

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68662; File No. SR-NSX-2012-15)

January 15, 2013

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 to Amend the Listing Rules for Compensation Committees to Comply with Rule 10C-1 under the Act

I. Introduction

On September 26, 2012, National Stock Exchange, Inc. (“NSX” or “Exchange”) filed with 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 to modify the Exchange’s rules for compensation committees of listed issuers to comply with Rule 10C-1 under the Act. On October 10, 2012, NSX filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on October 17, 2012.⁴ The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 13, 2013.⁵ The Commission received no comment letters

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the filing in its entirety.

⁴ See Securities Exchange Act Release No. 68039 (October 11, 2012), 77 FR 63914 (“Notice”).

⁵ See Securities Exchange Act Release No. 68313 (November 28, 2012), 77 FR 71853 (December 4, 2012).

on the proposed rule change.⁶ This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of Proposed Rule Change

A. Background: Rule 10C-1 under the Act

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”),⁷ the Commission proposed Rule 10C-1 under the Act,⁸ which directs each national securities exchange (hereinafter, “exchange”) to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule’s requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C-1.⁹

Rule 10C-1 requires, among other things, each exchange to adopt rules providing that each member of the compensation committee¹⁰ of a listed issuer must be a member of the board of directors of the issuer, and must otherwise be independent.¹¹ In determining the independence standards for members of compensation committees of listed issuers, Rule 10C-1 requires the

⁶ The Commission notes that comments were received on substantially similar proposals filed by the Nasdaq Stock Market LLC (Nasdaq) and the New York Stock Exchange, LLC (“NYSE”). For a summary and discussion of these comments see Securities Exchange Act Release Nos. 68640 (January 11, 2013) (“Nasdaq Approval Order”) and 68639 (January 11, 2013) (“NYSE Approval Order”).

⁷ Pub. L. 111-203, 124 Stat. 1900 (2010).

⁸ See Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (“Rule 10C-1 Proposing Release”).

⁹ See Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (“Rule 10C-1 Adopting Release”).

¹⁰ For a definition of the term “compensation committee” for purposes of Rule 10C-1, see Rule 10C-1(c)(2)(i)-(iii).

¹¹ See Rule 10C-1(a) and (b)(1).

exchanges to consider relevant factors, including, but not limited to: (a) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the issuer to the director (hereinafter, the “Fees Factor”); and (b) whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer (hereinafter, the “Affiliation Factor”).¹²

In addition, Rule 10C-1 requires the listing rules of exchanges to mandate that compensation committees be given the authority to retain or obtain the advice of a compensation adviser, and have direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser they retain.¹³ The exchange rules must also provide that each listed issuer provide for appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to any compensation adviser retained by the compensation committee.¹⁴ Finally, among other things, Rule 10C-1 requires each exchange to provide in its rules that the compensation committee of each listed issuer may select a compensation consultant, legal counsel or other adviser to the compensation committee only after taking into consideration six factors specified in Rule 10C-1,¹⁵ as well as any other factors identified by the relevant exchange in its listing standards.¹⁶

¹² See id. See also Rule 10C-1(b)(1)(iii)(A), which sets forth exemptions from the independence requirements for certain categories of issuers. In addition, an exchange may exempt a particular relationship with respect to members of a compensation committee from these requirements as it deems appropriate, taking into consideration the size of an issuer and any other relevant factors. See Rule 10C-1(b)(1)(iii)(B).

¹³ See Rule 10C-1(b)(2).

¹⁴ See Rule 10C-1(b)(3).

¹⁵ See Rule 10C-1(b)(4). The six factors, which NSX proposes to set forth explicitly in its rules, are specified in the text accompanying note 29, infra.

¹⁶ Other provisions in Rule 10C-1 relate to exemptions from the rule and a requirement that each exchange provide for appropriate procedures for a listed issuer to have a reasonable

B. NSX’s Proposed Rule Change, as Amended

To comply with Rule 10C-1, NSX proposes to amend several provisions of NSX Rule 15.5(d), “Listed Company Corporate Governance Requirements.”¹⁷ Specifically, the Exchange proposes to amend NSX Rule 15.5(d)(5), relating to compensation committees.

1. Independence of Compensation Committee Members

NSX’s rules currently require each issuer listed on the Exchange to have a compensation committee¹⁸ composed entirely of “independent directors” as defined in NSX’s Rules.¹⁹ Rule 10C-1, as discussed above, provides that exchange standards must require compensation committee members to be independent, and further provides that each exchange, in determining independence for this purpose, must consider relevant factors, including the Fees Factor and Affiliation Factor described above.

