

**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-48435; File No. SR-NYSE-2003-23)**

September 3, 2003

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the
New York Stock Exchange, Inc. Repealing Exchange Rule 500 and Amending
Section 806 of the Listed Company Manual**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 2003, the New York Stock Exchange, Inc. (“NYSE” 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 prepared by the NYSE. 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 NYSE proposes to delete Exchange Rule 500 in its entirety and amend Section 806 of the Exchange’s Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rules of Board of Directors**General Rules**

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[Removal from the List Upon Request of the Issuer

Rule 500. An issuer may apply to delist a security after complying with the following procedures:

(a) Stock of a domestic issuer:

- (1) The issuer's audit committee and board of directors must approve the application;
- (2) The issuer must publish a press release announcing its proposed delisting; and
- (3) The issuer must send to at least each of its 35 record shareholders with the largest positions in the security written notice alerting them to the proposed delisting; such notice must specify the earliest possible date of such delisting (which date shall be not less than 20 business days nor more than 60 business days (or, subject to Exchange approval, such longer period as the issuer may request) after the later of the date the notice is sent or the press release is issued) and must include a statement that the issuer complied with paragraphs a) (1) and a) (2) above. The issuer must contemporaneously send to the Exchange a copy of such notice.

(b) Stock of non-U.S. issuer:

- (1) The issuer's board of directors must approve the application;
- (2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 U.S. record shareholders with the largest positions in the security written notice alerting them to the proposed delisting. The issuer must contemporaneously send to the Exchange a copy of such notice.

(c) All listed bonds: The issuer's board of directors must approve the application.

... Supplementary Material:

.10 Definition of "stock" and "bond." - Exchange Rule 4 defines the term "stock," and Exchange Rule 5 defines the term "bond."

.20 Requirement to issue a press release. - Pursuant to paragraphs (a)(2) and (b)(2) of this Rule, the issuer must publish the press release in compliance with the Procedures of Public Release of Information in Para.202.06 of the Exchange's Listed Company Manual.

.30 Application to the Securities and Exchange Commission to withdraw a security from listing. - After an issuer complies with the procedures of this Rule, the issuer may file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. With respect to an issuer required to provide security holders with notice of the proposed delisting pursuant to paragraph (a) (3) of this Rule, the proposed date for such withdrawal from listing and registration must be the same date specified in its notice to security holders. The issuer must contemporaneously send to the Exchange a copy of the application.

.40 Delisting of multiple classes of securities. - If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.]

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Listed Company Manual

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806.00 Rule of the Exchange in respect of Removal From List upon Request of Company.

[Rule 500 in effect as of July 21,1999 is as follows:

Rule 500. An issuer may apply to delist a security after complying with the following procedures:

(a) Stock of a domestic issuer:

(1) The issuer's audit committee and board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 record shareholders with the largest positions in the security written notice alerting them to the proposed delisting; such notice must specify the earliest possible date of such delisting (which date shall be not less than 20 business days nor more than 60 business days (or subject to Exchange approval, such longer period as the issuer may request) after the later of the date the notice is sent or the press release is issued) and must include a statement that the issuer complied with paragraphs (a) (1) and

(a) (2) above. The issuer must contemporaneously send to the Exchange a copy of such notice.

(b) Stock of non-U.S. issuer:

(1) The issuer's board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 U.S. record shareholders with the largest positions in the security written notice alerting them to the proposed delisting. The issuer must contemporaneously send to the Exchange a copy of such notice.

(c) All listed bonds: The issuer's board of directors must approve the application.

... Supplementary Material:

.10 Definition of "stock" and "bond." - Exchange Rule 4 defines the term "stock," and Exchange Rule 5 defines the term "bond."

.20 Requirement to issue a press release. - Pursuant to paragraphs (a)(2) and (b)(2) of this Rule, the issuer must publish the press release in compliance with the Procedures of Public Release of Information in Para.202.06 of the Exchange's Listed Company Manual.

.30 Application to the Securities and Exchange Commission to withdraw a security from listing. - After an issuer complies with the procedures of this Rule, the issuer may file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under

the Securities Exchange Act of 1934. With respect to an issuer required to provide security holders with notice of the proposed delisting pursuant to paragraph (a) (3) of this Rule, the proposed date for such withdrawal from listing and registration must be the same date specified in its notice to security holders. The issuer must contemporaneously send to the Exchange a copy of the application.

.40 Delisting of multiple classes of securities. - If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.]

An issuer may apply to delist a security after its board approves the action and the issuer furnishes the Exchange with a copy of the board resolution certified by the secretary of the issuer. The issuer may thereafter file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 Exchange is proposing to delete Exchange Rule 500 in its entirety and to amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Amended Section 806 would require simply that a company furnish the Exchange with a certified board resolution evidencing board approval of the voluntary delisting.

