

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53494; File No. SR-NYSE-2005-72)

March 16, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on October 20, 2005, the New York Stock Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On December 22, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to modify the Listed Company Manual requirements relating to delisting procedures. The proposed rule change, as amended, reflects modifications of the Exchange’s delisting rules to conform to the requirements of

¹ 15 U.S.C. 78s (b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, the Exchange made clarifying changes to Item 3 of the Exchange’s Form 19b-4 and to Exhibit 1.

recently adopted Commission Rule 12d2-2.⁵ The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

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Listed Company Manual

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804.00 Procedure for Delisting

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The following will be the operative text of Section 804.00 effective as of April 24, 2006:

- If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and the basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.
- The notice to the issuer [shall] will also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange [(a majority of the members of such Committee voting on each determination must be public Directors)], provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. Such written request must state with specificity the grounds on which the issuer intends to challenge the determination of the

⁵ 17 CFR 240.12d2-2.

Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of \$20,000.

- If the issuer does not request a review within the specified period, the Exchange [shall] will suspend trading in the security and [an application by the Exchange staff to] will file a Form 25 with the Securities and Exchange Commission to strike the security from listing and furnish a copy of such [application shall be furnished] Form 25 to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. Prior to filing a Form 25 with the Securities and Exchange Commission, the Exchange will give public notice of its final determination to remove the security from listing by issuing a press release and posting a notice on its web site. Such notice will remain posted on the Exchange's web site until the delisting is effective pursuant to Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.
- If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. [The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.] The Committee's review and final decision [shall] will be based on oral argument (if

any) and the written briefs and accompanying materials submitted by the parties.

The company [shall] will not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section [shall] will not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

- A request for review will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate

suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

- Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff. Each party must submit its brief and any accompanying materials to both its counterparty and to the Office of the General Counsel of the Exchange, and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.
- The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. The Committee in its sole discretion may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. Document discovery and depositions will not be permitted.

- If the Committee decides that the security of the issuer should be removed from listing, the Exchange [shall] will (i) suspend trading in the security as soon as practicable [and an application shall be submitted by the Exchange to] , (ii) file a Form 25 with the Securities and Exchange Commission to strike the security from listing and registration and (iii) furnish a copy of such [application shall be furnished] Form 25 to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. Prior to filing the Form 25 with the Securities and Exchange Commission, the Exchange will give public notice of its final determination to remove the security from listing by issuing a press release and posting a notice on its web site. Such notice will remain posted on the Exchange's web site until the delisting is effective pursuant to Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the Committee decides that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

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806.02 Removal from List Upon Request of Company

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The following will be the operative text of Section 806.02 effective as of April 24, 2006:

An issuer may delist a security from the Exchange after its board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2-2(c) under the Securities Exchange Act of 1934. The issuer [may] must thereafter file [an application] a Form 25 with the Securities and Exchange

Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. The company must provide a copy of such Form 25 to the Exchange simultaneously with its filing with the Securities and Exchange Commission. If an issuer delists a class of stock from the Exchange pursuant to this [Rule] Section 806.02, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 804.00 (“Procedure for Delisting”) and Section 806.02 (“Removal from List Upon Request of Company”) of the Exchange’s Listed Company Manual. The proposed amendments are intended to comply with the Commission’s instruction in the adopting release for Commission Rule 12d2-2⁶ requiring each national securities exchange to have rules designed to meet the requirements of

⁶ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

Commission Rule 12d2-2 and to make initial filings of such proposed rule changes with the Commission no later than October 20, 2005. The text of the proposed amendments provides that the revised procedures required by such amendments would be operative as of April 24, 2006.

Commission Rule 12d2-2(b)⁷ allows a national securities exchange to file a Form 25 to strike a class of securities from listing in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

- Notice to the issuer of the exchange's decision to delist its securities;
- An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and
- Public notice of the exchange's final determination to remove the security from listing by issuing a press release and posting notice on its web site. Such notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to Commission Rule 12d2-2(d)(1)⁸ and must remain posted until the delisting is effective.

The proposed amendment to Section 804.00 provides that, before filing a Form 25 with the Commission in connection with the delisting of a security, the Exchange would give public notice of its final determination to delist the security by issuing a press release and posting a notice on its Web site. The notice would remain posted on the Exchange's Web site until the delisting is effective pursuant to Commission Rule 12d2-2(d)(1), i.e., 10 days after filing of the Form 25 unless the Commission acts to delay its effectiveness. Because Section 804.00 currently requires the Exchange to notify the issuer of the delisting decision and provides the issuer with a right to appeal that determination to a committee of the Exchange's board of directors, the Exchange

⁷ 17 CFR 240.12d2-2(b).

⁸ 17 CFR 240.12d2-2(d)(1).

believes that it does not need to make any other amendments to Section 804.00 to comply with Commission Rule 12d2-2(b).

The proposed amendment to Section 806.02 provides that any issuer wishing to voluntarily delist a security from the Exchange must comply with all of the requirements of Commission Rule 12d2-2(c)⁹ and must furnish the Exchange with a copy of the Form 25 filed in connection with the delisting simultaneously with its filing with the Commission.

In addition to the proposed changes to comply with Commission Rule 12d2-2, the Exchange proposes to amend Section 804.00 to delete references therein to “public Directors” and “industry Directors,” as these terms relate to a historical governance structure of the Exchange that no longer exists.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change, as amended, is the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

⁹ 17 CFR 240.12d2-2(c).

¹⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2005-72 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2005-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-NYSE-2005-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

*Action as set forth or recommended herein
APPROVED pursuant to authority delegated by the
Commission under Public Law 87-592.*

For the Division of Market Regulation

by: _____

(Date)

¹¹ 17 CFR 200.30-3(a)(12).