SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41634; File No. SR–NYSE–97–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Voluntary Delistings by Listed Companies

July 21, 1999.

I. Introduction

On November 17, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the procedures a NYSE-listed company must follow to voluntarily delist its securities from the Exchange. On December 3, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 10, 1997.[4] The Commission received 23 comment letters on the proposal.[5] On February 13, 1998, the NYSE submitted its response to the comment letters received by the Commission.[6] On November 9, 1998, the NYSE submitted Amendment No. 2 to the proposed rule change.[7] Amendment No. 2 was published for comment in the **Federal Register** on November 18, 1998.[8] The Commission received 16 comment letters on Amendment No. 2.[9] For the reasons discussed below, this order approves the proposed rule change, as amended.

II. Background

According to the Exchange, the NYSE adopted the existing Rule 500 in 1939 as a corporate governance safeguard. At that time, an issuer's decision to delist from the NYSE generally resulted in the loss of a public market for a security. NYSE Rule 500 requires supermajority shareholder approval (*i.e.*, , two-thirds of outstanding shares) before a listed company could delist its securities. [10]In addition, no more than ten percent of the issuer's shareholders may object to the delisting. The NYSE states that these provisions ensured that shareholders had a voice in a public company's decision to leave the NYSE.

With the development of other established securities markets, many of the concerns that gave rise to the adoption of Rule 500 were rendered obsolete. Indeed, over the past decade, a number of markets have challenged the NYSE for listings. One of these, the Nasdaq Stock Market, approaches, and by some measures, has surpassed the NYSE in the number of companies and annual share volume. [11] In this environment, the NYSE's Rule 500 has been challenged as a deterrent to intermarket competition rather than a necessary investor protection provision.

Over the past sixty years, only one issuer [12] has delisted its securities from the NYSE. Recognizing the potential anti-competitive impact of the rule, the Commission and its staff have repeatedly encouraged the NYSE to amend Rule 500 to enhance intermarket competition for listings. For example, in January 1994, Commission staff published a study that reviewed, among other things, market practices and

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 1, 1997 (''Amendment No. 1''). In Amendment No. 1, the NYSE proposed to amend the proposal to require an issuer to provide the Exchange with a copy of the notice provided to its shareholders and a copy of the delisting application submitted to the Commission.

[4] *See* Securities Exchange Act Release No. 39394 (December 3, 1997), 62 FR 65116.

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, dated December 12, 1997; Frank G. Zarb, Chairman, President and Chief Executive Officer, National Association of Securities Dealers, Inc., dated January 6, 1998 (''NASD I''); Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, dated January 12, 1998 (''CII''); George B. Brunt, Vice President, Secretary and General Counsel, DSC Communications Corporation, dated January 20, 1998 (''DSC''); James J. Angel, Ph.D., Assistant Professor of Finance, Georgetown University School of Business, dated January 22, 1998; William G. Christie, Associate Professor of Management, Vanderbilt University, dated January 25, 1998; John Markese, Ph.D., President, American Association of Individual Investors, dated January 26, 1998 (''AAII''); John J. McConnell, Professor of Finance, Purdue University, dated January 21, 1998; Eric D. Roiter, Vice President and General Counsel, Fidelity Management and Research Company, dated January 30, 1998 (''Fidelity I''); Bernard W. Schotters, Senior Vice President and Treasurer, Tele-Communications, Inc., dated January 30, 1998 (''TCI''); Jim Tolonen, Chief Financial Officer, Novell, dated February 2, 1998 (''Novell''); John C. Wilcox, Esq., Chairman, and Dr. Richard A. Wines, Senior Managing Director, Georgeson & Company, Inc., dated February 6, 1998 (''Georgeson''); Richard H. Koppes, Jones, Day, Reavis & Pogue, dated February 17, 1998; Charles M. Leighton, Chair, and Peter N. Larson, Vice Chair, NYSE Listed Company Advisory Committee, dated February 19, 1998 ''NYSE Listed Company Advisory Committee''); Edward F. Green, Chairman, and Harvey J. Goldschmid, Chairman, NYSE Legal Advisory Committee, dated February 27, 1998 (''NYSE Legal Advisory Committee''); Myra R. Drucker, Chair, NYSE Pension Managers Advisory Committee, dated February 18, 1998 (''NYSE Pension Managers Advisory Committee''); James F. Rothenberg, President, Capital Research and Management Co., dated March 6, 1998 (''Capital Research''); Patrick J. Healy, President, The Issuer Network, dated March 16, 1998 (''Issuer Network''); Henry H. Hopkins, Managing Director and Chief Legal Counsel, T. Rowe Price Associates, Inc., dated March 25, 1998 (''T. Rowe Price''); and Eric D. Roiter, Vice President and General Counsel, Fidelity Management and Research Company, dated May 7, 1998 (''Fidelity II''). *See also* Letters to The Honorable Arthur Levitt, Chairman, Commission, from; Michael G. Oxley, Chairman, Subcommittee on Finance and Hazardous Materials, Committee on Commerce, United States House of Representatives, dated January 27, 1998; Senators Christopher J. Dodd and Alfonse M. D'Amato, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate, dated February 9, 1998; and Congressman Edward J. Markey, United States House of Representatives, dated February 24, 1998.