To comply with this requirement, NSX proposes to amend its rules to provide that, for purposes of determining the independence of a member of its compensation committee, a listed company must consider the following factors: (i) the source of compensation of a member of the

opportunity to cure any defects that would be the basis for the exchange, under Rule 10C-1, to prohibit the issuer’s listing. See also infra note 34 and accompanying text.

¹⁷ The proposal also amends NSX Rule 15.5(b), to set forth a transition period for companies to comply with the new requirements. See infra note 22 and accompanying text.

¹⁸ The proposed NSX Rule change sets forth the following definition of “compensation committee” for purposes of its compensation-related rules: “A committee that oversees executive compensation, whether or not such committee also performs other functions or is formally designated as a compensation committee.” See proposed NSX Rule 15.5(f).

¹⁹ “Independent directors,” as defined in NSX Rule 15.5(d)(2) and used herein, includes a two-part test for independence. The definition sets forth five specific categories of directors who cannot be considered independent because of certain discrete relationships (“the bright-line tests”). In addition, no director qualifies as “independent” unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).

committee, including any consulting, advisory or other compensatory fee paid by the listed company to such member; and (ii) whether the member of the committee is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.²⁰ The Exchange believes this requirement will benefit investors by ensuring that the members of committees that oversee executive compensation are not subject to conflicts of interest.²¹

The proposed rules provide a transition period for companies to comply with these independence standards. Listed companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with these requirements.²²

2. Authority of Committees to Retain Compensation Advisers; Independence of Compensation Advisers; and Funding

NSX's rules currently provide that the compensation committee of a listed company must have a written charter that addresses the committee's purpose and responsibilities, and sets forth the direct responsibilities that the committee must have as a minimum.²³ To comply with the requirements of Rule 10C-1 regarding the authority to retain compensation advisers²⁴ and the independence of such advisers,²⁵ NSX proposes that the compensation committee's charter must also include the responsibilities to: retain or obtain the advice of compensation consultants,

²⁰ See infra note 34 and accompanying text describing a cure period proposed by NSX, under certain conditions, for a situation in which a member of the committee ceases to be independent.

²¹ See Notice, supra note 4.

²² See proposed amendment to NSX Rule 15.5(b).

²³ See NSX Rule 15.5(d)(5)(b).

²⁴ See supra text accompanying note 13, relating to Rule 10C-1(b)(2).

²⁵ See supra text accompanying note 15, relating to Rule 10C-1(b)(4).

independent legal counsel and other compensation advisers as determined in its sole discretion;²⁶ to appoint, compensate and oversee the work of any compensation consultant, independent legal counsel and other adviser that the committee retains;²⁷ and to select a compensation consultant, independent legal counsel or other adviser to the committee only after considering six enumerated factors that may affect the independence of the compensation adviser.²⁸

The factors are: (i) the provision of other services to the issuer by the person that employs the compensation consultant, independent legal counsel or adviser; (ii) the amount of fees received from the issuer by the person that employs the compensation consultant, independent legal counsel or other adviser, as a percentage of the employer's total revenue; (iii) the policies and procedures of the person that employs the compensation consultant, independent legal counsel or other adviser that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the compensation consultant, independent legal counsel or other adviser with a member of the compensation committee; (v) any stock of the issuer owned by the compensation consultant, independent legal counsel or other adviser; and (vi) any business or personal relationship of the compensation consultant, independent legal counsel, other adviser or person employing the adviser with an executive officer of the issuer.²⁹

To comply with Rule 10C-1's requirement with respect to funding of compensation advisers engaged by compensation committees,³⁰ NSX proposes to add a provision to its rules stating that listed companies must provide for appropriate funding, as determined by the

²⁶ See proposed NSX Rule 15.5(d)(5)(b)(i)(D).

²⁷ See proposed NSX Rule 15.5(d)(5)(b)(i)(E).

²⁸ See proposed NSX Rule 15.5(d)(5)(b)(i)(F).

²⁹ See proposed NSX Rule 15.5(d)(5)(b)(i)(F)(1)-(6).

