## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 232, 240, and 249

**[Release No. 34–49858; 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:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is proposing to streamline the procedures for removing from listing, and/or withdrawing from registration, securities under Section 12(b) of the Securities Exchange Act of 1934 (''Exchange Act''). Specifically, the Commission is proposing amendments to its rules and Form 25 so that the Commission would no longer issue an order to remove a security from listing and/or registration on a national securities exchange. Instead, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange and the Commission would file a Form 25 with the Commission. The Commission is also proposing to require exchanges to file the revised Form 25 as notice to the Commission under Section 19(d) of the Exchange Act. In addition, the Commission is proposing to require mandatory electronic filing of the revised Form 25. Finally, the Commission is proposing to exempt options and security futures from Section 12(d) of the Exchange Act. The proposed amendments would reduce the regulatory burdens on exchanges and issuers, and make more information on delisting and deregistration publicly available on one central database for the convenience of investors and other members of the public.

**DATES:** Comments should be submitted on or before July 22, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–25–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–25–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/proposed.shtml)*. Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Sharon Lawson, Senior Special Counsel, at (202) 942–0182, Susie Cho, Special Counsel, at (202) 942–0748, Lisa Jones, Special Counsel, at (202) 942–0063, and Ian Patel, Attorney, at (202) 942–0089, Division of Market Regulation; and Robert Plesnarski, Deputy Chief Counsel, at (202) 942–2900, Division of Corporation Finance; at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

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

I. Background
II. Need for Proposed Changes to Rule 12d2–2 and Form 25
III. Discussion
  A. Proposed Changes to Rule 12d2–2
  1. Exchange-Initiated Delisting and/or Withdrawal From Section 12(b) Registration
  2. Issuer Voluntary Withdrawal From Listing and Section 12(b) Registration
  3. Effectiveness of Delisting and Withdrawal of Registration Under Section 12(b) Upon Filing the Form 25
  4. Delisting and/or Withdrawal From Section 12(b) Registration Pursuant to Certain Corporate Actions
  5. Deletions of Certain Provisions in Current Rule 12d2–2
  B. Proposed Changes to Form 25
  C. Filing of Form 25 To Serve as Notice Pursuant to Section 19(d)
  D. Proposed Exemption of Options and Security Futures From Section 12(d)
  E. General Request for Comment
IV. Paperwork Reduction Act
V. Costs and Benefits of Proposed Amendments to Rule 12d2–2 and Form 25
  A. Expected Benefits
  B. Expected Costs
VI. Regulatory Flexibility Act Certification
VII. Small Business Regulatory Enforcement Fairness Act
VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation
IX. Statutory Authority and Text of Proposed Rules

## I. Background

Section 12(a) of the Exchange Act [1] 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 [2] 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.[3]

Rule 12d2–2 [4] and Form 25 [5] 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. First, the Rule requires an exchange to file an application on Form 25 with the Commission as notification of the removal from listing and registration of a security where the entire security class is matured, redeemed, retired, or extinguished by operation of law.[6]

[1] 15 U.S.C. 78*l*(a).

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

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

[4] 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).

[5] 17 CFR 249.25. *See* Securities Exchange Act Release No. 4706 (April 16, 1952).

[6] 17 CFR 240.12d2–2(a)(1)–(a)(4). The Form 25 provides the Commission with the name of the security to be removed from listing and registration, the effective date, which must be at least 10 days from the date the Form is filed with the Commission, and the date and type of event predicating the delisting and deregistration.

Second, an exchange may 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 such security has become effective on such other exchange.[7]

Third, an exchange may file a written application with the Commission to delist and deregister securities that have fallen below the exchange's listing standards.[8] The Rule requires the Commission to grant the application unless the Commission, by written notice to the exchange, postpones the effective date for a period of not more than 60 days. 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. The Commission's Division of Market Regulation may approve delisting applications by delegated authority.[9] Any person aggrieved by an action made by delegated authority may seek Commission review of the action.[10] Thereafter, an aggrieved party may seek review in the U.S. Court of Appeals.[11]

Fourth, an issuer may file a written application under Rule 12d2–2 with the Commission to voluntarily withdraw its security from listing on an exchange and registration under Section 12(b) in accordance with the rules of such exchange. 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. Prior to issuing an order, the Commission may also order a hearing on the matter and can impose such terms as necessary for the protection of investors.[12] After expiration of the comment period, the Commission, pursuant to delegated authority, issues an order based on the application and any comments.[13] As is the process with all decisions of the Commission made pursuant to delegated authority, an aggrieved party may petition the Commission for review of the delisting order and, thereafter, may seek review of the order in the U.S. Court of Appeals.[14]

Finally, the Rule provides that 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 a security registered pursuant to application 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, the issuer may file with the Commission a request that such registration shall expire.[15] The issuer shall accompany such request with a written explanation of the reasons why the publication of such rule or regulation leads the issuer to make such request. Such registration shall expire immediately upon receipt of such request or immediately before such rule or regulation becomes effective, whichever date is later.

## II. Need for Proposed Changes to Rule 12d2–2 and Form 25

Rule 12d2–2 under the Exchange Act was adopted at a time when delisting from an exchange had broad ramifications for shareholders, because of the lack of alternative markets. Indeed, early on, many exchange delistings were only approved after a hearing before the Commission.[16]

Today, the delisting process has been delegated to the Commission's Division of Market Regulation, which approves delisting applications pursuant to its delegated authority.[17] While delisting can still have a major impact on an issuer and its shareholders, under the current market structure, delisting on one market does not necessarily mean that shareholders would be unable to trade an issuer's securities in another market environment.

In the past several years, the number of delisting applications has been significant, placing burdens on exchanges and issuers. In 2002, there were a total of 862 delistings, with the Commission receiving 474 Forms 25, 266 delisting applications from exchanges, and 62 voluntary delisting applications from issuers. In 2003, the Commission received a total of 799 delistings, which included 547 Forms 25, 190 delisting applications from exchanges, and 57 voluntary delisting applications from issuers. Although Rule 12d2–2 does not provide any procedures for persons to request a hearing on an exchange's delisting application or issuer's withdrawal application, the Commission has the discretion to order a hearing to determine whether the application to strike the security from listing and registration 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.[18] In addition, Rule 12d2–2(d) states that interested persons may submit written comments on an issuer's withdrawal application. However, the Commission rarely receives comments on issuer withdrawal applications. As noted above, the Commission, by delegated authority, approves the delisting applications that have been filed by exchanges and issuers.

In addition to paperwork burdens on exchanges and issuers, the delisting process is decentralized and confusing to members of the public who seek information on the registration and deregistration of a security. For instance, an issuer who seeks to register a class of its securities under Section 12(b) of the Exchange Act, generally files a Form 8–A [19] on the Commission's Electronic Data Gathering, Analysis, and

However, where the security is being delisted pursuant to Rule 12d2–2(a)(3), because the instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefor, and a successor security is going to be admitted under the temporary exemption provided for by Rule 12a–5, 17 CFR 240.12a–5, the effective date of the Form 25 can only be on or after the date that the successor security has been removed from its exempt status. 17 CFR 240.12d2–2(a)(1)–(a)(4).

[7] 17 CFR 240.12d2–2(b).

[8] 17 CFR 240.12d2–2(c).

[9] 17 CFR 200.30–3(a)(1).

[10] 17 CFR 201.430(a).

[11] 15 U.S.C. 78y.

[12] 15 U.S.C. 78*l*; 17 CFR 240.12d2–2(d).

[13] 17 CFR 240. 12d2–2(d). *See supra* note.

[14] 15 U.S.C. 78y.

[15] 17 CFR 240.12d2–2(f).

[16] *See e.g.*, Securities Exchange Act Release No. 1032 (January 25, 1937); Securities Exchange Act Release No. 1549 (January 25, 1938); Securities Exchange Act Release No. 1563 (February 3, 1938); Securities Exchange Act Release No. 3446 (June 12, 1943); and Securities Exchange Act Release No. 3519 (December 10, 1943).

