

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 above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-2002-53 and should be submitted by December 5, 2002.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NYSE has asked the Commission to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>21</sup> In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,<sup>22</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NYSE's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the

requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act<sup>23</sup> also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NYSE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

The Commission also believes that the treatment proposed by NYSE for security futures dealers under Rule 431 is consistent with the Act, and Rule 400(c)(2)(v) thereunder.<sup>24</sup> Specifically, the rule would permit NYSE member organizations to accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for a security futures dealer, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

Finally, the Commission believes it is consistent with the Act for the NYSE to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of Rule 431, the NYSE's proposal will make compliance by members with the regulatory requirements of several SROs easier.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NYSE members to trade security futures in securities accounts from the outset of security futures trading.<sup>25</sup> In addition, the Commission believes that granting accelerated approval to the proposed rule change and Amendment No. 1 thereto should clarify NYSE members' obligations under NYSE Rule 431 with respect to their trading in security futures. The Commission notes that the NYSE has filed the proposed rule change as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule

change before it requests permanent approval.

Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>26</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing on a pilot basis for sixty days beginning on the date of this order.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change, as amended (File No. SR-NYSE-2002-53), be approved until January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-28897 Filed 11-13-02; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46787; File No. SR-OC-2002-01]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by OneChicago, LLC Relating to Customer Margin Requirements for Security Futures

November 7, 2002.

On August 30, 2002, OneChicago, LLC ("OneChicago" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to customer margin requirements for security futures. On September 25, 2002, OneChicago submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 25, 2002, OneChicago submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change was

<sup>16</sup> 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>19</sup> 15 U.S.C. 78s(b)(1).

<sup>20</sup> 17 CFR 240.19b-4.

<sup>21</sup> See letter from Kieran P. Hennigan, Sullivan & Cromwell, to Assistant Director for Security Futures Products, Division of Market Regulation ("Division"), Commission, dated September 24, 2002, ("Amendment No. 1").

<sup>22</sup> See letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special

Continued

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>23</sup> 17 CFR 240.403(b)(2).

<sup>24</sup> 17 CFR 200.400(c)(2)(v).

<sup>25</sup> The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

published for comment in the **Federal Register** on October 1, 2002.<sup>5</sup> The Commission received nine comment letters from ten commenters on the proposed rule change.<sup>6</sup> On November 7, 2002, OneChicago submitted Amendment No. 3 to the proposed rule change.<sup>7</sup> In addition, OneChicago submitted a letter in response to the commenters.<sup>8</sup> This order approves the proposed rule change and Amendment Nos. 1 and 2 thereto, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

## I. Description of the Proposed Rule Change

### Introduction

On August 1, 2002, the Commodity Futures Trading Commission ("CFTC") and SEC (collectively, the "Commissions") jointly adopted customer margin requirements for security futures.<sup>9</sup> Under the Commissions' "account specific" approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the

security futures are held (*i.e.*, a futures account or securities account).

### Proposal

The proposed rule change sets forth margin requirements for security futures traded on OneChicago that are held in futures accounts.<sup>10</sup> Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from OneChicago's margin rules.

### Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.<sup>11</sup> In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures. The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, OneChicago permits reduced margin levels for eighteen specific offsetting positions.<sup>12</sup>

<sup>10</sup> The proposed rule change limits the scope of OneChicago's customer margin rules to positions in futures accounts, except with respect to the exclusion for market making activity (which is discussed below) where the proposed rule change provides that the rules apply to positions in both futures accounts and securities accounts. However, the Commission notes that OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

<sup>11</sup> Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

<sup>12</sup> In its release adopting the customer margin rules for security futures, the Commissions' published a table of eighteen offsetting positions and corresponding margin levels that are consistent with comparable offsets permitted for positions involving exchange-traded options. The proposed rule change includes all of the offsetting positions that the Commissions included in their table.

However, OneChicago's customer margin rules will only apply to positions held in futures accounts. Because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in

### Security Futures Dealers

As noted above, the proposed rule change provides an exclusion from OneChicago's margin rules for market makers. Under the proposed rule change, OneChicago's market maker exclusion provides that in order to qualify for the exclusion from the margin rules, a person must (1) be a OneChicago member that is registered with the Exchange as a dealer in security futures; (2) be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA or as a dealer with the Commission under Section 15(b) of the Act; (3) maintain records sufficient to prove compliance with the requirements of OneChicago Rule 515(n) and Rule 41.42(c)(2)(v) under the CEA and Rule 400(c)(2)(v) under the Act, as applicable, "including without limitation trading account statements and other financial records sufficient to detail activity;"<sup>13</sup> and (4) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. In addition, the market maker exclusion provides that any market maker that fails to comply with the Rules of the Exchange or the margin rules adopted by the Commission and the CFTC shall be subject to disciplinary action in accordance with Chapter 7 of OneChicago's rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

As originally submitted, the market maker exclusion further provided that a market maker would be considered to be holding itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis if either (1) at least 75% of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options; or (2) except for unusual circumstances, at least fifty percent (50%) of its trading activity on OneChicago in any calendar quarter is in classes of security futures

a futures account (*i.e.*, offsets that do not include securities other than security futures).

