with financial information systems design or implementation, the operation of our information system, or the management of our local area network.

AVAILABILITY OF INDEPENDENT ACCOUNTANTS

Representatives of Arthur Andersen will be present at the meeting to answer appropriate questions. They will have the opportunity to make a statement if they desire to do so.

OTHER MATTERS

The board of directors is not aware of any matters that are expected to come before the meeting other than those referred to in this proxy statement. If any other matter should properly come before the meeting, the persons named in the accompanying proxy card intend to vote the proxies in accordance with their best judgment.

The chairperson of the meeting may refuse to allow the transaction of any business not presented beforehand, or to acknowledge the nomination of any person not made, in compliance with the above procedures.

STOCKHOLDER PROPOSALS FOR 2002 ANNUAL MEETING

Stockholder proposals intended to be presented at our 2002 Annual Meeting of Stockholders must have been received by us at our principal executive offices by December 14, 2001 for inclusion in the proxy statement and proxy card that will relate to that meeting.

Under our by-laws, a stockholder must follow certain procedures to nominate

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one or more individuals for election as a director or to introduce an item of business at an annual meeting of stockholders. These procedures provide that any nomination or proposed item of business must be submitted in writing to our Secretary at 25 First Street, Cambridge, Massachusetts 02141. The nomination or proposed item of business must be received not less than sixty days nor more than ninety days prior to the 2002 Annual Meeting and must include the name and address of the stockholder proposing such nomination or item of business and the number of shares of common stock owned by such stockholder.

A nomination must contain the following information about the nominee:

- name, age, business and, if known, residence address;
- principal occupation or employment;

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- the number of shares of our common stock, if any, held by the nominee; and
- the information that would be required under SEC rules in a proxy statement soliciting proxies for the election of such nominee as a director.

Notice of a proposed item of business must include:

- a brief description of the substance of, and the reasons for, conducting such business at the annual meeting; and
- any material interest of the stockholder in such business.

We have not yet set a date for our 2002 meeting. If the 2002 meeting were to be held on May 14, 2002 (the anniversary of the 2001 meeting), the deadline for delivery of a stockholder proposal or nomination would be March 15, 2002.

LEGAL MATTERS

On October 31, 2000, Aron Rosenberg, one of our stockholders, filed a lawsuit in the United States District Court for the District of Delaware, Rosenberg V. Tudor Investment Corp., Tudor Private Equity Fund L.P., The Raptor Global Fund L.P., The Raptor Global Fund Ltd., Tudor Global Trading LLC and Art Technology Group, Inc., Civil Action No. 00-925. Mr. Rosenberg's complaint alleges that the Tudor and Raptor entities violated Section 16(b) of the Securities Exchange Act of 1934 in connection with their sales of our common stock after our initial public offering on July 20, 1999. Those entities received shares of our common stock immediately before our closing of our initial public offering, upon the conversion of Series D preferred stock that they had acquired more than six months before our initial public offering. The complaint alleges that those entities should be deemed to have purchased shares of our common stock shortly before the closing of our initial public offering, as the result of changes effected through a charter amendment relating to the preferred stock. The complaint also alleges that the entities obtained profits of more than \$70 million from sales of our common stock within six months after the date on which such purchase should be deemed to have occurred and that those profits should be paid to us in accordance with Section 16(b). Although we are a nominal defendant in the suit, Mr. Rosenberg is not seeking any damages from us. We cannot assure you that we will receive any payment as a result of this lawsuit.

In February 2001, we received a letter from attorneys representing Open Market, Inc., an Internet software company, asserting that our software

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infringed certain of Open Market's patents. Although eight patent descriptions were attached as exhibits, the letter did not describe which of the patents we allegedly infringed, nor did it describe the manner in which our software infringed those patents. We have engaged patent counsel to review the Open Market patents and to try to ascertain the details of the claim from Open Market's counsel. Open Market has not filed a lawsuit against us as a result of these claims, but we cannot be certain that a lawsuit will not be filed in the future.

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APPENDIX A AUDIT COMMITTEE CHARTER

MEMBERSHIP

NUMBER. The Audit Committee shall consist of at least three independent, financially literate members of the board of directors meeting the requirements set forth below.

INDEPENDENCE. A director is independent if he or she is not an officer or employee of the Company or its subsidiaries, if he or she has no relationship which, in the opinion of the Company's board of directors, would interfere with his or her exercise of independent judgment in carrying out the responsibilities of a director, and if he or she:

- has not been an employee of the Company or any affiliate of the Company in the current year or in any of the past three years;
- has no immediate family member who has been employed by the Company or an affiliate of the Company in any of the past three years (an immediate family member includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in a person's home);
- is not employed as an executive of an entity other than the Company having a compensation committee which includes any of the Company's executives;
- did not within the last fiscal year receive from the Company or any affiliate of the Company compensation--other than benefits under a tax qualified retirement plan, compensation for director service or nondiscretionary compensation--greater than \$60,000; and
- has not in any of the past three years been a partner in, or controlling shareholder or executive of, a for profit business organization to which the Company made or from which the Company received payment (other than payment arising solely from investments in the Company's securities) that exceeds the greater of: (i) \$200,000; or (ii) more than 5% of the Company's or business organization's consolidated gross revenues.

Under exceptional and limited circumstances, one director who has a relationship making him or her not independent, and who is not a Company employee or an immediate family member of a Company employee, may serve on the Audit Committee if the board of directors determines that the director's membership on the Audit Committee is required by the best interests of the Company and its shareholders, and discloses in the next annual proxy statement after such determination the nature of the relationship and the reasons for the determination.

FINANCIAL LITERACY. Each member of the Audit Committee must be able to read and understand fundamental financial statements, including the Company's balance sheet, income statement, and cash flow statement, or must become able to do so

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within a reasonable time after his or her appointment to the Audit Committee. At least one member of the Audit Committee must have past employment experience in finance or accounting, professional certification in accounting, or other comparable experience or background which result in the member having financial sophistication (such as being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities).

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CHAIRMAN. Unless a Chairman is elected by the board of directors, the Audit Committee shall elect a Chairman by majority vote.

RESPONSIBILITIES OF THE AUDIT COMMITTEE

The Audit Committee shall assist the board of directors in fulfilling their responsibilities to shareholders concerning the Company's accounting and reporting practices, and shall facilitate open communication between the Audit Committee, board of directors, outside auditors, and management. The Audit Committee shall discharge its responsibilities, and shall assess the information provided by the Company's management and the outside auditor, in accordance with its business judgment. The responsibilities set forth herein do not reflect or create any duty or obligation of the Audit Committee to plan, conduct, oversee or determine the appropriate scope of any audit, or to determine that the Company's financial statements are complete, accurate, fairly presented, or in accordance with Generally Accepted Accounting Principles or applicable law. In exercising its business judgment, the Audit Committee shall rely on the information and advice provided by the Company's management and/or its outside auditor.

The Audit Committee shall review and reassess the adequacy of this charter at least annually.

The outside auditor shall be accountable to the Audit Committee and the board of directors, which together shall have the ultimate authority and responsibility to nominate the outside auditor to be proposed for shareholder approval in any proxy statement, and to select, evaluate, and (where appropriate) replace the outside auditor.

The Audit Committee shall ensure that they receive from the outside auditor the written disclosures and letter from the outside auditor required by Independence Standards Board Standard No. 1.

The Audit Committee shall discuss with the outside auditor its independence, and shall actively engage in a dialogue with the outside auditor regarding any disclosed relationships or services that might impact the objectivity and independence of the auditor. The Audit Committee shall take, or recommend that the full board of directors take, appropriate action to oversee the independence of the outside auditor.

The Audit Committee shall review and discuss with the Company's management the Company's audited financial statements.

The Audit Committee shall discuss with the outside auditor the matters about which Statement on Auditing Standards No. 61 requires discussion.

Based upon its discharge of its responsibilities pursuant to this Charter and any other information, discussion or communication that the Audit Committee in its business judgment deems relevant, the Audit Committee shall consider whether they will recommend to the board of directors that the Company's audited financial statements be included in the Company's annual reports on Forms 10-K.

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The Audit Committee shall prepare for inclusion where necessary in a proxy or information statement of the Company relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), the report described in Item 306 of Regulation S-K.

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The Audit Committee shall annually inform the outside auditor, the Chief Financial Officer, the Controller, and the most senior other person, if any, responsible for the internal audit activities, that they should promptly contact the Audit Committee or its Chairman about any significant issue or disagreement concerning the Company's accounting practices or financial statements that is not resolved to their satisfaction. Where such communications are made to the Chairman, he or she shall confer with the outside auditor concerning any such communications, and shall notify the other members of the Audit Committee of any communications which the outside auditor or the Chairman in the exercise of his or her business judgment believes should be considered by the Audit Committee prior to its next scheduled meeting.

The Audit Committee shall direct the outside auditor to use its best efforts to perform all reviews of interim financial information prior to disclosure by the Company of such information, and to discuss promptly with the Chairman of the Audit Committee and the Chief Financial Officer any matters identified in connection with the auditor's review of interim financial information which are required to be discussed by Statement on Auditing Standards No. 61. The Chairman of the Audit Committee shall discuss any such matters with the outside auditor, and shall notify the other members of the Audit Committee of any discussions which the outside auditor or the Chairman in the exercise of his or her business judgment believes should be considered by the Audit Committee prior to disclosure or filing of the interim financial information, or the Audit Committee's next scheduled meeting.

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APPENDIX B FEDERAL INCOME TAX CONSEQUENCES OF AMENDED AND RESTATED 1996 STOCK OPTION PLAN

The following is a summary of the United States federal income tax consequences that generally will arise with respect to options granted under our Amended and Restated 1996 Stock Option Plan and with respect to the sale of common stock acquired under the 1996 plan. It does not address the tax consequences that may arise with respect to any gift or disposition other than by sale of common stock acquired under the 1996 plan. For precise advice as to any specific transaction or set of circumstances, any participant in the 1996 plan, referred to as a Participant, should consult with his or her own tax advisors. Any participants should also consult with his or her own tax advisor regarding the application of any state, local, and foreign taxes and any federal gift, estate, and inheritance taxes. For purposes of the following description, "we," "our" and "us" refer to ATG and its subsidiaries, unless the context requires otherwise.

INCENTIVE STOCK OPTIONS

In general, a Participant will not recognize taxable income upon the grant or exercise of an incentive stock option. Instead, a Participant will recognize taxable income with respect to an incentive stock option only upon the sale of common stock, referred to as ISO Stock, acquired through the exercise of the incentive stock option. Nevertheless, in the case of a Participant who has not been employed by us at all times commencing on the date on which a particular incentive stock option was granted and ending on the date that is three months

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before the date on which the option is exercised, the option generally will be treated as though it were a non-statutory stock option and taxed as described below under "Non-Statutory Stock Options." Similarly, incentive stock options will be treated as non-statutory stock options for purposes of the alternative minimum tax. While a Participant will pay alternative minimum tax only to the extent of the excess of that tax over the Participant's regular tax, the treatment of an option as a non-statutory stock option for purposes of the alternative minimum tax could create such an excess.