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated February 12, 1998 (''NYSE Response Letter'').

[7] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 6, 1998 (''Amendment No. 2''). For a discussion of Amendment No. 2, *see* text accompanying note 23.

[8] *See* Securities Exchange Act Release No. 40688 (November 9, 1998), 63 FR 65626.

[9] *See* Letter from Joan C. Conley, Vice President and Corporate Secretary, NASD, to Jonathan G. Katz, Secretary, Commission, dated January 13, 1999 (''NASD II''); Robert C. Pozen, President and Chief Executive Officer, Fidelity Management and Research Company, to Arthur C. Levitt, Chairman, Commission, dated January 21, 1999 (''Fidelity III''); Yi-Hsin Chang, dated January 20, 1999; Steve Aakhus, dated January 21, 1999; James C. Finn, dated January 21, 1999; Brook A. Mancinelli, dated January 21, 1999; Randy Goering, dated January 21, 1999; Thomas E. Chaddock, dated January 21, 1999; Peter Carucci, dated January 21, 1999; John Rice, dated January 21, 1999; Jon H. Halberg, English Education Department, Kangwon National University, dated January 22, 1999; Russell Peter, Packaging Engineer, Trim Systems, LLC, dated January 22, 1999; Gregory Cain, dated January 21, 1999; Robin Reagler, dated January 22, 1999; Carole A. Werling, dated January 23, 1999; Tom Purdy, dated January 23, 1999; and J.A. McCarthy, dated January 21, 1999.

[10] The Commission notes that the NYSE's current rules governing voluntary delisting are substantially more onerous than the rules adopted by most other U.S. securities markets. For example, the Nasdaq Stock Market requires only that written notice be sent to the NASQ. *See* NASD Rule 4480. *See also* PCX Rule 3.4 and Phlx Rule 809 (generally requiring only that an issuer submit a certified copy of a resolution adopted by the issuer's Board of Directors authorizing withdrawal from listing and a statement detailing the reasons for the proposed withdrawal). Only the rules of the Chicago Stock Exchange (''CHX'') are modeled on the NYSE's Rule 500. *See* CHX Article XXVIII, Rule 4. The Division of Market Regulation, by letter dated July 20, 1999, has requested the CHX submit a proposal amending its rule.

[11] *See 1998 Securities Industry Factbook*, Securities Industry Association, at 48–51 (1998).

[12] *See* Application of MacMillan Bloedel Limited (March 25, 1986) 51 FR 11129, (April 1, 1986), (File No. 1–7902). In contrast, in 1998 alone, the NYSE listed 66 companies that had voluntarily delisted from the Nasdaq Stock Market and 17 companies that had voluntarily delisted from the American Stock Exchange.

structures.[13] In the Market 2000 Study, the staff stated that the NYSE's voluntary delisting provisions ''represent a barrier to delisting that is too onerous.''[14] The staff recommended that the NYSE submit a proposed rule change to modify NYSE Rule 500[15] to allow decisions about voluntary delisting to be made by the listed company's board of directors, rather than by its shareholders.[16]

By letter to the NYSE dated May 27, 1997, the Commission reiterated the staff's request that the Exchange reexamine Rule 500. The Commission requested that the NYSE determine whether the rule remained relevant in light of the current competitive environment in which the differences among the markets regarding the availability of quotation and transaction information, disclosure requirements, and listing criteria have been reduced.[17] In the May 1997 Letter, the Commission noted that NYSE Rule 500: may place an unnecessary limitation on competition for listings by imposing a significant barrier for issuers that wish to withdraw securities from listing on the NYSE. As a result, listed companies may find it difficult to move to another exchange or Nasdaq even though the companies believe that it is or would be in the best interest of their shareholders.

