

“all criminal history record information.”⁹

The proposed rule is also consistent with the laws of the State of New York, where ISE maintains its principal offices. In August 2002, New York State amended its general business law to require fingerprint-based background checks of employees of national securities exchanges who are regularly employed in New York State.¹⁰ The New York law also requires fingerprint-based background checks of non-employees who provide services to the exchange if those individuals have “access to records * * * or other material or secure buildings or secure property, which place the security of such organization at risk.” The proposed rule will facilitate the Exchange’s compliance with New York State law by facilitating the Exchange’s access to criminal history record information maintained by the Federal Bureau of Investigation (“FBI”).

Moreover, fingerprint-based background checks will enhance the Exchange’s ability to adequately screen employees and non-employee service providers to better determine whether there are unacceptable risks associated with granting such persons access to the Exchange’s facilities, records, systems, data and other information. The proposed rule will permit the Exchange to receive arrest-based criminal history record information from the FBI, which includes conviction, sentencing, probation and parole information. Thus, the information obtained through fingerprint-based background checks will provide a more exhaustive and reliable profile of the criminal records of prospective employees and non-employee service providers, and thereby better facilitate risk assessment, than information provided directly by such persons.

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does not impose 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 the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not anticipate soliciting, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-29 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48839; File No. SR-NQLX-2003-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC to Amend Rule 419 To Make the Information Recording and Submission Requirements for Block Trades and Exchange for Physical Trades Consistent

November 25, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-7 under the Act,² notice is hereby given that on November 10, 2003, NQLX, LLC (“NQLX”) filed with the Securities and Exchange Commission (“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. On November 7, 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

⁹ 15 U.S.C. 78q(f)(2).

¹⁰ N.Y. Gen. Bus. Law 359-e (12-a) (McKinney 2003).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

the effective date of the proposed rule change would be November 10, 2003.

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

NQLX proposes to amend NQLX Rule 419 to make the information recording and submission requirements for Block Trades and Exchange for Physical Trades consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades.

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

* * * * *

Rule 419 Block Trades.* * *

(g) Information Recording, Submission, and Dissemination

(1) For a [each] Block Trade[,] *in addition to the requirements of Rules 408(b) and 408(c),* a Member or Person Associated with a Member must [ensure that information is recorded and retained] *record on an Order Ticket [consistent with Rule 408(c)] the identity of the individual arranging the Block Trade and time stamp the Order when negotiation begins.*

(2)—(7) 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 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 419 so that the information recording and submission requirements for Block Trades and Exchange for Physical Trades are consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades. First, amended Rule 419(g) would require members to comply with the requirements of NQLX Rule 408(b), in addition to those of NQLX Rule 408(c), when recording and retaining

information on an Order Ticket for a Block Trade. Second, amended NQLX Rule 419(g) would require members to record on an Order Ticket the identity of the individual arranging the Block Trade and to time stamp the Order when negotiations begin.

NQLX believes that the proposed rule change is consistent with the requirements, where applicable, under Section 6(h)(3)(J) of the Act⁴ and the criteria, where applicable, under Section 2(a)(1)(D)(i)(IX) of the CEA,⁵ as modified by joint orders of the Commission and the CFTC.⁶

2. Statutory Basis

NQLX files the proposed rule change pursuant to Section 19(b)(7) of the Act.⁷ NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,⁸ including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.⁹ NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act¹⁰ and the criteria under Section 2(a)(1)(D)(i) of the CEA,¹¹ 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,¹² in general, and Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities 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 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 of Comments on the Proposed Rule Change 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 Change and Timing for Commission Action

The proposed rule change has become effective on November 10, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.¹⁴

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. 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 will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's Internet Web site (<http://www.sec.gov>). All submissions should refer to File No. SR-NQLX-2003-08 and should be submitted by December 24, 2003.

⁴ 15 U.S.C. 78f(h)(3)(J).

⁵ 7 U.S.C. 2(a)(1)(D)(i)(IX).

⁶ 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 Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

⁷ 15 U.S.C. 78s(b)(7).

⁸ Pub. L. 106-554, 114 Stat. 2763 (2000).