Generally, the tax consequences of selling ISO Stock will vary with the length of time that the Participant has owned the ISO Stock at the time it is sold. If the Participant sells ISO Stock after having owned it for more than two years from the grant date and one year from the exercise date, then the Participant will recognize long-term capital gain in an amount equal to the excess of the sale price of the ISO Stock over the exercise price.

If the Participant sells ISO Stock prior to having owned it for more than two years from the grant date and one year from the exercise date, known as a "Disqualifying Disposition", then the Participant generally will recognize ordinary compensation income in an amount equal to the lesser of:

- (1) the excess of the fair market value of the ISO Stock on the Exercise Date over the exercise price; and
- (2) the excess of the sale price of the ISO Stock over the exercise price.

A Participant making a Disqualifying Disposition will also recognize capital gain in an amount equal to the excess of the sale price of the ISO Stock over the fair market value of the ISO Stock on the exercise date. This capital gain will be a long-term capital gain if the Participant has held the ISO

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Stock for more than one year prior to the date of the sale and will be a short-term capital gain if the Participant has held the ISO Stock for a shorter period.

If a Participant sells ISO Stock for less than the exercise price, then the Participant will recognize capital loss equal to the excess of the exercise price over the sale price of the ISO Stock. This capital loss will be a long-term capital loss if the Participant has held the ISO Stock for more than one year prior to the date of the sale and will be a short-term capital loss if the Participant has held the ISO Stock for a shorter period.

NON-STATUTORY STOCK OPTIONS

As in the case of an incentive stock option, a Participant will not recognize taxable income upon the grant of a non-statutory stock option. However, a Participant generally will recognize ordinary compensation income upon the exercise of a non-statutory stock option in an amount equal to the excess of the fair market value of the common stock, referred to as NSO Stock, acquired through the exercise of the non-statutory stock option on the exercise date over the exercise price.

With respect to any NSO Stock, a Participant will have a tax basis equal to the exercise price plus any income recognized upon the exercise of the option. Upon selling NSO Stock, a Participant generally will recognize capital gain or loss in an amount equal to the excess of the sale price of the NSO Stock over

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the Participant's tax basis in the NSO Stock. This capital gain or loss will be a long-term capital gain or loss if the Participant has held the NSO Stock for more than one year prior to the date of the sale and will be a short-term capital gain or loss if the Participant has held the NSO Stock for a shorter period.

DELIVERY OF COMMON STOCK UPON EXERCISE OF STOCK OPTIONS

Under certain circumstances, the 1996 plan permits a Participant to exercise an option by delivering to us common stock having a fair market value equal in amount to the exercise price. The use of this method of exercise generally will not alter the tax consequences described above, and it may enable a Participant to dispose of appreciated common stock without immediately recognizing capital gain on the disposition. The Participant's tax basis in any shares of common stock delivered to us to exercise an option generally will be carried over to an equal number of shares of common stock acquired upon exercising the option. Nevertheless, any Participant should consider that the delivery to us of ISO Stock or common stock acquired pursuant to our employee stock purchase plan will constitute a Disqualifying Disposition, having all of the adverse tax consequences described above, if the holding-period requirements described above are not satisfied with respect to that stock.

MAXIMUM INCOME TAX RATES ON CAPITAL GAIN AND ORDINARY INCOME

Long-term capital gain will be taxable at a maximum rate of 20% or, if certain additional requirements are satisfied, including the satisfaction of a five-year holding period, a maximum rate of 18%. Short-term capital gain and ordinary income will be taxable at a maximum rate of 39.6%. Phase outs of personal exemptions and reductions of allowable itemized deductions at higher levels of income may result in slightly higher marginal tax rates. Except in the case of a Disqualifying Disposition of ISO Stock, ordinary compensation income will also be subject to a Medicare tax and, under certain circumstances, a social security tax.

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OUR TAX CONSEQUENCES

The grant of an option under the 1996 plan will have no tax consequences to us. Moreover, in general, neither the exercise of an incentive stock option acquired under the 1996 plan nor the sale of any common stock acquired under the 1996 plan will have any tax consequences to us. We generally will be entitled to a business-expense deduction, however, with respect to any ordinary compensation income recognized by a Participant under the 1996 plan. Any such deduction will be subject to the limitations of Section 162(m) of the Internal Revenue Code.

WITHHOLDING

While a Participant's Disqualifying Disposition of ISO Stock will result in the recognition of ordinary compensation income, we will have no withholding obligation with respect to that income. Nevertheless, we will have a withholding obligation with respect to ordinary compensation income recognized upon the exercise of a Non-Statutory Stock option by a Participant who has been employed by us. We will require any such Participant to make arrangements to satisfy this withholding obligation.

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APPENDIX C AMENDMENTS TO THE BY-LAWS

SECTION 1.6 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH

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THE FOLLOWING:

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

SECTION 1.8 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the corporation. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

SECTION 1.13 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

1.13 Conduct of Meetings.

(a) Chairman of Meeting. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence by the President or a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors of the corporation may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of

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Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their

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duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) Closing of Polls. The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) Inspectors of Election. In advance of any meeting of stockholders, the Board of Directors, the Chairman of the Board or the Chief Executive Officer shall appoint one or more inspectors or election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

SECTION 2.10 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

2.10 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

SECTION 2.11 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

2.11 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

SECTION 2.14 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

2.14 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic

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transmission, and the written consents and electronic transmissions are filed with the minutes of proceedings of the Board or committee.

SECTION 5.3 OF THE BY-LAWS SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH

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THE FOLLOWING:

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these By-laws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time stated in such notice, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

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PROXY

ART TECHNOLOGY GROUP, INC.

The Board of Directors of Art Technology Group, Inc. is Soliciting this Proxy

The undersigned owns shares of common stock of Art Technology Group, Inc. (the "Company"). The Company's 2001 Annual Meeting of Stockholders will be held on Monday, May 14, 2001, beginning at 10:00 a.m., local time, at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109. The undersigned appoints each of Ann C. Brady, Linda Handman, and Mark L. Johnson, acting singly, with the power of substitution to each, as attorney, agent and proxy to vote all shares of common stock that the undersigned is entitled to vote, at the meeting and at any adjournment or postponement of the meeting.

The individuals named above will vote these shares as directed by the undersigned on this proxy. IF NO PROPER VOTING INSTRUCTIONS ARE GIVEN, THE INDIVIDUALS NAMED ABOVE WILL VOTE THE SHARES OF THE UNDERSIGNED FOR THE ELECTION OF THE NOMINEE LISTED ON THE REVERSE SIDE OF THIS PROXY AS A DIRECTOR OF THE COMPANY AND FOR PROPOSALS 2, 3 AND 4.

If any other matters are properly presented for consideration at the meeting, the individuals named above will have the discretion to vote these shares on those matters.

MARK HERE FOR ADDRESS CHANGE AND NOTE BELOW | |

SEE REVERSE SIDE (Please sign and date on reverse side) SEE REVERSE SIDE

DETACH HERE

|X| Please mark votes as in this example.

PROPOSAL 1. To elect Scott A. Jones and Thomas N. Matlack as Class II directors of the Company to serve until the 2004 Annual Meeting or until their successors are elected and qualified:
FOR WITHHELD
ALL NOMINEES FROM ALL NOMINEES
| | | |

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FOR ALL NOMINESS EXCEPT AS NOTED ABOVE

PROPOSAL 2. To approve the amendment of the Amended and Restated 1996 Stock Option Plan to increase the number of shares of common stock available thereunder to 25,600,000.

FOR	AGAINST	ABSTAIN

PROPOSAL 3. To approve the amendments of the By-laws.

FOR	AGAINST	ABSTAIN

PROPOSAL 4. To ratify the selection of Arthur Andersen LLP as the independent accountants of the Company for the fiscal year ending December 31, 2001.

FOR	AGAINST	ABSTAIN

Mark here if you plan to attend the meeting: | |

Please sign exactly as your name is printed on this proxy. When signing as attorney-in-fact, executor, administrator, trustee, guardian or custodian, or in any other representative capacity, please write title.

Owner: _____ Date: _____, 2001

Co-Owner: _____ Date: _____, 2001

calculation of the Redemption Amount and total rate of return based on the Starting Value of 100, the Threshold Value of 90, the Step Up Value of 131.02, the Step Up Payment of \$3.102 per unit and a range of hypothetical Ending Values. **The actual amount you receive and the resulting total rate of return will depend on the actual Ending Value and whether you hold the notes to maturity.** The following examples do not take into account any tax consequences from investing in the notes.

For recent **hypothetical** values of the Basket, see The Basket section below. For recent actual levels of the Basket Components, see The Basket Components below. Each Basket Component is a price return index and as such the Ending Value will not include any income generated by dividends paid on the stocks included in any of the Basket Components, which you would otherwise be entitled to receive if you invested in those stocks directly. In addition, all payments on the notes are subject to issuer and guarantor credit risk.

Ending Value	Percentage Change from the Starting Value to the Ending Value	Redemption Amount per Unit	Total Rate of Return on the Notes
0.00	-100.00%	\$1.000	-90.00%
50.00	-50.00%	\$6.000	-40.00%
80.00	-20.00%	\$9.000	-10.00%
90.00 ⁽¹⁾	-10.00%	\$10.000	0.00%
95.00	-5.00%	\$10.000	0.00%
97.00	-3.00%	\$10.000	0.00%
100.00 ⁽²⁾	0.00%	\$13.102 ⁽³⁾	31.02%
102.00	2.00%	\$13.102	31.02%
105.00	5.00%	\$13.102	31.02%
110.00	10.00%	\$13.102	31.02%

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120.00	20.00%	\$13.102	31.02%
130.00	30.00%	\$13.102	31.02%
131.02 ⁽⁴⁾	31.02%	\$13.102	31.02%
140.00	40.00%	\$14.000	40.00%
150.00	50.00%	\$15.000	50.00%
154.00	54.00%	\$15.400	54.00%
160.00	60.00%	\$16.000	60.00%

(1) This is the Threshold Value.

(2) The Starting Value was set to 100.00 on the pricing date.

(3) This amount represents the sum of the principal amount and the Step Up Payment of \$3.102.