Exchange Rule 500 describes the procedures a listed company must follow to voluntarily delist its securities from the Exchange. The original rule, adopted in 1939, required two-thirds of a company's outstanding shares to vote in favor of a delisting, with no more than ten percent of the shares opposing. In 1999, the requirement of a shareholder vote was eliminated, and since then the rule has required only board and audit committee approval, prior written notice to the company's 35 largest record holders, and a press release informing shareholders generally of the proposed delisting.³

³ See Securities Exchange Act Release No. 41634 (July 21, 1999), 64 FR 40633 (July 27, 1999) (SR-NYSE 97-31) (hereinafter referred to as the "1999 SEC

In approving the 1999 amendment, the Commission requested that the Exchange review periodically the shareholder notification requirement of Rule 500 to determine whether it remained warranted and consistent with the protection of investors. In fulfillment of the Commission's request and in the context of the work the Exchange has done in re-examining its corporate governance standards for listed companies, the Exchange determined to reassess Rule 500. The Exchange has concluded that it is now appropriate to require only that a company voluntarily delisting its securities from the Exchange obtain the approval of its board and furnish the Exchange with a copy of the board resolution. The company would, of course, then be required under Commission rules to file an application with the Commission to withdraw the security from listing on the Exchange.⁴

The rationale for the requirement in the current rule that a company obtain a separate audit committee approval of a delisting was to insure that independent directors approved the decision.⁵ In the work the Exchange has done during the last two years on corporate governance listing standards, the Exchange has learned that a majority

Approval Order"). Since the 1999 amendment, only one company has voluntarily delisted its common stock to move to Nasdaq. Several companies have used the rule to voluntarily delist bonds from the Exchange, which the NYSE represents that it understood to be motivated by a desire to reduce reporting burdens attendant to listing the bonds (the shareholder notification requirement does not apply to a voluntarily delisting of bonds). A similar motivation prompted a Swedish company with very few U.S. shareholders to delist its ADRs earlier this year so that it could avoid having to comply with U.S. reporting obligations. Finally, three small closed end funds moved to the American Stock Exchange because their declining net asset value placed them in danger of falling below NYSE continued listing requirements.

⁴ See Rule 12d2-2(d) under the Act.

⁵ See 1999 SEC Approval Order, footnote 16, and text accompanying footnotes 44 and 45.

independent board has already become prevalent among Exchange listed companies.⁶

After the Exchange's currently pending corporate governance proposals become final, a majority independent board will become an Exchange listing standard.⁷ As a result, the Exchange believes that board approval of a voluntary delisting is all that must be required by the Exchange.

The Exchange further believes that neither advance notification to shareholders nor a company press release need be mandated under Exchange rules. In the case of a transfer of a listing from one market to another, both the company transferring and the market to which it is transferring are typically eager to publicize the event.⁸ Practical considerations such as the need to make brokers and investors aware of a change in ticker symbol also serve to insure that a planned move is visible. In any event, companies are obligated to publicly disclose material events,⁹ and the Exchange expects that a company

⁶ See Press Release from Investor Responsibility Research Center, March 7, 2002, available at www.irrc.com/company/06062002_NYSE.html.

⁷ See Securities Exchange Act Release No. 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR-NYSE 2002-33). Under the Exchange's proposed standards, a controlled company will not be required to have a majority independent board. Here too, however, a board that is acceptable under the new Exchange standards should be appropriate to make a delisting decision.

⁸ The company referred to in footnote 3 above that transferred to Nasdaq issued a press release announcing that fact approximately one month prior to the actual transfer.

⁹ See Sections 202.05 and .06 of the Exchange's Listed Company Manual. The Exchange also notes that pending proposed amendments by the SEC to Form 8-K will require a Form 8-K filing when a company has taken definitive action to terminate a listing, including by reason of a transfer to another market. See Securities Exchange Act Release No. 46084 (June 17, 2002), 67 FR 42914 (June 25, 2002) (File No. S7-22-02).

that has made a final determination to voluntarily delist its securities from the Exchange would promptly disclose that determination to the public.¹⁰

The Exchange has for many years replicated Rule 500 in Section 806 of its Listed Company Manual, which is a separate compendium of rules applicable to listed companies. In making this change, the Exchange will delete Rule 500 in its entirety. The remaining requirement of board approval and notice thereof to the Exchange will be codified in Section 806 of the Listed Company Manual.

2. Statutory Basis

The NYSE represents that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ When reviewing this proposed rule change, members of the Exchange's Pension Managers Advisory Committee as well as members of the Exchange's Board of Directors observed that companies should not voluntarily delist from the Exchange without investors in their stock having advance notice of the event. For the reasons stated above, the Exchange believes that there will be adequate public notice. If, however, for some reason disclosure is not made by the company or a third party when such disclosure is warranted, then the Exchange itself will publicly announce the planned delisting.

¹¹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

- A. by order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer

to file number SR-NYSE-2003-23 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