<sup>13</sup> OneChicago added the quoted language to this requirement of the market maker exclusion in Amendment No. 3.

Counsel, Division, Commission, dated September 24, 2002, ("Amendment No. 2").

<sup>5</sup> Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707.

<sup>6</sup> See letters to Jonathan Katz, Secretary, Commission, from: Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Stock Exchange, dated October 15, 2002 ("PCX Letter"); Marc Menchel, Senior Vice President and General Counsel, National Association of Securities Dealers, dated October 23, 2002 ("NASD Letter"); Richard Ketchum, Deputy Vice Chairman and President, The Nasdaq Stock Market, Inc., dated October 23, 2002 ("Nasdaq Letter"); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated October 22, 2002 ("ISE Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange, Inc., dated October 22, 2002 ("Amex Letter"); John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Kathleen M. Hamm, Senior Vice President, Nasdaq Liffe Markets, LLC, dated October 22, 2002 ("NQLX Letter"); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated October 24, 2002 ("NYSE Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

<sup>7</sup> See letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special Counsel, Division, Commission, dated November 7, 2002, ("Amendment No. 3"). In Amendment No. 3, OneChicago modified certain aspects of its exclusion for market making activity.

<sup>8</sup> Letter from C. Robert Paul, General Counsel, OneChicago, to Jonathan G. Katz, Secretary, Commission, dated November 7, 2002 ("OneChicago Letter").

<sup>9</sup> Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

products to which it is assigned under a market making program adopted by OneChicago pursuant to Rule 514.

In Amendment No. 3, OneChicago amended this aspect of its proposed rule change. As amended, the market maker exclusion now provides three alternative ways for a member to satisfy the requirement that a security futures dealer hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. Under the first alternative, the market maker must (1) provide continuous two-sided quotations throughout the trading day for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange,<sup>14</sup> subject to relaxation during unusual market conditions as determined by OneChicago (such as a fast market in either a security future or an underlying security) at which times the market maker must use its best efforts to quote continuously and competitively; and (2) when providing quotations, quote with a maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the second alternative, the market maker must (1) respond to at least 75% of the requests for quotation for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange<sup>15</sup>, subject to relaxation during unusual market conditions as determined by the OneChicago (such as a fast market in either a security future or an underlying security) at which times such Market Maker must use its best efforts to quote competitively; and (2) when responding to requests for quotation, quote within five seconds with a maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the third alternative, the market maker is assigned to a group of security futures that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20% of the security futures listed on the Exchange ("Limited Assignment"). In addition,

<sup>14</sup> Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

<sup>15</sup> Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

this alternative provides that: (a) At least 75% of the market maker's total trading activity in OneChicago products is in its assigned security futures, measured on a quarterly basis; (b) during at least 50% of the trading day the market maker has bids or offers in the market that are at or near the best market, except in unusual market conditions (such as a fast market in either a security future or an underlying security), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned security futures; and (c) the first two requirements are satisfied on at least 90% (in the case of an Unlimited Assignment) or 80% (in the case of a Limited Assignment) of the trading days in each calendar quarter.

## II. Summary of Comments

As noted above, the Commission received nine comment letters from ten commenters on the proposed rule change,<sup>16</sup> and OneChicago submitted a letter in response to the comments.<sup>17</sup>

### Market Maker Exclusion

All of the comments expressed concern with OneChicago's proposed market maker exclusion. In particular, the commenters objected to the provision that would allow OneChicago members to qualify for the market maker exclusion based on the amount of revenue they derive from trading listed financial derivatives and underlying instruments. Six comments expressed the view that this test was inconsistent with the guidelines provided by the Commission and the CFTC,<sup>18</sup> and six comments maintained that the proposed revenue requirement was not consistent with the margin requirements for comparable exchange-traded options and therefore did not satisfy the requirements of section 7(c)(2) of the Act.<sup>19</sup> Commenters argued that the revenue test would allow OneChicago members to qualify for the market maker exclusion without actually providing liquidity to the market for security futures.<sup>20</sup> Other commenters contended that the revenue test would increase

<sup>16</sup> PCX Letter, NASD Letter, Nasdaq Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, and SSB Letter. See *supra* note 6. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

<sup>17</sup> OneChicago Letter, *supra* note 8.