The Commission again urged the Exchange to consider possible modification to NYSE Rule 500 that could reduce potential anti-competitive effects.[18] In response, in November 1997, the Exchange submitted a proposed rule change to revise NYSE Rule 500.[19]

III. Description of the Proposal

The purpose of the proposed rule change, as amended, is to revise the procedures a NYSE-listed company must follow to voluntarily delist its securities from the Exchange. As discussed above, NYSE Rule 500 currently requires supermajority shareholder approval before a listed company can delist its securities from the Exchange: holders of 66⅔ percent of the securities must approve the delisting, and ten percent or more of the shareholders cannot object to the delisting .

The NYSE initially proposed, in November 1997, to require a listed company that wished to delist from the Exchange to obtain the approval of a majority of: (1) the company's full board of directors; and (2) the company's audit committee. The issuer would also have to provide its shareholders with between 45 and 60 calendar days written notice of the delisting. A non-U.S. issuer would only have to obtain board approval to delist its stock. A non-U.S. issuer also would have to provide holders with reasonable notice of its intention to delist, which would require the issuer to send written notice to U.S. holders and to follow home country practice to provide notice to non-U.S. holders.[20] An issuer's board of directors would be required to approve an application to delist listed bonds. Finally, the NYSE proposed to require an issuer to provide the Exchange with a copy of the notice provided to its shareholders and a copy of the delisting application submitted to the Commission.[21]

In response to the Commission's request for comment on the original proposal, the Commission received a number of comments, discussed below in Section IV, both for and against the proposal. As a result of those comments and discussions with Commission staff, the Exchange submitted Amendment No. 2 to the proposed rule change in November, 1998.[22]

Current Proposal

Amendment No. 2 modifies several aspects of the NYSE's initial filing. First, as amended, the proposal would require a listed company to obtain approval of its board of directors according to applicable state law requirements on majority votes, rather than requiring approval by a majority of the entire board. Generally, under states law, the majority of a quorum of a company's board of directors is sufficient for corporate decision.[23] The Exchange would continue to require audit committee approval. Second, the amended proposal would modify the proposed notice provision to require U.S. companies to provide actual written notice to no less than 35 of their largest record holders, rather than to all holders. A foreign issuer would have to provide such notice to its 35 largest U.S. shareholders. Third, the amended proposal would require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting. Finally, the minimum waiting period before a security could be delisted from the Exchange would be reduced from 45 calendar days to 20 business days after the later of the date the notice is sent or the press release is issued, and the maximum waiting period would be increased from 60 calendar days to 60 business days. Listed companies would have the right to request an extension of the waiting period, subject to approval by the Exchange.

IV. Summary of Comments

The Commission received 23 comment letters on the proposed rule change, as initially proposed.[24] The broad range of commenters included six corporations, two trade associations representing individual and institutional investors, two senators and two congressmen, four professors, three advisory committees to the NYSE, and the NASD. All commenters supported at least some change to the existing rule. Eight commenters generally supported the rule change as initially proposed, believing that it maintained a reasonable balance between providing companies with greater flexibility in listing decisions and ensuring sufficient

---

[13] Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) (''Market 2000 Study'').

[14] *Id.*, at 31.

[15] The staff recommended that the NYSE modify, rather than rescind Rule 500 in its entirety. The Division recognized that ''withdrawing securities from listing is an important corporate decision and that it is reasonable to ensure that careful management consideration is given to this decision.'' *See* market 2000 Study, *supra* note 13.

[16] *Id.* The Division suggested that ''new standards could require approval by the board of directors and a majority of the independent directors, or it could require a review of the delisting decision by the board's audit committee.'' The Commission notes that the proposal initially filed by the NYSE would have approval of a majority of the issuer's *full* board of directors *and* its audit committee.

[17] *See* Letter from Jonathan G. Katz, Secretary, Commission, to Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated May 27, 1997 (''May 1997 Letter'').

