

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47114; File No. SR-OC-2002-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products

December 31, 2002.

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 November 7, 2002, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II below, which Items have been prepared by OneChicago. On December 11, 2002, OneChicago filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications under Section 5c(c) of the Commodity Exchange Act ("CEA")³ on November 6 and 7, 2002.

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

OneChicago is proposing to adopt rules on listing standards for security futures contracts ("Eligibility and Maintenance Criteria for Security Futures Products") to comply with the requirements under Section 6(h)(3) of the Act⁴ and the criteria under Section 2(a)(1)(D)(i) of the CEA.⁵ The OneChicago Listing Standards are, for the most part, substantially identical to the sample listing standards (the "Sample Listing Standards") included in Staff Legal Bulletin No. 15 ("SLB 15"),⁶ except that the OneChicago Listing Standards:

- Reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC with respect to shares of exchange-traded funds, trust-issued receipts, shares of registered closed-end

management investment companies, and American Depositary Receipts ("ADRs")⁷ and

- Establish an approximately equal dollar-weighting methodology for physically settled futures based on narrow-based security indices (such indices are referred to hereafter as "NBIs"), which (i) Requires the number of each component security to be rounded up or down to the nearest multiple of 100 shares or receipts in the course of the initial index composition and any subsequent rebalancing, (ii) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by OneChicago's ability to rebalance indices on an interim basis if it so elects, and (iii) ensures that outstanding contracts will not be affected by any rebalancing.

In connection with the adoption of the OneChicago Listing Standards, OneChicago is proposing the following rule changes, which are referenced in Item II.A.1.b below, from the version of the OneChicago Rulebook filed as part of OneChicago's notice registration with the Commission on Form 1-N:⁸

- An amendment to its Rule 213 (the "Information Sharing Rule"), to add the following text after the first sentence: "The Chief Executive Officer, or his or her delegate, is authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement.";

- An amendment to its Rule 603 (the "Market Manipulation Rule"), to (i) remove the reference to market demoralization from the heading and (ii) replace the reference to "upsetting the equilibrium of the market in any Contract" with the words "generating unnecessary volatility";

- An amendment to its Rule 605 (the "Sales Practice Rule"), to provide that each Clearing Member, Exchange Member (including its Related Parties) and Access Person shall comply with any and all sales practice rules from time to time promulgated by the

National Futures Association ("NFA") (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the National Association of Securities Dealers, Inc. ("NASD") (in the case of any other Clearing Member, Exchange Member or Access Person) with respect to security futures.

- An amendment to its Rule 610 (the "Trading Ahead Rule") to remove the requirement that a customer's consent under such rule be in writing and indicated on each relevant order; and

- An amendment to its Rule 611 (the "Trading Against Rule"), to remove the requirement that a customer's consent under such rule be in writing and given or renewed within 12 months of the transaction at issue.

OneChicago is also filing herewith proposed Rules 403, 415, 419, 501, 601, 602, 604, 612 and 613, which remain unchanged from the Rulebook filed with the Commission as part of OneChicago's notice registration on Form 1-N.⁹ OneChicago Rule 515, while also referenced in Item II.A.1.b below, is not filed in this proposed rule change because it was the subject of a separate filing by OneChicago on Form 19b-4, and was approved by the Commission on November 7, 2002.¹⁰

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 statutory basis for, the proposed rules, 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

Section 6(h)(3) of the Act¹¹ sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

⁴ 15 U.S.C. 78f(h)(3).

⁵ 7 U.S.C. 2(a)(1)(D)(i).

⁶ SEC, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) [available at <http://sec.gov>].

⁷ See 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) and Joint Order Granting the Modification of Listing Standards Requirements (American Depositary Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

⁸ See Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10-133).

⁹ See Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10-133).

¹⁰ See Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR-OC-2002-01).

¹¹ 15 U.S.C. 78f(h)(3).

exchange¹² and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.¹³

a. OneChicago Listing Standards

According to OneChicago, Commission staff published SLB 15, including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or security indices), to provide guidance as to how an exchange can comply with the foregoing requirements, but noted that different listing standards could also be consistent with the Act.