³⁰ See supra note 14 and accompanying text.

compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser.³¹

3. Application to Smaller Reporting Companies

Rule 10C-1 includes an exemption for smaller reporting companies from all the requirements included within the rule.³² Consistent with this Rule 10C-1 provision, NSX proposes to exempt smaller reporting companies, as defined in Rule 12b-2 under the Act (hereinafter, “Smaller Reporting Companies”) from compliance with the proposed new independence standards with respect to compensation committee service.³³

Under the proposal, a company that ceases to be a Smaller Reporting Company will be allowed six months from the date that the company tests its status as such a company (“Smaller Reporting Company Determination Date”) to meet the independence standards applicable to compensation committees. However, the compensation committee will be required to comply with the rule requiring an independence assessment of compensation consultants and other advisers that it retains as of the Smaller Reporting Company Determination Date.

4. Opportunity to Cure Defects

Rule 10C-1 requires that an exchange’s rules must provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects in the issuer’s compliance with the Rule, and provides a specific cure period that may be used by an exchange, under certain conditions, when a member of a compensation committee ceases to be independent.³⁴ NSX’s proposal states that listed companies that fail to comply with the requirements of the

³¹ See proposed NSX Rule 15.5(d)(5)(c).

³² See Rule 10C-1(b)(5)(ii).

³³ See proposed NSX Rule 15.5(e).

³⁴ See Rule 10C-1(a)(3).

Exchange's compensation-related rules will be subject to the delisting procedures set forth in Rule 15.7 of the Exchange's rules, "Suspension and/or Delisting by Exchange," unless the deficiencies are cured within 45 days from the date of notification by the Exchange. With respect to the rules specifically regarding the independence of compensation committee members, however, NSX proposes to allow the cure period permitted by Rule 10C-1: If a member of the compensation committee ceases to be independent for reasons outside of the member's control, that person, with notice by the listed company to the Exchange, may remain a member of the committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

5. Exemptions

The Exchange proposes that its existing exemptions from its compensation-related listing rules remain unchanged. The Exchange's current listing rules provide exemptions for: controlled companies; limited partnerships and companies in bankruptcy; closed-end and open-end funds registered under the Investment Company Act of 1940 Act ("the 1940 Act"); passive business organizations in the form of trusts (such as royalty trusts); derivatives and special purpose securities; and issuers whose only listed equity security is a preferred stock.³⁵

The Exchange states that these categories of issuers typically: (i) are externally managed and do not directly employ executives (e.g., limited partnerships that are managed by their general partner or closed-end funds managed by an external investment adviser); (ii) do not by their nature have employees (e.g., passive business organizations in the form of trusts or issuers of derivative or special purpose securities); or (iii) have executive compensation policy set by a

³⁵ See NSX Rule 15.5(a)(1).

body other than the board (e.g., bankrupt companies have their executive compensation determined by the bankruptcy court). The Exchange states that, in light of these structural differences, which, it states, are the reasons why these categories of issuers generally do not have compensation committees, it believes that it would be a significant and unnecessarily burdensome alteration in their governance structures to require them to comply with the proposed new requirements.

The Exchange currently does not require issuers whose only listed security is a preferred stock to comply with NSX Rule 15.5. The Exchange proposes to continue to exempt these issuers from compliance with the proposed amended rule. The Exchange believes this approach is appropriate because holders of listed preferred stock have significantly greater protections with respect to their rights to receive dividends and a liquidation preference upon dissolution of the issuer, and preferred stocks are typically regarded by investors as a fixed income investment comparable to debt securities, the issuers of which are exempt from compliance with Exchange Act Rule 10C-1.

III. Discussion

After careful review, the Commission finds that the NSX proposal, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁶ In particular, the Commission finds that the amended proposed rule change is consistent with the requirements of Section 6(b) of the Act,³⁷ as well as with Section 10C of the Act³⁸ and Rule 10C-1 thereunder.³⁹ Specifically, the Commission finds that the

³⁶ In approving the NSX proposed NSX Rule change, as amended, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

³⁷ 15 U.S.C. 78f(b).

³⁸ 15 U.S.C. 78j-3.

proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁴⁰ which requires that the rules of a national securities exchange be designed, among other things, to 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; and not be designed to permit, among other things, unfair discrimination between issuers.

The development and enforcement of meaningful listing standards for a national securities exchange is of substantial importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives. The Commission believes that the NSX proposal will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.

In enacting Section 10C of the Act as one of the reforms of the Dodd-Frank Act,⁴¹ Congress resolved to require that “board committees that set compensation policy will consist

³⁹ 17 CFR 240.10C-1.

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ See supra note 7.

only of directors who are independent.”⁴² In June 2012, as required by this legislation, the Commission adopted Rule 10C-1 under the Act, which directs the national securities exchanges to prohibit, by rule, the initial or continued listing of any equity security of an issuer (with certain exceptions) that is not in compliance with the rule’s requirements regarding issuer compensation committees and compensation advisers.