[17] *See e.g.*, Securities Exchange Act Release No. 48422 (August 29, 2003); Securities Exchange Act Release No. 48297 (August 7, 2003); and Securities Exchange Act Release No. 48291 (August 5, 2003).

[18] 15 U.S.C. 78*l*(d); 17 CFR 240.12d2–2(c) and (d).

[19] Form 8–A may be used for registration pursuant to Exchange Act Section 12(b) or 12(g) of any class of securities of any issuer which is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange. Small business issuers may use Form 10–SB to register a class of securities under Section 12(b) or 12(g). 17 CFR 249.210b. Form 10 is the general form used for registration pursuant to Section 12(b) or 12(g) by an issuer ineligible to use Form 8–A or 10–SB. 17 CFR 249.210. Foreign private issuers may use Form 20F to register a class of securities under Section 12(b) or 12(g). 17 CFR 249.220f.

Retrieval (''EDGAR'') system.[20] At present, no further information about changes to a security's Section 12(b) registration status is required to be filed on EDGAR.[21] Thus, while a search of current issuers on EDGAR may show what looks like an effective Form 8-A registration statement indicating that a class of securities currently is registered under Section 12, the Commission may have issued an order approving the delisting and deregistration of the security. However, the delisting order, though publicly available, is not available on EDGAR.

The exchange delisting process differs from the procedures applicable to the delisting of securities from The Nasdaq Stock Market, Inc. (''Nasdaq''). Section 12(d) of the Exchange Act does not apply to the National Association of Securities Dealers, Inc. (''NASD''), because the NASD is not a registered national securities exchange. Instead, the NASD delists securities solely pursuant to its rules that have been approved under Section 19(b) of the Exchange Act.[22] After such a security has been delisted, the NASD files the notice of its determination to the Commission pursuant to Section 19(d) of the Exchange Act[23] and Rule 19d–1 under the Exchange Act.[24]

A delisting determination by the NASD is reviewable upon appeal to the Commission.[25] Under Rule 420(c) of the Commission's Rules of Practice, filing an application for review with the Commission shall not operate as a stay of the NASD's delisting determination, unless the Commission orders a stay pursuant to a motion of the applicant or on the Commission's own motion.[26] The Commission's review of the delisting determination proceeds under Section 19(f) of the Exchange Act.[27] In general, on review of the NASD's action, the Commission determines whether the specific grounds on which the action is based exist in fact, whether such action is in accordance with applicable NASD rules, and whether those rules are, and were applied, consistent with the purpose of the federal securities laws.[28] Moreover, the Commission has stated that the NASD's primary consideration in determining whether to remove a security must be the interests of prospective investors.[29] An issuer may voluntarily terminate its listing upon written notice to Nasdaq.[30] An issuer that has been delisted by the NASD may be able to, but is not required to, terminate its registration under Section 12(g) of the Exchange Act[31] by filing Form 15 with the Commission.[32] This filing also immediately suspends the issuer's duty to file reports under Sections 13[33] and 15(d)[34] of the Exchange Act.[35]

## III. Discussion

The Commission proposes to amend Rule 12d2–2, Rule 19d–1, and Form 25 under the Exchange Act, and Rule 101[36] of Regulation S–T. Under the proposal, exchanges and issuers would follow the rules of the applicable national securities exchange regarding the delisting of securities, after which the exchange or issuer would file the Form 25 with the Commission to remove the security from listing and/or withdraw it from registration under Section 12(b) of the Exchange Act and Rule 12d2–2 thereunder.[37] In addition, the Commission is proposing to exempt standardized options and security futures from the delisting and withdrawal from registration procedures set forth in Section 12(d) of the Exchange Act and Rule 12d2–2. Finally, under the proposal, revised Form 25 would provide notice to the Commission under Section 19(d)(1) and Rule 19d-1 under the Exchange Act of a denial of access to services of the Exchange.[38]

The proposed amendments would, in general, reduce the regulatory burdens on exchanges and issuers that exist under the current regulatory process. The proposal would also make more information on delisting and deregistration publicly available on one central database, EDGAR, for the convenience of investors and other members of the public.[39] The changes being proposed for delisting exchange-listed securities, while not identical, would make the procedure similar to that in place today for delisting securities approved for inclusion on Nasdaq. The Commission believes that the proposal would make the delisting process for exchange-listed securities more transparent and efficient, and that the proposal's requirements are necessary for the protection of investors. The Commission also believes that the proposal would reduce uncertainty to issuers, exchanges, and the public as to the timing and status of a security because delisting and deregistration would be accomplished by the electronic filing of revised Form 25, instead of by Commission order.[40]

---

[20] EDGAR is the electronic data gathering, analysis and retrieval system of the Commission that enables registered companies and other persons to file their securities documents with the Commission in an electronic format.

[21] The Commission notes that currently the filing of Form 25 on EDGAR is voluntary and not required. *See infra* note and accompanying text.

[22] 15 U.S.C. 78s(b).

[23] 15 U.S.C. 78s(d).

[24] 17 CFR 240.19d–1. Section 19(d) of the Act, 15 U.S.C. 78s(d), and Rule 19d–1 thereunder, 17 CFR 240.19d–1, provide that a self-regulatory organization (''SRO'') 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.

[25] Under Section 19(d)(2), any action for which an SRO is required to file notice under Section 19(d)(1) is subject to review by the appropriate regulatory agency, on its own motion, or upon application by any person aggrieved thereby.

[26] 17 CFR 201.420(c).

[27] 15 U.S.C. 78s(f).

[28] *See e.g., Prairie Pacific Energy Corp.,* Securities Exchange Act Release No. 37919A (November 6, 1996).

[29] *See DBH Capital Group, Inc.,* Securities Exchange Act Release No. 37069 (April 5, 1996).

[30] *See* NASD Rule 4480(b).

[31] 15 U.S.C. 78*l*(g).

[32] Note, however, that upon removal from Nasdaq, an issuer is not required to file a Form 15. If, for example, it wishes to be quoted on the OTC Bulletin Board, it likely would remain registered under Section 12(g). NASD Rule 6510 requires an issuer to be ''*required* to file reports pursuant to Sections 13 or 15(d) of the Exchange Act'' as a condition to being eligible to be quoted on the OTC Bulletin Board. An issuer subject solely to reporting requirements under Section 15(d) may have its reporting requirement automatically suspended under Section 15(d), notwithstanding the issuer's continued voluntary filing of reports, and therefore not be eligible to be quoted on the OTC Bulletin Board. *See* 15 U.S.C. 78*o*(d). Therefore, upon removal from Nasdaq, there is no assurance that any public notice is made available through any filing with the Commission.

[33] 15 U.S.C. 78m.

[34] 15 U.S.C. 78*o*(d).

[35] The duty to file reports pursuant to Section 15(d) of the Exchange Act is automatically suspended for any fiscal year except the first fiscal year if, at the beginning of the fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. 15 U.S.C. 78*o*(d). Such suspension occurs automatically pursuant to the statute, and therefore is not dependent on the filing of a Form 15. However, pursuant to Rule 12h–3 under the Exchange Act, an issuer's duty to report under Section 15(d) may be immediately suspended by filing of a Form 15 if at that time (*e.g.,* during the fiscal year the issuer has less than 300 security holders) the issuer meets the requirements of that rule. 17 CFR 240.12h–3.

[36] 17 CFR 232.101.

[37] *See infra* notes 67 through 77 and accompanying text for a discussion on the effectiveness of delisting and/or withdrawal of registration under Section 12(b) upon the filing of the revised Form 25.

[38] 15 U.S.C. 78s(d)(1); 17 CFR 240.19d–1.

[39] If, however, an issuer continues to be registered under Section 12(g) of the Exchange Act after no longer listing on an exchange, an issuer would not file a Form 15 and therefore a Form 15 would not be available on EDGAR.

