SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34–52029; File No. S7–25–04]

RIN 3235–AJ04

Removal From Listing and Registration of Securities Pursuant to Section 12(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under Section 12(b) of the Securities Exchange Act of 1934 (''Exchange Act''). The final rules require all issuers and national securities exchanges seeking to delist and/or deregister a security in accordance with the rules of an exchange and the Commission to file the amended Form 25 in an electronic format with the Commission on the EDGAR database. The final rules also provide that the Form 25 serves as an exchange's notice to the Commission under Section 19(d) of the Exchange Act. Finally, the final rules exempt, on a permanent basis, standardized options and security futures products traded on a national securities exchange from Section 12(d) of the Exchange Act. The amendments serve to reduce regulatory burdens on the exchanges and issuers, and to make the delisting and deregistration process more transparent and efficient in the interest of investors and the public.

DATES: *Effective date:* August 22, 2005.

Compliance date: April 24, 2006.

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SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 101 of Regulation S–T, 17 CFR 232.101; and Rule 12d2–2, 17 CFR 240.12d2–2, Form 25, 17 CFR 249.25, and Rule 19d–1, 17 CFR 240.19d–1 under the Exchange Act.

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I. Introduction

On June 15, 2004, the Commission issued a release proposing to amend Rule 12d2–2, Rule 19d–1, and Form 25 under the Exchange Act and Rule 101 of Regulation S–T, to streamline the procedures for delisting a security traded on a national securities exchange and/or deregistering the security under Section 12(b) of the Exchange Act.[1] Under the proposal, issuers and national securities exchanges would electronically file a Form 25 with the Commission to delist and/or deregister securities. The Commission received three comments in response to the proposal. After careful consideration of the comments as discussed below, the Commission today is adopting the amendments substantially as proposed. To give time for national securities exchanges to adopt rules to comply with the new requirements in Rule 12d2–2, the amendments will not be operative until April 24, 2006.

II. Background

A. Statutory Provisions and Exchange Act Rule 12d2–2

Section 12(a) of the Exchange Act[2] makes it unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless the security is registered on that exchange in accordance with the provisions of the Exchange Act and the rules thereunder. Section 12(d) of the Exchange Act[3] provides that a security registered with a national securities exchange may be withdrawn or stricken from listing and registration on an exchange in accordance with the rules of the exchange, and upon such terms as the Commission may deem necessary, upon application by the issuer or the exchange to the Commission.[4] Rule 12d2–2[5] and Form 25[6] under the Exchange Act set forth the conditions and procedures under which a security may be delisted from a national securities exchange and withdrawn from registration under Section 12(b) of the Exchange Act.

Rule 12d2–2 governs the delisting and deregistration process for both exchange-initiated and issuer-initiated applications. Under the current Rule, the exchange files a Form 25 with the Commission to remove from listing and registration securities where the entire class is matured, redeemed, retired, or extinguished by operation of law.[7] The Form is effective at a date specified by the exchange that is at least ten days from the date the Form 25 is filed with the Commission. An exchange may also file a written application with the Commission to remove a security from listing and registration when the securities have fallen below the exchange's listing standards.[8] The

[1] *See* Securities Exchange Act Release No. 49858, 69 FR 34860 (June 22, 2004) (''Proposed Release'').

[2] 15 U.S.C. 78*l*(a).

[3] 15 U.S.C. 78*l*(d).

[4] The Commission views a security's withdrawal to be the same as a security's termination of registration.

[5] 17 CFR 240.12d2–2. *See* Securities Exchange Act Release No. 98 (February 12, 1935) (adopting Rule JD2, the predecessor to Rule 12d2–2). Rule 12d2–2 was most recently amended in 1963. *See* Securities Exchange Act Release No. 7011 (February 5, 1963).

[6] 17 CFR 249.25. *See* Securities Exchange Act Release No. 4706 (April 16, 1952).

[7] 17 CFR 240.12d2–2(a).

[8] 17 CFR 240.12d2–2(c). Under Rule 12d2–2(b), an exchange may also strike a security from listing and registration under Rule 12d2–2, if: (1) Trading in such security has been terminated pursuant to a rule of such exchange requiring such termination whenever the security is admitted to trading on another exchange; and (2) listing and registration of

Commission will issue an order granting the application, unless the Commission, by written notice to the exchange, postpones the effective date for a period of not more than 60 days.[9] The Commission may also order a hearing on the application to determine whether the exchange's application is in accordance with the exchange's rules or what terms the Commission should impose for the protection of investors.[10]

Rule 12d2–2 also provides that an issuer may initiate the delisting of its securities by filing a written application with the Commission to withdraw its security from listing and registration on an exchange in accordance with the rules of such exchange.[11] After publication of the notice of the issuer's application and expiration of a comment period, the Commission generally issues an order based on the application and any comments received.[12] The Commission may, however, order a hearing on the matter and can impose such terms as necessary for the protection of investors.[13]

Finally, Rule 12d2–2 provides that an issuer may request within 30 days after the publication of any rule or regulation which substantially alters or adds to the obligations, or detracts from the rights, of an issuer of securities registered pursuant to application under Section 12(b) or (c) of the Exchange Act that such registration shall expire.[14]

B. Summary of Proposed Rules

On June 15, 2004, the Commission issued a proposing release to streamline the procedures for removing from listing and/or withdrawing from registration, securities registered under Section 12(b) of the Exchange Act.[15] Specifically, to lessen paperwork burdens on exchanges and issuers, proposed amendments to Rule 12d2–2 would require that all exchange-initiated and issuer-initiated delisting applications be filed with the Commission electronically on the Form 25. The Commission would no longer issue orders to effectuate the delisting and deregistration of securities. Rather, the delisting would occur 10 days after the Form 25 is filed with the Commission while the deregistration under Section 12(b) would occur 90 days after the filing of the Form 25, unless the Commission postpones the deregistration pursuant to Rule 12d2–2(d)(3), as discussed below.[16]

To centralize information on the registration and deregistration of a security in one database, proposed amendments to Form 25 and Rule 101 of Regulation S–T would require that the Form 25 be filed electronically via the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[17] To avoid additional paperwork burdens, Rule 19d–1 and Form 25 would also be amended to require that the Form 25 serve as notice to the Commission of a denial of access to services of the Exchange as a result of an exchange-initiated delisting as required by Section 19(d)(1) and Rule 19d–(1) under the Exchange Act.

Finally, the proposed rule amendments would exempt standardized options and security futures from the delisting and deregistration procedures set forth in Section 12(d) of the Exchange Act, and Rule 12d2–2.[18]

C. Overview of the Comments Received

The Commission received three comment letters on the proposed amendments.[19] While all the commenters were very supportive of the Commission's proposal, the commenters also requested that the Commission provide further clarification on certain aspects of the proposed changes to Rule 12d2–2.

Specifically, two commenters requested that the Commission clarify the scope and purpose of the proposed requirement that exchanges provide public notice, at least 10 days before a delisting becomes effective, of the exchange's determination to delist a security.[20] In addition, the Amex Letter requested that the Commission clarify what information is to be included in a final delisting determination that is attached to the Form 25 as notice of a final action by an exchange, pursuant to Section 19(d) of the Exchange Act.[21] The NYSE Letter recommended that the Commission permit withdrawals of the Form 25 at any time prior to the effective date, and allow the exchange to determine the effective date of the Form 25, so long as the date chosen is at least ten days after the filing of the Form 25.

The NYSE also suggested that, for issuer-initiated delistings, the issuer should be the first to inform investors of its intent to delist and/or deregister from an exchange prior to public notification by the exchange of such delisting. The NYSE also believes, in response to a question raised in the Commission's release, that the issuer notification requirement should come from Commission rules rather than exchange rules because the Commission is in the best position to enforce this requirement.[22]

In addition, the Amex Letter recommended that there be a clearly defined mechanism by which the issuer and exchange are notified of a Commission action to delay effectiveness of a delisting, and that the

such security has become effective on such other exchange. 17 CFR 240.12d2–2(b).

[9] 17 CFR 240.12d2–2(c).

[10] *Id.*

[11] 17 CFR 240.12d2–2(d). The Commission publishes the issuer's application in the **Federal Register** for comment, and any interested person may submit to the Commission in writing all facts bearing upon whether the application to withdraw the security from listing and registration has been made in accordance with the rules of the exchange and what terms should be imposed by the Commission for the protection of investors.

[12] *Id.* The Commission seldom receives comments on delisting applications. Moreover, when the Commission has received comments, it has not, in recent years, imposed any conditions on the delisting or withdrawal from registration. For example, thus far in 2005, the Commission has received 16 delisting applications from issuers and comments on 2 of them. *See* Securities Exchange Act Release No. 51496 (April 6, 2005) (order granting the application of Carmel Container Systems Ltd. to withdraw its ordinary shares from listing and registration on the Amex); Securities Exchange Act Release No. 51212 (February 15, 2005) (order granting the application of Premier Farnell plc to withdraw its ordinary shares, preference shares, and American Depositary Shares from listing and registration on the NYSE). In 2004, the Commission received comments on the delisting applications of GB Holdings, Inc. and The Ohio Art Company (''Ohio Art''). *See* Securities Exchange Act Release No. 49553 (April 12, 2004) (order granting the application of GB Holdings, Inc. to withdraw its notes from listing and registration on the Amex); Securities Exchange Act Release No. 49336 (February 27, 2004) (notice of application of The Ohio Art Company to withdraw its common stock from listing and registration on the Amex). In 2003, the Commission received one comment on a delisting application. *See* Securities Exchange Act Release No. 47248 (January 24, 2003) (order granting the application of HSBC Bank, PLC to withdraw its notes from listing on the NYSE).

[13] *Id.*

[14] 17 CFR 240.12d2–2(f).

[15] *See supra* note 1.

[16] *See infra* notes 60–64.

[17] Under the amendments adopted by the Commission today, Form 25 will be filed by both exchanges and issuers. To assist exchanges and issuers in filing and permit the EDGAR system to differentiate between Forms 25 filed by exchanges and Forms 25 filed by issuers, Forms 25 filed by exchanges would have the EDGAR submission type of 25–NSE and Forms 25 filed by issuers would have the EDGAR submission type of 25.

[18] In conjunction with proposed Rule 12d2–2(e), the Commission issued an order to temporarily exempt standardized options and security futures from Rule 12d2–2 under the Exchange Act. Securities Exchange Act Release No. 49859 (June 15, 2004), 69 FR 34409 (June 21, 2004).

