

(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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR-DTC-2002-15 and should be submitted by December 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

[FR Doc. 02-28654 Filed 11-8-02; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46771; File No. SR-NQLX-2002-01]

#### Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change, by Nasdaq Liffe Markets, LLC Relating to Margin Rules for Security Futures

November 5, 2002.

On September 24, 2002, the Nasdaq Liffe Markets, LLC ("NQLX") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change relating to margin rules for security futures products other than options on security futures. The proposed rule change was published for comment in the **Federal Register** on September 30, 2002.<sup>3</sup> The Commission received three comment letters on the proposed rule change.<sup>4</sup> In addition, NQLX submitted a letter in response to the commenters.<sup>5</sup> On November 4, 2002, NQLX filed an amendment to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

#### I. Description of the Proposed Rule Change

##### Introduction

On August 1, 2002, the Commodity Futures Trading Commission ("CFTC") and SEC (collectively, the "Commissions") jointly adopted customer margin requirements for security futures.<sup>7</sup> Under the Commissions' "account specific" approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the

security futures are held (*i.e.*, a futures account or securities account).

##### Proposal

The proposed rule change sets forth margin requirements for security futures traded on NQLX that are held in futures accounts. Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures contracts and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. In addition, the proposed rules do not apply to security futures held in a securities account. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from NQLX's margin rules.

##### Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.<sup>8</sup> In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures.

The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, NQLX permits reduced margin levels for specific offsetting positions held in futures accounts. Specifically, NQLX permits reduced margin levels for the following offsets:

(1) For a long security future and a corresponding short security futures on the same underlying individual stock or narrow-based index, but with a different expiration month, both the initial margin and the maintenance margin are the greater of 5% of the current market value of the long security futures or 5% of the current market value of the short security futures.

(2) For a long (short) basket of security futures (each of which is based on a narrow-based security index that together tracks a broad-based index) held in combination with a short (long) position of the applicable broad-based index future, both the initial and the maintenance margin are 5% of the

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

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

<sup>3</sup> Securities Exchange Act Release No. 46548 (September 25, 2002), 67 FR 61361 (SR-NQLX-2002-01).

<sup>4</sup> See letters to Jonathan Katz, Secretary, Commission, from: John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange LLC, dated October 23, 2002 ("Amex Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

<sup>5</sup> Letter from Kathleen M. Hamm, Senior Vice President, Regulation and Compliance, NQLX, to Jonathan G. Katz, Secretary, Commission, dated October 30, 2002 ("NQLX Letter").

<sup>6</sup> See letter from Kathleen M. Hamm, Senior Vice President of Regulation and Compliance, NQLX, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated November 1, 2002 ("Amendment No. 1"). Amendment No. 1 amends proposed Rule 403(e)(1) to provide that a security futures dealer must fulfill its market maker obligation in security futures contracts representing at least 20 percent of the total volume in all security futures contracts traded on NQLX for the preceding calendar quarter. In addition, Amendment No. 1 amends proposed Rule 403(e)(2) to provide that a security futures dealer must fulfill its market maker obligation in security futures contracts representing at least 75 percent of the total trading in security futures contracts on NQLX for the preceding calendar quarter.

<sup>7</sup> Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

<sup>8</sup> Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

current market value of the long (short) basket of security futures.

(3) For a long (short) basket of security futures that together tracks a narrow-based index future held in combination with a short (long) narrow-based index future, both the initial and the maintenance margin are the greater of (a) 5% of the current market value of the long security futures or (b) 5% of the current market value of the short security futures.

(4) For a long (short) security future on either an individual stock or a narrow-based index held in combination with an identical short (long) security future listed by a different exchange, both the initial and maintenance margin level are the greater of (a) 3% of the current market value of the long security futures position or (b) 3% of the current market value of the short security futures position.

#### *Security Futures Dealers*

As noted above, the proposed rule change provides an exclusion from NQLX's margin rules for Security Futures Dealers. Under the proposed rule change, NQLX defines a "Security Futures Dealer" as a market maker<sup>9</sup> designated by NQLX as a Security Futures Dealer that meets the requirements of NQLX Rules 403(d) and Rule 403(e). Rule 403(d) requires a Security Futures Dealer: (1) To be a member of NQLX; (2) to be registered as a floor trader or floor broker with the CFTC under section 4f(a)(1) of the CEA or as a dealer with the SEC under section 15(b) of the Act; (3) to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis and enters into a written agreement with NQLX that must meet, at a minimum, the requirements of NQLX Rule 403(e); (4) to maintain records sufficient to prove compliance with the requirements of NQLX Rule 403(d) and NQLX Rule 403(e), including, but not limited to, documents concerning personnel effecting relevant Orders, relevant trade and cash blotters, relevant stock records, and documents concerning applicable internal system capacity and performance; and (5) to be subject to disciplinary action under Chapter 5 of NQLX's Rules for failing to comply with CFTC Rules 41.42–41.48 and Rules 400–406 under the Act, with sanctions up to and including removal of the member's

designation as a Security Futures Dealer.

