

proposed rule change (SR-NASD-2003-157), as amended by Amendment No. 1 and hereby is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-1468 Filed 1-22-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49094; File No. SR-NSCC-2003-05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Permitting Elimination of All Hard Copies of Important Notices

January 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 14, 2003, 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 amend NSCC's rules and procedures to provide that notices sent in electronic format meet NSCC's notification obligations.

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

NSCC currently distributes notices in a hard copy form via U.S. mail to members outside of the New York area, to the Direct Drop Boxes of each member with a New York presence, and via fax when necessary. The proposed rule change would modify NSCC's Rule 45 to allow NSCC to post notices on its Web site and to have these postings satisfy NSCC's notification obligations. The rule change would require members to access that Web site throughout the day.

NSCC believes that the proposed rule change would facilitate the timely dissemination of information necessary for participation in NSCC and therefore is consistent with the requirements of the Act and the rules and regulations thereunder.

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

NSCC does not believe that the proposed rule change would 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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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:

- (a) By order approve the proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-05. 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 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 will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at www.nsc.com/legal/. All submissions should refer to the File No. SR-NSCC-2003-05 and should be submitted by February 13, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49093; File No. SR-NYSE-99-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 350 ("Compensation or Gratuities to Employees of Others")

January 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

³ 17 CFR 200.30-3(a)(12).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 26, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 by the Exchange. On February 5, 2003, The Exchange filed Amendment No. 1 to the proposed rule change.³ On December 17, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, including Amendments No. 1 and No. 2, from interested persons.

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

The proposed rule change consists of amendments to Rule 350 ("Compensation or Gratuities to Employees of Others") that would rescind the requirement that certain designated compensation arrangements involving Floor employees receive the prior written approval of the Exchange. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Compensation or Gratuities to Employees of Others

Rule 350. (a) No member, allied member, member organization or employee thereof shall:

(1) Employ or compensate any person for services rendered, or

(2) Give any gratuity in excess of \$50 per person per year to any principal, officer, or employee of the Exchange or its subsidiaries, or

(3) Give any gratuity in excess of \$100 per person per year to any principal, officer or employee of another member or member organization, financial institution, news or financial information media, or non-member broker or dealer in securities,

commodities, or money instruments, except as specified below or with the prior written consent of the (employer. [and in the case of Floor employees the prior written consent of the employer and the Exchange.]

A gift of any kind is considered a gratuity.

(b) Compensation for services rendered of up to \$200 per person per year may be paid with the prior written consent of the employer [, but not of the Exchange,] to operations employees of other members or member organizations of the following types:

(1) A telephone clerk on the NYSE Floor who provides courtesy telephone relief to a member's clerk, or handles such a member's orders over the member's own wire.

(2) Employees who make out commission bills or prepare Exchange reports for members.

(3) A specialist's Floor clerk who maintains records for a specialist other than his employer, or provides courtesy relief to another specialist's clerk.

(4) When the service rendered by the employee exceeds that which the primary employer is obligated to furnish,

(a) A telephone clerk who handles a member's orders transmitted over the wire of the clerk's employer.

(b) A telephone clerk who handles orders directed by the clerk's employer to the member who receives them.

A Floor employee who receives compensation for services rendered in excess of \$200 per year from another member or member organization (not the primary employer), must become employed by and registered with such member or member organization in accordance with Rule 35.

(c) Records shall be retained for at least three years of all such gratuities and compensation for inspection by Exchange examiners.

Supplementary Material:

.10 When close relatives work in different financial organizations, gifts arising from the family relationship are not considered subject to Rule 350.

Employment of or gratuities to personnel working on the Floor of other exchanges and approved by the other exchange under a rule similar to Rule 350 are not considered subject to Rule 350.

Requests for Exchange consent under Section a(1) of this *Rule for the employment or compensation of Exchange employees by members or member organizations* should be [addressed as follows, and] sent to the *Exchange's Human Resources Department* at least 10 days in advance of the proposed date of employment[.].

[(A) Exchange employees—Attention: Personnel Department

(B) Floor employees of other members or member organizations—Attention: Market Operations Division.

Consents under (a)(1) or (b), above, shall include name and position of proposed employee, amount of proposed compensation, name and title of person giving consent for employer, and nature of proposed duties of employee. Approvals under a(1) will not be given in December.