[19] *See* letters to Jonathan G. Katz, Secretary, Commission, from Claudia Crowley, Vice President & Deputy Chief Regulatory Officer, American Stock Exchange LLC, (''Amex'') dated July 22, 2004 (''Amex Letter''); Sullivan & Cromwell LLP, dated July 22, 2004 (''Sullivan Letter''); and Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE''), dated August 27, 2004 (''NYSE Letter'').

[20] *See* Amex Letter and NYSE Letter, *supra* note 19.

[21] *See* Amex Letter, *supra* note 19.

[22] *See* NYSE Letter, *supra* note 19.

Form 25 be amended to reflect such delay.[23]

Both exchange commenters, Amex and NYSE, asked the Commission to verify that the final delisting rules will not impact their current rules on suspending the trading of listed securities pursuant to Rule 12d2–1. Both of these commenters note the importance of an exchange's ability to suspend trading under its rules prior to a delisting going effective.[24] The Amex Letter and NYSE Letter also both state that exchange rules should not provide a comment period for delistings. In this regard, the Amex letter notes that, for exchange delistings, it already provides issuers with an appeal process.

Finally, the Sullivan Letter questioned the impact of the proposed 90-day effective date of deregistration on an issuer that has been acquired in a merger or similar business combination and no longer has any public shareholders. The Sullivan Letter recommended that the proposed rules be modified to provide that, if at the time a Form 25 is filed, an issuer has only one holder of record of equity securities registered under Section 12(b), then the proposed 90-day delay in the deregistration going effective should be automatically accelerated to make the deregistration effective the 10th day after the Form is filed.[25]

After carefully considering the comments received, the Commission has decided to adopt the proposed rule amendments substantially as proposed. The Commission believes that the final rule amendments fulfill the statutory requirements and promote efficiency and transparency in the delisting and deregistration procedures for exchanges and issuers. In response to the views and concerns expressed by commenters, the Commission has, however, made certain minor modifications and provided clarification to certain aspects of the final rules, as discussed below.

III. Discussion of the Final Rule Amendments

A. Final Amendments to Rule 12d2–2

1. Exchange-Initiated Delisting and/or Withdrawal From Section 12(b) Registration

The Commission is adopting the amendments to Rule 12d2–2 regarding exchange-initiated delistings substantially as proposed.[26] Specifically, the Commission is amending paragraph (b) of Rule 12d2–2 to provide that a national securities exchange may strike a class of securities from listing and/or withdraw the registration of such securities under Section 12(b) by filing an application on Form 25.[27] The delisting of the security will be effective 10 days after Form 25 is filed with the Commission.[28] The withdrawal from Section 12(b) registration will take effect 90 days after the filing of the Form, or such shorter period as the Commission may determine.[29] However, an issuer's duty to file any reports under Section 13(a) of the Exchange Act and the rules and regulations thereunder, solely because of such security's registration under Section 12(b), generally would be suspended upon the effective date of the delisting.[30]

In addition, the rules of the exchange must, at a minimum,[31] provide the following: (1) Notice to the issuer of the exchange's decision to delist its securities; (2) an opportunity for appeal to the national securities exchange's board of directors, or to a committee designated by the board; and (3) public notice, no fewer than 10 days before the delisting becomes effective, of the exchange's final determination to delist the security via a press release and posting on the exchange's Web site.[32] This public notice must remain posted on an exchange's Web site until the delisting is effective. As noted in the proposing release, to the extent that an exchange's rules do not currently comply with these requirements, the exchange must amend its rules.[33] Finally, as in current Rule 12d2–2, the exchange must promptly deliver a copy of the application to the issuer.[34]

The Commission received one comment in response to its question regarding whether the Commission should require exchanges, pursuant to exchange rules, to provide an additional opportunity for the public to comment on an anticipated delisting and/or deregistration before the Form 25 becomes effective. The Amex strongly opposed adopting exchange rules to provide additional opportunities for comment on exchange-initiated delistings, stating that such opportunity would open exchange-initiated delistings to a plethora of comments from investors seeking to stop the delisting and/or deregistration of an issuer's security.[35] The Amex stated that, pursuant to its rules, issuers are entitled to two levels of appeal for delisting decisions, and thus believed that permitting an additional public appeal or challenge process could potentially create confusion and uncertainty regarding delistings, thus undermining the goals of the Commission's proposal. In addition, the Amex and NYSE suggested that the Commission clarify the purpose of the required 10-day notice period.[36] Amex, in particular, asked whether the notice period is intended to provide investors and other interested parties a way to

[23] *See* Amex Letter, *supra* note 19. *See infra* notes 60–64 and accompanying text.

[24] *See* Amex Letter and NYSE Letter, *supra* note 19.

[25] *See* Sullivan Letter, *supra* note 19. The Sullivan Letter further requests that the Commission adopt a similar requirement with respect to Exchange Act Rule 12g–4 and Form 15 for securities being withdrawn from registration under Section 12(g) of the Exchange Act. The Commission notes that because the Rule adopted today only applies to Section 12(b) registration, it is not addressing the comments on Section 12(g) registration requirements, including deregistration for foreign private issuers.

[26] The Commission is making minor modifications to paragraph (d) of Rule 12d2–2 from that proposed. *See infra* notes 60–64 and accompanying text.

[27] Rule 12d2–2(b).

[28] *See* Rule 12d2–2(d)(1). But see also Rule 12d2–2(d)(3) (regarding the Commission's authority to delay the effectiveness of the Form 25). *See also* Rule 12d2–2(d)(5)–(7).

[29] *See* Rule 12d2–2(d)(2). *But see also* Rule 12d2–2(d)(3) (regarding the Commission's authority to delay the effectiveness of the Form 25). *See also* Rule 12d2–2(d)(5)–(7).

[30] *See* Rule 12d2–2(d)(5). There are certain situations where the duty to file reports under Section 13(a) may continue. *See* 12d2–d)(5)–(7).

[31] Rule 12d2–2(d)(2). Section 6(b)(7) of the Exchange Act, 15 U.S.C. 78f(b)(7), requires that the rules of an exchange provide, among other things, a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. *See also* Section 6(d)(2) of the Exchange Act, 15 U.S.C. 78f(d)(2), which requires exchanges to notify the issuer of, and give the issuer an opportunity to be heard upon, the specific grounds for delisting and withdrawal from registration and keep a record.

[32] Rule 12d2–2(b)(i). The Commission also notes that Rule 17a–1(b) under the Exchange Act requires the exchange to keep a copy of all documents made or received by it in the course of its business and in the conduct of its self-regulatory activity for a period of not less than five years. This includes retention of material in the course of a delisting. 17 CFR 240.17a–1.

[33] Exchanges must submit, by October 24, 2005, any proposed rule changes, pursuant to Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), necessary to conform their delisting procedures to Rule 12d2–2, as amended. The Commission believes that three months would afford sufficient time for exchanges to review their rules and file any proposed rule changes necessary to comply with amended Rule 12d2–2. The compliance date of the amended Rule 12d2–2 has been delayed until April 24, 2006 to give time for such proposed rule changes to be filed and considered by the Commission under Section 19(b) of the Exchange Act.

[34] Rule 12d2–2(b)(2). The Commission notes generally that it would expect the exchange to notify the issuer at the same time as filing the Form 25.

[35] *See* Amex Letter, *supra* note 19.

[36] *See* Amex Letter and NYSE Letter, *supra* note 19.

delay or prevent a delisting and/or deregistration.[37]

The Commission agrees with the Amex that it is not necessary that exchange rules provide for an opportunity for the public to comment on a delisting and/or deregistration. The Commission strongly believes that listed companies that no longer satisfy exchange listing standards should be delisted quickly in accordance with exchange rules and the Exchange Act. Such expedient action by exchanges serves to protect the public from being mislead into believing that these companies retain the imprimatur of an exchange listing. The requirement that an exchange provide public notice that a security will be delisted at least 10 days prior to the effectiveness of such delisting is consistent with the current procedures under Rule 12d2–2 for exchange-initiated delistings, and the Commission believes that such notice will better inform investors and the public of an exchange delisting, and give investors and the public sufficient time to take any action permitted under state and federal law. The Commission further notes that a person aggrieved by an exchange's final delisting determination is able to petition the Commission for review of such decision,[38] and then appeal the Commission's decision to the U.S. Court of Appeals.[39]

The Commission believes that the 10-day public notice requirement, as with the current delay in issuing an exchange delisting order, is sufficient time for interested parties to submit to the Commission any comments they have on the anticipated delisting and/or deregistration, to sell their securities, or to take any other action as permitted under state and federal law. The Commission believes that the 10-day public notice requirement is consistent with current procedure as well as with the Act, and will provide an opportunity for the Commission to impose such terms for the protection of investors in accordance with Section 12(d) of the Exchange Act or delay the delisting and/or deregistration in accordance with the Rule.[40]

The NYSE requested clarification on whether the proposed requirement that an exchange provide 10-day advance notice to the public of a delisting can coincide with the filing of the Form 25.[41] Rule 12d2–2(b)(3) requires an exchange to issue public notice no fewer than 10 days before the delisting on Form 25 becomes effective and, under Rule 12d2–2(d)(1) a delisting will become effective 10 days after a Form 25 is filed with the Commission. Accordingly, the Commission confirms that an exchange may issue public notice of its final determination to delist and/or deregister a security on the same day that the Form 25 is filed on Edgar with the Commission. The Commission notes, however, that, the 10-day notification requirement is a minimum period and that an exchange may give public notice of its delisting determination prior to the filing of the Form 25 with the Commission.

Finally, the Commission is retaining the requirement in current Rule 12d2–2(e)(ii) that an exchange must promptly deliver a copy of the delisting application to the issuer.[42] In the Proposing Release the Commission asked for comment on whether it should eliminate the recently added requirement that an issuer disclose the delisting of a class of its securities from an exchange[43] by filing a Form 8–K if the Commission were to adopt the Form 25 amendments. The Commission is not now eliminating the Form 8–K disclosure requirement regarding exchange-initiated delistings. Thus, an issuer continues to be required to file a Form 8–K if it receives notice from the exchange that maintains the principal listing for any class of its common equity, as defined in Exchange Act Rule 12b–2, that the exchange has submitted an application to delist a class of the issuer's securities. To provide certainty to issuers as to when their Form 8–K filing requirements are triggered, the Commission has determined to retain the requirement that an exchange deliver a copy of the delisting application to the issuer.

