

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73944; File No. SR-NSX-2014-017)

December 24, 2014

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 16, 2014, National Stock Exchange, Inc. (“NSX[®]” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 has filed proposed rule changes in connection with a proposed transaction (the “Transaction”) whereby National Stock Exchange Holdings, Inc. (“NSX Holdings”), a corporation organized under the laws of the State of Delaware,³ will purchase all of the outstanding shares of NSX from the CBOE Stock Exchange, LLC (“CBSX”). Pursuant to the Transaction, the Exchange will become a wholly-owned subsidiary of NSX Holdings. In addition, the Exchange is proposing that, in connection with the Transaction, the Commission approve certain amendments in the organizational documents of NSX.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NSX Holdings was incorporated in the State of Delaware on August 19, 2014.

To effectuate the transaction, the Exchange seeks to obtain the Commission's approval of: the proposed Second Amended and Restated Certificate of Incorporation of NSX Holdings;⁴ the proposed By-laws of NSX Holdings; proposed amendments to the Exchange's current Amended and Restated Certificate of Incorporation;⁵ and Exchange's Second Amended By-laws.

The text of the proposed rule change is available on the Exchange's website at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 proposed rule change and discussed any comments it received on the proposed rule change. 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 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 Proposed Transaction

⁴ The original Certificate of Incorporation for NSX Holdings was amended on October 2, 2014 to amend 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.

⁵ The original Certificate of Incorporation for NSX was filed with the Delaware Secretary of State on December 12, 2005 and was restated on June 29, 2006. It was subsequently restated and amended in December 2011 in connection with the acquisition of the Exchange by CBSX.

Since December 2011, NSX has been wholly owned by CBSX.⁶ CBSX is the record and beneficial owner of 100 shares of NSX, par value \$.01 per share, which represents all of the issued and outstanding shares of capital stock of NSX. Pursuant to the terms of a Stock Purchase Agreement dated September 8, 2014 (the “SPA”) by and among CBSX, NSX Holdings and NSX, NSX Holdings has agreed to acquire all of the outstanding capital stock of NSX upon the closing of the Transaction (the “Closing”) in return for cash consideration paid to CBSX.⁷ The SPA provides that the Closing will occur only after all required regulatory approvals have been obtained and all other conditions precedent to Closing have been satisfied or waived.⁸ Following the completion of the Transaction, NSX will remain a Delaware for-profit stock corporation, with authority to issue 1,000 shares of common stock. At all times, all of the outstanding stock of NSX shall be owned by NSX Holdings.

NSX will remain registered as a national securities exchange under Section 6 of the Act⁹ and a self-regulatory organization (“SRO”) as defined in Section 3(a)(26) of the Act.¹⁰ The

⁶ The acquisition of NSX by CBSX was approved by the Commission in December 2011. See Exchange Act Release No. 66071 (December 29, 2011), 77 FR 521 (January 5, 2012) (SR-NSX-2011-14 and SR-CBOE-2011-107).

⁷ CBSX is partially owned by the Chicago Board Options Exchange, Incorporated (“CBOE”) and operated as a facility of CBOE. Pursuant to a rule amendment filed with the Commission, CBSX ceased trading operations as of the close of business on April 30, 2014. See Exchange Act Release No. 71880 (April 4, 2014), 79 FR 19950 (April 10, 2014) (SR-CBOE-2014-036).

⁸ Conditions precedent to Closing are formal requirements set forth in the SPA that must be satisfied or waived on or prior to the Closing date. These conditions include the completion of all required filings with or notices to, and all approvals, authorizations and actions by, the SEC, the Financial Industry Regulatory Authority, the Secretary of State of the State of Delaware and other applicable governmental entities and regulatory bodies necessary to effect the completion of the Transaction; compliance by each party with specified representations, warranties and covenants, and receipt of necessary approvals by each party.

⁹ 15 U.S.C. 78f.