(4) This is the Step Up Value.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Redemption Amount Calculation Examples

Example 1

The Ending Value is 80.00, or 80.00% of the Starting Value:

Starting Value: 100.00

Threshold Value: 90.00

Ending Value: 80.00

Redemption Amount per unit

Example 2

The Ending Value is 95.00, or 95.00% of the Starting Value:

Starting Value: 100.00

Threshold Value: 90.00

Ending Value: 95.00

Redemption Amount per unit = **\$10.00**, *the principal amount, since the Ending Value is less than the Starting Value, but is equal to or greater than the Threshold Value.*

Example 3

The Ending Value is 110.00, or 110.00% of the Starting Value:

Starting Value: 100.00

Step Up Value: 131.02

Ending Value: 110.00

Redemption Amount per unit, *the principal amount plus the Step Up Payment, since the Ending Value is equal to or greater than the Starting Value, but less than the Step Up Value.*

Example 4

The Ending Value is 154.00, or 154.00% of the Starting Value:

Starting Value: 100.00

Step Up Value: 131.02

Ending Value: 154.00

Redemption Amount per unit

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Risk Factors

There are important differences between the notes and a conventional debt security. An investment in the notes involves significant risks, including those listed below. You should carefully review the more detailed explanation of risks relating to the notes in the Risk Factors sections beginning on page PS-7 of product supplement EQUITY INDICES SUN-1, page S-4 of the Series A MTN prospectus supplement, and page 7 of the prospectus identified above. We also urge you to consult your investment, legal, tax, accounting, and other advisors before you invest in the notes.

Depending on the performance of the Basket as measured shortly before the maturity date, your investment may result in a loss; there is no guaranteed return of principal.

Your return on the notes may be less than the yield you could earn by owning a conventional fixed or floating rate debt security of comparable maturity.

Payments on the notes are subject to our credit risk, and the credit risk of BAC, and actual or perceived changes in our or BAC's creditworthiness are expected to affect the value of the notes. If we and BAC become insolvent or are unable to pay our respective obligations, you may lose your entire investment.

Your investment return may be less than a comparable investment directly in the stocks included in the Basket Components.

We are a finance subsidiary and, as such, will have limited assets and operations.

BAC's obligations under its guarantee of the notes will be structurally subordinated to liabilities of its subsidiaries.

The notes issued by us will not have the benefit of any cross-default or cross-acceleration with other indebtedness of BofA Finance or BAC; events of bankruptcy or insolvency or resolution proceedings relating to BAC and covenant breach by BAC will not constitute an event of default with respect to the notes.

The initial estimated value of the notes considers certain assumptions and variables and relies in part on certain forecasts about future events, which may prove to be incorrect. The initial estimated value of the notes is an estimate only, determined as of a particular point in time by reference to our and our affiliates' pricing models.

These pricing models consider certain assumptions and variables, including our credit spreads, and those of BAC, BAC's internal funding rate on the pricing date, mid-market terms on hedging transactions, expectations on interest rates and volatility, price-sensitivity analysis, and the expected term of the notes. These pricing models rely in part on certain forecasts about future events, which may prove to be incorrect.

The public offering price you pay for the notes exceeds the initial estimated value. If you attempt to sell the notes prior to maturity, their market value may be lower than the price you paid for them and lower than the initial estimated value. This is due to, among other things, changes in the value of the Basket, BAC's internal funding rate, and the inclusion in the public offering price of the underwriting discount and the hedging related charge, all as further described in Structuring the Notes on page TS-26. These factors, together with various credit, market and economic factors over the term of the notes, are expected to reduce the price at which you may be able to sell the notes in any secondary market and will affect the value of the notes in complex and unpredictable ways.

The initial estimated value does not represent a minimum or maximum price at which we, BAC, MLPF&S or any of our other affiliates would be willing to purchase your notes in any secondary market (if any exists) at any time. The value of your notes at any time after issuance will vary based on many factors that cannot be predicted with accuracy, including the performance of the Basket, our and BAC's creditworthiness and changes in market conditions.

A trading market is not expected to develop for the notes. None of us, BAC or MLPF&S is obligated to make a market for, or to repurchase, the notes. There is no assurance that any party will be willing to purchase your notes at any price in any secondary market.

BAC and its affiliates' hedging and trading activities (including trades in shares of companies included in the Basket) and any hedging and trading activities BAC or its affiliates engage in that are not for your account or on your behalf, may affect the market value and return of the notes and may create conflicts of interest with you.

Changes in the level of one of the Basket Components may be offset by changes in the level of the other Basket Components. Due to the different Initial Component Weights, changes in the level of some Basket

Components will have a more substantial impact on the value of the Basket than similar changes in the levels of the other Basket Components.

The index sponsors may adjust each Basket Component in a way that affects its level, and the index sponsors have no obligation to consider your interests.

You will have no rights of a holder of the securities represented by the Basket Components, and you will not be entitled to receive securities or dividends or other distributions by the issuers of those securities.

While BAC and our other affiliates may from time to time own securities of companies included in the Basket Components, we, BAC and our other affiliates do not control any company included in any Basket Component, and have not verified any disclosure made by any other company.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Your return on the notes and the value of the notes may be affected by exchange rate movements and factors affecting the international securities markets, specifically changes in the countries represented by the Basket Components. In addition, you will not obtain the benefit of any increase in the value of the currencies in which the securities included in the Basket Components trade against the U.S. dollar, which you would have received if you had owned the securities represented by the Basket Components during the term of your notes, although the levels of the Basket Components may be adversely affected by general exchange rate movements in the market.

There may be potential conflicts of interest involving the calculation agent, which is an affiliate of ours. We have the right to appoint and remove the calculation agent.

The U.S. federal income tax consequences of the notes are uncertain, and may be adverse to a holder of the notes.

See Summary Tax Consequences below and U.S. Federal Income Tax Summary beginning on page PS-28 of product supplement EQUITY INDICES SUN-1.

Other Terms of the Notes

Market Measure Business Day

The following definition shall supersede and replace the definition of a Market Measure Business Day set forth in product supplement EQUITY INDICES SUN-1:

A Market Measure Business Day means a day on which:

(A) each of the Eurex (as to the EURO STOXX 50[®] Index), the London Stock Exchange (as to the FTSE[®]100 Index), the Tokyo Stock Exchange (as to the Nikkei Stock Average Index), the Geneva, Zurich and Basle Stock Exchanges (as to the Swiss Market Index), the Australian Stock Exchange (as to the S&P/ASX 200 Index), and the Stock Exchange of Hong Kong (as to the Hang Seng Index) (or any successor to the foregoing exchanges) are open for trading; and

(B) the Basket Components or any successors thereto are calculated and published.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The Basket

The Basket is designed to allow investors to participate in the percentage changes in the levels of the Basket Components from the Starting Value to the Ending Value of the Basket. The Basket Components are described in the section "The Basket Components" below. Each Basket Component was assigned an initial weight on the pricing date, as set forth in the table below.

For more information on the calculation of the value of the Basket, please see the section entitled "Description of the Notes -- Basket Market Measures" beginning on page PS-23 of product supplement EQUITY INDICES SUN-1.

On the pricing date, for each Basket Component, the Initial Component Weight, the closing level, the Component Ratio and the initial contribution to the Basket value were as follows:

Basket Component	Bloomberg Symbol	Initial Component Weight	Closing Level⁽¹⁾	Component Ratio⁽²⁾	Initial Basket Value Contribution
EURO STOXX 50 [®] Index	SX5E	40.00%	3,506.03	0.01140892	40.00
FTSE [®] 100 Index	UKX	20.00%	7,421.43	0.00269490	20.00
Nikkei Stock Average Index	NKY	20.00%	22,319.61	0.00089607	20.00
Swiss Market Index	SMI	7.50%	8,835.03	0.00084889	7.50
S&P/ASX 200 Index	AS51	7.50%	5,910.772	0.00126887	7.50
Hang Seng [®] Index	HSI	5.00%	30,007.68	0.00016662	5.00
				Starting Value	100.00

(1) These were the closing levels of the Basket Components on the pricing date.

Each Component Ratio equals the Initial Component Weight of the relevant Basket Component (as a percentage)

(2) multiplied by 100, and then divided by the closing level of that Basket Component on the pricing date and rounded to eight decimal places.

The calculation agent will calculate the value of the Basket by summing the products of the closing level for each Basket Component on the calculation day and the Component Ratio applicable to such Basket Component. If a Market Disruption Event occurs as to any Basket Component on the scheduled calculation day, the closing level of that Basket Component will be determined as more fully described beginning on page PS-24 of product supplement EQUITY INDICES SUN-1 in the section "Description of the Notes--Basket Market Measures--Observation Level or Ending Value of the Basket."

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

While actual historical information on the Basket did not exist before the pricing date, the following graph sets forth the hypothetical historical daily performance of the Basket from January 1, 2008 through the pricing date.

The graph is based upon actual daily historical levels of the Basket Components, hypothetical Component Ratios based on the closing levels of the Basket Components as of December 31, 2007, and a Basket value of 100.00 as of that date. This hypothetical historical data on the Basket is not necessarily indicative of the future performance of the Basket or what the value of the notes may be. Any hypothetical historical upward or downward trend in the value of the Basket during any period set forth below is not an indication that the value of the Basket is more or less likely to increase or decrease at any time over the term of the notes.

Hypothetical Historical Performance of the Basket

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The Basket Components

All disclosures contained in this term sheet regarding the Basket Components, including, without limitation, their make-up, method of calculation, and changes in their components, have been derived from publicly available sources. The information reflects the policies of, and is subject to change by each of STOXX Limited (*STOXX*) with respect to the EURO STOXX 50[®] Index (the *SX5E*), FTSE International Limited (*FTSE*) with respect to the FTSE Index (the *UKX*), Nikkei Inc. (*Nikkei*) with respect to the Nikkei Stock Average Index (the *NKY*), the Geneva, Zurich, SIX Group Ltd., certain of its subsidiaries, and the Management Committee of the SIX Swiss Exchange (the *SIX Exchange*), with respect to the Swiss Market Index (the *SMI*), S&P Dow Jones Indices LLC (*S&P*), a division of S&P Global, with respect to the S&P/ASX 200 Index (the *AS51*), and HSI Services Limited (*HSIL*) with respect to the Hang Seng[®] Index (the *HSI*) (STOXX, FTSE, Nikkei, S&P, Six Exchange and HSIL together, the *index sponsors*). The index sponsors have no obligation to continue to publish, and may discontinue or suspend the publication of any Basket Component at any time. The consequences of any index sponsor discontinuing publication of a Basket Component are discussed in the section entitled *Description of the Notes—Discontinuance of an Index* beginning on page PS-22 of product supplement EQUITY INDICES SUN-1. None of us, BAC, the calculation agent, or MLPF&S accepts any responsibility for the calculation, maintenance, or publication of any Basket Component or any successor index.

The EURO STOXX 50[®] Index

The SX5E was created by STOXX, which is owned by Deutsche Börse AG. Publication of the SX5E began on February 28, 1998, based on an initial index value of 1,000 at December 31, 1991. The SX5E is reported daily on the Bloomberg Professional[®] service under the symbol *SX5E* and on the STOXX website. Information contained in the STOXX website is not incorporated by reference in, and should not be considered a part of, this term sheet.