2. Issuer-Initiated Withdrawal From Listing and Section 12(b) Registration

The Commission is adopting the amendments to Rule 12d2–2 regarding issuer-initiated delistings substantially as proposed.[44] Specifically, the final amendments to Rule 12d2–2 permit an issuer of a class of securities to withdraw such securities from listing on a national securities exchange by filing an application on Form 25 with the Commission.[45] The delisting of the security will be effective 10 days after Form 25 is filed with the Commission.[46] The withdrawal from registration under Section 12(b) will take effect 90 days after the filing of the Form, or such shorter period as the Commission may determine.[47]

In addition, Rule 12d2–2(c) requires an issuer filing Form 25 to satisfy the following requirements: (1) Comply with the applicable exchange's rules for delisting and applicable state laws; (2) Submit a written notification to the exchange no fewer than 10 days before the issuer files a Form 25 of its intent to withdraw its security from listing and/or registration on such exchange[48]; and (3) Contemporaneous with providing written notice to the exchange, issue public notice of its intent to delist, and/or withdraw its security from Section 12(b) registration, via a press release and, if it has a publicly accessible Web site, post such notice on that Web site.[49]

The Commission has changed the time period in which an issuer is required to publish notice of its intent to delist its securities from an exchange from that proposed. Specifically, the final rule amendments require this notice to be published contemporaneous with providing written notice to the exchange of the issuer's intent to delist,[50] whereas, under the proposal, an issuer would have been required to publish notice of its intent to delist no fewer than 10 days before the issuer's delisting became effective. Because the Commission proposed that a delisting would become effective 10 days after the filing of a Form 25, an issuer could have waited to issue public notice until it filed the Form 25. The Commission received a comment from the NYSE expressing concern that, because the proposal would require the exchange to publish notice on its Web site of an issuer's intent to delist upon notification of such intent by the issuer, the exchange would be required to

[37] *See* Amex Letter, *supra* note 19.

[38] *See* 15 U.S.C. 78s(d).

[39] *See* 15 U.S.C. 78y.

[40] 15 U.S.C. 78l(d). *See also* Rule 12d2–2(d)(3).

[41] *See* NYSE Letter, *supra* note 19.

[42] Rule 12d2–2(b)(2).

[43] *See* Exchange Act Form 8–K, Item 3.01; Securities Act Release No. 8400 (Mar. 16, 2004), 69 FR 15594 (Mar. 25, 2004).

[44] The modifications to paragraph (c) of Rule 12d2–2 are discussed *infra* at notes 50–55 and accompanying text. In addition, the Commission is making minor modifications to paragraph (d) of Rule 12d2–2 from that proposed. *See infra* notes 60–64 and accompanying text.

[45] Rule 12d2–2(c).

[46] Rule 12d2–2(d)(1).

[47] Rule 12d2–2(d)(2). *See also* 12d2–2(d)(5)–(7) and *supra* note 30 and accompanying text.

[48] The written notice to the exchange must include a description of the security involved together with a statement of all material facts relating to the reasons for filing such application for withdrawal or striking from listing and registration. As noted in the Proposing Release, *supra* note 1, the Commission believes that notification to an exchange by an issuer at least 20 days prior to its delisting becoming effective will allow sufficient time for exchanges to make any system changes in preparation for removing the security from being quoted.

[49] The issuer would also be required to represent on Form 25 that these requirements have been met.

[50] Rule 12d2–2(c)(2)(iii).

notify the public at least 10 days before the issuer would be required to provide such notice. The NYSE believes that it is inappropriate for the exchange to be required, under Commission rules, to notify investors prior to the time the public receives such an announcement from the issuer.

In response to this comment, the final rule amendments require an issuer to notify the public at the same time it notifies the exchange of its intent to delist and/or withdraw its registration, which must be at least 10 days prior to filing a Form 25. The Commission is also adopting, as proposed, final rule amendments requiring the exchange, upon notification by an issuer, to post on its Web site the issuer's intent to withdraw its securities from listing and registration by the next business day.[51] Consequently, the issuer is required to notify the public at the same time it notifies the exchange, which will be at least 20 days prior to the delisting becoming effective.[52] Moreover, the exchange is required to notify the public by the next business day after the issuer notifies the exchange of its intent to delist.[53] The notices by an issuer and exchange on their Web sites must remain posted until the delisting becomes effective.[54]

The Commission received two comments on whether exchange rules should allow interested parties an additional opportunity to comment on the delisting before it becomes effective 10 days after filing the Form 25, and the elimination of a formal comment process. The NYSE noted that it has changed its rules in recent years to allow issuers to delist without preconditions, other than approval by the issuer's board of directors. As a result, while the NYSE has no objection concerning a Commission imposed comment period under Commission rules, it believes that there is no benefit in requiring that exchange rules provide an additional comment period. The Amex states that, while it may be appropriate to provide the public an opportunity to comment, the comment process should not be mandated or administered by the exchange. The Amex notes that an exchange cannot require an issuer to remain listed and whether or not an issuer is eligible to deregister its securities under the Exchange Act is outside the authority of the exchange.

The Commission agrees with these commenters and believes that the public notice requirements under the revised Rule provide adequate notification to investors and the public of an anticipated issuer delisting. As with exchange-initiated delistings, the Commission believes that the requirement that issuers provide public notice at least 10 days prior to filing a Form 25 provides sufficient time for any interested parties to submit to the Commission any comments it has on the delisting and/or deregistration, to sell their securities, or to take any other action as permitted under state and Federal law. The Commission also has the authority, pursuant to Section 12(d) of the Exchange Act, to impose any terms as the Commission may deem necessary for the protection of investors.[55]

3. Effectiveness of Delisting and Withdrawal of Registration Under Section 12(b) of the Exchange Act

The Commission is adopting amendments to Rule 12d2–2(d) that provide that the effective date for delisting of a class of securities is different from the effective date for the withdrawal from registration of such a class of securities under Section 12(b) of the Exchange Act. In particular, Rule 12d2–2(d)(1) provides that a class of securities will no longer be considered listed on a national securities exchange 10 days after the filing of Form 25 with the Commission. With respect to deregistration, however, Rule 12d2–2(d)(2) provides that the withdrawal of a security's registration under Section 12(b) is effective 90 days, or such shorter period as the Commission may determine, after filing the Form 25 with the Commission. As noted in the Proposing Release, the 90-day delay for deregistering a class of securities is substantially similar to the process for withdrawing a security from Section 12(g) registration.[56]

The Commission received three comments regarding the effectiveness of delisting and withdrawal from registration of a class of securities.[57] The NYSE recommended that the Commission continue to permit an exchange to choose the effective date of an exchange-initiated delisting, so long as the date is at least 10 days after the filing of an application, noting that there may be occasional circumstances in which an exchange may wish to delay a delisting beyond the 10 days. In this regard, current Form 25 allows an exchange to designate a date at least 10 days from the time the form is submitted to the Commission on which the involuntary delisting of an issuer's securities is to be effective. Form 25, however, may only be used by an exchange to remove from listing and registration securities where the entire class is matured, redeemed, retired, or extinguished by operation of law. Under the current Rule, the majority of Form 25s request a date that is 10 days from the date the Form is submitted. For exchange involuntary delistings, which under the former rules could not utilize the Form 25, it had been the Commission's policy to generally issue an approval order on the 10th day after an exchange's application to delist a security is filed with the Commission. Although an exchange occasionally does request a later effective date in its application, the majority of applications are approved by Commission order 10 days after they are submitted. Accordingly, we do not believe that by mandating that the Form becomes effective 10 days from the date submitted will change, in practice, the effectiveness of the majority of exchange delistings.

The amended Rule will remove the flexibility that exchanges currently have to request that a Form 25 or an application for delisting be made effective more than 10 days after filing. The Commission reminds exchanges that they have control as to when to file the Form 25 and, therefore, retain the ability to determine when a delisting becomes effective. The commenter did not describe any circumstance that necessitates an effective date for a delisting of more than 10 days. Moreover, the Commission believes it is important for the effective date of a delisting to be unequivocal. Investors and market participants should be able to discern with certainty the effective date of delisting based upon the date of filing of Form 25. For these reasons, the Commission is adopting the rule that Forms 25 will become effective 10 days after filing.

A second commenter requested that the effective date for withdrawal from registration under Section 12(b) of the Exchange Act coincide with the effective date of the delisting for an

[51] Rule 12d2–2(c)(3). The public notice requirements for the issuer and exchange replace the current requirement that the Commission publish notice of an issuer's proposed delisting.

[52] *See* Rule 12d2–2(c)(2)(iii).

[53] *See* Rule 12d2–2(c)(2)(iii) and (c)(3).

[54] *Id.*

[55] In addition, Rule 12d2–2(d)(3) states that the Commission can postpone the effectiveness of a deregistration to determine whether the application on Form 25 has been made in accordance with the rules of the exchange, or whether terms should be imposed for the protection of investors.

[56] *See* 15 U.S.C. 78*l*(g)(4) (''Registration of any class of security pursuant to this subsection shall be terminated in ninety days, or such shorter period as the Commission may determine * * *.'').

[57] *See* Amex Letter, *supra* note 19, at 2; NYSE Letter, *supra* note 19, at 3; and Sullivan Letter, *supra* note 19, at 3–5.

''acquired company'' [58] that no longer has any public shareholders. The commenter stated that, under the proposed amendments, an acquired company would be obligated to continue certain reporting requirements following a business combination during a 90-day period before a deregistration under Section 12(b) of the Exchange Act takes effect. The commenter believes that such disclosures do not provide any benefit if the company, with equity securities registered under Section 12(b), has been acquired in a merger or similar business combination and has no public shareholders remaining. The commenter notes that the former stockholders of the acquired company do not benefit from any additional disclosure and to the extent they received solely cash in the transaction they no longer need the protection under the Exchange Act with respect to the acquired company. The commenter recommended that the Commission instead provide that, if at the time the Form 25 is filed an issuer has one holder of record of equity securities registered pursuant to Section 12(b), then the 90-day period for the effectiveness of deregistration will be automatically accelerated to the tenth day after the Form is filed.[59]

The Commission has determined not to change the Rule as suggested by the commenter. If a business combination or merger former shareholders of the acquired company no longer need the protection of additional disclosure that may be triggered by its continued registration under Section 12(b), the Commission has the ability to accelerate the deregistration. The Commission believes that the appropriateness of accelerating the deregistration is better assessed on a case-by-case basis.

The third commenter, the Amex, states that it is important that there be a clearly defined mechanism by which the issuer and exchange are notified of the Commission action to delay effectiveness of a delisting, and that the Form 25 is amended to reflect such delay.[60] Under Rule 12d2–2(d)(3) as proposed, the Commission provided that it may, by written notice to the exchange or issuer, postpone effectiveness of a deregistration to determine whether the Form 25 to deregister the class of securities has been made in accordance with the rules of the exchange, and whether any terms or conditions should be imposed by the Commission for the protection of investors.[61]

The Commission believes that the mechanism for notification by the Commission of a delay in effectiveness of a delisting and/or deregistration would be by written notice. After considering Amex's comments, the Commission is modifying the Rule to clarify that any such written notice would be given to both the exchange and the issuer.[62] The Commission is also changing the Rule to clarify that the Commission will send written notice to both the exchange and issuer if it postpones effectiveness of a delisting or deregistration.[63] Regarding the commenter's suggestion of amending the Form 25, the Commission does not believe that postponement of a delisting and/or deregistration warrants amendment of the Form 25.[64] Rather, the Commission would expect that the Commission would provide notice of the delay to the public through the Commission's Web site or by a press release.

Under new Rule 12d2–2(d)(5), upon the filing of Form 25, an issuer's duty to file reports under Section 13(a) of the Exchange Act, which arises from the registration of a class of securities under Section 12(b), will be suspended upon the effective date of a delisting, even though the Section 12(b) withdrawal from registration is effective at a later time. The Commission notes that an issuer will, however, have to comply with all other Exchange Act requirements that arise from Section 12(b) registration until its withdrawal from registration is effective.[65]

Rule 12d2–2(d)(4) requires that, if an action under Section 12 of the Exchange Act to suspend the effective date of, or revoke, the registration of a class of securities, commences against an issuer at any time while the securities are registered under Section 12(b), the securities would remain registered under Section 12 until the final determination of such proceeding, or until the Commission otherwise determines to suspend the effective date of, or revoke, the registration of a class of securities.[66] This provision preserves the Commission's ability to commence a proceeding pursuant to Section 12 of the Exchange Act, and is designed to ensure that issuers will not be able to circumvent pending Commission action simply by filing a Form 25 to deregister.

To preclude an issuer from using the 90-day delay period to circumvent its reporting obligations under Section 13(a) of the Exchange Act [67] and the rules and regulations thereunder, Rule 12d2–2(d)(5) requires that, if, following the effective date for delisting a security, the Commission, an exchange, or an issuer delays the Form 25's effective date for the security's withdrawal from registration under Section 12(b), the issuer, within 60 days of such delay, will be required to file with the Commission any reports that would have been required under Section 13(a) had the Form 25 not been filed.[68] The issuer will also be required to timely file any subsequent reports required under Section 13(a) for the duration of the delay. As discussed in the Proposing Release, the Commission believes that the 60-day reporting requirement will help prevent issuers from using the filing of the Form 25 to inappropriately suspend their reporting obligations for a temporary period of time. The Commission believes that the 60-day reporting requirement also would be beneficial to investors and the public in that, during the time that a security's withdrawal from registration is delayed, investors and the public would be able to continue to track an issuer's financial status without missing a fiscal quarter of reporting information.[69]

Under Rule 12d2–2(d)(6), an issuer will therefore be required to file any reports that an issuer with such a class of securities registered under Section 12 of the Exchange Act would be required to file under Section 13(a) if such class of securities: (1) Is registered under Section 12(g) of the Exchange Act; or (2) would be registered, or would be required to be registered, under Section

[58] The commenter defines an ''acquired company'' to mean a company with equity securities registered under Section 12(b) of the Exchange Act that has been acquired in a merger or similar business combination. *See* Sullivan Letter, *supra* note 19, at 2.

[59] *See* Sullivan Letter, *supra* note 19, at 5.

[60] *See* Amex Letter, *supra* note 19, at 2.

[61] The Commission also has authority under Section 12(d) of the Exchange Act to impose terms on the withdrawal from listing and registration of a security as it deems necessary for the protection of investors.

[62] *See* Rule 12d2–2(d)(3).

[63] *See id.*

[64] Exchanges and issuers will be permitted to amend the Form 25 in certain instances, such as correcting a technical error to the Form. *See* Section III.B. regarding the general instructions to Form 25.

[65] These continuing requirements include, for example, Sections 13(e), 14(a) and 14(d) of the Exchange Act (proxy and tender offer rules). 15 U.S.C. 78m(e), 78n(a), and 78n(d).

[66] For example, under Section 12(j) of the Exchange Act, the Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title, or the rules and regulations thereunder. 15 U.S.C. 78*l*(j).

[67] 15 U.S.C. 78m(a).

[68] *See* Rule 12d2–2(d)(6).

[69] The 60-day time period is similar to the time period provided in Rule 12g–4(b) regarding the deregistration of a class of equity securities under Section 12(g) of the Exchange Act.

12(g) but for the exemption from registration under Section 12(g) of the Exchange Act by Section 12(g)(2)(A)[70] of the Exchange Act.

Similarly, under Rule 12d2–2(d)(7), an issuer whose reporting responsibilities under Section 13(a) of the Exchange Act are suspended will, nevertheless, be required to file any reports that would be required under Section 15(d) of the Exchange Act but for the fact that the reporting obligations are: (1) Suspended for a class of securities under Rule 12d2–2(d)(5); and (2) suspended, terminated, or otherwise absent under Section 12(g) of the Exchange Act. The reporting responsibilities of an issuer under Section 15(d) of the Exchange Act shall continue until the issuer is required to file reports under Section 13(a) or the issuer's reporting responsibilities under Section 15(d) are otherwise suspended. The Commission believes that these provisions will help ensure that an issuer with reporting obligations under Section 13(a) of the Exchange Act that are suspended under the Rule because they have filed the Form 25 would continue to file any reports under Section 13(a) or 15(d) that would be required if the class of delisted securities was no longer registered under Section 12(b) of the Exchange Act. The Commission has not received any comments on these provisions and is adopting Rule 12d2–2(d)(4) through (d)(7) as proposed.

4. Delisting and/or Withdrawal From Section 12(b) Registration Pursuant to Certain Corporate Actions

The Commission proposed to retain the current requirement in Rule 12d2–2(a)(1)–(4) that an exchange file Form 25 to strike a security from listing and registration following certain corporate actions, such as circumstances where the entire security class is matured, redeemed, retired, or extinguished by operation of law. The Commission has received no comments on this part of the proposal and is adopting it as proposed.[71]

The Commission also received no comments on its proposed amendments to paragraph (d)(8) of Rule 12d2–2 and is adopting it as proposed. Rule 12d2–2(d)(8) clarifies that if a security is delisted pursuant to paragraph (a)(3) of amended Rule 12d2–2 and a national securities exchange intends to admit a successor security to trading, in accordance with Rule 12a–5 under the Exchange Act, the effective date of delisting, as set forth in amended Rule 12d2–2(d)(1), shall not be earlier than the date the successor security is removed from its exempt status.[72] The Commission notes that this is consistent with the current treatment of successor securities, in which the Form 25 for delisting and deregistering the original security can only be made effective after the successor security has been removed from its exempt status.[73]

5. Deletions of Certain Provisions in Current Rule 12d2–2

Paragraph (b) of Rule 12d2–2 currently provides that an exchange may strike a security from listing and registration if: (1) Trading in such security has been terminated pursuant to a rule of such exchange requiring such termination whenever the security is admitted to trading on another exchange; and (2) listing and registration of such security has become effective on such other exchange. The Commission believes that the provision may raise competitive concerns, as it could be construed as a limitation on an issuer's right to list its securities on multiple exchanges. The Commission did not receive any comments on its proposal to eliminate this provision from Rule 12d2–2 and is adopting the amendment as proposed.

In addition, paragraph (f) of Rule 12d2–2 currently provides that, within 30 days of the publication of any rule or regulation which substantially alters or adds to the obligations, or detracts from the rights, of an issuer of a security registered under Section 12(b) or (c) of the Exchange Act, or of its officers, directors, or security holders, or of persons soliciting or giving any proxy or consent or authorization with respect to such security, an issuer may file with the Commission a request that its registration expire. Such registration shall expire immediately upon receipt of such request or immediately before such rule or regulation becomes effective, whichever date is later.[74] The Commission proposed to eliminate this paragraph, as it is an obscure provision that has rarely been utilized.[75] Furthermore, the elimination of this provision would ensure that issuers have to follow exchange rules to delist and/or deregister their securities.[76] The Commission received no comments on its proposal to eliminate this provision, and is adopting the amendment as proposed.

B. Changes to Form 25

Currently, Form 25 is only filed by an exchange as notification to the Commission of the removal of a security from listing and registration where the entire class of the security has been matured, redeemed, retired, or its rights extinguished by operation of law.[77] Exchanges may file Form 25 on EDGAR or may submit paper copies of the Form to the Commission.[78] In addition, exchange and issuer delisting applications filed with the Commission, pursuant to Rule 12d2–2(c) and (d), are currently submitted in paper only and cannot be filed on EDGAR. Form 25 currently becomes effective at the opening of business on such date as specified by the exchange, which must be no fewer than 10 days following the date on which Form 25 is filed with the Commission.

To simplify the delisting and deregistration process, the Commission is amending Form 25 to be used for all delistings initiated by either the issuer or an exchange. The Commission received no comments on its proposal to amend Form 25. Accordingly, Form 25 replaces the paper application currently filed by exchanges and issuers to delist and deregister securities under current

[70] *See* Section 12(g)(2)(A) of the Exchange Act, which states that the provisions of Exchange Act Section 12(g)(1) shall not apply to ''any security listed and registered on a national securities exchange.'' 15 U.S.C. 78l(g)(2)(A). During the Section 13(a) reporting suspension contemplated by proposed Rule 12d2–2(d)(5), an issuer's class of securities would not be listed on a national securities exchange for purposes of Section 12 of the Exchange Act. The class of securities would, however, continue to be registered under Section 12(b) of the Exchange Act for the duration of the Section 13(a) reporting suspension or until the Commission otherwise determines.

[71] *See* Rule 12d2–2(a).

[72] *See* Rule 12d2–2(d)(8).

[73] Currently, exchanges generally do not file the Form 25 until the successor security has actually been removed from its exempt status.

[74] 17 CFR 240.12d2–2(f).

[75] The Options Clearing Corporation used the provision to deregister securities in response to the Commission adopting new exemptions for standardized options under the Securities Act of 1933 and the Exchange Act. *See* Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003). Form 25 was unavailable because it discusses delisting and deregistration. The OCC, however, only wished to deregister the options. The Commission is amending Form 25 to cover delisting and deregistration to avoid this problem in the future.

[76] Issuers should note that Section 12(a) of the Exchange Act requires the effective registration of a class of securities (other than an exempted security) on an exchange as a prerequisite to trading on such exchange.

[77] *See supra* note 7 and accompanying text.

[78] The proposal to permit the voluntary filing of Form 25 through EDGAR was adopted by the Commission as part of amendments to rules under the Exchange Act and the Securities Act of 1933 to require foreign private issuers and foreign governments to file most of their securities documents through EDGAR; to clarify when a filer may submit an English summary instead of an English translation of a foreign language document; and to eliminate the requirement that any first-time EDGAR filer, domestic or foreign, submit a paper copy of its electronic filing to the Commission. *See* Securities Exchange Act Release No. 45922 (May 14, 2002), 67 FR 36678 (May 24, 2002).

