

## SEC Revises Rules for Delisting Securities Listed on a Stock Exchange

August 29, 2005

On July 15, 2005, the Securities and Exchange Commission announced that it had amended Rule 12d2-2, among others, under the Securities Exchange Act of 1934, and Form 25 to streamline the process for removing from listing, and withdrawing from registration, securities of an issuer that are listed on a stock exchange. Rule 12d2-2 governs the delisting and deregistration process for both exchange-initiated and issuer-initiated applications to delist a security from a stock exchange. See Release No. 34-52029.

### Effective Date

In order to allow the national securities exchanges to adopt rules to comply with the new requirements, the revisions will not be operative until April 24, 2006.

### Exchange-Initiated Delisting

The SEC has revised Rule 12d2-2 to provide that a stock exchange will now strike a security from listing by filing a Form 25 with the SEC with a copy of the stock exchange's determination to delist as an attachment. The delisting is effective 10 days after the filing of the Form 25, unless the SEC postpones the effectiveness to determine whether the application has been made in accordance with the rules of the stock exchange whether terms should be imposed for the protection of investors. The withdrawal from registration under Section 12(b) of the Exchange Act will take effect 90 days after the filing of the Form 25, unless the SEC determines that a shorter period will apply. However, an issuer's duty to file any reports under Section 13(a) of the Exchange Act, and the rules and regulations promulgated thereunder, solely because of such securities registration under Section 12(b) of the Exchange Act, generally will be suspended at the effective date of the delisting. However, if the issuer has a class of securities registered, or required

to be registered, pursuant to Section 12(g) of the Exchange Act or another class of securities registered under Section 12(b) of the Exchange Act, the duty to file reports will continue.<sup>1</sup>

In order to delist a security, the stock exchange must provide:

- Notice to the issuer of the exchange's decision to delist the security;
- An opportunity for appeal to the stock exchange's board of directors, or to a committee of the board of directors;
- Public notice, no fewer than 10 days before the delisting becomes effective, of the exchange's final determination to delist the security via a press release and posting on the stock exchange's website; and
- A copy of the Form 25 promptly to the issuer.<sup>2</sup>

### Issuer-Initiated Delisting

The SEC has revised Rule 12d2-2 to provide that an issuer may withdraw a security from listing on a stock exchange by filing a Form 25 with the SEC. The delisting is effective 10 days after the filing of the Form 25, unless the SEC postpones the effectiveness to determine whether the application has been made in accordance with the rules of the stock exchange or whether terms should be imposed for the protection of investors. The withdrawal from registration under Section 12(b) of the Exchange Act will take effect 90 days after the filing of the Form 25, unless the SEC determines that a shorter period will apply. However, an issuer's duty to file any reports under Section 13(a) of the Exchange Act, and the rules and regulations promulgated thereunder, solely because of such securities registration under Section 12(b) of the Exchange Act, generally will be

suspended at the effective date of the delisting. However, if the issuer has a class of securities registered, or required to be registered, pursuant to Section 12(g) of the Exchange Act or another class of securities registered under Section 12(b) of the Exchange Act, the duty to file reports will continue.<sup>3</sup>

In order to delist a security, an issuer must:

- Comply with the stock exchange's rules for delisting and applicable state laws;
- Submit a written notification to the stock exchange no fewer than 10 days before the issuer files the Form 25;<sup>4</sup> and
- Issue public notice of its intent to delist contemporaneously with providing written notice to the stock exchange via press release and post such notice on its website if it has one.

## Form 25

Form 25 has been revised to be used for all delistings whether initiated by a stock exchange or an issuer. In addition, Form 25 must now be filed electronically via the SEC's EDGAR filing system.

*If you have any questions regarding revised delisting and deregistration process, we would be pleased to provide additional details or advice about specific situations. For more information, please contact any of the attorneys listed below or any other member of our corporate and securities group. If you would prefer to receive distributions electronically and are not receiving them that way now, please send your e-mail address to mnoonan@mayerbrownrowe.com or cblackmond@mayerbrownrowe.com.*

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## Other

In light of the changes that make delisting automatic upon the passage of time, the SEC will no longer issuer orders approving delisting applications.

Finally, the SEC has exempted standardized options and securities futures products from section 12(d) of the Exchange Act and Rule 12d2-2.

## Endnotes

- 1 It is important to remember that an issuer's obligations under the proxy rules and tender offer rules, Sections 13(e), 14(a) and 14(d) of the Exchange Act, will continue until the deregistration is effective.
- 2 When the issuer receives this notice from an exchange that maintains the primary listing of the common equity being delisted, the issuer will be required to file a Form 8-K within four business days pursuant to Item 3.01(a) of Form 8-K.
- 3 See note 1 above.
- 4 Written notice to the stock exchange must include a description of the security involved together with a statement of all material facts relating to the reasons for filing the Form 25. The stock exchange is required to notify the public by the next business day after an issuer notifies it of the issuer's intent to delist. When the board, a board committee or duly authorized officer(s) take definitive action to cause the delisting of common equity from the principal exchange (or Nasdaq) on which such security is listed, the issuer will be required to file a Form 8-K within four business days pursuant to Item 3.01(d) of Form 8-K.