Requests for exceptions to Section a(2) above will be considered only under very unusual circumstances.]

In general, approval to employ an Exchange employee outside of the hours of regular employment by the Exchange will be limited to employment of a routine or clerical nature. Approval will not be given for the employment of an Exchange employee in an advisory or professional capacity with reference to Exchange operations or policies.

When the Exchange has granted permission for part-time employment of an employee of the Exchange [or of another member or member organization] no approval is required for a subsequent gratuity or bonus to such person provided it is in proportion to gratuities given full-time employees of the employing organization.

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

In its filing with the Commission, the Exchange 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 Exchange 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

Background

Rule 350 (sometimes referred to as the "Rule") designates limits and sets conditions on the payment of compensation and gratuities by members, allied members, member organizations or employees thereof to principals, officers, or employees of other members or member organizations. For instance, the Rule states that any payment exceeding the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 3, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange provided additional details regarding the purpose of the proposed rule change.

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 16, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange again provided further details regarding the purpose of the proposed rule change, and modified Rule 350.

Rule's designated limits requires the prior written consent of the employer and, in the case of Floor employees,⁵ the prior written consent of both the employer and the Exchange.

Specifically, the prior written consent of the Exchange is currently required when a member, allied member, member organization, or employee thereof employs or compensates (in excess of \$200 per annum) or gives a gratuity (in excess of \$100 per annum) to a Floor employee of another member or member organization. The proposed amendments to Rule 350 would rescind the provision requiring Floor employees to obtain the prior written consent of the Exchange for such payments. The prior written consent of the employer would still be required. The amendments would eliminate a provision that, in the context of the Exchange's current regulatory framework, has become outdated, impracticable, and does not serve a regulatory purpose. As discussed below, the regulatory concerns underlying Rule 350's current procedures that require NYSE approval of Floor employee compensation are effectively addressed by the requirements set forth under Rule 35 ("Floor Employees To Be Registered") and the Exchange's ongoing examination program.

In addition, Rule 350(b) states that compensation for services rendered of up to \$200 per person per year may be paid with the prior written consent of the employer, but not the Exchange, to operations employees of other members or member organizations for specified functions (e.g., courtesy telephone relief, preparation of commission billing or reports).

When a member or member organization compensates a Floor employee of another member organization in excess of \$200 per year, the Exchange believes that such compensation should be made only in the context of an employee/employer relationship. Compensation in excess of \$200 is not *de minimis* and implies that a person is regularly providing services in support of the member's or member organization's business.

Accordingly, the proposed rule change includes a provision that a Floor employee of a member or member organization (the primary employer)

⁵ The term "Floor employees" generally includes Floor clerks and other operational personnel (e.g., trading assistants, front-line specialist clerks, and others, such as messengers, who perform clerical and ministerial functions). The dual employment/compensation arrangements addressed by Rule 350 typically involve Floor employees providing support services (such as phone coverage and billing preparation) to members and member organizations other than their primary employer.

who receives compensation for services rendered in excess of \$200 per year from another member or member organization must become employed by and registered with such member or member organization (who becomes the secondary employer) pursuant to Rule 35.

Proposal

The proposed amendments to Rule 350 would rescind the provision that requires the prior written consent of the Exchange for payment of compensation or gratuities above the Rule's prescribed levels by a member, allied member, member organization or employee thereof, to Floor employees of another member or member organization. Compliance with this provision currently involves the submittal to the Exchange of "Form 350" by the Floor employee's primary employer. The Form requires a brief outline of the payment arrangement.

The amendments are proposed in consideration of the primary purpose of Rule 350, which is to protect against potential conflicts of interest or other improprieties that might arise in connection with the payment of compensation or gratuities to certain persons. The Exchange believes that determining the propriety of employee compensation and gratuities is a function more appropriately, reasonably, and effectively exercised by the primary member or member organization employer. The employer, by virtue of its direct knowledge of the employee, the employee's duties, and the business relationship with the other individual or entity, is in the best position to evaluate the initial and ongoing propriety of such arrangements. Accordingly, Rule 350 will continue to require that the primary employer approve, in writing, the employment and compensation of Floor employees by any other member or member organization.⁶

Also, if compensation to any Floor employee exceeds \$200 per year (as specified in paragraph (b) of the Rule), the Exchange views the arrangement as one of employment. As such, it would trigger certain requirements of Rule 35, including registration of the Floor employee with the secondary employer. The secondary employer is obligated to thoroughly investigate the person's background and submit a Form U-4,