Exchange plans to reopen its marketplace for the trading of equity securities as soon as practicable after the Closing and plans to operate the Exchange pursuant to the rules of the Exchange currently in effect and using the Exchange’s existing trading system; however, the re-opening of the Exchange marketplace is subject to additional rule changes filed with the Commission and such rule changes being approved or becoming effective.¹¹ NSX’s Rules, all of which remain in full force and effect as of the date of the instant rule filing, will continue to govern the activities of NSX up to and after the Closing, and NSX will continue to discharge its SRO responsibilities pursuant to NSX’s registration under Section 6 of the Act.¹² NSX Holdings represents that, assuming consummation of the Transaction, it will at all times ensure that the Exchange has access to financial resources sufficient for it to discharge its SRO responsibilities after the date of Closing.

Currently, NSX has one affiliated entity, NSX Securities LLC (“NSX Securities”). Pursuant to Exchange Rule 2.11(a), NSX Securities provides the outbound routing of orders from the Exchange to other trading centers. NSX Securities operates as a facility (as defined in

¹⁰ 15 U.S.C. 78c(a)(26).

¹¹ Pursuant to a rule filing with the Commission, the Exchange ceased trading operations as of the close of business on May 30, 2014. See Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR-NSX-2014-14). NSX Rules continue to remain in full force and effect through and after May 30, 2014. The rule filing stated that the Exchange shall file a proposed rule change pursuant to Rule 19b-4 of the Exchange Act prior to any resumption of trading on the Exchange pursuant to Chapter XI (Trading Rules) of the NSX Rules.

¹² Id. The Exchange will also continue to adhere to the Undertakings in the Commission’s 2005 Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions, including those Undertakings related to a Regulatory Oversight Committee and the separation of the regulatory functions from the commercial interests of NSX. See Securities Exchange Act Release No. 51714 (May 19, 2005).

Section 3(a)(2) of the Exchange Act)¹³ of NSX. An SRO unaffiliated with the Exchange carries out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Section 17d-1 of the Act¹⁴ with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules. As provided in Exchange Rule 2.11(a)(3), an ETP Holder’s use of NSX Securities to route orders to another trading center will be optional; any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other trading centers.

Further as provided in Exchange Rule 2.11(b), the books, records, premises, officers, agents, directors and employees of NSX Securities as a facility of the Exchange are deemed to be those of the Exchange for purposes of, and oversight pursuant to the Exchange Act, and the books and records of NSX securities as a facility of the Exchange are at all times subject to inspection and copying by the Exchange and by the Commission.

The Exchange states that, upon the Closing of the Transaction, all of the provisions of Rule 2.11 governing the operation of NSX Securities will remain in full force and effect, and the sole change impacting NSX Securities will be the change of ownership of the Exchange as the NSX Securities’ sole affiliate. The Exchange, on behalf of NSX Securities, will provide notice to, and obtain any required consents from, FINRA for the NSX change of ownership.

NSX has submitted to the Commission for its approval (i) a proposed Second Amended and Restated Certificate of Incorporation for NSX Holdings (the “NSX Holdings A&R Certificate”); (ii) proposed By-laws of NSX Holdings (the “NSX Holdings By-laws”); (iii) the proposed Second Amended and Restated Certificate of Incorporation of NSX (the “NSX A&R

¹³ 15 U.S.C. 78c(a)(2).

¹⁴ 15 U.S.C. 78q(d)(1).

Certificate"); and (iv) the proposed Third Amended and Restated NSX By-laws (the "NSX A&R By-laws"), which are proposed to be adopted or amended as described below.

The NSX Holdings A&R Certificate and NSX Holdings By-laws

The instant filing seeks Commission approval for the NSX Holdings A&R Certificate and for the NSX Holdings By-laws. The key provisions of these organizational documents impacting the governance of NSX Holdings and its status as the holding company of NSX are described below.

First, as proposed, the total number of shares which the NSX Holdings is authorized to issue is 100,000 shares of common stock with a par value of \$0.01. The NSX Holdings A&R Certificate carries forward the authorized share amount contained in the October 2, 2014, amendment to the Certificate of Incorporation for NSX Holdings.¹⁵ At present, NSX Holdings plans to issue 10,000 shares of common stock.

