

change is consistent with the maintenance listing standards of the Chicago Board Options Exchange, Inc. ("CBOE").<sup>8</sup>

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.<sup>9</sup>

**Rule 902 Initial Listing Standards: Physically-Settled Security Futures Contracts.**

(a) (1)–(2) No change.

(b) Initial Listing Standards—Underlying Securities are Single Securities: To initially list a physically-settled Security Futures Contract with an underlying single security, the single security must:

(1)–(7) No change.

(8) (i) *have a market price per security of at least \$3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) for the previous five consecutive trading days before listing if the underlying security is a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Security"); or*

(ii) *have a market price per security of at least \$7.50 (calculated by the lowest closing price reported in any market on which the underlying security traded) for the majority of trading days during the three calendar months before listing if the underlying security is not a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Uncovered Security"); or*

(iii) *(A) meet the requirement of Rule 903(c), and*

*(B) underlie a securities futures contract that (i) trades on at least one other registered national securities exchange and (ii) has had an average daily trading volume of at least 5,000 contracts during the three calendar months immediately before the date of listing; and*

(9) No change.

(c)–(d) No change.

(e) Initial Listing Standards—Underlying Securities are Restructure Securities: For a Restructure Security

the requirements of Rule 902(b) apply, except that:

(1)–(4) No change.

(5) Restructure Securities Issued in Public Offering or Rights Distribution: To determine whether Rule 902(b)(8) is deemed satisfied for a Restructure Security that is distributed pursuant to a public offering or a rights distribution, NQLX may look back at the market price history of the Original Security if:

(i) the Look-Back Test of Rule

902(e)(3) is satisfied; and

(ii) the Restructure Security

(A) trades "regular way" on an exchange or automatic quotation system for at least five trading days immediately before the date that NQLX selects the Restructure Security as an underlying security for a Security Futures Contract, and

(B) closes trading on each of those five previous trading days, and opens trading on the day of selection, at least at (i) \$3.00 if the Restructure Security is a Covered Security (as defined by Rule 902(b)(8)(i)) or (ii) \$7.50 if the Restructure Security is an Uncovered Security (as defined by Rule 902(b)(8)(ii)).

**Rule 9031 Maintenance Listing Standards: Physically-Settled Security Futures Contracts:**

(a) (1)–(5) No change.

(b) No change.

(c) Maintenance Standards—Underlying Securities are Single Securities Other than Shares of Exchange-Traded Funds, Shares of Registered Closed-End Management Investment Companies, or Trust-Issued Receipts: When the underlying of a physically-settled Security Futures Contract is a single security other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts, to list a new delivery month of the Security Futures Contract, the single security must:

(1)–(5) No change.

(6) [(i)] *have a market price per security of at least \$3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) on the trading day immediately before listing a new delivery month [if the underlying security is a Covered Security (as defined by Rule 902(b)(8)(i)), or] and*

*[(ii) have a market price per security of at least \$5.00 for an Uncovered Security (as defined by Rule 902(b)(8)(ii)) on a majority of the trading days during the past six calendar months (measured by the 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:

(A) the open interest by Customers (on a two-sided basis) equals or exceeds 4,000 contract for all delivery months;

(B) the aggregate market value of the underlying security equals or exceeds \$50 million;

(C) 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

(D) the market price per share of or receipts evidencing the underlying security:

(i) has closed at \$3.00 or above on a majority of trading days during the past six calendar months, as measured by the highest closing price for the underlying security reported in any market that trades the underlying security, and

(ii) is at least \$3.00 on the day NQLX lists the new delivery month for trading;]

(7) No change.

(d)–(f) No change.

**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 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**

NQLX proposes to adopt revisions to its current listing standards, which it believes are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association,<sup>10</sup> because the options listing and maintenance standards of the Amex, CBOE, ISE, and PCX contain similar provisions.<sup>11</sup> NQLX believes that adoption of the current proposal would provide investors with security futures

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

<sup>11</sup> See Securities Exchange Act Release No. 34–47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62). See, e.g., ISE Rule 502(b)(5)(ii); PCX Rule 3.6(a)(4); Interpretations and Policies .01 and .02 to CBOE Rule 5.4; and Commentary .01(4) to Amex Rule 916.

determines it appropriate to add a new series intra-day, NQLX will submit a proposed rule change to the Commission and CFTC to use the price per share of the last reported trade on the primary market on which the underlying security trades at the time NQLX determines to add the new series.

<sup>8</sup> See Interpretations and Policies .01 and .02 to CBOE Rule 5.4. See also Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54599 (October 29, 2001).

<sup>9</sup> NQLX authorized technical corrections to the proposed rule text during a telephone conversion between Kathleen Hamm, Senior Vice President, Regulation and Compliance, NQLX, and Christopher Solgan, Attorney, Division, Commission, on April 8, 2003.