

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51456; File No. SR-NSX-2004-07)

March 31, 2005

Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change Relating to Non-Member Give-Ups

On August 31, 2004, the National Stock ExchangeSM (“NSXSM”) submitted to the Securities and Exchange Commission (“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 relating to non-member give-ups. On December 3, 2004, the NSXSM filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended for comment in the Federal Register on December 29, 2004.³ The Commission did not receive any comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of the NSXSM be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 50898 (December 21, 2004), 69 FR 78028.

⁴ In approving the proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

permitting NSXSM members to give-up non-NSXSM members' clearing numbers for purposes of clearing and settling trades should add transparency to trading on the NSXSM and should eliminate unnecessary steps in clearing and settling these trades. The proposed rule requires that the NSXSM member clearing firm accept financial responsibility for all transactions with non-members. It further requires non-members to enter into a contract consenting to the disciplinary jurisdiction of the NSXSM. This requirement should provide an adequate level of control by the NSXSM over non-members engaging in transactions on the NSXSM.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NSX-20004-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).