

# NYSE Regulation – Listed Company Manual

## 802.00 Continued Listing

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### 802.01 Continued Listing Criteria

The Exchange would normally give consideration to the prompt initiation of suspension and delisting procedures with respect to a security of either a domestic or non-U.S. issuer when:

#### 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 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 the procedures set forth below. For purposes of this 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) 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 issued the required press release 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 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 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 six-month trading period depending on the company’s specific circumstances. If the Exchange determines that an additional trading period of up to six months is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to 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 six-month trading period is appropriate.

If the Exchange determines that an additional up to 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 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 (the "Initial Twelve-Month Period") 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 Initial 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.

The Exchange's discretion to allow a company to continue listing beyond the Initial Twelve-Month Period shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange determines to continue listing a company beyond the Initial Twelve-Month Period, and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00.

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 the procedures set out in Section 804.00 to delist the security.