[18] *Id.*

[19] According to the NYSE, beginning in May 1997, the Exchange consulted with two committees of its Board: its Public Policy Committee and its Quality of Markets Committee, as well as a number of NYSE advisory committees, including its Legal, Listed Company, Pension Managers, and Individual Investors Advisory Committees, about modifying NYSE Rule 500. The NYSE also consulted with other Exchange constitutents, including representatives of the Council of Individual Investors, the American Bar Association Task Force on Listing Standards, and various institutional investors. The NYSE represented to the Commission that these constituents overwhelmingly supported the revision, rather than the repeal, of Rule 500. *See* NYSE Response Letter, *supra* note 6, at 1–2.

[20] As initially proposed, domestic and non-U.S. issuers would be required to request Exchange members to transmit the notice of proposed delisting to beneficial stockholders. An issuer would be required to provide members with copies of the notice and to reimburse associated expenses. This requirement was subsequently deleted by the NYSE. *See* Amendment No. 2, *supra* note 7.

[21] *See* Amendment No. 1, *supra* note 3.

[22] *See* Amendment No. 2, *supra* note 7.

[23] *See e.g.*, DEL. CODE ANN. tit. 8, sec. 141 (1991).

[24] *See* note 5, *supra*. Comment received by the Commission on Amendment No. 2 are discussed at Part IV.B., below.

shareholder protection.[25] Two commenters stated that the proposal generally did not provide sufficient shareholder protection.[26]

As discussed below, many commenters expressed a number of concerns regarding the necessity and practicality of the requirements in the original proposal.[27] These commenters stated that the proposed requirements relating to the approval process, shareholder notification, and the mandatory waiting period were still anti-competitive, unduly burdensome, and costly for issuers.[28] Finally, four commenters expressed a desire to see all barriers to delisting removed and, therefore, advocated the repeal of NYSE Rule 500.[29]

A. Board of Directors Vote

Nine comment letters stated that the approval of a company's board of directors is reasonable because the decision to delist is within the purview of the issuer's business judgment.[30] Two commenters, however, contended that requiring a vote of a majority of the full board of directors is both unnecessary and inconsistent with the Exchange's listing standards, which require a simple vote of the board of directors to list on the Exchange.[31] One commenter further noted the disparate treatment between domestic and foreign issuers with respect to this requirement.[32]

In response, the Exchange proposes to modify its proposal to permit a listed company to obtain approval of its board of directors according to the applicable state law requirements on majority votes, rather than requiring approval by a majority of the entire board.[33]

B. Elimination of Shareholder Approval Requirements

While most commenters agreed that the current supermajority shareholder approval requirement is onerous and unnecessary, some commenters believed that the proposed approval process did not provide sufficient shareholder protection.[34] One commenter noted that the 45 to 60 day notice period is meaningless for listed companies that have eliminated their shareholders' right to call a special meeting protesting a delisting decision.[35] Three comment letters further expressed the concern that, under the proposal, the potential exists for issuers to delist in an attempt to circumvent shareholder voting rights under NYSE rules.[36] Accordingly, several commenters believed that majority shareholder approval requirements should be retained.[37]

The Exchange did not modify its proposal in response to these comments, noting that its proposal reflected its efforts to balance its competing interests by ''provid[ing] appropriate protection for shareholders, while granting companies greater flexibility as they make decisions on the trading markets for their stock.'' [38]

C. Audit Committee Vote

Three commenters questioned the necessity of requiring the audit committee to approve the delisting of a stock.[39] One commenter stated that a company's audit committee is an unsuitable venue for reviewing external matters [40] and another commenter stated that board approval should be sufficient.[41] One commenter noted that this requirement could operate as a veto power over a full board majority vote to delist from the Exchange.[42]

While the Exchange considered these comments, it ultimately retained the requirement of audit committee approval.[43] The Exchange reasoned that an issuer's audit committee, composed entirely of independent directors, would be ''the best possible proxy for shareholders'' because the audit committee members could consider a proposed delisting ''independently of any other reasons that may influence members of a company's board with closer ties to the company.'' [44] The NYSE Pension Managers Advisory Committee supported the NYSE's decision to require audit committee approval, stating that audit committee approval, combined with board approval, would ''provide substantial and sufficient shareholder protection.'' [45]

D. Shareholder Notification Requirements

Seven comment letters supported requiring issuers to provide written notice of intent to delist to all shareholders of record.[46] Several commenters, however, believed that the proposed notification requirements would be anti-competitive, burdensome, and costly.[47] Two of these commenters believed that shareholder notification may wrongfully imply that delisting from the NYSE is harmful to investors.[48] One commenter noted that written notice to shareholders is not required under state law for ordinary business decisions,[49] and two commenters suggested some type of media notice would be a reasonable alternative.[50]