[40] While the delisting will be effective 10 days after filing Form 25, the deregistration will occur 90 days after the filing of the Form, with limited exceptions to this as discussed below. *See infra* notes 67–77 and accompanying text.

*A. Proposed Changes to Rule 12d2–2*

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

An involuntary delisting is where the issuer falls below, or has violated, exchange listing standards, and is initiated by the exchange rather than the issuer. For an exchange-initiated delisting, current Rule 12d2–2 requires an exchange to file an application with the Commission to delist and deregister an issuer's security. The security is not delisted until the Commission issues an order granting the application.[41] The Commission is proposing to permit an exchange to delist and/or withdraw from registration a security, in accordance with its rules, by filing an application on Form 25. The delisting of the security would be effective 10 days after Form 25 is filed with the Commission. The withdrawal from registration would occur 90 days after the filing of the Form.[42]

Because the Commission is proposing that exchanges may delist and/or withdraw from Section 12(b) registration a security by filing a Form 25, rather than by Commission order, it is important for the exchange delisting and/or withdrawal process to be fair. Accordingly, the Commission is proposing that Rule 12d2–2 provide that the rules of the exchange[43] require 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 of the exchange's final determination to delist the security, via a press release and posting on the exchange's Web site no fewer than 10 days before the delisting becomes effective.[44] Proposed Rule 12d2–2 also provides that public notice must remain posted on an exchange's Web site until the delisting is effective. It is the Commission's understanding that, among the seven national securities exchanges that trade stocks,[45] only two have not set forth in their rules specific procedures regarding notice to the issuer of the exchange's decision to delist its securities.[46]

The first two proposed requirements for exchange rules are consistent with the requirements of Sections 6(b)(7) and 6(d)(2) of the Exchange Act.[47] Section 6(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.[48] Moreover, the Commission notes that exchanges are already required under Section 6(d)(2) 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.[49] Further, such determination by the exchange must be supported by a statement setting forth the specific grounds on which the delisting and withdrawal from registration is based.[50] The exchanges' rules are currently required to comply with this Exchange Act provision. While the proposed amendments do not require exchanges to adopt new rules to comply with the requirements of the Exchange Act, to the extent that an exchange's rules do not currently comply with these statutory requirements, the exchange would have to amend its rules.

The proposed requirement that exchange rules[51] provide public notice of the exchange's final delisting determination at least 10 days before the delisting becomes effective is designed to better inform the public of delistings.[52] The proposed 10-day public notice requirement is based on the present requirements of Rule 12d2–2. As previously noted, Rule 12d2–2(a) currently requires that the Form 25 be effective not less than 10 days following the date on which the Form 25 is filed with the Commission.[53] In addition, Rule 12d2–2(c) states that a national securities exchange may file a delisting application, in accordance with its rules, on a date specified in the application that must be not less than 10 days after it is filed with the Commission.[54]

The Commission believes that 10 days is sufficient time for any interested parties, in response to the anticipated delisting, to take action as permitted under state and federal law. Further, during the 10-day period following the filing of Form 25, any interested person may, prior to the effectiveness of delisting, submit to the Commission in writing any comments it has on the delisting and/or deregistration, including whether the application 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. The Commission will continue to have the authority, pursuant to Section 12(d) of the Exchange Act, to impose any terms the Commission may deem necessary for the protection of investors, as well as, to postpone the effectiveness of the delisting and/or deregistration.[55] The 10-day notice would provide an opportunity for the Commission to impose such conditions or delay the delisting and/or deregistration prior to it becoming effective. Finally, any delisting determination by an exchange is reviewable upon appeal to the Commission.[56] Thus, any person aggrieved by the exchange's decision would be able to petition the Commission for review of such decision,[57] and then appeal the Commission's decision to the U.S. Court of Appeals.[58]

The Commission seeks comment on the proposed requirements for exchange delisting rules. Specifically, comment is

---

[41] *See supra* notes 8–11 and accompanying text.

[42] *See infra* notes 67 through 77 and accompanying text.

[43] Any change or addition to an exchange's rules must be filed with the Commission pursuant to Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b).

[44] Proposed Rule 12d2–2(b). The Commission also notes that Rule 17a–1(b) would require 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 would include retention of material in the course of a delisting. 17 CFR 240.17a–1.

[45] These national securities exchanges include: American Stock Exchange LLC (''Amex''); Boston Stock Exchange, Inc. (''BSE''); Chicago Stock Exchange, Inc. (''CHX''); National Stock Exchange, Inc. (''NSX''); Pacific Exchange Inc. (''PCX''); Philadelphia Stock Exchange, Inc. (''Phlx''); and New York Stock Exchange, Inc. (''NYSE'').

[46] *See* Chapter XXVII, Section 1, of the BSE Rules; NSX By-laws, Article 4, Section 3.1, which only contain general statements on the ability of the BSE and NSX to delist securities listed on their respective markets. If the changes proposed herein are ultimately adopted, the BSE and NSX would have to submit rule proposals under Section 19(b) of the Act to conform their delisting rules to the notice requirements.

[47] 15 U.S.C. 78f(b)(7) and (d)(2).

[48] 15 U.S.C. 78f(b)(7).

[49] 15 U.S.C. 78f(d)(2).

[50] *Id.*

[51] The Commission would expect to delay the effectiveness of proposed Rule 12d2–2, if adopted, to give the exchanges adequate time to submit proposed rule changes, pursuant to Section 19(b) of the Exchange Act, to conform their delisting procedures, as necessary, to this and other proposed requirements.

[52] In addition, for issuer-initiated withdrawals from listing and registration, exchanges also would be required to provide public notice via posting on their Web sites, as discussed below. *See infra* note 61 and accompanying text.

[53] 17 CFR 240.12d2–2(a).

[54] 17 CFR 240.12d2–2(c).

[55] 15 U.S.C. 78*l*(d). *See also* proposed Rule 12d2–2(d)(3).

[56] *See supra* note . Under Rule 420(c) of the Commission's Rules of Practice, filing an application for review with the Commission shall not operate as a stay of the exchange's delisting determination, unless the Commission orders a stay pursuant to a motion of the applicant or on the Commission's own motion. 17 CFR 201.420(c). The Commission's review of the delisting determination proceeds under Section 19(f) of the Exchange Act. 15 U.S.C. 78s(f).

[57] 15 U.S.C. 78s(d).

[58] 15 U.S.C. 78y.

requested on whether the Commission should require exchanges to have any other provisions in their delisting procedures. For example, should exchange rules allow investors or the public an additional opportunity to comment on the proposed withdrawal of securities from listing and/or registration on the exchange before the withdrawal becomes effective upon filing the Form 25? The Commission also requests comment as to whether the filing of Form 25 with the Commission on EDGAR, together with the dissemination by press release and Web site posting, of an exchange-initiated delisting is sufficient public notice. In addition, the Commission requests comment on the proposed timeline for exchange-initiated delistings, and whether the 10-day notice prior to effectiveness of the delisting is sufficient for investors or other interested parties to pursue any remedies available to them.

Finally, the Commission requests comment on the proposal's impact on aggrieved parties' rights to a review of an exchange's delisting decision. In particular, the Commission requests comment on the impact on an aggrieved party of having to petition the Commission for review of an exchange's delisting decision, rather then petition the Commission for review of action made by delegated authority, before seeking review in the U.S. Court of Appeals.

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

The Commission is also proposing to amend the requirements for issuers that wish to withdraw a security from listing and/or registration from a national securities exchange. Currently, Rule 12d2–2 requires an issuer to file an application with the Commission to withdraw its securities from listing and registration on an exchange. The Commission publishes the application for comment. The issuer delisting is not effective until the Commission issues an order. The Commission is proposing to permit an issuer to withdraw its securities from listing and/or registration by filing an application on Form 25. The delisting of the security would be effective 10 days after Form 25 is filed with the Commission. The withdrawal from registration would occur 90 days after the filing of the Form.[59]

In addition, the Commission is proposing to amend Rule 12d2–2 to require issuers to make the following representations on Form 25: (1) That the issuer has complied with the applicable exchange's rules for delisting and applicable state laws; (2) that the issuer has submitted written notification of its intent to withdraw its security from the exchange, including a statement setting forth 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; and (3) that the issuer has issued public notice of its intent to delist from the exchange, and/or withdraw from Section 12(b) registration, its security, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site.[60] The proposed amendments would require the issuer to publish such notice no fewer than 10 days before the issuer's application for delisting on Form 25 becomes effective. Any notification by an issuer on its Web site would be required to remain posted until the delisting on Form 25 has become effective.

