

on already existing debt with a similar maturity. The balance of the funds needed by PS&S to complete the Transaction will be obtained from a capital contribution from KeySpan to KeySpan Energy to KSI to KeySpan Business Solutions to PS&S.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48142; File No. SR-CBOE-2002-36]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Closing-Only Transactions

July 9, 2003.

On June 27, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("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. On April 2, 2003, the CBOE filed Amendment No. 1 that entirely replaced the original rule filing.<sup>3</sup> On April 21, 2003, the Exchange's rule proposal was published for comment in the **Federal Register**, as amended.<sup>4</sup> No comments letters were received on the proposal. This order approves the proposed rule change.

CBOE proposes to amend Exchange Rule 5.4 regarding its procedures for limiting transactions in options that have closing-only restrictions. Currently, the Exchange has the authority to prohibit an opening purchase transaction in an option, but must seek approval through the Office of the Chairman. The proposal would change this procedure by granting two floor officials, in consultation with a designated senior executive officer of the Exchange, the authority to prohibit opening purchase transactions for equity options whenever the Exchange has determined that an underlying

security previously approved for Exchange option transactions does not meet the current requirements for continuance of such approval. In addition, the proposal would permit certain specific types of opening transactions by members to accommodate the closing transactions of other market participants. In particular, the Exchange proposes to permit: (i) Opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) (Crossing Orders).

The Exchange also proposes similar procedural changes to Interpretations and Policies .05 (to lift restrictions on opening transactions if the underlying security, which previously did not meet the Exchange's listing standards, again meets the Exchange's listing standards), .08 (for securities consisting of shares or other securities that represent interests in registered investment companies organized as open-end management investment companies, unit investment trusts or similar entities) and .09 (for Trust Issued Receipts).

Finally, the CBOE proposes to add Interpretation and Policy .11 under CBOE Rule 8.51 regarding the implementation of non-firm mode for options that are restricted to closing-only transactions. When a series or class of option is in non-firm mode, CBOE Rule 8.51(e)(4) requires the DPM and floor officials to review and reaffirm the condition of the market every 30 minutes. The proposal would provide an exception to this requirement in situations when opening transactions have been prohibited in an option and the underlying security has been delisted, and is subsequently traded on the OTC Bulletin Board, Pink Sheets or a similar trading system. Under these circumstances, the Exchange would monitor the activity or condition of the market and the DPM and floor officials would not be required to review and reaffirm the market conditions causing the non-firm mode designation every 30 minutes.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular,

the requirements of section 6 and the rules and regulations thereunder.<sup>6</sup> Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that these procedural changes should promote efficiency regarding transactions in options that have closing-only restrictions. Further, the Commission believes that the proposal should provide a more efficient process for monitoring market conditions in options classes for which opening transactions have been restricted when the underlying security is delisted.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-CBOE-2002-36) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-17923 Filed 7-15-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48148; File No. SR-NQLX-2003-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC to Remove Rule 903(c)(7) From the Maintenance Listing Standards and To Add Rule 408(e) Relating to the Clearing Account Indicator

July 9, 2003.

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 June 20, 2003, Nasdaq Liffe Markets, 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 the NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes

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

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

<sup>3</sup> See Letter from Andrew Spiwak, Director Legal Division and Chief Enforcement Attorney, CBOE, to John Roeser, Special Counsel, Division of Market Regulation, Commission, dated April 1, 2003.

<sup>4</sup> See Securities Exchange Act Release No. 47659 (April 10, 2003), 68 FR 19588.

<sup>5</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

from interested persons. On June 19, 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 Act<sup>3</sup> ("CEA") in which NQLX indicated that the effective date of the proposed rule change would be June 27, 2003.

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

First, NQLX proposes removing NQLX Rule 903(c)(7) because the provision should have been removed as no longer relevant when previous rule modifications were made and filed with the SEC concerning NQLX's maintenance listing standards for security futures on single securities other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts.<sup>4</sup> Second, NQLX proposes adding new NQLX Rule 408(e) which would require a member or person associated with a member to timely provide the appropriate clearing account indicator for a trade through NQLX's post trade registration system if the member or person associated with the member fails to provide the appropriate clearing account indicator at the time of order entry.

