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**Stuart A. Sirkin,**

*Director, Corporate Policy and Research  
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Corporation.*

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10230, New Executive Office Building,  
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**Chuck Mierzwa,**

*Clearance Officer.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47419; File No. SR-AMEX-  
2002-36]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

February 27, 2003.

#### I. Introduction

On April 22, 2002, American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-AMEX-2002-36 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 4, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The resolution of uncompared trades (sometimes referred to as "DKs") has gone through substantial revision as the nature of trade comparison has changed. In 1966, standardized forms were adopted for the timely and efficient resolution of DKs. The primary responsibility for DK resolution at that time was entrusted to floor members.<sup>3</sup> In 1978, the time limit for replying to a DK notice was set at 3:45 p.m. on trade date plus three business days ("T+3") or prior to 10 a.m. on trade date plus five business days ("T+5") if a specialist or independent member was involved. Upon a change in the opening to 9:30 a.m. in 1985, members were then required to reply to a DK notice involving a specialist or independent member prior to 9:30 a.m. on T+5.

A result of, among other things, the Commission's 1987 Market Break

Report<sup>4</sup> was a major initiative to shorten the comparison process. One development was the implementation in 1990 of Amex's Intra-Day Comparison system ("IDC").<sup>5</sup> In 1990, Amex also implemented Rule 719, Comparison of Exchange Transactions, which required that any transactions effected on Amex be compared or otherwise closed out by Amex's close of business on the business day following the day of the contract.<sup>6</sup> Amex adopted further rule changes in 1991 to formalize the operational procedures for full implementation of Amex's electronic equity trade comparison facility.<sup>7</sup> Among the new rules adopted in 1991 was Rule 731, Resolution of Uncompared Transactions, that expressly required that member organizations resolve uncompared trades no later than 3 p.m. on T+1 or 3:30 p.m. on T+1 if an agent was involved.

Because of the inherent risks to the settlement process from uncompared trades, Amex believes it should have the flexibility to change the time periods for the resolution of DKs. For example, market conditions and systemic changes may require Amex to implement different cut-off time periods for the resolution of DKs depending on the particular product, such as stocks, bonds, exchange-traded funds ("ETFs"), or trust-issued receipts ("TIRs"). Accordingly Amex proposes to amend Rule 731 to allow Amex to establish DK resolution time periods for equities, bond, ETFs, and TIRs as appropriate.

Specifically, the proposed rule change will amend Rule 731 by providing Amex flexibility in determining (1) cut-off times and dates for member organizations to make any necessary additions, deletions, or changes to their DK data and (2) cut-off times for resolution and acceptance of DKs remaining uncompared in the system.

<sup>4</sup> Commission, Division of Market Regulation, The October 1987 Market Break (February 1988).

<sup>5</sup> Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 (June 7, 1990), [SR-Amex-90-01] (order approving IDC for post-trade processing of transactions in equity securities).

<sup>6</sup> Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (April 5, 1990), [SR-Amex-89-05] (order permanently approving rule requiring regular way trades be compared or closed out by close of business on T+1). In 1994, the Commission approved Amex's proposed rule change which required trade date submission of comparison data. Exchange Act Release No. 34298 (July 1, 1994), 59 FR 35397 (July 11, 1994), [SR-Amex-94-13]. Today Rule 719(a) requires members and member organizations to submit comparison data to their clearing firm for any transaction executed on Amex within two hours of the trade.

<sup>7</sup> Exchange Act Release No. 29157 (May 2, 1991), 56 FR 21510 (May 9, 1991), [SR-Amex-90-16] (order approving rule detailing mechanics of resolving uncompared equity trades through IDC).

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

(1) *Collection title:* Gross Earnings Report.

(2) *Form(s) submitted:* BA-11.

(3) *OMB Number:* 3220-0132.

(4) *Expiration date of current OMB clearance:* 04/30/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 516.

(8) *Total annual responses:* 516.

(9) *Total annual reporting hours:* 237.

(10) *Collection description:* Section 7(c)(2) of the Railroad Retirement Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information is used in determining the amount which would place the OASDHI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room

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

<sup>2</sup> Securities Exchange Act Release No. 46916, (November 26, 2002), 67 FR 72241 (December 4, 2002).

