

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

Simultaneously with this filing, NQLX submitted to and certified with the CFTC, proposed rule changes to NQLX Rules 101(a)(79) and 420(a). These proposed changes would allow members and persons associated with members to effect exchange for physical trades for sophisticated and experienced customers (known as "wholesale customers"⁸) during hours other than trading hours for the futures leg of the transaction.⁹ NQLX states that its general rule provisions on exchange for physical trades (NQLX Rule 420(a)), as well as its proposed changes to those provisions and the related definition of wholesale customers (NQLX Rule 101(a)(79)), do not fall within the categories of changes required to be submitted to the Commission for publication.¹⁰ However, to implement the proposed changes to Rules 101(a)(79) and 420(a), NQLX proposes adopting a change to its Rule 420(b) relating to the reporting, submission, and dissemination of trade information for exchange for physical trades.¹¹⁻¹³

The proposed rule change to NQLX Rule 420(b) would require a member to report trade information on exchange for physical trades effected after the close of trading for wholesale customers within 15 minutes after the opening of trading on the next trading day. As for exchange for physical trades effected for customers other than those meeting the

definition of wholesale customers or effected for any customer during trading hours, 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. The remaining proposed changes to Rule 420(b) correct typographical errors.

2. Statutory Basis

NQLX files this proposed rule change pursuant to Section 19(b)(7) of the Act.¹⁴ NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,¹⁵ including the requirement that trading in a listed security futures contract is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.¹⁶ NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act¹⁷ and the criteria under Section 2(a)(1)(D)(i) of the CEA,¹⁸ 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,¹⁹ in general, and Section 6(b)(5) of the Act,²⁰ in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities 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 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 the Proposed Rule Change 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 Change and Timing for Commission Action

Concurrent with the filing of the proposed rule change with the SEC, NQLX has filed on February 6, 2003 a written certification with the CFTC under Section 5c(c)²¹ of the CEA and CFTC Regulation Part 40.6²² in which NQLX certifies that it believes that its proposed changes to Rule 420 as well as Rule 101(a)(79) comply with the CEA. Proposed changes to Rules 101(a)(79) and 420 are effective on February 7, 2003, the day after their filing with the CFTC.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.²³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts 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 also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. 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 these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-04 and should be submitted by March 28, 2003.

⁸ NQLX Rule 101(a)(79), as amended would revise the definition of wholesale customer to require that a customer receive notification from a Member that the customer is not only qualified to participate in block trades, but is also qualified to participate in exchange for physical trades at times other than during trading hours on market days for the futures leg.

⁹ The rules of other futures exchanges allow exchange for physical trades to be effected after the close of trading and reported shortly after opening of trading the following trading day. See e.g., New York Futures Exchange Rule 303(e)(5)(iii)(2); Coffee, Sugar & Cocoa Exchange Rule 3.06(e)(iii)(2).

¹⁰ 15 U.S.C. 78s(7)(A).

¹¹⁻¹³ NQLX previously submitted its Rule 420(b) to the Commission for publication as part of its rules related to the establishment of audit trails necessary or appropriate to facilitate coordinated market surveillance. Securities Exchange Act Release No. 46774, (November 5, 2002) 67 FR 68895, 68897 (November 13, 2002); see also 15 U.S.C. 78f(h)(3)(J).

¹⁴ 15 U.S.C. 78s(b)(7).

¹⁵ Public Law 106-554, 114 Stat. 2763 (2000).

¹⁶ See Section 6(h)(3)(H) of the Act, 5 U.S.C. 78f(h)(3)(H).

¹⁷ 15 U.S.C. 78f(h)(3).

¹⁸ 7 U.S.C. 2(a)(1)(D)(i).

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 7 U.S.C. 7a-2(c).

²² 17 CFR 38.4.

²³ 15 U.S.C. 78s(b)(1).