The proposed amendments would require the issuer to submit its written notification to the exchange of its intention to withdraw its security from listing and registration no fewer than 10 days before the issuer files the Form 25 with the Commission. In addition, the exchange, upon notification by an issuer, would be required to post on its Web site the issuer's intent to withdraw its securities from listing and registration,[61] and to leave such notice posted on its Web site until the delisting is effective. The proposed public notification requirements for the issuer and exchange would replace the current requirement that the Commission publish notice of an issuer's proposed delisting and eliminate a formal comment process.

The first two proposed requirements for issuers voluntarily delisting and/or deregistering their securities are based upon existing requirements of Rule 12d2–2. Specifically, Rule 12d2–2(d) states that an issuer may file an application to withdraw its security from listing and registration on an exchange in accordance with the rules of such exchange.[62] In addition, current Rule 12d2–2(e) provides that an application by an issuer to withdraw from listing shall describe the security involved and state all material facts relating to the reasons for filing the delisting application.[63] The proposed requirement that an issuer publish notice of its determination to withdraw from listing and registration is designed to provide investors with timely information with respect to a pending delisting.

The Commission proposes that written notification to the exchange and public posting on an exchange Web site occur at least 10 days before an issuer files Form 25. Because delisting would not become effective until 10 days after filing of the Form 25, the effect of the proposed amendment is that public notice on an exchange Web site would be posted at least 20 days before an issuer voluntary delisting becomes effective. Public dissemination by the issuer would be required 10 days before the application for delisting on Form 25 becomes effective. The Commission believes that 20 days is sufficient time to allow exchanges to make the necessary system changes in preparation for removing the security from being quoted on the listed market in anticipation of the issuer filing the Form 25 to delist its securities.[64] In addition the Commission believes that the minimum 10 day issuer public notification period provides sufficient time for any interested parties, in response to the anticipated delisting, to submit to the Commission in writing any comments it has on the delisting and/or deregistration, sell their security, or take any other action as permitted under state and federal law. Further, as noted earlier with respect to exchange-initiated delistings, the Commission would continue to have 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, as well as the ability to postpone the effectiveness of the delisting and/or the deregistration. The proposed public notice would provide an opportunity for the Commission to impose such conditions or delay the delisting and/or deregistration.[65]

The Commission requests comment on the proposed requirements for issuers that seek to voluntarily withdraw their securities from listing and registration. For example, should exchange rules allow investors or the public an additional opportunity to comment on the proposed withdrawal of securities from listing and registration

[59] *See infra* notes 77 through 92 and and accompanying text.

[60] Proposed Rule 12d2–2(c).

[61] Proposed Rule 12d2–2(c)(2).

[62] 17 CFR 240.12d2–2(d).

[63] 17 CFR 240.12d2–2(e).

[64] The Commission notes that the exchanges can monitor issuers' filings on EDGAR. In addition, if an exchange wishes to be informed directly of when the issuer files the revised From 25, it can adopt a rule requiring listed companies to give notice to the exchange upon filing of the revised Form 25.

[65] 15 U.S.C. 78*l*(d). *See also* proposed Rule 12d2–2(d)(3).

on the exchange before the withdrawal becomes effective 10 days after filing Form 25? The Commission also solicits comment on the elimination of the existing formal solicitation of comment process after publication of notice by the Commission of a proposed issuer delisting.[66]

The proposal would permit an issuer to voluntarily withdraw a security from listing on an exchange by filing a Form 25 on EDGAR, which would be effective 10 days after filing. Because the Commission would no longer issue an order, aggrieved parties would no longer be able to seek review in the U.S. Court of Appeals. The Commission requests comment on whether Rule 12d2–2 should permit aggrieved parties to petition the Commission for review of the delisting. The Commission also requests comment as to whether issuers should be required to disseminate publicly their intent to withdraw the security from listing and registration, and whether dissemination by press release and Web site posting is sufficient public notice. In this regard, the Commission is also requesting comment on whether such public dissemination by press release and/or posting on an issuer's publicly assessable Web site should be an SRO rule requirement adopted pursuant to Section 19(b) of the Act, rather than a requirement under proposed Rule 12d2–2. The Commission also requests comment on the proposed timeline for issuer-initiated delistings. Is the requirement of notice to the exchange 10 days before an issuer files the Form 25 sufficient? Further, is the minimum 10-day notice period to the public, which begins once the issuer has filed a Form 25, sufficient? Finally, comment is requested as to whether the Commission should impose any other additional conditions to ensure investor protection.

3. Effectiveness of Delisting and Withdrawal of Registration Under Section 12(b) Upon Filing the Form 25

As noted above, the Commission proposes that the application on Form 25 to delist a class of securities from a national securities exchange be effective 10 days after filing Form 25 with the Commission.[67] With respect to deregistration, the Commission proposes that the withdrawal from Section 12(b) registration be effective 90 days after filing Form 25 or such shorter period as the Commission may determine.[68] For purposes of Section 12(b) under the Exchange Act, a class of securities would no longer be considered listed on a national securities exchange 10 days after the filing of Form 25 with the Commission, even though the withdrawal of a security's registration under Section 12(b) is effective at a later time. Further, as discussed below, 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), would be suspended upon the effective date of a delisting, even though the Section 12(b) withdrawal from registration would be effective at a later time. The Commission believes that this approach would give issuers and investors certainty as to the effective date of the delisting and withdrawal from registration under Section 12(b), and under the circumstances described below, would allow issuers to suspend reporting under Section 13(a) at the time of delisting. Issuers would, however, have to comply with all other Exchange Act requirements that arise from Section 12(b) registration until such registration is withdrawn.[69] The Commission solicits comments on this approach.

Notwithstanding the proposal to amend Rule 12d2–2 and Form 25 so that delisting on Form 25 is effective 10 days after filing Form 25 with the Commission, there are instances in which the Commission may find it necessary or appropriate for the protection of investors to delay the effectiveness of delisting and/or deregistration of a class of security. As such, the Commission is proposing to amend Rule 12d2–2(d) to provide that, the Commission 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 or would be filed 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.[70] This proposed provision retains the Commission's current authority under Section 12(d) of the Exchange Act to impose any terms as necessary for the protection of investors before the deregistration becomes effective.

The Commission is also proposing under Rule 12d2–2(d) 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.[71] The Commission believes this provision would be important to preserve its ability to commence a proceeding pursuant to Section 12 of the Exchange Act, because such proceeding may only be brought with regard to a class of securities registered pursuant to Section 12 of the Exchange Act. The Commission further believes that the

[66] The Commission notes that it seldom receives comments on delisting applications. Thus far in 2004, the Commission has received 1 comment on the delisting application of GB Holdings, Inc., and 14 comments on the delisting application of The Ohio Art Company (''Ohio Art''). Ohio Art also submitted a letter to the Commission in response to questions from Commission staff on the application. *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); *see* 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 written comment on a delisting application filed with the Commission. *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). In 2002, the Commission received three written comments on delisting applications filed with the Commission. *See* Securities Exchange Act Release Nos. 46503 (September 16, 2002) (order granting the application of the PCX to strike from listing and registration the common stock of One Mile, Inc.), 46700 (October 21, 2002) (order granting the application of KBK Capital Corp. to withdraw its common stock from listing on the PCX), and 46699 (October 21, 2002) (order granting the application of KBK Capital Corp. to withdraw its common stock from listing on the Amex). In 2001, the Commission did not receive any written comments on a delisting application. Furthermore, the Commission has not in recent years, imposed any conditions on the delisting applications it approved.