Composition and Maintenance of the SX5E

The SX5E is composed of 50 component stocks from of market sectors from within the 19 EURO STOXX Supersector indices, which represent the Eurozone portion of the STOXX Europe 600 Supersector indices. The STOXX 600 Supersector indices contain the 600 largest stocks traded on the major exchanges of 18 European countries and are organized into the following 19 Supersectors: automobiles & parts; banks; basic resources; chemicals; construction & materials; financial services; food & beverage; health care; industrial goods & services; insurance; media; oil & gas; personal & household goods; real estate; retail; technology; telecommunications; and utilities.

The SX5E is weighted by free float market capitalization. Each component's weight is capped at 10% of the SX5E's total free float market capitalization. Free float weights are reviewed quarterly and the SX5E composition is reviewed annually in September.

Within each of the 19 EURO STOXX Supersector indices, the component stocks are ranked by free float market capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free float market capitalization of the corresponding EURO STOXX Total Market Index Supersector Index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are current index components are added to the selection list. The stocks on the selection list are ranked by free float market capitalization. In exceptional cases, the STOXX Supervisory Board may make additions and deletions to the selection list.

The 40 largest stocks on the selection list are chosen as components.

Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The following graph shows the daily historical performance of the SX5E in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the SX5E was 3,506.03.

Historical Performance of the EURO STOXX 50® Index

This historical data on the SX5E is not necessarily indicative of the future performance of the SX5E or what the value of the notes may be. Any historical upward or downward trend in the level of the SX5E during any period set forth above is not an indication that the level of the SX5E is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the SX5E.

License Agreement

One of our affiliates has entered into a non-exclusive license agreement with STOXX providing for the license to it and certain of its affiliated companies, including us, in exchange for a fee, of the right to use indices owned and published by STOXX (including the SX5E) in connection with certain securities, including the notes offered hereby. The license agreement requires that the following language be stated in this document:

STOXX and its licensors (the Licensors) have no relationship to us, other than the licensing of the SX5E and the related trademarks for use in connection with the notes. STOXX and its Licensors do not:

- sponsor, endorse, sell, or promote the notes;
- recommend that any person invest in the notes offered hereby or any other securities;
- have any responsibility or liability for or make any decisions about the timing, amount, or pricing of the notes;
- have any responsibility or liability for the administration, management, or marketing of the notes; or
- consider the needs of the notes or the holders of the notes in determining, composing, or calculating the SX5E, or have any obligation to do so.

STOXX and its Licensors will not have any liability in connection with the notes. Specifically:

STOXX and its Licensors do not make any warranty, express or implied, and disclaims any and all warranty concerning:

- the results to be obtained by the notes, the holders of the notes or any other person in connection with the use of the SX5E and the data included in the SX5E;
- the accuracy or completeness of the SX5E and its data;
- the merchantability and the fitness for a particular purpose or use of the SX5E and its data;
- STOXX and its Licensors will have no liability for any errors, omissions, or interruptions in the SX5E or its data;
- and

Under no circumstances will STOXX be liable for any lost profits or indirect, punitive, special, or consequential damages or losses, even if STOXX or its Licensors know that they might occur.

The licensing agreement discussed above is solely for our benefit and that of STOXX, and not for the benefit of the holders of the notes or any other third parties.

Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The FTSE® 100 Index

The FTSE® 100 Index (the UKX) is a market capitalization-weighted index of the 100 most highly capitalized U.K.-listed blue chip companies traded on the London Stock Exchange. The UKX was developed with a base level of 1,000 as of December 30, 1983. It is calculated, published and disseminated by FTSE Russell (FTSE), a company owned by the London Stock Exchange Plc (the Exchange).

Additional information on the FTSE® 100 Index is available from the following website: ftse.com/uk. We are not incorporating by reference that website or any material it includes in this document.

Index Composition and Selection Criteria

The UKX consists of the 100 largest U.K.-listed blue chip companies, based on full market capitalization, that pass screening tests for price and liquidity. The UKX is reviewed on a quarterly basis in March, June, September and December based on data from the close of business on the Tuesday before the first Friday of the review month. The FTSE Europe, Middle East & Africa Regional Advisory Committee (the Committee), meets quarterly to approve the constituents of the UKX. These meetings are held on the Wednesday before the first Friday in March, June, September and December. Any constituent changes are implemented after the close of business on the third Friday of the review month (i.e., effective Monday), following the expiration of the London International Financial Futures and Options Exchange futures and options contracts.

Eligibility Standards

Only premium listed equity shares, as defined by the Financial Conduct Authority in its Listing Rules Sourcebook, are eligible for inclusion in the UKX. Eligible stocks must pass price and liquidity screens before being included in the UKX. Additionally, a stock must have a free float (as described below) of greater than 5%.

Price Screen — With regard to the price screen, the Committee must be satisfied that an accurate and reliable price exists for purposes of determining the market value of a company. To be eligible for inclusion in the UKX, a stock must have a full listing on the London Stock Exchange with a Sterling-denominated price on SETS (the London Stock Exchange's trading service for UK blue chip securities).

Minimum Voting Rights Screen — Companies are required to have greater than 5% of the company's voting rights (aggregated across all of its equity securities, including, where identifiable, those that are not listed or trading) in the hands of unrestricted shareholders in order to be eligible for index inclusion. Current constituents who do not meet this requirement will have until the September 2022 review to meet the requirement or they will be removed from the index.

Liquidity Screen — With regard to liquidity, each eligible stock is tested for liquidity annually in June by calculating its median daily trading per month. When calculating the median of daily trades per month of any security, a minimum of five trading days in each month must exist, otherwise the month is excluded from the test. Liquidity is tested from the first business day in May of the previous year to the last business day of April. The median trade is calculated by ranking each daily trade total and selecting the middle-ranking day. Any period of suspension is not included in the test. The liquidity test is applied on a pro-rata basis where the testing period is less than 12 months. A stock not presently included in the UKX that does not turnover at least 0.025% of its shares in issue (after application of any investability weightings) based on its median daily trade per month in at least ten of the 12 months prior to the annual index review in June will not be eligible for inclusion until the next annual review. An existing constituent failing to trade at least 0.015% of its shares in issue (after the application of any investability weightings) based on its median daily trade per month for at least eight of the 12 months prior to the annual index review will be removed from the UKX and will not be eligible for inclusion until the next annual review. New issues will become eligible for inclusion in the UKX at the quarterly review following their issuance provided that they have a minimum trading record of at least 20 trading days prior to the review date and that they have turned over at least 0.025% of their shares in issue (after the application of any investability weightings) based on their median daily trade per month since listing.

Market Capitalization Ranking — Eligible stocks that pass the price and liquidity screens are ranked by the Committee according to their market capitalization before the application of any adjustments based on the extent to which the shares are publicly traded. Only the quoted equity capital of a constituent company will be included in the calculation

of its market capitalization. Where a company has two or more classes of equity, secondary lines will be included in the calculation of the market capitalization of the company only if those lines are significant and liquid. The Committee will add a stock to the UKX at the quarterly review if it has risen to 90th place or above on the full market capitalization rankings and will delete a stock at the quarterly review if it has fallen to 111th place or below on these rankings. Market capitalization rankings are calculated using data as of the close of business on the day before the review.

100 Constituent Limitation — The UKX always contains 100 constituents. If a greater number of companies qualify to be inserted in the UKX than qualify to be removed, the lowest ranking constituents of the UKX will be removed so that the total number of stocks remains at 100 following inclusion of those that qualify to be inserted. Likewise, if a greater number of companies qualify to be removed than to be inserted at the quarterly review, securities of the highest ranking companies that are then not included in the UKX will be inserted to match the number of companies being removed, in order to maintain the total at 100.

Index Calculation

The UKX is a market capitalization weighted index. This means that the price movement of a larger company (that is, one representing larger percentage of the UKX) will have a greater effect on the level of the UKX than will the price movement of a smaller company (that is, one representing a smaller percentage of the UKX).

The value of the UKX is represented by a fraction, (a) the numerator of which is the *sum* of the *product* of (i) the price of each component stock, (ii) the number of shares issued for each such component and (iii) a free float factor for each such component (described more fully below), and (b) the denominator of which is a divisor. The divisor represents the total issued share capital of the

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UKX on the base date; the divisor may be adjusted as necessary to allow for changes in issued share capital of individual securities without distorting the UKX.

As noted above, a free float factor is applied to each index component. By employing this approach, FTSE uses the investable market capitalization, not the total market capitalization, of each constituent to determine the value of the UKX. Investable market capitalization depends on free float. The following are excluded from free float: shares directly owned by state, regional, municipal and local governments (excluding shares held by independently managed pension schemes for governments); shares held by sovereign wealth funds where each holding is 10% or greater of the total number of shares in issue (if the holding subsequently decreases below 10%, the shares will be excluded from free float until the holding falls below 7%); shares held by directors, senior executives and managers of the company, and by their family and direct relations, and by companies with which they are affiliated; shares held within employee share plans; shares held by public companies or by non-listed subsidiaries of public companies; shares held by founders, promoters, former directors, founding venture capital and private equity firms, private companies and individuals (including employees) where the holding is 10% or greater of the total number of shares in issue (if the holding subsequently decreases below 10%, the shares will be excluded from free float until the holding falls below 7%); all shares where the holder is subject to a lock-in clause (for the duration of that clause, after which free float changes resulting from the expiration of a lock-in clause will be implemented at the next quarterly review subsequent to there being a minimum of 20 business days between the expiration date of such lock-in clause and the index review date); shares held for publicly announced strategic reasons, including shares held by several holders acting in concert; and shares that are subject to ongoing contractual agreements (such as swaps) where they would ordinarily be treated as restricted.

The UKX is recalculated whenever errors or distortions occur that are deemed to be significant. Users of the UKX are notified through appropriate media.

Index Maintenance

The UKX is reviewed quarterly for changes in free float. A stock's free float is also reviewed and adjusted if necessary following certain corporate events. Following a takeover or merger involving one or more index constituents, the free float restrictions will be based on restricted holdings in the successor company and will be implemented when the offer has completed (or lapsed) unless it directly reflects a corporate action independent of and not conditional on the takeover or merger completing or lapsing. If the corporate event includes another corporate action that affects the UKX, a change in free float is implemented at the same time as the corporate action. If there is no corporate action, the change in free float will be applied at the next quarterly review. Following the application of an initial free float restriction, a stock's free float will only be changed if its rounded free float moves more than three percentage points above or below the existing rounded free float. Companies with a free float of above 99% and of 15% or below will not be subject to the three percentage points threshold.

