

PAPERWORK REDUCTION ACT SUBMISSION

Rule 12d2-2 and Form 25

SUPPORTING STATEMENT

A. Justification

1. Necessity for Information Collection

Section 12(a) of the Securities Exchange Act of 1934 (“Act”),¹ generally 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 effectively registered on that exchange in accordance with the provisions of the Act and the rules thereunder. Section 12(d) of the Act provides that a security registered with a national securities exchange may be withdrawn or stricken from listing on an exchange in accordance with the rules of the exchange, and upon such terms as the Securities and Exchange Commission (“Commission”) may deem necessary, upon application by the issuer of the security or by the exchange to the Commission.

Rule 12d2-2 (“Rule”) and Form 25 (“Form 25”) were adopted in 1935 and 1952, respectively, pursuant to Sections 12 and 23 of the Act. The Rule sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act. The Commission adopted amendments to Rule 12d2-2 and Form 25.² Under the amended Rule, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission has also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission has adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

2. Purposes of, and Consequences of Not Requiring, the Information Collection

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the

¹ 15 U.S.C. 78b *et seq.*

² See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

proper procedural and notice requirements associated with a delisting and/or withdrawal from registration under Section 12(b) of the Act. Without the Rule and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

A national securities exchange previously had the option of filing the Form 25 either through a paper submission or through the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) System.³ Issuers previously filed applications for delisting and/or withdrawal from registration under Section 12(b) of the Act on paper with the Commission. Rule 12d2-2, as amended, requires that national securities exchanges and issuers file a Form 25 electronically through EDGAR.⁴ These changes will minimize the burdens of filing on national securities exchanges and issuers.

4. Efforts to Identify Duplication

Not applicable.

5. Effect on Small Business

Not applicable. Neither the national securities exchanges, who must comply with both the Rule and the Form, nor any issuer obligated to respond under the Rule, would be considered a small business as described in the OMB guidelines for completing this Submission.

6. Consequences of Less Frequent Collection

If the collection of information were conducted less frequently, the Commission would not have the timely information necessary to ensure that delisting and/or withdrawal from registration under Section 12(b) of the Act continue to be accomplished in accordance with the respective rules of the national securities exchanges and the rule, and that such exchanges remain in compliance with Section 12(d) of the Act. Since the information required by the Rule and the

³ See Securities Act Release No. 33-8099 (May 14, 2002) (Adopting amendments to Regulation S-T under the Securities Act of 1933, 17 CFR 232.10 et seq.).

⁴ The Commission notes that issuers file the Form 25 through EDGAR and exchanges file the Form 25-NSE through EDGAR. Form 25-NSE is not a separate form but rather, is a submission type in EDGAR designed to, among other things, allow the Commission to track the number of Form 25s filed by exchanges only. The submission type refers to Form variations that filers use on EDGAR to fulfill their filing obligation. Thus, the paper Form 25 is implemented on EDGAR as two different submission types including: 25 and 25-NSE. For purposes of the Paperwork Reduction Act extension to Form 25 therefore, the extension applies to both submission types since there is only one single Form 25.

Form 25, as applicable, is not otherwise available to the Commission, such Rule and Form 25 are necessary for the Commission to fulfill its statutory responsibilities.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The requirements of the Rule and the Form are consistent with the general information collection guidelines imposed for public protection as set forth in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Commission

In connection with adopting the amendments to Rule 12d2-2 and Form 25, the Commission consulted with several national securities exchanges on the information collection. In addition, the Commission requested, but did not receive, comments regarding its burden estimates in the release proposing to amend Rule 12d2-2 and Form 25.⁵

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Hour Burden

⁵ See Securities Exchange Act Release No. 49858 (June 15, 2004), 69 FR 34860 (June 22, 2004).

There are 15 national securities exchanges that trade equity securities that are respondents complying with the requirements of the Rule and Form 25. Additionally, any issuer whose security is listed on a national securities exchange which seeks to remove such security from listing and/or registration on that exchange will be subject to the requirements of subparagraph (c) of the Rule. Although the burdens of complying with the Rule and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSE Amex than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

The Commission staff has prepared the following breakdown of the respondents' relevant reporting hour burdens and related costs:

For national securities exchanges filing a Form 25, the staff has computed the average cost per response to be approximately \$52.75, representing one reporting hour per response, including:

quarter hour of legal work	@	\$82/hour	=	20.50
quarter hour of compliance work (Examiner)	@	\$71/hour	=	17.75
half hour of compliance work (Clerk)	@	\$29/hour	=	14.50
				\$52.75

In 2010, the Commission received approximately 630 responses from the national securities exchanges on Form 25s, for the purpose of delisting equity securities. Therefore, the Commission expects that under the Rule, exchanges would handle approximately 630 Form 25s for delisting applications annually. Assuming, on average, one reporting hour per response, the resultant aggregate annual reporting hour burden would be 630 annual burden hours for all exchanges (15 exchanges x an average of 42 responses per exchange x 1 hour per response). The related costs associated with these burden hours are \$33,232.50 (\$52.75 per response x 630 responses).

For issuers filing a Form 25, the staff has computed the average cost per response to be approximately \$64.00, representing one reporting hour per response, including:

half hour of attorney work	@	\$82/hour	=	41.00
half hour of paralegal work	@	\$46/hour	=	23.00
				\$64.00

Since approximately 118 responses are received by the Commission from issuers voluntarily applying to remove their securities from listing and registration on exchanges, the aggregate annual reporting hour burden on issuers filing a Form 25 would be, assuming on average one reporting hour per response, 118 annual burden hours for all issuers (118 issuers x 1

response per issuer x 1 hour per response), at a related aggregate cost of \$7,552 (\$64 per response x 118 responses). Accordingly, the total annual hour burden for all respondents to comply with the Rule is 748 hours (630 hours for exchanges + 118 hours for issuers).

13. Estimate of total annualized cost burden

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the Rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost to comply with the Rule.

14. Estimate of Cost to Federal Government

There are no agency records prior to fiscal year 1981 that would permit the Commission staff to compute the cost of developing the Rule or Form 25. Concerning ongoing costs to the Federal Government, based on its experience with reviewing and processing delisting notices and applications, the Commission staff believes that the operational costs to the Commission of processing a Form 25 is approximately \$14.38. Since approximately 748 responses are received by the Commission annually, the total estimated cost to the Federal Government would be approximately \$10,756.24. These estimates were arrived at based on computations of staff time devoted to processing these responses and related overhead costs (valued at 25 percent of the cost of staff time, in accordance with the formulas set forth in the Guide to Estimating Reporting Costs (1973)).

15. Explanation of Changes in Burden

The decrease in burden is a result of a decrease in the number of forms filed with the Commission due to market conditions.

16. Information Collections Planned for Statistical Purposes

Not applicable. The information is not published for statistical use.

17. Explanation of Why Expiration Date Should Not Be Displayed

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

The collections of information under the Rule and Form do not employ statistical methods.