



Via email to [www.rule-comments@sec.gov](http://www.rule-comments@sec.gov)

August 27, 2004

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

**Re: Removal from Listing and Registration of Securities Pursuant to  
Section 12(d) of the Securities Exchange Act of 1934;  
Release No. 34-49858; File No. S7-25-04**

Dear Mr. Katz:

The New York Stock Exchange, Inc. (the "NYSE" or the "Exchange") is pleased to comment on the proposals made by the Securities and Exchange Commission (the "SEC") in the above-referenced release (the "Proposing Release") regarding the procedures for removing from listing, and/or withdrawing from registration, securities under Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

The Exchange welcomes the SEC's initiative to streamline the delisting process and is broadly supportive of the Proposing Release. The Exchange would appreciate clarification of certain points and has comments on certain provisions. The Exchange also wishes to respond to questions posed in the Proposing Release.

### **1. Impact on Suspension Practices**

The Exchange wishes to clarify that it is not the SEC's intention that new Rule 12d2-2 will affect the exchanges' ability to continue their existing practices with respect to the suspension of trading in listed securities pursuant to Rule 12d2-1.

In many cases today the Exchange will have suspended securities from trading prior to the SEC approval of a delisting application, and in some cases even prior to such an application being filed. For example, securities being delisted by the Exchange will be suspended from trading

following the conclusion of any appeal taken by the company to the Exchange's board, and may even be suspended during the appeal period if the Exchange has determined this to be necessary in the public interest.

The Proposing Release does not address these suspension practices directly. In light of their importance, the Exchange urges the SEC to state explicitly that in adopting new Rule 12d2-2 it does not intend to change its interpretation or application of Rule 12d2-1.

## **2. Timing of Public Notification of Exchange-Initiated Delisting**

The Exchange wishes to clarify that the requirement in proposed Rule 12d2-2 that the Exchange notify the public of an Exchange-initiated delisting 10 days in advance of the effectiveness of the Form 25 filed in connection with that delisting can commence simultaneously with the filing of the Form 25. We believe this is the plain reading of the rule text and that it provides interested parties with sufficient time to comment on the delisting prior to its effectiveness.

## **3. Exchange's Obligation to Publicize Voluntary Delistings**

We note that the proposed rule requires an issuer seeking a voluntary delisting to notify the Exchange at least 10 days before filing its Form 25 and that the exchange is required to post that notification on its Web site at that time. The issuer is not itself required to publish a notice of its intent to delist until 10 days before the effectiveness of its Form 25, *i.e.*, on the date of filing of the Form 25 and 10 days later than the exchange is required to do so. The Exchange believes it is inappropriate that it should be required to inform investors prior to a public announcement from the issuer and suggests that the proposed rule be modified so that the notice issued 10 days before filing is released by the issuer itself or, alternatively, that the issuer and the Exchange should be obligated to post notices on their respective Web sites simultaneously.

On a related matter, the staff asks whether the issuer's obligation to publicize its voluntary delisting should be a requirement of the proposed rule or of the exchange's own rules. We believe the SEC is best positioned to enforce the requirement that the issuer publicize a voluntary delisting. The proposed rule requires the issuer to represent to the SEC that it has given such notice and the SEC has the ability to delay effectiveness of the Form 25 if such notice has not actually been properly given.

## **4. Public Comments on Voluntary Delistings**

The staff asks whether exchange rules should allow investors or the public to comment on voluntary withdrawals of securities from listing. The Exchange has changed its rules in recent years to give companies the right to voluntarily delist without preconditions other than approval by the company's board of directors. The Exchange has no objection to the SEC-imposed

Mr. Jonathan G. Katz  
August 27, 2004  
Page 3

comment period prior to the effectiveness of the Form 25 relating to a voluntary delisting, but sees no benefit to an additional comment period imposed by the Exchange.

**5. Withdrawal of Form 25**

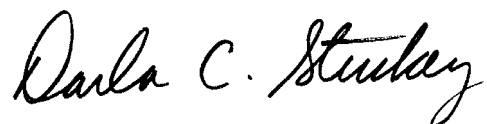
The staff asks whether there should be specific instances in which an issuer or an exchange may withdraw a Form 25 after it has been filed. The Exchange believes that the Exchange or the issuer, as applicable, should be able to withdraw a Form 25 at any time prior to its effectiveness. We do not believe this would occur frequently, but it does not seem necessary to foreclose the ability to occasionally reverse a decision or correct a mistake.

**6. Effective Date of Delisting**

The current procedures pursuant to which the Exchange applies to the SEC to delist a company enable the Exchange to request that the delisting be made effective on a date of the Exchange's choosing so long as that date is at least 10 days after filing of the application. The Exchange would like to retain this flexibility, as there are occasional circumstances in which it may be desirable to delay delisting beyond the 10 days contemplated in the Proposing Release.

Thank you for your consideration of these comments. We would be pleased to answer any questions or provide further information that you may find helpful.

Sincerely,

A handwritten signature in cursive script that reads "Darla C. Stuckey". The signature is written in black ink and is positioned below the "Sincerely," text.