At each quarterly review, the Committee publishes a Reserve List containing the six highest ranking non-constituents of the UKX. The Reserve List will be used in the event that one or more constituents are deleted from the UKX during the period up to the next quarterly review. If a merger or takeover results in one index constituent being absorbed by another constituent, the resulting company will remain a constituent and a vacancy will be created. This vacancy will be filled by selecting the highest ranking security in the Reserve List as at the close of the index calculation two days prior to the deletion and related index adjustment. If an index constituent is taken over by a non-constituent company, the original constituent will be removed and replaced by the highest ranking non-constituent on the Reserve List. Any eligible company resulting from the takeover will be eligible to become the replacement company if it is ranked higher than any other company on the Reserve List. If a constituent company is split to form two or more companies, then the resulting companies will be eligible for inclusion as index constituents, based on their respective full market capitalizations (before the application of any investability weightings), provided that they qualify in all other respects. Any eligible company resulting from a split that has no available market price after 20 business days will be removed. If a split results in the inclusion of an ineligible non-equity security, such security will remain in the UKX for two trading days and then be removed. If a constituent is delisted or ceases to have a firm quotation, it will be removed

from the list of constituents and be replaced by the highest ranking eligible company from the Reserve List as at the close of the index calculation two days prior to the deletion.

Capitalization Adjustments

A premium listed secondary line of a company will be considered for index inclusion if its total market capitalization before the application of any adjustments based on the extent to which the shares are publicly traded, is greater than 25% of the total market capitalization of the company's principal line and the secondary line is eligible, in its own right. Should the total market capitalization of a secondary line fall below 20% of the total market capitalization of the company's principal line at an annual review, the secondary line will be deleted from the UKX unless its total market capitalization remains above the qualification level for continued inclusion as a constituent of the UKX at that review. Where a company has partly paid shares, these shares, together with the outstanding call(s), are both included in the UKX. Warrants to purchase ordinary shares and convertible securities are not included in the UKX until they are exercised or converted.

Share Weighting Changes — For the purposes of computing the UKX, the number of shares in issue for each constituent security is expressed to the nearest share and, to prevent a large number of insignificant weighting changes, the number of shares in issue for each constituent security is amended only when the total shares in issue held within the index system changes by more than 1% on a cumulative basis. Changes will be made quarterly after the close of business on the third Friday of March, June, September and December. The data for these changes will be taken from the close of business on the third Wednesday of the month prior to the review month.

If a corporate action is applied to a constituent, which involves a change in the number of shares in issue, the change in shares will be applied simultaneously with the corporate action. If accumulated changes in the number of shares in issue add up to 10% or more or

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when an accumulated share change represents \$2 billion of a company's total market capitalization, they are implemented between quarters. If an adjustment is made, it will be applied for the first time at the next review in March of the following year. All adjustments are made before the start of the index calculation on the day concerned, unless market conditions prevent this.

Shares in Issue Increase — When a company increases the number of shares it has in issue, the market capitalization of that company increases and the total market capitalization will rise accordingly. The index divisor is adjusted to maintain a constant index value.

Weighting Amendments — *The market capitalization of a company is adjusted to take account of various corporate actions, in accordance with the rules of the UKX. To prevent the value of the UKX from changing due to such an event, all corporate actions which affect the market capitalization of the UKX require an offsetting divisor adjustment. By adjusting the divisor, the value of the UKX remains constant before and after the event. Below is a summary of the more frequent corporate actions and their resulting adjustment.*

Market Disruption

If there is a system problem or situation in the market that is judged by FTSE to affect the quality of the constituent prices at any time when the UKX is being calculated, the UKX will be declared indicative (e.g., normally where a "fast market" exists in the equity market). The message "IND" will be displayed against the index value calculated by FTSE. The Committee must be satisfied that an accurate and reliable price for the purposes of determining the market value of a company exists. The Committee may exclude a security from the UKX should it consider that an accurate and reliable price is not available.

If any event leads to an error in the value of the UKX that is greater than three basis points at the local country index level, then the UKX will generally be recalculated, subject to discovery, within one month of the event. Where an alternative approach is available, FTSE may, at its sole discretion, choose not to recalculate.

The following graph shows the daily historical performance of the UKX in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the UKX was 7,421.43.

Historical Performance of the FTSE® 100 Index

This historical data on the UKX is not necessarily indicative of the future performance of the UKX or what the value of the notes may be. Any historical upward or downward trend in the level of the UKX during any period set forth above is not an indication that the level of the UKX is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the UKX.

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The Nikkei Stock Average Index

The Index, also known as the Nikkei 225 Index, is an equity index calculated, published, and disseminated by Nikkei Inc. The Index measures the composite price performance of selected Japanese stocks. The Index is currently based on 225 stocks (each, an Index Stock) trading on the Tokyo Stock Exchange (TSE) and represents a broad cross-section of Japanese industry. All 225 of the Index Stocks are listed in the First Section of the TSE. Index Stocks listed in the First Section are among the most actively traded stocks on the TSE. The Index started on September 7, 1950. However, it was retroactively calculated back to May 16, 1949, when the TSE reopened for the first time after World War II.

Calculation of the Index

The Index is a modified, price-weighted index. Each Index Stock's weight is based on its price per share rather than the total market capitalization of the issuer. Nikkei Inc. calculates the Index by multiplying the per share price of each Index Stock by the corresponding weighting factor for that Index Stock (a Weight Factor), calculating the sum of all these products and dividing that sum by a divisor. The divisor is subject to periodic adjustments as set forth below.

Each Weight Factor is computed by dividing 50 by the presumed par value of the relevant Index Stock, so that the share price of each Index Stock when multiplied by its Weight Factor corresponds to a share price based on a uniform par value of 50. Each Weight Factor represents the number of shares of the related Index 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 Index Stocks, currently the TSE. The level of the Index is currently calculated once per 15 seconds during TSE trading hours.

In order to maintain continuity in the level of the Index in the event of certain changes due to non-market factors affecting the Index Stocks, such as the addition or deletion of stocks, stock splits, or increase in paid-in capital, 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. In the event of a change affecting any Index 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.

Index Maintenance

The Index is reviewed annually at the beginning of October. The purpose of the review is to maintain the representative nature of the Index Stocks. Stocks with high market liquidity are added and those with low liquidity are deleted. At the same time, to take changes in industry structure into account, the balance of the sectors, in terms of the number of constituents, is considered. Liquidity of a stock is assessed by the two measures: trading value and magnitude of price fluctuation by volume, which is calculated as $(\text{high price}/\text{low price}) / \text{volume}$. Among stocks on the TSE First Section, the top 450 stocks in terms of liquidity are selected to form the high liquidity group. Those constituents that are not in the high liquidity group are deleted. Those non-constituent stocks which are in the top 75 of the high liquidity group are added.

After the liquidity deletions and additions, constituents are deleted and added to balance the number of constituents among sectors, and to make the total number of the constituents equal 225. Among the 450 high liquidity stocks, half of those that belong to a sector are designated as the appropriate number of stocks for that sector. The actual number of constituents in a sector is then compared with its appropriate number, and if the actual number is larger or smaller than the appropriate number, then components are deleted or added, as necessary. Stocks to be deleted are selected from stocks with lower liquidity and stocks to be added are selected from stocks with higher liquidity. Stocks selected according to the foregoing procedures are candidates for addition or deletion, as applicable, and the final determinations will be made by Nikkei Inc.

The Index is also reviewed on an ongoing basis in response to extraordinary developments, such as bankruptcies or mergers. Any stock becoming ineligible for listing in the TSE First Section due to any of the following reasons will be removed from the Index: (i) bankruptcy and liquidation events; (ii) corporate restructurings, such as mergers, share

exchanges or share transfers; (iii) excess debt or other reasons; or (iv) transfer to the TSE Second Section. In addition, a component stock designated as security under supervision becomes a deletion candidate. However, the decision to delete such a candidate will be made by examining the sustainability and the probability of delisting for each individual case. Upon deletion of a stock from the Index, Nikkei Inc. will generally select as a replacement the most liquid stock that is both in the high liquidity group and in the same sector as the deleted stock. When deletions are known in advance, replacements may be selected as part of the periodic review process or by using similar procedures.

The Tokyo Stock Exchange

The TSE is one of the world's largest securities exchanges in terms of market capitalization. Trading hours for most products listed on the TSE are currently from 9:00 A.M. to 11:00 A.M. and from 12:30 P.M. to 3:00 P.M., Tokyo time, Monday through Friday.

Due to the time zone difference, 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 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

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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. The TSE may also 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 make up the Index, and these limitations, in turn, may adversely affect the market value of the notes.

The following graph shows the daily historical performance of the NKY in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the NKY was 22,319.61.

Historical Performance of the Nikkei Stock Average Index

This historical data on the NKY is not necessarily indicative of the future performance of the NKY or what the value of the notes may be. Any historical upward or downward trend in the level of the NKY during any period set forth above is not an indication that the level of the NKY is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the NKY.

License Agreement

We have entered into an agreement with Nikkei Inc. providing us with a non-exclusive license with the right to use the Index in exchange for a fee. The Index is the intellectual property of Nikkei Inc. (the index sponsor), formerly known as Nihon Keizai Shimbun, Inc. Nikkei, Nikkei Stock Average, and Nikkei 225 are the service marks of Nikkei Inc. Nikkei Inc. reserves all the rights, including copyright, to the Index.

The notes are not in any way sponsored, endorsed or promoted by the index sponsor. The index sponsor does not make any warranty or representation whatsoever, express or implied, either as to the results to be obtained as to the use of the Index or the figure as which the NKY stands at any particular day or otherwise. The NKY is compiled and calculated solely by the index sponsor. However, the index sponsor shall not be liable to any person for any error in the NKY and the index sponsor shall not be under any obligation to advise any person, including a purchaser or seller of the notes, of any error therein.

In addition, the index sponsor gives no assurance regarding any modification or change in any methodology used in calculating the Index and is under no obligation to continue the calculation, publication and dissemination of the NKY.

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The Swiss Market Index

The Swiss Market Index (the "SMI"):

was first launched with a base level of 1,500 as of June 30, 1988; and is sponsored, calculated, published and disseminated by SIX Group Ltd., certain of its subsidiaries, and the Management Committee of SIX Swiss Exchange.

The SMI is a price return float-adjusted market capitalization-weighted index of the 20 largest stocks traded on the SIX Swiss Exchange. The Management Committee of SIX Swiss Exchange is supported by an Index Commission (advisory board) in all index-related matters, notably in connection with changes to the index rules and adjustments, additions and exclusions outside of the established review and acceptance period. The Index Commission meets at least twice annually.

Information regarding the Swiss Market Index may be found on SIX Exchange's website. Please note that information included in that website is not included or incorporated by reference in this document.

Index Composition and Selection Criteria

The SMI is comprised of the 20 highest ranked stocks traded on the SIX Swiss Exchange that have a free float of 20% or more and that are not investment companies. The equity universe is largely Swiss domestic companies; however, in some cases, foreign issuers with a primary listing on the SIX Swiss Exchange or investment companies that do not hold any shares of any other eligible company and that have a primary listing on the SIX Swiss Exchange may be included.

The ranking of each security is determined by a combination of the following criteria:

- average free-float market capitalization (compared to the capitalization of the entire SIX Swiss Exchange index family), and
- cumulative on order book turnover (compared to the total turnover of the SIX Swiss Exchange index family).

Each of these two factors is assigned a 50% weighting in ranking the stocks eligible for the SMI.

