SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56769 / November 8, 2007

Admin. Proc. File No. 3-12564

In the Matter of the Application of

NAVISTAR INTERNATIONAL CORPORATION

c/o Charles W. Mulaney Jr., Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Chicago, Illinois 60606

For Review of Action Taken by

NEW YORK STOCK EXCHANGE LLC

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE -- DELISTING FROM THE NEW YORK STOCK EXCHANGE

Failure to Meet Continued Listing Requirements

National securities exchange removed securities from exchange listings because the securities issuer was not in compliance with the timely filing requirement and failed to return to compliance within the twelve-month cure period. Held, the application for review is dismissed.

APPEARANCES:

Steven K. Covey, of Navistar International Corporation, for Navistar International Corporation, and Charles W. Mulaney Jr., Colleen P. Mahoney, Laura D. Cullison, and Alison Rhoten, of Skadden, Arps, Slate, Meagher & Flom LLP, for Navistar International Corporation.

Douglas W. Henkin and Kylie Davidson, of Milbank, Tweed, Hadley & McCloy LLP, for New York Stock Exchange LLC and NYSE Regulation, Inc.

Appeal filed: February 8, 2007
Last brief received: May 16, 2007

I.

Navistar International Corporation ("Navistar" or the "Company"), an issuer formerly listed on the New York Stock Exchange LLC (the "NYSE") and the NYSE Arca, Inc. (collectively, the "Exchange"), appeals the decision of the NYSE Regulation Board of Directors Committee for Review (the "Review Committee") to remove the entire class of common stock and the entire class of convertible junior preference stock, series D (collectively, "Listed Securities"), of Navistar from listing and registration on the Exchange. The Review Committee determined that Navistar's Listed Securities were no longer eligible for listing on the Exchange because the Company failed to file its annual report for fiscal year 2005 with the Commission and was unable to return to compliance within the twelve-month cure period. We base our findings on an independent review of the record.

II.

Navistar, formerly known as International Harvester Company, is a holding company and defense contractor that produces military vehicles, commercial trucks, diesel engines, and school buses. Section 13(a) of the Securities Exchange Act of 1934 requires issuers to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. 1/ Pursuant to Exchange Act Section 13(a), the Commission has promulgated Rules 13a-1 and 13a-13, which require issuers to file annual and quarterly reports with the Commission. 2/

NYSE Listed Company Manual Rule 802.01E ("Rule 802.01E") requires Exchange-listed companies to file timely their annual report filings with the Commission as a condition of continued listing on the Exchange. When a listed company becomes delinquent in filing its annual report, Rule 802.01E provides for an automatic six-month grace period from the filing due date during which the late-filing company's securities are permitted to continue trading on the Exchange while NYSE staff monitors the company and the status of the filing until the annual report is filed. 3/ The Exchange adds the company to the late filer list on the NYSE website and appends the initials "LF," indicating a late filer, to the company's profile page and

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1/ 15 U.S.C. § 78m.

2/ 17 C.F.R. §§ 240.13a-1 and 13a-13.

3/ Rule 802.01E ¶ 4. Other factors "which may lead to a company's delisting" include the "failure of a company to make timely, adequate, and accurate disclosures of information to its shareholders and the investing public." NYSE Listed Company Manual Rule 802.01D.

makes the information available on the consolidated tape. 4/ If the company fails to file its annual report within the six-month grace period, the NYSE, in its sole discretion, may permit the company's securities to continue trading on the Exchange for up to an additional six-month period. 5/ Absent extraordinary circumstances, if the company fails to file its annual report by the end of the second six-month extension, the Exchange begins suspension and delisting procedures.

Navistar failed to file its Form 10-K annual report for the fiscal year ending October 31, 2005 (the "2005 Form 10-K" or "2005 annual report") with the Commission by the January 17, 2006 filing deadline. In a press release issued on that date announcing its failure to file, the Company stated that it was "still in discussions with its outside auditors about a number of open items."

When NYSE staff contacted Navistar in February 2006 to discuss the status of the Company's 2005 Form 10-K, Navistar informed the staff that the Company expected to complete its 2005 annual report in late May or early June 2006. However, Navistar soon realized it would not be able to file within the first six-month grace period. In April 2006, Navistar notified NYSE staff that it was replacing its independent auditor, and in June 2006, Navistar issued a press release announcing that the Company planned to file the 2005 Form 10-K by mid-January 2007.