OneChicago believes that the Sample Listing Standards, as modified by the order relating to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies,¹⁴ constitute a useful and appropriate model to be used in developing initial listing and maintenance standards for security futures products. The OneChicago Listing Standards therefore generally follow the Sample Listing Standards (as so modified), subject to the additional modifications relating to physically settled futures based on NBIs described under Item I. above. The additional modifications are (i) a function of OneChicago's providing for physical settlement of futures contracts based on NBIs, and accordingly, are limited in application to such physically settled contracts, and (ii) designed to enhance the usefulness and effectiveness of futures on NBIs in connection with hedging, arbitrage and other investment strategies.

Unlike options on security indices currently listed on national securities exchanges, all NBI futures to be listed on OneChicago are expected to be physically settled. OneChicago believes that physical settlement will effectively reduce the basis risk related to trading in these products and lead to tighter bid-ask spreads, thereby limiting the potential for market manipulation. OneChicago believes that its decision in favor of physical settlement therefore furthers the statutory objective of avoiding price manipulation of security futures products and their underlying securities.¹⁵ Physical settlement, however, makes it impracticable to have NBIs consisting of component securities in increments that are smaller than 100

shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding is a necessary step in the initial index composition and any subsequent rebalancing.

If the composition of NBIs were subject to frequent or retroactive changes as a result of index rebalancings, OneChicago believes that NBI futures would lose their potential as particularly useful and effective tools in the implementation of hedging, arbitrage and other investment strategies.

The Sample Listing Standards contemplate at least quarterly rebalancings of equal dollar-weighted indices. The OneChicago Listing Standards modify this requirement by providing that an approximately equal dollar-weighted NBI underlying a physically settled security futures product is to be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. OneChicago believes that this test adequately balances the potential adverse consequences of too frequent changes in the composition of any NBI with the objective that an NBI should be, and remain, representative of the industry segment to which it relates. OneChicago will have the ability to rebalance any NBI on an interim basis should this become necessary as a result of exceptional changes in the relative values of the component securities. As OneChicago plans to list only contracts expiring on the next two quarterly expiration dates (based on the quarterly cycle of March, June, September and December) and the nearest two serial monthly expiration dates that are not quarterly expiration dates, OneChicago will be able to phase in contracts based on a rebalanced NBI, and thereby replace contracts with open interest based on the previous NBI composition, within a short period of time.

OneChicago believes it is critical, however, that investors with open positions in contracts based on a particular NBI be able to rely on the number of shares or receipts evidencing each component security remaining unchanged for purposes of those contracts. Accordingly, the OneChicago Listing Standards clarify that outstanding contracts will not be affected by any rebalancing.

Unlike the Sample Listing Standards (and the listing standards for options on which they are based), exchange rules and other requirements applicable to a

variety of financial instruments based on "narrowly-based" security indices or baskets contemplate modifications to a pure equal dollar-weighted composition methodology and/or do not require automatic periodic rebalancings. For example, OneChicago believes that the rules of the American Stock Exchange ("Amex") for portfolio depositary receipts¹⁶ and index fund shares¹⁷ expressly permit a "modified equal-dollar weighting methodology" and do not appear to provide for rebalancing. Similarly, no rebalancing is required for the component securities represented by any series of trust-issued receipts traded on Amex.¹⁸ Further, OneChicago notes that the offering documents for the "Holding Company Depositary Receipts (HOLDERS)" developed by Merrill Lynch & Co., Inc., another exchange-listed instrument designed to enable investors to indirectly gain exposure to equity securities of multiple issuers through a single investment, specify that the underlying trust assets will not change during the (indefinite) term of the trust unless one of several narrowly defined "reconstitution events" occurs. In this connection, OneChicago notes that single-security futures based on at least some of the aforementioned instruments are permissible under the relief granted by the Commission and the CFTC¹⁹ with respect to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies.

The contents of the OneChicago Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed. Finally, OneChicago believes that it is also worth noting that, despite the differences between the OneChicago Listing Standards and the Sample Listing Standards, hypothetical indices following one or the other methodology have been shown to be highly correlated.

b. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act²⁰ contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how OneChicago will comply with it,

¹⁶ See Amex Rule 1000, in particular Commentary .03 thereto.