Rule 12d2–2(c) and (d) of the Exchange Act.

Rule 12d2–2, as amended, requires exchanges and issuers to follow the rules of the exchange regarding the delisting and deregistration of securities, after which the exchange or issuer will file the amended Form 25 to notify the Commission of the delisting and/or deregistration of a security under Section 12(d). The Commission is amending Form 25 to require the exchange or issuer to provide the Commission with the name of the issuer of the security, the name of the exchange where such security is listed and registered, the address of the issuer, and a description of the security. In addition, on Form 25, the exchange or issuer is required to check a box to designate the provision under Rule 12d2–2 relied upon to strike the security from listing and/or registration under Section 12(d) of the Exchange Act.

The instructions to Form 25 provide that the Form must be filed on EDGAR.[79] The Commission believes that requiring exchange and issuers to file one form, the revised Form 25, on EDGAR will substantially reduce paperwork burdens for exchanges and issuers. Further, mandatory filing on EDGAR is designed to ensure that all current information on the registration status of an issuer is available on EDGAR. Because exchanges and issuers have access to EDGAR, the Commission believes it will not be burdensome for them to file electronically. Moreover, this change will be beneficial to the public by providing a complete representation of the issuer's registration status, which, as noted above, is not currently available on the EDGAR system.

To effectuate mandatory electronic filing of the revised Form 25, the Commission is amending Regulation S–T.[80] Currently, Rule 101(b)(9) of Regulation S–T[81] permits, but does not require, electronic filing of Form 25 on EDGAR. The Commission is eliminating this provision, because it is proposing mandatory electronic filing of Form 25. In addition, the Commission is amending Regulation S–T to add new paragraph (a)(1)(ix) to Rule 101 make the filing of Form 25 on EDGAR mandatory.[82]

Currently, Form 25 does not include general instructions as to its use and effectiveness. Therefore, the Commission is adopting new general instructions to Form 25 to provide further guidance to the exchanges and issuers on the use and effectiveness of the Form. The general instructions reiterate many of the regulatory requirements adopted in this proposal, including mandatory electronic filing on EDGAR, delayed effectiveness of a security's withdrawal of registration under Section 12(b), and suspension of duty to file reports under Section 13(a) immediately upon the filing of the Form 25. The instructions to Form 25 also direct issuers to determine whether they have additional reporting requirements under Section 12(g) and reporting obligations pursuant to Section 15(d) of the Exchange Act upon filing of the Form.

The general instructions also state that with respect to the filing of any amendment to Form 25, the removal of the class of securities from listing on the exchange shall be effective 10 days after filing the amended Form 25. The withdrawal of registration of a class of securities registered under Section 12(b) shall take effect in 90 days, or such shorter period as the Commission may determine, after the exchange or issuer files the amended Form 25.

On March 16, 2004, the Commission adopted amendments to Form 8–K, including, among other items, a new Form 8–K item that would require an issuer to disclose the delisting of a class of its securities from an exchange.[83] In the Proposing Release, the Commission solicited comment on whether it should eliminate the Form 8–K disclosure requirement regarding exchange-initiated delistings if it adopted those proposals.[84] The Commission noted that if it adopts the Form 25 amendments, the delisting of a company's securities from an exchange would trigger both a Form 25 filing requirement and Form 8–K filing requirement. The Commission did not receive any comments on this issue. The Commission believes that it would not be prudent at this time to adopt additional amendments to Form 8–K, particularly since the new Form 8–K disclosure requirements have only recently been adopted and become effective. In addition, Form 8–K requires disclosure that would not be presented in the Form 25, including the actions that the company intends to take as a result of the delisting.[85] If necessary in the future, the Commission will consider amending Form 8–K to eliminate the Form 8–K disclosure requirement regarding exchange-initiated delistings.

C. Filing of Form 25 to Serve as Notice Pursuant to Section 19(d)

Rule 19d–1 under the Exchange Act[86] provides that an exchange shall file with the Commission a notice of, among other things, any final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services.[87] Currently, exchanges do not file Section 19(d) notices when they delist a security, because the actual delisting of the security does not occur until ordered by the Commission. Therefore, the Commission, not the exchange, takes the final action of delisting the security.

Under Rule 12d2–2 as amended today, the Commission will no longer issue orders approving exchanges' delisting applications. Therefore, the exchanges are required to file notices under Rule 19d–1 of any final delisting decisions of the exchange as denials of access to exchange services. To avoid imposing additional paperwork burdens on the exchanges, however, the Commission proposed to amend Rule 19d–1 to provide that the filing of a Form 25 would serve as notice to the Commission under Section 19(d) of the Exchange Act. The Commission received no comments on this proposal and is adopting the amendments to Rule 19d–1 as proposed.[88]

The Commission also proposed to amend Rule 19d–1 to require the exchange to attach a copy of its delisting determination to Form 25 and file Form 25 with the attachment on EDGAR. The

[79] The Commission notes that an issuer that wishes to delist and/or deregister its class of security from more than one exchange must file a separate Form 25 for each exchange. An exchange or issuer is permitted to delist and/or deregister more than one class of security on the same Form 25. These procedures are consistent with current practice.

[80] 17 CFR 232.10 through 232.601. Regulation S–T is the general regulation governing EDGAR filing. In addition to Regulation S–T, filers must submit electronic documents in accordance with the EDGAR filing manual.

[81] 17 CFR 232.101(b)(9).

[82] 17 CFR 232.101(a). The Commission notes that issuers and exchanges that need to obtain a temporary hardship exemption from EDGAR filing requirements may seek to do so pursuant to Rule 201 of Regulation S–T.

[83] *See* Item 3.01 of Securities Act Release No. 8400, (March 16, 2004), 69 FR 15594 (March 25, 2004) (adopting amendments to Form 8–K).

[84] *See* Proposing Release, *supra* note 1.

[85] *See* Item 3.01 of Form 8–K, 17 CFR 249.308.

[86] 17 CFR 240.19d–1.

[87] These delisting decisions are reviewable by the Commission under Section 19(d)(2) of the Exchange Act because they have been considered by the Commission to be a denial if access to services offered by the self-regulatory organization (''SRO''). 15 U.S.C. 78s(d)(2). *See e.g., Healthtech Int'l Inc.*, 70 S.E.C. 2337 (1999). If, in any proceeding to review an exchange's delisting decision, the Commission finds that the specific grounds on which such denial of access exist in fact, that the denial of access is in accordance with the rules of the exchange, and that such rules are, and were applied in a manner consistent with the Exchange Act, the Commission shall dismiss the proceeding. 15 U.S.C. 78s(f).

[88] *See* Rule 19d–1(j) and (k).

Commission is adopting this amendment as proposed.

One commenter asked that the Commission clarify what constitutes the exchange delisting determination that must be attached to Form 25, and what information must be included in such determination.[89] The Commission has not specified a particular form or template for the delisting determination of the exchange that serves as the notice required by Rule 19d–1. The Commission notes, however, that the delisting determination of the exchange must follow the requirements of Section 6(d) of the Exchange Act.[90] Thus, at a minimum, the delisting determination of the exchange shall be supported by a statement setting forth the specific grounds on which the delisting is based.

D. Exemption of Options and Security Futures From Section 12(d)

The Commission is amending Rule 12dd2–2 to exempt standardized options and securities futures products from Section 12(d) of the Exchange Act and Rule 12d2–2 thereunder. When Congress enacted the Commodity Futures Modernization Act of 2000 (''CFMA'',[91] it excluded security futures products traded on a national securities exchange from the requirement to register under Section 12(a) of the Exchange Act.[92] In addition, the Commission exempted by rule security futures products from Section 12(g), if traded on a national securities exchange and cleared by a clearing agency that is registered as a clearing agency under Section 17A of the Exchange Act or exempt from registration as a clearing agency under Section 17A(b)(7).[93] Although the CFMA did not explicitly exempt security futures products from the requirements of Section 12(d) or Rule 12d2–2 under the Exchange Act, the Commission has not applied the requirements under those provisions to securities futures exchanges and temporarily exempted them from Rule 12d2–2 under the Exchange Act.[94]

In addition, the Commission believes there is little practical benefit to requiring the delisting of standardized options and security futures to comply with Rule 12d2–2. Standardized options and security futures products are derivatives, and thus holders of such products have no ownership interest in the underlying security or index, unless the option or security future is physically settled and the holder chooses to exercise the standardized option or hold the security future until expiration. For this reason, when a standardized option or security futures product fails to meet an exchange's maintenance standards, the exchange may not add new options series or expiration months in security futures products, but market participants are still allowed to do closing transactions in open series of options until expiration or until the settlement date of the security future.

The Commission received no comments on its proposal to exempt standardized options and security futures products from Section 12(d) of the Exchange Act and the requirements of Rule 12d2–2, and is adopting the amendments as proposed. Paragraph (e) of amended Rule 12d2–2 exempts from Section 12(d) of the Exchange Act, and Rule 12d2–2 thereunder, standardized options, as defined in Rule 9b–1(a)(4) under the Exchange Act,[95] that are issued by a clearing agency registered under Section 17A of the Exchange Act[96] and traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act.[97] Paragraph (e) to Rule 12d–2 also exempts from Section 12(d)[98] and Rule 12d2–2 any security futures products that are traded on a national securities exchange.

E. Compliance Date

The amendments and new rules will become effective on August 22, 2005. To provide exchanges sufficient time to conform their SRO rules to the new requirements, however, the compliance date of the amendments and new rules is April 24, 2006.

F. Implementation

To the extent that exchanges have to revise their rules to comply with the amendments and new rules, SRO rule changes would be required to be filed with the Commission under Section 19(b) of the Exchange Act.[99] Such proposed rule changes that meet the requirements of Rule 12d2–2, as well as Section 19(b) and Rule 19b–4[100] under the Exchange Act, must be filed with the Commission no later than October 24, 2005 and must be operative no later than nine months after publication of Rule 12d2–2.

IV. Paperwork Reduction Act

A. Summary of Collection of Information

As discussed in the Proposing Release, certain provisions of Rule 12d2–2 and Form 25 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[101] The Commission submitted the collection of information requests contained in the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, and OMB approved the request for approval of the revision of collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB approved the collection of information titled ''Removal from Listing and Registration of Matured, Redeemed, or Retired Securities—Rule 12d2–2 and Form 25,'' (OMB Control No. 3235–0080).