On July 6, 2006, Navistar submitted a formal request and supporting materials to NYSE staff seeking an additional six-month trading period, through February 1, 2007, to allow the Company to complete and file the 2005 Form 10-K. NYSE staff granted this request by letter dated July 21, 2006, "subject to reassessment on an ongoing basis." The letter cautioned that if Navistar did "not complete its October 31, 2005 Form 10-K filing with the [Commission] by February 1, 2007, the NYSE [would] move forward with the initiation of suspension and delisting procedures." The NYSE letter also noted that, in addition to the delay in filing the 2005 Form 10-K, Navistar was delinquent in filing its Forms 10-Q for the quarters ending January 31, 2006 and April 30, 2006.

At some point, it became evident that Navistar might not be able to make the February 1, 2007 deadline for its filing. During Navistar's ongoing discussions with NYSE staff, the possible availability of an exception to the Exchange's delisting requirements, the so-called "national interest" exception, arose. That exception is set forth in Rule 802.01E ¶ 7:

> In certain unique circumstances, a listed company that is delayed in filing its annual report beyond the twelve-month period described above . . . because its

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4/ See, e.g., Order Granting Approval to Proposed Rule Change Relating to Section 802.01E of the Listed Company Manual, Securities Exchange Act Rel. No. 53152 (Jan. 19, 2006), 87 SEC Docket 516.

5/ Rule 802.01E ¶ 4.

> financial statements have not yet been completed 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.

If these threshold requirements are met, and the Exchange believes that the company remains suitable for listing based on additional criteria, 6/ then the Exchange, "in its sole discretion, may determine to allow the listed company to continue listing beyond" the maximum twelve-month cure period. This exception expires on December 31, 2007. 7/ The only company to be granted this exception to date is the Federal National Mortgage Association ("Fannie Mae").

During an October 12, 2006 meeting between NYSE staff and Navistar, NYSE staff informed Navistar that the NYSE had been having discussions with the Commission regarding the "national interest" exception, and that the Commission "was uncomfortable in having open-ended judgment applied to the Exchange" and had discussed "potentially removing that exception" from NYSE rules. NYSE staff informed Navistar that, accordingly, "none of our late filers at [that] point in time would be considered for the ['national interest'] exception." 8/

On October 20, 2006, NYSE staff again spoke to Navistar regarding the submission of a revised timeline for completion of the delinquent filings and agreed to meet on November 8, 2006. However, on November 7, 2006, Navistar cancelled that meeting, informing NYSE staff that the Company had decided instead to seek Commission support for Navistar's continued listing on the NYSE market.

Navistar met with staff of the Commission's Division of Market Regulation ("Market Regulation") on December 5, 2006 to make a formal presentation outlining the Company's

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6/ These criteria include continued compliance with applicable quantitative and qualitative listing standards, the continued ability to meet current debt obligations and adequately finance operations, reported progress on completing financial statements, public transparency regarding status, and the reasonable expectation that the company will be able to resume timely filings in the future. The parties do not dispute that Navistar satisfies these additional criteria.

7/ See Order Approving Proposed Rule Change Amending Annual Report Timely Filing Requirements, Exchange Act Rel. No. 55198 (Jan. 30, 2007), 89 SEC Docket 3029. If a company listed under this exception fails to file its periodic annual report by December 31, 2007, the Exchange will commence suspension and delisting proceedings against the company. Rule 802.01E ¶ 8.

8/ On December 14, 2006, the New York Stock Exchange, Inc. filed a notice that it was amending Rule 802.01E to provide for the expiration of the "national interest" exception. See supra note 7.

position that Navistar was eligible for the "national interest" exception. According to Navistar, following the Company's presentation, Market Regulation staff stated at the meeting that "the matter was one for the NYSE to determine in the first instance." The next day, Navistar contacted NYSE staff to brief the NYSE on the Company's meeting with Market Regulation staff and provided NYSE staff with a copy of the presentation that the Company had made to Market Regulation staff. NYSE staff learned upon reviewing the presentation materials that Navistar had attempted to persuade the Commission that the Company was eligible for the "national interest" exception. 9/

In a December 14, 2006 telephone call, Navistar informed NYSE staff that the Company would be unable to file its 2005 Form 10-K by February 1, 2007. According to the NYSE, NYSE staff informed Navistar during that call that the Company did not meet the threshold criteria to be considered for the "national interest" exception, although Navistar disputes that this disclosure was made during this or any other communication with NYSE staff. NYSE staff also told Navistar that the NYSE would proceed with suspension and delisting procedures.

