

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55198; File No. SR-NYSE-2006-116)

January 30, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Annual Report Timely Filing Requirements

I. Introduction

On December 14, 2006, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 802.01E of its Listed Company Manual (“Manual”) to end, as of December 31, 2007, the Exchange’s discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission. The proposed rule change was published for public comment in the Federal Register on December 28, 2006.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Section 802.01E of the Manual to end, as of December 31, 2007, the Exchange’s discretion to continue the listing of certain companies that are twelve or more months late in filing their annual reports<sup>4</sup> with the Commission.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 54977 (December 20, 2006), 71 FR 78249.

<sup>4</sup> The term “annual report” used herein refers to the filing of Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR.

Section 802.01E of the Manual provides that if a company fails to timely file a periodic annual report with the Commission, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within six months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period depending on the company's specific circumstances; but in any event if the company does not file its periodic annual report by the end of the one year period ("Initial Twelve-Month Period"), the Exchange will begin suspension and delisting procedures in accordance with the procedures in Section 804.00 of the Manual.

Section 802.01E states that, in certain unique circumstances, a listed company that is delayed in filing its annual report beyond the Initial Twelve-Month Period may have a position in the market (relating to both the nature of its business and its very large publicly-held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such a case, where the Exchange believes that the company remains suitable for listing given, among other factors,<sup>5</sup> its relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and where there is a reasonable expectation that the company will be able to resume timely filings in the future, the Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding the company's failure to file within the time periods specified in Section 802.01E of the Manual.

The Exchange has determined that it is unnecessary for the Exchange to retain the discretion to allow companies to continue to be listed beyond the Initial Twelve-Month Period

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<sup>5</sup> See Section 802.01E of the Manual for a complete list of the factors that the Exchange must consider when determining whether to continue listing a company beyond the Initial Twelve-Month Period.

after December 31, 2007. Therefore, under this proposed amendment, the Exchange's discretion to allow a company to continue to be listed beyond the Initial Twelve-Month Period set forth in Section 802.01E of the Manual shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange had determined to continue listing a company beyond the Initial Twelve-Month Period under the circumstances specified in Section 802.01E of the Manual as described above,<sup>6</sup> and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Manual.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>8</sup>

Specifically, the Commission believes that eliminating the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports will encourage listed companies to file any late annual reports as quickly as practicable. This should benefit the public interest and protect investors by helping to assure that investors receive

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<sup>6</sup> See supra note 5 and accompanying text.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

up to date financial information about listed companies. Eliminating the Exchange's discretion to not commence delisting of a company past the Initial 12 Month Period ensures that companies cannot continue to trade on the Exchange for extended periods of time without making publicly available their required annual reports.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2006-116) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).