

highest closing price reported for the underlying security in any market trading the underlying); provided, however, that NQLX may waive this requirement and open for trading a new delivery month of the Security Futures Contract, if:

(i)–(ii) No change.

(iii) The average daily trading volume in the underlying security (in all markets that trade the underlying) has been at least 109,000 shares or receipts evidencing the underlying security in each of the prior 12 months; and

(iv) The market price per share of or receipts evidencing the underlying security[.];

(A) No change.

(B) Is at least \$3.00 on the day NQLX lists the new delivery month for trading[.];

(7) No change.

(d)–(f) No change.

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

##### 1. Purpose

NQLX proposes to adopt revisions to its current listing standards to clarify the particular listing standards applicable when the underlying securities of a security futures contract are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds. Specifically, the proposed rule change makes two things clear.<sup>7</sup> First, the requirement that the underlying security be held by at least 2,000 holders does not apply when the underlying securities are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds. Second, when the underlying securities are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds, instead of requiring an average daily trading volume of at least 109,000 securities in each of the preceding 12 months, the revised rules would require total trading volume of at least 2.4 million securities in the preceding 12 months. The remaining proposed changes correct typographical errors and add clarifying language to certain provisions of NQLX rules 902 and 903.

NQLX believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act<sup>8</sup> and the criteria under section 2(a)(1)(D)(i) of the

CEA,<sup>9</sup> as modified by joint orders of the Commission and the CFTC, and that its listing standards are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.<sup>10</sup>

##### 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 trading in a listed security futures 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.<sup>13</sup> NQLX further believes that its proposed rule changes comply 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 changes are 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, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### *C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change 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 Change and Timing for Commission Action

Concurrent with the filing of the proposed rule change with the Commission, NQLX has filed a written certification with the CFTC under section 5c(c)<sup>18</sup> of the CEA and CFTC regulation part 38.4<sup>19</sup> in which NQLX certifies that its proposed changes to NQLX rules 902 and 903 comply with the CEA. Changes to proposed NQLX rules 902 and 903 are effective the day after their filing with the CFTC.

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.<sup>20</sup>

### 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](mailto: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. Electronically submitted comments will be posted on the Commission's website (<http://www.sec.gov>). All submissions should refer to File No. SR–NQLX–2003–01 and should be submitted by February 4, 2003.

<sup>7</sup> NQLX notes that a similar proposal has been adopted by OneChicago, LLC, another designated contract market and national securities exchange currently listing security futures products. See Securities Exchange Act Release No. 47114 (December 31, 2002).

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

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

<sup>10</sup> 15 U.S.C. 78f(h)(3)(C).

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

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

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

<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> 7 U.S.C. 7a–2(c).

<sup>19</sup> 17 CFR 38.4.

<sup>20</sup> 15 U.S.C. 78s(b)(1).