

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of Section 6(b) of the Act⁸ 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,⁹ which requires that an exchange be so 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,¹⁰ 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)¹¹ and 6(b)(3)¹² of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ 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.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Surety Bond Guarantee Program Fee

AGENCY: Small Business Administration (SBA).

⁷In 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).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(1).

¹⁰ 15 U.S.C. 78f(b)(3).

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(3).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

ACTION: Notice of proposed fee increase. Request for public comments.

SUMMARY: SBA proposes to increase the guarantee fee charged on each guaranteed bond (other than bid bonds) and payable by surety companies participating in SBA's Surety Bond Guarantee (SBG) Program from 20% to 32% of the bond premium, effective October 1, 2005. SBA believes that the fee increase is necessary to increase the reserves in the SBG Program's revolving fund to better offset the unfunded program liabilities resulting from defaults under guaranteed bonds. SBA is requesting public comments on the proposed fee increase.

DATES: The Agency must receive comments on or before September 14, 2005.

ADDRESSES: You may submit comments by any of the following methods: Mail or Hand Delivery / Courier: Barbara Brannan, Special Assistant, U.S. Small Business Administration, Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416; Fax: (202) 205-7600; Email: Barbara.Brannan@sba.gov.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Special Assistant, Office of Surety Guarantees, (202) 205-6545, Barbara.Brannan@sba.gov.

SUPPLEMENTARY INFORMATION: Under the authority of Title IV, Part B of the Small Business Investment Act, as amended, 15 U.S.C. 694a, *et seq.*, SBA has entered into guarantee agreements with surety companies (individually referred to as "the Surety" or collectively referred to as "Sureties") for the purpose of inducing Sureties to provide necessary bonding to eligible small business concerns that would not otherwise meet their underwriting standards. All such agreements obligate SBA to indemnify the Surety against a specified percentage of loss, which the Surety may incur as a result of the breach of the bonded contract. Some agreements generally require SBA's prior approval before SBA's guarantee attaches, and the Sureties involved are known as Prior Approval Sureties. Other agreements allow the Surety to issue bonds that will be guaranteed without SBA's prior approval. These Sureties are Preferred (PSB) Sureties. In order to offset the expenses and liabilities of the Surety Bond Guarantee (SBG) Program, SBA charges both the small business concern (the Principal) and the Surety a guarantee fee (pursuant to the statutory directive that the SBG Program be administered "on a prudent and economically justifiable basis"),¹⁵ U.S.C. 694b(h), and deposits the fees

collected from them into a revolving fund.

Since 1998, the guarantee fee payable by Prior Approval Sureties under 13 CFR 115.32(c) and by the PSB Sureties under 13 CFR 115.66 has been 20% of the bond premium. SBA analyzed the SBG Program performance and trends to determine if changes in the guarantee fees charged to the Principal or the Surety are warranted. In particular, SBA evaluated past program performance and trends to project future potential losses, loss recoveries, and fee income. Based on this analysis, the current reserves in the SBG Program's revolving fund, which are supported by guarantee fees collected from Principals and Sureties, will be insufficient to cover unfunded program liabilities. These liabilities result from claims filed by Sureties under SBA's guarantee. SBA believes, therefore, that an increase in fees is necessary to supplement the current reserves in the revolving fund. This increase will be imposed on Sureties only. SBA is not proposing to increase the fee charged to Principals because raising their fees is inconsistent with the SBG Program purpose to make bonding assistance and contracting opportunities more accessible to small business concerns that would not otherwise meet the Surety's underwriting standards. In addition, increased fees would place a financial burden on small contractors, and may make them uncompetitive in the bonding market.

The proposed increase in guarantee fees payable by Prior Approval Sureties and PSB Sureties would take effect on October 1, 2005. The proposed date would allow sufficient time for SBG Program participants to make any necessary adjustments to their accounting systems.

SBA is requesting public comments on the proposed fee increase. Please clearly identify paper and electronic comments as "Public Comments on Proposed Fee Increase for SBG Program," and send them to the contact listed in the **ADDRESSES** section of the preamble.

(Authority: 13 CFR 115.32(c) and 115.66)

Barbara Brannan,

Special Assistant, Office of Surety Guarantees.

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