

6(h)(3) of the Act<sup>13</sup> and the criteria under section 2(a)(1)(D)(i) of the CEA,<sup>14</sup> as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule changes are consistent with the provisions of section 6 of the Act,<sup>15</sup> in general, and section 6(b)(5) of the Act,<sup>16</sup> in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 changes 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 changes.

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

The proposed rule change has become effective on June 27, 2003. 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>17</sup>

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

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-05 and should be submitted by August 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48137; File No. SR-NASD-2002-80]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. to Require an Issuer's Audit Committee or Another Independent Body of the Board of Directors to Approve Related Party Transactions**

July 8, 2003.

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> notice is hereby given that on June 11, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 30, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>18</sup> 17 CFR 200.30-3(a)(75).

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

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

<sup>3</sup> See letter from John D. Nachman, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 30, 2002 ("Amendment No. 1").

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

Nasdaq proposes to require an issuer's audit committee or another independent body of the board of directors to approve related party transactions. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### **Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships**

(a)—(g) No change.

(h) Conflicts of Interest.

Each Issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and [shall utilize] *all such transactions must be approved by the company's audit committee or another [comparable] independent body of the board of directors [for the review of potential conflict of interest situations where appropriate]. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404.*

(i)—(l) No change.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### **1. Purpose**

The purpose of the proposed rule change is to expand Nasdaq's conflict of interest rule, Rule 4350(h). This rule currently provides that an issuer must conduct an appropriate review of all related party transactions on an ongoing basis and utilize its audit committee or comparable body of the board of directors for the review of potential conflicts of interest. Nasdaq is proposing to expand this rule by

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

<sup>14</sup> 7 U.S.C. 2(a)(1)(D)(i).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

requiring the audit committee or another independent body of the board of directors to approve, rather than merely review, related party transactions.<sup>4</sup> Of course, all directors that review and approve a related party transaction must not only be independent as specified under Nasdaq rules but also disinterested in the transaction. Nasdaq believes that requiring approval of such transactions will improve investor protection.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>5</sup> in general, and with section 15A(b)(6) of the Act,<sup>6</sup> in particular, in that the proposed rules are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As previously mentioned, the proposed rule change is designed to improve investor protection.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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 the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

Within 35 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 90 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:

A. By order approve such proposed rule change, or

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

<sup>4</sup> For purposes of Rule 4350(h), the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404.

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposal 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 NASD. All submissions should refer to File No. SR-NASD-2002-80 and should be submitted by August 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48141; File No. SR-NSCC-2003-12]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Availability of Trade Data to Members for Listed and OTC Processing**

July 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on June 16, 2003, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on June 24, 2003, amended 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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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 will make technical modifications to NSCC's trade comparison rules and procedures to clarify (1) the format, availability, and content of trade data available to its participants and (2) that NSCC will no longer provide trade comparison processing for New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") equity trades.

### **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.<sup>2</sup>

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

The purpose of the proposed rule change is to make technical changes to NSCC's rules and procedures to conform them to actual practice. NSCC issues transaction information known as "output" to its members in various formats and at different intervals throughout the day. The changes make it clear that the frequency and availability of such information is dependent on the format of the output.

Historically, NSCC's reporting of equity trading activity on behalf of various participants and marketplaces was limited to reporting at the end of the trading processing day, with report output produced to participants and marketplaces in both a print image ("PI") and machine readable output ("MRO") form.

With PI output, data appears as a formatted report with predefined columns of information. PI-formatted information is "reader friendly," includes both activity and total fields, and is usually produced at end-of-day, reflecting the total activity reported by the participant for that processing day.

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