The SMI is reconstituted annually after prior notice of at least two months on the third Friday in September after the close of trading.

The reconstitution is based on data from the previous July 1 through June 30. Provisional interim selection (ranking) lists are also published following the end of the third, fourth and first financial quarters.

In order to reduce turnover, an index constituent will not be replaced unless it is ranked below 23 or, if it is ranked 21 or 22, if another share ranks 18 or higher. If a company has primary listings on several exchanges and less than 50% of that company's total turnover is generated on the SIX Swiss Exchange, it will not be included in the SMI unless it ranks at least 18 or better on the selection list on the basis of its turnover alone (i.e., without considering its free float).

Maintenance of the Index

Constituent Changes. In the case of major market changes as a result of capital events such as mergers or new listings, the Management Committee of SIX Swiss Exchange can decide at the request of the Index Commission that a security should be admitted to the SMI outside the annual review period as long as it clearly fulfills the criteria for inclusion. For the same reasons, a security can also be excluded if the requirements for admission to the SMI are no longer fulfilled. As a general rule, extraordinary acceptances into the SMI take place after a three-month period on a quarterly basis after the close of trading on the third Friday of March, June, September and December (for example, a security listed on or before the fifth trading day prior to the end of November cannot be included until the following March). An announced insolvency is deemed to be an extraordinary event and the security will be removed from the SMI with five trading days' prior notice if the circumstances permit such notice.

Capped Weightings and Intra-Quarter Breaches. The weight of any index constituent that exceeds a weight of 18% within the index is reduced to that value at each quarterly index review by applying a capping factor to the calculation of such constituent's free float market capitalization. A constituent's number of shares and free float market capitalization are used to determine its capping factor. The excess weight (the difference of the original weight minus the capped weight) is distributed proportionally across the other index constituents. The constituents are also capped to 18% as soon as two index constituents exceed a weight of 20% (an "intra-quarter breach"). If an intra-quarter breach

is observed after the close of the markets, a new calculation of the capping factors is executed immediately and communicated to the market in order to ensure that the maximum weight per constituent is capped at 18% for the opening on the next day. In order to achieve a capped weighting of the index without causing market distortion, a stepwise reduction is conducted based on the quarterly index reviews to ensure that no change in the weight (as a result of capping) from one review to the next exceeds 3%. The transition period is in effect until no component has a weight larger than 18%. In the case of an intra-quarter breach, the weights are limited to the last defined weights as of the prior review.

Number of Shares and Free Float. The securities included in the SMI are weighted according to their free float. This means that shares deemed to be in firm hands are subtracted from the total market capitalization of that company. The free float is calculated on the basis of outstanding shares. Issued and outstanding equity capital is, as a rule, the total amount of equity capital that has been fully subscribed and wholly or partially paid in and documented in the Commercial Register. Not counting as issued and outstanding equity capital are the approved capital and the conditional capital of a company. The free float is calculated on the basis of listed shares only. If a company offers several different categories of listed participation rights, each is treated separately for purposes of index calculation.

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Shares held deemed to be in firm hands are shareholdings that have been acquired by one person or a group of persons in companies domiciled in Switzerland and which, upon exceeding 5%, have been reported to SIX Swiss Exchange. Shares of persons and groups of persons who are subject to a shareholder agreement which is binding for more than 5% of the listed shares or who, according to publicly known facts, have a long-term interest in a company, are also deemed to be in firm hands.

For the calculation of the number of shares in firm hands, SIX Swiss Exchange may also use other sources than the reports submitted to it. In particular, SIX Swiss Exchange may use data gained from issuer surveys that it conducts itself.

In general, shares held by custodian nominees, trustee companies, investment funds, pension funds and investment companies are deemed free-floating regardless whether a report has been made to SIX Swiss Exchange. SIX Swiss Exchange classifies at its own discretion persons and groups of persons who, because of their area of activity or the absence of important information, cannot be clearly assigned.

The free-float rule applies only to bearer shares and registered shares. Capital issued in the form of participation certificates and bonus certificates is taken into full account in calculating the SMI because it does not confer voting rights.

The number of securities in the SMI and the free-float factors are adjusted after the close of trading on four adjustment dates per year, the third Friday of March, June, September and December. Such changes are pre-announced at least one month before the adjustment date, although the index sponsor reserves the right to take account of recent changes before the adjustment date in the actual adjustment, so the definite new securities are announced five trading days before the adjustment date.

In order to avoid frequent slight changes to the weighting and to maintain the stability of the SMI, any extraordinary change of the total number of outstanding securities or the free float will only result in an extraordinary adjustment if it exceeds 10% and 5% respectively and is in conjunction with a corporate action.

After a takeover, SIX Swiss Exchange may, in exceptional cases, adjust the free float of a company upon publication of the end results after a five-day notification period or may exclude the security from the relevant index family. When an insolvency has been announced, an extraordinary adjustment will be made and the affected security will be removed from the SMI after five trading days' notice.

The index sponsor reserves the right to make an extraordinary adjustment, in exceptional cases, without observing the notification period.

Calculation of the Index

The index sponsor calculates the SMI using the Laspeyres formula, with a weighted arithmetic mean of a defined number of securities issues. The formula for calculating the index value can be expressed as follows:

$$\text{Index} = \frac{\text{Free Float Market Capitalization of the index}}{\text{Divisor}}$$

The free float market capitalization of the index is equal to the sum of the product of the last-paid price, the number of shares, the free-float factor, the capping factor and, if a foreign stock is included, the current CHF exchange rate as of the time the index value is being calculated. The index value is calculated in real time and is updated whenever a trade is made in a component stock. Where any index component stock price is unavailable on any trading day, SIX Swiss Exchange will use the last reported price for such component stock. Only prices from the SIX Swiss Exchange's electronic order book are used in calculating the SMI.

Divisor Value and Adjustments

The divisor is a technical number used to calculate the SMI and is adjusted to reflect changes in market capitalization due to corporate events, and is adjusted by SIX Swiss Exchange to reflect corporate events, as described in the index rules.

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The following graph shows the daily historical performance of the SMI in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the SMI was 8,835.03.

Historical Performance of the Swiss Market Index

This historical data on the SMI is not necessarily indicative of the future performance of the SMI or what the value of the notes may be. Any historical upward or downward trend in the level of the SMI during any period set forth above is not an indication that the level of the SMI is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the SMI.

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The S&P/ASX 200 Index

The S&P[®]/ASX 200 Index (the AS51):

was first launched in 1979 by the Australian Securities Exchange and was acquired and re-launched by its current index sponsor on April 3, 2000; and

is sponsored, calculated, published and disseminated by S&P Dow Jones Indices LLC, a part of McGraw Hill Financial (S&P).

The AS51 includes 200 companies and covers approximately 80% of the Australian equity market by market capitalization. As discussed below, the AS51 is not limited solely to companies having their primary operations or headquarters in Australia or to companies having their primary listing on the Australian Securities Exchange (the ASX). All ordinary and preferred shares (if such preferred shares are not of a fixed income nature) listed on the ASX, including secondary listings, are eligible for the AS51. Hybrid stocks, bonds, warrants, preferred stock that provides a guaranteed fixed return and listed investment companies are not eligible for inclusion.

The AS51 is intended to provide exposure to the largest 200 eligible securities that are listed on the ASX by float-adjusted market capitalization. Constituent companies for the AS51 are chosen based on market capitalization, public float and liquidity. All index-eligible securities that have their primary or secondary listing on the ASX are included in the initial selection of stocks from which the 200 index stocks may be selected.

The float-adjusted market capitalization of companies is determined based on the daily average market capitalization over the last six months. The security's price history over the last six months, the latest available shares on issue and the investable weight factor (the IWF), are the factors relevant to the calculation of daily average market capitalization. The IWF is a variable that is primarily used to determine the available float of a security for ASX listed securities.

Information regarding the S&P[®]/ASX 200 Index may be found on S&P's website. That information is updated from time to time on that website. Please note that information included in that website is not included or incorporated by reference in this document.

Number of Shares

When considering the index eligibility of securities for inclusion or promotion into S&P/ASX indices, the number of index securities under consideration is based upon the latest available ASX quoted securities. For domestic securities (companies incorporated in Australia and traded on the ASX, companies incorporated overseas but exclusively listed on the ASX and companies incorporated overseas and traded on other markets but most of its trading activity is on the ASX), this figure is purely based upon the latest available data from the ASX.

Foreign-domiciled securities may quote the total number of securities on the ASX that is representative of their global equity capital; whereas other foreign-domiciled securities may quote securities on the ASX on a partial basis that represents their Australian equity capital. In order to overcome this inconsistency, S&P will quote the number of index securities that are represented by CHESS Depositary Interests (CDIs) for a foreign entity. When CDIs are not issued, S&P will use the total securities held on the Australian register (CHESS and, where supplied, the issuer sponsored register). This quoted number for a foreign entity is representative of the Australian equity capital, thereby allowing the AS51 to be increasingly reflective of the Australian market.

The number of CDIs or shares of a foreign entity quoted on the ASX can experience more volatility than is typically the case for ordinary shares on issue. Therefore, an average number on issue will be applied over a six-month period. Where CDI information is not supplied to the ASX by the company or the company's share register, estimates for Australian equity capital will be drawn from CHESS data and, ultimately, registry-sourced data.

IWF

The IWF represents the float-adjusted portion of a stock's equity capital. Therefore any strategic holdings that are classified as either corporate, private or government holdings reduce the IWF which, in turn, results in a reduction in the float-adjusted market capital.

The IWF ranges between 0 and 1, is calculated as $1 - \text{Sum of the \% held by strategic shareholders who possess 5\% or more of issued shares}$, and is an adjustment factor that accounts for the publicly available shares of a company. A

company must have a minimum IWF of 0.3 to be eligible for index inclusion.

S&P Dow Jones Indices identifies the following shareholders whose holdings are considered to be control blocks and are subject to float adjustment:

1. Government and government agencies;
2. Controlling and strategic shareholders/partners;
3. Any other entities or individuals which hold more than 5%, excluding insurance companies, securities companies and investment funds; and
4. Other restricted portions such as treasury stocks.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Liquidity Test

Only stocks that are regularly traded are eligible for inclusion. Eligible stocks are considered for index inclusion based on their stock median liquidity (median daily value traded divided by its average float-adjusted market capitalization for the last six months relative to the market capitalization weighted average of the stock median liquidities of the 500 constituents of the All Ordinaries index, another member of the S&P/ASX index family).

Index Maintenance

S&P rebalances constituents quarterly to ensure adequate market capitalization and liquidity using the previous six months' data to determine index eligibility. Quarterly review changes take effect the third Friday of March, June, September and December. Eligible stocks are considered for index inclusion based on their float-adjusted market capitalization rank relative to the stated quota of 200 securities. For example, a stock that is currently in the S&P/ASX 300 and is ranked at 175, based on float-adjusted market capitalization, within the universe of eligible securities may be considered for inclusion into the AS51, provided that liquidity hurdles are met.