⁶ This is consistent with the NYSE Rule 346(b) requirement that no member, allied member or employee of a member or member organization be employed or compensated by another person "without making a written request and receiving the prior written consent of his member or member organization employee * * *."

fingerprint card and an application for an Exchange-issued identification card to the Exchange's Qualifications and Registrations Department. The Exchange approves the registration of each Floor employee if the qualifying requirements have been met, *i.e.*, training and satisfaction of appropriate examinations. Upon employment, the secondary employer then becomes responsible for supervision of all activities of the Floor employee performed on its behalf.

Further, as previously noted, the proposed rescission would eliminate a provision that has become outdated. Given that an average of over eight hundred Form 350 requests have been received each year over the past three years, it is not practicable for the Exchange to investigate and approve each such request. Due to the sheer number of applications and the historical absence of regulatory "red flags" or actual problems found as a result of such review/approval process, the Exchange believes that it would be more effective to monitor and regulate, on an ongoing basis through routine examinations, the supervisory procedures and recordkeeping responsibilities associated with the arrangements.

In this regard, the Exchange has strengthened its examination program to regulate Floor employees, members, and member organizations. The program has been enhanced and updated to place greater emphasis on dual employment arrangements. Included in the examination scope is a chapter that requires examiners to test that an employer's dual employment approval letters are on file, that compensation is properly recorded on the employer's books and records, that certain records (including Form U-4 and fingerprints) have been filed, and that effective supervisory procedures are in place.

The proposed rule change will not alter the categories of persons covered by Rule 350, nor will it affect the requirement that members and member organizations retain a record of all gratuities and compensation paid for a minimum of three years.

Based on the foregoing, the Exchange believes that the proposed rule change will not compromise the effectiveness of Rule 350.

The Exchange is also proposing to amend Supplementary Material .10 to Rule 350 to clarify that approval requests for dual employment/compensation arrangements involving Exchange employees should be sent to the Exchange's Human Resources Department at least 10 days in advance of the proposed employment date.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5)⁷ of the Act which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest in that it establishes appropriate approval and procedures for Floor employees of members and member organizations who seek to be employed, compensated, or paid gratuities by another member or member organization.

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

The Exchange believes that the proposal does not impose any burden on competition 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 Exchange 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.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NYSE-99-12. 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 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 Exchange. All submissions should refer to file number SR-NYSE-99-12 and should be submitted by February 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49090; File No. SR-NQLX-2004-01]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by NQLX LLC Relating to Time-Stamping Orders for Block Trades and Exchange for Physical Trades

January 16, 2004.

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 January 6, 2004, NQLX LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes 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 changes from interested persons. On January 5, 2004, NQLX filed the proposed rule changes with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c)

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

of the Commodity Exchange Act³ ("CEA") in which NQLX indicated that the effective date of the proposed rule change would be January 6, 2004.

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

NQLX proposes to amend NQLX Rules 419 and 420 to explicitly require its members to time-stamp orders when negotiations end (rather than begin) for block trades and exchange for physical trades. Because NQLX's rules already require members to time-stamp orders immediately upon receipt, execution, and any modification or cancellation of the order, NQLX believes that these changes will enhance its ability to monitor its members for timely submission to NQLX for acceptance of proposed block and exchange for physical trades as required by its Rules 419 and 420.

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

* * * * *

Rule 419 Block Trades

- (a)-(f) No changes.
- (g) Information Recording, Submission, and Dissemination.
 - (1) For a Block Trade in addition to the requirements of Rules 408(b) and 408(c), a Member or Person Associated with a Member must record on an Order Ticket the identity of the individual arranging the Block Trade and time stamp the Order when negotiation [begins] ends.

(2)-(7) No changes.

Rule 420 Exchange for Physical Trades

- (a) No changes
- (b) Information Recording, Submission, and Dissemination.
 - (1) For an Exchange for Physical Trade in addition to the requirements of Rules 408(b) and 408(c), a Member or Person Associated with a Member must record on an Order Ticket the identity of the individual arranging the Exchange for Physical Trade and time stamp the Order when negotiation [begins] ends.

(2)-(7) No changes.

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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,

³ 7 U.S.C. 7a-2(c).

⁷ 15 U.S.C. 78f(b)(5).