

SR-Phlx-2003-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-78 and should be submitted by January 9, 2004.

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. 34-48923; File No. SR-OC-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Adopt OneChicago Rule 616 Relating to "Chinese Walls"

December 12, 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 December 8, 2003, OneChicago, LLC ("OneChicago" or "Exchange") 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 OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading

Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act³ on December 5, 2003, which stated that the effective date of the proposed rule change is December 8, 2003.

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

OneChicago proposes to add new OneChicago Rule 616, attached hereto as Exhibit 4, to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities described below which may result in inadvertent cross trades without violating OneChicago Rule 604, provided that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with the Rule. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

Rule 616. Safe Harbor for Inadvertent Cross Trades

(a) An Entity acting as a market maker for any Exchange product (an "Exchange Market Maker") may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.

(b) Definitions: For purposes of this rule, (1) "Other Business Activities" means:

(A) conducting an investment or banking or public securities business;

(B) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or

(C) entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.

(2) "Chinese Wall" means an organizational structure that satisfies each of the following conditions:

(A) The market-making activities are conducted in a location physically

separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.

(B) Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.

(C) Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:

(i) the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity's responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and

(ii) the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the "Risk Exposure Supervisor") may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:

(a) enter orders into the OneChicago System or make trading decisions for either the Entity's market-making account or proprietary account;

(b) provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor

(c) provide a person performing the market-making function with information regarding the firm's pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.

(3) An "Entity" means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.

(c) An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b)

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).