¹⁷ See Amex Rule 1000A, in particular Commentary .02 thereto.

¹⁸ See Amex Rule 1202, in particular Commentary .01 thereto.

¹⁹ See *supra* note 7.

²⁰ 15 U.S.C. 78f(h)(3).

¹² 15 U.S.C. 78f(h)(3)(C).

¹³ 15 U.S.C. 78f(h)(3)(H).

¹⁴ See *supra* note 7.

¹⁵ See 15 U.S.C. 78f(h)(3)(H).

whether by particular provisions in the OneChicago Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act²¹ requires that any security underlying a security future be registered pursuant to Section 12 of the Act.²² This requirement is addressed by sections I.A.(ii), II.A.(i), III.A.(ii)(b) and IV.A.(ii)(a) of the OneChicago Listing Standards.

Clause (B) of Section 6(h)(3) of the Act²³ requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. All security futures products initially proposed to be traded on OneChicago will be physically settled. OneChicago has entered into arrangements with both The Options Clearing Corporation (“OCC”) and the clearinghouse of the Chicago Mercantile Exchange Inc. (“CME”), both of which are registered clearing agencies, relating to the clearing of security futures products. By virtue of the CME clearinghouse being an associated clearinghouse of OCC, and OCC having in place arrangements with the National Securities Clearing Corporation for the delivery of securities underlying physically settled security futures products, OneChicago believes that the payment and delivery of the securities underlying OneChicago’s security futures products in accordance with the statutory requirements should be ensured.

Clause (C) of Section 6(h)(3) of the Act²⁴ provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.²⁵ For the reasons discussed under Item II.A.1. above, notwithstanding specified differences between the Sample Listing Standards and the OneChicago Listing Standards, OneChicago believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act²⁶ requires that each security future be based on common stock or such other equity securities as the Commission and the CFTC jointly determine appropriate.

This requirement is addressed by sections I.A.(i), III.A.(ii)(c) and IV.A.(ii)(b) of the OneChicago Listing Standards.

Clause (E) of Section 6(h)(3) of the Act²⁷ requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to Section 6(h)(7) of the Act,²⁸ the foregoing requirement is deferred until the “compliance date” (as defined therein). OneChicago expects that both OCC and the CME clearinghouse will have in place procedures complying with the requirements of clause (E) after such “compliance date.”

Clause (F) of Section 6(h)(3) of the Act²⁹ requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act³⁰ effect transactions in a security futures product. This requirement is addressed by the Sales Practice Rule. As amended, the Sales Practice Rule requires all security futures intermediaries entering into transactions on OneChicago to comply with the applicable sales practice rules from time to time promulgated by the NFA (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the NASD (in the case of any other Clearing Member, Exchange Member or Access Person), both of which are national securities associations.

Clause (G) of Section 6(h)(3) of the Act³¹ requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA³² and the rules and regulations thereunder or the provisions of Section 11(a) of the Act³³ and the rules and regulations thereunder. Security futures intermediaries trading on OneChicago will be subject to the aforementioned statutory and regulatory prohibitions against dual trading by virtue of OneChicago Rule 604 previously included in Exhibit A–5 to OneChicago’s Form 1–N, filed with the Commission on August 20, 2002,³⁴ which requires such intermediaries to

comply with all applicable law.

OneChicago Rules 610 through 613 contain customary provisions relating to the priority of customers’ orders, trading against customers’ orders, withholding orders and disclosing orders, consistent with Regulations §§ 155.2 through 155.4 under the CEA.³⁵ The amendments reflected in Rules 610 and 611 as filed herewith reflect the fact that the customer consents referred to therein are not generally required to be in writing or renewed. OneChicago notes, however, that the prohibition of dual trading in security futures products as set forth in Regulation § 41.27³⁶ adopted pursuant to Section 4j(a) of the CEA³⁷ by its terms only applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined algorithm. Since those conditions do not exist on OneChicago, OneChicago has no specific rule prohibiting dual trading.