NSX Holdings Ownership and Voting

Ownership of NSX Holdings as the new holding company of NSX will be divided among two categories of shareholders. The largest category is comprised of 12 individual investors who, in the aggregate, own approximately 64% of the outstanding shares of NSX Holdings.¹⁶ At Closing, one individual investor may own in the aggregate more than 40% of the outstanding

¹⁵ NSX Holdings A&R Certificate, Article Fourth.

¹⁶ Pursuant to Rule 6a-2 under the Act, the Exchange will, within 10 days after the Closing, amend its Form 1 (APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT) filed with the Commission. Exhibit K of Form 1, which is applicable only to "...exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange....", requires the Exchange to provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Exchange. As noted above, the Exchange proposes that 100% of the issued and outstanding shares of NSX will be directly owned by NSX Holdings.

shares of NSX Holdings. Four of these 12 individual investors in NSX Holdings, owning in the aggregate approximately 60% of the outstanding shares, are securities industry and technology professionals with extensive experience, including senior executive managerial experience, in areas including capital markets and investment management, exchange operations, electronic trading, and systems architecture and development.¹⁷ The Exchange anticipates that these four individuals will assume senior executive roles in the Exchange's management upon the completion of the Transaction.

The second category of shareholders of NSX Holdings consists of two affiliated entities: Thor Investment Holdings LLC ("Thor")¹⁸ and TIP-1 LLC ("TIP-1"),¹⁹ each a Delaware limited liability company. Thor will own approximately 16% of the outstanding equity of NSX Holdings, and TIP-1 will own approximately 20% of the outstanding equity of NSX Holdings. Thor will also have an ownership interest in TIP-1 and will act as its managing member. In turn, Thor's management will be vested exclusively in a managing member, Thor Managing Member LLC ("Thor MM"). Thor MM will have no ownership interest in either Thor or TIP-1. There are three individual members of Thor MM, all of whom are also members of Thor. Currently, nine individuals are members of Thor. It is anticipated that there will be six members of TIP-1,

¹⁷ The remaining eight individual shareholders of NSX Holdings own shares in amounts ranging from approximately 0.063% to 1.269%. One or more of these individuals may become an employee of NSX upon the completion of the Transaction.

¹⁸ The Certificate of Formation for Thor was filed with the Secretary of State of Delaware on July 23, 2014.

¹⁹ The Certificate of Formation for TIP-1 was filed with the Secretary of State of Delaware on July 23, 2014.

including Thor. Each such member thereby has an ownership interest in the respective entities' share of the outstanding equity of NSX Holdings.²⁰

The Exchange notes that there is no commonality or overlap between the 12 individual investors owning approximately 64% of the outstanding shares of NSX Holdings and the individual members of Thor and TIP-1 which own the remaining approximately 36% of the outstanding equity of NSX Holdings. No individual has an ownership interest in both Thor and TIP-1. None of the individual members of Thor or TIP-1 will become an employee of NSX, and none of these individuals will have any role in the day-to-day management or operation of the Exchange.

With respect to voting rights, Thor will have the power to exercise TIP-1's voting rights in NSX Holdings, such that Thor will have the ability to exercise an approximate 36% voting interest of NSX Holdings. The Exchange notes, however, that because of the voting limitations in the NSX Holdings A&R Certificate described below, Thor will not be able to exercise its voting interest in excess of the 20% voting limitation.

The NSX Holdings A&R Certificate provides for limitations on the ownership and voting of shares of NSX Holdings. Subject to certain exceptions, no Person,²¹ either alone or with its Related Persons,²² shall be permitted at any time to own beneficially shares of stock of NSX

²⁰ Currently, approximately 15% of the ownership interest in Thor remains unassigned and may be distributed to other individuals at the discretion of the Managing Member. This approximate 15% unassigned interest represents less than 5% of the total outstanding shares of NSX Holdings.

