

**Federal Register** on February 13, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## II. Description

The proposed rule change amends the rules of both the Government Securities Division (“GSD”) and the Mortgage-Backed Securities Division (“MBSD”) of FICC with respect to their additional account structures. GSD and MBSD both permit members to open and maintain accounts in addition to their primary accounts. These additional accounts developed as an administrative convenience for members that wanted to keep certain activities segregated from their primary accounts. The proposed rule change addresses certain legal risks associated with these accounts.

### *Government Securities Division*

For each additional account opened for a member, GSD assigns a unique participant ID number and separately calculates daily clearing fund requirements, funds-only settlement requirements, and net settlement positions based solely upon the activity in the additional account.<sup>3</sup> Currently, the opening and maintenance of additional accounts requested by a GSD member is governed by an agreement between the member and GSD.<sup>4</sup> Pursuant to the additional account agreement, the member agrees to be responsible for all of the obligations and liabilities associated with the additional account; however, GSD’s rules do not address the opening and maintenance of these additional accounts.<sup>5</sup>

The proposed rule change reflects the principles set forth in the additional account agreement and those that FICC management has defined to govern these accounts. Specifically, additional accounts that are opened for someone

other than a member itself or for the member’s wholly-owned subsidiary shall require the approval of FICC’s Membership and Risk Management Committee. The proposed rule change makes clear that GSD members will be responsible for all of the obligations arising under GSD’s rules that are associated with additional accounts. The additional account entity will not have any proprietary interest with respect to the additional account and will not have any rights or privileges of GSD members. GSD will have the right to deny the opening of an additional account if it believes that the additional account entity presents risk to FICC, such as legal risk from an insolvency regime that is adverse to GSD’s rights.

### *Mortgage-Backed Securities Division*

Currently, MBSD rules expressly permit participants to open additional accounts upon request for themselves or for any other entity. FICC has reviewed MBSD’s current rules and is enhancing them by making clear that (i) additional account holders do not have membership or property rights with respect to additional accounts and (ii) MBSD may apply collateral associated with one account of a participant to satisfy obligations among any or all of that participant’s accounts. These provisions will serve to protect MBSD in the event an additional account holder makes a claim with respect to the property, proceeds, or collateral associated with the activity of the account.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>6</sup> The proposed rule change, by clarifying the rights and obligations of FICC and of its members with respect to additional accounts established by FICC’s members for their own use or for the use of non-members, is designed to protect FICC and its members from any unnecessary financial risks. Accordingly, the proposed rule change should help to assure the safeguarding of securities and funds which are in FICC’s custody or control or for which it is responsible.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in

particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2003-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50372; File No. SR-NASD-2004-074]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify and Modify Market Maker Quote Re-Entry Obligations**

September 14, 2004.

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> notice is hereby given that on April 28, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with 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 Nasdaq. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes certain changes to Rule 4620 to clarify and modify market makers’ quote re-entry obligations when

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, dated August 30, 2004 (“Amendment No. 1”). In Amendment No. 1, Nasdaq replaced the rule text in the original proposal with a new version to reflect changes to NASD rules effected by SR-NASD-2004-076. See Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

<sup>2</sup> Securities Exchange Act Release No. 49212 (February 9, 2004), 69 FR 7273.

<sup>3</sup> The maintenance of such accounts has billing implications as set forth in GSD’s fee structure.

<sup>4</sup> The additional account structure permitted by GSD should be contrasted with GSD’s executing firm feature, which permits a member to submit trades of a non-GSD member with which the member has a correspondent relationship. Executing firm trades are commingled with the member’s own trades in the member’s GSD account and are not separated from the member’s other activity (including other executing firm activity) for any purpose. Therefore, the member’s clearing fund requirement, funds-only settlement requirement, and net settlement position reflects all executing firm activity in its GSD account.