Clause (H) of Section 6(h)(3) of the Act³⁸ provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. As discussed in Item II.A.1. above, the eligibility and maintenance criteria for security futures products contained in the OneChicago Listing Standards have been designed to ensure that the products that will be listed on OneChicago and the underlying securities will not be readily susceptible to price manipulation. In addition, Rule 603 in the OneChicago Rulebook, as amended by this filing, prohibits market manipulation (including generating unnecessary volatility or creating a condition where prices do not or will not reflect fair market values). The amendments reflected in Rule 603 as filed herewith were designed to avoid the use of terms or concepts that are not germane to futures markets. OneChicago Rules 415(b) and 419 implement the requirements contained in Rule 6h-1, under the Act³⁹ relating to settlement and regulatory halts with respect to security futures products.

²¹ 15 U.S.C. 78f(h)(3)(A).

²² 15 U.S.C. 78l.

²³ 15 U.S.C. 78f(h)(3)(B).

²⁴ 15 U.S.C. 78f(h)(3)(C).

²⁵ 15 U.S.C. 78o–3(a).

²⁶ 15 U.S.C. 78f(h)(3)(D).

²⁷ 15 U.S.C. 78f(h)(3)(E).

²⁸ 15 U.S.C. 78f(h)(7).

²⁹ 15 U.S.C. 78f(h)(3)(F).

³⁰ 15 U.S.C. 78o–3(a).

³¹ 15 U.S.C. 78f(h)(3)(G).

³² 7 U.S.C. 4j.

³³ 15 U.S.C. 78k(a).

³⁴ See *supra* note 8.

³⁵ 17 CFR 155.2–155.4.

³⁶ 17 CFR 41.27.

³⁷ 7 U.S.C. 4j(a).

³⁸ 15 U.S.C. 78f(h)(3)(H).

³⁹ 17 CFR 240.6h–1.

Clause (I) of Section 6(h)(3) of the Act⁴⁰ requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The relevant provisions are OneChicago Rules 601, 602 and 603, which prohibit fraudulent acts, fictitious transactions and market manipulation, respectively. OneChicago notes that it is an affiliate member of the Intermarket Surveillance Group (“ISG”) and has executed an affiliate agreement, an agreement to share market surveillance and regulatory information and an addendum to the foregoing agreements with the other ISG members. The Information Sharing Rule permits OneChicago to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators. To the extent permitted by any such agreement, OneChicago’s Chief Executive Officer, or his or her designee, will be authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement. Additional provisions related to coordinated surveillance are contained in sections I.A.(ix)(a), III.A(ii)(g) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (J) of Section 6(h)(3) of the Act⁴¹ requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The audit trail capability provided by CBOE*direct*, the trade matching engine utilized by OneChicago, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on OneChicago. This applies to orders entered through CBOE*direct* terminals as well as to orders routed to CBOE*direct* through CME’s Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct* or Globex®), terms of the order, order type, instrument and contract month, price, quantity, account type, account

designation, user code and clearing firm.

OneChicago’s electronic audit trail will consist of data recorded by CBOE*direct* and Globex®, and OneChicago will have full access to all such data. Information logged by CBOE*direct*, including in respect of orders received through CBOE*direct* terminals, will be archived and provided to OneChicago each day. Orders received through Globex® will be archived and maintained at CME. Together these data sets will enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either Chicago Board Options Exchange, Inc (“CBOE”) or CME systems, and therefore will not be recorded electronically by CBOE*direct* and Globex® at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped and include the account designation, date and other required information (*i.e.*, order terms, order type, instrument and contract month, price and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member and Access Person must keep all books and records as required to be kept by it pursuant to the CEA, CFTC regulations, the Act, regulations under the Act and the Rules of OneChicago. OneChicago Rule 501 also requires that such books and records be made available to OneChicago upon request. Current CFTC regulations require books and records to be maintained for a period of five years.

Block trades will be entered in CBOE*direct* by OneChicago’s operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to OneChicago. Generally, the same

procedures apply to exchange of future for physical (“EFP”) transactions, except that no verbal report is required for such transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE’s or CME’s systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the procedures specified in the preceding paragraph.