²¹ The term "Person" as used in the NSX Holdings A&R Certificate means a natural person, partnership (general or limited), corporation, limited liability company, trust or unincorporated organization, or a governmental entity or political subdivision thereof. See NSX Holdings A&R Certificate, Article Fourth, Section B.

²² The term "Related Person" means: (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the Exchange Act) director, general partner, manager or managing member, as applicable, and all "affiliates" and "associates" of such

Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (the “Concentration Limitation”).²³ As proposed, any Person (either alone or with their Related Persons) who is in excess of the Concentration Limitation as of the filing date of the NSX Holdings A&R Certificate will have an exemption, not to extend past May 19, 2015, from the Concentration Limitation. The Exchange believes that permitting an exemption for this period is a reasonable and measured approach that balances the capital contributions made by shareholders at the time of the acquisition of NSX by NSX Holdings with the post-acquisition governance goal of reducing share ownership concentrations.²⁴

The Concentration Limitation applies unless and until: (i) a Person (either alone or with its Related Persons) intending to acquire such ownership shall have delivered to the Board of Directors of NSX Holdings (the “Holdings Board”) a notice in writing, not less than 45 days (or such shorter period as the Holdings Board shall expressly consent to) prior to the acquisition of

Person (as those terms are defined in Rule 12b-2 under the Exchange Act), and other Person(s) whose beneficial ownership of shares of stock of the Corporation with the power to vote on any matter would be aggregated with such first Person’s beneficial ownership of such stock or deemed to be beneficially owned by such first Person pursuant to Rules 13d-3 and 13d-5 under the Exchange Act; and (2) in the case of any Person constituting a member (as that term is defined in Section 3(a)(3)(A) of the Exchange Act) of NSX (defined in NSX Rule 1.5E(1) as a Holder of an Equity Trading Permit) for so long as NSX remains a registered national securities exchange, such Person and any broker or dealer with which such Person is associated; and any other Person(s) with which such Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of NSX Holdings; and in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person or who is a director or officer of NSX Holdings or any of its parents or subsidiaries. Id.

²³ See NSX Holdings A&R Certificate, Article Fourth, Section C(i).

²⁴ The Exchange notes that, in connection with a prior restructuring of a national securities exchange, the Commission approved a period of time for the reduction of share ownership concentrations by certain individuals. See Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (SR-ISE-2002-01).

any shares that would cause such Person (either alone or with its Related Persons) to exceed the Concentration Limitation, of its intention to acquire such ownership; (ii) the Holdings Board shall have resolved to expressly permit such ownership; and (iii) such resolution shall have been filed with the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder.²⁵

Article Fourth, Section C(i)(b) of the NSX Holdings A&R Certificate provides for additional safeguards that must be satisfied before the Holdings Board may adopt a resolution permitting share ownership in excess of the Concentration Limitation. Specifically, the provision states that, subject to its fiduciary obligations pursuant to the Delaware General Corporation Law, the Holdings Board shall not adopt any resolution permitting a Person to exceed the Concentration Limitation unless the Holdings Board first determines that such acquisition of beneficial ownership by such Person, either alone or with its Related Persons (i) will not impair any of NSX Holdings' or NSX's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of NSX Holdings and its stockholders; (ii) such acquisition of beneficial ownership by such Person, either alone or with its Related Persons, will not impair the Commission's ability to enforce the Exchange Act; and (iii) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.²⁶

The NSX Holdings A&R Certificate further provides that, in making such determinations, the Holdings Board may impose such conditions and restrictions on a Person and its Related Persons owning any shares of stock of NSX Holdings entitled to vote on any matter as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the

²⁵ See NSX Holdings A&R Certificate, Article Fourth, Section C(i)(a).

