

members of both FINRA and NYSE), and NYSE has enforced the rule to address, among other things, sales practice abuses such as co-mingling of funds, failure to disclose ownership interests in accounts and unauthorized trading.<sup>5</sup> FINRA proposes to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250 as it believes that this rule will continue to be an important enforcement tool and should be expanded to apply to the entire FINRA membership. FINRA further notes that the Rule may provide members' customers with a level of anonymity within the member and with certain external relationships that they find useful, while still allowing customers' identities to be clearly known to members and available to regulators. Consequently, FINRA proposes to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250 with minor changes to replace references to "member organization" or "organization" with the term "member."

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide FINRA with an important tool to further ensure that FINRA members appropriately designate each customer account, while also providing a reasonable means of permitting customers to maintain a certain level of anonymity, subject to appropriate documentation identifying the owner.

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

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

<sup>5</sup> See, e.g., Robert S. Bartek, Exchange Hearing Panel Decision 73-60 (August 28, 1973); Jeffrey Alan Schultz, Exchange Hearing Panel Decision 82-23 (March 18, 1982); Kery Shane Hutner, Exchange Hearing Panel Decision 02-27 (January 31, 2002). See also NYSE Information Memo 78-80, Members' Accounts and Initiating Orders on the NYSE Floor (November 10, 1978) (addressing, among other things, NYSE Rule 406(1), now Rule 406).

<sup>6</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-FINRA-2009-017 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-017. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2009-017 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-8655 Filed 4-15-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59744; File No. SR-OC-2009-01]

### Self-Regulatory Organizations; One Chicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating the \$3 Market Price Maintenance Standard

April 9, 2009.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 under the Act<sup>2</sup> notice is hereby given that on April 3, 2009, One Chicago, 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 the self-regulatory organization. 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") under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> on February 27, 2009.

<sup>7</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 Description of the Proposed Rule Change

OneChicago is proposing to amend Rule 906(b)(1)(E) to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security. All other provisions and standards of the Rule will remain unchanged. A copy of this filing is available on the Exchange's Web site at <http://www.onechicago.com>, at the Exchange'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 self-regulatory organization 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 those 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 parts of such statements.

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

#### 1. Purpose

The purpose of this proposed rule change is to eliminate the \$3 market price per share requirement from the Exchange's requirements for maintenance standards for a security futures product (SFP) that is physically settled by removing Rule 906(b)(1)(E). OC's rules require that the market price per share of the underlying security has not closed below \$3 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. If the price of an underlying security falls below \$3, the Exchange can continue to trade then-listed delivery months on that underlying security, but is unable to list new delivery months.

The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and that only those underlying securities meeting the remaining continued listing criteria set forth in Rule 906 will be eligible for continued listing and the listing of additional delivery months. The Exchange further believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the

current volatile market environment in which the market price for a large number of securities has fallen below \$3, the Exchange is unable to list new delivery months on underlying securities trading below \$3. If there is market demand for such SFP the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with new delivery months.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>4</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. In particular, the proposed rule change will permit the Exchange to list additional delivery months on underlying securities even if the price of the underlying security is less than \$3 thus providing investors additional opportunities to hedge their positions. Further, this proposed rule change is nearly identical to one recently approved by the Commission.<sup>5</sup>

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

OneChicago does not believe that the proposed rule change will have an impact on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the OneChicago proposed rule change have not been solicited and none have been received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on April 3, 2009. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refilled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>6</sup>

<sup>4</sup> 15 U.S.C. 78f (b)(5).

<sup>5</sup> See Securities Exchange Act Release No. 59336 (February 2, 2009) (Order Approving Proposal To Eliminate \$3 Underlying Price Requirement for Continued Listing and Listing of Additional Series).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

## 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-OC-2009-01 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OC-2009-01. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-OC-2009-01 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-8658 Filed 4-15-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59736; File No. SR-NYSEAmex-2009-10]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 975NY—Obvious Errors and Catastrophic Errors

April 8, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 1, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Amex filed the proposed rule change as a “non-controversial” proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange Rule 975NY—Obvious Errors and Catastrophic Errors. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

NYSE Amex proposes to amend Rule 975NY pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Executive Officer of NYSE Amex (“CEO”) or his/her designee (collectively “Exchange officer”),<sup>6</sup> may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.<sup>7</sup> A transaction reviewed pursuant to this new provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 975NY(a)(1)–(5) or Commentary .04 thereof. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An ATP Holder affected by a determination to nullify or adjust a transaction pursuant to this new provision may appeal such

<sup>6</sup> The Exchange represents that a CEO designee will be an officer of the Exchange, who has also been designated as a Trading Official, such as the Executive Vice President of Trading Operations or the Vice President of Trade Operations or the Vice President of Options Floor Operations. Exchange officers are employees of the Exchange, and are not affiliated with ATP Holders or ATP Firms.

<sup>7</sup> In the event a party to a transaction requests the review of a transaction, an Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

determination in accordance with Rule 975NY(a)(6); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. NYSE Amex believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This new provision is not intended to replace a party’s obligation to request a review, within the required time periods under Rule 975NY(a)(3), of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rules 975NY(a)(1)–(5) or Commentary .04 thereof, no additional relief may be granted under this new provision. Moreover, NYSE Amex does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction pursuant to Rule 975NY(a)(3). NYSE Amex believes this provision will help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, notwithstanding that a party failed to make a timely request for a review.

The Exchange also proposes at this time to revise Rule 975NY(a)(3)(A) in order to clarify that the time period in which a Market Maker or other ATP Holder must notify the Exchange, when requesting relief from a possible erroneous transaction, applies to all transactions that are subject to adjustment or nullification, pursuant to Rule 975NY(a)(1)–(5).

##### 2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).