

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")⁸ in general, and furthers the objectives of Section 6(b)(5)⁹ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposed rule change, as amended, also furthers the objectives of Section 6(b)(1),¹⁰ in that it helps to assure that the Exchange is so organized and has 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.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 date of 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 Exchange consents, the Commission will:

- (a) by order approve such proposed rule change, as amended; or
- (b) institute proceedings to determine whether the proposed rule change, as amended, should be 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, as amended, 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-2005-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSX-2005-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 filing also will be available for inspection and copying at the principal office of the NSX. 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-2005-07 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52573; File No. SR-NSX-2005-07]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1, 2, and 3, Thereto, Relating to the Creation of a Regulatory Oversight Committee

October 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2005, the National Stock ExchangeSM ("NSX"SM 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 NSX. On August 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On August 18, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. On October 6, 2005, the Exchange filed Amendment No. 3 to the proposed rule change.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 is proposing to amend the text of Article VI, Section 1.1 of the Exchange's By-Laws to allow it to create, and specifically identify, a Regulatory Oversight Committee ("ROC") in accordance with the agreed upon undertakings contained in Section F.1. of the Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions ("Order") entered May 19, 2005.⁴ The text of the proposed rule change, including the proposed charter for the ROC, is below.⁵ Proposed new language is in *italics*.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 3 replaced and superseded the original filing, as amended by Amendments Nos. 1 and 2, in its entirety.

⁴ See *In the Matter of National Stock Exchange and David Colker*, Securities Exchange Act Release No. 51715 (May 19, 2005).

⁵ After consultation with staff, the Exchange is filing the Charter for the Regulatory Oversight Committee (the "ROC Charter") as part of this Rule Change. Accordingly, the Exchange represents that any changes (amendments or deletions) to the

Continued

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 17 CFR 200.30-3(a)(12).

Code of Regulations (By-Laws) of National Stock Exchange Article VI

Committees

Section 1. Establishment of Committees

1.1. Committees

There shall be a *Regulatory Oversight Committee*, a *Membership Committee*, a *Business Conduct Committee*, a *Securities Committee*, an *Appeals Committee*, a *Nominating Committee*, and such other committees as may be established from time to time by the Board. Committees shall have such authority as is vested in them by the By-Laws or Rules or as is delegated to them by the Board. All Committees are subject to the control and supervision of the Board.

* * * * *

NSX REGULATORY OVERSIGHT COMMITTEE CHARTER

The *Regulatory Oversight Committee* (the "ROC") shall be responsible to oversee all of the National Stock Exchange's ("NSX" or the "Exchange") regulatory functions and responsibilities and to advise regularly the NSX's Board of Directors about NSX's regulatory matters.

A. The responsibilities of the ROC shall be to: (i) oversee the NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommend the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approve the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) take any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopt policies and procedures to ensure the independence of the Chief Regulatory Officer (the "CRO"). For the purpose of strengthening the ROC oversight procedures, the CRO shall certify compliance with the required items of the SEC Order to the ROC on a form and frequency basis set by the ROC.

The CRO shall have the authority to require such additional compliance certification from the staff as he deems appropriate and in such forms as he may prescribe.

B. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

C. Meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program.

D. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to NSX Board, and NSX Board's decision as to each such recommendation proposal.

E. In the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

Composition

The Committee members shall be comprised of no less than three members, who have been appointed by the Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

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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 proposal and discussed any comments it received on the proposed rule change, as amended. 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In accordance with the agreed upon undertakings provided in Section F.1. of the Order, the NSX is proposing to create a ROC through the submission of this rule change. In that regard, the NSX is seeking approval of an amendment to the Exchange By-Laws to specifically identify the ROC as an Exchange committee. The composition, scope of responsibilities, and functions of the ROC will be described in the ROC Charter, which would include provisions that mirror the terms of the undertaking⁶ along with certifications

⁶ Section F.1. of the Order provides that NSX will undertake to create a ROC and further that:

"a. Within ninety (90) days of the issuance of the Order, NSX shall file proposed rule changes with the [Securities and Exchange] Commission in accordance with Section 19(b) of the Exchange Act and Rule 19b-4 to create a ROC to oversee all of NSX's regulatory functions and responsibilities and to advise regularly the * * * NSX Board * * * about NSX's regulatory matters. The ROC members shall not be, nor have been in the preceding three years, employees of NSX or any NSX member firm. The NSX Board shall appoint the members of the ROC. The ROC shall elect a Chairperson from among its members.

b. The responsibilities of the ROC shall include, but not be limited to: (i) oversight of NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommending to the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approving the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) taking any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopting policies and procedures to ensure the independence of the Chief Regulatory Officer described in Section F.2.a [of the Order].

c. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

d. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal.

e. In the event the ROC's recommended operating budget for NSX's regulatory functions, as described in Section F.1.b. above, either: (i) is less than the previous year's budget by a material amount, (ii) is rejected by the NSX Board; (iii) is reduced by the NSX Board by a material amount; or (iv) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation ("Market Regulation") in writing, providing copies of all such minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

f. Subject to Commission approval of NSX's proposed rule changes, NSX shall fully implement this undertaking within one-hundred-eighty (180) days of the issuance of this Order."

procedures similar to those prescribed by Sarbanes-Oxley and which are also consistent with the certification procedures contained in the Order.

