

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55631; File No. SR-NSX-2006-16)

April 13, 2007

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto Regarding the Annual Certification of Compliance and Supervisory Processes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2006, the National Stock Exchange, Inc. (“NSX” or “Exchange”) 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 the Exchange. On April 9, 2007, the NSX filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).³ 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 adopt NSX Rule 5.7 and accompanying Interpretations and Policies .01 (Annual Compliance and Supervision Certification) to require each Equity Trading Permit (“ETP”) Holder’s Chief Executive Officer (“CEO”) to certify annually to having in place a process to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable Rules of the Exchange, and federal securities laws and regulations. The text of the proposed rule and interpretation is set forth below.

Proposed new language is italicized.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which supplemented the original filing, the NSX provided more information regarding the certification process and corrected a grammatical error.

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CHAPTER V.
SUPERVISION

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Rule 5.7. Annual Certification of Compliance and Supervisory Processes

Each ETP Holder shall have its chief executive officer (or equivalent officer) certify annually, as set forth in Interpretations and Policies .01, that the ETP Holder has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable Rules of the Exchange and federal securities laws and regulations.

Interpretations and Policies .01 Annual Compliance and Supervision Certification

The Exchange is issuing this interpretation to Rule 5.7, which requires that the ETP Holder's chief executive officer (or equivalent officer) execute annually a certification that the ETP Holder has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable Rules of the Exchange and federal securities laws and regulations. The certification for each ensuing year shall be effected no later than on the anniversary date of the previous year's certification. The certification shall state the following:

Annual Compliance and Supervision Certification

The undersigned is the chief executive officer (or equivalent officer) of [name of ETP Holder corporation/partnership/sole proprietorship] (the "ETP Holder"). As required by Rule 5.7, the undersigned makes the following certification:

1. The ETP Holder has in place processes to:

- (a) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable Rules of the National Stock Exchange, Inc. and federal securities laws and regulations;
- (b) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and
- (c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Rules of the National Stock Exchange, Inc. and federal securities laws and regulations.

2. The undersigned chief executive officer (or equivalent officer) has conducted one or more meetings with the chief compliance officer in the preceding 12 months, the subject of which satisfy the obligations set forth in Interpretations and Policies .01 to Rule 5.7.

3. The ETP Holder's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer, and such other officers as the ETP Holder may deem necessary to make this certification. The final report has been submitted to the ETP Holder's board of directors and audit committee or will be submitted to the ETP Holder's board of directors and audit committee (or equivalent bodies) at the earlier of their next scheduled meetings or within 45 days of the date of execution of this certification.

4. The undersigned chief executive officer (or equivalent officer) has consulted with the chief compliance officer and other officers as applicable (referenced in paragraph 3 above) and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in this certification.

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The Exchange provides the following guidance in completing the Certification above. Included in the processes requirement is an obligation on the part of the ETP Holder to conduct one or more meetings annually between the chief executive officer (or equivalent officer) and the chief compliance officer to: (1) discuss and review the matters that are subject of the certification; (2) discuss and review the ETP Holder 's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The report required in paragraph 3 of the certification must document the ETP Holder's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable NSX rules and federal securities laws and regulations, and any principal designated by the ETP Holder may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer (or equivalent officer), chief compliance officer and any other officers the ETP Holder deems necessary to make the certification and must be provided to the ETP Holder's board of directors and audit committee in final form either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that: (1) such report is clearly titled in a manner indicating that it is responsive to the

requirements of the certification and Rule 5.7; (2) an ETP Holder that submits a report for review in response to a NSX request must submit the report in its entirety; and (3) the ETP Holder makes such report in a timely manner, i.e., annually.