In order to limit the level of index turnover, eligible securities will only be considered for index inclusion once another stock is excluded due to a sufficiently low rank and/or liquidity, based on the float-adjusted market capitalization. Potential index inclusions and exclusions need to satisfy buffer requirements in terms of the rank of the stock relative to a given index. The buffers are established to limit the level of index turnover that may take place at each quarterly rebalancing.

Between rebalancing dates, an index addition is generally made only if a vacancy is created by an index deletion. Index additions are made according to float-adjusted market capitalization and liquidity. An initial public offering is added to the AS51 only when an appropriate vacancy occurs and is subject to proven liquidity for at least two months. An exception may be made for extraordinary large offerings where sizeable trading volumes justify index inclusion. Deletions can occur between index rebalancing dates due to acquisitions, mergers and spin-offs or due to suspension or bankruptcies. The decision to remove a stock from the AS51 will be made once there is sufficient evidence that the transaction will be completed. Stocks that are removed due to mergers and acquisitions are removed from the AS51 at the cash offer price for cash-only offers. Otherwise, the best available price in the market is used.

Share numbers for all index constituents are updated quarterly and are rounded to the nearest thousand. The update to the number of issued shares will be considered if the change is at least 5% of the float adjusted shares or \$100 million in value.

Share updates for foreign-domiciled securities will take place annually at the March rebalancing. The update to the number of index shares will only take place when the six-month average of CDIs or the Total Securities held in the Australian branch of issuer sponsored register (where supplied) and in CHESS, as of the March rebalancing, differs from the current index shares by either 5% or a market-cap dollar amount greater than A\$100 million. Where CDI information is not supplied to the ASX by the company or the company's share register, estimates for Australian equity capital will be drawn from CHESS data and, ultimately, registry-sourced data.

Intra-quarter share changes are implemented at the effective date or as soon as reliable information is available; however, they will only take place in the following circumstances:

- changes in a company's float-adjusted shares of 5% or more due to market-wide shares issuance;
- rights issues, bonus issues and other major corporate actions; and
- share issues resulting from index companies merging and major off-market buy-backs.

Share changes due to mergers or acquisitions are implemented when the transaction occurs, even if both of the companies are not in the same index and regardless of the size of the change.

IWFs are reviewed annually as part of the September quarterly review. However, any event that alters the float of a security in excess of 5% will be implemented as soon as practicable by an adjustment to the IWF.

The function of the IWF is also to manage the index weight of foreign-domiciled securities that quote shares on the basis of CDIs. Due to the volatility that is displayed by CDIs, unusually large changes in the number of CDIs on issue could result. Where this is the case, the IWF may be used to limit the effect of unusually large changes in the average number of CDIs (and, thereby, limit the potential to manipulate this figure). Where the Australian Index Committee

sees fit to apply the IWF in this manner, the rationale for the decision will be announced to the market. This will be reviewed annually at the March-quarter index rebalancing date.

Calculation of the AS51

The AS51 is calculated using a base-weighted aggregate methodology. The value of the AS51 on any day for which an index value is published is determined by a fraction, the numerator of which is the aggregate of the price of each stock in the AS51 times the number of shares of such stock included in the AS51 times that stock's IWF, and the denominator of which is the divisor, which is described more fully below.

In order to prevent the value of the AS51 from changing due to corporate actions, all corporate actions may require S&P to make an index or divisor adjustment, as described in S&P's rules. This helps maintain the value of the AS51 and ensures that the movement of the AS51 does not reflect the corporate actions of the individual companies that comprise the AS51.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

In situations where an exchange is forced to close early due to unforeseen events, such as computer or electric power failures, weather conditions or other events, S&P will calculate the closing price of the indices based on (1) the closing prices published by the exchange or (2) if no closing price is available, the last regular trade reported for each security before the exchange closed. If the exchange fails to open due to unforeseen circumstances, S&P treats this closure as a standard market holiday. The AS51 will use the prior day's closing prices and shifts any corporate actions to the following business day. If all exchanges fail to open or in other extreme circumstances, S&P may determine not to publish the AS51 for that day.

S&P reserves the right to recalculate the AS51 under certain limited circumstances.

The following graph shows the daily historical performance of the AS51 in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the AS51 was 5,910.772.

Historical Performance of the S&P/ASX 200 Index

This historical data on the AS51 is not necessarily indicative of the future performance of the AS51 or what the value of the notes may be. Any historical upward or downward trend in the level of the AS51 during any period set forth above is not an indication that the level of the AS51 is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the AS51.

License Agreement

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S&P AND THE AUSTRALIA STOCK EXCHANGE DO NOT GUARANTEE THE ACCURACY AND/OR THE COMPLETENESS OF THE S&P®/ASX 200 INDEX OR ANY DATA INCLUDED THEREIN AND S&P AND THE AUSTRALIA STOCK EXCHANGE SHALL HAVE NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INTERRUPTIONS THEREIN. S&P AND THE AUSTRALIA STOCK EXCHANGE MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO RESULTS TO BE OBTAINED BY US, MLPF&S, OWNERS OF THE NOTES OR ANY OTHER PERSON OR ENTITY FROM THE USE OF THE S&P®/ASX 200 INDEX OR ANY DATA INCLUDED THEREIN. S&P AND THE AUSTRALIA STOCK EXCHANGE MAKE NO EXPRESS OR IMPLIED WARRANTIES, AND EXPRESSLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE S&P®/ASX 200 INDEX OR ANY DATA INCLUDED THEREIN. WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL S&P OR THE AUSTRALIA STOCK EXCHANGE HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT,

OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The Hang Seng® Index

The HSI is calculated, maintained and published by HSIL, a wholly owned subsidiary of Hang Seng Bank, in concert with the HSI Advisory Committee and was first developed, calculated and published on November 24, 1969.

The HSI is a free float-adjusted market capitalization weighted stock market index that is designed to reflect the performance of the Hong Kong stock market.

Only companies with a primary listing on the main board of the Stock Exchange of Hong Kong (SEHK) are eligible as constituents of the HSI. Mainland China enterprises that have an H-share listing in Hong Kong will not be eligible for inclusion in the HSI unless the company has no unlisted share capital. In addition, to be eligible for selection, a company: (1) must be among those that constitute the top 90% of the total market value of all primary listed shares on the SEHK (the market value of a company refers to the average of its month-end market capitalizations for the past 12 months); (2) must be among those that constitute the top 90% of the total turnover of all primary listed shares on the SEHK in a sufficient number of measurement sub-periods (turnover is assessed over the last eight quarterly sub-periods: if a company was in the top 90% in any of the most recent four sub-periods, it receives two points; if it was in the top 90% in any of the latter four sub-periods, it receives one point. A company must attain a score of eight points to meet the turnover requirement); and (3) should normally have a listing history of 24 months (there are exceptions for companies that have shorter listing histories but large market values and/or high turnover scores). From the many eligible candidates, final selections are based on the following: (1) the market value and turnover rankings of the companies; (2) the representation of the sub sectors within the HSI directly reflecting that of the market; and (3) the financial performance of the companies.

Calculation of the HSI

The calculation methodology of the HSI is a free float-adjusted market capitalization weighting with a 10% cap on individual stocks. Under this calculation methodology, shares held by any entities (excluding custodians, trustees, mutual funds and investment companies) which control more than 5% of shares are excluded for index calculation:

Strategic holdings (governments and affiliated entities or any other entities which hold substantial shares in the company would be considered as non-freefloat unless otherwise proved);

Directors' and management holdings (directors, members of the board committee, principal officers or founding members);

Corporate cross holdings (publicly traded companies or private firms / institutions); and

Lock-up shares (shareholdings with a publicly disclosed lock-up arrangement).

A free float-adjusted factor representing the proportion of shares that is free floated as a percentage of the issued shares, is rounded up to the nearest multiple of 5% for the calculation of the HSI and is updated quarterly.

A cap of 10% on individual stock weightings is applied. A cap factor is calculated quarterly to coincide with the regular update of the free float-adjusted factor. Additional re-capping is performed upon constituent changes.

The formula for the index calculation is as follows:

Current Index =

where:

P_t : current price at day t ;

P_{t-1} : closing price at day $t-1$;

IS: number of issued shares;

FAF: free float-adjusted factor, which is between 0 and 1; and

CF: capping factor, which is between 0 and 1.

Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

The following graph shows the daily historical performance of the HSI in the period from January 1, 2008 through the pricing date. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On the pricing date, the closing level of the HSI was 30,007.68.

Historical Performance of the Hang Seng® Index

This historical data on the HSI is not necessarily indicative of the future performance of the HSI or what the value of the notes may be. Any historical upward or downward trend in the level of the HSI during any period set forth above is not an indication that the level of the HSI is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels of the HSI.

License Agreement

We or one of our affiliates has entered into a non-exclusive license agreement with HSIL and Hang Seng Data Services Limited whereby we or one of our affiliates, in exchange for a fee, is permitted to use the HSI in connection with certain securities, including the notes. We are not affiliated with HSIL; the only relationship between HSIL and us is any licensing of the use of HSIL's indices and trademarks related to us.

