

## 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>19</sup> in general and furthers the objectives of Section 6(b)(5)<sup>20</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers.

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

CBOE does not believe that the proposed rule change will impose any burden on competition.

### *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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and subparagraph (f)(6) of Rule 19b-4<sup>22</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>23</sup>

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>24</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change as quickly as possible. The CBOE contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Amex, which was published for public notice and comment.<sup>25</sup> As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,<sup>26</sup> and, therefore, the proposal is effective and operative upon filing with the Commission.

## 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

day period to have commenced on January 2, 2003, the date CBOE filed Amendment No. 2.

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> See Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (approving SR-Amex-2002-21).

<sup>26</sup> For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for inspection and copying at 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-CBOE-2002-63 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47212; File No. SR-ISE-2002-27]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Repeal of Limitations on Orders**

January 17, 2003.

On November 21, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("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 the repeal of limitations on orders. Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.<sup>3</sup> No comments were received on the proposed rule change.

The Exchange proposes to repeal the provision in its Rule 717 that prohibits Electronic Access Members ("EAMs") from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. The ISE adopted this "speed bump" in 2000 to protect ISE market makers from exposure across multiple series of options if they receive orders in many series at the same time.<sup>4</sup> The Exchange now represents that the rule has been outmoded by the development of sophisticated risk management tools and that eliminating this restriction will provide EAMs and

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 46959 (December 6, 2002), 67 FR 77115.

<sup>4</sup> See Securities Exchange Act Release No. 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-

their customers with enhanced access to the ISE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Elimination of the "speed bump" will remove an impediment to trading created only to limit the market risk undertaken by ISE market makers. Additionally, the change should permit faster entry and execution of orders on the Exchange, thereby providing investors with improved services. Therefore, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-ISE-2002-27) be, and it hereby is, approved.

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. 34-47193; File No. SR-NQLX-2002-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Nasdaq Liffe Markets, LLC Relating to Final Settlement Prices for Cash-Settled Security Futures Products and Trading Restrictions and Suspensions

January 15, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-7 thereunder,<sup>2</sup> notice is hereby given that on December 17, 2002, Nasdaq Liffe Markets, LLC

("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in items I, II, and III below, which items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has certified the proposed rule changes with the Commodity Futures Trading Commission ("CFTC") under section 5c(c) of the Commodity Exchange Act<sup>3</sup> ("CEA") on October 30, 2002, and December 16, 2002.

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

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX proposes to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes to adopt rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors. Below is the text of the proposed rule changes. Text in italics indicates material to be added.

\* \* \* \* \*

#### Rule 426 Trading Restrictions and Suspensions

(a) *The Chief Executive Officer or President shall have the power to restrict or suspend trading in any Exchange Contract on NQLX at any time during an Emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.*

*Rule 904 Contract Specifications-Security Futures Products that Cash-Settle.*

#### Reserved

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#### 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 statutory

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

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX is proposing to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes adopting rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.

##### 2. Statutory Basis

NQLX files these proposed rules pursuant to section 19(b)(7) of the Act.<sup>4</sup> NQLX believes that its proposed rules comply with the requirements under section 6(h)(3)(H) of the Act<sup>5</sup> and the criteria under section 2(a)(1)(D)(i)(VII) of the CEA.<sup>6</sup> In addition, NQLX believes that its proposed rules are consistent with the provisions of section 6 of the Act<sup>7</sup> in general, and section 6(b)(5) of the Act<sup>8</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 rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

<sup>5</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>6</sup> 7 U.S.C. 2(a)(1)(D)(i)(VII).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> 7 U.S.C. 7a-2(c).