

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74597; File No. SR-NSX-2015-01)

March 27, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection with the Amended and Restated Certificate of Incorporation of National Stock Exchange Holdings, Inc., the Exchange's Parent Corporation, and the Amended and Restated Certificate of Incorporation of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 19, 2015, National Stock Exchange, Inc. ("NSX<sup>®</sup>" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this rule proposal as "non-controversial" pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing the instant rule amendment to effectuate ministerial, non-substantive amendments to (i) the certificate of incorporation of National Stock Exchange Holdings, Inc. ("NSX Holdings"), a Delaware corporation that owns all of the issued and outstanding shares of NSX; and (ii) the certificate of incorporation of NSX. The text of the proposed change to the NSX Holdings certificate of incorporation is attached as Exhibit 5A and the text of the proposed change to the NSX certificate of incorporation is attached as Exhibit 5B.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make ministerial, non-substantive amendments to the certificates of incorporation of NSX Holdings and of NSX. The Exchange is proposing these amendments in order to satisfy the requirements of the Delaware General Corporation Law (the “DGCL”) and correct technical defects in those documents. The Exchange previously submitted to the Commission (i) a proposed “Second Amended and Restated Certificate of Incorporation for National Stock Exchange Holdings, Inc.” (the “Holdings Amended Certificate”); and (ii) a proposed “Second Amended and Restated Certificate of Incorporation for National Stock Exchange, Inc.” (the “NSX Amended Certificate”). Both of these documents were submitted to the Commission as part of a rule filing seeking approval of a transaction in which NSX Holdings purchased all of the outstanding shares of NSX from the CBOE Stock Exchange, LLC.<sup>5</sup> The

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<sup>5</sup> See Securities Exchange Act Release No. 73944 (December 24, 2014), 80 FR 85 (January 2, 2015) (SR-NSX-2014-017).

Commission granted its approval of the proposed transaction on February 13, 2015<sup>6</sup> and the transaction closed on February 18, 2015.

In connection with filing the Holdings Amended Certificate and the NSX Amended Certificate with the Delaware Secretary of State, the Exchange became aware that the titles of both documents, as filed with and approved by the Commission, were not correct and would not be acceptable for filing. Specifically, the Holdings Amended Certificate was incorrectly titled as the “Second Amended and Restated Certificate of Incorporation” because, as described below, a prior amendment to the Holdings certificate of incorporation through a “Certificate of Amendment to the Certificate of Incorporation” (the “Certificate of Amendment”) did not constitute an amendment and restatement of the NSX Holdings certificate of incorporation under the DGCL. Accordingly, as proposed, the Holdings Amended Certificate will be entitled “Amended and Restated Certificate of Incorporation for National Stock Exchange Holdings, Inc.” The NSX Amended Certificate will be entitled “Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.” because the Exchange had previously filed with the Delaware Secretary of State an amended and restated certificate of incorporation which would have been deemed a “second” amended and restated certificate of incorporation, although it had not been titled as such. The Exchange also proposes to make conforming amendments to the text of each document.

NSX Holdings was incorporated in the State of Delaware on August 19, 2014. The original certificate of incorporation for NSX Holdings was amended on October 2, 2014 with the filing of the Certificate of Amendment with the Delaware Secretary of State. The Certificate of

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<sup>6</sup> See Securities Exchange Act Release No. 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (“Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange from the CBOE Stock Exchange, LLC”).

Amendment increased the total number of shares of common stock that NSX Holdings was authorized to issue from 10,000 shares to 100,000 shares with a par value of \$0.01 but made no other changes to the certificate of incorporation. Prior to the filing of the Holdings Amended Certificate with the Delaware Secretary of State, the Exchange became aware that, under the DGCL, the document should properly be entitled “Amended and Restated Certificate of Incorporation” because it seeks to: (i) integrate into a single instrument all of the provisions of NSX Holdings’ certificate of incorporation and the Certificate of Amendment; and (ii) further amend NSX Holdings’ certificate of incorporation.<sup>7</sup> Since NSX Holdings had not previously filed an “Amended and Restated Certificate of Incorporation” with the Delaware Secretary of State, but had only filed the Certificate of Amendment increasing the authorized shares that NSX Holdings was permitted to issue, the Holdings Amended Certificate in its present form, as filed with and approved by the Commission, would not be accepted for filing. Accordingly, the Exchange seeks approval for NSX Holdings to modify the form of the Holdings Amended Certificate that it proposes to file with the Delaware Secretary of State by changing the title and making certain conforming amendments in the text of the document. The Exchange also proposes to eliminate references in the introductory paragraph of the Holdings Amended Certificate to the October 2, 2014 amendment of the original certificate of incorporation through the Certificate of Amendment, because such references are not necessary for purposes of the DGCL.

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<sup>7</sup> Specifically, Section 245(a) of the DGCL provides that “[a] corporation may, whenever desired, integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State [one] or more certificates or other instruments...and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.”

With respect to the NSX Amended Certificate, the Exchange became aware that entitling it the “Second Amended and Restated Certificate of Incorporation” was not correct because a document meeting the definition of a second amended and restated certificate of incorporation had previously been filed with the Delaware Secretary of State, even though it had not been specifically entitled as such.<sup>8</sup> On February 18, 2015, the NSX Amended Certificate, in the form approved by the Commission was submitted for filing to the Delaware Secretary of State. The Delaware Secretary of State refused to accept the NSX Amended Certificate unless it was modified to eliminate the reference to it being the “Second” Amended and Restated Certificate of Incorporation. The title of the document was changed and conforming modifications were made to the text. The NSX Amended Certificate was accepted by and successfully filed with the Delaware Secretary of State.

Accordingly, the Exchange is proposing to amend the NSX Amended Certificate previously filed with, and approved by, the Commission by entitling the NSX Amended Certificate as the “Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.” and making conforming amendments to the text of the document. In so doing, the Exchange seeks to fully comply with DGCL and with the Exchange Act. The Exchange notes that the proposed changes to the Holdings Amended Certificate and the NSX Amended Certificate are ministerial and do not affect the substance of either document.

## 2. Statutory Basis

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<sup>8</sup> On December 30, 2011, the Exchange filed an “Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.” with the Delaware Secretary of State. As stated therein, the original Certificate of Incorporation was filed on December 12, 2005 and was restated on June 29, 2006.

The Exchange believes that its rule proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5) of the Exchange Act, in particular, because the proposed change will align the charter documents of NSX Holdings and of the Exchange with the specific requirements of the DGCL. The Exchange's proposal to make non-substantive changes to the Holdings Amended Certificate and the NSX Amended Certificate furthers the purposes of Section 6(b)(5) of the Act to, among other things, 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 a national market system and, in general, to protect investors and the public interest. The proposed changes are ministerial, do not affect the substance of either document and are necessary to assure that charter documents of NSX Holdings and of the Exchange meet the Delaware statutory requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate for the furtherance of the Act. The proposed rule change is not designed to address any competitive issue in the U.S. securities markets or have any impact on competition in those markets because it is intended to correct technical defects in the form of the certificates of incorporation of NSX Holdings and of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change from market participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2015-01 on the subject line.

##### Paper Comments:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2015-01. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2015-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Brent J. Fields  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).