In response to the expressed concerns, the Exchange modified its proposal to require domestic issuers to provide written notice to no fewer than 35 of their largest record holders.[51] Foreign issuers would have to provide written notice to no fewer than 35 of their largest U.S. shareholders.[52] In addition, the Exchange modified its proposal to require all listed companies to issue a press release informing their shareholders of the proposed delisting.[53]

E. Waiting Period After Shareholder Notification

At one end of the spectrum, five commenters stated that the proposed 45 to 60 day waiting period would be insufficient, in certain circumstances, to

[25] *See* Letters from Professor Angel, Richard Koppes, Senators Dodd and D'Amato, NYSE Listed Company Advisory Committee, Congressman Markey, NYSE Legal Advisory Committee, NYSE Pension Managers Advisory Committee, and Issuer Network, *supra note 5*.

[26] *See* Letters from CII, and Fidelity I and II, supra note 5.

[27] *See* letters from Professor Peake, NASD I, DSC, Professor Christie, AAII, TCI, Novell, Congressman Oxley, Georgeson, Capital Research, and T. Rowe Price, *supra* note 5.

[28] *Id.*

[29] *See* Letters from TCI, Novell, and Georgeson, *supra* note 5. *See also* NASD II Letter, *supra* note 9.

[30] *See* Letters from DSC, Professor Christie, AAII, Professor McConnell, Fidelity I and II, TCI, Congressman Oxley, and NYSE Pension Managers Advisory Committee, *supra* note 5.

[31] *See* Letters from Professor Peake and NASD I, *supra* note 5.

[32] *See* Letter from Professor Peake, *supra* note 5.

[33] *See* Amendment No. 2, *supra* note 7.

[34] *See* Letters from CII, Fidelity I and II, and Senators Dodd and D'Amato, *supra* note 5.

[35] *See* CII Letter, *supra* note 5.

[36] *See* Letters from CII and Fidelity I and II, *supra* note 5.

[37] *See* Letters from CII and Senators Dodd and D'Amato, *supra* note 5.

[38] *See* NYSE Response Letter, *supra* note 6.

[39] *See* Letters from NASD I, Professor McConnell, and T. Rowe Price, *supra* note 5.

[40] *See* Letter from Professor McConnell, *supra* note 5.

[41] *See* Letter from T. Rowe Price, *supra* note 5.

[42] *See* Letter from NASD I, *supra* note 5.

[43] *See* NYSE Response Letter, *supra* note 6.

[44] *Id.* at 6.

[45] *See* NYSE Pension Managers Advisory Committee, *supra* note 6.

[46] *See* Letters from Professor McConnell, Richard Koppes, Senators Dodd and D'Amato, NYSE Listed Company Advisory Committee, Congressman Markey, NYSE Legal Advisory Committee, and NYSE Pension Managers Advisory Committee, *supra* note 5.

[47] *See* Letters from NASD I, DSC, TCI, and Congressman Oxley, *supra* note 5.

[48] *See* Letters from NASD I and DSC, *supra* note 5.

[49] *See* Letter from NASD I, *supra* note 5.

[50] *See* Letters from NASD I and Congressman Oxley, *supra* note 5.

[51] *See* Amendment No. 2, *supra* note 7.

[52] *Id.*

[53] *Id.*

protect shareholder interests.[54] Four of these commenters noted that the notice period would be sufficient if the issuer represents to the Exchange that it will list on a market that has comparable shareholder voting rights.[55] If the market is not comparable, the commenters recommended lengthening the notice period to six months to allow shareholders a reasonable time to convene a special meeting.[56] Four commenters further stated that the proposed waiting period would not provide sufficient time to allow institutional investors to liquidate portfolios without sizable and unnecessary losses.[57]

At the other end of the spectrum, several commenters opposed any waiting period on the grounds that it would be anti-competitive.[58] Some of these commenters contended that an issuer's decision to delist is an ordinary business decision and, therefore, does not require shareholder notification or a waiting period.[59] These commenters also noted that the Exchange does not have a similar requirement for companies that desire to list on the NYSE.[60]