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

\* \* \* \* \*

#### Rule 408 Submitting Orders

(a)-(d) No change.

(e) *If at the time of Order entry the Member or Person Associated with the Member fails to provide the appropriate Clearing Account Indicator as required by Rules 408(c)(6) and (d), then the Member or Person Associated with the Member must timely provide the appropriate Clearing Account Indicator for the trade through the Trade Registration System.*

\* \* \* \* \*

#### Rule 903 Maintenance Listing Standards: Physically-Settled Security Futures Contracts

(a)-(b) No change.

(c) Maintenance Standards-Underlying Securities are Single Securities Other than Shares of Exchange-Traded Funds, Shares of Registered Closed-End Management Investment Companies, or Trust-Issued

Receipts: When the underlying of a physically-settled Security Futures Contract is a single security other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts, to list a new delivery month of the Security Futures Contract, the single security must:

(1)-(5) No change.

(6) have a market price per security of at least \$3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) on the trading day immediately before listing a new delivery month[; and].

[(7) to satisfy Rule 903(c)(6)(iv) for a second, consecutive six calendar-month period, the price of the underlying security must be at least \$4.00.]

\* \* \* \* \*

### 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 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 removing NQLX Rule 903(c)(7) from its maintenance listing standards for security futures on single securities other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts. NQLX previously amended Rule 903(c)(6) to allow for the listing of a new delivery month for a security futures product if the underlying securities have reported at least a \$3.00 per share closing price on their primary market on the trading day immediately before the listing of the new delivery month.<sup>5</sup> When NQLX Rule 903(c)(6) was amended, NQLX Rule 903(c)(7), which was a related provision, should have been removed as no longer applicable or relevant. Therefore, NQLX states that the proposed removal of NQLX Rule 903(c)(7) merely eliminates a provision that no longer serves any purpose, nor makes any sense, because of the

previous amendments made to NQLX Rule 903(c)(6).

In addition, new NQLX Rule 403(e) is intended to make explicit that, if at the time of order entry, an NQLX member or person associated with an NQLX member fails to provide the appropriate clearing account indicator (*e.g.*, the type of clearing account: firm account, customer account, or market maker account) as required by NQLX Rules 408(c)(6) and (d), then the member or person associated with the member must timely provide the appropriate clearing account indicator for the trade through NQLX's trade registration system before the clearing organization accepts and registers the trade. NQLX believes that new NQLX Rule 408(e) will help enhance its trade audit trail and trade processing and clearing by requiring members to ensure that proper clearing account indicators are provided to the clearing organization for executed trades.

NQLX believes that these proposed rule changes are consistent with the requirements under section 6(h)(3) of the Act<sup>6</sup> and the criteria under section 2(a)(1)(D)(i) of the CEA,<sup>7</sup> as modified by joint orders of the Commission and the CFTC,<sup>8</sup> and that its listing standards are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.<sup>9</sup>

##### 2. Statutory Basis

NQLX files the proposed rule changes pursuant to section 19(b)(7) of the Act.<sup>10</sup> NQLX believes that the proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>11</sup> including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.<sup>12</sup> NQLX further believes that its proposed rule changes comply with the requirements under section

<sup>6</sup> 15 U.S.C. 78f(h)(3).

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

<sup>8</sup> See Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (Aug. 20, 2001), and 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).

<sup>9</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>10</sup> 15 U.S.C. 78s(b)(7).

<sup>11</sup> P.L. 106-554, 114 Stat. 2763 (2000).

<sup>12</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> See Securities Exchange Act Release No. 47675 (April 14, 2003), 68 FR 19591 (April 21, 2003).

<sup>5</sup> *Id.*

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](mailto: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.*

[FR Doc. 03-17924 Filed 7-15-03; 8:45 am]

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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).