

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-36 and should be submitted by May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47675; File No. SR-NQLX-2003-03]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by Nasdaq Liffe Markets, LLC To Amend Its Initial Listing Standards and Maintenance Standards for Single Stock Futures**

April 14, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on January 27, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which Items have been prepared by the NQLX. On April 4, 2003, NQLX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

On January 27, 2003, NQLX submitted the proposed rule change to the Commodities Futures Trading Commission ("CFTC") for approval. On April 3, 2003, NQLX submitted the Amendment No. 1 to proposed rule change to the CFTC for approval. Under section 19(b)(7)(B) of the Act,<sup>4</sup> the proposed rule change may take effect upon approval by the CFTC.

**I. Self-Regulatory Organization's Description of the Proposed Rule Change**

NQLX proposed to amend both its initial and maintenance listing standards (NQLX Rules 902 and 903) as they relate to the pricing criteria for securities that underlie security futures products offered by NQLX. Currently NQLX Rule 902(b)(8) requires that the market price per share of any underlying security must be at least \$7.50 for the majority of trading days during the three calendar months before listing of the security futures contract, as measured by the lowest closing price reported in any market in which the

underlying security traded on each of the subject days.

In addition to meeting the current listing requirements of NQLX Rule 902(b), NQLX proposes adding a new rule provision, NQLX Rule 902(b)(8)(i), that would allow the listing of a security futures product if the underlying securities are "covered securities," as defined under Section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act") ("covered securities"),<sup>5</sup> and have reported at least a \$3.00 per share closing price on their primary for the five previous consecutive trading days before the initial listing of the product. For initial listings of security future products with underlying securities that are not covered securities, NQLX Rule 90218(b)(8)(ii) will continue to require those underlying securities to trade at \$7.50 or above for the majority of trading days during the three calendar months before listing of the security futures contract.

NQLX also proposes to add NQLX Rule 902(b)(8)(iii) to allow the initial listing of a security futures contract if the underlying security (1) meets the requirements under NQLX Rule 903(c); (2) underlies a security futures contract that already trades on at least one other registered national securities exchange; and (3) underlies a security futures contract that has had average daily trading volume of at least 5,000 contracts during the three calendar months immediately before the date of listing. NQLX represents that this proposed change is consistent with similar initial listing standards in place at several options exchanges.<sup>6</sup>

As to maintenance listing standards, in addition to meeting the current listing requirements of NQLX rule 903(c), NQLX proposes to amend NQLX Rule 903(c)(6) to allow the listing of a new delivery months for a security futures product if the underlying securities have reported at least a \$3.00 per share closing price on their primary market on the trading day immediately before the listings of the new delivery month.<sup>7</sup> NQLX represents that this

<sup>5</sup> Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market system of the Nasdaq Stock Market (or any successor to such entities). \* \* \*" 15 U.S.C. 77r(b)(1)(A). The term "covered security" would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

<sup>6</sup> See, e.g., Commentary .01(4) to American Stock Exchange LLC ("Amex") Rule 916; International Securities Exchange, Inc. ("ISE") Rule 502(b)(5)(ii); Pacific Exchange, Inc. ("PCX") Rule 3.6(a)(4).

<sup>7</sup> Currently, NQLX does not anticipate adding additional series intra-day. However, if NQLX ever

Continued

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> On April 4, 2003, NQLX filed Form 19b-7, which completely replaces the initial filing in its entirety. Telephone conversation between Kathleen Hamm, Senior Vice President, Regulation and Compliance, NQLX, and Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, on April 8, 2003.

<sup>4</sup> 15 U.S.C. 78s(b)(7)(B).

change is consistent with the maintenance listing standards of the Chicago Board Options Exchange, Inc. ("CBOE").<sup>8</sup>

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.<sup>9</sup>

**Rule 902 Initial Listing Standards: Physically-Settled Security Futures Contracts.**

(a) (1)–(2) No change.

(b) Initial Listing Standards—Underlying Securities are Single Securities: To initially list a physically-settled Security Futures Contract with an underlying single security, the single security must:

(1)–(7) No change.

(8) (i) *have a market price per security of at least \$3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) for the previous five consecutive trading days before listing if the underlying security is a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Security"); or*

(ii) *have a market price per security of at least \$7.50 (calculated by the lowest closing price reported in any market on which the underlying security traded) for the majority of trading days during the three calendar months before listing if the underlying security is not a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Uncovered Security"); or*

(iii) *(A) meet the requirement of Rule 903(c), and*

*(B) underlie a securities futures contract that (i) trades on at least one other registered national securities exchange and (ii) has had an average daily trading volume of at least 5,000 contracts during the three calendar months immediately before the date of listing; and*

(9) No change.

(c)–(d) No change.

(e) Initial Listing Standards—Underlying Securities are Restructure Securities: For a Restructure Security

the requirements of Rule 902(b) apply, except that:

(1)–(4) No change.

(5) Restructure Securities Issued in Public Offering or Rights Distribution: To determine whether Rule 902(b)(8) is deemed satisfied for a Restructure Security that is distributed pursuant to a public offering or a rights distribution, NQLX may look back at the market price history of the Original Security if:

(i) the Look-Back Test of Rule

902(e)(3) is satisfied; and

(ii) the Restructure Security

(A) trades "regular way" on an exchange or automatic quotation system for at least five trading days immediately before the date that NQLX selects the Restructure Security as an underlying security for a Security Futures Contract, and

(B) closes trading on each of those five previous trading days, and opens trading on the day of selection, at least at (i) \$3.00 if the Restructure Security is a Covered Security (as defined by Rule 902(b)(8)(i)) or (ii) \$7.50 if the Restructure Security is an Uncovered Security (as defined by Rule 902(b)(8)(ii)).