[67] *See* proposed Rule 12d2–2(d)(1).

[68] It would be in the Commission's sole discretion to shorten the 90-day time period, as the Commission deems necessary and appropriate for the protection of investors.

[69] 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).

[70] For example, the Commission, pursuant to Section 19(d)(2), 15 U.S.C. 78s(d)(2), may, on its own motion, review an exchange's determination to delist the security and/or withdraw a class of securities from registration under Section 12(b), as a denial of access to exchange services.

[71] 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. 78l(j).

proposed 90-day delay[72] prior to the withdrawal of registration of a class of securities under Section 12(b) would give the Commission sufficient time to initiate proceedings, as necessary, pursuant to Section 12 of the Exchange Act.

To preclude an issuer from using the 90-day delay period to circumvent its reporting obligations under Section 13(a) of the Exchange Act[73] and the rules and regulations thereunder, the Commission is proposing that, if, following the effective date of 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, would 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.[74] The issuer would also be required to file timely any subsequent reports required under Section 13(a) for the duration of the delay. The Commission believes that providing an issuer 60 days after any action to delay a security's withdrawal from registration would give issuers adequate time to become current in its reports as required by Section 13(a). This requirement also is designed to ensure that the filing of the Form 25 cannot be used by issuers 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.[75] The Commission requests comment, however, as to whether there should be specific instances in which an issuer or an exchange may withdraw Form 25 after it has been filed on EDGAR.

An issuer whose reporting responsibilities under Section 13(a) of the Exchange Act are suspended for a class of securities under proposed Rule 12d2–2(d)(5)[76] would, nevertheless, 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 12(g) but for the exemption from registration under Section 12(g) of the Exchange Act by Section 12(g)(2)(A)[77] of the Exchange Act.

Similarly, an issuer whose reporting responsibilities under Section 13(a) of the Exchange Act are suspended under proposed Rule 12d2–2(d)(5) would, 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 proposed 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 goal of the reporting framework contemplated above is designed to ensure that an issuer with reporting responsibilities under Section 13(a) of the Exchange Act that are suspended under proposed Rule 12d2–2(d)(5) would continue to file any reports under Section 13(a) or Section 15(d) that would be required if the class of securities delisted under proposed Rule 12d2–2 was no longer registered under Section 12(b) of the Exchange Act. The Commission seeks comment on whether the framework outlined above accomplishes this goal.

The Commission also seeks comment generally on the proposed provisions regarding the effectiveness of delisting and withdrawal of registration under Section 12(b).

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

Proposed Rule 12d2–2 would retain the current requirement that an exchange file Form 25 to strike a security from listing and registration following certain corporate actions. As noted earlier, these circumstances are where the entire security class is matured, redeemed, retired, or extinguished by operation of law.[78] In addition, proposed Rule 12d2–2 would be modified to indicate that if a security is delisted pursuant to paragraph (a)(3) of 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 the Form 25, as set forth in proposed Rule 12d2–2(d)(1), shall not be earlier than the date the successor security is removed from its exempt status.[79] 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.[80] The Commission seeks comment on the proposal to retain the current requirement that an exchange file Form 25 to strike a security from listing and registration following certain corporate actions, including the proposal that the delisting shall not be effective until after the successor security is removed from its exempt status.

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

Current Rule 12d2–2 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.[81] The Commission proposes to eliminate this provision from the amended Rule. 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 seeks comment on the proposed

[72] We note that the proposed provision is similar to the procedures applicable to Section 12(g) registered securities as provided under Section 12(g)(4) of the Exchange Act. 15 U.S.C. 78l(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 * * *''.).

[73] 15 U.S.C. 78m(a).

[74] Proposed Rule 12d2–2(d)(5).

[75] 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.

[76] For purposes of proposed Rule 12d2–2, the period of such suspension would include the 60 day grace period described under proposed Rule 12d2–2(d)(5).

[77] *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 ''security listed and registered on a national securities exchange.'' 15 U.S.C. 78*l*(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.

[78] *See* 17 CFR 240.12d2–2(a)(1)–(4).

[79] *See supra* note 6; *see also* proposed Rule 12d2–2(d)(8).

[80] Exchanges generally do not file the Form 25 until the successor security has actually been removed from its exempt status. The Commission would expect the exchanges to continue this practice under the proposed rule language.

[81] 17 CFR 240.12d2–2(b).

elimination of paragraph (b) from Rule 12d2–2.

In addition, current Rule 12d2–2(f) 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.[82]

The Commission proposes to eliminate this paragraph, as it is an obscure provision that has rarely been utilized. Indeed, the Commission is aware of the paragraph being invoked only once since the adoption of the 1975 Exchange Act amendments.[83] The Commission is concerned that the provision could potentially conflict with its proposal because paragraph (f) would immediately deregister an issuer's securities upon filing a request with the Commission without following the proposed procedures and timeframes for delisting and/or withdrawal from registration. Such a result would not serve the public interest and would be unfair to public shareholders. The elimination of this provision would ensure that issuers would have to follow exchange rules to delist and/or deregister their securities.[84] The Commission also believes that the proposed Rule 12d2–2 would clarify that a security no longer required to be registered must still comply with the delisting provisions of Rule 12d2–2, because the rule would permit an issuer to file Form 25 to solely delist its securities.[85] The Commission asks for comment, however, as to its proposal to eliminate paragraph (f) from the Rule.

*B. Proposed 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 pursuant to paragraph (a) of Rule 12d2–2, which only deals with situations where the entire class of the security has been matured, redeemed, retired, or its rights extinguished by operation of law.[86] Exchanges may file Form 25 on EDGAR or may submit paper copies of the Form to the Commission.[87] 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. To simplify the delisting and deregistration process, the Commission proposes that Form 25 be amended so that its use can be expanded to include delistings initiated by either the issuer or an exchange. Accordingly, under the proposal, Form 25 would replace the paper application currently filed by either an exchange or issuer to delist and deregister securities under current Rule 12d2–2(c) and (d) of the Exchange Act, and eliminate the need for the Commission to issue an approval order to grant the exchange's or issuer's request to delist and deregister the security.

Rule 12d2–2, as amended, would require exchanges and issuers to follow the rules of the exchange regarding the delisting and deregistration of securities, after which the exchange or issuer would 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 proposing to amend 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. This is similar to information currently provided on the existing Form 25. Finally, on revised Form 25, the exchange or issuer would check a box to designate the rule provision of Rule 12d2–2 relied upon to strike the security from listing and/or registration under Section 12(d) of the Exchange Act.

The proposed instructions to Form 25 would provide that the Form *must* be filed on EDGAR. Further, as noted above, exchanges and issuers would be required to file Form 25, instead of filing in paper with the Commission, and the Commission would no longer issue approval orders for exchange and issuer delistings and deregistrations. The Commission believes that requiring exchange and issuers to file one form, the revised Form 25, on EDGAR would 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 would not be burdensome for them to file electronically. Moreover, this change would 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 proposes to amend Regulation S–T.[88] Currently, Rule 101(b)(9) of Regulation S–T[89] permits, but does not require, electronic filing of Form 25 on EDGAR. The Commission is proposing to eliminate this provision, because it is proposing mandatory electronic filing of Form 25. Rule 101(c)(9) of Regulation S–T,[90] which specifies that Exchange Act filings submitted to the Commission's Division of Market Regulation, except for Form 25, shall not be submitted in electronic format, would remain unchanged. In addition, the Commission is proposing an amendment to Regulation S–T to add new paragraph (a)(1)(ix) to make the filing of Form 25 on EDGAR mandatory.[91] The Commission solicits comment as to whether filing of Form 25 on EDGAR should be mandatory.

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. The Commission is

[82] 17 CFR 240.12d2–2(f).

[83] 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 proposing to amend Form 25 to cover delisting and/or deregistration to avoid this problem in the future. Accordingly, the provision would no longer be necessary.

