Q filed with the Commission) of at least 30% of its consolidated capitalization. The term ''consolidated capitalization'' is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss and/or treasury stock), minority interests, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities.

(2) *Investment Grade Ratings.* With respect to the securities issuance authority proposed in this Declaration: (a) Within four business days after the occurrence of a Ratings Event,[6] Applicants would notify the Commission of its occurrence (by means of a letter, via fax, email or overnight mail to the Office of Public Utility Regulation); and (b) within 30 days after the occurrence of a Ratings Event, Applicants would submit a post-effective amendment to the Declaration explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Applicant(s) to issue the securities for which authorization has been requested in this Declaration, so long as Applicant(s) continue to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this filing). Furthermore, no securities authorized as a result of this Declaration would be issued following the 60th day after a Ratings Event (other than common stock, commercial paper and short-term debt) by any Applicant if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction through the remainder of the period authorized in this filling over the issuance of any securities (other than common stock, commercial paper and short-term notes) that Applicants are prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

(3) *Effective Cost of Money on Financings.* The effective cost of capital would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event would the effective cost of capital exceed 500 basis points over comparable term U.S. Treasury securities (''Treasury Security'').

(4) *Maturity.* The final maturity of any long-term debt securities would not exceed five years. Short-term debt incurred under the Revolver would have a maturity of not to exceed one year.

(5) *Issuance Expenses.* The fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Declaration would not exceed the competitive market rates which are consistent with similar securities of comparable credit quality and maturities issued by other companies, provided that in no event would such fees and expenses exceed 500 basis points of the principal or face amount of the securities being issued or the gross proceeds of the financing.

(6) *Use of Proceeds.* The proceeds from the borrowing would be used for general corporate purposes including (i) the financing of working capital requirements of the PNM Resources system, (ii) cash management activities and (iii) other lawful purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

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[6] A ''Ratings Event'' would occur if, during the authorization period requested in this filing, (i) any security issued by any Applicant upon original issuance, if rated, is rated below investment grade; or (ii) any outstanding security of any Applicant that is rated is downgraded below investment grade. For purposes of this provision, a security would be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52224; File No. SR–NSX–2005–03]

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

August 8, 2005.

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''),[1] and Rule 19b–4 thereunder,[2] 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.[3] On June 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 30, 2005.[5] 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, 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.[6]

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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.

[4] In Amendment No. 2, the Exchange revised the proposed rule text, as well as, the proposed rule change's statutory basis section.

[5] *See* Securities Exchange Act Release No. 51912 (June 23, 2005), 70 FR 37889.

[6] 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.

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6(b) of the Act[8] 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 it 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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[7] 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).

[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).

SMALL BUSINESS ADMINISTRATION

Surety Bond Guarantee Program Fee

AGENCY: Small Business Administration (SBA).

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.

[FR Doc. 05–16085 Filed 8–12–05; 8:45 am]

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