

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48498; File No. SR-NQLX-2003-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NQLX LLC To Remove Requirement That Members Record the Clearing Account Indicator on Order Tickets

September 17, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on August 28, 2003, NQLX 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 a written certification under section 5c(c) of the Commodity Exchange Act ("CEA")<sup>3</sup> on August 27, 2003.

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

NQLX is proposing changes to NQLX Rule 408 because it has determined that NQLX Rule 408(c)(6)'s requirement that its Members record on order tickets the alpha-code for the relevant "Clearing Account Indicator"<sup>4</sup> is redundant and unnecessary so long as at the time of order entry its Members submit the appropriate Clearing Account Indicator to NQLX's automated trading system along with other required order information. The text of the proposed rule change follows; additions are italicized; deletions are [bracketed].

\* \* \* \* \*

#### Rule 408 Submitting Orders

- (a)-(b) No Change
- (c)(1)-(5) No Change
- [(6) Clearing Account Indicator,]
- [(7) Exchange Contract,
- [(8) delivery or expiration month,
- [(9) quantity,
- [(10) buy or sell,

[(11) price or price limit or range, [(12) put or call and exercise price (if applicable),

[(13) open or close position indicator (if applicable),

[(14) Order instructions from Rule 410 (if applicable),

[(15) Strategy type indicator (if applicable), and

[(16) code indicator for a Cross Transaction, Block Trade, or Exchange for Physical Trade (if applicable).

(d) A Member or Person Associated with a Member must ensure that the information from items (4) through (16) *in Rule 408(c) as well as the appropriate Clearing Account Indicator* [is] are [also] submitted to the ATS for all Orders *at the time of Order entry*.

(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 Rule[s] 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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#### 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 statutory 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 revising specified provisions of NQLX Rule 408 to remove the unnecessary redundancy of requiring its Members to record exchange-designated Clearing Account Indicators on order tickets as well as submitting those same Clearing Account Indicators at the time of order entry to NQLX's automated trading system. NQLX requires Clearing Account Indicators from its Members to facilitate providing its clearing house, The Options Clearing Corporation, with information regarding the appropriate clearing account type (*i.e.*, market maker, firm/proprietary, or customer) for all orders at the time of order entry. Therefore, so long as NQLX Members

submit the appropriate Clearing Account Indicator for orders submitted to NQLX's automated trading system at the time of order entry, the purpose of this rule provision is met. As such, NQLX Rule 408(c)(6)'s current requirement that Members also record Clearing Account Indicators on order tickets is redundant and burdensome because it requires each preparer of an order ticket submitted to NQLX to know NQLX's exchange-designated Clearing Account Indicators, but serves no additional regulatory purpose.

No other substantive changes are proposed to NQLX Rule 408 and Members are still required to record customer account numbers or identifiers and customer type indicators along with other required information on each order ticket. Therefore, with the adoption of these proposed changes, NQLX believes that it will continue to maintain audit trails necessary and appropriate to surveil trading in security futures products in its market and to coordinate the surveillance with other markets as required.

NQLX believes that the proposed rule change is consistent with the requirements, where applicable, under section 6(h)(3)(J) of the Act<sup>5</sup> and the criteria, where applicable, under section 2(a)(1)(D)(i)(IX) of the CEA,<sup>6</sup> as modified by joint orders of the Commission and the CFTC.

##### 2. Statutory Basis

NQLX files this proposed rule change pursuant to section 19(b)(7) of the Act.<sup>7</sup> NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>8</sup> including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.<sup>9</sup> NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act<sup>10</sup> and the criteria under section 2(a)(1)(D)(i) of the CEA,<sup>11</sup> 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,<sup>12</sup> in general, and

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> NQLX Rule 101(a)(15) defines "Clearing Account Indicator" as "the type of account designated by the Clearing Organization." In this context, the type of account means the clearing account type at The Options Clearing Corporation (*i.e.*, market maker, firm/proprietary, or customer).

<sup>5</sup> 15 U.S.C. 78f(h)(3)(J).

<sup>6</sup> 7 U.S.C. 2(a)(1)(D)(i)(IX).

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

<sup>8</sup> Pub. L. 106-554, 114 Stat. 2763 (2000).

<sup>9</sup> See section 6(h)(3)(J) of the Act, 15 U.S.C. 78f(h)(3)(J).

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

<sup>11</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>12</sup> 15 U.S.C. 78f.