

rule to which they would have been entitled had the rule been in effect upon their original notification of the bid price deficiency.⁹ Accordingly, issuers would be eligible for extended compliance periods in circumstances where they meet the terms of the new rule. Those issuers that do not meet the eligibility requirements under the new rule would be afforded an opportunity to present a definitive plan to demonstrate compliance with the bid price requirement or eligibility for the new compliance periods, and panels could determine to grant exceptions in order for such issuers to effectuate such plans. In addition, such issuers would be permitted to complete any pending compliance period that was extended pursuant to the rule in effect when the compliance period began.¹⁰ However, in no event shall a SmallCap Market issuer be afforded a period that exceeds two years from the date of the original bid price deficiency notification, absent extraordinary circumstances.¹¹ All time periods under the new rule would run concurrent with the prior rule, from the date of the original bid price deficiency notification.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act¹² in

⁹ Nasdaq has represented that, during the pendency of this rule proposal, panels have afforded issuers exceptions consistent with the proposal as filed at the time pursuant to NASD Rule 4810(b). All pending exceptions will be modified in accord with this new rule and this implementation proposal.

¹⁰ For example, a SmallCap Market issuer that is currently in the final 90-day compliance period would be eligible to complete this 90-day compliance period, notwithstanding the fact that such period would be eliminated under the proposed rule. At the conclusion of the 90-day compliance period, the issuer would be afforded the final compliance period under the proposed rule up to its next shareholder meeting, provided it satisfied all requirements of the new rule. That is, it must satisfy all initial listing criteria, commit to seek shareholder approval at its next shareholder meeting, but in no event later than two years from the original bid price notification (nine months from the expiration of the 90-day period), and to promptly thereafter effect the reverse stock split to come into compliance with the bid price requirement.

¹¹ NASD Rule 4810(b) provides that Nasdaq may grant exceptions to its listing rules. As noted above, Nasdaq would be unwilling to exercise this discretion for SmallCap issuers beyond two years from the date of the original bid price deficiency notification, absent "extraordinary circumstances." Nasdaq has stated that adverse financial developments affecting the issuer would not support a finding of "extraordinary circumstances." Rather, the term "extraordinary circumstances" is intended to refer to a *force majeure* event that makes it impossible for the issuer to avail itself of the due process afforded by the Nasdaq listing rules. See e-mail from Sara Bloom, Nasdaq, to Michael Gaw, Commission, dated October 2, 2003.

¹² 15 U.S.C. 78o-3(b)(6).

that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing this rule change to allow issuers additional time to comply with the bid price requirements if they demonstrate compliance with heightened listing standards. Under the proposed rule change, issuers meeting heightened standards would have additional time to execute business and compliance plans, thereby, in Nasdaq's view, minimizing disruption to investors and providing greater transparency and consistency.

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

Nasdaq does not believe that the proposed rule change, as amended, would 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.

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, 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-2003-44 and should be submitted by October 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48583; File No. SR-OC-2003-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Amend Its Policy Regarding Block Trades, Pre-Execution Discussions and Cross Trades

October 1, 2003.

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 September 12, 2003 OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On September 11, 2003, OneChicago filed a written certification under Section 5c(c) of the Commodity Exchange Act ("CEA")³ with the Commodity Futures Trading Commission ("CFTC").

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

OneChicago is proposing to amend its policy regarding block trades, pre-execution discussions and cross trades. The text of the proposed rule change

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

appears below. New text is in *italics*; deleted text is in [brackets].

* * * * *

OneChicago Policies:

Block Trades, *Pre-Execution Discussions* and Cross Trades

Block Trades [Policy]

Pursuant to OneChicago Rule 417[(a)(i)(B)], the Exchange permits *eligible contract participants*, See Rule 417(a), to execute block trades [to be executed] away from the public auction market in privately negotiated transactions for a minimum of 500 contracts per transaction.