In response, the Exchange modified its proposal to reduce the minimum waiting period before delisting from 45 calendar days to 20 business days, after actual written notice is sent or the press release is issued, whichever occurs later.[61] The Exchange also proposes to increase the maximum waiting period from 60 calendar days to 60 business days.[62] Finally, the amended proposal would allow companies to request an extension of the waiting period, subject to approval by the Exchange.[63]

F. Comments on Amendment No. 2 to the Proposed Rule Change

The Commission received 16 comment letters on the proposed modifications to the initial filing contained in Amendment No. 2 to the proposed rule change.[64] All but two[65] of the commenters generally supported the proposed modifications to NYSE rule 500. Specifically, Fidelity supported the amended proposal only under certain circumstances.[66] Fidelity reiterated its concern that, under the amended proposal, the potential exists for issuers to delist in an attempt to circumvent shareholder voting rights under the NYSE's rules.[67] Fidelity believed that the 20-day notice period would be sufficient if the issuer represents to the Exchange that it will list on a market that has comparable shareholder voting rights.[68] If the market is not comparable, Fidelity recommended, as a condition of delisting from the NYSE, that the issuer should be required to submit to the shareholders within the first year of delisting any proposal that would have been submitted to the shareholders within the first year under the NYSE's rules.[69]

Finally, the NASD opposed all aspects of the amended proposal and advocated the complete repeal of NYSE Rule 500.[70] The NASD contended that, even as amended, Rule 500 is anti-competitive and unduly burdensome in that it ''significantly limits an issuer's discretion to delist from the NYSE, excludes competition from rival stock markets, harms investors, undermines the purposes of the Exchange Act, and discriminates among issuers.'' [71] The NASD reiterated its contention in an earlier comment letter that audit committee approval is unnecessary, hinders the delisting decision, and is inconsistent with most state law requirements.[72] The NASD further stated that a delisting decision is an ordinary business decision that warrants neither written shareholder notification nor a waiting period.[73]

V. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [74] and the rules and regulations thereunder applicable to a national securities exchange.[75] In particular, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Sections 6(b)(5) and 6(b)(8) of the Act.[76] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be 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 to protect investors and the public interest.[77] Section 6(b)(5) also requires that the rules of an exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[78] In addition, Section 6(b)(8) of the Act prohibits the rules of an exchange from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the statute.[79]

As discussed above, over the last several years, the Commission and its staff have repeatedly expressed to the Exchange their concerns regarding the potentially anti-competitive effects of NYSE Rule 500. The commission's regulatory concerns centered upon its belief that the NYSE's rules governing voluntary delisting created nearly insurmountable obstacles to listed companies desiring to delist their securities from the Exchange, and as such, impeded competition between securities markets. The Commission believes that the amended proposal represents an important step toward easing the more onerous restrictions on voluntary delistings, while helping to ensure that shareholders will be given an opportunity to participate in the delisting decisionmaking process. As a result, the Commission believes that the NYSE's proposed revision of Rule 500 is consistent with the provisions of the Act discussed above. The voluntary delisting procedures proposed by the NYSE in Amendment No. 2 represent a significant and positive change over both the current delisting process and the delisting procedures proposed in the Exchange's initial filing, particularly with respect to the proposed approval

[54] *See* Letters from CII, Professor Angel, Fidelity I and II, and Congressman Markey, *supra* note 5.

[55] *See* Letters from Professor Angel, Fidelity I and II, and Congressman Markey, *supra* note 5.

[56] *Id.*

[57] *See* Letters from CII, Fidelity I and II, and Congressman Markey, *supra* note 5.

[58] *See* Letters from NASD I, DSC, AAII, TCI, Congressman Oxley, Capital Research, and T. Rowe Price, *supra* note 5.

[59] *See* Letters from NASD I, DSC, AAII, TCI, Congressman Oxley, and T. Rowe Price, *supra* note 5.

[60] *See* Letters from NASD I, Capital Research, and T. Rowe Price, *supra* note 5.

[61] *See* Amendment No. 2, *supra* note 7.

[62] *Id.*

[63] *Id.*

[64] *See* note 9. *supra.*

[65] *See* Letters from NASD II and Fidelity III, *supra* note 9.