²⁶ 15 U.S.C. 78c(a)(39).

objectives of the Exchange Act and the governance of NSX Holdings.²⁷ Moreover, in the event that a Person, either alone or with its Related Persons, at any time owns beneficially shares of stock of NSX Holdings in excess of the Concentration Limitation without having first satisfied the requirement of providing timely written notice to the Holdings Board, and the Holdings Board expressly resolving to permit such ownership and filing the resolution with the Commission pursuant to Section 19(b) of the Exchange Act, NSX Holdings shall call from such Person and its Related Persons that number of shares of stock of NSX Holdings entitled to vote on any matter that exceeds the Concentration Limitation at a price equal to the par value of such shares of stock.²⁸

The NSX Holdings A&R Certificate further provides for limitations on ownership of shares by ETP Holders of NSX.²⁹ For so long as NSX remains a registered national securities exchange under Section 6 of the Exchange Act, no ETP Holder, either alone or with its Related Persons, shall be permitted at any time to own beneficially shares of stock of NSX Holdings representing in the aggregate more than 20% of the then outstanding votes of NSX Holdings stock entitled to be cast on any matter.³⁰ If any ETP Holder, either alone or with its Related Persons, at any time owns beneficially shares of stock in excess of such 20% limitation, NSX Holdings shall call from such ETP Holder and its Related Persons that number of shares of stock

²⁷ See NSX Holdings A&R Certificate, Article Fourth, Section C(i)(b).

²⁸ See NSX Holdings A&R Certificate, Article Fourth, Section C(i)(c).

²⁹ NSX Rule 1.5E.(1) defines the term “ETP” as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker dealer pursuant to Section 15 of the Exchange Act and which has been approved by the Exchange.

³⁰ See NSX Holdings A&R Certificate, Article Fourth, Section C(ii).

of NSX Holdings entitled to vote on any matter that exceeds such 20% limitation a price equal to the par value of such shares of stock.³¹

With respect to voting limitations, Article Fourth, Section B(i) of the NSX Holdings A&R Certificate provides that, notwithstanding any other provisions of that document, no Person, either alone or with its Related Persons, as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of NSX Holdings, in person or by proxy or through any voting agreement or other arrangement, to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the “Voting Limitation”). If votes have been cast, in person or by proxy or through any voting agreement or other arrangement, by any Person, either alone or with its Related Persons, in excess of the Voting Limitation, NSX Holdings shall disregard such votes cast in excess of the Voting Limitation.³² The Voting Limitation shall apply unless and until a Person (and its related persons) owning any shares of stock of NSX Holdings entitled to vote on such matter shall have delivered to the Holdings Board a notice in writing, not less than 45 days (or such shorter period as the Holdings Board shall expressly consent to) prior to any vote, of its intention to cast more than 20% of the votes entitled to be cast on such matter or to enter into an agreement, plan or other arrangement that

³¹ Id.

³² The NSX Holdings A&R Certificate, Article Fourth, Section B(i) prohibits “Nonvoting Agreements” by or among Persons and their Related Persons that would result in shares of stock that would be subject to such agreement not being voted on any matter, or the withholding of any proxy relating those shares, where the effect of such an agreement would be to enable any Person, either alone or with its Related Persons, to vote or cause the voting of shares of representing in the aggregate more than 20% of the then outstanding votes entitled to be cast (the “Nonvoting Agreement Prohibition”). Any share owner seeking a waiver of the Nonvoting Agreement Prohibition so as to be able to enter into such an agreement would also be required to obtain express permission of the Holdings Board through a duly authorized written resolution that is filed with and approved by the Commission under Section 19(b) of the Exchange Act.

would violate the Nonvoting Agreement Prohibition, as applicable; the Holdings Board shall have resolved to expressly permit such exercise or the entering into of such agreement, plan or other arrangement, as applicable, and such resolution shall have been filed with the Commission under Section 19(b) Exchange Act and shall have become effective thereunder.³³

Regulatory Jurisdiction; Regulatory Obligations of NSX Holdings, Its Officers and Directors

The NSX Holdings A&R Certificate and the NSX Holdings By-laws contain explicit provisions governing the operation of NSX Holdings with respect to regulatory jurisdiction and the regulatory obligations of the company and its directors, officers and employees.