Each firm executing a side of a block trade must have at least one designated person pre-authorized to report block trades. Only OneChicago member firms with a clearing relationship at The Options Clearing Corporation or the Chicago Mercantile Exchange Clearing Division will be allowed to report a block trade.

The seller is obligated to call OneChicago Operations Management ("OOM") without delay after the trade is negotiated to notify the Exchange of the basic terms of the trade, including the contract, price, quantity and contra-party information. *If the transaction is a spread or combination, such as when one party is rolling a position into the next contract month,¹ the seller of the month closest to expiration is responsible for reporting the entire transaction.* OOM will provide the caller a Trade Identification ("Trade ID") for the block trade and report both sides of the trade to the OneChicago trade engine. The trade engine will then relay the block trade terms to the Chicago Board Options Exchange Financial Network ("CFN"), which serves as the OneChicago price distribution mechanism, and [to]OneChicago's matched trade database. After reporting the trade to OOM, the buyer and seller must each complete and transmit the prescribed Block Trade Reporting form via facsimile or e-mail to the OOM Help Desk. Both sides must include the Trade ID given by the OOM Help Desk to the seller at the time of his call. It is the responsibility of the buying and selling firms to effect any subsequent allocations or necessary updates to non-critical matching fields utilizing their chosen post-trade processing system.

To protect market integrity during the negotiation and reporting period, any party with knowledge of the pending

block trade is prohibited from entering offsetting orders in the specific or any related OneChicago product for the benefit of the account or accounts related to a party to the block trade until the block trade has been reported to and disseminated by CFN. Additionally, no party with knowledge of the pending block trade report is allowed to exercise discretion by withholding (or placing) orders for any account that would have (or would not have) been placed given knowledge of the pending block trade until the block trade has been reported to and disseminated by the CFN price distribution mechanism. Parties subject to the jurisdiction of a member or an affiliate of the Intermarket Surveillance Group ("ISG") are further prohibited from submitting related offsetting orders on OneChicago if they utilize block trade reporting facilities of any other ISG participant exchange until such trades have been disseminated to the marketplace via the standard public reporting mechanism for that exchange. OneChicago considers busting block trades to be a serious matter and may deny a bust request based on the factors surrounding the request, including but not limited to the market impact of the original report, the amount of variation between the block trade price and the market price at the time of the report and the length of time transpiring since the block trade was reported to the public. Fees will be levied for busting a block trade.

Any attempt to circumvent this policy or misrepresent a transaction as a block trade will be forwarded to the appropriate party for investigation.

Pre-Execution Discussions

In accordance with OneChicago Rule 614, the Exchange permits Members and Access Persons to engage in pre-execution discussions pursuant to which one party may agree in advance to take the opposite side of the other party's order for a transaction to be executed on the Exchange, on the following conditions:

1. *Customers of each such party must consent to allow pre-execution discussions with other market participants;*

2. *Any Member or Access Person who is solicited to participate in a OneChicago transaction through pre-execution discussions shall not (i) disclose to any other party the details of such discussions or (ii) enter an order or quote through the Exchange to take advantage of information conveyed during such discussions unless such Member or Access Person has agreed during the pre-execution discussions to participate in the transaction in*

accordance with this policy and the order or quote is entered to implement that agreement; and

3. *Except for block trades conducted pursuant to Rule 417 and exchange of future for physical transactions conducted pursuant to Rule 416, a period of four seconds shall elapse between entering the first order or quote and entering the second order for the opposite side. The order or quote initially entered may be filled or lifted by a third party during the four-second waiting period rather than consummating the transaction with the intended party as contemplated by the pre-execution discussions.*

Cross Trades

[Pursuant to]*In accordance with OneChicago Rules 409 and 610, a Member [of the Exchange]may cross orders, provided that the Member [exposes] enters one side of the trade [(buy or sell) to OneChicago's central order book for a minimum of](which shall be the Customer's side in the event that the Member or its affiliate is taking the other side) into OneChicago's trading system at least four seconds before entering the order for the opposite side.*