<sup>18</sup> NASD Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, Nasdaq Letter, SSB Letter, and Amex Letter.

<sup>19</sup> PCX Letter, NASD Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, and SSB Letter.

<sup>20</sup> PCX Letter, ISE Letter, and NQLX Letter, Morgan/Goldman Letter.

systemic risk in the marketplace for security futures, and therefore did not satisfy section 7(c)(2) of the Act, by allowing an excessively high number of market professionals to trade security futures with reduced margin requirements.<sup>21</sup>

Three comments also expressed concern with the provision that would allow a OneChicago member to qualify for the market maker exclusion if at least 50% of its trading activity per quarter was in contracts to which it is assigned pursuant to a market making program adopted by OneChicago.<sup>22</sup> Those comments generally expressed the belief that the requirement was too vague and asked the Commission not to approve it until OneChicago had explained the nature of its market making program more fully.

In response to the commenters' concerns, OneChicago modified the tests that a member must satisfy to qualify for the market maker exclusion by eliminating the test based on revenue and revising the test based on trading activity. OneChicago stated that it believes that its revised test is consistent with the rules of the options exchanges. In addition, OneChicago noted that it requested approval of the revised tests on a six-month pilot basis and stated that it intends to use this pilot program to monitor carefully the operation and affect of the revised tests. OneChicago, in response to commenters' concerns. The Commission believes that Amendment No. 3 addresses the commenters' concerns by modifying the requirements of the market maker exclusion, particularly by eliminating the revenue test, and notes that any changes or additions to OneChicago's current market making program would be filed with the Commission for approval under section 19(b)(2) of the Act.

In addition, two comments expressed the view that OneChicago's proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.<sup>23</sup> The commenters' concern is that the regulatory capital requirements for certain security futures market participants is inadequate. Moreover, those commenters expressed concern that in the event of a bankruptcy of a carrying firm, a bankruptcy receiver or

<sup>21</sup> Morgan/Goldman Letter, NASD Letter, SSB Letter.

<sup>22</sup> PCX Letter, Amex Letter, and NQLX Letter.

<sup>23</sup> Morgan/Goldman Letter and SSB Letter.

trustee would pay out to the floor broker a pro rata share of the available pool of assets on the same terms as customers, notwithstanding that the floor broker was not required to post customer margin.

In response, OneChicago stated that Rule 1.17 under the CEA and the minimum financial requirements of the futures exchanges all require that a futures commission merchant maintain adjusted net capital of at least four percent of customer segregated funds (an amount which includes required margin deposits as well as open trade equity) and to deduct from net capital the amount of undermargined and deficit customer and non-customer accounts. In addition, OneChicago stated that a market maker is entitled to nothing more than its pro rata share of customer property in a bankruptcy proceeding, and that if a market maker had reduced margin requirements its share of the customer estate would be correspondingly reduced.

The Commission believes that the determination of what amount of capital is sufficient for a market participant is within the purview of the participant's primary regulator and does not believe that it would be appropriate to require OneChicago's margin rules to address these concerns indirectly. In addition, the Commission believes that any concerns regarding a market maker's share of a customer's estate in a bankruptcy proceeding would be more properly addressed by changes to the insolvency regime applicable to those market participants.

Finally, three commenters expressed concern with the fact that certain aspects of OneChicago's margin rules would apply to positions carried in securities accounts. One commenter objected to OneChicago's proposal to adopt margin levels for offsetting positions that may only be held in securities accounts even though its rules apply only to positions in futures accounts because the proposal gave the impression that those offsets were permitted to be carried in a futures account.<sup>24</sup> Two commenters also objected to the provisions in OneChicago's rules asserting that, with respect to the exclusion for market makers, OneChicago's margin rules would apply to positions in both futures accounts and securities accounts.<sup>25</sup> These comments argued that this aspect of the proposed rule change would conflict with current margin requirements governing securities accounts of broker-dealers and would

create confusion by subjecting those market makers to the margin requirements of both OneChicago and their designated examining authority.