In response, NSX submitted the proposed rule change, which includes rules intended to comply with the requirements of Rule 10C-1. The Commission believes that the proposed rule change satisfies the mandate of Rule 10C-1 and otherwise will promote effective oversight of its listed issuers’ executive compensation practices.

A. Independence of Compensation Committee Members

As discussed above, under Rule 10C-1, the exchanges must adopt listing standards that require each member of a compensation committee to be independent, and to develop a definition of independence after considering, among other relevant factors, the source of compensation of a director, including any consulting advisory or other compensatory fee paid by the issuer to the director as well as whether the director is affiliated with the issuer or any of its subsidiaries or their affiliates.

The Commission notes that Rule 10C-1 leaves it to each exchange to formulate a final definition of independence for these purposes, subject to review and final Commission approval pursuant to Section 19(b) of the Act. This discretion comports with the Act, which gives the exchanges the authority, as self-regulatory organizations, to propose the standards they wish to set for companies that seek to be listed on their markets consistent with the Act and the rules and

⁴² See H.R. Rep. No. 111-517, Joint Explanatory Statement of the Committee of Conference, Title IX, Subtitle E “Accountability and Executive Compensation,” at 872-873 (Conf. Rep.) (June 29, 2010).

regulations thereunder, and, in particular, Section 6(b)(5) of the Act. As the Commission stated in the Rule 10C-1 Adopting Release, “given the wide variety of issuers that are listed on exchanges, we believe that the exchanges should be provided with flexibility to develop independence requirements appropriate for the issuers listed on each exchange and consistent with the requirements of the independence standards set forth in Rule 10C-1(b)(1).”⁴³

The enhanced independence standards proposed by NSX specifically require that, when evaluating the independence of a director responsible for determining executive compensation, a company’s board of directors must consider the following factors: (i) the source of compensation of the director, including consulting, advisory or other compensatory fee paid by the company to the director; and (ii) whether the director is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in accordance with the requirements of Rule 10C-1(b)(1).⁴⁴

The Commission believes that by incorporating these independence standards, the Exchange has complied with the independence requirements of Rule 10C-1(b)(1), and that the proposed independence requirements, which are designed to protect investors and the public interest, are consistent with the requirements of Section 6(b)(5) of the Act. The Commission believes that the enhanced standards, in conjunction with the Exchange’s existing general and

⁴³ As explained further in the Rule 10C-1 Adopting Release, prior to final approval, the Commission will consider whether the exchanges’ proposed changes are consistent with the requirements of Section 6(b) and Section 10C of the Exchange Act.

⁴⁴ As noted above, NSX rules require all listed companies to have a compensation committee, and the proposal adds that a compensation committee means a committee that oversees executive compensation, whether or not such committee also performs other functions or is formally designated as a compensation committee. This definition of compensation committee is consistent with Section 6(b)(5) of the Act and should give companies flexibility while continuing to ensure that a structured committee is overseeing executive compensation.

“bright line” independence standards,⁴⁵ are sufficiently broad to encompass the types of relationships which would generally be material to a director’s independence for determining executive compensation.

B. Authority of Committees to Retain Compensation Advisers; Independence of Compensation Advisers; and Funding

As discussed above, NSX proposes to require its listed companies to include provisions in the charters of their compensation committees that reflect the provisions of Rule 10C-1 setting forth the authority that must be given to compensation committees to retain compensation advisers, the responsibilities of compensation committees regarding the appointment, compensation, and oversight of such advisers, and the requirement that compensation committees assess the independence of such advisers. NSX further proposes, in accordance with Rule 10C-1, to require listed companies to provide appropriate funding for payment of reasonable compensation to a compensation adviser retained by the committee. As such, the Commission believes these provisions meet the mandate of Rule 10C-1 and are consistent with the Act.

In approving these provisions, the Commission notes that compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the compensation committee, and is not limited to advice concerning executive compensation. The Commission notes that Rule 10C-1 includes an instruction that specifically requires a compensation committee to conduct the independence assessment with respect to “any compensation consultant, legal counsel or other adviser that

⁴⁵ See supra note 19.

provides advice to the compensation committee, other than in-house counsel,⁴⁶ and thus requires an independence assessment with respect to regular outside legal counsel.

As noted above, the compensation committee may select, or receive advice from, a compensation consultant, legal counsel, or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the six factors set forth in Rule 10C-1⁴⁷ regarding independence assessments of compensation advisers, which will be set forth in detail in NSX's rules. Codifying the comprehensive list of factors, as set forth in Rule 10C-1, into the Exchange's own rules will ensure that issuers adequately assess the independence of potential compensation advisers.

In approving this aspect of the proposal, the Commission notes that compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the compensation committee, and is not limited to advice concerning executive compensation. As it has stated elsewhere, the Commission anticipates that compensation committees will conduct such an independence assessment at least annually.⁴⁸

C. Application to Smaller Reporting Companies

As noted by NSX, Rule 10C-1 provides that the requirements established by the rule shall not apply to any smaller reporting company. As such, the Commission believes that the Exchange's proposed exemption of Smaller Reporting Companies from the new requirements comports with Rule 10C-1 and is consistent with the Act. As noted in the Commission's Rule 10C-1 Adopting Release, exempting Smaller Reporting Companies from the requirements mandated by Rule 10C-1 could offer cost savings to such companies.

⁴⁶ See Instruction to paragraph (b)(4) of Rule 10C-1.

⁴⁷ See Rule 10C-1(b)(4).

⁴⁸ See NYSE Approval Order and Nasdaq Approval Order, supra note 6.

D. Opportunity to Cure Defects

NSX proposes, generally, to allow listed companies that fail to comply with the compensation-related rules 45 days from the date of notification by the Exchange to cure any deficiency. If the deficiency is not cured by this time, the company will be subject to the delisting procedures set forth in the Exchange's rules regarding suspension and delisting. With respect, specifically, to the independence requirements for compensation committee members, the Exchange proposes to provide the cure period permitted by Rule 10C-1 for these rules.

The Commission notes that NSX's rules relating to delisting procedures require the Exchange to provide: (1) notice to the issuer of the Exchange's decision to delist the issuer's securities; (2) an opportunity for the issuer to file an appeal pursuant to the Exchange's rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange's final determination to delist the security via a press release and posting on the Exchange's website; and (4) the prompt delivery to the issuer of a copy of the form that the Exchange filed with the Commission, as required, upon its institution of proceedings to delist the issuer's security.⁴⁹

The Commission believes that NSX's proposed grant of 45 days to a company that fails to meet the new standards (other than the independence requirements) before instituting the Exchange's general procedures for companies out of compliance with its listing requirements, as well as the particular cure period it proposes to provide to a company that fails to meet the new independence standards, adequately meet the mandate of Rule 10C-1. The Commission believes that these cure provisions also are consistent with investor protection and the public interest since

⁴⁹ See NSX Rule 15.7.

they give a company a reasonable time period to cure non-compliance with these important requirements before they will be delisted.

E. Exemptions

As NSX notes, its existing rules relating to compensation afford an exemption to controlled companies, limited partnerships, companies in bankruptcy, closed-end and open-end funds registered under the 1940 Act, passive business organizations in the form of trusts (such as royalty trusts), derivatives and special purpose securities as described above, and issuers whose only listed equity security is a preferred stock. The Exchange proposes to extend the exemptions for these entities to the new requirements of the proposed rule change.

The Commission notes that Rule 10C-1 allows exchanges to exempt from the listing rules adopted pursuant to Rule 10C-1 certain categories of issuers, as the national securities exchange determines is appropriate.⁵⁰ The Commission believes that, given the specific characteristics of the aforementioned types of issuers,⁵¹ it is reasonable and consistent with Section 6(b)(5) of the Act for the Exchange to extend their existing exemptions from the new requirements.

IV. Conclusion

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by NSX, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. NSX's new rules will help to meet Congress's intent that compensation committees that are

⁵⁰ The Commission notes, moreover, that, in the case of limited partnerships and open-end funds registered under the 1940 Act, Rule 10C-1 itself provides exemptions from the independence requirements of the Rule. The Commission notes that controlled companies are provided an automatic exemption from the application of the entirety of Rule 10C-1 by Rule 10C-1(b)(5).

⁵¹ See supra Section II.B.5.

responsible for setting compensation policy for executives of listed companies consist only of independent directors.

NSX's rules also, consistent with Rule 10C-1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of NSX-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of NSX's standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁵²

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2)⁵³ of the Act, that the

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78s(b)(2).

proposed rule change, SR-NSX-2012-15, as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Kevin M. O'Neill
Deputy Secretary

⁵⁴ 17 CFR 200.30-3(a)(12).