

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will reduce significant, long-term fails to deliver in the marketplace.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

The Commission notes that in Section 3210(b) of the proposed rule, consistent with the application of Regulation SHO, the NASD excludes from the close out requirement of Section 3210(a) of the proposed rule the amount of the fail to deliver position that the participant of a registered clearing agency had at a registered clearing agency on the

settlement day immediately preceding the day that the security became a non-reporting threshold security. The Commission specifically requests comment on this aspect of proposed Rule 3210.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-044 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2004-044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2004-044 and should be submitted on or before December 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-6306 Filed 11-15-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52760; File No. SR-NYSE-2005-75]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Section 802.01E of the Listed Company Manual

November 10, 2005.

Pursuant to section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 26, 2005, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule filing reflects amendments to the Listed Company Manual procedures applicable to companies that fail to file in a timely manner their annual report required by the Act. The text of the proposed rule change is set forth below. Additions are in italics and deletions are in brackets.

### Listed Company Manual

\* \* \* \* \*

802.00 Continued Listing Criteria

\* \* \* \* \*

802.01E SEC Annual Report Timely Filing Criteria

A company that fails to file its annual report (Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR) with the SEC in a timely manner will be subject to the following procedures: Once the Exchange identifies that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of [its status] *the procedures set forth below*. For purposes of this [Para.] Section 802.01E, the later of these two dates will be referred to as the "Filing Due Date."

Within five days of receipt of this notification, the company will be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) [if it has not already done so,] issue a press release disclosing the status of the filing, *noting the delay, the reason for the delay and the anticipated filing date, if known*. If the company has not [fails to] issued [this] *the required* press release [in a timely manner] *by the fifth day following receipt of this notification*, the Exchange will itself issue a press release stating that the company has failed to timely file its annual report with the SEC.

During the [nine] six-month period from the Filing Due Date, the Exchange will monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within [nine] six months from the Filing Due Date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional [three] six-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to [three] six months is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in [Para.] Section 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in [Paras.] Sections 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to [three] six-month trading period is appropriate, the Exchange will consider the likelihood that the filing can be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and will also take the frequency and detail of such information into account in determining

whether an additional [three] six-month trading period is appropriate.

If the Exchange determines that an additional up to [three] six-month trading period is appropriate and the company fails to file its periodic annual report by the end of the additional period, suspension and delisting procedures will, *subject to the provisions below*, commence in accordance with the procedures set out in [Para.] Section 804.00. *In certain unique circumstances, a listed company that is delayed in filing its annual report beyond the twelve-month period described above because its financial statements have not yet been completed may have a position in the market (relating to both the nature of its business and its very large publicly-held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such case, when the Exchange believes that the company remains suitable for listing given:*

1. *Its continuing compliance with applicable quantitative and qualitative listing standards;*

2. *Its continued ability to meet current debt obligations and adequately finance operations;*

3. *Its progress, as reported to the Exchange, in completing its financial statements;*

4. *Whether it has been publicly transparent on its status, issuing press releases regarding its progress in completing its financial statements and providing other information regarding its financial status; and*

5. *The reasonable expectation that the company will be able to resume timely filings in the future, the Exchange, in its sole discretion, may determine to allow the listed company to continue listing beyond the twelve-month period. The Exchange will advise the SEC of, and publish on the NYSE's website, any such determination.*

*The Exchange will reevaluate such determination once every three months. If the Exchange reaffirms its decision to allow trading to continue, the Exchange will advise the SEC of, and publish on the NYSE's website, that reaffirmation.*

Note that, *regardless of the procedures described above*, if, at any time, the Exchange deems it necessary or appropriate in the public interest or for the protection of investors, trading in any security can be suspended immediately, and[,] *the Exchange will follow [in accordance with] the procedures set out in [Para.] Section 804.00[, application made to the SEC] to delist the security.*

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B, and C below.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange recently approved section 802.01E of the NYSE's Listed Company Manual which codifies the Exchange's procedures relating to situations where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10-K, 10-KSB, 20-F, 40-F, or N-CSR in a timely manner.

Section 802.01E currently provides that if a company fails to timely file a periodic annual report with the SEC, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within nine months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances, but in any event if the company does not file its periodic annual report by the end of the one year period, the Exchange will begin suspension and delisting procedures in accordance with the procedures in section 804.00.

The Exchange believes that there are certain unique listed companies that have a position in the market (relating to both the nature of their business and their very large publicly-held market capitalization) such that their delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors, notwithstanding a delay in an annual report filing that extended beyond one year.

The Exchange is, therefore, proposing to amend section 802.01E to provide that, for these certain unique companies that remain suitable for listing given their relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and with respect to which there is a reasonable expectation that the company will be able to resume timely filings in the future, the

Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding their failure to file within the time periods specified in section 802.01E. The Exchange will advise the SEC of, and publish on the NYSE's Web site, any such determination. In addition, the Exchange will reevaluate such determination once every three months and, if the Exchange reaffirms its decision to allow trading to continue, the Exchange will advise the SEC of, and publish on the NYSE's website, that reaffirmation.

In all such cases, Exchange staff will continue to hold regular discussions and meetings with the company's management, directors, regulators and advisors to monitor the status of the annual report filing, as well as the company's compliance with the NYSE's other qualitative and quantitative requirements, and to determine whether to allow the company to continue to trade despite the continued failure to file an annual report with the SEC. In addition, in order to provide investors with appropriate notice that companies have failed to file their annual reports with the SEC in a timely manner, the Exchange will continue to monitor and disseminate transparent information on the failure of such companies to file their annual report with the SEC, including through appending an ".LF" indicator in the financial status field of the company's ticker symbol and distributing that information via the low speed ticker and through our data stream to market data vendors.

The NYSE also maintains an up to date list of companies that are late in filing their annual reports with the SEC on our Web site at <http://www.nyse.com>. Additionally, each NYSE listed company has a unique data page on the site and, when applicable, this page indicates that the company is considered a late filer.

With respect to all companies subject to section 802.01E, the Exchange is also proposing to (i) shorten the initial monitoring period for companies that miss their Filing Due Date from nine to six months and (ii) lengthen from three to six months the additional period that the Exchange may grant companies prior to the commencement of suspension and delisting procedures. In addition, the Exchange is proposing minor amendments to section 802.01E to clarify the requirements regarding

procedures for press releases relating to late filings.<sup>4</sup>

## 2. Statutory Basis

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

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.

Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>4</sup> The Commission notes that the Exchange is clarifying the type of information that must be included in the press release.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-75 on the subject line.

### Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-NYSE-2005-75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-75 and should be submitted on or before December 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jonathan G. Katz,

Secretary.

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## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10245 and # 10246]

### Indiana Disaster # IN-00002

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major

<sup>6</sup> 17 CFR 200.30-3(a)(12).