



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

December 8, 2006

**Response of the Office of Market Supervision
Division of Market Regulation**

Janet M. Kissane
Vice President & Associate General Counsel
Office of the General Counsel
NYSE Group, Inc.
11 Wall Street
New York, NY 10005

Re: NYSE Arca, Inc.
Request for No-Action Relief on behalf of certain dually-listed issuers listed on the New York Stock Exchange LLC from Rule 12d2-2(c)(2)(iii) Contemporaneous Public Notice Requirement
Incoming letter dated December 8, 2006

Dear Ms. Kissane:

This letter is in response to your request for no-action relief dated December 8, 2006. A copy of your letter is attached with this response. By doing this, we avoid having to repeat or summarize the facts you presented. Each capitalized term in this letter has the same meaning as in your letter.

The Exchange, on behalf of certain issuers listed on both the NYSE and the Exchange ("NYSE Dually-Listed Issuers"),¹ requests assurance that the staff of the Division of Market Regulation ("Division") will not recommend enforcement action to the Commission under Section 12(d) of the Exchange Act or Exchange Act Rule 12d2-2(c), if the Exchange issues, via a press release, the public notice required under Exchange Act Rule 12d2-2(c)(2)(iii), on behalf of NYSE Dually-Listed Issuers who request the Exchange to issue such press release.

Based on your representations and the facts presented, the Division will not recommend enforcement action to the Commission if, pursuant to the process set forth in your letter, NYSE Dually-Listed Issuers seeking to voluntarily delist from the Exchange, rely on the Exchange to issue a press release to satisfy the public notice requirement of Exchange Act Rule 12d2-2(c)(2)(iii).

¹ A list of the dually listed issuers is available on the Exchange's Web site at www.nyse.com/attachment/NYSEArca_Listed_Issues.xls. As of the date of this letter, there are currently 121 NYSE dually listed issuers on the Exchange.

This position may only be relied upon by NYSE Dually-Listed Issuers voluntarily delisting from the Exchange pursuant to the procedures your letter outlined and compliance with conditions in this letter. This position does not alter any of the other requirements under the Exchange Act and the rules thereunder, in particular, Exchange Act Rule 12d2-2.

This position is based on the representations made to the Division in your letter. Any different facts may require the Division to reach different conclusions. Further, this response expresses the position of the Division on enforcement action only and does not purport to express any legal conclusions on the questions presented.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth K. King". The signature is fluid and cursive, with a prominent initial "E" and a stylized "K" at the end.

Elizabeth K. King
Associate Director



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December 8, 2006

Sharon Lawson, Esq.
Senior Special Counsel
U.S. Securities and Exchange Commission
Division of Market Regulation
100 F Street
Washington DC 20549

Dear Ms. Lawson,

NYSE Arca, Inc., a registered national securities exchange and self-regulatory organization (the "Exchange" and formerly known as "The Pacific Exchange, Inc."), is writing on behalf of certain issuers (referred to as "dually listed issuers") who are listed on both the Exchange and the New York Stock Exchange LLC, a registered national securities exchange, self-regulatory organization and affiliate of the Exchange (the "NYSE"), to seek assurances that the staff of the Division of Market Regulation will not recommend enforcement action to the Commission under Section 12(d) of the Securities Exchange Act of 1934 (the "Exchange Act") or Rule 12d2-2(c) thereunder if the Exchange issues via a press release the contemporaneous public notice required under Rule 12d2-2(c)(2)(iii) for those dually listed issuers so requesting.

Background

On March 7, 2006, the New York Stock Exchange, Inc. and Archipelago Holdings, Inc. combined to form NYSE Group, Inc., as a result of which the Exchange and NYSE became affiliated registered national securities exchanges. The Exchange and NYSE now have approximately 130 companies who are dually listed on both exchanges.

The Exchange has set about to revitalize its primary listings program, one consequence of which will be a significant fee increase in 2007 for all issuers listed on the Exchange, including dually listed issuers. The Exchange believes that the merger and resulting affiliation of the two exchanges – with their overlapping services, capabilities and the like – highlights the redundancy of a dual listing for these dually listed issuers in particular. Recognizing these and other developments, many of these dually listed issuers have already determined to voluntarily delist from the Exchange and have asked for the assistance of the Exchange in facilitating that process.