The ROC members shall be comprised of no less than three members, who have been appointed by the NSX Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of the NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

With respect to scope of responsibilities, the ROC is a committee of the NSX Board that is responsible for oversight of all NSX regulatory functions. The ROC is also responsible for keeping the NSX Board informed, on a regular basis, concerning the Exchange's regulatory functions, for providing advice to the Board concerning those functions, and for making recommendations to the Board for NSX action with respect to regulatory matters. The scope of responsibilities, as detailed in the Commission's Order, is contained in the ROC Charter.

As detailed in the ROC Charter, the ROC's functions include responsibility for the oversight of all of NSX's regulatory functions in order to promote and enforce compliance with the federal securities laws and the NSX rules, including reviewing with the Exchange's Chief Regulatory Officer (the "CRO") and other appropriate regulatory personnel various aspects of the design, implementation, and effectiveness of NSX's regulatory programs. The ROC will also review, revise and/or approve the CRO's recommendation for a regulatory budget to formulate the ROC's recommendation of an adequate operating budget and staffing level for NSX's regulatory function to the Board. In addition, the ROC will review, evaluate, and, if appropriate, recommend to the Board the implementation of any and all actions recommended by the CRO and the Regulatory Services Division (the "Division") to fulfill the Division's and the ROC's oversight and advisory responsibilities. The ROC also has the responsibility to assess the performance of the CRO and review the CRO's assessment of the Division's staff in fulfilling their responsibilities and recommend compensation and personnel actions to the Board. The ROC will also review, amend, approve or reject the CRO's recommendations

respecting the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars, including the approval (or ratification) of all regulatory circulars issued by the NSX within thirty five days of the issuance of such regulatory circulars. On at least an annual basis, the ROC will review the structural protections to separate the Exchange's regulatory function from the commercial interest of the Exchange by reviewing the supervisory responsibilities of the Chief Executive Officer and the CRO. Further, the ROC will take all steps necessary to provide reasonable assurance that NSX is and remains in compliance with the Order⁷ and will take any other action necessary to fulfill its oversight and advisory responsibilities.

As also detailed in the ROC Charter, meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program. The ROC will also create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal. As also provided in the ROC Charter, in the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

⁷ This includes, but is not limited to, the review, assessment and approval of (i) the CRO's certification of certain matters to the Commission, (ii) the CRO's cooperation and interaction with the Regulatory Consultants and the Regulatory Auditors, (iii) the Regulatory Division's implementation of the Regulatory Consultant's recommendations, (iv) the Regulatory Division's answers to any deficiencies noted in the Regulatory Auditors' reports, and (v) the Regulatory Division's adoption of certain procedures and programs outlined in the Order.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")⁸ in general, and furthers the objectives of Section 6(b)(5)⁹ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposed rule change, as amended, also furthers the objectives of Section 6(b)(1),¹⁰ in that it helps to assure that the Exchange is so organized and has 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.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 date of 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 Exchange consents, the Commission will:

- (a) by order approve such proposed rule change, as amended; or
- (b) institute proceedings to determine whether the proposed rule change, as amended, should be 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(1).

See Order, *supra* note 4.

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-2005-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSX-2005-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 filing also will be available for inspection and copying at the principal office of the NSX. 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-2005-07 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52569; File No. SR-NYSE-2005-61]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to an Interpretation of Exchange Rule 452

October 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 2, 2005, the New York Stock Exchange, Inc. ("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. The Exchange filed Amendment Nos. 1³ and 2⁴ to the proposed rule change on September 20, 2005 and September 28, 2005, respectively. 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 amend an Exchange interpretation of Exchange Rule 452 (Giving Proxies by Member Organizations).⁵

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was intended to replace and supersede the filing in its entirety. However, the Exchange withdrew Amendment No. 1 on September 28, 2005 since the Exchange inadvertently submitted Amendment No. 1 incorrectly under to Rule 19b-4(f)(6), rather than Rule 19b-4(f)(1).

⁴ In Amendment No. 2, the Exchange made non-substantive clarifying changes to reference Sections 402.06 and 402.08 of the Exchange's Listed Company Manual, in the Purpose section of its filing.

⁵ The Commission notes that the proposed rule change, as amended, does not amend the text of Exchange Rule 452 or its Supplementary Material.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 452 (which is referenced in Sections 402.06 and 402.08 of the Listed Company Manual) provides that a member organization may give a proxy to vote shares registered in its name, notwithstanding the failure of the beneficial owner to instruct the firm how to vote, provided, among other things, that the proposal being voted on does not involve a matter which "may affect substantially the rights or privileges of such stock." By way of example, Supplementary Material .11 to Rule 452 (which is also referenced in Section 402.08 of the Listed Company Manual) lists 18 actions in respect of which member organizations may not vote uninstructed shares. In addition to those 18 specific actions, the Exchange has interpreted Rule 452 to preclude member organizations from voting without instructions in certain other situations, including any material amendment to the investment advisory contract with an investment company.⁶

For many years, the Exchange interpreted this provision to permit member organizations to vote uninstructed shares on the authorization of new investment company investment advisory contracts, where the change in identity of the investment adviser was the only change being made to the substantive terms of the contract.

The Exchange, following discussions with staff from the Commission's Division of Investment Management, has determined that any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended ("1940 Act"),⁷ and the rules thereunder, will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of Exchange Rule 452 so that a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give a proxy to vote shares registered in its

⁶ See Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR-NYSE-92-05).

⁷ 15 U.S.C. 80a et seq.

¹¹ 17 CFR 200.30-3(a)(12).