⁹ 15 U.S.C. 78f(h)(3)(J).

¹⁰ 15 U.S.C. 78f(h)(3).

¹¹ 7 U.S.C. 2(a)(1)(D)(i).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48846; File No. SR-NSCC-2003-21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 16, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Rule 59 to NSCC's Rules to establish an information messaging system called the Separately Managed Accounts ("SMA") Service.

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The SMA Service will provide a messaging hub for the communication of information among sponsors of separately managed accounts and the investment managers participating in their programs.³ At year-end 2002, the managed account industry had approximately 2 million accounts with approximately \$398 billion in assets under management. It is estimated to increase to 5.3 million accounts and \$930 billion in assets under management by 2006.⁴

Currently, communication of information among sponsors and investment managers and other participants in the managed account industry is supported by a combination of methods such as multiple proprietary vendor and sponsor applications and platforms supplemented by faxes, emails, and telephone communication. It was the consensus of industry representatives through their participation in the MMI that this current operational infrastructure, which depends upon nonstandard and manual processing over multiple platforms, could not support the projected growth and even at the current levels has resulted in excessive processing costs, delays, and errors.

Accordingly, the MMI commissioned a study of the operational interfaces in the separately managed account industry. This study noted the lack of standardized protocols and processes and centralized connectivity as the major areas of operational concern, and concluded that these inefficiencies could be expected to result in errors with an adverse economic impact. The authors of the study recommended to the MMI that the industry look beyond its current technology and operations

³ Separately managed accounts are generally described as professionally managed individual investment portfolios offered to investors such as high net worth individuals. The investor's assets are managed in separate accounts by a sponsor or its custodian that typically contracts with multiple investment managers to provide a diversified investment strategy for the investor. The investor is generally charged an asset-based fee in lieu of commissions and other fee arrangements. Information about the separately managed account industry is available on the Web site of The Money Market Institute ("MMI") at <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, comprised mostly of portfolio management firms and sponsors of investment advisory and consulting services.

⁴ The industry forecasts were developed by the Financial Research Corporation with the cooperation of the MMI through analysis of data provided by MMI members.

platforms to seek an industry-wide approach that would allow the SMA industry to achieve the type of standardized and centralized processing accomplished by the mutual fund industry over the last twenty years.⁵

In response to the operational issues facing the managed account industry and recognizing the benefits that NSCC's mutual fund services provide to the mutual fund industry, in early 2002 the MMI asked NSCC to explore whether NSCC could provide services with similar operational benefits to the separately managed accounts industry, with the view of increasing operational efficiency and decreasing operational risks inherent in the current processing structure. At the request of the MMI, NSCC was subsequently invited to work with the MMI's Technology/Operations Committee and to work with industry representatives to create business communications standards for sponsor firms and investment managers and to develop a message processing utility that would support the standards when published. The initial standards, addressing new account set up, account termination, and account deposits and withdrawals, were delivered to the industry in late 2002. These standardized data elements are available to all vendors, sponsors, and managers to use in programming their various applications.⁶

At the invitation of the MMI, NSCC initiated the SMA Service project development work to assess the feasibility of offering the SMA Service. A prototype of the SMA Service system was made available for industry testing and feedback in January 2003. On May 21, 2003, DTCC presented the proposed service to MMI's Board of Governors and the presentation was well received. On September 4, 2003, NSCC's Board of Directors approved the proposed rule change.

Pending approval of the Commission, the SMA Service will be available for use by members, fund members, and data services only members. As in the case with all NSCC products, NSCC will allow vendors to build interfaces to

⁵ "Operational Interfaces in the Separately Managed Account Industry," Deloitte & Touche, published by The Money Management Institute, August 2002. See also, "2010: A Managed Account Odyssey: Projections in the Future of the Managed Account Industry," Leonard A. Reinhart and Jay N. Whipple III © 2002 Lockwood Financial Services, Inc., also equating the current operational infrastructure of the managed account industry to that of the mutual fund industry prior to the implementation of NSCC's mutual fund services.

⁶ The standardized data elements are available on the Web site of the MMI at <http://www.moneyinstitute.com> and NSCC at <http://nsc.com>.

¹⁵ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.