NYSE staff confirmed that it would commence these procedures in a letter to Navistar dated December 15, 2006, noting that the Company had "announced that completion of its 2005 financial statements [would] extend beyond February 1, 2007," and that this was "beyond the maximum 12-month period otherwise available to complete the filing as permitted under the NYSE's rules." Under NYSE Listed Company Manual Rule 804, if an issuer wishes to challenge the NYSE staff's delisting determination, the issuer may request a hearing before a committee of the Exchange's board of directors. Navistar promptly requested Exchange review of the NYSE staff's decision on the basis that Navistar was eligible for the "national interest" exception and that NYSE staff had failed to consider the availability of that exception in determining to delist the Listed Securities. During the pendency of the Exchange review process, the NYSE agreed to permit the Company's stock to continue to trade on the Exchange. 10/

9/ According to the NYSE, although Navistar had asked NYSE staff about the "national interest" exception on an informal basis, the Company had not asserted that it qualified for that exception and had not submitted directly any evidence supporting that position to NYSE staff. Navistar asserts, however, that NYSE staff "continued to maintain that they could not consider an additional extension given the Commission's negative attitude towards such additional extensions."

10/ On December 15, 2006, Standard & Poor's announced that it was removing Navistar's stock from the Standard & Poor's 500 Composite Stock Price Index ("S&P 500") effective "after the close of trading" on December 19, 2006. According to a declaration submitted to the Review Committee by NYSE Regulation, Inc. senior management, the chairman of the S&P Index Committee informed NYSE Regulation, Inc. senior management in a December 20, 2006 telephone conversation that Standard & Poor's

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On January 17, 2007, Navistar filed a Form 12b-25 Notification of Late Filing with the Commission stating that the Company would be unable to file its Form 10-K for the fiscal year ending October 31, 2006 either by the due date of January 16, 2007 or within the fifteen-day extension provided by Exchange Act Rule 12b-25(b). 11/ On January 30, 2007, the Review Committee held its review hearing. Prior to the hearing, the parties submitted briefs, witness statements, and other documentation in support of their respective positions. At the hearing, the Review Committee heard oral argument and extensive witness testimony concerning whether Navistar was eligible for the "national interest" exception.

Citing its $2.5 billion total market capitalization and its role as a defense contractor, Navistar argued at the hearing that, in terms of size and the nature of its business, it qualified for the "national interest" exception. Navistar's chief executive officer testified, however, that the delisting would not have any impact on Navistar's government contracts. While expressing concern that delisting could jeopardize the Company's "trade credit . . . if there's any confidence lost in the [C]ompany," he admitted that Navistar was "a liquid company [that could] withstand" the anticipated impact of the Company's suppliers collecting on the trade debt owed them by Navistar. In addition, he conceded that "[h]ow much of a threat" delisting would be to the Company "is always debatable." He conceded further that Navistar was "a fundamentally sound company with good cash balances, et cetera." Navistar's chief financial officer ("CFO") admitted to the Review Committee that the delisting would not trigger any defaults in the Company's outstanding debt and that Navistar would not have to raise additional capital in the market. He related how Navistar's most recent refinancing syndication was "oversubscribed, [by] 2.7 billion" when the Company sought to refinance $1.5 billion.

Navistar also argued that the "national interest" exception could not be limited solely to Fannie Mae. Navistar expressed concern that "what we really have here is what has been effectually known as the Fannie Mae rule created for Fannie Mae and applied to Fannie Mae and no one else."

The NYSE staff argued that, although Navistar was a large company, "it was not amongst even the largest, not even the top thousand, at the time the decision that [NYSE] staff came to was made." 12/ Richard Ketchum, chief executive officer of NYSE Regulation, Inc., testified

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10/ (...continued)
believed that Navistar's market capitalization was not representative of the "large cap" market.

11/ 17 C.F.R. § 240.12b-25(b).

