

# SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-50475; File No. SR-NSX-2004-02)

September 30, 2004

Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Anti-Money Laundering Compliance Programs

## I. Introduction

### A. Filing Background

On March 5, 2004, National Stock Exchange (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish NSX Rule 5.6, Anti-Money Laundering Compliance Program. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. On August 9, 2004, NSX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 20, 2004, notice of the proposed rule change was published in the Federal Register.<sup>4</sup> The Commission received no comments on the proposal. For the reasons discussed below this order approves the proposed rule change.

### B. USA PATRIOT Act

In response to the events of September 11, 2001, President Bush signed into law

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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> See letter from James C. Yong, Senior Vice President of Regulation and General Counsel, NSX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 9, 2004 (“Amendment No. 1”).

<sup>4</sup> Exchange Act Release No. 50198 (August 13, 2004), 69 FR 51739 (August 20, 2004).

on October 26, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “PATRIOT Act”) to address terrorist threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements.<sup>5</sup> The PATRIOT Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.<sup>6</sup> Certain provisions of Title III of the PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (“MLAA”), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 requires all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training program; and (iv) an audit function to test the anti-money laundering program.

The Commission has previously approved several other self-regulatory organizations’ (“SROs”) proposals (including those of the NYSE and the NASD) to adopt rules requiring their members to establish anti-money laundering compliance programs with the minimum standards described above.<sup>7</sup> Proposed NSX Rule 5.6 involves similar requirements.

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<sup>5</sup> Pub. L. 107-56, 115 Stat. 272 (2001).

<sup>6</sup> 31 U.S.C. 5311, et seq.

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002)(order approving SR-NASD-2002-10 and SR-NASD-2002-24).

## II. Description of the Proposed Rule Change

NSX proposes to establish NSX Rule 5.6, Anti-Money Laundering Compliance Program, which requires NSX members to establish and implement anti-money laundering compliance programs. These anti-money laundering compliance programs must be designed to comply with Section 352 of the PATRIOT Act. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program.

Under the proposal, NSX members must develop and implement an anti-money laundering compliance program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated under that Act by the Department of Treasury. Each member's anti-money laundering program must be approved, in writing, by a member of its senior management. The anti-money laundering programs required under the proposed rule must establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under Section 5318(g) of the Bank Secrecy Act and the implementing regulations under that Act. The programs must also establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. The programs must provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party. The programs must also designate, and identify to the Exchange, a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation. In

addition, the programs must provide ongoing training for appropriate persons. The proposed rule also states that, in the event any of the provisions of the rule conflict with any of the provisions of another applicable SRO's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the member's Designated Examining Authority ("DEA") rule would apply.

### III. Discussion and Commission Findings

The Commission finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities exchange,<sup>8</sup> and, in particular, with the requirements of Sections 6(b)(5)<sup>9</sup> of the Act. Section 6(b)(5) requires, among other things that the rules of a registered national securities 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, 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.

The Commission finds that the proposed rule change is consistent with these Sections of the Act. The Commission finds that the NSX has proposed a rule that accurately, reasonably, and efficiently implements the requirements of the PATRIOT Act as it applies to NSX members. Moreover, the Commission finds it appropriate and

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<sup>8</sup> In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

consistent with the Act for NSX members to follow the anti-money laundering rules of their DEAs to the extent those rules conflict with NSX's. The Commission believes that provision of the NSX rule implementing this approach will avoid confusion and enhance compliance for dual members.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposal SR-NSX-2004-02, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

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