[66] *See* Fidelity III Letter, *supra* note 9.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *See* NASD II Letter, *supra* note 9. The Commission's consideration of the NYSE's amendments to Rule 500 under Section 19(b) of the Act, however, does not raise the question whether the Commission should take steps to remove NYSE Rule 500. In the matter before us, we consider only whether to approve or disapprove the proposed rule change, based on whether we find that the proposed rule change is consistent with the Act. 17 U.S.C. 19(b)(2).

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] 15 U.S.C. 78f.

[75] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[76] 15 U.S.C. 78f(b)(5) and (8).

[77] 15 U.S.C. 78f(b)(5).

[78] *Id.*

[79] 15 U.S.C. 78f(b)(8).

requirements, notification requirements, and mandatory waiting period.

A. Approval Process

The NYSE proposes to eliminate Rule 500's existing shareholder approval requirements.[80] Instead, the proposed amendment to NYSE Rule 500 would require the approval of a listed company's audit committee, as well as approval by an issuer's board of directors. The proposal, as amended, would allow the applicable state law to govern the issue of what constitutes a majority vote for corporate decisionmaking. The Commission anticipates that for the majority of listed companies, a proposal to delist could be approved by the majority of a quorum of the issuer's board.[81]

The Commission recognizes the significance of an issuer's decision regarding the appropriate market in which to list its securities. The Commission believes that issuers should carefully consider the best interests of their shareholders in both listing and delisting decisions, and that the NYSE's proposal should help to ensure that due consideration is given to a decision regarding whether to delist securities from the Exchange. While approval by the audit committee in addition to Board approval may not prove necessary to ensure careful decisonmaking, the Commission at this time does not believe that this requirement is unreasonably onerous. Moreover, these requirements are considerably less burdensome than either the existing supermajority shareholder approval requirements of the NYSE's initial proposal, which would have required a majority of the issuer's full board of directors. Ultimately, the Commission believes that the proposed requirements should ensure that careful consideration is given to the various factors influencing a company's decision regarding the appropriate market in which to list its securities. The Commission, however, expects the NYSE to continue to monitor the practical application of these requirements to ensure that they do not represent a significant and unnecessary impediment to delisting.

B. Shareholder Notification Requirements

Thge NYSE's proposal would eliminate the existing shareholder approval requirements, and instead, establish shareholder notification requirements. As initially proposed, the NYSE would have required issuers to provide actual written notice of their intent to delist their securities from the Exchange to all holders of record. Amendment No. 2 subsequently modified the proposal to require domestic issuers to provide actual written notice to no fewer than 35 of their largest record holders, rather than to all holders. Foreign issuers would have to provide such notice to no fewer than 35 of their largest U.S. shareholders. In addition, the amended proposal would require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting.

The Commission considers beneficial the proposed requirement that listed companies issue a press release to notify their shareholders of the proposed delisting. What is gained by mandating actual written notice to no less than the 35 largest holders of record is less clear, considering that such shareholders may be those most likely to keep abreast of the latest news regarding the issuer. The Commission believes that publishing a press release may achieve the same goal of informing an issuer's shareholders of the delisting decision without incurring the costs associated with actual written notice. Nonetheless, the Commission believes that the proposed shareholder notification requirement is a significant improvement over the original proposal and a reasonable means of addressing concerns raised by certain commenters.[82]

Therefore, although the Commission does not believe that the requirement of actual written notice to certain shareholders will prove necessary, we do not believe at this time that the requirement is inconsistent with the Act. That being said, however, the Commission urges the NYSE to review periodically the shareholder notification requirements of Rule 500 to determine whether the requirement of written notice to an issuer's largest shareholders continues to be warranted and consistent with the protection of investors.

C. Waiting Period After Shareholder Notification

Finally, the amended proposal would reduce the minimum waiting period before an issuer could apply to delist its securities from the Exchange, from 45 calendar days to 20 business days after the later of the date the written notice is sent or the press release is issued.[83] The amended proposal would also increase the maximum waiting period from 60 calendar days to 60 business days. The amended proposal would, however, permit NYSE-listed companies to request that the Exchange grant an extension of the waiting period.

The required waiting period following shareholder notification is designed to ensure that shareholders have a reasonable opportunity to communicate with a listed company's management regarding any concerns they may have regarding a proposed delisting. The Commission believes that reducing the minimum waiting period from 45 calender days to 20 business days is reasonable, as it should reduce the delay of the waiting period on listed companies that are anxious to delist their securities without significantly reducing the time period for investors to consider the implications of the delisting decision. In addition, the Commission believes that increasing the maximum waiting period and permitting listed companies to extend the period beyond that time frame is reasonable, as the proposed modification should provide listed companies with some flexibility in complying with the notification procedures. In particular, in those instances where it appeared that an issuer's decision to delist might face significant shareholder opposition, an issuer would be able to delay the delisting to ensure that shareholders are given an opportunity to play a meaningful role in the decisionmaking process.