[84] 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. The provisions of this subsection shall not apply with respect to a security futures product traded on a national securities exchange.

[85] *See id.*, and *supra* note 83. *See also* proposed Rule 12d2–2(c).

[86] *See supra* note 6 and accompanying text.

[87] The proposal to permit the voluntary filing of Form 25 through EDGAR was adopted by the Commission as part of the Regulation S–T amendments. *See* Securities Exchange Act Release No. 45922 (May 14, 2002), 67 FR 36678 (May 24, 2002).

[88] 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.

[89] 17 CFR 232.101(b)(9).

[90] 17 CFR 232.101(c)(9).

[91] Rule 101(a) of Regulation S–T specifies filings that are required to be submitted in electronic format. 17 CFR 232.101(a).

proposing that the delisting of a security be effective 10 days after the filing of revised Form 25 with the Commission, and removal from registration under Section 12(b) be effective 90 days after filing of the Form 25.[92]

Currently, Form 25 does not include general instructions as to its use and effectiveness. Therefore, the Commission is proposing to include general instructions to the revised Form 25 to provide further guidance to the exchanges and issuers on the use and effectiveness of the Form. The proposed general instructions reiterate many of the regulatory requirements proposed in the amended rule provisions that are discussed in this release, including, but not limited to, Rule 19d-1 notices, 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 proposed amendments to Form 25 also would instruct 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 Commission believes that the proposed instructions to the revised Form would help provide clarity and guidance to issuers, investors and the public about the rules' requirements, including the effective dates for delisting and deregistration upon filing the Form 25.

The Commission seeks comment on the proposed Form 25 effective date of ten days after the filing of the Form. In this regard, commenters should consider, as discussed above, that the Commission is proposing that exchanges and issuers provide public notice of the determination to delist and/or deregister the security at least 10 days before the effective date of delisting on Form 25. In addition, the Commission is proposing that an exchange post public notice on its Web site of an issuer's intent to delist and/or deregister a class of securities at least 20 days before the effective date of delisting on Form 25. The Commission also requests comment on the new proposed format and content of the Form 25, including the proposed general instructions. Specifically, commenters should consider whether there are any additional instructions that should be included in the Form.

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.[93] If the Commission adopts the Form 25 amendments described in this release, 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 seeks to eliminate any unnecessary duplication in required public disclosure about exchange-initiated delistings if it adopts the Form 25 amendments. Therefore, the Commission solicits comment on whether it should eliminate the Form 8–K disclosure requirement regarding exchange-initiated delistings if it adopts the amendments proposed in this release.[94]

In responding to this request for comment, please consider the fact that the Form 8–K amendments require an issuer to file a Form 8–K disclosing two separate events related to the delisting process at two different points in time. An issuer first would have to file a Form 8–K if it received notice from the national securities exchange or national securities association that maintains the principal listing for a class of the registrant's common equity to the effect that the issuer or a class of the issuer's securities does not satisfy a rule or standards of the exchange or association for continued listing. The issuer would have to file a second Form 8–K at the time a class of its securities actually has been delisted from or by the exchange or association.[95] Is there a benefit to requiring issuers to disclose both of these events in the same type of filing (*i.e.*, Form 8–K) rather than having the first event disclosed in a Form 8–K and the second event disclosed only in a Form 25?

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

The Commission further proposes that revised Form 25 serve as notice from the exchange to the Commission under Section 19(d) of the Exchange Act,[96] and Rule 19d–1 thereunder.[97] Rule 19d–1 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.[98] Currently, the exchanges do not typically 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.

Because the Commission is proposing to cease issuing orders granting approval of exchanges' delisting applications, the exchanges would be 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 is proposing that the filing of revised Form 25 by an exchange constitute adequate notice pursuant to Section 19(d) of the Exchange Act.[99]

In connection with this proposal, the Commission is also proposing to amend Rule 19d–1 to add new paragraphs (j) and (k). Under new paragraph (j) to Rule 19d–1, any exchange for which the Commission is the appropriate regulatory agency that delists a security pursuant to Section 12(d) of the Exchange Act and Rule 12d2–2 would be required to file a notice with the Commission on revised Form 25 in accordance with new paragraph (k) of

[92] *See* discussion of proposed Rule 12d2–2(d) regarding the effectiveness of delisting and/or deregistration under Section 12(b) of the Exchange Act upon the filing of the proposed revised Form 25, *supra* notes 67–77 and accompanying text.

[93] *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).

[94] The Form 8–K item addresses both exchange-initiated delistings as well as delistings initiated by a national securities association. The proposals in this release would create a filing obligation under Form 25 at the time of delisting in the case of exchange-initiated delistings. This filing obligation would be in addition to the Form 8–K obligation. Because there is no form comparable to Form 25 in the case of a delisting initiated by a national securities association, for example, a delisting from the Nasdaq National Market, that portion of the Form 8–K item would be retained. Reports on Form 8–K regarding issuer-initiated delistings would not be affected by these proposals because the triggering event for Form 8–K is not concurrent with the delisting of the securities. *See id.*

[95] *See supra* note 93. With respect to voluntary delistings initiated by the issuer, only one Form 8–K would have to be filed at the time the issuer has taken definitive action to cause the listing or quotation of a class of its common equity to be withdrawn or terminated from the exchange or association.

[96] 15 U.S.C. 78s(d).

[97] 17 CFR 240.19d–1.

[98] 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 of access to services offered by the 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).

[99] The revised Form 25 would require the exchange to attach a copy of its delisting decision. In its delisting decision, the exchange must make findings as to the specific grounds on which such denial of access to exchange services is based. 15 U.S.C. 78s(f).

Rule 19d–1. New paragraph (k) of Rule 19d–1 would require the exchange to attach a copy of its delisting determination to revised Form 25 and file Form 25 with the attachment on EDGAR.

The Commission seeks comment on the appropriateness of considering the filing of the Form 25 with the attached exchange delisting decision as notice to the Commission pursuant to Section 19(d) of the Exchange Act.

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

Finally, the Commission proposes to exempt standardized options and security futures products from Section 12(d) of the Exchange Act and the requirements of Rule 12d2–2.[100] Standardized options and securities futures products are exempt from Sections 12(a) and 12(g) of the Exchange Act.[101] Nevertheless, the options exchanges have continued to file applications under Rule 12d2–2 to delist options, and the Commission has issued orders approving such delistings. Because the Commission has never applied the requirements of Section 12(d) and Rule 12d2–2 under the Exchange Act to security futures products and does not believe that the requirements for delisting securities being proposed today would provide investors in options with any protections, the Commission is proposing to explicitly exempt these products from the requirements of the Rule.

When Congress enacted the Commodity Futures Modernization Act of 2000 (''CFMA''),[102] it excluded security futures products traded on a national securities exchange from the requirement to register under Section 12(a) of the Exchange Act.[103] 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 under Section 17A(b)(7).[104] 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 security futures exchanges and is today proposing to make clear that security futures products are not subject to those requirements.

Accordingly, the Commission is proposing new paragraph (e) to Rule 12d2–2 to exempt 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,[105] that are issued by a clearing agency registered under Section 17A of the Exchange Act [106] and traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act.[107] Proposed new paragraph (e) to Rule 12d–2 would also exempt from Section 12(d) [108] and Rule 12d2–2 any security futures products that are traded on a national securities exchange. The Commission seeks comment on the proposed exemption of standardized options and security futures products from Section 12(d) of the Exchange Act and Rule 12d2–2 thereunder.

*E. General Request for Comment*

The Commission requests comment on the proposed amendments to Rule 12d2–2 Form 25, Rule 19d–1, and Regulation S–T, suggestions for additions to the proposal, and comment on other matters that might have an effect on the proposal contained in this release. In particular, the Commission requests comment on whether the proposal will enhance market efficiency without jeopardizing investor protection. Commenters may also wish to address whether there should be additional exchange or Commission requirements to ensure adequate investor protection in the delisting process.

