

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53666; File No. SR-Amex-2005-107)

April 17, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 to Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

I. Introduction

On October 24, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On October 27, 2005, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 1, 2006, Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the Federal Register on March 13, 2006.<sup>5</sup> No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced the original proposed rule change in its entirety.

<sup>4</sup> In Amendment No. 2, Amex added footnotes to the Form 19b-4 and Exhibit 1 that reference appropriate sections of the Amex Company Guide; made grammatical corrections to the proposed rule text regarding the final effective date of the old Amex rules; and clarified the circumstances under which the Exchange is authorized to file a Form 25 for certain corporate actions.

<sup>5</sup> See Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738.

## II. Description of the Proposed Rule Change

Section 12 of the Act<sup>6</sup> and Rule 12d2-2 thereunder<sup>7</sup> (“SEC Rule 12d2-2”) govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 (“amended SEC Rule 12d2-2”) and other Commission rules require the electronic filing of revised Form 25 on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.<sup>8</sup>

The Amex proposes to revise Amex Rule 18 and Sections 1010, 1011, 1201, 1202, 1203, 1204, 1205 and 1206 of the Amex Company Guide with respect to delisting procedural requirements as mandated by recent amendments to SEC Rule 12d2-2.

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:<sup>9</sup>

- (i) Notice to the issuer of the exchange’s decision to delist its securities;
- (ii) An opportunity for appeal to the exchange’s board of directors, or to a committee designated by the board; and
- (iii) Public notice of the national securities exchange’s final determination to remove the

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<sup>6</sup> 15 U.S.C. 78j.

<sup>7</sup> 17 CFR 240.12d2-2.

<sup>8</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>9</sup> See also Form 8-K (Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing), which sets forth disclosure requirements for issuers that do not satisfy listing standards.

security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

With respect to the above requirements set forth in amended SEC Rule 12d2-2(b), Amex rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.<sup>10</sup> Amex rules do not currently provide for the mandated public notice, and accordingly the Amex is proposing changes to Section 1010(c) of the Amex Company Guide to incorporate such public notice as required by the recent amendments to SEC Rule 12d2-2(b). The proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

In the case of an issuer-initiated delisting, Amex proposes revisions to Amex Rule 18 and Section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

- (i) Comply with the Exchange's rules for delisting and applicable state laws;
- (ii) Submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the Exchange will be provided at least 20 days before the delisting becomes effective); and
- (iii) Issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site, contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is

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<sup>10</sup> See Amex Company Guide, Section 1202 (Written Notice of Staff Determination) and Section 1203 (Request for Hearing).

effective.

In addition, changes are proposed to Amex Rule 18 to require that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist, and that the issuer provide the Exchange with a certified copy of the relevant board resolution prior to filing the Form 25. The issuer must notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing.

The Amex also proposes that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii) and; (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).

Further, as required by amended SEC Rule 12d2-2(c)(3), the Amex represents that it will post notice of issuer-initiated delistings on its Web site beginning on the business day following receipt of notice from the issuer, and it will keep the notice posted until the delisting becomes effective. As in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.

Finally, Amex has made changes in its rules to clarify that the Form 25 serves as the

application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>11</sup> and, in particular, the requirements of Section 6 of the Act.<sup>12</sup> Specifically, as discussed below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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. Further, as noted in more detail below, the changes being adopted by Amex meet the requirements of amended SEC Rule 12d2-2.

#### A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and

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<sup>11</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

public notice of the exchange's final determination to delist. The Commission believes that Amex's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

Amex rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.<sup>14</sup> Specifically, issuers may appeal staff delisting determinations to panel of at least two members of the Committee on Securities, which is a board-appointed committee.<sup>15</sup> Adverse panel decisions may be appealed to the Committee on Securities.<sup>16</sup> In addition, the Board may in its discretion call any Committee on Securities decision for review.<sup>17</sup> In addition, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. The Commission notes that the proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

#### B. Issuer Voluntary Delisting

In the case of an issuer-initiated delisting, Amex is proposing revisions to Amex Rule 18 and Section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

- (i) comply with the Exchange's rules for delisting and applicable state laws;
- (ii) submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the

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<sup>14</sup> See supra note 10.

<sup>15</sup> See Amex Company Guide, Section 1204 (The Listing Qualifications Panel).

<sup>16</sup> See Amex Company Guide, Section 1205 (Review by the Amex Committee on Securities).

<sup>17</sup> See Amex Company Guide, Section 1206 (Discretionary Review by Amex Board).

Exchange will be provided at least 20 days before the delisting becomes effective); and (iii) issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site, contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is effective.

The Commission believes that the amendments will fully inform issuers of the requirements for voluntary delisting of their securities under Amex rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing. This requirement will allow the Exchange to be fully informed of the actual filing of a Form 25 and prepare to take timely action in accordance with the filing of the Form.

In addition, Amex has proposed a new requirement that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist and that the issuer provide the Exchange with a certified copy of the relevant board resolution. The Commission believes that these requirements may help ensure that the decision to delist a security voluntarily has been well-considered by the issuer's board.

Amex also proposes that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its statement of all

material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii) and; (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii). The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

The Commission notes that Amex represents that it will, as required by the revised Commission rules, post notice of issuer-initiated delistings on its Web site beginning on the business day following receipt of notice from the issuer, and it will keep the notice posted until the delisting becomes effective. The Commission also notes that, as in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.



IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (File No. SR-Amex-2005-107), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris  
Secretary

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<sup>18</sup> Id.

<sup>19</sup> 17 CFR 200.30-3(a)(12).