VI. Conclusion

Because the proposed amendments to NYSE Rule 500 greatly ease the existing restrictions on NYSE-listed companies that wish to voluntarily delist their securities from the Exchange, the Commission believes that the proposal, as amended, is consistent with the Act.

[80] Although the proposal would eliminate the requirement that NYSE-listed companies obtain shareholder approval of a proposed delisting, the proposal would establish shareholder notification procedures to afford shareholders an opportunity to express their views on delisting decisions and take any action they deem necessary. *See* Section III for a detailed description of the proposed shareholder notification requirements.

[81] The requirements would, therefore, mirror those proposed by the NYSE for the voluntary delisting of listed bonds.

[82] *See* Letters from CII and Fidelity I, *supra* note 5.

[83] The proposal ties the date on which an issuer may delist to the later of the date the actual written ''notice is sent or the press release is issued.'' Although this language may be interpreted to suggest that either the actual written notice or the press release may be issued first, the Commission cautions that notifying the largest shareholders of a decision to delist before issuing a press release may raise regulatory concerns regarding the fair access of information to all investors and may impose certain requirements on those shareholders that receive the notice before it is disseminated to the public. As a result, the Commission strongly urges the listed companies to issue the press release before sending written notice to the largest shareholders or to do both simultaneously.

Although the Commission is approving the amended proposal because on balance the proposed changes represent a significant improvement over existing Rule 500, the Commission believes that the Exchange should continue to assess the rule's operation in order to determine whether it is appropriate to further eliminate impediments to voluntary delistings. We note that, even as amended, the NYSE's voluntary delisting rules continue to be more onerous than those of most other domestic markets.[84] Therefore, the Commission expects the NYSE to review the rule's restrictions on an ongoing basis to determine if they are necessary to protect investors, or whether they unnecessarily impede an issuer in changing marketplaces.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[85] that the proposed rule change (SR–NYSE–97–31), including Amendment Nos. 1 and 2, is approved.

By the Coommission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19102 Filed 7–26–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3098]

United States—Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 1, 1999.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION, CONTACT: Vickie Alexander, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011-(20–2) 357–2925; fax: 011-(20–2) 354–8091; E-mail: alexanderva@state.gov

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin August 1, 1999. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2000 must be postmarked by October 31, 1999. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board.

These include priorities in the areas of information technology, environmental technologies, biotechnology, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Brooke Holmes,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.—Egypt S&T Joint Board.

[FR Doc. 99–19151 Filed 7–26–99; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62a]

Implementation of WTO Recommendations Concerning EC–Measures Concerning Meat and Meat Products (Hormones)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the imposition of 100 percent *ad valorem* duties on certain articles.

SUMMARY: The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and related obligations by imposing a 100% *ad valorem* rate of duty on three articles described in the Annex to this notice that are the products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's ban on imports of U.S. meat from animals treated with certain hormones. This action constitutes the exercise of U.S. rights under Article 22 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act of 1974, as amended..

EFFECTIVE DATE: In accordance with U.S. rights under the DSU, effective July 29, 1999, a 100% *ad valorem* rate of duty shall be applied to the articles described in the Annex to this notice that are the products of one or more of the following EC member States—Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden—and that are entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after July 29, 1999 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41. This action will follow authorization on July 26, 1999, by the DSB to suspend the application to the EC, and member States thereof, of concessions and related obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994).

ADDRESSES: 600 17th Street, NW., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning documents and USTR procedures; William Busis, Associate General Counsel, (202) 395–3150 or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320, for questions concerning WTO developments regarding the EC's hormone ban; John Valentine, Attorney, International Agreements Staff, U.S. Customs Service, (202) 927–1219, for questions concerning classification; and Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: In December 1985, the EC adopted a directive on livestock production restricting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals, and meat from animals, to which hormones had been administered. That directive was later declared invalid by the European Court of Justice on procedural grounds and

[84] *See* note 10, *supra.*

[85] 15 U.S.C. 78s(b)(2).