

OneChicago ✕

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December 5, 2003

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Rule Certification and Request for Commission Rule Approval of
Safe Harbor for Inadvertent Cross Trades**

Dear Ms. Webb:

Pursuant to section 5c(c) of the Commodity Exchange Act, as amended (the "Act"), and sections 40.5 and 41.24 of the regulations promulgated by the Commodity Futures Trading Commission ("Commission") under the Act ("Regulations"), OneChicago, LLC ("OneChicago") submits the proposed new Rule 616, attached hereto as Appendix A, providing a safe harbor for inadvertent cross trades executed by OneChicago market makers that have implemented and maintain appropriate "Chinese Wall" procedures. OneChicago certifies that this new Rule 616 complies with the Act and the Regulations and submits Rule 616 for the Commission's review and approval.

The effective date of the new rule is December 8, 2003. There are no opposing views that are not incorporated into this amendment. OneChicago Rule 616 was approved by the Chief Executive Officer of OneChicago on December 3, 2003, as permitted by resolution of the OneChicago board of directors adopted on September 10, 2002.

OneChicago proposes to add Rule 616 to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities which may result in inadvertent cross trades without violating OneChicago Rule 604.¹ For purposes of this Rule, "Other Business Activities" means (1) conducting an investment or banking or public securities business; (2) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which the market maker makes markets; or (3) entering agency orders or proprietary orders (other than market making transactions for OneChicago products) into the OneChicago system.

¹ This proposed rule is similar to Rule 810 of the International Securities Exchange ("ISE").

To qualify for the protection afforded by the Rule's safe harbor, a OneChicago market maker must meet the following conditions: (i) have an organizational structure that has physical separation between the persons engaged in its market making activities on the Exchange and the persons conducting its Other Business Activities; (ii) implement "Chinese Wall" procedures to prevent the use of material non-public, corporate or market information in possession of persons on one side of the wall from divulging such information to persons on the other side of the wall; and (iii) restrict, with two exceptions,² persons from one side of the wall from exercising influence or control over persons on the other side of the wall.

As a precondition to invoking proposed Rule 616 as a defense to inadvertent cross trades, a market maker would be required to submit to the Exchange a written statement that sets forth the manner in which it intends to satisfy the conditions described above; the names and titles of the person or persons responsible for maintenance and surveillance of the Chinese Wall procedures; a commitment to provide the Exchange with such information and reports as the Exchange may request; a commitment to take appropriate disciplinary action against any person violating the proposed Rule or the entity's internal compliance and audit procedures adopted pursuant to proposed Rule 616; the procedures established to ensure that information with respect to clearing activities will not be used to compromise the entity's Chinese Wall; and an acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this proposed Rule may be a violation of the Act, the Regulations, the Securities Exchange Act of 1934 or the rules thereunder or the Rules of the Exchange.

On behalf of OneChicago, I hereby certify that new Rule 616 complies with the Act and the Regulations.

Yours truly,

C. Robert Paul
General Counsel

² The first exception permits the market-making function and Other Business Activities to be under common management as long as any management oversight does not conflict with or compromise the market maker's responsibilities under OneChicago Rules. The second exception permits the same person or persons to supervise the market-making functions and Other Business Activities to monitor the overall risk exposure of the firm or affiliated firms. This exception does not, however, permit such supervisors to (i) enter orders in the OneChicago system or make trading decisions for either the market making account or any other proprietary account; (ii) provide information to any person performing the non-market making function of an Exchange market maker with information relating to its market making activity; nor provide a person performing the market maker function with information regarding the entity's pending transactions or order flow arising out of its Other Business Activities.

Rule 616. Safe Harbor for Inadvertent Cross Trades

(a) An Entity acting as a market maker for any Exchange product (an “Exchange Market Maker”) may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.

(b) Definitions: For purposes of this rule,

(1) “Other Business Activities” means:

(A) conducting an investment or banking or public securities business;

(B) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or

(C) entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.

(2) “Chinese Wall” means an organizational structure that satisfies each of the following conditions:

(A) The market-making activities are conducted in a location physically separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.

(B) Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.

(C) Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:

(i) the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity’s responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and

(ii) the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the “Risk Exposure Supervisor”) may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:

(a) enter orders into the OneChicago System or make trading decisions for either the Entity’s market-making account or proprietary account;

(b) provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor

(c) provide a person performing the market-making function with information regarding the firm’s pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.

(3) An “Entity” means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.

(c) An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained;

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

- (3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to the transactions of the Entity and its affiliates;
- (4) A commitment to take appropriate disciplinary action against any person violating this Rule or the Entity's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and an acknowledgement that the Exchange may take appropriate disciplinary action, including (without limitation) reallocation of any or all Contracts in which it serves as a market maker, in the event of such a violation;
- (5) Whether the Entity or an affiliate of the Entity intends to clear the Entity's proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used in a way that would compromise the Entity's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Entity or the affiliate to clear for unaffiliated third parties; and
- (6) An acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of the CEA, the Commission's Regulations, the Exchange Act, the rules thereunder or the Rules of the Exchange.
- (d) An Exchange Market Maker cannot avail itself of this Rule until it has received written confirmation from the Exchange that the organizational structure and the compliance and audit procedures described in the statement submitted by such Exchange Market Maker in accordance with paragraph (c) above comply with this Rule.
- (e) Subparagraph (c)(5) permits an Entity or an affiliate of the Entity to clear the Entity's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. Such procedures must provide that any information pertaining to market maker positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions, including common management as described in clause (b)(2)(C)(i) of this Rule, who are involved in exercising managerial oversight with respect to the market making activity.
- (f) Notwithstanding paragraph (a) of this Rule, an Entity shall not be required to maintain a Chinese Wall to obtain safe harbor from violating Rule 604 due to inadvertent cross trades under the following conditions:

- (1) the Entity functions as a non-market maker Exchange Member in the OneChicago System solely in Contracts in which the Entity is not appointed as a market maker pursuant to Rule 515(n); and
- (2) the Entity enters orders into the OneChicago System as a non-market maker Exchange Member only for (i) the proprietary account of such Entity or (ii) the account of entities that are affiliated with such Entity.

