

D. Opportunity To Cure Defects

NSX proposes, generally, to allow listed companies that fail to comply with the compensation-related rules 45 days from the date of notification by the Exchange to cure any deficiency. If the deficiency is not cured by this time, the company will be subject to the delisting procedures set forth in the Exchange's rules regarding suspension and delisting. With respect, specifically, to the independence requirements for compensation committee members, the Exchange proposes to provide the cure period permitted by Rule 10C-1 for these rules.

The Commission notes that NSX's rules relating to delisting procedures require the Exchange to provide: (1) Notice to the issuer of the Exchange's decision to delist the issuer's securities; (2) an opportunity for the issuer to file an appeal pursuant to the Exchange's rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange's final determination to delist the security via a press release and posting on the Exchange's Web site; and (4) the prompt delivery to the issuer of a copy of the form that the Exchange filed with the Commission, as required, upon its institution of proceedings to delist the issuer's security.⁴⁹

The Commission believes that NSX's proposed grant of 45 days to a company that fails to meet the new standards (other than the independence requirements) before instituting the Exchange's general procedures for companies out of compliance with its listing requirements, as well as the particular cure period it proposes to provide to a company that fails to meet the new independence standards, adequately meet the mandate of Rule 10C-1. The Commission believes that these cure provisions also are consistent with investor protection and the public interest since they give a company a reasonable time period to cure non-compliance with these important requirements before they will be delisted.

E. Exemptions

As NSX notes, its existing rules relating to compensation afford an exemption to controlled companies, limited partnerships, companies in bankruptcy, closed-end and open-end funds registered under the 1940 Act, passive business organizations in the form of trusts (such as royalty trusts), derivatives and special purpose securities as described above, and

issuers whose only listed equity security is a preferred stock. The Exchange proposes to extend the exemptions for these entities to the new requirements of the proposed rule change.

The Commission notes that Rule 10C-1 allows exchanges to exempt from the listing rules adopted pursuant to Rule 10C-1 certain categories of issuers, as the national securities exchange determines is appropriate.⁵⁰ The Commission believes that, given the specific characteristics of the aforementioned types of issuers,⁵¹ it is reasonable and consistent with Section 6(b)(5) of the Act for the Exchange to extend their existing exemptions from the new requirements.

IV. Conclusion

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by NSX, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. NSX's new rules will help to meet Congress's intent that compensation committees that are responsible for setting compensation policy for executives of listed companies consist only of independent directors.

NSX's rules also, consistent with Rule 10C-1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of NSX-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of NSX's standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed

rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁵²

It is therefore ordered, pursuant to Section 19(b)(2)⁵³ of the Act, that the proposed rule change, SR-NSX-2012-15, as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68574; File No. SR-Phlx-2012-130]

**Self-Regulatory Organizations;
NASDAQ OMX PHLX LLC; Order
Approving Proposed Rule Change To
Amend Performance Evaluations With
Respect to Quote Submissions of
Streaming Quote Traders and Remote
Streaming Quote Traders**

January 3, 2013.

Correction

In notice document 2013-00201, appearing on pages 1906-1907 in the issue of Wednesday January 9, 2013, make the following correction:

On page 1906, in the second column, the Subject is corrected to read as set forth above.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68676; File No. SR-NASDAQ-2013-004]

**Self-Regulatory Organizations; The
NASDAQ Stock Market LLC; Notice of
Filing and Immediate Effectiveness of
a Proposed Rule Change To Modify
Fees for Review of Delisting
Determinations and Appeal of Panel
Decisions**

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78s(b)(2).

⁵⁴ 17 CFR 200.30-3(a)(12).

⁴⁹ See NSX Rule 15.7.

⁵⁰ The Commission notes, moreover, that, in the case of limited partnerships and open-end funds registered under the 1940 Act, Rule 10C-1 itself provides exemptions from the independence requirements of the Rule. The Commission notes that controlled companies are provided an automatic exemption from the application of the entirety of Rule 10C-1 by Rule 10C-1(b)(5).

⁵¹ See *supra* Section II.B.5.