Act, the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. The Exchange believes that the proposed amendments are consistent with the Act in that they codify qualification and examination requirements for certain prescribed individuals.

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

The Exchange believes that the proposed rule change does not impose any burden on competition 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 dated if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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*. Please include File Number SR–NYSE–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–04. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2005–04 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4230 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52179; File No. SR–NYSE–2004–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 352 Concerning Guarantees and Sharing in Accounts

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 14, 2004 and on July 6, 2005 (Amendment No. 1), the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change. The proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange, incorporates amendments submitted to the Commission as Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 352 (the ''Rule'') to expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose. The text of the proposed rule change is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange 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

Background. Rule 352 generally prohibits members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer. The amendments proposed herein expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose.

Loan Arrangements between Registered Personnel and Customers. The Exchange does not currently have a rule that specifically addresses the issue of loan arrangements between member organization personnel and customers; however, the Exchange believes that such arrangements, given their inherent potential for conflict of interest and abuse, are generally not a good business practice. Bearing this concern in mind, it is recognized that there are certain situations when such loans may be appropriate. Accordingly, proposed paragraphs (e) and (f) to Rule 352 would limit loan arrangements, between persons associated with a member organization in any registered capacity and customers, to certain prescribed situations. As outlined in detail below, proposed Rule 352(e) requires written supervisory procedures that would limit loan arrangements between registered member organization personnel and customers of the member organization to those arising either in the context of a prescribed personal or business relationship outside of the broker-customer relationship, or to those involving other registered personnel of the member organization. Proposed Rule 352(f) further requires detailed written supervisory procedures that would require that certain loan arrangements between registered member organization personnel and customers of the member organization be disclosed to the member organization for prior approval.

Limitations on Loan Arrangements. Proposed Rule 352(e) would permit a person associated with a member organization in any registered capacity to borrow money from or lend money to a customer of such person only if: (A) The member organization has written supervisory procedures permitting the borrowing and lending of money between such registered persons and their customers; and (B) the lending or borrowing arrangement meets one of the following conditions: (1) The customer is a member of such registered person's immediate family; or (2) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; or (3) the customer and the registered person are both registered persons of the same member organization; or (4) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker/customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

Loan Procedures. Proposed Rule 352(f)(1) would require member organizations to pre-approve, in writing, the lending or borrowing arrangements described in proposed paragraphs (e)(3) (between registered persons of the same member organization); (e)(4) (involving a personal relationship outside the context of the broker-customer relationship); and (e)(5) (involving a business relationship outside the context of the broker-customer relationship).

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(1) between a person associated with a member organization in any registered capacity and a customer that is a member of such registered person's immediate family, proposed paragraph (f)(2) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive member organization approval either prior to or subsequent to entering into a lending or borrowing arrangement with an immediate family member. For purposes of this proposed rule, the term ''immediate family'' is defined in proposed paragraph 352(g) to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and would also include any other person whom the registered person supports, directly or indirectly, to a material extent.

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(2) between a person associated with a member organization in any registered capacity and a customer that is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business, proposed paragraph (f)(3) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive approval either prior to or subsequent to entering into a lending or borrowing arrangements with a customer that is a prescribed financial institution, provided that the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. For purposes of proposed paragraph (e)(2), a member organization may rely on the registered person's written representation that the terms of the loan meet the standards required by proposed paragraph (f)(3).

Integration of the Rule's Interpretation. The NYSE Interpretation Handbook contains an exception to the general prohibition, under current Rule 352(c), against sharing or agreeing to share in any profits or losses in any customer's account or from any transaction transacted therein.[3] The Interpretation states, in part, that: ''* * * where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with section 205(1) and the rules thereunder, the arrangement will not be deemed violative of Rule 352(c) if the arrangement arises in the context of such member organization's advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.''

Since this exemption for member organizations acting in the capacity of a registered investment adviser is not referred to nor reasonably implied by the Rule, it is proposed that it be deleted in its entirety from the Interpretation Handbook, and integrated into the proposed Rule text.[4]

In addition, the Interpretation text reference to section 205(1) of the Investment Advisers Act of 1940 is inaccurate. It is proposed that the reference be corrected to read ''Section 205* * *unless exempt pursuant to section 203(b) of the Advisers Act.''[5] The proposed change simply clarifies the scope and original intent of the reference, and does not alter the substance of the Interpretation.

Miscellaneous Rule Text Clarifications. The Exchange has taken this opportunity to rearrange and clarify certain sections of the Rule. For example, the text of Rule 352(b) arguably suggests an application of the Rule to a category broader than that of ''customers'' (*e.g.*, encompassing broker-

[3] *See* text of the proposed rule change which is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[4] *Id.*

[5] *Id.*

dealers). Specifically, it states that ''no member, allied member, registered representative or officer shall guarantee or in any way represent that either he or his employer will guarantee any customer against loss in *any* account or on *any* transaction'' (italics added). It is proposed that this text be amended to specify ''customer'' accounts and ''customer'' transactions in order to remove any suggestion that proposed Rule 352 is to be construed more expansively than other NYSE sales practice rules. These proposed amendments are consistent with both the original intent of the Rule and the Exchange's ongoing interpretation of it.

It is proposed that the text of Rule 352(c) be amended, as reflected in proposed Rule 352(b), to clarify that its general restriction against receiving or agreeing to receive a share in the profits or losses of any customer account extends to officers of a member organization who are acting in the capacity of a registered representative. Inclusion of the term ''officer'' also makes proposed paragraph (b) consistent with proposed paragraph (a).

