

#### 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-FICC-2003-07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com/gov/gov.other.docs.jsp?NS-query=.com>. All submissions should refer to File No. SR-FICC-2003-07 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48840; File No. SR-ISE-2003-29]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange Inc., Relating to Requiring the Fingerprinting of Exchange Employees and Independent Contractors and Other Service Providers

November 25, 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 November 18, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

The Exchange is proposing to adopt a new rule pursuant to which it will obtain fingerprints from prospective and current employees, and independent contractors and other service providers, submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing, and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use in protecting the Exchange's facilities, records, systems, data and other information. The text of the rule amendment is available at the Office of the Secretary of the Exchange and at the Commission.

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

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed

rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to require the fingerprinting of prospective and current employees, and independent contractors and other service providers of the Exchange. The events of September 11, 2001, including the resulting temporary disruption in the securities markets, have led national exchanges and lawmakers alike to evaluate various security requirements, with the objective of enhancing investor protection, business continuity and workplace safety. To that end, the Commission has approved fingerprinting rules for the National Association of Securities Dealers, Inc. ("NASD") with respect to employees and independent contractors of The Nasdaq Stock Market, Inc. ("Nasdaq")<sup>5</sup> and for the New York Stock Exchange ("NYSE") with respect to prospective and current employees, temporary personnel, independent contractors and service providers of each of the Exchange and its principal subsidiaries.<sup>6</sup> ISE is proposing to adopt a rule establishing a fingerprint-based program that is substantially similar to the Nasdaq and NYSE programs.

The proposed rule is consistent with Section 17(f)(2) of Act<sup>7</sup> and Rule 17f-2 thereunder,<sup>8</sup> which require, subject to certain exemptions, a variety of securities industry personnel to be fingerprinted, including every member of a national securities exchange; brokers, dealers, transfer agents, and clearing agencies; and employees of such entities. Although Section 17(f)(2) does not require the Exchange or other self-regulatory organizations to fingerprint their own employees and non-employee service providers, it permits self-regulatory organizations designated by the SEC to have access to

<sup>5</sup> See Release No. 34-47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (SR-NASD-2002-113).

<sup>6</sup> See Release No. 34-48118 (July 1, 2003) 68 FR 41033 (July 9, 2003) (SR-NYSE-2003-18).

<sup>7</sup> 15 U.S.C. 78q(f)(2).

<sup>8</sup> 17 CFR 240.17f-2.

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

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

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

“all criminal history record information.”<sup>9</sup>

The proposed rule is also consistent with the laws of the State of New York, where ISE maintains its principal offices. In August 2002, New York State amended its general business law to require fingerprint-based background checks of employees of national securities exchanges who are regularly employed in New York State.<sup>10</sup> The New York law also requires fingerprint-based background checks of non-employees who provide services to the exchange if those individuals have “access to records \* \* \* or other material or secure buildings or secure property, which place the security of such organization at risk.” The proposed rule will facilitate the Exchange’s compliance with New York State law by facilitating the Exchange’s access to criminal history record information maintained by the Federal Bureau of Investigation (“FBI”).

Moreover, fingerprint-based background checks will enhance the Exchange’s ability to adequately screen employees and non-employee service providers to better determine whether there are unacceptable risks associated with granting such persons access to the Exchange’s facilities, records, systems, data and other information. The proposed rule will permit the Exchange to receive arrest-based criminal history record information from the FBI, which includes conviction, sentencing, probation and parole information. Thus, the information obtained through fingerprint-based background checks will provide a more exhaustive and reliable profile of the criminal records of prospective employees and non-employee service providers, and thereby better facilitate risk assessment, than information provided directly by such persons.

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>11</sup> that an exchange have rules that are 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 regulating, clearing,

settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not anticipate soliciting, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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 Exchange Act.

## IV. Solicitation of Comments

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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 ISE. All submissions should refer to File No. SR-ISE-2003-29 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48839; File No. SR-NQLX-2003-08]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Life Markets, LLC to Amend Rule 419 To Make the Information Recording and Submission Requirements for Block Trades and Exchange for Physical Trades Consistent**

November 25, 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 November 10, 2003, NQLX, LLC (“NQLX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change 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 change from interested persons. On November 7, 2003, NQLX filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”), together with a written certification under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> (“CEA”) in which NQLX indicated that

<sup>9</sup> 15 U.S.C. 78q(f)(2).

<sup>10</sup> N.Y. Gen. Bus. Law 359-e (12-a) (McKinney 2003).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</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> 7 U.S.C. 7a-2(c).