

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

Written comments were neither solicited nor received.

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

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>12</sup> the proposal may 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 self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup> Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to

monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on March 31, 2004.

**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 should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NASD-2004-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should be submitted by April 21, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49458; File No. SR-NQLX-2004-02]

**Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by NQLX LLC To Amend Its Rule 419 Relating to Block Trades**

March 23, 2004.

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 March 4, 2004, NQLX LLC ("NQLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NQLX. On March 16, 2004, NQLX filed an amendment to the proposed rule changes.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons. On March 3, 2004, NQLX filed the proposed rule changes with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c) of the Commodity Exchange Act<sup>4</sup> ("CEA") in which NQLX indicated that the effective date of the proposed rule changes would be March 4, 2004.

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

NQLX is proposing changes to its Rule 419 to explicitly permit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value<sup>5</sup> derived from that day's last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price ("VWAP")<sup>6</sup> of

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

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

<sup>3</sup> See letter from Robert Ledvora, Executive Vice President and Chief Financial Officer, NQLX, to the Office of Market Supervision, Division of Market Regulation ("Division"), Commission, dated March 16, 2004 ("Amendment No. 1").

<sup>4</sup> 7 U.S.C. 7a-2(c).

<sup>5</sup> The fair value of a security future is the current security price plus the interest rate cost of carry to the future's expiration minus the value of the expected dividend. Transaction costs make this an inexact number. Therefore, the fair value must be represented as an approximation.

<sup>6</sup> "Volume Weighted Average Price" means the average price of a security over an agreed upon time segment computed by multiplying the price per share of each transaction by the number of shares

Continued

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

transactions during an agreed upon time segment for that trading day in the underlying security. According to NQLX, these changes will provide a technical means for members to enter block trades during trading hours with a price indicator of whether the price will be the futures settlement price, the last sale price of the underlying security or the fair value of the Security Futures Contract derived from the VWAP of the underlying security.

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

\* \* \* \* \*

#### Rule 419 Block Trades <sup>7</sup>

(a)–(f) No change  
(g) Information Recording, Submission, and Dissemination  
(1)–(7) No change  
(8) *For Orders for Block Trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day's last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price (VWAP) of transactions during an agreed upon time segment for that trading day in the underlying security, the Member for the Initiator must as soon as practicable but no later than 8 minutes after negotiations end submit the Block Trade through the ATS with all the information required by Rule 419(g)(2) and indicating the price as:*  
(i) *"0.00" for the Daily Settlement Price for the Exchange Contract,*  
(ii) *"0.01" for the fair value of that day's last sale price for the security underlying the Security Futures Contract, or*  
(iii) *"0.02" for the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security.*  
*As soon as practicable but no later than 10 minutes after the close of trading for the Exchange Contract, the Member for the Initiator must provide through the ATS the Daily Settlement Price, the fair value of that day's last sale price for the security underlying the Security Futures Contract, or the fair*

traded in that transaction, then dividing the sum of these values for all the transactions in the security during the agreed upon time segment by the total number of shares traded during that period.

<sup>7</sup> Pursuant to a telephone conversation between De'Ana Dow, Associate Vice President and Chief Counsel, Futures and Options Regulation, National Association of Securities Dealers and Marisol Rubecindo, Law Clerk, Division, Commission, on March 18, 2004, NQLX amended rule text language to conform with language published in its Rule Book.

*value of the Security Futures Contract derived from the VWAP, in the underlying securities as applicable. Nothing in this Rule 419(g)(8) relieves Members from complying with the provisions of Rules 419(g)(6) and 419(g)(7).*

\* \* \* \* \*

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

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule changes, 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 Changes

#### 1. Purpose

NQLX proposes revising Rule 419—Block Trades—to permit its members to submit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day's last sale price of the security underlying the Security Futures Contract or at the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security. NQLX is amending this rule to provide a technical means for members to enter block trades during trading hours with a price indicator. The actual price of the block trade must be submitted as soon as practicable, but not later than 10 minutes after the close of trading for the Exchange Contract.

NQLX believes that the proposed rule changes are consistent with the requirements, where applicable, under section 6(h)(3)(J) of the Act<sup>8</sup> and the criteria, where applicable, under section 2(a)(1)(D)(i)(IX) of the CEA,<sup>9</sup> as modified by joint orders of the Commission and the CFTC.<sup>10</sup>

<sup>8</sup> 15 U.S.C. 78f(h)(3)(J).

<sup>9</sup> 7 U.S.C. 2(a)(1)(D)(i)(IX).

<sup>10</sup> See Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and Shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) and Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

#### 2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.<sup>11</sup> NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>12</sup> including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.<sup>13</sup> NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act<sup>14</sup> and the criteria under section 2(a)(1)(D)(i) of the CEA,<sup>15</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>16</sup> in general, and section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it will prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and protect investors and the public interest.

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

NQLX does not believe that the proposed rule change will result in 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 Proposed Rule Changes Received From Members, Participants, or Others

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

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

The proposed rule changes became effective on March 4, 2004. Within 60 days of the date of effectiveness of the proposed rule changes, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule changes and require that the proposed rule changes be refilled in accordance with the provisions of section 19(b)(1) of the Act.<sup>18</sup>

<sup>11</sup> 15 U.S.C. 78s(b)(7).

<sup>12</sup> P.L. 106–554, 114 Stat. 2763 (2000).

<sup>13</sup> 15 U.S.C. 78f(h)(3)(J).

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

<sup>15</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78s(b)(1). For purposes of calculating the sixty-day abrogation period, 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 changes conflict 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 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-NQLX-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 will also be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2004-02 and should be submitted by April 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49470; File No. SR-OCC-2004-03]

##### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending OCC's Rules To Provide for Use of a Give-Up Service Provider and Revising OCC's Fee Schedule**

March 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 16, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The purpose of the proposed rule change is to provide for OCC's use of a "give-up service provider" that will act as an intermediary in reporting certain futures and futures option transactions to OCC and to amend OCC's fee schedule to offset the costs OCC will incur in utilizing a give-up service provider.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

###### 1. Introduction

The proposed rule change responds to a request by CBOE Futures Exchange, LLC ("CFE") that OCC provide its clearing members with the ability to accept or reject on a trade-by-trade basis trades executed on CFE and given up for the account of a clearing member by another clearing member.

Although the ability to accept or reject give-ups on a trade-by-trade basis is standard in the futures markets, OCC's clearing system is not currently configured to provide these capabilities. In order to make this function available to clearing members that trade or clear trades executed on CFE, OCC has entered into a Master Processing Services Agreement ("Services Agreement") with The Clearing Corporation ("TCC").

As part of the Services Agreement, OCC has agreed to pay TCC certain fees in connection with the services provided by TCC. OCC will pass some of these fees through to CFE pursuant to terms of the Implementation Agreement for Clearing and Settlement Services ("Implementation Agreement"). OCC will pass per-transaction fees charged by TCC through to clearing members in accordance with OCC's fee schedule. To the extent that the revenues generated from such transaction fees do not cover OCC's minimum transaction payment obligations to TCC, CFE will compensate OCC for the shortfall pursuant to the Implementation Agreement.

###### 2. Give-Up Services

Transactions given up by one OCC clearing member to another OCC clearing member are currently governed by OCC's Clearing Member Trade Assignment ("CMTA") processing and CMTA agreements that are standard in the options industry. Under a CMTA agreement, an OCC clearing member ("carrying clearing member") authorizes another clearing member ("executing clearing member") to give up the name of the carrying clearing member with respect to any trade executed on a specific exchange. Unless the CMTA agreement has been revoked, the carrying clearing member is responsible for all trades given up to it by the executing clearing member on that exchange. A carrying clearing member may return positions to the executing clearing member only under the very limited circumstances specified in the CMTA agreement. If one of those

considers the period to commence on March 16, 2004, the date on which NQLX filed Amendment No. 1.

<sup>19</sup> 17 CFR 200.30-3(a)(75).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.