Current Rule 352 paragraphs (a) and (b) have been combined into proposed paragraph (a). Further, the exceptions to the general prohibition against sharing in profits and losses which are currently in paragraphs .10 and .20 of the Rule's Supplemental Material have been clarified and relocated to proposed paragraph 352(c) under the heading ''Joint Accounts and Order Errors.''

Additional amendments are non-substantive changes, such as the clarification of rule text and the revision of dated language to reflect current usage.

(2) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5)[6] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends (1) by placing limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other, (2) by integrating the Rule's Interpretation into the proposed Rule, and (3) by clarifying both the Rule's scope and purpose with respect to prohibiting members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer.[7]

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

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange 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 Exchange Act. The Commission in particular solicits comment on the following question(s): Will any changes created by combining Rule 352 paragraphs (a) and (b) into proposed Rule 352 paragraph (a) allow a person associated with a member organization as a registered representative or officer, to guarantee to his employer the payment of the debit balance in a customer's account? If so, will such proposed change create any adverse impact on a member organization's incentive to supervise the activities of a person associated with such member organization as a registered representative or officer?

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.* Please include File Number SR–NYSE–2004–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–47. 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 Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. 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 the File Number SR–NYSE–2004–47 and should be submitted on or before August 26, 2005.

[6] 15 U.S.C. 78f(b)(5).

[7] Telephone conversation between William Jannace, Director, Rule and Interpretive Standards, NYSE, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (July 11, 2005).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4234 Filed 8–4–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52180; File No. SR–OC–2005–02]

Self-Regulatory Organization; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Security Futures Products and the Final Settlement Price for Futures on Narrow-Based Security Indexes

July 29, 2005.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 thereunder [2] notice is hereby given that on July 20, 2005 OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which Items have been prepared by OneChicago.[3] 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 CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [4] on July 18, 2005.

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

OneChicago is proposing to amend its listing standards for security futures products (''SFPs'') and its rule relating to the final settlement price for futures on narrow-based security indexes (''NBIs''). The text of the proposed rule change follows; additions are *italicized*; deletions are [bracketed].

[Eligibility and Maintenance Criteria for Security Futures Products]

906 [I.]*Listing Standards*

(a) 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)] *(1)* It must be a common stock, an American Depositary Receipt (''ADR'') representing common stock or ordinary shares, a share of an exchange traded fund (''ETF Share''), a trust issued receipt (''TIR'') or a share of a registered closed-end management investment company (''Closed-End Fund Share'').

[(ii)] *(2)* It must be registered under Section 12 of the Securities Exchange Act of 1934 (as amended from time to time, the ''Exchange Act''), and its issuer must be in compliance with any applicable requirements of the Exchange Act.

[(iii)] *(3)* It must be listed on a national securities exchange (''Exchange'') or traded through the facilities of a national securities association (''Association'') and reported as a ''national market system'' security as set forth in Rule 11Aa3–1 under the Exchange Act (''NMS security'').

[(iv)] *(4)* There must be at least seven million shares or receipts evidencing the underlying security outstanding that are owned by persons other than those required to report their security holdings pursuant to Section 16(a) of the Exchange Act.

Requirement [(iv)] *(4)* as Applied to Restructure Securities:

In the case of an equity security that a company issues or anticipates issuing as the result of a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Restructure Security''), [OneChicago, LLC (''OneChicago'')] *the Exchange* may assume that this requirement is satisfied if, based on a reasonable investigation, it determines that, on the product's intended listing date: (A) at least 40 million shares of the Restructure Security will be issued and outstanding; or (B) the Restructure Security will be listed on an Exchange or automated quotation system that is subject to an initial listing requirement of no less than seven million publicly owned shares.

In the case of a Restructure Security issued or distributed to the holders of the equity security that existed prior to the ex-date of a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Original Equity Security''), [OneChicago] *the Exchange* may consider the number of outstanding shares of the Original Equity Security prior to the spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Restructuring Transaction'').

[(v)] *(5)* In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, there must be at least 2,000 securityholders.

Requirement [(v)] *(5)* as Applied to Restructure Securities:

If the security under consideration is a Restructure Security, [OneChicago] *the Exchange* may assume that this requirement is satisfied if, based on a reasonable investigation,[OneChicago] *the Exchange* determines that, on the product's intended listing date: (A) at least 40 million shares of the Restructure Security will be issued and outstanding; or (B) the Restructure Security will be listed on an Exchange or automated quotation system that is subject to an initial listing requirement of at least 2,000 shareholders. In the case of a Restructure Security issued or distributed to the holders of the Original Equity Security, [OneChicago]*the Exchange* may consider the number of shareholders of the Original Equity Security prior to the Restructuring Transaction.

[(vi)] *(6)* In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, it must have trading volume (in all markets in which the underlying security is traded) of at least 2,400,000 shares in the preceding 12 months.

Requirement [(vi)] *(6)* 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] *the Exchange* 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)] *(A)* The Restructure Security has an aggregate market value of at least $500 million;

[(2)] *(B)* 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)] *(C)* The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds $50 million and the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] With the permission of OneChicago, the Commission made typographical, non-substantive corrections to the text of the proposed rule change. Telephone conversations between Madge Piro, Counsel for OneChicago, and Jennifer Dodd, Special Counsel, Division of Market Regulation (''Division''), Commission, July 21 and 29, 2005.

[4] 7 U.S.C. 7a–2(c).