

The proposed rule change also will adopt Commentary .08 to Rule 731 that extends the applicability of the rule to portfolio depositary receipts, index fund shares, and TIRs orders to buy or sell a security where the price is derivatively based upon another security or index of securities.⁸ The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

III. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange are designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.⁹ The proposed rule change permits Amex flexibility in establishing time periods for resolution of DKs and extends the application of the rule to additional types of securities that previously had not been covered by the rule. This flexibility should enable Amex to address issues in its comparison process that may arise from market conditions or from various products trading on Amex. In so doing, Amex should be able to improve its ability to resolve uncompleted trades, which in turn will improve the clearance and settlement of securities trading on Amex. For the reasons set forth above, the Commission believes that the AMEX's rule change is consistent with the exchange's obligations under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-AMEX-2002-36) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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⁸ Orders to buy or sell an option will continue to be covered by Rule 950(f) and the applicable Commentary to Rule 950.

⁹ 15 U.S.C. 78(f).

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47420; File No. SR-NQLX-2003-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC, Relating to Revised Reporting Requirements for Exchange for Physical Trades

February 27, 2003.

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 February 11, 2003 Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "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. NQLX also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications on February 6, 2003 under Section 5c(c) of the Commodity Exchange Act³ ("CEA").⁴

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

NQLX proposes to adopt a change to its Rule 420(b) relating to the reporting, submission, and dissemination of trade information concerning exchange for physical trades.⁵⁻⁷ The proposed change

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

⁴ Telephone conversation between Kathleen Hamm, Senior Vice President of Regulation and Compliance, NQLX, and Ian K. Patel, Attorney, Division of Market Regulation ("Division"), Commission on February 24, 2003.

⁵⁻⁷ An exchange for physical trade occurs between two parties where the first party sells, and the second party buys, the related physical (e.g., the common stock underlying a security futures contract) while simultaneously the first party buys, and the second party sells, an appropriate number of futures contracts, known as the "futures leg" of the transaction. See NQLX Rule 420(a)(2). Exchange for physical trades allow certainty of execution at one place and in one transaction for the two parties to the transaction instead of requiring the parties to execute multiple transactions across several exchanges, which inherently creates risk that one market will move before the entire transaction can be executed. Generally, on futures exchanges, exchange for physical trades are negotiated and effected by parties outside the centralized market, and the exchange reports the futures leg as either transferred, newly created, or offset. Johnson and Hazen, *Commodities Regulation* § 1.03[3] (3d ed. 2002). The CEA and the regulations of the CFTC both recognize exchange for physical trades as properly executed outside the centralized market.

would allow the reporting and dissemination of information related to exchange for physical trades effected by sophisticated and experienced customers (i.e., "wholesale customers") during hours other than trading hours for the futures leg of the transaction on the next trading day. As for exchange for physical trades effected for customers other than those meeting the definition of wholesale customers, there would be no change to the reporting requirements and those transactions would still need to be transacted during trading hours on the exchange and reported as soon as practicable but not longer than 30 minutes after the arranging of the transaction. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

Rule 420 Exchange for Physical Trades

* * * * *

(b) Information Recording, Submission, and Dissemination

(1) No change.
(2) As soon as practicable but no later than (i) 30 minutes after *effecting an Exchange for Physical Trade during trading hours on Market Days* or (ii) 15 minutes after the opening of trading for the Futures Leg on the first Market Day after effecting an Off-Hours Exchange for Physical Trade, the Member—when the transaction is between a Member and a Customer—and the Member selling the Futures Leg—when the transaction is between two Members unless otherwise mutually agreed to by the two Members—must submit through the ATS the following information concerning the Exchange for Physical Trade:

- (i) to (xii) No change.
- (xiii) quantity of the Related Physical, [and]
- (xiv) to (xv) No change.
- (3) No change.
- (4) After sending the confirmation for the Exchange for Physical [t]Trade, NQLX will disseminate through the ATS the following information:
 - (i) to (vi) No change.
 - (5) to (7) No change.

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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 basis for, the proposed rule change, burdens on

Commodity Exchange Act § 5(b)(3), 7 U.S.C. 7a-1 (2000) and CFTC Regulation § 1.38, 17 CFR 1.38; see *Id.*