12/ The NYSE staff cited figures showing that, during the relevant period, Navistar's market capitalization would have placed it only in the top forty percent of Exchange-listed
(continued...)

that "a company not only has to be of extraordinary size, it must also for a variety of factors truly create the risk of . . . the delisting impinging on a national interest." Ketchum explained that "in [his] analysis throughout this process, in discussions with the [NYSE] staff, in reviewing what they indicated they [had] been provided by Navistar, . . . [he] did not believe [that the Rule 802.01E] standards were met, either from the standpoint of Navistar being truly one of the largest companies listed on the [Exchange]," or that the Company's delisting "would have a fundamental, profound, systemic effect on the national interest." Distinguishing Navistar's situation from that of Fannie Mae, Ketchum observed that Fannie Mae's position in the market was such that "a significant lack of confidence with respect to [Fannie Mae] would create a meaningful risk and meaningful impact on the national economy." He stated further that the "national interest" exception would apply to "extremely large" companies other than Fannie Mae, which "because of their positioning and potential exposure, [would] create[] very real impacts to the national economy, . . . systemic risk in some way or other to the national economy as a result of their failure."

Glenn Tyranski, NYSE Regulation, Inc.'s senior vice president of financial compliance, testified that, "in internal discussions" with Ketchum and other NYSE senior management prior to NYSE staff's determination to delist Navistar's Listed Securities, NYSE staff concluded that, although Navistar likely met "all of the secondary criteria [of the Rule 802.01E exception]," from "a threshold standpoint they don't make it on all of it. In other words, you need that to get into the qualifying round. And that was our conclusion at the senior management level, that that was in fact not met." In response to questioning by the Review Committee, Tyranski testified further that an issuer must meet both of the threshold requirements in order to qualify for the "national interest" exception, stating that "it is national interest and substantial size. So in order to move from that, you have to satisfy both sides of the 'and.'" Tyranski also testified that, while "[a]t no point during this process was any formal request made for national interest," NYSE staff communicated to Navistar during the December 14, 2006 conference call that the Company did not qualify for the "national interest" exception.

On February 6, 2007, the Review Committee affirmed the NYSE staff's decision to suspend and delist Navistar's Listed Securities, finding the determination consistent with NYSE rules and the purposes of the securities laws. The Review Committee stated that "the Company was given a full opportunity to present oral argument, witness testimony, and any additional evidence it wished to present regarding whether its circumstances did, in fact, qualify it for continued listing under [Rule] 802.01E." The Review Committee also noted that Navistar presented evidence in support of the Company's assertion that it met the threshold criteria of the "national interest" exception, as well as evidence relating to the Company's continued suitability for listing in light of the specific criteria listed in Rule 802.01E. The Review Committee stated

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12/ (...continued)
companies and that the average market capitalization of Exchange-listed companies was $9.4 billion.

that, in reaching its decision to delist Navistar, it "fully considered all of the evidence presented to it by the Company and NYSE Regulation . . . ." 13/ This appeal followed. 14/

On February 14, 2007, the NYSE suspended trading in Navistar's Listed Securities. On February 16, 2007, Navistar's Listed Securities were delisted from the Exchange. Those securities currently are quoted on the Pink Sheet Electronic Quotation Service (the "Pink Sheets"). Attached to Navistar's Form 8-K filed on June 28, 2007 is a press release dated June 26, 2007 stating that the Company "expects to file its fiscal 2005 Form 10-K . . . by the end of September" 2007. 15/ The press release also states that Navistar "expects to complete and file Form 10-Ks for the fiscal years ending October 31, 2006 and 2007, by March 31, 2008." 16/ We take official notice that, to date, Navistar has not filed its 2005 Form 10-K.

III.

Our review is governed by Exchange Act Section 19(f), 17/ which provides that we will dismiss Navistar's appeal if we determine that the specific grounds on which the delisting is based exist in fact, that the delisting is in accordance with the applicable NYSE rules, and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. 18/

13/ The Review Committee found that the "record in this matter . . . establishe[d] that NYSE Regulation Staff did consider the Company's possible qualification for the 'national interest' exception and determined that the Company did not meet the threshold criteria for application of the exception."

14/ On February 13, 2007, the Commission denied Navistar's motion for an expedited stay of the Review Committee's determination. See Order Denying Stay, Exchange Act Rel. No. 55304 (Feb.13, 2007), 89 SEC Docket 3384.