## IV. Paperwork Reduction Act

Rule 12d2–2 and Form 25, which the Commission is proposing to amend, contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[109] The title of the affected information collection is the Form 25, as required and under Rule 12d2–2 (OMB Control No. 3235–0080).

Compliance with the proposed amendments would be mandatory. The information required by the proposed amendments would not be kept confidential by the Commission. 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 Commission has submitted the revisions to the collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Form 25, as contemplated by the proposed amendments, would be used by both issuers and exchanges to delist a class of securities from a national securities exchange, and withdraw its registration under Section 12(b) of the Act. This form enables the Commission to receive organized information relating to a company planning to delist its class of securities from a national securities exchange and withdraw from registration under Section 12(b) of the Exchange Act. In addition, the amended Form 25 would serve as notice from the exchange to the Commission under Section 19(d) of the Exchange Act.

The Commission estimates that the current combined burden under Rule 12d2–2 is 851 burden hours per year. This estimate is based on exchange and issuer activity in 2003. In 2003, exchanges filed 544 Forms 25 per year at one burden hour per form. The exchanges filed 190 delisting applications at one burden hour per application; of those applications, 104 were filed to delist equity securities and 86 were filed to delist options. In 2003, 57 issuers voluntarily delisted their securities by filling out delisting applications, which, for issuers, take on average, two burden hours per application.

If adopted, the amended Rule 12d2–2 would 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. The amended Rule would also exempt standardized options and security futures products from the Rule entirely. Assuming that 57 issuers voluntarily delist their securities, this change would reduce the total burden hours incurred by issuers from 114 hours to 57 hours. In addition, the Commission estimates that the proposed exemption for standardized options and security futures products would lower the total burden hours incurred by exchanges from 190 hours to 104 hours.[110] As a result of this reduction,

[100] In conjunction with this release, the Commission is issuing an order to exempt temporarily standardized options and security futures from Rule 12d2–2 under the Exchange Act. *See* Securities Exchange Act Release No. 49859 (June 15, 2004). *See also* proposed Rule 12d2–2(e).

[101] *See infra* note 104.

[102] Pub. L. No. 106–554, 114 Stat. 2763.

[103] 15 U.S.C. 78*l*(a).

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

[105] 17 CFR 240.9b–1(a)(4).

[106] 15 U.S.C. 78q–1.

[107] 15 U.S.C. 78f(a).

[108] 15 U.S.C. 78*l*(d).

[109] 44 U.S.C. 3501 *et. seq.*

[110] No data is available with respect to how many exchanges currently use EDGAR to file Form 25. However, the Commission believes that requiring

Continued

the combined estimated burden under a revised Rule 12d2–2 would be 705 hours.

The Commission is soliciting comment on the expected PRA effects of the proposed rule amendments. In particular, the Commission solicits comment on the accuracy of our revised burden hour estimates expected to result from the proposed amendments. The Commission further requests comment on whether the proposed changes to the collection of information are necessary for the proper performance of the Commission's functions, including whether the information garnered will have practical utility. In addition, the Commission solicits comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. The Commission further solicits comment on whether there are ways to minimize the burden of information collection on those who respond, including through the use of automated collection techniques or other forms of information technology. Finally, the Commission solicits comment on whether the proposed amendments will have any effects on any other collection of information not previously identified in this section.

Comments on the collection of information requirements and expected effects, should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503. Commenters should also send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–25–04. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–25–04 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB must make a decision concerning the affected collections of information between 30 and 60 days after publication of the release. Consequently, in order to ensure that the comments achieve their full effect, commenters should submit them to OMB within 30 days of this release's publication.

Form 25 to be filed on EDGAR will not change the amount of time required to complete Form 25.

## V. Costs and Benefits of Proposed Amendments to Rule 12d2–2 and Form 25

Rule 12d2–2 under the Exchange Act currently contemplates different procedural instructions based on the reason for a delisting. Generally, when an exchange decides to delist a class of securities because the rights associated with such security have been redeemed or extinguished, the exchange usually files a Form 25 in paper with the Commission. When an exchange intends to delist a class of securities as required under its rules, it must file an application in paper with the Commission to delist, and the Commission must issue an order approving the delisting. If an issuer of a class of securities intends to voluntarily delist, it must file an application in paper with the Commission to voluntarily delist the class of securities from an exchange, after which the Commission must issue an order approving the delisting. Exchange-initiated delistings and Forms 25 submitted by exchanges cannot be deemed effective less than ten days after filing with the Commission.[111] As for issuer-initiated delisting, there is no specific period for approval specified in the Rule, but the application for delisting must be noticed for comment in the **Federal Register**, typically for a period of 15 business days.

The proposed amendments to Rule 12d2–2 and the Form 25 would simplify the deregistration and delisting requirements under the Exchange Act. The amendments would require both 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 would be effective 10 days after filing with the Commission.[112] However, withdrawal from Section 12(b) registration obligations would not be effective until 90 days after the Form 25 is filed. In addition, the Commission would no longer issue orders approving a delisting. Instead, the revised Form 25 with an attached exchange delisting decision would constitute adequate notice under Section 19(d) of the Exchange Act.

The proposed amendments would also revise Rule 12d2–2 to specify the delisting requirements with which exchanges and issuers must comply. First, the Rule would require that each exchange have adequate delisting rules relating to notification to the issuer of a delisting, review and appeal of an exchange's delisting decision, and dissemination of notice of a delisting. This provision would include a requirement that the exchange give public notice of its decision to delist a class of securities, via a press release and posting on a Web site, no fewer than 10 days before the delisting on Form 25 becomes effective. In addition, the Rule would mandate that both issuers and exchanges follow these rules. Finally, the Rule would require that a delisting issuer certify that it has complied with applicable delisting rules of the exchange and state laws, submitted written notification to the exchange of its decision to delist at least 10 days before it files Form 25, and has widely disseminated notice of the delisting of its class of securities. Finally, the proposed rule would exclude options and securities futures from the delisting requirements, as amended, in the Rule.

### *A. Expected Benefits*

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

The proposed amendments to Rule 12d2–2 should provide clarity to both issuers and exchanges. The requirement that all exchanges have specified rules relating to the delisting process would clarify the issues that both issuers and 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 would 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.

[111] 17 CFR 240.12d2–2.

[112] The Commission receives comments on delisting applications infrequently and has not, in recent years, imposed any conditions on the delisting applications it approved. *See supra* note 66.

In addition, the proposed amendments, by exempting standardized options and security futures products from Rule 12d2–2, should eliminate the time exchanges currently spent filing applications to delist these products. The proposed amendments should also promote the comparable regulatory treatment of options and security futures. The exemption for standardized options and security futures should also provide clarity to market participants.

*B. Expected Costs*

The Commission expects that the changes described above should streamline the delisting process and may result in a net reduction in the current costs borne by issuers and exchanges. No detrimental effects to investors are expected.

The filing of Form 25 will impose costs on exchanges and issuers. Both exchanges and issuers would be required to spend time filling out Form 25 in connection with a delisting. In addition, exchanges may incur costs associated with the maintenance of EDGAR capabilities. However, the Form 25 is expected to be less time consuming than the method currently used to initiate a delisting; therefore, the administrative time burden associated with delisting would likely be lower than that of the current practice associated with delisting. With respect to EDGAR facilities, it is our understanding that the exchanges already have EDGAR capabilities. In addition, the costs associated with maintaining the technological facilities necessary to file Form 25 on EDGAR should be insignificant.

The proposed requirement that an issuer that wishes to voluntarily delist represent on Form 25 that it has taken the steps necessary to comply with exchange rules and has provided adequate notice to the public, would 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, the proposed amendments should reduce the cost to issuers by eliminating the delisting application and replacing it with the revised Form 25. Currently, delisting applications are not granted until the Commission issues an order delisting and deregistering the class of securities, which may impose additional requirements on issuers until the order is issued by the Commission; however, a delisting on revised Form 25 would be effective 10 days after filing with the Commission. In addition, 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 would be suspended upon the effective date of the delisting. Currently, an issuer must file such reports until the Commission issues its order to delist the security.

