

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54672; File No. SR-NYSEArca-2006-47)

October 30, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Modify the Voluntary Withdrawal Procedures of Securities from Listing on the Exchange and, for Dually-Listed Issuers Voluntarily Withdrawing Listed Securities on the Exchange, to Eliminate the Requirement to Submit Resolutions by their Board of Directors

I. Introduction

On August 4, 2006, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 5.4(b) of NYSE Arca Equities, Inc. (“NYSE Arca Equities”), a wholly-owned subsidiary of the Exchange. The Exchange amended the proposal on August 17, 2006. The proposed rule change, as amended, was published for comment in the Federal Register on August 29, 2006.³ The Commission received no comments on the proposal. On October 17, 2006, the Exchange filed Amendment No. 2 to the proposal.⁴ In Amendment No. 2, the Exchange amended the proposed rule text to reflect The Nasdaq Stock Market’s change in status as a national securities exchange,⁵ and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers (as defined below). This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. The Commission has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54348 (August 22, 2006), 71 FR 51264.

⁴ See Partial Amendment dated October 17, 2006 (“Amendment No. 2”).

⁵ See Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 54240 (July 31, 2006), 71 FR 45246 (August 8, 2006); and 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

accelerated approval of Amendment No. 2 and is also providing notice and soliciting comments on Amendment No. 2 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to modify the voluntary withdrawal procedures of securities from listing on NYSE Arca, L.L.C. (“NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. For an issuer who wishes to voluntarily withdraw securities listed on NYSE Arca Marketplace, the Exchange proposes to eliminate the requirement that such issuer submit a letter from an authorized officer of the issuer, providing the specific reasons cited by its board of directors for the proposed withdrawal.⁶ Further, the Exchange proposes to eliminate the requirement that such issuer, under special circumstances, submit the proposed withdrawal to its shareholders for their vote at a meeting for which proxies are solicited, provided the security is not also listed on another exchange with similar requirements.

In place of these requirements, the Exchange proposes that an issuer may voluntarily delist a security from the Exchange after the issuer’s 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 Act.⁷ The issuer must thereafter file a Form 25 with the Commission to withdraw the

⁶ Although the provision requiring submission of a letter stating the board of director’s specific reasons for delisting would be eliminated from NYSE Arca Equities rules, Rule 12d2-2(c)(2)(ii) under the Act has a similar provision that requires issuers to “provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration.” 17 CFR 240.12d2-2(c)(2)(ii).

⁷ 17 CFR 240.12d2-2(c).

security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. In addition, if an issuer delists a class of stock from the Exchange and does not delist other classes of listed securities, the Exchange may consider delisting one or more of such other classes.

Finally, for an issuer whose securities are listed on both the Exchange and another national securities exchange (“dually-listed issuer”), the Exchange proposes to eliminate the requirement that such issuer provide to the Exchange a certified copy of the resolutions of the issuer’s board of directors authorizing the withdrawal from listing on the Exchange. Instead, the Exchange proposes to require the submission of a letter signed by an authorized executive officer of the issuer setting forth the reason for the proposed withdrawal.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.⁸ Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and 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.

⁸ 15 U.S.C. 78f(b). In approving the proposed rule change, as amended, the Commission considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

The Commission believes the Exchange’s proposal to modify voluntary withdrawal procedures is consistent with the requirements of the Act and does not raise any significant regulatory issues. The Exchange proposes to amend the voluntary delisting process by requiring that an issuer may voluntarily delist a security from the Exchange after the issuer’s 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 Act.¹⁰ The issuer must thereafter file a Form 25 with the Commission to withdraw the security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. Further, the Exchange may consider delisting one or more other classes of securities if an issuer delists a class of security and does not delist other classes of listed securities. The Commission notes that the proposed voluntary withdrawal procedures are consistent with the requirements of Rule 12d2-2 under the Act¹¹ and are virtually identical to the voluntary withdrawal procedures of the New York Stock Exchange LLC (“NYSE”).¹² Further, some of the provisions to be deleted are already imposed on issuers by Rule 12d2-2 under the Act.¹³

Further, the Exchange proposes to eliminate the requirement that a dually-listed issuer provide to the Exchange a certified copy of the resolutions of the issuer’s board of directors authorizing the withdrawal from listing on the Exchange. The proposed rule requires that each

¹⁰ 17 CFR 240.12d2-2(c).

¹¹ 17 CFR 240.12d2-2.

¹² See NYSE Listed Company Manual Section 806.02. NYSE and the Exchange are both owned by the NYSE Group, Inc. as a result of a merger between the Archipelago Holdings, Inc. and the New York Stock Exchange, Inc. on March 7, 2006.

¹³ 17 CFR 240.12d2-2(c)(2)(ii).

dually-listed issuer provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal.¹⁴ Dually-listed issuers also must still comply with all the other requirements of NYSE Arca Equities Rule 5.4(b) and Rule 12d2-2 under the Act,¹⁵ which specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated.

The elimination of the board certification requirement may ease the burden on dually-listed issuers who wish to voluntarily withdraw securities from listing on the Exchange. Moreover, the security of a dually-listed issuer would continue to be listed and traded on a registered national securities exchange. As noted by the Exchange, this should ensure that transparent last sale information will continue to be disseminated on the delisted security on an uninterrupted basis. It would also ensure the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act. Based on the above reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

IV. Accelerated Approval of Amendment No. 2

Pursuant to Section 19(b)(2) of the Act,¹⁶ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

In Amendment No. 2, the Exchange proposed to amend the proposed rules to reflect the change in status of the Nasdaq Stock Market to a national securities exchange, and to add that

¹⁴ See proposed NYSE Arca Equities Rule 5.4(b); see also supra note 6.

¹⁵ See 17 CFR 240.12d2-2(c)(2).

¹⁶ 15 U.S.C. 78s(b)(2).

only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers. The Commission finds good cause to accelerate approval of these changes prior to the 30th day after publication in the Federal Register. The revisions made to the proposal in Amendment No. 2 accurately reflect The Nasdaq Stock Market's status as a national securities exchange, and clarify that only an authorized executive officer of a dually-listed issuer may submit a delisting notice to the Exchange. The Commission believes that accelerating approval of Amendment No. 2 is appropriate because these revisions do not raise any new regulatory issues and make the proposal more accurate and clearer.

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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-NYSEArca-2006-47 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-NYSEArca-2006-47. 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 such 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-NYSEArca-2006-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSEArca-2006-47), as amended, is hereby approved, and that Amendment No. 2 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris
Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).