

of this Rule and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to the transactions of the Entity and its affiliates;

(4) A commitment to take appropriate disciplinary action against any person violating this Rule or the Entity's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and an acknowledgement that the Exchange may take appropriate disciplinary action, including (without limitation) reallocation of any or all Contracts in which it serves as a market maker, in the event of such a violation;

(5) Whether the Entity or an affiliate of the Entity intends to clear the Entity's proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used in a way that would compromise the Entity's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Entity or the affiliate to clear for unaffiliated third parties; and

(6) An acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of the CEA, the Commission's Regulations, the Exchange Act, the rules thereunder or the Rules of the Exchange.

(d) An Exchange Market Maker cannot avail itself of this Rule until it has received written confirmation from the Exchange that the organizational structure and the compliance and audit procedures described in the statement submitted by such Exchange Market Maker in accordance with paragraph (c) above comply with this Rule.

(e) Subparagraph (c)(5) permits an Entity or an affiliate of the Entity to clear the Entity's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. Such procedures must provide that any information pertaining to market maker positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under

this Rule to have access to such information or to other employees in senior management positions, including common management as described in clause (b)(2)(C)(i) of this Rule, who are involved in exercising managerial oversight with respect to the market making activity.

(f) Notwithstanding paragraph (a) of this Rule, an Entity shall not be required to maintain a Chinese Wall to obtain safe harbor from violating Rule 604 due to inadvertent cross trades under the following conditions:

(1) the Entity functions as a non-market market Exchange Member in the OneChicago System solely in Contracts in which the Entity is not appointed as a market market pursuant to Rule 515(n); and

(2) the Entity enters orders into the OneChicago System as a non-market marker Exchange Member only for (i) the proprietary account of such Entity or (ii) the account of entities that are affiliated with such Entity.

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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 proposes to add new OneChicago Rule 616 to provide a safe harbor to market makers for inadvertent cross trades that may occur between their market-making operations in OneChicago's products and their "Other Business Activities" (as defined below) on the condition that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with OneChicago Rule 616. For purposes of this Rule, "Other Business Activities" means (1) conducting an investment or banking or public securities business; (2) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which the market maker makes markets; or (3) entering

agency orders or proprietary orders (other than market-making transactions for OneChicago products) into the OneChicago system. OneChicago Rule 616 would also permit members to conduct proprietary trading in the same physical space as their market-making activities, but only in security futures products that are not within their market-making assignments.⁴

To qualify for the protection afforded by the OneChicago Rule 616 safe harbor, a OneChicago market maker must meet the following conditions: Have an organizational structure that has physical separation between the persons engaged in its market making activities on the Exchange and the persons conducting its "Other Business Activities"; implement "Chinese Wall" procedures to prevent the use of material non-public, corporate or market information in possession of persons on one side of the wall from divulging such information to persons on the other side of the wall; and restrict, with some exceptions,⁵ persons from one side of the wall from exercising influence or control over persons on the other side of the wall. As a precondition to relying on proposed OneChicago Rule 616 as a safe harbor for inadvertent cross trades, an Exchange market maker would be required to submit to the Exchange a written statement that sets forth the manner in which it intends to satisfy the conditions described above; the names and titles of the person or persons responsible for maintenance and surveillance of the Chinese Wall procedures; a commitment to provide the Exchange with such information and reports as the Exchange may request; a commitment to take appropriate

⁴ The Commission approved a similar provision in International Securities Exchange, Inc. Rule 810 in December 2000. See Securities Exchange Act Release No. 43729 (December 15, 2000), 65 FR 81551 (December 26, 2000).

⁵ OneChicago proposes two exceptions to OneChicago's Rule 616 Chinese Wall requirement that persons on one side of the wall may not exercise influence or control over persons on the other side of the wall. The first exception permits the market making function and Other Business Activities to be under common management as long as any management oversight does not conflict with or compromise the market maker's responsibilities under OneChicago Rules. The second exception permits the same person or persons to supervise the market-making functions and Other Business Activities to monitor the overall risk exposure of the firm or affiliated firms. This exception does not, however, permit such supervisor to enter orders in the OneChicago System or make trading decisions for either the market-making account or any other proprietary account; provide information to any person performing Other Business Activities with information relating to market-making activity; or provide a person performing the market maker function with information regarding the firm's pending transactions or order flow arising out of its Other Business Activities.