THE HSI IS PUBLISHED AND COMPILED BY HANG SENG INDEXES COMPANY LIMITED PURSUANT TO A LICENSE FROM HANG SENG DATA SERVICES LIMITED. THE MARK AND NAME HANG SENG CHINA ENTERPRISES INDEX ARE PROPRIETARY TO HANG SENG DATA SERVICES LIMITED. HANG SENG INDEXES COMPANY LIMITED AND HANG SENG DATA SERVICES LIMITED HAVE AGREED TO THE USE OF, AND REFERENCE TO, THE HSI BY US IN CONNECTION WITH THE NOTES, **BUT NEITHER HANG SENG INDEXES COMPANY LIMITED NOR HANG SENG DATA SERVICES LIMITED WARRANTS OR REPRESENTS OR GUARANTEES TO ANY BROKER OR HOLDER OF THE NOTES OR ANY OTHER PERSON (I) THE ACCURACY OR COMPLETENESS OF THE HSI AND ITS COMPUTATION OR ANY INFORMATION RELATED THERETO; OR (II) THE FITNESS OR SUITABILITY FOR ANY PURPOSE OF THE HSI OR ANY COMPONENT OR DATA COMPRISED IN IT; OR (III) THE RESULTS WHICH MAY BE OBTAINED BY ANY PERSON FROM THE USE OF THE HSI OR ANY COMPONENT OR DATA COMPRISED IN IT FOR ANY PURPOSE, AND NO WARRANTY OR REPRESENTATION OR GUARANTEE OF ANY KIND WHATSOEVER RELATING TO THE HSI IS GIVEN OR MAY BE IMPLIED. THE PROCESS AND BASIS OF COMPUTATION AND COMPILATION OF THE HSI AND ANY OF THE RELATED FORMULA OR FORMULAE, CONSTITUENT STOCKS AND FACTORS MAY AT ANY TIME BE CHANGED OR ALTERED BY HANG SENG INDEXES COMPANY LIMITED WITHOUT NOTICE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO RESPONSIBILITY OR LIABILITY IS ACCEPTED BY HANG SENG INDEXES COMPANY LIMITED OR HANG SENG DATA SERVICES LIMITED (I) IN RESPECT OF THE USE OF AND/OR REFERENCE TO THE HSI BY US IN CONNECTION WITH THE NOTES; OR (II) FOR ANY INACCURACIES, OMISSIONS, MISTAKES OR ERRORS OF HANG SENG INDEXES COMPANY LIMITED IN THE COMPUTATION OF THE HSI; OR (III) FOR ANY INACCURACIES, OMISSIONS, MISTAKES, ERRORS OR INCOMPLETENESS OF ANY INFORMATION USED IN CONNECTION WITH THE COMPUTATION OF THE HSI WHICH IS SUPPLIED BY ANY OTHER PERSON; OR (IV) FOR ANY ECONOMIC OR OTHER LOSS WHICH MAY BE DIRECTLY OR INDIRECTLY SUSTAINED BY ANY BROKER OR HOLDER OF THE PRODUCT OR ANY OTHER PERSON DEALING WITH THE NOTES AS A RESULT OF ANY OF THE AFORESAID, AND NO CLAIMS, ACTIONS OR LEGAL PROCEEDINGS MAY BE BROUGHT AGAINST HANG SENG INDEXES COMPANY LIMITED AND/OR HANG SENG DATA SERVICES LIMITED IN CONNECTION WITH THE NOTES IN ANY MANNER WHATSOEVER BY ANY BROKER, HOLDER OR OTHER PERSON DEALING WITH THE NOTES. ANY BROKER, HOLDER OR OTHER PERSON DEALING WITH THE NOTES DOES SO THEREFORE IN FULL KNOWLEDGE OF THIS DISCLAIMER AND CAN PLACE NO RELIANCE WHATSOEVER ON HANG SENG INDEXES COMPANY**

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Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Supplement to the Plan of Distribution; Conflicts of Interest

Under our distribution agreement with MLPF&S, MLPF&S will purchase the notes from us as principal at the public offering price indicated on the cover of this term sheet, less the indicated underwriting discount.

MLPF&S, a broker-dealer subsidiary of BAC, is a member of the Financial Industry Regulatory Authority, Inc.

(FINRA) and will participate as selling agent in the distribution of the notes. Accordingly, offerings of the notes will conform to the requirements of Rule 5121 applicable to FINRA members. MLPF&S may not make sales in this offering to any of its discretionary accounts without the prior written approval of the account holder.

We will deliver the notes against payment therefor in New York, New York on a date that is greater than two business days following the pricing date. Under Rule 15c6-1 of the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the notes more than two business days prior to the original issue date will be required to specify alternative settlement arrangements to prevent a failed settlement.

The notes will not be listed on any securities exchange. In the original offering of the notes, the notes will be sold in minimum investment amounts of 100 units. If you place an order to purchase the notes, you are consenting to MLPF&S acting as a principal in effecting the transaction for your account.

MLPF&S may repurchase and resell the notes, with repurchases and resales being made at prices related to then-prevailing market prices or at negotiated prices, and these will include MLPF&S's trading commissions and mark-ups. MLPF&S may act as principal or agent in these market-making transactions; however, it is not obligated to engage in any such transactions. At MLPF&S's discretion, for a short, undetermined initial period after the issuance of the notes, MLPF&S may offer to buy the notes in the secondary market at a price that may exceed the initial estimated value of the notes. Any price offered by MLPF&S for the notes will be based on then-prevailing market conditions and other considerations, including the performance of the Basket and the remaining term of the notes. However, neither we nor any of our affiliates is obligated to purchase your notes at any price, or at any time, and we cannot assure you that we or any of our affiliates will purchase your notes at a price that equals or exceeds the initial estimated value of the notes.

The value of the notes shown on your account statement will be based on MLPF&S's estimate of the value of the notes if MLPF&S or another of our affiliates were to make a market in the notes, which it is not obligated to do. That estimate will be based upon the price that MLPF&S may pay for the notes in light of then-prevailing market conditions and other considerations, as mentioned above, and will include transaction costs. At certain times, this price may be higher than or lower than the initial estimated value of the notes.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Structuring the Notes

The notes are our debt securities, the return on which is linked to the performance of the Basket. The related guarantees are BAC's obligations. As is the case for all of our and BAC's respective debt securities, including our market-linked notes, the economic terms of the notes reflect our and BAC's actual or perceived creditworthiness at the time of pricing. In addition, because market-linked notes result in increased operational, funding and liability management costs to us and BAC, BAC typically borrows the funds under these types of notes at a rate that is more favorable to BAC than the rate that it might pay for a conventional fixed or floating rate debt security. This rate, which we refer to in this term sheet as BAC's internal funding rate, is typically lower than the rate BAC would pay when it issues conventional fixed or floating rate debt securities. This generally relatively lower internal funding rate, which is reflected in the economic terms of the notes, along with the fees and charges associated with market-linked notes, typically results in the initial estimated value of the notes on the pricing date being less than their public offering price.

At maturity, we are required to pay the Redemption Amount to holders of the notes, which will be calculated based on the performance of the Basket and the \$10 per unit principal amount. In order to meet these payment obligations, at the time we issue the notes, we may choose to enter into certain hedging arrangements (which may include call options, put options or other derivatives) with MLPF&S or one of our other affiliates. The terms of these hedging arrangements are determined by seeking bids from market participants, including MLPF&S and its affiliates, and take into account a number of factors, including our and BAC's creditworthiness, interest rate movements, the volatility of the Basket Components, the tenor of the notes and the tenor of the hedging arrangements. The economic terms of the notes and their initial estimated value depend in part on the terms of these hedging arrangements.

MLPF&S has advised us that the hedging arrangements will include a hedging related charge of approximately \$0.075 per unit, reflecting an estimated profit to be credited to MLPF&S from these transactions. Since hedging entails risk and may be influenced by unpredictable market forces, additional profits and losses from these hedging arrangements may be realized by MLPF&S or any third party hedge providers.

For further information, see Risk Factors—General Risks Relating to the Notes beginning on page PS-7 and Use of Proceeds on page PS-17 of product supplement EQUITY INDICES SUN-1.

Market-Linked Step Up Notes

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Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Summary Tax Consequences

You should consider the U.S. federal income tax consequences of an investment in the notes, including the following:

There is no statutory, judicial, or administrative authority directly addressing the characterization of the notes.

You agree with us (in the absence of an administrative determination, or judicial ruling to the contrary) to characterize and treat the notes for all tax purposes as a single financial contract with respect to the Basket.

Under this characterization and tax treatment of the notes, a U.S. Holder (as defined beginning on page 50 of the prospectus) generally will recognize capital gain or loss upon maturity or upon a sale or exchange of the notes prior to maturity. This capital gain or loss generally will be long-term capital gain or loss if you held the notes for more than one year.

No assurance can be given that the IRS or any court will agree with this characterization and tax treatment.

Under current Internal Revenue Service guidance, withholding on dividend equivalent payments (as discussed in the product supplement), if any, will not apply to notes that are issued as of the date of this term sheet unless such notes are delta-one instruments.

You should consult your own tax advisor concerning the U.S. federal income tax consequences to you of acquiring, owning, and disposing of the notes, as well as any tax consequences arising under the laws of any state, local, foreign, or other tax jurisdiction and the possible effects of changes in U.S. federal or other tax laws. You should review carefully the discussion (including the opinion of our counsel, Morrison & Foerster LLP) under the section entitled U.S. Federal Income Tax Summary beginning on page PS-28 of product supplement EQUITY INDICES SUN-1.

Validity of the Notes

In the opinion of McGuireWoods LLP, as counsel to BofA Finance and BAC, when the trustee has made an appropriate entry on Schedule 1 to the Master Registered Global Note dated November 4, 2016 that represents the notes (the Master Note) identifying the notes offered hereby as supplemental obligations thereunder in accordance with the instructions of BofA Finance, and the notes have been delivered against payment therefor as contemplated in this pricing supplement and the related prospectus, prospectus supplement and product supplement, all in accordance with the provisions of the indenture governing the notes and the related guarantee, such notes will be legal, valid and binding obligations of BofA Finance, and the related guarantee will be the legal, valid and binding obligations of BAC, subject, in each case, to the effects of applicable bankruptcy, insolvency (including laws relating to preferences, fraudulent transfers and equitable subordination), reorganization, moratorium and other similar laws affecting creditors' rights generally, and to general principles of equity. This opinion is given as of the date of this pricing supplement and is limited to the laws of the State of New York and the Delaware Limited Liability Company Act and the Delaware General Corporation Law (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) as in effect on the date hereof. In addition, this opinion is subject to customary assumptions about the trustee's authorization, execution and delivery of the indenture governing the notes and due authentication of the Master Note, the validity, binding nature and enforceability of the indenture governing the notes and the related guarantee with respect to the trustee, the legal capacity of individuals, the genuineness of signatures, the authenticity of all documents submitted to McGuireWoods LLP as originals, the conformity to original documents of all documents submitted to McGuireWoods LLP as copies thereof, the authenticity of the originals of such copies and certain factual matters, all as stated in the letter of McGuireWoods LLP dated August 23, 2016, which has been filed as an exhibit to the Registration Statement of BofA Finance and BAC relating to the notes and the related guarantees initially filed with the Securities and Exchange Commission on August 23, 2016.

Market-Linked Step Up Notes

Linked to an International Equity Index Basket, due April 30, 2021

Where You Can Find More Information

We and BAC have filed a registration statement (including a product supplement, a prospectus supplement, and a prospectus) with the SEC for the offering to which this term sheet relates. Before you invest, you should read the Note Prospectus, including this term sheet, and the other documents relating to this offering that we and BAC have filed with the SEC, for more complete information about us, BAC and this offering. You may get these documents without cost by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, we, any agent, or any dealer participating in this offering will arrange to send you these documents if you so request by calling MLPF&S toll-free at 1-800-294-1322.

Market-Linked Investments Classification

*MLPF&S classifies certain market-linked investments (the *Market-Linked Investments*) into categories, each with different investment characteristics. The following description is meant solely for informational purposes and is not intended to represent any particular Enhanced Return Market-Linked Investment or guarantee any performance.*

Enhanced Return Market-Linked Investments are short- to medium-term investments that offer you a way to enhance exposure to a particular market view without taking on a similarly enhanced level of market downside risk. They can be especially effective in a flat to moderately positive market (or, in the case of bearish investments, a flat to moderately negative market). In exchange for the potential to receive better-than market returns on the linked asset, you must generally accept market downside risk and capped upside potential. As these investments are not market downside protected, and do not assure full repayment of principal at maturity, you need to be prepared for the possibility that you may lose all or part of your investment.

Market-Linked Step Up Notes

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