Clause (K) of Section 6(h)(3) of the Act⁴² requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. OneChicago Rule 419 provides for trading in a security future to be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Clause (L) of Section 6(h)(3) of the Act⁴³ requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.⁴⁴ OneChicago believes that its proposed Rule 515 regarding customer margin is consistent with the requirements of the Act.⁴⁵

For the reasons described above, OneChicago submits that the OneChicago Listing Standards and the proposed changes to the Information Sharing Rule, the Market Manipulation Rule, the Sales Practice Rule, the Trading Ahead Rule, the Trading Against Rule and the other proposed OneChicago rules filed herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.⁴⁶

2. Statutory Basis

One Chicago has filed these proposed rules pursuant to Section 19(b)(7) of the Act.⁴⁷ OneChicago believes that the OneChicago Listing Standards are authorized by, and consistent with, Section 6(b)(5)⁴⁸ of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to

⁴² 15 U.S.C. 78f(h)(3)(K).

⁴³ 15 U.S.C. 78f(h)(3)(L).

⁴⁴ 15 U.S.C. 78g(c)(2)(B).

⁴⁵ The Commission notes that OneChicago’s Rule 515 regarding customer margin was approved on November 7, 2002. Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR–OC–2002–01). See *supra* note 9.

⁴⁶ 15 U.S.C. 78f(h)(3).

⁴⁷ 15 U.S.C. 78s(b)(7).

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁰ 15 U.S.C. 78f(h)(3)(I).

⁴¹ 15 U.S.C. 78f(h)(3)(J).

promote just and equitable principles of trade.

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

OneChicago does not believe that the OneChicago Listing Standards will have an impact on competition because (i) It can be expected that other self-regulatory organizations that will list security futures products will adopt substantially similar listing standards and (ii) any concerns about possible anti-competitive effects should be evaluated in light of the standards applicable to other financial instruments based on "narrowly based" security indices or baskets, which are consistent with the OneChicago Listing Standards. In addition, OneChicago does not believe that the proposed amendment to the Information Sharing Rule will have an impact on competition because such amendment deals with procedural aspects of sharing information and is not substantive. Similarly, OneChicago does not believe that the proposed amendment to the Sales Practice Rule will have an impact on competition because it is designed to reflect the fact that members of OneChicago that are registered with the NFA will be subject to the sales practice rules of such organization rather than the sales practice rules of the NASD. Finally, OneChicago does not believe that the proposed amendments to the Market Manipulation Rule, the Trading Ahead Rule or the Trading Against Rule or the other proposed rules will have an impact on competition because such amendments constitute non-substantive changes to reflect market practice in the areas to which they relate.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

Comments on the OneChicago Listing Standards have not been solicited.

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

Pursuant to Section 19(b)(7)(B) of the Act,⁴⁹ the proposed rule change, as filed with the Commission on November 7, 2002, became effective on November 8, 2002. Amendment No. 1 to the proposed rule change became effective on December 11, 2002. 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.⁵⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict 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 rules that are filed with the Commission, and all written communications relating to the proposed rules 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 will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (<http://www.sec.gov>).

All submissions should refer to File No. SR-OC-2002-04 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-272 Filed 1-6-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47109; File No. SR-Phlx-2002-78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Increase the Transaction Charge for Off-Floor Broker-Dealer Orders Delivered via AUTOM and Executed via AUTO-X

December 30, 2002.

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

("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 16, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to 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 Phlx. 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 Phlx proposes to amend its schedule of dues, fees and charges to increase the off-floor broker-dealer equity option transaction charge from \$.35 per contract to \$.45 per contract for orders delivered through the Phlx Automated Options Market ("AUTOM") System, and automatically executed by the Exchange's Automatic Execution System ("AUTO-X").³ The \$.45 per contract transaction charge applicable to off-floor broker-dealer orders entered via AUTOM and executed via AUTO-X will apply to transactions in equity options only.⁴ The option transaction charge applicable to off-floor broker-dealer orders not executed by AUTO-X remains at \$.35 per contract. The Exchange intends to implement this fee on transactions settling on or after January 2, 2003.

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 Phlx 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

⁴ This fee will be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

⁴⁹ 15 U.S.C. 78s(b)(7)(B).

⁵⁰ 15 U.S.C. 78s(b)(1).

⁵¹ 17 CFR 200.30-3(a)(75).