15/ Navistar Int'l. Corp. Current Report (Form 8-K), Ex. No. 99.1, at E-1 (June 28, 2007). Among the twenty-two accounting issues currently under review in Navistar's restatement process are "the adequacy of amounts recorded for asbestos liabilities," "the timing of revenue recognition," "inventory valuations," and "the accounting and reporting for derivatives."

16/ Id.

17/ 15 U.S.C. § 78s(f).

18/ Id. See also Fog Cutter Capital Group, Inc., Exchange Act Rel. No. 52993 (Dec. 21, 2005), 86 SEC Docket 3164, petition denied, 474 F.3d 822 (D.C. Cir. 2007) (NASD); Outsource Int'l, Inc., 55 S.E.C. 382, 390-91 (2001) (NASD).

A. Specific Grounds Exist in Fact

We find that the Review Committee based its delisting determination on specific grounds existing in fact. 19/ There is no dispute that Navistar failed to file its 2005 Form 10-K timely or within the twelve-month cure period that ended on February 1, 2007. Navistar's 2005 Form 10-K is now more than twenty months delinquent. In addition, Navistar has not filed a Form 10-Q since September 2005 and was unable to file its 2006 Form 10-K within the time permitted. We conclude that the specific factual grounds exist for the Review Committee's delisting determination.

B. The Delisting was in Accordance with NYSE Rules

We find that the delisting was in accordance with the applicable NYSE rules and that the NYSE properly applied Rule 802.01E. Having been given two six-month extensions, Navistar was warned that its failure to file the 2005 Form 10-K by February 1, 2007 would lead to delisting procedures. Navistar subsequently notified the NYSE that the Company would be unable to file its 2005 annual report by the end of the second six-month extension.

Thus, the only alternative for continued listing of Navistar's Listed Securities was the "national interest" exception. Under Rule 802.01E, the "national interest" exception is to be construed narrowly. The Rule states that the circumstances triggering the exception must be "unique" and requires satisfaction of two factors: the size of the listed company's publicly-held market capitalization and the nature of its business. These two factors combined must evidence that a delisting will be "significantly contrary to the national interest and the interests of public investors." 20/

Even assuming that Navistar had met the threshold requirements for continued listing on the Exchange pursuant to Rule 802.01E ¶ 7, the rule provides that the determination to allow the Company to continue listing beyond the twelve-month period rests with the "sole discretion" of the Exchange. In approving the rule change creating the "national interest" exception, however, we stated expressly that the "limited discretion" permitting a filing extension beyond the twelve-month cure period would be "available only in certain very rare circumstances." 21/ We also acknowledged the NYSE's concern that "'the effective functioning of certain companies is of particular importance to the national interest and that a disruption in the orderly market for their

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19/ See, e.g., SC&T Int'l, Inc., 54 S.E.C. 320, 325 (1999) (concluding that delisting determination was based on specific factual grounds where company failed to file its quarterly and annual reports in a timely manner) (NASD).

20/ Rule 802.01E ¶ 7.

21/ Order Granting Approval to Proposed Rule Change Relating to Section 802.01E, 87 SEC Docket at 517.

securities would have serious implications not just for those companies and their shareholders but also for the country as a whole.'" 22/

Navistar does not meet the threshold requirements for the "national interest" exception. According to Navistar, its total market capitalization of $2.5 billion during the relevant period placed it in the top seventeen percent of all publicly-traded companies in the United States. However, Standard and Poor's removed Navistar's stock from the S&P 500 stock price index because Navistar's market capitalization was not representative of the "large cap" market. Thus, although Navistar is a large company, its size is not extraordinary.

Further, the record does not establish that the nature of Navistar's business is such that the delisting of the Company's Listed Securities would have a systemic effect on the national interest. Navistar's business includes the production of military and commercial vehicles. However, from the record, it does not appear that Navistar's role in the market for military and commercial vehicles has been or will be disrupted by Navistar's delisting. Navistar's chief executive officer conceded at the hearing that the delisting would not have any impact on Navistar's government contracts. Navistar's CFO admitted that the delisting of the Company's Listed Securities would not trigger any defaults in its outstanding debt and that Navistar would not have to raise additional capital in the market. He further testified that the Company's then most recent refinancing of $1.5 billion in debt was oversubscribed by $2.7 billion.

