

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-52224; File No. SR-NSX-2005-03)**

**August 8, 2005**

**Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Ongoing Qualification of the Members of NSX's Board of Directors**

On May 13, 2005, the National Stock Exchange (the "Exchange" or "NSX") filed with the Securities and Exchange Commission ("Commission"), 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 amend its By-Laws to implement procedures for replacing a Director on its Board of Directors ("Board") in the event that such Director fails to maintain the qualifications of his or her designated category. On June 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On June 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the Federal Register on June 30, 2005.<sup>5</sup> The Commission received no comments on the proposal.

The Exchange proposed to amend Article V, Section 3 of its By-Laws to provide that:

(A) if a Director fails to maintain the necessary qualifications of his or her respective category,

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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> In Amendment No. 1, the Exchange clarified certain language in Section 3(a) of the proposed rule change, made conforming changes to Exhibit 1 to the proposed rule change and corrected page numbering errors in the initial filing.

<sup>4</sup> In Amendment No. 2, the Exchange revised the proposed rule text, as well as, the proposed rule change's statutory basis section.

<sup>5</sup> See Securities Exchange Act Release No. 51912 (June 23, 2005), 70 FR 37889.

such Director would cease to be a Director upon a determination by the Board that the Director is no longer qualified, and his or her office would be deemed vacant for all purposes; (B) a Director who fails to maintain his or her necessary qualifications would have a grace period of the later of 45 days or until the next regular Board meeting to re-qualify for his or her respective category; and (C) a Director (other than an Independent Director) whose membership has been suspended does not lose his or her qualification by reason of such suspension during the period of suspension, but rather, such Director may remain a Director during the suspension unless he or she is removed.<sup>6</sup>

Under the proposal, the Board is the sole judge of whether a Director is no longer qualified for his designated category and whether a Director has re-qualified. Effective upon the expiration of the grace period for re-qualification, the Board may fill any resulting vacancy with a person who qualifies for the category in which the vacancy exists.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, in particular, is consistent with Section 6(b)(1) of the Act,<sup>9</sup> which requires that an exchange be so

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<sup>6</sup> A Director may be removed with cause by a majority vote of those individuals or entities entitled to vote to elect such Director. See Article V, Section 4 of the NSX By-Laws.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act, and Section 6(b)(3) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.

The Commission believes that the proposed rule change, as amended, should clarify NSX's By-Laws with respect to replacing Directors who no longer qualify for their positions on the Board and, thereby, should increase the efficiency of NSX's governance. The Commission notes that the proposal is based on Section 6.3(b) of the Chicago Board Options Exchange, Incorporated's Constitution, which was previously approved by the Commission.

For the foregoing reasons, the Commission finds that the proposal does not raise any new issues of regulatory concern and is consistent with the requirements of Sections 6(b)(1)<sup>11</sup> and 6(b)(3)<sup>12</sup> of the Act.

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<sup>10</sup> 15 U.S.C. 78f(b)(3).

<sup>11</sup> 15 U.S.C. 78f(b)(1).

<sup>12</sup> 15 U.S.C. 78f(b)(3).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NSX-2005-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).