For these reasons, the Exchange proposes that, as the national securities exchange from which the dually listed issuers are withdrawing, it be permitted to issue via a press release the public notice required under Rule 12d2-2(c)(2)(iii) on behalf of such dually listed issuers of their intent to delist from the Exchange, if requested to do so by such issuers. The Exchange believes that the assistance it intends to offer would facilitate the voluntary delisting of as many as 130 issuers from its market.

Currently, an issuer seeking to voluntarily remove its securities from listing on the Exchange must comply with Rule 12d2-2(c) under the Exchange Act and NYSE Arca Equities, Inc. Rule 5.4. In particular, with respect to publication of notice required under Rule 12d2-2(c)(2)(iii), contemporaneous with providing written notice to the Exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site. Any notice provided on an issuer's Web site under this paragraph shall remain available until the delisting on Form 25 has become effective pursuant to paragraph (d)(1) of Rule 12d2-2. If the issuer has not arranged for listing and/or registration on another national securities exchange or for quotation of its security in a quotation medium (as defined in Rule 240.15c2-11), then the press release and posting on the Web site must contain this information.¹ The Exchange also must provide notice on its Web site of the issuer's intent to delist and/or withdraw from registration its securities by the next business day. Such notice must remain posted on the Exchange's Web site until the delisting on Form 25 is effective.

Proposed Voluntary Delisting Process and Rationale

As a matter of business policy and courtesy, the Exchange believes it should assist those issuers dually listed on both the Exchange and NYSE – which are now affiliated – in voluntarily delisting from the Exchange. To that end, the Exchange intends to send an email to approximately 130 issuers dually listed on the Exchange and NYSE, setting forth the delisting process for voluntarily delisting from the Exchange. The email will describe the voluntary delisting process, and will specify that if an issuer provides notice by January 5, 2007 (such date referred to herein as the “Issuer Notice Period”) to the Exchange of its intent to voluntarily delist and consents in writing to allow the Exchange to publish a press release on its behalf, the Exchange will include the name of such issuer in one press release that the Exchange will publish on behalf of all such issuers the business day after the end of the Issuer Notice Period.²

In an effort to bring some clarity to the process, the Exchange will further request that such issuers file a Form 25 no sooner than January 18, 2007.

If each issuer publishes its own press release regarding its delisting from the Exchange, the Exchange believes that there will be a flood of piecemeal information into the marketplace about the delistings and the reason for them. The Exchange believes that allowing the Exchange, in its capacity as the national securities exchanges from which the dually listed issuers are withdrawing, to coordinate the publication of notice of delisting by up to 130

¹ NYSE Arca Equities Rule 5.4 also requires that, if applicable, the issuer must also state in its press release the fact that it is no longer eligible for continued listing and the specific policies and standards with which it does not comply.

² The Commission recently approved a rule filing by the Exchange to eliminate the requirement that issuers who are dually listed on the Exchange, on one hand, and any other national securities exchange, on the other hand, submit certified board resolutions relating to its delisting from the Exchange. Instead, the issuer is required to submit a letter from an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal. See File No. SR-NYSEArca-2006-47, Release No. 34-54672 (October 30, 2006), 71 FR 65021 (November 6, 2006).

issuers would not only assist the dually listed issuers in fulfilling their obligations under Rule 12d2-2, but would also provide clear information to the public about the delistings.

Under the Exchange's proposed approach, a dually listed issuer would still be required to comply with Rule 12d2-2 and NYSE Arca Equities Rule 5.4, including the requirement to (a) provide initial notice to the Exchange of its intent to delist; (b) post such notice on its Web site until the delisting became effective; and (c) file its own Form 25. In addition, a dually listed issuer could still issue its own press release if it so desired.

Finally, under the Exchange's proposed approach and as required by the Exchange's rules, any issuer not eligible for continued listing would be required to comply with the process as set forth above, and such issuer's status would be noted in the Exchange's press release, with identification of the specific standards with which it does not comply.

The Exchange is therefore seeking assurance that the staff of the Division of Market Regulation will not recommend enforcement action to the Commission under Section 12(d) of the Exchange Act or Rule 12d2-2(c) thereunder if the Exchange issues via a press release the public notice required under Rule 12d2-2(c)(2)(iii) for those dually listed issuers so requesting, as more fully described above.

* * * *

If you have any questions regarding this request, or desire any additional information, please contact the undersigned at 212-656-2039.

Thank you very much for your attention to this matter.

Sincerely yours,



Janet M. Kissane