The Commission is adopting amendments to its rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under Section 12(b) of the Exchange Act. The final amendments to Rule 12d2–2 require all issuers and national securities exchanges seeking to delist and/or deregister a security in accordance with the rules of an exchange and the Commission to file Form 25 in an electronic format with the Commission

[89] *See* Amex Letter, *supra* note 19, at 3.

[90] 15 U.S.C. 78f(d). Section 6(d)(2) of the Exchange Act, 15 U.S.C. 78f(d)(2), requires, among other things, that in any proceeding by a national securities exchange to determine whether a person shall be prohibited or limited with respect to access to services offered by the exchange, the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for prohibition or limitation under consideration and keep a record. A determination by the exchange to prohibit or limit a person with respect to access to services offered by the exchange shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

[91] Pub. L. 106–554, 114 Stat. 2763.

[92] 15 U.S.C. 78*l*(a).

[93] *See* Securities Act Release No. 8171 (December 23, 2002), 68 FR 188 (January 2, 2003).

[94] *See* Securities Exchange Act Release No. 49859 (June 15, 2004), 69 FR 34409 (June 21, 2004).

[95] 17 CFR 240.9b–1(a)(4).

[96] 15 U.S.C. 78q–1.

[97] 15 U.S.C. 78f(a).

[98] 15 U.S.C. 78*l*(d).

[99] *See* Preliminary Note to Rule 12d2–2. As SROs, exchanges currently are required by the Exchange Act to file with the Commission any proposed new rules or rule amendments, accompanied by a concise general statement of the basis for, and purpose of, the proposed rule change. Upon the filing of a proposed rule change, the Commission shall publish notice of it and provide an opportunity for public comment. *See* Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and Rule 19B–4 under the Exchange Act, 17 CFR 240.19b–4. The proposed rule change may not take effect unless the Commission approves it pursuant to Section 19(b)(2) of the Exchange Act, or it is otherwise permitted to become effective under Section 19(b)(3)(A) or Section 19(b)(7) of the Exchange Act. 15 U.S.C. 78s(b)(2), (b)(3)(A) and (b)(7).

[100] 17 CFR 240.19b–4.

[101] 44 U.S.C. 3501.

on the EDGAR database. In addition, as in current Rule 12d2–2, an exchange seeking to delist and/or deregister a class of securities must promptly deliver a copy of the application to the issuer. The final amendment to Rule 19d–1 provides that Form 25 serve as an exchange's notice to the Commission under Section 19(d) of the Exchange Act. Finally, Rule 12d2–2 exempts standardized options and security futures products traded on a national securities exchange from Section 12(d) of the Exchange Act.

Because the final rules are substantially similar to those proposed, the Commission continues to believe that the estimates published in the Proposing Release regarding the proposed collection of information burdens are appropriate.[102] Compliance with the collection of information imposed by the final rules is mandatory. Any information with the Commission filed by the exchanges and/or issuers as required by the final rules will not be confidential and will be made available to the public.

B. Use of Information

The collections of information are necessary for persons to obtain certain benefits or to comply with certain requests. As discussed, Form 25 will be used by both issuers and national securities exchanges to delist a class of securities from a national securities exchange, and to withdraw from registration a class of securities under Section 12(b) of the Exchange Act. Form 25 will enable the Commission to receive organized information relating to an issuer and/or the listed exchange that intends to delist and/or deregister a class of securities from the listed exchange pursuant to Section 12(b) of the Exchange Act. Moreover, Form 25, in addition to the exchange's delisting determination, will serve as notice of an exchange's final action as required under Section 19(d) of the Exchange Act.

C. Respondents

The final rules apply to national securities exchanges and issuers seeking to delist a class of securities from a national securities exchange and/or to withdraw from registration a class of securities under Section 12(b) of the Exchange Act. At the end of 2003, there were nine national securities exchanges. In 2003, 57 issuers sought to delist a class of securities from a national securities exchange and/or to withdraw from registration a class of securities under Section 12(b) of the Exchange Act. Given these figures, the Commission staff estimates that approximately 66 respondents will be required to comply with these Rule amendments.

D. Total Annual Reporting and Recordkeeping Burdens

The Commission estimates that the current combined burden under Rule 12d2–2 is 848 burden hours per year. This estimate is based on activities of national securities exchanges and issuers in 2003. In 2003, the national securities exchanges filed 544 Forms 25 at one burden hour per form (including filling out the Form 25 and providing notice to the issuer). In addition, the national securities exchanges filed 190 delisting applications at one burden hour per application (including filling out the application and providing notice to the issuer).

In the Proposing Release, the Commission proposed to eliminate current Rule 12d2–2(e)(2), which requires exchanges to deliver a copy of the application to the issuer. Nevertheless, the Proposing Release's estimate of one burden hour per Form 25 for national securities exchanges mistakenly included this requirement; a more accurate estimation of the burden hours without this requirement would have been lower than that set forth in the Proposing Release. However, after further evaluation, the Commission today is adopting amendments to Rule 12d2–2 that will continue to require exchanges seeking to delisting and/or deregister a class of securities to deliver a copy of the Form 25 to the issuer.[103] Therefore, the hour burden estimate for filing a Form 25 would remain one burden hour per form-the estimate includes filling out the Form 25 and providing notice to the issuer.

Of those written applications filed by national securities exchanges, 104 were filed to delist equity securities and 86 were filed to delist options. Rule 12d2–2 will exempt standardized options and security futures products. The Commission estimates that the exemption for standardized options and security futures products will lower the total burden hours incurred by national securities exchanges from 734 hours to 648 hours.[104]

In 2003, 57 issuers voluntarily delisted their securities by filling out and submitting delisting applications, which, for issuers, take on average, two burden hours per application. Rule 12d2–2 will require issuers that voluntarily delist their securities to file a Form 25, which takes one burden hour, rather than a voluntary delisting application, which, for issuers, takes two burden hours. Assuming that 57 issuers voluntarily delist their securities, this change will reduce the total burden hours incurred by issuers from 114 hours to 57 hours.

As a result of this reduction, the combined estimated annual burden under Rule 12d2–2 for exchanges and issuers will be 705 hours.[105]

E. No Responses to Request for Comment

In the Proposing Release, the Commission solicited comments on: (1) The accuracy of our burden hour estimates; (2) whether the proposed changes to collection of information are necessary for the proper performance of the Commission's functions; (3) whether there are ways to enhance the quality, utility, and clarity of the proposed information to be collected; (4) whether there are ways to minimize burden hour estimates; and (5) whether the proposed amendments would have any effects on any other collection of information not previously identified. The Commission did not receive any comments on the Paperwork Reduction analysis contained in the Proposing Release.

V. Costs and Benefits of Final Rule Amendments

A. Introduction

The new amendments to Rule 12d2–2 and Form 25 adopted by the Commission today simplify the deregistration and delisting requirements under Section 12 of the Exchange Act. Rule 12d2–2 and Form 25 will require both national securities exchanges and issuers seeking to delist and deregister a class of securities to file the Form 25 with the Commission on EDGAR. The application to delist a class of securities on Form 25 will be effective 10 days after filing with the Commission. However, withdrawal from

[102] With regard to estimates under Rule 12d2–2, the Commission Staff has changed the estimate of the total paperwork burden slightly due to a miscalculation. The Commission stated in the Proposing Release that the number of burden hours per year is 851 hours. The actual number of burden hours per year is 848 hours.

[103] *See* Rule 12d2–2(b)(2).

[104] None of the national securities exchanges currently use EDGAR to file Form 25. However, the Commission believes that requiring Form 25 to be filed on EDGAR will not change the amount of time required to complete Form 25.

[105] The Commission notes that exchanges may need to amend their rules to comply with the requirements of Rule 12d2–2. Pursuant to Exchange Act Rule 19b–4, any such amendments would need to be filed with the Commission as proposed rule changes. However, this collection of information would be collected pursuant to Exchange Rule 19b–4 and therefore would not be an additional collection of information for Rule 12d2–2.

Section 12(b) registration obligations will not be effective until 90 days after the Form 25 is filed, or such shorter period of time that the Commission may require. In addition, the Commission will no longer issue orders approving a delisting. Instead, the revised Form 25 with an attached national securities exchange delisting decision will constitute notice of an exchange's final action under Section 19(d) of the Exchange Act.

Rule 12d2–2 specifies the delisting requirements with which national securities exchanges and issuers must comply. First, each national securities exchange must have adequate delisting rules relating to notification to the issuer of a delisting, review and appeal of a national securities exchange's delisting decision, and dissemination of notice of a delisting. This provision includes a requirement that the national securities exchange give public notice of its decision to delist a class of securities, via a press release and posting on the national securities exchange's Web site, no fewer than 10 days before the delisting on Form 25 becomes effective. In addition, the exchange must promptly deliver a copy of the application to the issuer.

A delisting issuer must certify that it has complied with applicable delisting rules of the national securities exchange and applicable state laws, submitted written notification to the applicable national securities exchange of the issuer's decision to delist at least 10 days before it files Form 25 and, contemporaneously with such notice, has widely disseminated notice of the delisting of its class of securities. Rule 12d2–2 will exclude options and securities futures from the delisting requirements. The Commission solicited comments on the cost and benefit analysis contained in the Proposing Release. In response, the Amex Letter stated that the Amex supports the Commission's efforts to provide increased transparency and efficiency to the delisting and deregistration process.[106]

B. Benefits

Amendments to Rule 12d2–2, as adopted, will benefit issuers, national securities exchanges, and investors. The use of Form 25 for all delistings provides a uniform method of delisting a class of securities. In addition, the use of EDGAR as a method of filing the Form 25 makes information contained in Commission filings easily available to issuers, national securities exchanges, and the investing public, without any corresponding increase in the time required for issuers to complete Form 25. The electronic format of the information facilitates research and data analysis, and the use of EDGAR facilitates more efficient storage, retrieval, and analysis of delisting information. Quicker access to this information will not only facilitate review of the information, but also enhance the Commission's ability to study and address issues that relate to this information.

Rule 12d2–2 is intended to provide clarity to both issuers and national securities exchanges. The requirement that all national securities exchanges have specified rules relating to the delisting process should clarify the issues that both issuers and national securities exchanges must address before filing a Form 25. Requiring issuers to certify that they have in fact followed the necessary steps in the delisting process should serve as a reminder to delisting issuers of the necessary procedures, and provide the public with adequate notice that a delisting has been properly effected.

In addition, Rule 12d2–2, by exempting standardized options and security futures products, eliminates the time national securities exchanges currently spend filing applications to delist these products. Rule 12d2–2 also promotes the comparable regulatory treatment of options and security futures. The exemption for standardized options and security futures also provides clarity to market participants.