Navistar points out that Exchange Act Section 6(b)(5) prohibits unfair discrimination among issuers, 23/ and argues that, implicit in the Commission's approval of the changes to Rule 802.01E was the Commission's finding that the proposed changes did not run afoul of the anti-discrimination requirement. 24/ Navistar then suggests that, because the NYSE applied Rule 802.01E ¶ 7 as though it applied only to Fannie Mae, the NYSE's action in denying Navistar the "national interest" exception was not in accordance with Rule 802.01E.

Navistar adverts to the hearing testimony of Dina Maher, an NYSE Regulation, Inc. compliance director. Maher stated that she had informed the Company at the October 12, 2006 meeting between NYSE staff and Navistar "about the discussions then taking place between the Commission and the NYSE about eliminating the 'Fannie Mae exception,'" and that "the Commission was 'uncomfortable' with the discretion granted the NYSE" by the rule. Accordingly, Maher informed Navistar that none of the late filers at that point would be

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22/ Id.

23/ 15 U.S.C. § 78f(b)(5).

24/ See Credit Suisse First Boston Corp., 400 F.3d 1119, 1130 (9th Cir. 2005) (recognizing that the "ultimate approval of a proposed [self-regulatory organization] rule reflects the Commission's determination that the proposed rule is consistent with the purposes of the Exchange Act").

considered for the exception. Navistar also cites the 2006 testimony of Commission Chairman Christopher Cox before the Senate Committee on Banking, Housing and Urban Affairs, in which he referred to Rule 802.01E ¶ 7 as a "unique exception for Fannie Mae" and reported that the Commission had encouraged the NYSE to amend the rule "to put an expiration date on this exception." 25/ Navistar contends that the NYSE's failure to grant the Company the "national interest" exception constituted an abuse of discretion because "there is no principled, non-discriminatory basis to distinguish between Fannie Mae and Navistar with respect to eligibility for an extension under Rule 801.01E ¶ 7 [sic]." 26/ Navistar notes that the successful effort to eliminate the exception as of December 31, 2007 does not alter the fact that Rule 802.01E ¶ 7 currently is in "full force and effect."

Navistar's arguments fail. Both the Review Committee and we considered Navistar's qualifications for the "national interest" exception on the merits. 27/ As the Review Committee decision stated, Navistar was given full opportunity at the hearing "to present oral argument, witness testimony, and any additional evidence it wished to present" in pursuit of the "national interest" exception. We have reviewed the record de novo. For the reasons stated above, we have concluded that the "national interest" exception is not available to Navistar.

We also disagree with Navistar's argument that the NYSE's determination with respect to Fannie Mae cannot be properly distinguished from the Review Committee's determination here. Fannie Mae's market capitalization during the relevant period was more than twenty-one times that of Navistar's. Ketchum testified before the Review Committee that Fannie Mae's position in the market is so unique that a loss of investor confidence in that institution would have a meaningful impact on the national economy. As the NYSE points out, "[t]he concern with Fannie Mae was the potential impact that delisting Fannie Mae might have had on the market for home mortgages and on obligations other than Fannie Mae common stock, and the potential

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25/ Accounting Irregularities at Fannie Mae: Hearing Before the S. Comm. on Banking, Housing and Urban Affairs, 109th Cong. (2006) (statement of Christopher Cox, Chairman of the Securities and Exchange Commission).

26/ Navistar also asserts that Fannie Mae's financial statements required restatement due to fraud, while Navistar's restatement of its financial statements was not the result of misconduct.

27/ Navistar contends that NYSE staff neither considered the applicability of the "national interest" exception to Navistar nor communicated its conclusion that the Company did not qualify for the exception. This argument is beside the point: it is the determination of the Review Committee that is before us here. Cf. James B. Chase, 56 S.E.C. 149, 160 n.26 (2003) (stating that the National Adjudicatory Council's decision was under review, not the NASD hearing panel's determination).

derivative impact on the national housing market and the economy generally." 28/ Ketchum testified that, while Rule 802.01E ¶ 7 would apply to other very large companies comparable in size and economic influence to Fannie Mae, Navistar does not fall into that category of companies whose delisting would have a "fundamental, profound, systemic effect on the national interest."