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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 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

It is critical that each NSX ETP Holder understand the importance of employing comprehensive and effective compliance policies and written supervisory procedures. Compliance with applicable NSX rules and federal securities laws and regulations is the foundation of ensuring investor protection and market integrity and is essential to the efficacy of self-regulation. Consequently, the Exchange is proposing to adopt Rule 5.7, that would require ETP Holders to have their CEOs, or equivalent officer, certify annually to having in place processes to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NSX rules, and federal securities laws and

regulations.⁴

Specifically, the proposed rule change would require the CEO to certify annually that senior executive management has in place processes to: (1) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable NSX rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with applicable NSX rules, and federal securities laws and regulations. The proposed rule change further would require the CEO to certify that those processes are evidenced in a report that has been reviewed by those executing the certification, as well as the member's board of directors and audit committee. The proposed rule change also would create a new Interpretation and Policy .01 to Rule 5.7, which sets forth the language of the certification and gives further guidance as to the requirements and limitations of the rule.

The proposed rule change states that included in this processes requirement is an obligation on the part of the ETP Holder to conduct one or more meetings annually between the CEO (or equivalent officer) and the chief compliance officer to: (1) discuss and review the matters that are subject of the certification; (2) discuss and review the ETP Holder's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas. The CEO also may be the same person as the

⁴ This new rule should not impose substantial new obligations on NSX ETP Holders as the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange LLC ("NYSE") have implemented similar rules. See NASD Rule 3013(b) and Interpretative Material—3013 ("IM 3013") (effective Dec. 1, 2004; amendment to IM 3013 effective March 17, 2006); NYSE Rule 342.30 (effective Nov. 16, 2005). As a result, a similar requirement is already in place for NASD and NYSE member firms, addressing member firms' compliance with the rules of those self-regulatory organizations. The first certifications pursuant to those rules were due by April 1, 2006.

chief compliance officer.

As noted in the proposed rule change, the periodic and content requirements for meetings between the CEO (or equivalent officer) and the chief compliance officer, as well as the pertinent requirements of paragraphs 3 and 4 of the certification, are intended to indicate the unique and integral role of the chief compliance officer both in the discharge of certain compliance processes and the reporting requirements that are the subject matter of the certification and in providing a reliable basis upon which the CEO can execute the certification. The chief compliance officer is the primary advisor to the ETP Holder on its overall compliance scheme and the particularized rules, policies and procedures that the ETP Holder adopts. This is because the chief compliance officer should have an expertise in the process of: (1) gaining an understanding of the products, services or line functions that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the relevant rules, regulations, laws and standards of conduct pertaining to such products, services or line functions based on experience and/or consultation with those persons who have a technical expertise in such areas of the ETP Holder's business; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with those relevant rules, regulations, laws and standards of conduct; (4) evidencing the supervision by the line managers who are responsible for the execution of compliance policies; and (5) developing programs to test compliance with the ETP Holder's policies and procedures.

It is that expertise in the process of compliance that makes the chief compliance officer an indispensable party to enable the CEO to reach the conclusions stated in the certification. Consequently, any certification made by a CEO under circumstances where the chief compliance

officer has concluded, after consultation, that there is an inadequate basis for making such certification would be, without limitation, conduct inconsistent with the observance of the high standards of commercial honor, and the just and equitable principles of trade—a violation of NSX Rule 3.1. Beyond the certification requirement, it is the intention of both Rule 5.7 and Interpretations and Policies .01 to foster regular and significant interaction between senior management and the chief compliance officer regarding the ETP Holder’s comprehensive compliance program.

The chief compliance officer and other compliance officers that report to the chief compliance officer (as described in the sentence that immediately follows) shall perform the compliance functions contemplated under paragraphs 3 and 4 of the certification. Nothing herein is intended to limit or discourage the participation of other employees both within and outside the ETP Holder’s compliance department in any aspect of the ETP Holder’s compliance programs or processes, including those matters discussed herein. However, it is understood that the chief compliance officer and, where applicable, the most senior compliance officers having primary compliance department responsibility for each of the ETP Holder’s business segments, will retain responsibility for the compliance functions contemplated by paragraphs 3 and 4 of the certification.

As may be necessary to render their views and advice, the chief compliance officer and the other officers referenced in paragraph 3 of the certification who consult with the CEO (or equivalent officer) pursuant to paragraph 4, shall, in turn, consult with other employees, officers, outside consultants, lawyers and accountants.