C. Costs

The Commission believes that the changes described above will streamline the delisting process and may result in a net reduction in the current costs borne by issuers and national securities exchanges. The Commission does not expect any detrimental effects to investors as a result of the new amendments to Rule 12d2–2 and Form 25.

The filing of Form 25 imposes costs on national securities exchanges and issuers. Rule 12d2–2 requires national securities exchanges and issuers to spend time filling out Form 25s in connection with a delisting. In addition, national securities exchanges who seek to delist and/or deregister a class of securities must promptly deliver a copy of the Form 25 to the issuer. National securities exchanges may also incur costs associated with the maintenance of EDGAR capabilities. However, the Commission expects the Form 25 requirements to be less time consuming than the method currently used to initiate a delisting; therefore, the administrative time burden associated with delisting will likely be lower than that of the current practice associated with delistings. With respect to EDGAR facilities, it is the Commission's understanding that the national securities exchanges already have EDGAR capabilities. In addition, the costs associated with maintaining the technological facilities necessary to file Form 25s on EDGAR should be insignificant.

The requirement that an issuer that wishes to voluntarily delist represent on Form 25 that it has taken the steps necessary to comply with applicable national securities exchange rules and has provided adequate notice to the public, will impose costs on delisting issuers in the form of the time associated with completing the Form 25. The Commission believes, however, that issuers already bear this cost, as they are currently required to file a delisting application with the Commission. In fact, Rule 12d2–2 reduces cost to issuers by eliminating the current delisting application format and replacing it with the Form 25. Currently, delisting applications are not granted until the Commission issues an order, which may impose additional requirements on issuers; however, a delisting on the Form 25 will be effective 10 days after it is filed with the Commission. In addition, currently, an issuer must file reports under Section 13(a) until the Commission issues its order to delist the security. However, under the final Rule amendments adopted today while the actual deregistration under Section 12(b) would not occur generally until 90 days later, an issuer's duty to file reports under Section 13(a) as a result of the Section 12(b) registration will be suspended upon the effective date of the delisting. The Commission Staff estimates that the annual paperwork cost to issuers will be $4,674 (57 hours × $82 per hour for an attorney).[107]

In addition, Rule 12d2–2 may impose costs on national securities exchanges. The national securities exchanges may incur a duty to codify or change their rules. While most national securities exchanges already have some of the delisting requirements as part of their rules, some of the rules will need to be changed. For example, not all of the national securities exchanges currently have in their rules specific procedures regarding notice to the issuer of the national securities exchange's decision to delist a class of securities. Therefore,

[106] *See* Amex Letter, *supra* note 19.

[107] Security Industry Association's *Report on Management and Professional Earnings in the Securities Industry 2003* (the ''2003 Report''). According to the 2003 Report, the hourly cost of an attorney is approximately $82.

Rule 12d2–2 will likely impose, on some national securities exchanges, a cost associated with codifying the notification requirement.[108]

Finally, Rule 12d2–2 could impose costs on national securities exchanges relating to the review of delistings upon appeal to the Commission. Currently, any person aggrieved by a Commission action made by delegated authority may seek Commission review of the action. Accordingly, when the Commission issues an order striking a class of securities from listing and registration by delegated authority,[109] an aggrieved party may petition the Commission for review of the delisting order. Thereafter, an aggrieved party may seek review in the U.S. Court of Appeals.[110]

Rule 12d2–2 will result in a review process similar to the delisting of Nasdaq securities, where an aggrieved party can appeal the National Association of Securities Dealers' (''NASD'') delisting decision to the Commission as a denial of access, and the Commission must review the decision on a de novo basis. Under this process, the Commission requires the NASD to file a response to an appeal by the aggrieved party. The Commission's decision can be appealed to the U.S. Court of Appeals.

Rule 12d2–2 will require parties aggrieved by a national securities exchange's delisting decision to appeal the decision to the Commission before going to the U.S. Court of Appeals. A national securities exchange whose delisting decision was appealed would have to respond to an appeal, which will require the national securities exchange to incur costs. Because the Commission is required to review petitions filed under Section 19(d) of the Exchange Act, aggrieved parties could determine to avail themselves of the Commission appeal process more frequently. Thus, national securities exchanges may have to respond more often to such appeals.

VI. Regulatory Flexibility Act Certification

The Commission has certified, pursuant to 5 U.S.C. 605(b), that the amendments to Rule 12d2–2 and Form 25 will not have a significant economic impact on a substantial number of small entities. This certification was set forth in the Proposing Release.[111] The Commission solicited and did not receive any comments about the impact on small entities or the Regulatory Flexibility Act certification.

VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[112] requires the Commission, whenever it engages in rulemaking that requires it to consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[113] requires the Commission, in making rules under the Exchange Act, to consider the impact that any such rule would have on competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, the Commission solicited comments on the effects of the amendments on burden on competition and promotion of efficiency, competition, and capital formation. The Commission did not receive any comments that addressed these issues.

The Commission believes that Rule 12d2–2 promotes efficiency by streamlining the delisting and deregistration process. Rule 12d2–2 establishes one form that must be filled out for all delistings, whether voluntary or involuntary. The Form 25 informs the Commission and the public that a security previously traded on a national securities exchange is no longer traded, and enables the Commission to verify that a delisting has occurred in accordance with the rules of the national securities exchange.

Furthermore, the Commission expects that Rule 12d2–2, by exempting standardized options and security futures products from Rule 12d–2, will promote the comparable regulatory treatment of options and security futures. The exemption for standardized options and security futures products would also provide clarity to market participants.

The Commission does not believe that Rule 12d2–2 will have any anti-competitive effects. The Commission is also not aware of any impact on capital formation that will result from Rule 12d2–2.

VIII. Statutory Authority and Text of Final Rule

Pursuant to the Exchange Act and particularly Sections 3(b), 12(d), 23(a), and 36 thereof, 15 U.S.C. 78c, 78*l*, and 78w(a), the Commission is adopting amendments to § 232.101, § 240.12d2–2, § 240.19d–1, and Form 25 (referenced in 17 CFR 249.25) of Chapter II of Title 17 of the *Code of Federal Regulations* in the manner set forth below. The Commission is also adopting the amendments to § 232.101 pursuant to the Securities Act of 1933, and particularly Sections 6, 7, 8, 10, and 19(a) thereof, 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

List of Subjects

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of Final Rule

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.101 is amended by:
■ a. Removing the word ''and'' at the end of paragraph (a)(1)(ix);
■ b. Removing the period at the end of paragraph (a)(1)(x) and in its place adding ''; and'';
■ c. Adding paragraph (a)(1)(xi);
■ d. Adding the word ''and'' at the end of paragraph (b)(7);
■ e. Removing ''; and'' at the end of paragraph (b)(8) and in its place adding a period; and
■ f. Removing paragraph (b)(9).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

[108] *See supra* note 105.

[109] 17 CFR 200.30–3(a)(1).

[110] 15 U.S.C. 78y. An aggrieved party must petition the Commission for review of action made by delegated authority before seeking judicial review. 17 CFR 201.430(c).

[111] *See* Securities Exchange Act Release No. 49858 (June 15, 2004), 69 FR 34860 (June 22, 2004).

[112] 15 U.S.C. 78c(f).

[113] 15 U.S.C. 78w(a)(2).

(1) * * *

(xi) Form 25 (§ 249.25 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq*.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 240.12d2–2 is amended by:

■ a. Removing the authority citation following § 240.12d2–2;

■ b. Adding a ''Preliminary Note'' before paragraph (a);

■ c. Revising the introductory text of paragraph (a), paragraphs (a)(4), (b), (c), (d), and (e); and

■ d. Removing paragraph (f).

The addition and revisions read as follows:

§ 240.12d2–2 Removal from listing and registration.

Preliminary Notes: 1. The filing of the Form 25 (§ 249.25 of this chapter) by an issuer relates solely to the withdrawal of a class of securities from listing on a national securities exchange and/or from registration under section 12(b) of the Act (15 U.S.C. 78*l*(b)), and shall not affect its obligation to be registered under section 12(g) of the Act and/or reporting obligations under section 15(d) of the Act (15 U.S.C. 78*o*(d)).

2. *Implementation.* The rules of each national securities exchange must be designed to meet the requirements of this section and must be operative no later than April 24, 2006. Each national securities exchange must submit to the Commission a proposed rule change that complies with section 19(b) of the Act (15 U.S.C. 78s) and Rule 19b–4 (17 CFR 240.19b–4) thereunder, and this section no later than October 24, 2005.

(a) A national securities exchange must file with the Commission an application on Form 25 (17 CFR 249.25) to strike a class of securities from listing on a national securities exchange and/or registration under section 12(b) of the Act within a reasonable time after the national securities exchange is reliably informed that any of the following conditions exist with respect to such a security:

* * * * *

(4) All rights pertaining to the entire class of the security have been extinguished; *provided, however*, that where such an event occurs as a result of an order of a court or other governmental authority, the order shall be final, all applicable appeal periods shall have expired, and no appeals shall be pending.

(b)(1) In cases not provided for in paragraph (a) of this section, 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:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the national securities 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 notice on its Web site. Public notice under this paragraph shall be disseminated no fewer than 10 days before the delisting becomes effective pursuant to paragraph (d)(1) of this section, and must remain posted on its Web site until the delisting is effective.

(2) A national securities exchange must promptly deliver a copy of the application on Form 25 to the issuer.

(c)(1) The issuer of a class of securities listed on a national securities exchange and/or registered under section 12(b) of the Act may file an application on Form 25 to notify the Commission of its withdrawal of such securities from listing on such national securities exchange and its intention to withdraw the securities from registration under section 12(b) of the Act.

(2) An issuer filing Form 25 under this paragraph must satisfy the requirements in paragraph (c)(2) of this section and represent on the Form 25 that such requirements have been met:

(i) The issuer must comply with all applicable laws in effect in the state in which it is incorporated and with the national securities exchange's rules governing an issuer's voluntary withdrawal of a class of securities from listing and/or registration.

(ii) No fewer than 10 days before the issuer files an application on Form 25 with the Commission, the issuer must provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration.

(iii) Contemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site. Any notice provided on an issuer's Web site under this paragraph shall remain available until the delisting on Form 25 has become effective pursuant to paragraph (d)(1) of this section. If the issuer has not arranged for listing and/or registration on another national securities exchange or for quotation of its security in a quotation medium (as defined in § 240.15c2–11), then the press release and posting on the Web site must contain this information.

(3) A national securities exchange, that receives, pursuant to paragraph (c)(2)(ii) of this section, written notice from an issuer that such issuer has determined to withdraw a class of securities from listing and/or registration on such exchange, must provide notice on its Web site of the issuer's intent to delist and/or withdraw from registration its securities by the next business day. Such notice must remain posted on the exchange's Web site until the delisting on Form 25 is effective pursuant to paragraph (d)(1) of this section.

