Dated: April 26, 2006.

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53702; File No. SR-NSX–2005–09]

Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 Thereto to Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

April 21, 2006.

I. Introduction

On October 24, 2005, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. The proposed rule change was published for comment in the **Federal Register** on March 22, 2006.[3] No comments were received regarding the proposal. On March 23, 2006, NSX filed Amendment No. 1 to the proposed rule change.[4] On April 12, 2006, NSX filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, publishes notice of Amendment Nos. 1 and 2 to the proposed rule change, and grants accelerated approval to Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change

Section 12 of the Act [6] and SEC Rule 12d2–2 govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2–2 (''amended SEC Rule 12d2–2'') and other Commission rules require the electronic filing of revised Form 25 [7] on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.[8]

In the case of exchange-initiated delistings, amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2–2(d)(1), and must remain posted on its Web site until the delisting is effective.

The Exchange's current provisions with respect to the delisting of securities are contained in Article IV, Section 3 of the NSX Bylaws. The Exchange proposes to amend Section 3.1(b) of the Bylaws to comply with new requirements set forth in amended SEC Rule 12d2–2(b). The provisions set forth in current Section 3 of the Bylaws, which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2–2(b)(1)(i)-(ii). NSX rules do not currently provide for public notice of the delisting, as mandated by amended SEC Rule 12d2–2(b)(1)(iii). Therefore, proposed Section 3.1(b) of the Bylaws would require the Exchange to provide public notice, in accordance with amended SEC Rule 12d2–2(b)(1)(iii), of a final determination by the Exchange to strike an issuer's securities from listing and/or withdraw the registration of such securities on the Exchange.

The criteria the Exchange would employ for issuers that desire to delist their security from the Exchange are contained in Section 3.2 of the NSX Bylaws. Currently, Section 3.2 of the NSX Bylaws requires that an issuer seeking to voluntarily delist its security submit a certified copy of the issuer's board resolution authorizing withdrawal from listing and registration and a statement of the reasons for the withdrawal and supporting facts. NSX is retaining these provisions. The Exchange proposes to amend Section 3.2 of the NSX Bylaws to add new requirements that an issuer certify that it is in compliance with the Exchange's rules for delisting and applicable state law (in conformity with amended SEC Rule 12d2–2(c)(2)(i)) and certify that the issuer is in compliance with the public notice requirements under amended SEC Rule 12d2–2(c)(2)(iii). The proposed rule filing sets forth a new requirement separate from those set forth in amended SEC Rule 12d2–2(c) that would require the issuer to notify the Exchange in writing that it has filed Form 25 with the SEC simultaneously with such filing. Such notification would include the date the issuer expects the delisting to become effective. In addition, NSX proposes to amend Section 3.2 of the Bylaws to add provisions requiring the issuer to submit written notice that is in conformity with the requirements of amended SEC Rule 12d2–2(c)(2)(ii) to the Exchange no fewer than ten days before the issuer files its application to delist with the Commission and another notice when such application becomes effective. The proposal would also eliminate the provision in Section 3.2 of the NSX Bylaws that requires the issuer to submit the proposed voluntary delisting of its security to the security holders for their vote in a meeting for which proxies are submitted.

The Exchange also proposes in Interpretations and Policies .01 to new Section 3.2A to the NSX Bylaws to require any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Section 3.2A that has received notice from the Exchange, pursuant to Section 3.1A or otherwise, that it is below the

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

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 53508 (March 17, 2006), 71 FR 14562.

[4] In Amendment No. 1, NSX added an interpretation and policy to Section 3.2A to Article IV of the NSX Bylaws to: (i) Clarify the effective date of the proposal; (ii) clarify the use of Form 25 as a delisting application; and (iii) state that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice.

[5] In Amendment No. 2, NSX made technical changes to its Form 19b–4, Exhibit 1, and Exhibits that clarify the changes proposed in Amendment No. 1.

[6] 15 U.S.C. 78l.

[7] 17 CFR 249.25.

[8] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (''SEC Rule 12d2–2 Approval Order'').

Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts (pursuant to Section 3.2A(d)) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule12d2–2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by amended SEC Rule 12d2–2(c)(2)(iii) under the Act.[9]

Finally, the Exchange has made changes in its rules to clarify that the Form 25 serves as the application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2–2.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [10] and, in particular, the requirements of Section 6 of the Act.[11] Specifically, as discussed below, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[12] which requires, in part, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, as noted in more detail below, the changes being adopted by the NSX meet the requirements of amended SEC Rule 12d2–2.

A. Exchange Delisting

Amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that NSX's current rules and proposal comply with the dictates of amended SEC Rule 12d2–2(b).

NSX rules currently provide the requisite issuer notice as well as an opportunity to appeal such action by following Chapter X of the Exchange Rules governing adverse actions.[13] Specifically, a person who is or will be aggrieved by any action of the Exchange can submit an application for hearing and review to the Secretary of the Exchange, who promptly forwards such request to the Appeals Committee.[14] The decision of the Appeals Committee is subject to further review by the Board of Directors upon its own motion or upon written request by the aggrieved party.[15] Finally, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[16]

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements of amended SEC Rule 12d2–2(c) regarding issuer voluntary delisting. In addition, new Section 3.2 of the NSX Bylaws would require the issuer to certify its compliance with Exchange rules for delisting and other applicable laws. Further, the Commission notes that NSX also proposes to amend Section 3.2 of the Bylaws to conform to amended SEC Rule 12d2–2(c) which requires issuers to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a public notice of such determination. The Commission believes that these provisions will inform issuers of the requirements for voluntary delisting of their securities under Exchange rules and federal securities laws and ensure the Exchange and shareholders are adequately notified of an issuer delisting.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2–2 that would require an issuer seeking to voluntarily delist its security to notify the Exchange in writing that it has filed Form 25 with the Commission simultaneously with such filing. The issuer would also be required to notify the Exchange in writing immediately after the delisting actually becomes effective. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form.

The Exchange also proposes to add an interpretation and policy to Section 3.2A to the Bylaws to require any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Section 3.2A that has received notice from the Exchange, pursuant to Section 3.1A or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts (pursuant to Section 3.2A (d)) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2–2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by amended SEC Rule 12d2–2(c)(2)(iii) under the Act.[17] The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

C. Accelerated Approval of Amendment Nos. 1 and 2

Pursuant to Section 19(b)(2) of the Act,[18] the Commission may not approve

[9] *See* Amendment No. 1, *supra* note 4.

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

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Section 3.1 of the NSX By-Laws.

[14] NSX Rule 10.3.

[15] NSX Rule 10.5.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amendment No. 1, *supra* note 4.

[18] 15 U.S.C. 78s(b)(2).

any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment Nos. 1 and 2 to the proposal, prior to the 30th day after publishing notice of Amendment Nos. 1 and 2 in the **Federal Register**.

As previously discussed, the revisions made to the proposal in Amendment No. 1 [19] will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. The other revisions in Amendment No. 1 are clarifications. In Amendment No. 2, the Exchange made technical changes that clarify the revisions set forth in Amendment No. 1. The Commission believes that granting accelerated approval of Amendment Nos. 1 and 2 will permit the Exchange to implement these new provisions as expeditiously as possible, to the benefit of investors. Further, no comments were received on the original proposal, as published.[20] The Commission also believes that accelerating approval of Amendment Nos. 1 and 2 is appropriate because these revisions do not raise new regulatory issues.

Accordingly, pursuant to Section 19(b)(2) of the Act,[21] the Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after notice of Amendment Nos. 1 and 2 are published in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 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. Please include* File No. SR–NSX–2005–09 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2005–09. 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 Exchange. 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–NSX–2005–09 and should be submitted on or before May 22, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–NSX–2005–09) is approved, and Amendment Nos. 1 and 2 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

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[19] *See* Amendment No. 1, *supra* note 4 and Section III.B herein.

[20] *See* Securities Exchange Act Release No. 53508, *supra* note 3.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Venturi Wireless, Inc., Sunnyvale Research Plaza, 555 N. Mathilda Avenue, Suite 100, Sunnyvale, California 94085. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizons Ventures Fund I, L.P. and Horizons Ventures Advisors Fund I, L.P., all Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Venturi Wireless, Inc., and therefore Venturi Wireless, Inc. is considered an Associate of Horizon Ventures Fund II as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 3, 2006.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

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SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought