

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) ⁷ of the Act which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest in that it establishes appropriate approval and procedures for Floor employees of members and member organizations who seek to be employed, compensated, or paid gratuities by another member or member organization.

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

The Exchange believes that the proposal does not impose any burden on competition 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

Written comments were neither solicited nor received.

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 Exchange 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 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. All comment letters should refer to File No. SR-NYSE-99-12. 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 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 number SR-NYSE-99-12 and should be submitted by February 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49090; File No. SR-NQLX-2004-01]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by NQLX LLC Relating to Time-Stamping Orders for Block Trades and Exchange for Physical Trades

January 16, 2004.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on January 6, 2004, NQLX 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 NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. On January 5, 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 Act³ ("CEA") in which NQLX indicated that the effective date of the proposed rule change would be January 6, 2004.

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

NQLX proposes to amend NQLX Rules 419 and 420 to explicitly require its members to time-stamp orders when negotiations end (rather than begin) for block trades and exchange for physical trades. Because NQLX's rules already require members to time-stamp orders immediately upon receipt, execution, and any modification or cancellation of the order, NQLX believes that these changes will enhance its ability to monitor its members for timely submission to NQLX for acceptance of proposed block and exchange for physical trades as required by its Rules 419 and 420.

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

* * * * *

Rule 419 Block Trades

(a)-(f) No changes.
(g) Information Recording, Submission, and Dissemination.
(1) For a Block Trade in addition to the requirements of Rules 408(b) and 408(c), a Member or Person Associated with a Member must record on an Order Ticket the identity of the individual arranging the Block Trade and time stamp the Order when negotiation [begins] ends.

(2)-(7) No changes.

Rule 420 Exchange for Physical Trades

(a) No changes
(b) Information Recording, Submission, and Dissemination.
(1) For an Exchange for Physical Trade in addition to the requirements of Rules 408(b) and 408(c), a Member or Person Associated with a Member must record on an Order Ticket the identity of the individual arranging the Exchange for Physical Trade and time stamp the Order when negotiation [begins] ends.

(2)-(7) No changes.

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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,

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

⁷ 15 U.S.C. 78f(b)(5).

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 both its rule regarding block trades (NQLX Rule 419(g)(1)) and its rule regarding exchange for physical trades (NQLX Rule 420(b)(1)) to require its members to time-stamp orders when negotiations end (rather than begin) for proposed block trades and exchange for physical trades. Requiring time-stamping when negotiations end for block trades and exchange for physical trades is in addition to the time-stamping of orders required immediately upon receipt, execution, and any modification or cancellation of the order, which is already required of all orders submitted to NQLX for execution.⁴ NQLX believes that these proposed rule changes will enhance the exchange's ability to monitor its members for timely submission of proposed block trades and exchange for physical trades to NQLX for acceptance as required by NQLX's Rules 419 and 420, respectively.

NQLX also believes that the proposed rule changes are consistent with the requirements, where applicable, under section 6(h)(3)(J) of the Act⁵ and the criteria, where applicable, under section 2(a)(1)(D)(i)(IX) of the CEA,⁶ as modified by joint orders of the Commission and the CFTC.⁷

2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.⁸ NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,⁹ including the requirement that NQLX have audit trails necessary and

appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.¹⁰ NQLX further believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act¹¹ and the criteria under section 2(a)(1)(D)(i) of the CEA,¹² as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule changes are consistent with the provisions of section 6 of the Act,¹³ in general, and section 6(b)(5) of the Act,¹⁴ in particular, in that they will prevent fraudulent and manipulative acts and practices, will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and will 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.

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 changes.

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

The proposed rule changes became effective on January 6, 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 refiled in accordance with the provisions of section 19(b)(1) of the Act.¹⁵

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. All comment letters should refer to File No. SR-NQLX-2004-01. 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-2004-01 and should be submitted by February 13, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49050; File No. SR-PHLX-2003-75]

Self-Regulatory Organizations; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change by the Philadelphia Stock Exchange, Inc.

January 9, 2004.

On November 17, 2003, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend PHLX Rule 1064. Notice of the proposed rule change was published for public comment in the **Federal Register**

⁴ See NQLX Rules 408(b), 419(g)(1), and 420(b)(1).

⁵ 15 U.S.C. 78f(h)(3)(J).

⁶ 7 U.S.C. 2(a)(1)(D)(i)(IX).

⁷ 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).

⁸ 15 U.S.C. 78s(b)(7).

⁹ Pub. L. 106-554, 114 Stat. 2763 (2000).

¹⁰ 15 U.S.C. 78f(h)(3)(J).

¹¹ 15 U.S.C. 78f(h)(3).

¹² 7 U.S.C. 2(a)(1)(D)(i).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(1).

¹⁶ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.