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BY ELECTRONIC MAIL

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File Number S7-25-04

Dear Mr. Katz:

The American Stock Exchange LLC (“Amex”) appreciates the opportunity to provide comments on the Securities and Exchange Commission (“Commission” or “SEC”) proposal to streamline the procedures for removing securities from listing, and/or registration under the Securities Exchange Act of 1934 (“Exchange Act”).¹ The Amex supports the Commission’s efforts to provide increased transparency and efficiency to the delisting and deregistration process. Our comments are addressed to several aspects of the proposal.

The proposal would require issuers or exchanges seeking to delist and/or deregister a security under Section 12(b) of the Exchange Act to electronically file a Form 25 with the Commission after complying with the applicable exchange delisting rules. In the case of an involuntary delisting (where the issuer is not in compliance with the exchange’s continued listing requirements) the delisting of the security would be effective ten days after the Form 25 is filed and would no longer require that the Commission issue an order granting the delisting application.² In addition, the exchanges would be required to adopt rules to provide public notice of a final delisting determination at least ten days before the delisting becomes effective by issuance of a press release and posting on the exchange’s web site. The proposing release states that the ten day notice period is designed to “better inform the public of delistings” and also notes that ten days is “sufficient time for any interested parties ... to take action as permitted under state and federal law” and/or submit written comments to the Commission regarding the delisting and/or deregistration.³

The Commission asks for comment on whether exchange rules should allow investors or the public an additional opportunity to comment on a proposed exchange initiated delisting before

¹ Securities Exchange Act Release No. 49858, 69 FR 34860 (June 22, 2004)

² If applicable, a withdrawal from registration would occur 90 days after filing.

³ Release at 34863.

effectiveness. The Amex strongly opposes such a requirement, and while we agree that the proposed mandatory Form 25 EDGAR filing requirement, as well as the ten day public notice period will improve the efficiency and transparency of the delisting process, allowing an opportunity for public comment would open all exchange delistings to a plethora of potentially irrelevant comments and complaints from shareholders seeking to avoid delistings that are required by exchange rules. The Amex delisting rules provide a fair and impartial process by which impacted issuers may challenge a staff delisting determination, in accordance with the requirements of Section 6 of the Exchange Act. Such issuers are entitled to two levels of appeal – first to a Listing Qualifications Panel of the Amex Committee on Securities (“Committee”)⁴ and then to the Committee, and may be represented by legal or other counsel at all stages of appeal. Further, the Amex Board of Governors may call any Committee decision for review.⁵ The Commission staff has repeatedly stressed to all listing marketplaces that listing standards must be mandatory, in that investors and potential investors justifiably presume that a listed security meets the requirements of its marketplace. Permitting a public appeal or challenge process is inconsistent with this precept, and could create confusion and uncertainty regarding delistings, undermining the goals of the proposal. Thus, we believe that it is important for the Commission to clarify the scope and purpose of the notice period and that it is not intended to create another level of appeal with respect to an exchange initiated delisting proceeding.⁶

Similarly, we believe it is important that the final rules not impact the right of an exchange to suspend trading in a security at the time of filing a delisting application. Amex rules (as well as those of the New York Stock Exchange) currently provide that the Amex staff will suspend trading in a security once it is authorized to file a delisting application with the Commission.⁷ Such suspensions are important in order to expedite the termination of trading in a security that is no longer eligible for continued listing, and also provide an appropriate transitional period for an exchange listed security to facilitate transfer to another marketplace (either listed or unlisted).

With respect to issuer initiated delistings, the Commission requests comment on whether elimination of the existing formal solicitation of comment is appropriate, and whether exchange rules should allow investors or the public an additional opportunity to comment on a proposed withdrawal from listing and registration. While it may be appropriate to provide such an opportunity for comment, we do not believe the process should be mandated or administered by the listing exchange. Further, as with exchange initiated delistings, it is important for the Commission to clarify the scope and purpose of the comment period and whether it is intended to provide investors and other interested parties a mechanism to delay or prevent a delisting and deregistration. If the Commission determines to provide such a mechanism, we believe it should

⁴ The Committee is appointed by the Amex Board of Governors and is comprised of a cross-section of the public, Amex members and securities professionals.

⁵ See, Section 1206 of the Company Guide.

⁶ In the case of a denial of an issuer’s due process rights or other egregious error in connection with a delisting, the Commission would always have authority to intervene, whether during the ten day notice period or thereafter. However, if the Commission were to order a delay in the effectiveness of a delisting, it is important that there be a clearly defined mechanism by which the issuer and exchange are notified and the Form 25 is amended to reflect such delay.

⁷ See, Sections 1203(d), 1204(d), 1205(g) and 1206(e) of the Amex Company Guide.

be pursuant to Commission rather than exchange rules. Whether or not an issuer is eligible to deregister its securities under the Exchange Act is outside the authority of an exchange, and an exchange cannot require an issuer to remain listed.

Finally, we suggest that the Commission clarify what constitutes the exchange delisting determination that must be attached to Form 25, and what information must be included in such determination. For example, would the determination need to set forth the specific substantive grounds on which the delisting is based and the required procedural steps followed by the exchange prior to initiating the delisting, or alternatively would the determination only be required to contain a representation that the exchange has complied with its rules with respect to the delisting?

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The Amex appreciates the opportunity to comment on the proposal, and would be pleased to discuss these comments further with the Commission staff. Should you have any questions, please do not hesitate to call me at (212) 306-2432.

Sincerely,

Claudia Crowley

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