

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51912; File No. SR-NSX-2005-03)

June 23, 2005

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Ongoing Qualification of the Members of NSX's Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2005, the National Stock ExchangeSM (the "Exchange" or "NSX"SM) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSX. On June 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On June 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Article V, Section 3 of its By-Laws which pertains to the ongoing qualification of the members of its Board of Directors ("Board"). Below is the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified certain language in Section 3(a) of the proposed rule change, made conforming changes to Exhibit 1 to the proposed rule change and corrected page numbering errors in the initial filing.

⁴ In Amendment No. 2, the Exchange revised the proposed rule text, as well as, the proposed rule change's statutory basis section.

amended text of the proposed rule change. Proposed new language is in italics.⁵

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CODE OF REGULATIONS (BY-LAWS)

OF

NATIONAL STOCK EXCHANGE

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ARTICLE V

Exchange Organization and Administration

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Section 3. Vacancies

(a) Any intraterm vacancy that may occur on the Board caused by death, resignation or otherwise shall be filled by the Directors then in office by a person having the same qualifications, as set forth in Section 1 of Article V of these By-Laws, as those of the Director whose seat is vacant. The person selected to fill such vacancy shall serve the remaining term of office.

(b) In the event any Director fails to maintain the qualifications of his designated category, as set forth in Section 1 of Article V of these By-Laws, of which failure the Board shall be the sole judge, the Director shall, upon determination of the Board that the Director is no longer qualified, cease to be a Director, his office shall become vacant and (effective upon the expiration of the grace period for requalification set forth in Subsection (1) below), the vacancy

⁵ The reference to “Independent Director” in proposed Article V, Section 3(b)(2) of the NSX By-Laws is based upon the Commission’s prior approval of Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238 (June 7, 2005) (SR-NSX-2005-02).

may be filled by the Board with a person who qualifies for the category in which the vacancy exists.

(1) A Director who fails to maintain the applicable qualifications will be allowed the later of (i) 45 days from the date when the Board determines the Director is no longer qualified or (ii) until the next regular Board meeting following the date when the Board makes such determination, in which to requalify and thereafter continue to serve the remainder of such Director's term. During any such period up until the time when the Director requalifies, the Director shall be deemed not to hold office and the seat formerly held by the Director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether the Director has requalified.

(2) A Director (other than an Independent Director) whose membership has been suspended does not lose his qualification by reason of such suspension during the period of suspension.

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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 Exchange included statements concerning the purpose of, and basis for, the proposal and discussed any comments it received on the proposed rule change, as amended. The text of these 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 aspects 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 amend its By-Laws pertaining to the ongoing qualification of the members of its Board. Under the proposal, Article V, Section 3 of the NSX By-Laws would be amended to provide that if a Director fails to maintain the necessary qualifications of his respective category,⁶ the Director will cease to be a Director upon determination by the Board that the Director is no longer qualified and his office shall become vacant. The proposal will also provide the later of 45 days or until the next regular Board meeting for a Director who is no longer qualified for a designated category to requalify. During any period in which a Director is not qualified for a designated category, the Director shall be deemed not to hold office and the position formerly held by the Director shall be deemed vacant for all purposes. Under the proposal, the Board will be the sole judge of whether a Director is no longer qualified for his

⁶ The Board is currently composed of thirteen voting Directors. Those Directors are categorized as follows: “(a) the Exchange President; (b) two Proprietary Members with certificates, or executive officers of Proprietary Member organizations with certificates, who are Designated Dealers in the National Securities Trading System (‘Designated Dealer Directors’); (c) one Proprietary Member with certificate or an executive officer of a Proprietary Member organization with certificate, who conducts a nonmember public customer business on the Exchange (‘At-Large Director’); (d) the Chairman of [the Chicago Board Options Exchange] (‘CBOE Director’); (e) the President of CBOE (‘CBOE Director’); (f) four CBOE members or executive officers of CBOE member organizations (‘CBOE Directors’); and (g) three representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered broker or dealer or with another self-regulatory organization, other than as a public trustee or director (‘Public Directors’). Excepting affiliations with national securities exchanges, no two or more Directors may be partners, officers or directors of the same person or be affiliated with the same person.” See Article V, Section 1.1 of the NSX By-Laws. The Exchange is proposing to make various changes to the composition of the Board in a separate rule proposal, which is currently pending before the Commission. See Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238 (June 7, 2005) (SR-NSX-2005-02). Through that proposal, the composition of the Board is proposed to be revised to consist of the NSX Chief Executive Officer; three Member Directors; six Independent Directors; and three CBOE Directors.

designated category and whether a Director has requalified. Effective upon the expiration of the grace period for requalification, the Board may also fill any resulting vacancy with a person who qualifies for the category in which the vacancy exists. Finally, the proposal would provide that a Director (other than an Independent Director) whose membership has been suspended does not lose his qualification by reason of such suspension during the period of suspension. Rather, such Director may remain a Director during the suspension unless he is removed.⁷

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, enhances the fair and efficient governance of the Exchange. Therefore, NSX believes the proposed rule change, as amended, furthers the objectives of Section 6(b) of the Act,⁸ in general, and Section 6(b)(3),⁹ in particular, in that it assures a fair representation of its members in the selection of its directors and administration of its affairs. The proposed rule change also furthers the objectives of Section 6(b)(1),¹⁰ in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

⁷ A Director may be removed with cause by a majority vote of those individuals or entities entitled to vote to elect such Director. See Article V, Section 4 of the NSX By-Laws.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(3).

¹⁰ 15 U.S.C. 78f(b)(1).

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

No written comments were solicited or received in connection with the proposed rule change, as amended.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (a) by order approve such proposed rule change, as amended; or
- (b) institute proceedings to determine whether the proposed rule change, as amended, should be 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, as amended, 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 Number SR-NSX-2005-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSX-2005-03. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 NSX. 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-2005-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).