The Exchange recognizes that supervisors with business line responsibility are accountable for the discharge of an ETP Holder’s compliance policies and written supervisory

procedures. The signatory to the certification is certifying only as to having processes in place to establish, maintain, review, test and modify the ETP Holder's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

The requirement that an ETP Holder's processes include providing the report to the board of directors and audit committee (required by paragraph 3 of the certification) does not apply to ETP Holders that do not utilize these types of governing bodies and committees in the conduct of their business.⁵

The report required in paragraph 3 of the certification must document the ETP Holder's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable NSX rules and federal securities laws and regulations. Any principal designated by the ETP Holder may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the CEO (or equivalent officer), chief compliance officer and any other officers the ETP Holder deems necessary to make the certification and must be provided to the ETP Holder's board of directors and audit committee in final form either prior to execution of the certification, at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration.

⁵ As a part of their process, ETP Holders must have the report reviewed by their governing bodies and committees that serve similar functions in lieu of a board of directors and audit committee.

The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that: (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and Rule 5.7; (2) an ETP Holder that submits a report for review in response to a NSX request must submit the report in its entirety; and (3) the ETP Holder makes such report in a timely manner, for example, annually.

In summary, this proposal recognizes that responsibility for discharging compliance policies and written supervisory procedures rests with business line supervisors. The proposal also clarifies that execution of the certification does not by itself establish a signatory as having such line supervisory responsibility. The proposal also sets forth the particulars regarding the report that must evidence a member's compliance processes. It states that the report must be produced prior to execution of the certification and reviewed by the CEO, and such other officers as the member deems necessary. The report also must include the manner and frequency in which the processes are administered and identify those officers and supervisors with responsibility for such administration. The report need not contain conclusions that result from following the specified processes, such as compliance deficiencies. Additionally, the report may be combined with other reports required by a self-regulatory organization, provided the report is made annually, clearly indicates in the title that it contains the information required by Rule 5.7, and that the entire report is provided in response to any regulatory request for all or part of the combined report. Finally, with respect to review of the report, this clarifies that review by a member's board of directors and audit committee only applies to those members whose corporate governance structure have such or similar governing bodies and committees – it does

not impose a requirement that members create them if they do not currently exist.

ETP Holders should understand that the requirements of Rule 5.7 and Interpretations and Policies .01 represent, in part, a principle-based requirement to certify that the ETP Holder has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NSX rules and federal securities laws and regulations. Consequently, compliance with the periodic and content requirements of the Interpretation pertaining to meetings between the CEO (or equivalent officer) and the chief compliance officer does not satisfy the full extent of these principle-based obligations that will vary with the facts and circumstances of an ETP Holder's business activities and organizational structure. Moreover, NSX emphasizes the testing aspect of this principle-based requirement; an integral purpose of NSX rules pertaining to supervision is that ETP Holders adopt policies and procedures that are effective as to both the scope of, and the achievement of compliance with, applicable NSX rules, and federal securities laws and regulations.

NSX believes the proposal provides an effective mechanism to compel substantial and purposeful interaction between senior management and compliance personnel, thereby enhancing the quality of ETP Holders' supervisory and compliance systems. NSX further believes the rule change imposes the minimal additional burden on ETP Holders that is necessary to achieve the proposal's purpose, as the firms are already obligated to provide similar certifications in connection with rules of other self-regulatory organizations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. NSX believes that that the proposed rule change is consistent with the provisions of the Act noted above in that it will enhance focus on ETP Holders' compliance and supervision systems, thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection.

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

The Exchange does not believe that the proposed rule change would impose any 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 neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the 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 NSX consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be

⁶ 15 U.S.C. 78(f)(b).

⁷ 15 U.S.C. 78f(b)(5).

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-2006-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-NSX-2006-16. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 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 inspection and copying in the Commission's Public Reference Room. Copies of such filings 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-2006-16 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 the delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).