

from interested persons. On June 19, 2003, NQLX filed the proposed rule change 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 June 27, 2003.

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

First, NQLX proposes removing NQLX Rule 903(c)(7) because the provision should have been removed as no longer relevant when previous rule modifications were made and filed with the SEC concerning NQLX's maintenance listing standards for security futures on single securities other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts.⁴ Second, NQLX proposes adding new NQLX Rule 408(e) which would require a member or person associated with a member to timely provide the appropriate clearing account indicator for a trade through NQLX's post trade registration system if the member or person associated with the member fails to provide the appropriate clearing account indicator at the time of order entry.

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

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Rule 408 Submitting Orders

(a)–(d) No change.

(e) *If at the time of Order entry the Member or Person Associated with the Member fails to provide the appropriate Clearing Account Indicator as required by Rules 408(c)(6) and (d), then the Member or Person Associated with the Member must timely provide the appropriate Clearing Account Indicator for the trade through the Trade Registration System.*

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Rule 903 Maintenance Listing Standards: Physically-Settled Security Futures Contracts

(a)–(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) 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[; and].

[(7) to satisfy Rule 903(c)(6)(iv) for a second, consecutive six calendar-month period, the price of the underlying security must be at least \$4.00.]

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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 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 removing NQLX Rule 903(c)(7) from its maintenance listing standards for security futures on single securities other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts. NQLX previously amended Rule 903(c)(6) to allow for the listing of a new delivery month for a security futures product if the underlying securities have reported at least a \$3.00 per share closing price on their primary market on the trading day immediately before the listing of the new delivery month.⁵ When NQLX Rule 903(c)(6) was amended, NQLX Rule 903(c)(7), which was a related provision, should have been removed as no longer applicable or relevant. Therefore, NQLX states that the proposed removal of NQLX Rule 903(c)(7) merely eliminates a provision that no longer serves any purpose, nor makes any sense, because of the

previous amendments made to NQLX Rule 903(c)(6).

In addition, new NQLX Rule 403(e) is intended to make explicit that, if at the time of order entry, an NQLX member or person associated with an NQLX member fails to provide the appropriate clearing account indicator (*e.g.*, the type of clearing account: firm account, customer account, or market maker account) as required by NQLX Rules 408(c)(6) and (d), then the member or person associated with the member must timely provide the appropriate clearing account indicator for the trade through NQLX's trade registration system before the clearing organization accepts and registers the trade. NQLX believes that new NQLX Rule 408(e) will help enhance its trade audit trail and trade processing and clearing by requiring members to ensure that proper clearing account indicators are provided to the clearing organization for executed trades.

NQLX believes that these proposed rule changes are consistent with the requirements under section 6(h)(3) of the Act⁶ and the criteria under section 2(a)(1)(D)(i) of the CEA,⁷ as modified by joint orders of the Commission and the CFTC,⁸ 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.⁹

2. Statutory Basis

NQLX files the proposed rule changes pursuant to section 19(b)(7) of the Act.¹⁰ NQLX believes that the proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,¹¹ 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.¹² NQLX further believes that its proposed rule changes comply with the requirements under section

⁶ 15 U.S.C. 78f(h)(3).

⁷ 7 U.S.C. 2(a)(1)(D)(i).

⁸ See Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (Aug. 20, 2001), and 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).

⁹ 15 U.S.C. 78f(h)(3)(C).

¹⁰ 15 U.S.C. 78s(b)(7).

¹¹ P.L. 106–554, 114 Stat. 2763 (2000).

¹² 15 U.S.C. 78f(h)(3)(H).

³ 7 U.S.C. 7a–2(c).

⁴ See Securities Exchange Act Release No. 47675 (April 14, 2003), 68 FR 19591 (April 21, 2003).

⁵ *Id.*