Article VI of the NSX Holdings By-laws, entitled “SRO Functions of NSX,” governs the conduct of NSX Holdings as the holding company for NSX with respect to NSX’s status and obligations as a registered national securities exchange and an SRO.³⁴ Among the key provisions are requirements that, for so long as NSX Holdings shall, directly or indirectly, control NSX, the directors, officers, employees and agents of NSX Holdings shall:

- give due regard to the preservation of the independence of NSX’s SRO function and its obligations to investors and the general public and shall not take actions which would interfere with the effectuation of decisions by the NSX Board relating to NSX’s regulatory function (including disciplinary matters) or which would interfere with the Exchange’s ability to carry out its responsibilities under the Exchange Act;³⁵

³³ See NSX Holdings A&R Certificate, Article Fourth, Section B(ii).

³⁴ The NSX Holdings A&R Certificate, Articles Twelfth through Sixteenth contains substantially the same provisions with respect to NSX Holdings’ obligations as the controlling entity for the Exchange as an SRO.

³⁵ See NSX Holdings By-laws, Article VI, Section 6.1, “Non-Interference.”

- to the fullest extent permitted by applicable law, maintain the confidentiality of all information that comes into their possession pertaining to the SRO function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of NSX;³⁶ and
- maintain its books and records within the United States and subject at all times to inspection and copying by the SEC and by NSX to the extent related to the administration and operation of NSX.³⁷

For so long as NSX remains a registered national securities exchange, the books, records, premises, officers, directors, employees and agents of NSX Holdings shall be deemed to be the books, records, premises, officers, directors, employees and agents of NSX for purposes of and subject to oversight pursuant to the Exchange Act.³⁸ NSX Holdings and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission and NSX for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of NSX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or the Exchange, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or

³⁶ See NSX Holdings By-laws, Article VI, Section 6.2, “Confidentiality of Information.”

³⁷ See NSX Holdings By-laws, Article VI, Sections 6.4 and 6.5, “Books and Records.”

³⁸ See NSX Holdings A&R Certificate, Article Fourteenth.

agency. NSX Holdings and its officers, directors, employees and agents also agree that they will maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of the Exchange.³⁹ NSX Holdings is required to comply with the federal securities laws, rules and regulations and to cooperate with the SEC and with NSX pursuant to and to the extent of their respective regulatory authority.⁴⁰ The officers, directors, employees and agents of NSX Holdings, by virtue of their acceptance of such position, shall be deemed to agree to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding NSX and the self-regulatory functions and responsibilities of NSX. NSX Holdings will take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.⁴¹

Further, NSX Holdings shall take reasonable steps necessary to cause its officers, directors, employees and agents, prior to accepting a position as an officer, director, employee or agent, as applicable, of NSX Holdings, to consent in writing to the applicability to them of the provisions of Article VI of the NSX Holdings By-laws, as applicable, with respect to their activities related to the Exchange.⁴²

The Exchange submits that the NSX Holdings A&R Certificate and NSX Holdings By-laws establish an organizational framework that assures that the Commission and NSX will have

³⁹ See NSX Holdings A&R Certificate, Article Twelfth; NSX Holdings By-laws, Article VI, Section 6. Additionally, as noted, no individual who is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act may serve as a director or officer of NSX Holdings.

⁴⁰ See NSX Holdings A&R Certificate, Article Fifteenth; NSX Holdings By-laws, Article VI, Section 6.6.

⁴¹ See NSX Holdings A&R Certificate, Articles Twelfth and Fifteenth; NSX Holdings By-laws, Article VI, Section 6.6.

⁴² See NSX Holdings By-laws, Article VI, Section 6.8, "Consent To Application."

regulatory jurisdiction and authority over NSX Holdings and its directors, officers, employees and agents, and will preserve the independence and effectiveness of the Exchange in discharging its self-regulatory responsibilities pursuant to the Exchange Act. The provisions of those documents do not impair the ability of NSX to carry out its functions and responsibilities as a national securities exchange under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder. NSX will continue to enforce the Exchange Act, the Commission's rules thereunder, and the Exchange's own rules, in the same manner as prior to the Transaction. The Commission will continue to have plenary regulatory authority over NSX, as is currently the case.