Navistar concedes that the NYSE granted Fannie Mae the additional listing extension because of the potential derivative impact on the national housing market and the national economy. However, Navistar contends that the risk to the national interest is more acute in Navistar's case because the Company's business is capital-intensive and faces foreign competition, whereas Fannie Mae's domestic competitors could "easily have filled any void" that might have resulted if Fannie Mae had been delisted. Navistar claims that, because there is less competition in its industry than in the financial services industry in which Fannie Mae operates, any impairment of Navistar's business would likely result in a net loss for the national economy. Navistar argues that there is no principled way to conclude that home mortgages are more important to the national interest than military vehicles, school buses, fire trucks, and ambulances. The difficulty with all of these arguments is that they are all premised on the threshold assumption that delisting will seriously impair Navistar's business, and Navistar has not produced any evidence that delisting has had or will have such an effect. As discussed above, the evidence adduced by Navistar at the hearing indicates the opposite – that delisting will not have much if any negative impact on Navistar's business, much less a negative systemic effect on the national economy. 29/ Thus, the effect of the impact on the national economy of any impairment to Navistar's business is moot.

The application of Rule 802.01E ¶ 7 hinges on a company's position in the market based on both the nature of its business and its very large publicly-held market capitalization. As discussed previously, Navistar did not meet that threshold criteria for application of the exception. Having considered all the evidence, the Review Committee found that the "factual record support[ed] the specific grounds" for the decision to delist rather than grant a "national interest" exception. The evidence is so heavily weighted in favor of denying Navistar the "national interest" exception that we see no error in the Review Committee's determination.

28/ NYSE's Memorandum of Opposition to Navistar's application for review before us. Navistar suggests that it is "entirely possible" that no actual harm would have occurred if Fannie Mae had been delisted, referencing the fact that the housing market has not collapsed. Because Fannie Mae was not delisted, Navistar's contention is purely speculative.

29/ We observe that, soon after commencing trading on the Pink Sheets, Navistar's common stock rose approximately thirty percent. See Bob Tita, Navistar shares defy gravity; Takeover talk buoys stock despite delisting, Crain's Chicago Business, Feb. 26, 2007, at 2. To date, Navistar common stock's fifty-two-week price range is $27.27 - $74.60 and its three-month average trading volume is 439,729 shares.

C. The Rules were Applied in a Manner Consistent with the Exchange Act

We find that the applicable NYSE rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. The availability of current financial information is critical to the proper operation of the financial markets. 30/ For this reason, we believe that the "national interest" exception must be available only on the most limited basis. Exchange Act reporting requirements "are a crucial element in the federal government's efforts to maintain the integrity of the nation's financial markets." 31/ We have stated previously that investors are "entitled to assume" that public companies will comply "promptly . . . with their reporting obligations under the Exchange Act." 32/ The failure "to provide timely reports and adequate financial information [is] offensive to the central purpose of the periodic reporting system Congress established through the Exchange Act. For the system to work properly the information reported must be both current and adequate." 33/ Accordingly, Rule 802.01E ¶ 7 has always been intended to be a narrowly-construed exception to the usual requirement of timely filing. The subsequent determination to "sunset" the "national interest" exception was based on the recognition that even the narrow exception afforded by Rule 802.01E ¶ 7, upon reconsideration, was too broad. 34/

Navistar contends further that, because the securities of late filers are identified by the "LF" designation, the continued listing of Navistar's Listed Securities would not cause any investor confusion regarding the Company's filing status. This argument assumes that the only harm engendered by Navistar's continued listing is the confusion concerning its filing status.

30/ SEC v. Savoy Indus. Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978) (stating that Exchange Act reporting provisions are "clear and unequivocal" and are "satisfied only by the filing of complete, accurate, and timely reports") (internal citations omitted); SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (stating that Exchange Act reporting requirements are the "primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities"); see also Gateway Int'l Holdings, Exchange Act Rel. No. 53907 (May 31, 2006), 88 SEC Docket 430, 437 (deregistration proceeding based on issuer's failure to keep current on reporting requirements, stating that "[i]mplicit in [Exchange Act reporting] provisions is the requirement that the reports accurately reflect the issuer's financial condition and operating results").

31/ SEC v. Beisinger Indus. Corp., 421 F. Supp. 691, 694 (D. Mass. 1976), aff'd, 552 F.2d 15 (1st Cir. 1977).

