

other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 6(b)(5) of the Act.<sup>15</sup>

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the ETFs comprising the ETF basket are based on indices composed of a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to the existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2002-80) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46772; File No. SR-DTC-2002-15]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the FAST Certificates-on-Demand Service

November 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 4, 2002, The Depository Trust Company ("DTC") 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 the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to eliminate the FAST Certificate-on-Demand ("FAST COD") 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, DTC 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. The DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

Currently DTC's FAST COD service allows participants to request for same day availability a physical certificate in the participants' or its nominee's name for issues which are held in DTC's nominee name, Cede & Co., at the transfer agent under DTC's FAST program. After consultation with the largest users of the service, DTC is proposing to eliminate the FAST COD service due to decreasing demand for

the service. Currently there is an average of approximately five FAST COD requests per day. In the place of FAST COD, participants may continue to use the Rush Withdrawals-by-Transfer ("RWT") service<sup>3</sup> or the Deposit/Withdrawal at Custodian ("DWAC") service.<sup>4</sup> RWT allows participants to quickly obtain physical certificates, which can be registered in either the participant's name or its customer's name. Using DWAC, participants can request certificates in client name directly from the transfer agents.

DTC believes that the proposed rule filing is consistent with section 17A of the Act because it will eliminate a little-used service but will retain functionally similar services thereby promoting the prompt and accurate clearance and settlement of securities transactions.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC consulted orally with the largest users of the FAST COD service and circulated an Important Notice to Participants, which invited public comment on this proposal.<sup>5</sup> DTC has received no written comment on the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

<sup>3</sup> For more information about the RWT service, see Securities Exchange Act Release Nos. 30505 (March 20, 1992) [SR-DTC-91-23] (order approving implementation of the RWT service on permanent basis); 27518 (December 7, 1989) (order granting temporary extension of the RWT service); 26960 (June 23, 1989) [SR-DTC-89-11] (order granting approval of the RWT service procedures); 27052 (July 21, 1989) [SR-DTC-89-1] (order granting temporary approval of the RWT service).

<sup>4</sup> For more information about the DWAC service, see Securities Exchange Release No. 30283 (January 23, 1992) [SR-DTC-91-16] (order granting approval of the DWAC service).

<sup>5</sup> Important Notice to Participants #3624 is available through the Commission's Public Reference Room or through DTC.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the DTC.

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR-DTC-2002-15 and should be submitted by December 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46771; File No. SR-NQLX-2002-01]

#### Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change, by Nasdaq Liffe Markets, LLC Relating to Margin Rules for Security Futures

November 5, 2002.

On September 24, 2002, the Nasdaq Liffe Markets, LLC ("NQLX") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to margin rules for security futures products other than options on security futures. The proposed rule change was published for comment in the **Federal Register** on September 30, 2002.<sup>3</sup> The Commission received three comment letters on the proposed rule change.<sup>4</sup> In addition, NQLX submitted a letter in response to the commenters.<sup>5</sup> On November 4, 2002, NQLX filed an amendment to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

#### I. Description of the Proposed Rule Change

##### Introduction

On August 1, 2002, the Commodity Futures Trading Commission ("CFTC") and SEC (collectively, the "Commissions") jointly adopted customer margin requirements for security futures.<sup>7</sup> Under the Commissions' "account specific" approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the

security futures are held (*i.e.*, a futures account or securities account).

##### Proposal

The proposed rule change sets forth margin requirements for security futures traded on NQLX that are held in futures accounts. Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures contracts and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. In addition, the proposed rules do not apply to security futures held in a securities account. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from NQLX's margin rules.

##### Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.<sup>8</sup> In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures.

The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, NQLX permits reduced margin levels for specific offsetting positions held in futures accounts. Specifically, NQLX permits reduced margin levels for the following offsets:

(1) For a long security future and a corresponding short security futures on the same underlying individual stock or narrow-based index, but with a different expiration month, both the initial margin and the maintenance margin are the greater of 5% of the current market value of the long security futures or 5% of the current market value of the short security futures.

(2) For a long (short) basket of security futures (each of which is based on a narrow-based security index that together tracks a broad-based index) held in combination with a short (long) position of the applicable broad-based index future, both the initial and the maintenance margin are 5% of the

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 46548 (September 25, 2002), 67 FR 61361 (SR-NQLX-2002-01).

<sup>4</sup> See letters to Jonathan Katz, Secretary, Commission, from: John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange LLC, dated October 23, 2002 ("Amex Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

<sup>5</sup> Letter from Kathleen M. Hamm, Senior Vice President, Regulation and Compliance, NQLX, to Jonathan G. Katz, Secretary, Commission, dated October 30, 2002 ("NQLX Letter").

<sup>6</sup> See letter from Kathleen M. Hamm, Senior Vice President of Regulation and Compliance, NQLX, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated November 1, 2002 ("Amendment No. 1"). Amendment No. 1 amends proposed Rule 403(e)(1) to provide that a security futures dealer must fulfill its market maker obligation in security futures contracts representing at least 20 percent of the total volume in all security futures contracts traded on NQLX for the preceding calendar quarter. In addition, Amendment No. 1 amends proposed Rule 403(e)(2) to provide that a security futures dealer must fulfill its market maker obligation in security futures contracts representing at least 75 percent of the total trading in security futures contracts on NQLX for the preceding calendar quarter.

<sup>7</sup> Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

<sup>8</sup> Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

<sup>6</sup> 17 CFR 200.30-3(a)(12).