

rule to which they would have been entitled had the rule been in effect upon their original notification of the bid price deficiency.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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 Act<sup>12</sup> in

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.<sup>13</sup>

**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"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> 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")<sup>3</sup> 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

<sup>13</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.

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