

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53544; File No. SR-BSE-2005-46)

March 23, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto 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 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on October 24, 2005, the Boston Stock Exchange, Inc. ("BSE" 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 BSE. On March 16, 2006, BSE filed Amendment No. 1 to the proposed rule change.³ BSE filed Amendment No. 2 to the proposed rule change on March 21, 2006.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, BSE amended its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice. In addition, BSE revised its rule text to clarify which provisions in its appeal procedures were based on calendar or business days and to cross-reference its rules regarding the Exchange's basis for involuntary delisting of a class of securities by the Exchange.

⁴ Amendment No. 2 replaced and superseded the Exchange's original Form 19b-4 in its entirety.

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

The Exchange proposes to amend its rules regarding delisting securities. The text of the proposed rule change is below. Proposed new language is underlined.

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RULES OF THE BOSTON STOCK EXCHANGE

Chapter XXVII

Listed Securities - Requirements

SEC. 1. No change.

SEC. 2.

(a) Voluntary Withdrawal from Listing

An issuer proposing to withdraw a security from listing shall provide to the Exchange a certified copy of a resolution of the board of directors of the issuer authorizing withdrawal from listing. Once the copy is provided to the Exchange, the issuer must comply with Exchange Act Rule 12d2-2(c). Specifically, the issuer must: 1) comply with all applicable laws in effect in the state in which the issuer is incorporated; 2) provide written notice, which describes the security involved and all material facts relating to the reasons for withdrawal, to the Exchange no fewer than 10 days before the issuer files an application on Form 25 with the Securities and Exchange Commission; 3) publish notice, contemporaneous with providing written notice to the Exchange, through a press release, and if it has a publicly accessible website by posting such notice on that website, which shall remain available until the delisting on Form 25 becomes effective. Upon receipt of such notice from the issuer, the Exchange, as required by Rule 12d2-2(c)(3), shall post

notice of the issuer's intent on the Exchange website the next business day, and it shall maintain such posting until the delisting on Form 25 takes effect. The issuer must contemporaneously file a copy of Form 25 with the Exchange upon the submission of such form to the Securities and Exchange Commission. Once complete, the securities shall be removed from listing on the Exchange on the effective date established by Exchange Act Rule 12d2-2(d).

(b) Involuntary Withdrawal From Listing

Effective April 24, 2006, pursuant to Securities and Exchange Act Rule 12d2-2 for delisting and registration,⁵ where the Exchange is initiating the delisting from registration, for instances not provided in Rule 12d2-2(a), the Exchange may file an application to strike a class of securities from listing of such securities, where and issuer has fallen below the Exchange's continued listing policies and standards. (See Sec. 1) In such instances the Exchange shall:

1. Provide notice to the issuer of its decision to delist its securities;
2. Provide an opportunity to appeal to the Stock List Committee as follows:

Appeal Procedure

A. A request to appeal the Exchange's decision to withdraw from listing shall be filed no later than five (5) business days following issuer's receipt of the decision. The request must include a five thousand dollar (\$5,000) appeal fee. If the issuer does not request an appeal as specified, the Exchange shall submit to the Securities

⁵ The effective date of Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) amending Rule 12d2-2 is August 22, 2005. The compliance date is April 24, 2006. The BSE is incorporating the same compliance date into its rules.

and Exchange Commission an application on Form 25 to strike the security from listing. A copy of Form 25 shall be provided to the issuer in accordance with Rule 12d2-2.

B. If a request to appeal is received by the Exchange, the issuer will be entitled to present a written appeal before the Stock List Committee. The issuer may request a hearing with its request to appeal. However, the decision to grant an appeal hearing lies in the sole discretion of the Stock List Committee. Regardless of whether a hearing, if requested, is granted, the issuer must submit to the Exchange any documents or other written materials the issuer wishes to be considered within fifteen (15) calendar days of the filing of the notice to appeal. No hearing shall be held without giving five (5) business days notice to the issuer of the time and place for the hearing.

C. The decision of the Stock List Committee shall be final. A written decision shall be served upon the issuer; and

3. If the decision is that the security is to be withdrawn from listing then, in accordance with Rule 12d2-2, no fewer than ten (10) days before such action becomes effective, an application on Form 25 shall be filed with the Securities and Exchange Commission. A copy of Form 25 shall be provided to the issuer. Public notice of the final determination to remove the security from listing shall be made by the Exchange by issuing a press release and posting notice on the Exchange Web site. This public notice will remain posted on the Web site until the delisting is effective.

●●● Commentary

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 Rule 12d2-2(c)(2)(ii) under the Exchange Act and; (ii) its public press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Exchange Act.

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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 BSE 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 BSE 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 purpose of the proposed rule change is to conform the rules of the Exchange to the procedures recently established by the Commission for removing from listing, and

withdrawal from registration, securities under Section 12(b) of the Act.⁶ As amended, Commission Rule 12d2-2 (the "Rule") requires each national securities exchange seeking to delist and/or deregister securities to file an electronic application on Form 25 with the Commission. In addition, the Rule requires that the rules of the Exchange provide (1) notice to the issuer; (2) an opportunity for appeal; and (3) public notice.

Specifically, Section 2(a) (Voluntary Withdrawal from Listing) revises and codifies the current practices of the Exchanges to conform to the Rule.⁷ Section 2(a) provides that any issuer seeking to voluntarily delist a security from an exchange must comply with all of the requirements of the Rule. The Commentary to the Rule clarifies that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice.

Section 2(b) (Involuntary Withdrawal from Listing) provides the procedures when the withdrawal of a security from listing is initiated by the Exchange as outlined in the Rule. Section 2(b)(1) codifies the current practice of the Exchange to provide notice to the issuer of its decision to delist a security. New Section 2(b)(2) provides the issuer with an opportunity to appeal to the Stock List Committee. Sections 2(b)(2)(A)-(C) outline the issuers opportunity for a written appeal and hearing before the Stock List Committee.

⁶ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

⁷ While all of the rule text is new, the Exchange clarified which provisions of the rule text represented a codification of current Exchange practices. Telephone conversation between Maura Looney, Assistant Vice President, BSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission (March 22, 2006).

When an issuer files an appeal, a \$5,000 appeals fee must accompany the request. New Section 2(b)(3) conforms the current practices of the Exchange to comply with the Rule. Section 2(b)(3) provides that 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. The public notice will remain on the Web site of the Exchange until the delisting is effective.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

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

The BSE does not believe that the proposed rule change, as amended, will 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

No written comments were either solicited or received.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 BSE consents, the Commission will:

- (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, as amended, 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 Number SR-BSE-2005-46 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BSE-2005-46. 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 the filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2005-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).