

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53685; File No. SR-NYSE-2005-72)

April 20, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto 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 20, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 December 22, 2005, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on March 13, 2006.<sup>4</sup> No comments were received regarding the proposal. On April 11, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> This

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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> In Amendment No. 1, the Exchange made clarifying changes to Item 3 of the Exchange's Form 19b-4 and to Exhibit 1.

<sup>4</sup> See Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738.

<sup>5</sup> In Amendment No. 2, the Exchange made typographical changes to the proposed rule text of Section 806.02 (Removal from List Upon Request of Company) of the NYSE Listed Company Manual that were intended to clarify that the Exchange's proposed new requirement that a company provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission is a new requirement and is not part of the requirements of Rule 12d2-2(c) under the Act.

order approves the proposed rule change, as amended, publishes notice of Amendment No. 2 to the proposed rule change, and grants accelerated approval to Amendment No. 2.

## 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>

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 security from listing and/or registration, by issuing a press release and posting

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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.

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.

The Exchange proposes to amend Sections 804.00 and 806.02 of the Exchange's Listed Company Manual. With respect to the above requirements set forth in amended SEC Rule 12d2-2(b), NYSE rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.<sup>10</sup> NYSE rules do not currently provide for the mandated public notice, and accordingly the Exchange is proposing changes to Section 804.00 of the NYSE Listed Company Manual to provide that prior to filing the Form 25 with the Commission to withdraw a security from listing and registration, the Exchange will give public notice of its final determination to delist the security by issuing a press release and posting a notice on its Web site. Such notice would remain posted on the Exchange's Web site until the delisting is effective.

In the case of an issuer-initiated delisting, the NYSE is retaining Section 806.02 of the NYSE Listed Company Manual that currently provides that an issuer may delist a security after its board approves the action and the issuer furnishes the Exchange with a copy of the board resolution authorizing such delisting certified by the secretary of the issuer. The Exchange's proposal would clarify that the issuer must comply with all of the requirements of amended SEC Rule 12d2-2(c) and thereafter file a Form 25 with the Commission to withdraw its security from listing and registration. The Exchange's proposal would also add a new requirement that the issuer must file a copy of Form 25 with the Exchange immediately after submitting the Form 25 with the Commission.

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<sup>10</sup> See Section 804.00 (Procedure for Delisting) of the NYSE Listed Company Manual.

In addition to the proposed changes to comply with amended SEC Rule 12d2-2, the Exchange proposes to amend Section 804.00 to delete references therein to “public Directors” and “industry Directors,” as these terms relate to a historical governance structure of the Exchange that no longer exists.

### 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 the Exchange 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

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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).

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

NYSE rules currently provide for the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board. Specifically, if the Exchange staff should determine to delist a security, it will notify the issuer in writing of the basis of its determination. Such notice will inform the issuer that the issuer may appeal staff delisting determinations to a committee of the Board of Directors of the Exchange.<sup>14</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. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.<sup>15</sup>

#### B. Issuer Voluntary Delisting

In the case of an issuer-initiated delisting, Section 806.02 of the NYSE Listed Company Manual currently provides that an issuer may delist a security after its board approves the action and the issuer furnishes the Exchange with a copy of the board resolution authorizing such delisting certified by the secretary of the issuer. The Exchange's proposal would clarify that the issuer must comply with all of the requirements of amended SEC Rule 12d2-2(c) and thereafter file a Form 25 with the Commission to withdraw its security from listing and registration. The

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<sup>14</sup> See Section 804.00 of the NYSE Listed Company Manual.

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

Commission believes that the amendments will fully inform issuers of the requirements for voluntary delisting of their securities under NYSE 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 be prepared to take timely action to delist the security in accordance with the filing of the Form.<sup>16</sup>

C. Accelerated Approval of Amendment No. 2

Pursuant to Section 19(b)(2) of the Act,<sup>17</sup> the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30<sup>th</sup> 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. The Commission hereby finds good cause for approving Amendment No. 2 to the proposal, prior to the 30<sup>th</sup> day after publishing notice of Amendment No. 2 in the Federal Register. The revisions made to the proposal in Amendment No. 2 are typographical changes clarifying that the Exchange's proposed requirement that a company provide a copy of the Form

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<sup>16</sup> The Commission notes that current Section 807.00 of the NYSE Listed Company Manual, which the Exchange is retaining in its rules, provides in part that where a company falls below continued listing standards, the Exchange will permit the company to voluntarily transfer its listing. During this transition, the Exchange will daily disseminate ticker and information notices identifying the security's status and will include similar information on the Exchange's Web site.

In addition, amended SEC Rule 12d2-2(c)(2)(iii) requires a company seeking voluntary delisting to publish notice of its intention, along with its reasons for delisting, via a press release and Web site. In such cases, the Commission expects that a company below Exchange continued listing standards, in complying with amended SEC Rule 12d2-2(c)(2)(iii), would disclose in its public notice that it has fallen below continued listing standards, including the specific listing policies and standards which it does not comply with, and is voluntarily delisting from the Exchange.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

25 to the Exchange simultaneously with the filing of such Form with the Commission is a new requirement and is not part of the requirements of amended SEC Rule 12d2-2(c). This was the intent of the provision as originally proposed. The Commission believes that accelerating Amendment No. 2 is appropriate because these revisions are clarifying and do not raise new regulatory issues. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after notice of the Amendment is published in the Federal Register.

#### IV. Solicitation of Comments

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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2005-72 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-NYSE-2005-72. 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

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<sup>18</sup> Id.

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-NYSE-2005-72 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].



V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (File No. SR-NYSE-2005-72), as amended, is approved, and Amendment No. 2 to the proposed rule change is hereby granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> Id.

<sup>20</sup> 17 CFR 200.30-3(a)(12).