

**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49458; File No. SR-NQLX-2004-02)**

**March 23, 2004**

**Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by NQLX LLC to Amend Its Rule 419 Relating to Block Trades**

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 March 4, 2004, NQLX LLC (“NQLX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NQLX. On March 16, 2004, NQLX filed an amendment to the proposed rule changes.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons. On March 3, 2004, NQLX filed the proposed rule changes with the Commodity Futures Trading Commission (“CFTC”), together with a written certification under Section 5c(c) of the Commodity Exchange Act<sup>4</sup> (“CEA”) in which NQLX indicated that the effective date of the proposed rule changes would be March 4, 2004.

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

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

<sup>3</sup> See letter from Robert Ledvora, Executive Vice President and Chief Financial Officer, NQLX, to the Office of Market Supervision, Division of Market Regulation (“Division”), Commission, dated March 16, 2004 (“Amendment No. 1”).

<sup>4</sup> 7 U.S.C. 7a-2(c).

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

NQLX is proposing changes to its Rule 419 to explicitly permit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value<sup>5</sup> derived from that day’s last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price (“VWAP”)<sup>6</sup> of transactions during an agreed upon time segment for that trading day in the underlying security. According to NQLX, these changes will provide a technical means for members to enter block trades during trading hours with a price indicator of whether the price will be the futures settlement price, the last sale price of the underlying security or the fair value of the Security Futures Contract derived from the VWAP of the underlying security.

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

Deleted text is in [brackets].

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**Rule 419 Block Trades<sup>7</sup>**

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<sup>5</sup> The fair value of a security future is the current security price plus the interest rate cost of carry to the future’s expiration minus the value of the expected dividend. Transaction costs make this an inexact number. Therefore, the fair value must be represented as an approximation.

<sup>6</sup> “Volume Weighted Average Price” means the average price of a security over an agreed upon time segment computed by multiplying the price per share of each transaction by the number of shares traded in that transaction, then dividing the sum of these values for all the transactions in the security during the agreed upon time segment by the total number of shares traded during that period.

<sup>7</sup> Pursuant to a telephone conversation between De’Ana Dow, Associate Vice President and Chief Counsel, Futures and Options Regulation, National Association of Securities Dealers and Marisol Rubecindo, Law Clerk, Division, Commission, on March 18, 2004, NQLX amended rule text language to conform with language published in its Rule Book.

(a) – (f) No change

(g) **Information Recording, Submission, and Dissemination**

(1)-(7) No change

(8) For Orders for Block Trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day’s last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price (VWAP) of transactions during an agreed upon time segment for that trading day in the underlying security, the Member for the Initiator must as soon as practicable but no later than 8 minutes after negotiations end submit the Block Trade through the ATS with all the information required by Rule 419 (g)(2) and indicating the price as:

(i) “0.00” for the Daily Settlement Price for the Exchange Contract,

(ii) “0.01” for the fair value of that day’s last sale price for the security underlying the Security Futures Contract,

or

(iii) “0.02” for the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security.

As soon as practicable but no later than 10 minutes after the close of trading for the Exchange Contract, the Member for the Initiator must provide through the ATS the Daily Settlement Price, the fair value of that day's last sale price for the security underlying the Security Futures Contract, or the fair value of the Security Futures Contract derived from the VWAP, in the underlying securities as applicable. Nothing in this Rule 419(g)(8) relieves Members from complying with the provisions of Rules 419(g)(6) and 419(g)(7).

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**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule changes, 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 Changes**

**1. Purpose**

NQLX proposes revising Rule 419 – Block Trades – to permit its members to submit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day's last sale price of the security underlying the

Security Futures Contract or at the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security. NQLX is amending this rule to provide a technical means for members to enter block trades during trading hours with a price indicator. The actual price of the block trade must be submitted as soon as practicable, but not later than 10 minutes after the close of trading for the Exchange Contract.

NQLX believes that the proposed rule changes are consistent with the requirements, where applicable, under Section 6(h)(3)(J) of the Act<sup>8</sup> and the criteria, where applicable, under Section 2(a)(1)(D)(i)(IX) of the CEA,<sup>9</sup> as modified by joint orders of the Commission and the CFTC.<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

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

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

<sup>10</sup> See 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) and Joint Order Granting the Modification of Listing Standards Requirements (American Depositary Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

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

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

requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.<sup>13</sup> NQLX further believes that its proposed rule change complies 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 change is 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, in that it will prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and 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 Proposed Rule Changes 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 Changes and Timing for Commission Action**

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

<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).

The proposed rule changes became effective on March 4, 2004. 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>18</sup>

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes conflict 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, D.C. 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NQLX-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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

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<sup>18</sup> 15 U.S.C. 78s(b)(1). For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on March 16, 2004, the date on which NQLX filed Amendment No. 1.

Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2004-02 and should be submitted by [insert date 21 days from the date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(75).