In addition, the amendments to Rule 12d2–2 may impose costs on exchanges. The codification of the required delisting procedures may impose on exchanges a duty to change their rules. While most exchanges already require some of the proposed delisting requirements, some exchanges' rules would need to be changed. For example, not all of the stock exchanges currently have in their rules specific procedures regarding notice to the issuer of the exchange's decision to delist a class of securities. Therefore, the proposal would likely impose, on some exchanges, a cost associated with codifying the proposed notification requirement.

Finally, the proposed amendments to Rule 12d2–2 could impose costs on 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,[113] 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.[114]

The proposal would result in a review process that is more like that associated with the delisting of Nasdaq securities, where an aggrieved party can appeal the NASD's 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.

The proposed amendments to Rule 12d2–2 would similarly require parties aggrieved by an exchange's delisting decision to appeal the decision to the Commission before going to the U.S. Court of Appeals. An exchange whose delisting decision was appealed would have to respond to an appeal, which would require the 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 exchanges may have to respond more often to such appeals if the proposed amendments to the delisting process are adopted. The Commission solicits comment on these potential costs. In addition, the Commission solicits comment as to whether the procedures for appeal of exchange delisting decisions would impose additional costs on aggrieved parties.

## VI. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. § 605(b), that the proposed amendments to Rule 12d2–2, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments to Rule 12d2–2 would apply only to national securities exchanges and certain issuers of securities.

Under § 240.0–10(e) of the Act,[115] an exchange is a ''small entity'' if it has been exempted from the reporting requirements of Section 240.11Aa3–1 of the Act,[116] and is not affiliated with any person that is not a ''small business'' or ''small organization,'' as defined under § 240.0–10 of the Act.[117] The Commission has determined that none of the national securities exchanges are ''small entities'' because none have been exempted from Section 240.11Aa3–1 of the Act.

Under § 240.0–10(a) of the Act,[118] an issuer is a ''small entity'' if, on the last day of its most recent fiscal quarter, it had total assets of $5 million or less. Based on listing standards of the national securities exchanges, the number of companies that could potentially qualify as ''small entities'' under § 240.0–10 of the Act [119] represents an insubstantial percentage of the total number of companies listed on the national securities exchanges. All but two exchanges have listing standards that exceed this definition of a small entity. These issuers represent both an insubstantial percentage of all listed companies and an insubstantial

[113] 17 CFR 200.30–3(a)(1).

[114] 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).

[115] 17 CFR 240.0–10(e).

[116] 17 CFR 240.11Aa3–1.

[117] 17 CFR 240.0–10(a).

[118] 17 CFR 240.0–10(a).

[119] 17 CFR 240.0–10.

percentage of all issuers that are delisted and deregistered in any given year.

The proposed amendment would permit issuers and exchanges to delist a class of securities using the Form 25 on EDGAR system, which should take less time, and be less costly, to complete than an application to delist. Therefore, while the Commission believes that some small issuers could be affected by the proposed amendment, the Commission does not believe that the proposed amendments would have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

## VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [120] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment, or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. The Commission requests comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

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

Section 3(f) of the Exchange Act [121] 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 [122] 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.

The Commission believes that the proposal would promote efficiency by streamlining the delisting and deregistration process. The proposed amendments establish one form that must be filled out for all delistings, whether voluntary or involuntary. As proposed to be revised, the Form 25 would inform the Commission and the public that a security previously traded on an exchange is no longer traded, and would enable the Commission to verify that a delisting has occurred in accordance with the rules of the exchange.

Furthermore, the proposed amendments, by exempting standardized options and security futures products from Rule 12d–2, are expected to promote the comparable regulatory treatment of options and security futures. The proposed exemption for standardized options and security futures products would also provide clarity to market participants.

The Commission does not believe that the proposed amendments would have any anti-competitive effects. Nor is the Commission aware of any impact on capital formation that would result from the proposed amendments. The Commission requests comment on whether the proposed amendments, if adopted, would affect competition, efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## IX. Statutory Authority and Text of Proposed Rules

Pursuant to the Exchange Act and particularly Sections 3(b), 12(d), and 23(a) thereof, 15 U.S.C. 78c, 78*l,* and 78w(a), the Commission is proposing 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 proposing the amendments to § 232.101 pursuant to the Securities Act of 1933, and particularly Sections 6, 7, 10, and 19(a) thereof, 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[120] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[121] 15 U.S.C. 78c(f).

[122] 15 U.S.C. 78w(a)(2).

### 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 Proposed Rule Amendments

For the reasons set out in the preamble, the Commission proposes to amend 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 and 80a–37.

* * * * *

2. Section 232.101 is amended by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(vii);

b. Removing the period at the end of paragraph (a)(1)(viii), and in its place adding a semicolon;

c. Removing the period at the end of paragraph (a)(1)(ix) and in its place adding ''; and'';

d. Adding paragraph (a)(1)(x);

e. Removing the word ''and'' at the end of paragraph (b)(7);

f. 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) * * *

(1) * * *

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

* * * * *

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

1. 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.

* * * * *

2. 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 Note:* 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 (15 U.S.C. 78*l*(g)), and/or reporting obligations under section 15(d) of the Act (15 U.S.C. 78*o*(d)).

(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:

(1) * * *

(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) 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 registration, in accordance with its rules, if the rules of such exchange, at a minimum, provide:

(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 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 on Form 25 becomes effective pursuant to paragraph (d)(1) of this section, and must remain posted on its Web site until the delisting is effective.

(c) 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 security from listing on such national securities exchange and its intention to withdraw the securities from registration under section 12(b) of the Act. An issuer filing Form 25 under this paragraph must represent on the Form 25 that the following requirements have been met:

(1) The issuer has complied 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;

(2) The issuer has provided written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange, which sets 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, no fewer than 10 days before the issuer files an application on Form 25 with the Commission. The national securities exchange must provide notice on its Web site of the issuer's intent to delist and/or withdraw from section 12(b) registration its securities upon such notification by the issuer, and such notice shall remain posted on its Web site until the delisting on Form 25 is effective pursuant to paragraph (d)(1) of this section;

(3) The issuer has published notice of its intention to withdraw its class of securities from listing and/or registration from the national securities exchange, 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, no fewer than 10 days before the issuer's application for delisting on Form 25 becomes effective. 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 filing Form 25 under this paragraph 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.

(d) (1) An application on Form 25 to strike a class of securities from listing on a national securities exchange will become 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 considered effective 90 days, or such shorter period as the Commission may determine, after filing with the Commission.

(3) The Commission may, however, by written notice to the exchange or issuer, postpone the effectiveness of deregistration 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) Nothwithstanding 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 (15 U.S.C. 78l(g)); 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 (15 U.S.C. 78o(d)) 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 (15 U.S.C. 78*l*(d)) 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 (15 U.S.C. 77f(a)) 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 (15 U.S.C. 78q–1) or is exempt from registration under section 17A(b)(7) of the Act.

3. Section 240.19d–1 is amended by:

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

b. Adding an undesignated center heading after paragraph (i);

c. Adding paragraph (j);

d. Adding an undesignated center heading after paragraph (j); and

e. 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.**

* * * * *

*Notice of Limitation or Prohibition of Access to Services by Delisting of Security*

(j) 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.

*Contents of Notice Required by Paragraph (j)*

(k) 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

1. 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.

* * * * *

2. 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** **[OMB INFO BOX HERE]**

Securities and Exchange Commission
Washington, D.C. 20549

## 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.

BILLING CODE 8010–01–C

**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.

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.

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: (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 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: (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) 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 paragraph (a)(3) of Rule 12d2–2 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.

By the Commission.

Dated: June 15, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–13965 Filed 6–21–04; 8:45 am]

**BILLING CODE 8010–01–P**