**Rule 9031 Maintenance Listing Standards: Physically-Settled Security Futures Contracts:**

(a) (1)–(5) No change.

(b) No change.

(c) Maintenance Standards—Underlying Securities are Single Securities Other than Shares of Exchange-Traded Funds, Shares of Registered Closed-End Management Investment Companies, or Trust-Issued Receipts: When the underlying of a physically-settled Security Futures Contract is a single security other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts, to list a new delivery month of the Security Futures Contract, the single security must:

(1)–(5) No change.

(6) [(i)] *have a market price per security of at least \$3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) on the trading day immediately before listing a new delivery month [if the underlying security is a Covered Security (as defined by Rule 902(b)(8)(i)), or] and*

*[(ii) have a market price per security of at least \$5.00 for an Uncovered Security (as defined by Rule 902(b)(8)(ii)) on a majority of the trading days during the past six calendar months (measured by the highest closing price reported for the underlying security in any market trading the*

underlying); provided, however, that NQLX may waive this requirement and open for trading a new delivery month of the Security Futures Contract, if:

(A) the open interest by Customers (on a two-sided basis) equals or exceeds 4,000 contract for all delivery months;

(B) the aggregate market value of the underlying security equals or exceeds \$50 million;

(C) the average daily trading volume in the underlying security (in all markets that trade the underlying) has been at least 109,000 shares or receipts evidencing the underlying security in each of the prior 12 months; and

(D) the market price per share of or receipts evidencing the underlying security:

(i) has closed at \$3.00 or above on a majority of trading days during the past six calendar months, as measured by the highest closing price for the underlying security reported in any market that trades the underlying security, and

(ii) is at least \$3.00 on the day NQLX lists the new delivery month for trading;]

(7) No change.

(d)–(f) No change.

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

NQLX has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

**1. Purpose**

NQLX proposes to adopt revisions to its current listing standards, which it believes are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association,<sup>10</sup> because the options listing and maintenance standards of the Amex, CBOE, ISE, and PCX contain similar provisions.<sup>11</sup> NQLX believes that adoption of the current proposal would provide investors with security futures

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

<sup>11</sup> See Securities Exchange Act Release No. 34–47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62). See, e.g., ISE Rule 502(b)(5)(ii); PCX Rule 3.6(a)(4); Interpretations and Policies .01 and .02 to CBOE Rule 5.4; and Commentary .01(4) to Amex Rule 916.

determines it appropriate to add a new series intra-day, NQLX will submit a proposed rule change to the Commission and CFTC to use the price per share of the last reported trade on the primary market on which the underlying security trades at the time NQLX determines to add the new series.

<sup>8</sup> See Interpretations and Policies .01 and .02 to CBOE Rule 5.4. See also Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54599 (October 29, 2001).

<sup>9</sup> NQLX authorized technical corrections to the proposed rule text during a telephone conversion between Kathleen Hamm, Senior Vice President, Regulation and Compliance, NQLX, and Christopher Solgan, Attorney, Division, Commission, on April 8, 2003.

products that are useful and in demand as tools to manage the risks of their investment portfolios.

NQLX believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act<sup>12</sup> and the criteria under section 2(a)(1)(D)(i) of the CEA,<sup>13</sup> as modified by joint orders of the Commission and the CFTC, and that its listing standards are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.<sup>14</sup>

## 2. Statutory Basis

NQLX files this proposed rule change pursuant to section 19(b)(7) of the Act.<sup>15</sup> NQLX believes that this proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>16</sup> including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.<sup>17</sup> NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act<sup>18</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>19</sup> as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of section 6 of the Act,<sup>20</sup> in general, and section 6(b)(5) of the Act,<sup>21</sup> in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

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

NQLX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NQLX neither solicited nor received written comment on the proposed rule changes.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective on January 27, 2003, except that the changes made in Amendment No. 1 have become effective on April 4, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.<sup>22</sup>

### **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, conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-03 and should be submitted by May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47679; File No. SR-NASD-2003-48]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Display Charge Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members**

April 15, 2003.

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> notice is hereby given that on March 21, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to modify the display charge paid by persons that are not NASD members for use of the Nasdaq Workstation II ("NWII") Service.<sup>3</sup> Nasdaq will implement the proposed rule change as soon as practicable following approval by the Commission.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

\* \* \* \* \*

### **7000. Charges for Services and Equipment**

#### **7010. System Services**

(a)-(e) No change.

<sup>23</sup> 17 CFR 200.30-3(a)(75).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On March 21, 2003, Nasdaq also submitted a proposed rule change to modify this charge for NASD members. See Securities Exchange Act Release No. 47637 (April 7, 2003), 68 FR 17849 (April 11, 2003) (File No. SR-NASD-2003-47).

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

<sup>13</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>14</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>15</sup> 15 U.S.C. 78s(b)(7).

<sup>16</sup> P.L. 106-554, 114 Stat. 2763 (2000).

<sup>17</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>18</sup> 15 U.S.C. 78f(h)(3).

<sup>19</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>20</sup> 15 U.S.C. 78f.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(1).