Proposed Changes to NSX Organizational Documents in Connection with the Transaction

The completion of the Transaction and the resulting change in ownership from CBSX to NSX Holdings will require certain amendments in the NSX A&R Certificate and the NSX A&R By-laws. Under the Exchange's proposed amendments in the NSX A&R Certificate, the provision that the Exchange shall at all times be wholly owned by CBSX will be removed and replaced by a provision requiring that the Exchange at all times be wholly owned by NSX Holdings.⁴³

Under the proposed changes in the NSX A&R By-laws, because of the transfer of ownership of the Exchange from CBSX to NSX Holdings, references in the NSX A&R By-laws specific to CBSX are to be replaced, where applicable, with references to NSX Holdings. Specifically, Article III, Section 3.2(c) of the By-laws will be amended to eliminate any

⁴³ See Paragraph Fourth of the NSX A&R Certificate, which states that: “[t]he total number of shares of stock which the [Exchange] shall have authority to issue is one thousand (1,000) shares of common stock having a par value of \$.01 per share. At all times, all of the outstanding stock...shall be owned by National Stock Exchange Holdings, Inc....”

requirements relating to CBSX and will provide that no two or more directors of NSX may be partners, officers or directors of the same person⁴⁴ or be affiliated with the same person, unless such affiliation is with a national securities exchange or NSX Holdings. In addition, the Exchange proposes to amend Section 10.1 in the NSX A&R By-laws (Management of the Exchange) to delete Paragraph (b), which requires that for so long as CBSX controls NSX, NSX shall promptly inform the CBSX board of directors, in writing, in the event that NSX has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if NSX does not have or is not appropriately allocating such financial, technological, technical and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the Act. Upon the completion of the Transaction, such requirements will no longer apply because CBSX will no longer “control” NSX and will, in fact, have no ownership interest in NSX.

Section 10.2 of the NSX A&R By-laws replaces references to CBSX with references to NSX Holdings. The provision would provide that no members of the Holdings Board who are not also members of the NSX Board, or any officers, staff, counsel or advisors of NSX Holdings who are not also officers, staff, counsel or advisors of NSX (or any committees of NSX), shall be allowed to participate in any meetings of the NSX Board or any NSX committee pertaining to the self-regulatory function of NSX, including disciplinary matters. These amendments are intended to prevent any undue influence or any perception of undue influence over the Exchange’s self-regulatory functions by NSX Holdings.

⁴⁴ Article I, Section 1.1 of the NSX A&R By-laws provides that “[t]he term ‘person’ shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.”

Finally, the Exchange is proposing in the NSX A&R By-laws certain clarifying amendments, and other non-substantive conforming amendments, that are consistent with the changes described above. Specifically, in Article I, the Exchange proposes to add a definition of “ETP Holder Representative” to mean a representative of any Exchange or NSX Board committee who is an officer, director, employee or agent of an ETP Holder. The term “ETP Holder representative” was used in Section 5.7 but was not previously defined. The introduction of this defined term will add additional clarity and transparency to the NSX A&R By-laws. The formatting of the defined terms in Article I have been made uniform throughout.

NSX Board of Directors

The NSX A&R By-laws provide that the NSX Board shall consist of no fewer than seven or more than 25 directors.⁴⁵ The NSX Board’s composition at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors (at least one of whom shall be an Independent Director) and such number of ETP Holder Directors as is necessary to comprise at least 20% of the NSX Board.⁴⁶ The steps undertaken to transition membership in the NSX Board from the current directors to the post-Closing directors will conform to the requirements set forth in the NSX A&R By-laws. Vacancies in NSX Board Committees will be filled in accordance with Article V, Section 5.2, of the NSX A&R By-laws.