<sup>3</sup> A separate rule for uncompared options trades, Rule 970, was adopted when options commenced trading at the Amex in 1975. Rule 970 sets forth the procedures for settling uncompared options trades through the Rejected Option Transaction Notice.

The proposed rule change also will adopt Commentary .08 to Rule 731 that extends the applicability of the rule to portfolio depository receipts, index fund shares, and TIRs orders to buy or sell a security where the price is derivatively based upon another security or index of securities.<sup>8</sup> The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

### III. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange are designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.<sup>9</sup> The proposed rule change permits Amex flexibility in establishing time periods for resolution of DKs and extends the application of the rule to additional types of securities that previously had not been covered by the rule. This flexibility should enable Amex to address issues in its comparison process that may arise from market conditions or from various products trading on Amex. In so doing, Amex should be able to improve its ability to resolve uncompleted trades, which in turn will improve the clearance and settlement of securities trading on Amex. For the reasons set forth above, the Commission believes that the AMEX's rule change is consistent with the exchange's obligations under the Act.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-AMEX-2002-36) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>8</sup> Orders to buy or sell an option will continue to be covered by Rule 950(f) and the applicable Commentary to Rule 950.

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47420; File No. SR-NQLX-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC, Relating to Revised Reporting Requirements for Exchange for Physical Trades

February 27, 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 February 11, 2003 Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "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. NQLX also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications on February 6, 2003 under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> ("CEA").<sup>4</sup>

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

NQLX proposes to adopt a change to its Rule 420(b) relating to the reporting, submission, and dissemination of trade information concerning exchange for physical trades.<sup>5-7</sup> The proposed change

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

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

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

<sup>4</sup> Telephone conversation between Kathleen Hamm, Senior Vice President of Regulation and Compliance, NQLX, and Ian K. Patel, Attorney, Division of Market Regulation ("Division"), Commission on February 24, 2003.

<sup>5-7</sup> An exchange for physical trade occurs between two parties where the first party sells, and the second party buys, the related physical (e.g., the common stock underlying a security futures contract) while simultaneously the first party buys, and the second party sells, an appropriate number of futures contracts, known as the "futures leg" of the transaction. See NQLX Rule 420(a)(2). Exchange for physical trades allow certainty of execution at one place and in one transaction for the two parties to the transaction instead of requiring the parties to execute multiple transactions across several exchanges, which inherently creates risk that one market will move before the entire transaction can be executed. Generally, on futures exchanges, exchange for physical trades are negotiated and effected by parties outside the centralized market, and the exchange reports the futures leg as either transferred, newly created, or offset. Johnson and Hazen, *Commodities Regulation* § 1.03[3] (3d ed. 2002). The CEA and the regulations of the CFTC both recognize exchange for physical trades as properly executed outside the centralized market.

would allow the reporting and dissemination of information related to exchange for physical trades effected by sophisticated and experienced customers (i.e., "wholesale customers") during hours other than trading hours for the futures leg of the transaction on the next trading day. As for exchange for physical trades effected for customers other than those meeting the definition of wholesale customers, there would be no change to the reporting requirements and those transactions would still need to be transacted during trading hours on the exchange and reported as soon as practicable but not longer than 30 minutes after the arranging of the transaction. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

Rule 420 Exchange for Physical Trades

\* \* \* \* \*

(b) Information Recording, Submission, and Dissemination

(1) No change.

(2) As soon as practicable but no later than (i) 30 minutes after *effecting* an Exchange for Physical Trade *during trading hours on Market Days* or (ii) 15 minutes after the opening of trading for the Futures Leg on the first Market Day after effecting an Off-Hours Exchange for Physical Trade, the Member—when the transaction is between a Member and a Customer—and the Member selling the Futures Leg—when the transaction is between two Members unless otherwise mutually agreed to by the two Members—must submit through the ATS the following information concerning the Exchange for Physical Trade:

(i) to (xii) No change.

(xiii) quantity of the Related Physical, [and]

(xiv) to (xv) No change.

(3) No change.

(4) After sending the confirmation for the Exchange for Physical [t]Trade, NQLX will disseminate through the ATS the following information:

(i) to (vi) No change.

(5) to (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 basis for, the proposed rule change, burdens on

Commodity Exchange Act § 5(b)(3), 7 U.S.C. 7a-1 (2000) and CFTC Regulation § 1.38, 17 CFR 1.38; see *Id.*