(d)(1) An application on Form 25 to strike a class of securities from listing on a national securities exchange will be effective 10 days after Form 25 is filed with the Commission.

(2) An application on Form 25 to withdraw the registration of a class of securities under section 12(b) of the Act will be effective 90 days, or such shorter period as the Commission may determine, after filing with the Commission.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, the Commission may, by written notice to the exchange and issuer, postpone the effectiveness of an application to delist and/or to deregister to determine whether the application on Form 25 to strike the security from registration under section 12(b) of the Act has been made in accordance with the rules of the exchange, or what terms should be imposed by the Commission for the protection of investors.

(4) Notwithstanding paragraph (d)(2) of this section, whenever the Commission commences a proceeding against an issuer under section 12 of the Act prior to the withdrawal of the registration of a class of securities, such

security will remain registered under section 12(b) of the Act until the final decision of such proceeding or until the Commission otherwise determines to suspend the effective date of, or revoke, the registration of a class of securities.

(5) An issuer's duty to file any reports under section 13(a) of the Act (15 U.S.C. 78m(a)) and the rules and regulations thereunder solely because of such security's registration under section 12(b) of the Act will be suspended upon the effective date for the delisting pursuant to paragraph (d)(1) of this section. If, following the effective date of delisting on Form 25, the Commission, an exchange, or an issuer delays the withdrawal of a security's registration under section 12(b) of the Act, an issuer shall, within 60 days of such delay, file any reports that would have been required under section 13(a) of the Act and the rules and regulations thereunder, had the Form 25 not been filed. The issuer also shall timely file any subsequent reports required under section 13(a) of the Act for the duration of the delay.

(6) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended for a class of securities under paragraph (d)(5) of this section is, nevertheless, required to file any reports that an issuer with such a class of securities registered under section 12 of the Act would be required to file under section 13(a) of the Act if such class of securities:

(i) Is registered under section 12(g) of the Act; or

(ii) Would be registered, or would be required to be registered, under section 12(g) of the Act but for the exemption from registration under section 12(g) of the Act provided by section 12(g)(2)(A) of the Act.

(7)(i) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended under paragraph (d)(5) of this section is, nevertheless, required to file any reports that would be required under section 15(d) of the Act but for the fact that the reporting obligations are:

(A) Suspended for a class of securities under paragraph (d)(5) of this section; and

(B) Suspended, terminated, or otherwise absent under section 12(g) of the Act.

(ii) The reporting responsibilities of an issuer under section 15(d) of the Act shall continue until the issuer is required to file reports under section 13(a) of the Act or the issuer's reporting responsibilities under section 15(d) of the Act are otherwise suspended.

(8) In the event removal is being effected under paragraph (a)(3) of this section and the national securities exchange has admitted or intends to admit a successor security to trading under the temporary exemption provided for by § 240.12a–5, the effective date of the Form 25, as set forth in paragraph (d)(1) of this section, shall not be earlier than the date the successor security is removed from its exempt status.

(e) The following are exempt from section 12(d) of the Act and the provisions of this section:

(1) Any standardized option, as defined in § 240.9b–1, that is:

(i) Issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1); and

(ii) Traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)); and

(2) Any security futures product that is:

(i) Traded on a national securities exchange registered under section 6(a) of the Act or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)); and

(ii) Cleared by a clearing agency registered as a clearing agency pursuant to section 17A of the Act or is exempt from registration under section 17A(b)(7) of the Act.

■ 5. Section 240.19d–1 is amended by:

■ a. Removing the authority citation at the end of § 240.19d–1;

■ b. Adding paragraph (j); and

■ c. Adding paragraph (k).

The additions read as follows:

§ 240.19d–1 Notices by self-regulatory organizations of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services, and summary suspensions.

* * * * *

(j) Notice of limitation or prohibition of access to services by delisting of security. Any national securities exchange for which the Commission is the appropriate regulatory agency that delists a security pursuant to section 12(d) of the Act (15 U.S.C. 78*l*(d)), and § 240.12d2–2 must file a notice with the Commission in accordance with paragraph (k) of this section.

(k) Contents of notice required by paragraph (j) of this section. The national securities exchange shall file notice pursuant to paragraph (j) of this section on Form 25 (§ 249.25 of this chapter). Form 25 shall serve as notification to the Commission of such limitation or prohibition of access to services. The national securities exchange must attach a copy of its delisting determination to Form 25 and file Form 25 with the attachment on EDGAR.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Section 249.25 and Form 25 are revised to read as follows:

§ 249.25 Form 25, for notification of removal from listing and/or registration.

This form shall be used by registered national securities exchanges and issuers for notification of removal of a class of securities from listing on a national securities exchange and/or withdrawal of registration under section 12(b) of the Act (15 U.S.C. 78*l*(b)).

Note: The text of Form 25 does not, and this amendment will not, appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

FORM 25

Securities and Exchange Commission
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0080
Expires:	October 31, 2005
Estimated average burden hours per response	1.70

NOTIFICATION OF REMOVAL FROM LISTING AND/OR REGISTRATION UNDER SECTION 12(b) OF THE SECURITIES EXCHANGE ACT OF 1934.

Commission File Number _____

_____

(Exact name of Issuer as specified in its charter, and name of Exchange where security is listed and/or registered)

_____

(Address, including zip code, and telephone number, including area code, of Issuer's principal executive offices)

_____

(Description of class of securities)

Please place an X in the box to designate the rule provision relied upon to strike the class of securities from listing and registration:

☐ 17 CFR 240.12d2-2(a)(1)

☐ 17 CFR 240.12d2-2(a)(2)

☐ 17 CFR 240.12d2-2(a)(3)

☐ 17 CFR 240.12d2-2(a)(4)

☐ Pursuant to 17 CFR 240.12d2-2(b), the Exchange has complied with its rules to strike the class of securities from listing and/or withdraw registration on the Exchange.[1]

☐ Pursuant to 17 CFR 240.12d2-2(c), the Issuer has complied with the rules of the Exchange and the requirements of 17 CFR 240.12d2-2(c) governing the voluntary withdrawal of the class of securities from listing and registration on the Exchange.

Pursuant to the requirements of the Securities Exchange Act of 1934, _____(Name of Issuer or Exchange) certifies that it has reasonable grounds to believe that it meets all of the requirements for filing the Form 25 and has caused this notification to be signed on its behalf by the undersigned duly authorized person.

_____	By_____	_____
Date	Name	Title

[1] Form 25 and attached Notice will be considered compliance with the provisions of 17 CFR 240.19d-1 as applicable. See General Instructions.

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General Instructions

1. This form is required by Rule 12d2–2 (17 CFR 240.12d2–2) of the General Rules and Regulations under the Securities Exchange Act of 1934 (''Exchange Act'').

2. Exchanges: Attach the delisting determination to this Form 25 to serve as the required Notice pursuant to Exchange Act Rule 19d–1 (17 CFR 240.19d–1). Form 25 and the attached Notice will be considered compliance with the provisions of Rule 19d–1 as applicable.

3. The Form 25 and any attachments must be filed electronically on the EDGAR database.

4. The removal of the class of securities from listing on the exchange shall be effective 10 days after filing the Form 25. With respect to the filing of any amendment to Form 25, the removal of the class of securities from listing on the exchange shall be effective 10 days after filing the amended Form 25.

5. The withdrawal of registration of a class of securities registered under Section 12(b) of the Exchange Act shall take effect in 90 days, or such shorter period as the Commission may determine, after the exchange or issuer files a Form 25 with the Commission. With respect to the filing of any amendment to Form 25, the withdrawal of registration of a class of securities registered under Section 12(b) shall take effect in 90 days, or such shorter period as the Commission may determine, after the exchange or issuer files the amended Form 25.

6. For purposes of Section 12 of the Exchange Act, a class of securities shall no longer be considered listed on a national securities exchange upon the effective date of delisting even though the withdrawal of registration is effective at a later time.

7. The issuer's duty to file any reports under Section 13(a) of the Exchange Act and the rules and regulations thereunder as a result of the security's registration under Section 12(b) of the Exchange Act shall be suspended upon the effective date of the delisting. If, following the effective date of delisting, the withdrawal of registration under Section 12(b) is delayed by the Commission, an exchange, or an issuer, the issuer shall, within 60 days of such delay, file any reports that would have been required under Section 13(a) and the rules and regulations thereunder, had the Form 25 not been filed. The issuer will also file any subsequent reports required under Section 13(a) for the duration of the delay.

8. An issuer whose reporting responsibilities under Section 13(a) of the Exchange Act are suspended for a class of securities under Rule 12d2–2(d)(5) is, nevertheless, required to file any reports that an issuer with such a class of securities registered under Section 12 of the Exchange Act would be required to file under Section 13(a) if such class of securities: (a) is registered under Section 12(g) of the Exchange Act; or (b) would be registered, or would be required to be registered, under Section 12(g) of the Exchange Act but for the exemption from registration under Section 12(g) provided by Section 12(g)(2)(A) of the Exchange Act.

9. An issuer whose reporting responsibilities under Section 13(a) of the Exchange Act are suspended under Rule 12d2–2(d)(5) is, nevertheless, required to file any reports that would be required under Section 15(d) of the Exchange Act but for the fact that the reporting obligations are: (a) Suspended for a class of securities under Rule 12d2–2(d)(5); and (b) suspended, terminated, or otherwise absent under Section 12(g) of the Exchange Act. The reporting responsibilities of an issuer under Section 15(d) of the Exchange Act shall continue until the issuer is required to file reports under Section 13(a) of the Exchange Act or the issuer's reporting responsibilities under Section 15(d) are otherwise suspended.

10. Issuers should determine if they have additional registration and reporting requirements under Section 12(g) of the Exchange Act and reporting obligations pursuant to Section 15(d) of the Exchange Act upon the filing of Form 25.

11. In any case where the Commission has commenced a proceeding under Section 12 of the Exchange Act prior to the withdrawal of the registration of a class of securities becoming effective, such security will remain registered under Section 12(b) of the Exchange Act until the final decision of such proceeding, or until the Commission otherwise determines to suspend the effective date of, or revoke, the registration of a class of securities.

12. In the event removal is being effected under Rule 12d2–2(a)(3) and the national securities exchange has admitted or intends to admit a successor security to trading under the temporary exemption provided for by Exchange Act Rule 12a–5 (17 CFR 240.12a–5) the Form 25 shall be filed with the Commission in a manner that ensures that the delisting does not become effective until the successor security is removed from its exempt status.

Dated: July 14, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

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