NQLX Rule 403(e) requires a Security Futures Dealer to meet one of two minimum affirmative trading obligations. Under the first alternative, an NQLX member is a Security Futures Dealer under Rule 403(e)(1) if it satisfies the following requirements. First, the Security Futures Dealer must provide continuous two-sided quotations throughout the trading day, subject to relaxation during unusual market conditions as determined by NQLX,<sup>10</sup> for the first two delivery months of Security Futures Contracts that in total account for at least 20% of the total volume in all Security Futures Contracts traded on NQLX. Second, the Security Futures Dealer must quote for the first two delivery months with (a) a maximum bid/ask spread of no more than the greater of \$.10 or 150 percent of the bid/ask spread in the primary market for the security underlying the security future and (b) a minimum number of contracts no less than the lesser of 10 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the security future. Finally, the Security Futures Dealer must respond to requests for quotation in the specified security future within 5 seconds for all delivery months other than the first two delivery months with a two-sided quotation that has (a) a maximum bid/ask spread of no more than the greater of \$.20 or 150 percent of the bid/ask spread in the primary market for the security underlying the Security Futures Contract and (b) a minimum number of contracts no less than the lesser of 5 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the security future.

In the alternative, an NQLX member is a Security Futures Dealer under Rule 403(e)(2) if it satisfies the following requirements. First, the Security Futures Dealer must respond to all requests for quotation in a specified Security Futures Contract in specified delivery months other than the first two delivery months with two-sided quotations throughout the trading day. Second, the Security Futures Dealer must quote, when responding to requests for quotation, within 5 seconds (a) with a maximum bid/ask spread of no more than the greater of \$.20 or 150 percent

of the bid/ask spread in the primary market for the security underlying the Security Futures Contract and (b) a minimum number of contracts no less than the lesser of 5 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the Security Futures. Finally, 75% of the Security Futures Dealer's total trading in the preceding calendar quarter must be in Security Futures Contracts in which it fulfilled its obligations under this rule.

While NQLX Rule 403(e)(1) and NQLX Rule 403(e)(2) both provide the minimum requirements imposed on market makers designated as Security Futures Dealers, NQLX and the particular Security Futures Dealer may enter into written agreements with more rigorous affirmative obligations (e.g., more narrow maximum bid/ask spreads as well as larger minimum contract sizes).

#### **II. Summary of Comments**

As noted above, the Commission received three comment letters on the proposal,<sup>11</sup> and NQLX submitted a letter in response to the commenters.<sup>12</sup> Two commenters expressed the view that NQLX's proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.<sup>13</sup> In addition, those commenters maintained that the proposed rule change is not consistent with the margin requirements for comparable options contracts and, therefore, would create competitive disparities between security futures and exchange-traded options.

The other commenter expressed concern with NQLX's second alternative for satisfying the definition of a security futures dealer.<sup>14</sup> Specifically, the commenter maintained that the lack of a two-sided continuous quote commitment for all expiration or delivery months of a security futures contract, along with the ability to only quote farther term expiration or delivery month contracts, rendered the test in proposed NQLX Rule 403(e)(2) inconsistent with the obligations of a bona fide market maker. In addition, the commenter argued that the market

<sup>9</sup>NQLX's rules define a "Market Maker" as "any Member or other Person that enters into a written agreement with NQLX to facilitate liquidity and orderliness for a specified Exchange Contract or Groups of Exchange Contracts pursuant Rule 403." See NQLX Rule 101(a)(48).

<sup>10</sup>NQLX has represented that it would only relax the affirmative obligations of a Security Futures Dealer during unusual market conditions such as a fast market in either the security futures or their underlying securities. See NQLX Letter, *supra* note 5.

<sup>11</sup>Morgan/Goldman Letter, Amex Letter, and SSB Letter, *supra* note 4. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

<sup>12</sup>NQLX Letter, *supra* note 5.

<sup>13</sup>Morgan/Goldman Letter and SSB Letter, *supra* note 4.

<sup>14</sup>Amex Letter, *supra* note 4.

maker test under proposed NQLX Rule 403(e)(2) is not consistent with the current standard for receiving market maker margin treatment for exchange-traded options because it does not oblige market makers to make continuous markets in security futures.

