

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55799; File No. SR-NSX-2006-16)

May 22, 2007

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change Regarding the Annual Certification of Compliance and Supervisory Processes

I. Introduction

On November 22, 2006, the 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 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change regarding the annual certification of compliance supervisory processes. On April 9, 2007, the NSX filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).³ The proposed rule change was published for comment in the Federal Register on April 19, 2007,⁴ and the Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposed Rule 5.7 to require each Equity Trading Permit (“ETP”) Holder to have its Chief Executive Officer (“CEO”), 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. The Exchange explains that this will help promote comprehensive and effective

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.

⁴ See Exchange Act Release No. 55631 (April 13, 2007), 72 FR 19733 (April 19, 2007) (SR-NSX-2006-16).

compliance policies and written supervisory procedures among NSX ETP Holders, and that 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. Similar requirements are already in place for NASD and NYSE member firms, addressing their compliance with the rules of those self-regulatory organizations.⁵

The proposed rule change also would create a new Interpretation and Policy .01 to NSX Rule 5.7. This interpretation sets forth the language of the required certification.⁶ The interpretation also sets forth additional guidance for following those requirements, explaining that during the required annual meeting between the CEO and chief compliance officer, the

⁵ See NASD Rule 3013(b) and Interpretative Material—3013 (“IM 3013”); NYSE Rule 342.30.

⁶ The certification would state that the ETP Holder has in place processes to: (a) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable NSX rules 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 applicable NSX rules, and federal securities laws and regulations. See Proposed Interpretation and Policy .01, paragraph 1.

In addition, the certification would have to state that the CEO or equivalent officer has conducted one or more meetings with the chief compliance officer in the preceding 12 months to satisfy these obligations. See Proposed Interpretation and Policy .01, paragraph 2.

The certification further would provide that the ETP Holder’s processes are evidenced in a report that has been reviewed by the CEO or equivalent officer, chief compliance officer, and such other officers as the ETP Holder may deem necessary, and that the final report would be submitted to the ETP Holder’s board of directors and audit committee at the earlier of their next scheduled meetings or within 45 days of the date of execution of the certification. See Proposed Interpretation and Policy .01, paragraph 3.

Finally, the certification would provide that the CEO or equivalent officer has consulted with the chief compliance officer and other officers as applicable, as well as such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate to attest to the statements made in the certification. See Proposed Interpretation and Policy .01, paragraph 4.

parties should discuss and review the matters that are subject of the certification as well as the ETP Holder's compliance efforts to date, and also should identify and address significant compliance problems and plans for emerging business areas.⁷ ETP Holders must also prepare a report that documents the ETP Holder's processes for establishing, maintaining, reviewing, testing and modifying compliance policies.⁸ The report may be combined with compliance reports or similar reports required by other self-regulatory organizations.⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ and, in particular, with Section 6(b)(5)¹¹ of the Act, which requires, among other things, that the NSX's rules be designed to promote just and equitable

⁷ See Proposed Interpretation and Policy .01.

⁸ See *id.* Any principal designated by the ETP Holder may prepare the report, which 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. It 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, and identify the officers and supervisors responsible for that administration. The report, however, need not contain any conclusions resulting from following those processes.

⁹ In that case, the report must be titled in a manner that indicates 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 must make the report in a timely manner.

¹⁰ 15 U.S.C. 78(f)(b).

¹¹ 15 U.S.C. 78f(b)(5).

principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.¹²

The proposal that NSX ETP Holders follow procedures to help ensure compliance with NSX rules and the federal securities laws will complement broker-dealers' obligations under other self-regulatory organization rules, while particularly promoting compliance with rules specific to NSX. By permitting member firms to make the required reports in conjunction with reports required by other self-regulatory organizations, moreover, the proposal should accomplish those aims in an efficient manner.

¹² In approving this 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).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule change (SR-NSX-2006-16), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

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Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).