* * * * *

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

OneChicago 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

OneChicago is proposing to amend its current policy regarding block trades and cross trades and to add a new provision that explicitly permits pre-execution discussions. The substantive changes in the proposed rule change are the following: To amend the reporting requirements for block trades to require the seller of the front month of a block spread or combination transaction to report the entire transaction; to explicitly permit OneChicago members and access persons to enter into pre-execution discussions with other market participants when certain conditions are

¹ For purposes of this policy, the total quantity of the legs of a spread or a combination must meet the 500 minimum contracts requirement.

met; and to clarify that OneChicago members entering into cross trades in which the member or affiliate of the member is taking the opposite side of a customer order must expose the customer side of the trade on the OneChicago trading system for at least four seconds.

OneChicago's block trade policy currently requires the seller of the block trade to call OneChicago Operations Management ("OOM") to report the block transaction. Under the proposed rule change, if a block trade were a spread or a combination, the seller of the month closest to expiration would be required to report the entire transaction. For example, if the block were comprised of 250 Sep'03 Microsoft contracts and 250 Dec'03 Microsoft contracts, then the seller of the Sep'03 Microsoft contracts would report the entire block transaction to OOM, both the Sep'03 Microsoft contracts and the Dec'03 Microsoft contracts. In addition, the proposed rule change clarifies that the total quantity of the legs of a spread or combination must meet the 500 minimum contracts requirement.

Furthermore, the proposed rule change would add a new provision regarding pre-execution discussions. This provision would explicitly permit OneChicago members and access persons⁴ to engage in pre-execution discussions pursuant to which one party may agree in advance to take the opposite side of the other party's order if the following conditions are met:

1. Customers of each party must consent to allow pre-execution discussions with other market participants;
2. Any OneChicago member or access person who is solicited to participate in a OneChicago transaction through pre-execution discussions shall not: (i) Disclose to any other party the details of such discussions or (ii) enter an order or quote through the Exchange to take advantage of information conveyed during such discussions, unless such member or access person has agreed during the pre-execution discussions to participate in the transaction in accordance with this policy, and the order or quote is entered to implement that agreement; and
3. Except for block trades conducted pursuant to OneChicago Rule 417 and exchange of future for physical transactions conducted pursuant to OneChicago Rule 416, a period of four

seconds must elapse between entering the first order or quote and entering the second order for the opposite side. The order or quote initially entered may be filled or lifted by a third party during the four-second waiting period rather than consummating the transaction with the intended party as contemplated by the pre-execution discussion.

The proposed rule change would also amend the provision relating to cross trades to clarify that if a member is taking the other side of its customer's order, the customer side of the order must be entered into the OneChicago trading system for at least four seconds before the member may take the opposite side.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁵ in that it is reasonably designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The proposed rule change is also designed to protect investors and the public interest by requiring certain conditions to be met in order for a member or access person to enter into pre-execution discussions with other market participants. The proposed cross trade amendments are also designed to protect investors and the public interest by requiring that the customer side of a cross trade be entered into OneChicago's trading system for at least four seconds before members may take the other side of the customer's order.

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

OneChicago does not believe that the proposed rule change will have a negative impact on competition.

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

Comments on OneChicago's proposed rule change have not been solicited, and none have been received.

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

The proposed rule change has become effective on September 12, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in

accordance with the provisions of Section 19(b)(1) of the Act.⁶

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 OneChicago. All submissions should refer to File No. SR-OC-2003-07 and should be submitted by October 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3546]

Commonwealth of Virginia (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 1, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through October 1, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is

⁴ Under OneChicago Rule 101, an access person means any person, other than a clearing member or Exchange member or related party of either, who has been given access to the OneChicago System through a OneChicago workstation by a clearing member.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(1).

⁷ 17 CFR 200.30-3(a)(75).