<sup>5</sup> The only exceptions to this are with respect to repo brokers that are expressly required to open second accounts for their brokered repo activity and GSD’s fee structure which includes charges associated with the maintenance of additional accounts.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

a quote is withdrawn by Nasdaq's systems because of a dividend application or a trading halt.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its [Quote] *two-sided quotation* from the Nasdaq Market Center. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq-listed security in the Nasdaq Market Center shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq Market Center and thereby terminates its registration as a market maker in Nasdaq-listed issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with Nasdaq Market Center participant requirements contained in Rule 6100.

(b) and (c) No change

(d) *For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq Market Center if the market maker's two-sided quotation in the subject security is withdrawn by Nasdaq's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:*

(1) *the market maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;*

(2) *the market maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the market maker enters a new two-sided quotation prior to the opening of the next regular market session; or*

(3) *upon request from the market maker, Nasdaq MarketWatch authorizes*

*the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.*

[(d)](e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by [Market Makers] *market makers* seeking review of their denial of a reinstatement pursuant to [paragraph (b) above] *paragraphs (b) or (d) of this Rule.*

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The proposed rule change seeks to clarify the existing practice with respect to market maker quote reinstatement following a Nasdaq system-initiated withdrawal of the quote and to give market makers an additional trading day within which to request such a reinstatement. Nasdaq systems withdraw all market maker quotes in a security when certain corporate actions occur (e.g., a dividend is applied) and in the event of a trading halt. After such Nasdaq system-initiated quote withdrawal, a market maker is expected to reinstate its quote within a reasonable period of time in order to avoid being deemed as having voluntarily terminated its registration in the particular security.

Currently, a market maker is expected to re-enter its quote by the close of the regular market session on the day that the corporate action occurred or regular trading resumed. If trading resumes in the extended hours session, the market

maker has until market open on the next regular trading day to re-enter a quote. The proposed rule change would codify this policy.

The proposed rule change would also permit market makers who inadvertently failed to re-enter their quotes within the time frames described above to contact Nasdaq's MarketWatch department by the close of regular trading on the next trading day after the date of the corporate action or trading resumption and to seek to enter a quote. Nasdaq states that Nasdaq MarketWatch would monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases would deny immediate reactivation and deem the market maker's registration in the security as having been voluntarily terminated. Market makers would be able to seek a review by the Market Operations Review Committee of a denial of reinstatement under Rule 4620(d).

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>4</sup> including Section 15A(b)(6) of the Act,<sup>5</sup> which requires that the rules of the NASD be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. Nasdaq believes that the proposed rule change would make the existing policy concerning quote reinstatements following system-initiated withdrawals more transparent and contribute to the quality of the market and benefit investors. Nasdaq also believes that, by extending the amount of time available to submit a new quote following system-initiated withdrawals, the proposed rule change would also further encourage the desired re-infusion of liquidity and yield corresponding additional benefits to the market and investors.

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

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

*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 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-074 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-074. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-074 and should be submitted on or before October 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50373; File No. SR-OC-2004-02]

**Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Initial Listing Standards of Single Stock Futures**

September 14, 2004.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 thereunder,<sup>2</sup> notice is hereby given that on August 25, 2004, OneChicago, LLC ("OneChicago" or "Exchange") filed with 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 OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On August 24, 2004, OneChicago filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> ("CEA") in which OneChicago indicated that the effective date of the proposed rule change would be August 26, 2004.

<sup>6</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).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

OneChicago proposes to amend the initial listing standards for a security futures product based on a single security ("single stock future") relating to the trading volume of the underlying security. The text of the proposed rule change appears below. New language is in italics. Deleted text is in brackets.

\* \* \* \* \*

**Eligibility and Maintenance Criteria for Security Futures Products**

I. Initial listing standards for a security futures product based on a single security.

A. For a security futures product that is physically settled to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

(i)-(v) No Change.

(vi) In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, it must have [had an average daily] trading volume (in all markets in which the underlying security [has] is traded) of at least [109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months] *2,400,000 shares in the preceding 12 months.*

Requirement (vi) as Applied to Restructure Securities:

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may "look back" to the trading volume history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(1) The Restructure Security has an aggregate market value of at least \$500 million;

(2) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(3) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds \$50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(4) The revenues attributed to the business represented by the Restructure Security equal or exceed \$50 million and the Relevant Percentage of the