In response to the Morgan/Goldman letter, NQLX stated that it has minimum capital requirements for all of its members, including all market makers designated as security futures dealers. NQLX noted that its rules require its members that are registered with the SEC as broker-dealers or with CFTC as futures commission merchants or introducing brokers to meet and maintain the minimum capital requirements of their respective regulators. Further, NQLX stated that for all other members, its rules require minimum net worth of not less than \$250,000 and immediate notification to NQLX when one of those member's net worth declines below \$300,000. NQLX maintained that its minimum net worth requirements as well as its "early warning" capital levels adequately address the concerns of potential systemic credit risk raised by the Morgan/Goldman letter.

In response to the Amex Letter, NQLX stated that Rule 403(e)(2) places affirmative obligations on security futures dealers to respond "virtually instantaneously" to all requests for quotation throughout the trading day in specified back-month contracts. NQLX maintained that this standard requires regular responses to quotations by the Security Futures Dealer. In addition, NQLX expressed the view that by complying with Rule 403(e)(2), Security Futures Dealers expose their capital in order to provide liquidity and depth for the benefit of all market participants.

### III. Discussion

Under Section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> Section 6(b)(5) of the Act<sup>16</sup> requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>17</sup> In

addition, section 7(c)(2)(B) of the Act<sup>18</sup> provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views the Commission finds that the rule change is consistent with NQLX's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NQLX's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act<sup>19</sup> also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NQLX are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards proposed by NQLX for Security Futures Dealers are consistent with the Act, and Rule 400(c)(2)(v) thereunder.<sup>20</sup> Specifically, the Commission's margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "security futures dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required "to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis." The Commission

believes that the affirmative obligations required by NQLX Rule 403(e) satisfy this requirement.

### IV. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In response to the commenters' concerns, Amendment No. 1 adds two subsections to require Security Futures Dealers to satisfy their market making obligations in a meaningful number of contracts. Specifically, new paragraph (e)(1)(iv) of Rule 403 requires a Security Futures Dealer to fulfill its market making activities in one or more security futures contracts representing at least 20 percent of the total volume in all security futures contracts traded on NQLX for the preceding calendar quarter. Similarly, new paragraph (e)(2)(iii) of Rule 403 requires 75% of a Security Futures Dealer's total trading to be in security futures contracts in which it fulfills its market making obligations.

Because the amendments are responsive to commenters' concerns and further clarify the minimum requirements imposed on market makers designated as Security Futures Dealers, the Commission believes that there is good cause, consistent with Section 19(b) of the Act, to approve Amendment No. 1 to the proposed rule change, on an accelerated basis.

### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NQLX-2002-01 and should be submitted by December 3, 2002.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 15 U.S.C. 78f(b)(5), 78o-3(b)(6), and 78o-4(b)(2)(C).

<sup>17</sup> In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78o-3(b)(9).

<sup>18</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>19</sup> 17 CFR 240.403(b)(2).

<sup>20</sup> 17 CFR 200.400(c)(2)(v).

**VI. Conclusion**

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NQLX-2002-01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-28606 Filed 11-8-02; 8:45 am]

**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION****Data Collection Available for Public Comments and Recommendations**

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before January 13, 2003.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Jihoon Kim, Financial Analyst, (202) 205-6024 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Secondary Market Assignment and Disclosure Form.

*Form No:* 1088.

*Description of Respondents:* Secondary Market Participants.

*Annual Responses:* 5,000.

*Annual Burden:* 7,500.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Robert Max, Procurement Analyst, Office of Government Contracting,

Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:**

Robert Max, Procurement Analyst, (202) 205-7321 or Curtis B. Rich, Management Analyst, (202) 205-7030.

*Title:* Application for Small Business Size Determination.

*Form No:* 355.

*Description of Respondents:* Small Businesses.

*Annual Responses:* 10,500.

*Annual Burden:* 42,000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cindy Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:**

Cindy Pitts, Program Analyst, (202) 205-7570 or Curtis B. Rich, Management Analyst, (202) 205-7030.

*Title:* Borrower's Progress Certification.

*Form No:* 1366.

*Description of Respondents:* Recipients of disaster loans.

*Annual Responses:* 30,020.

*Annual Burden:* 15,010.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-28684 Filed 11-8-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Reporting and Recordkeeping Requirements Under OMB Review**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before December 12, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83-1), supporting statement, and other

documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline White, Agency Clearance Officer, (202) 205-7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Small Business Administration, Application for Certificate of Competency.

*No:* 1531.

*Frequency:* On Occasion.

*Description of Respondents:* Small Business Owners.

*Responses:* 300.

*Annual Burden:* 2,400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-28683 Filed 11-8-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Reporting and Recordkeeping Requirements Under OMB Review**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

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*Copies:* Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs,

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).