32/ SC&T Int'l, Inc., 54 S.E.C. at 326.

33/ Beisinger Indus. Corp., 421 F. Supp. at 695.

34/ See supra note 7.

We have stated previously that the "purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions." 35/ Investors therefore are entitled to timely reports and adequate financial information. 36/ The "LF" designation is no substitute for the timely reporting of adequate financial information.

Navistar also argues that its present and future shareholders would be better served if its securities remained listed on the Exchange and be subjected to continued monitoring by NYSE staff, instead of trading on the "essentially unregulated" Pink Sheets. We have held previously that, "while exclusion from a quotation system may hurt existing investors, primary emphasis must be placed on the interests of prospective future investors." 37/ Given the importance of current, accurate information from periodic reports properly filed with the Commission, potential future investors would not be well-served if Navistar were permitted to retain the imprimatur of a listed company without those filings. "Prospective investors are entitled to assume that the securities listed" on the Exchange "meet the system's listing standards." 38/ We have stated that the "'inclusion of a security . . . entail[s] an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.'" 39/ Because Navistar does not meet the Exchange's listing standards, we believe that future shareholders would be better served if Navistar's Listed Securities were delisted.

Navistar concedes that delisting a company that fails to meet an exchange's continued listing requirements is consistent with the purposes of the Exchange Act. However, Navistar claims that, except for its delay in filing the 2005 Form 10-K, the Company meets all the

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35/ Gateway Int'l Holdings, 88 SEC Docket at 441 (administrative law judge proceeding holding that revocation of registration of issuer's securities would "further the protection of investors including both current and prospective investors").

36/ SC&T Int'l, Inc., 54 S.E.C. at 326. This concern applies equally to current and prospective investors. Cf. Gateway Int'l Holdings, 88 SEC Docket at 441.

37/ DHB Capital Group, Inc., 52 S.E.C. 740, 745 (1996) (denying application for securities to be included in the Nasdaq SmallCap Market); Biorelease Corp., 52 S.E.C. 219, 224 (1995) (upholding delisting from Nasdaq SmallCap Market); Midland Res., Inc., 46 S.E.C. 861, 864 (1977) (stating that a delisting's "adverse effect on present [share]holders must yield to" the "protection of future investors who rely on listing as an indication that the securities meet the qualifications which such listing suggests").

38/ Biorelease Corp., 52 S.E.C. at 224.

39/ Fog Cutter Capital Group, Inc., 86 SEC Docket at 3174 n.29 (quoting DHB Capital Group, Inc., 52 S.E.C. at 744).

requirements for continued listing on the Exchange. This is incorrect. Navistar has not filed its 2006 Form 10-K and has stated previously that it will not be able to do so before March 2008. 40/

We observe that, under the terms of the "sunset" provision of amended Rule 802.01E, any issuer that is not current on its filings of annual reports by December 31, 2007 will be subject to delisting. Thus, even if we directed the NYSE to grant Navistar the "national interest" exception now, Navistar's Listed Securities would be delisted again at the beginning of next year if its 2005 and 2006 Forms 10-K have not been filed by that time. Navistar has failed to explain how such an anomalous result could be consistent with the purposes of the Exchange Act.

We find that a factual basis exists to delist Navistar's Listed Securities from the Exchange; that the NYSE acted in accordance with its applicable rules in delisting Navistar's Listed Securities; and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. Accordingly, we dismiss this review proceeding.

An appropriate order will issue. 41/

By the Commission (Commissioners ATKINS and CASEY); Chairman COX and Commissioner NAZARETH not participating.

Nancy M. Morris
Secretary

40/ Navistar Int'l. Corp. Current Report (Form 8-K), Ex. No. 99.1, at E-1 (June 28, 2007).

41/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56769 / November 8, 2007

Admin. Proc. File No. 3-12564

In the Matter of the Application of

NAVISTAR INTERNATIONAL CORPORATION

c/o Charles W. Mulaney Jr., Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Chicago, Illinois 60606

For Review of Action Taken by

NEW YORK STOCK EXCHANGE LLC

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION OF NATIONAL SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review of action taken by the New York Stock Exchange LLC against Navistar International Corporation be, and it hereby is, dismissed.

By the Commission.

Nancy M. Morris
Secretary