In response to these comments, OneChicago stated that it prefers to retain the full range of permitted margin offsets, so that they can be made effective if OneChicago later amends its margin rules to apply them to securities accounts or if the Commission at some future date takes steps that would permit these margin offsets to be carried in a futures account. In addition, OneChicago stated its view that it should be free to adopt its own rule and to apply that rule to its own members. However, OneChicago also clarified that it was not suggesting that OneChicago's margin rule supersedes that of any other self-regulatory organization. Rather, OneChicago explained that there may be broker-dealers that do not do a customer business that are members only of OneChicago and that these broker-dealers should be able to claim the advantages of market maker margin treatment without regard to whether they carry their positions in a securities or a futures account.

The Commission reiterates that because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures). In addition, the Commission emphasizes that approval of the proposed rule change does not affect the applicability of the rules of another self-regulatory organization to its members. As a result, OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

### III. Discussion

Under section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the regulations thereunder applicable to a national securities exchange.<sup>26</sup> Section 6(b)(5) of the Act<sup>27</sup> requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>28</sup> In

addition, section 7(c)(2)(B) of the Act<sup>29</sup> provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views, the Commission finds that the rule change is consistent with OneChicago's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, OneChicago's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act<sup>30</sup> also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by OneChicago are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards for OneChicago's market maker exclusion, as amended by Amendment No. 3, are consistent with the Act, and Rule 400(c)(2)(v) thereunder.<sup>31</sup> Specifically, the Commissions' margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "security futures dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required "to hold itself out as

competition, and capital formation. 15 U.S.C. 78o-3(b)(9).

<sup>29</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>30</sup> 17 CFR 240.403(b)(2).

<sup>31</sup> 17 CFR 200.400(c)(2)(v).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> In approving this rule change, the Commission has considered its impact on efficiency,

<sup>24</sup> NQLX Letter.

<sup>25</sup> NASD Letter, Nasdaq Letter.

being willing to buy and sell security futures for its own account on a regular or continuous basis." The Commission believes that the affirmative obligations required by OneChicago Rule 515(n) satisfy this requirement.

#### IV. Accelerated Approval of Amendment No. 3

OneChicago has asked the Commission to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures. Amendment No. 3 modifies two aspects of OneChicago's market maker exclusion. First, Amendment No. 3 clarifies the recordkeeping requirements that market makers must meet in order to qualify for the exclusion. The amendments to the recordkeeping requirement of the market maker exclusion clarify the types of records that, consistent with Rule 400(c)(2)(v)(2) under the Act, a market maker must keep in order to qualify for the exclusion for security futures dealers from OneChicago's margin requirements.

Second, Amendment No. 3 modifies the trading obligations that market maker must meet to qualify for the exclusion. The amendments to the trading obligations are in response to the commenters' concerns, and clarify the minimum trading requirements imposed on market makers in order to satisfy the requirement of the exclusion that a market maker hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. OneChicago has also requested that the Commission approve the amendments to the trading obligations as a pilot program for six months beginning on the date of this order.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable OneChicago to begin trading security futures from the outset of security futures trading.<sup>32</sup> In addition, the Commission believes that granting accelerated approval to Amendment No. 3 thereto should clarify obligations the obligations that OneChicago members must meet in order to qualify for the market maker exclusion from the margin requirements. In addition, the Commission notes that the

modifications to the trading obligations of the market maker exclusion set forth in Amendment No. 3 will take effect as a temporary pilot to give members of the public an opportunity to comment on the substance of that aspect of Amendment No. 3 before OneChicago requests permanent approval. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act, to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 3 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 Exchange. All submissions should refer to File No. SR-OC-2002-01 and should be submitted by December 5 2002.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>33</sup>, that the proposed rule change, as amended, (File No. SR-OC-2002-01) be, and hereby is, approved, *provided, however*, that OneChicago Rule 515(n)(ii)(C) is approved until May 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-28896 Filed 11-13-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3459]

#### State of Texas

As a result of the President's major disaster declaration on November 5, 2002, I find that Nueces County in the State of Texas constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 6, 2003 and for economic injury until the close of business on August 5, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 3 Office, 4400 Amon Carter  
Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Jim Wells, Kleberg and San Patricio in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	5.875
Homeowners without credit available elsewhere .....	2.937
Businesses with credit available elsewhere .....	6.648
Businesses and non-profit organizations without credit available elsewhere .....	3.324
Others (including non-profit organizations) with credit available elsewhere .....	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.324

The number assigned to this disaster for physical damage is 345911. For economic injury the number is 9S4800. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 6, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

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## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service; Performance Review Board Members

**AGENCY:** Small Business Administration.

<sup>32</sup> The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).