

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53508; File No. SR-NSX-2005-09)

March 17, 2006

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change to Amend 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) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 24, 2005, the National Stock ExchangeSM (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the text of Article IV, Section 3 of the Exchange’s By-Laws to allow its delisting rules to be set forth in sufficient detail to be in conformity with the recently adopted Rule 12d2-2 under the Act.³

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.12d2-2.

CODE OF REGULATIONS (BY-LAWS)

OF

NATIONAL STOCK EXCHANGE

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ARTICLE IV.

Securities Listed on the Exchange

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Delisting of Securities

Section 3.

3.1. Suspension and/or Delisting by Exchange

(a) No Change.

(b) Whenever the Board determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security by filing the appropriate application with the Commission (the “Delisting Application”) to strike a class of securities from listing on the Exchange or from registration under Section 12(b) of the Exchange Act within a reasonable time after the Exchange makes the decision to suspend or delist a security. The Exchange shall provide: (1) notice to the issuer of the Exchange’s decision to delist the issuer’s securities; (2) an opportunity for the issuer to file an appeal [Any issuer or any other person aggrieved by such action may seek relief] pursuant to the Exchange Rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange’s final determination to delist the security via a press release and posting on the Exchange’s website and (4) the prompt delivery of a copy of the Delisting Application to the issuer.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) failure to comply with the listing standards and agreements; or

(2) sustained loss so that financial condition becomes so impaired that

it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature or

(3) the entire class of securities has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments, and such funds have been made available to security holders; or

(4) the entire class of security has been redeemed or paid at maturity or retirement; or

(5) the instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefore and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision); or

(6) all rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as a result of an order of a court or other governmental authority, the orders shall be final, all applicable appeals periods shall have expired and no appeals shall be pending.

Notwithstanding the foregoing, the Board may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

3.2. Delisting by Issuer

A security, which in the opinion of the Board is eligible for continued listing, may be removed from listing upon the request or application of the issuer provided that the issuer: (a) submits a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration; [and] (b) a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof; (c) certifies its compliance with the Exchange's rules for delisting and applicable state laws; (d) submits a written notification to the Exchange no fewer than ten days before the issuer files the appropriate form with the Commission of its intent to withdraw its securities from listing and/or registration on the Exchange setting forth a description of the security involved, together with a statement of all the material facts relating to the reasons for the withdrawal and another notice to the Exchange, immediately after its withdrawal from listing becomes effective pursuant to the rules of the Commission; and (e) contemporaneous with providing written notice to the Exchange, the issuer issues a public notice of its intent to delist, and/or withdraw its securities from Section 12(b) registration, via a press release and, if it has a publicly accessible web site, post such notice on such website.

[The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange registered under Section 6 of the Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act having similar requirements.]

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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 NSX 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 Commission recently adopted amendments to its Rule 12d2-2, Rule 19d-1 and Form 25 under the Act and Rule 101 of Regulation S-T to streamline the procedures for delisting a security traded on a national securities exchange and/or deregistering the security under Section 12 of the Act.⁴ The Commission decided, in order to give time for the national securities exchanges to adopt rules to comply with the new requirements in Rule 12d2-2 under the Act, that the Commission's rule amendments will not become effective until April 24, 2006.

The amendments to Rule 12d2-2 under the Act provide that an exchange may strike a class of securities from listing and/or withdraw the registration of such security under Section 12(b) by filing an application on Form 25. The delisting of the security will be effective ten days after Form 25 is filed with the Commission. The withdrawal from Section 12(b) registration will take effect 90 days after the filing of the Form, or such shorter period as the Commission may determine. The Adopting Release also stated that the exchanges must, at a minimum, provide

⁴ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) ("Adopting Release").

that (i) the exchange issues a notice to the issuer of the exchange's decision to delist its securities; (ii) the issuer is given the opportunity to appeal to the national securities exchange's board of directors or to a committee designated by the board; and (iii) the exchange provides public notice, no fewer than ten days before the delisting becomes effective, of the exchange's final determination to delist the security via a press release and posting on the exchange's website.

The Exchange's current By-Law provisions respecting the delisting of securities are contained in Article IV, Section 3. The current provision provides that the Exchange's Board of Directors, in the exercise of its business judgment, may determine to delist a security by instituting a proceeding to delist the security. The issuer or any party aggrieved by such decision may choose to seek relief from such action by following Chapter X of the Exchange Rules governing adverse actions.

Although Section 3.2(b) of Article IV provides procedural protection for the issuer of the security proposed to be delisted, the Exchange's By-Laws do not set forth the detailed steps required by the Adopting Release. While the Exchange's procedures contain the central elements – notice to the issuer and an opportunity for appeal – they are not spelled out in detail. Accordingly, this filing proposes to add the procedural requirements of: (i) filing an application (Form 25) with the Commission; (ii) sending a notice to the issuer of the Exchange's decision to delist, which contains a notice of the appeals mechanism contained in Chapter X of the Rules and a copy of Form 25; and (iii) public notice of the determination to delist via a press release and the posting of such decision on the Exchange's website.

Section 3.2(c) of Article IV provides some specific events which may cause the Exchange to delist securities of issuers that meet the criteria. While the Exchange may delist any

security for the protection of the investing public and the public interest, this filing proposes to adopt the rationale set forth in Rule 12d2-2(a)(1)-(a)(4) for delisting.

This filing also proposes to amend the criteria the Exchange would employ for issuers that desire to delist their security from the Exchange. This proposal would adopt certain provisions contained in Rule 12d2-2(c). Specifically, it would add provisions that: (i) the issuer must certify that it is in compliance with the Exchange's rules for delisting and applicable state law (in conformity with Rule 12d2-2(c)(2)(i)); (ii) the issuer must submit written notice (that is in conformity with the requirements of Rule 12d2-2(c)(2)(ii)) to the Exchange no fewer than ten days before the issuer files its application to delist with the Commission and another notice when such application becomes effective (in order to provide the Exchange with adequate notice of the effective date); and (iii) like the Exchange, the issuer is required to post notice of its decision to delist and make public disclosure of the same (in conformity with Rule 12d2-2(c)(iii)).

Finally, the proposal would eliminate the need for the issuer to submit the proposed withdrawal to the security holders for their vote in a meeting for which proxies are submitted. This requirement is no longer deemed by the Exchange to be necessary for the protection of shareholders as the procedural requirements of Rule 12d2-2(c) fulfills that need.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,⁵ in general, and Section 6(b)(5),⁶ in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanisms of a free and open

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest.

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

The proposed rule change does not 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 shall:

- (a) by order approve such proposed 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 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 No. SR-NSX-2005-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NSX-2005-09. 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-NSX-2005-09 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).