2. Statutory Basis

Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove

⁴⁵ See NSX A&R By-laws, Article III, Section 3.2(a). This provision will remain unchanged.

⁴⁶ See NSX A&R By-laws, Article III, Section 3.2(b).

impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange submits that the proposed Transaction, and the organizational documents of NSX Holdings and of NSX, as proposed to be adopted or amended as the case may be to effectuate the Transaction, are consistent with Section 6(b) of the Act,⁴⁷ in general and Section 6(b)(5) in particular.⁴⁸ The NSX Holdings A&R Certificate and the NSX Holdings By-laws establish an organizational structure for NSX Holdings, as the holding company for NSX, that will assure that the Commission and NSX are able to fully discharge their respective obligations to effectively regulate the equity securities markets and NSX marketplace. Specifically, among other key provisions, NSX Holdings and its directors, officers, employees and agents, are subject to the exclusive jurisdiction of the U.S. federal courts, the SEC, and NSX. NSX Holdings is obligated to comply with the federal securities laws and the rules and regulations thereunder, as are its directors, officers and employees. The books, records, premises, directors, employees and agents of NSX Holdings are deemed to be those of NSX for purposes of and subject to oversight pursuant to the Exchange Act.⁴⁹ These provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

Further, the Exchange submits that the instant rule proposal is designed to effectuate changes to the NSX's ownership necessary to consummate the Transaction and provide for an efficient transition into a new organizational structure and a resumption of trading on the

⁴⁷ 15 U.S.C. 78f.

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ See NSX Holdings A&R Certificate, Articles Twelfth through Sixteenth; NSX Holdings A&R By-laws, Article VI.

Exchange's marketplace as soon as practicable after approval by the Commission of the Transaction and subject to additional rule changes filed with, or filed with and approved by, the Commission. To this extent, the Exchange submits that the rule changes are consistent with Section 6(b)(5) in that they are designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

The proposed amendments to NSX's organizational documents are intended to align the Exchange's governance and organizational structure with the proposed ownership by NSX Holdings. As a result of the discontinuation of CBSX's ownership of the Exchange, the provisions relating to CBSX will be removed and replaced, where applicable, with references to NSX Holdings. The Exchange believes that the proposed ownership and corporate structure will allow for greater efficiencies that will operate to enhance the national market system and the governance and operation of the Exchange as an SRO.

The Exchange submits that the Transaction and the accompanying rule changes proposed in this rule filing are consistent with Section 6(b)(5) in that they promote the protection of investors and the public interest. The Exchange submits that its proposal and the new ownership structure are consistent with the public interest in promoting efficient markets, reducing administrative burdens on exchanges, and providing flexibility where appropriate to the effective discharge of SRO responsibilities. The amendments are intended to provide market participants, investors and the public with a clear and transparent description of the proposed changes to the Exchange's ownership and governance structure as reflected in governing corporate documents.

The Exchange believes that the consummation of the Transaction and the subsequent re-opening of the Exchange's marketplace for trading equity securities after all necessary rule

changes have been filed with, or filed with and approved by, the Commission, will operate to enhance competition among the equity securities markets and provide new trading opportunities for market participants and the investing public.

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 in furtherance of the purposes of the Act. The rule change is being proposed in connection with the Transaction that will, upon completion, change the ownership structure of the Exchange with the result that the ownership interest of CBSX will terminate and the Exchange will be a wholly-owned subsidiary of NSX Holdings. Upon completion of the Transaction, NSX will move expeditiously to obtain all necessary regulatory approvals and reopen trading on NSX. This will operate to enhance rather than burden competition by restoring the NSX as an operating national securities exchange to which investors may direct their order flow, thus providing a further competitive venue for the trading of equity securities and affording market participants and the investing public additional opportunities to execute orders. As such, the Exchange believes that there is no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 written 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change 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 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-2014-017 on the subject line.

Paper Comments:

- 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-2014-017. 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-2014-017 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.⁵⁰

Brent J. Fields
Secretary

⁵⁰ 17 CFR 200.30-3(a)(12).