

submitted by [insert date 21 days from date of publication].

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. 34-46582; File No. SR-CBOE-2002-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Rules To Provide Notice of Benefits of Membership and Attendant Obligations

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" 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 Exchange. 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 CBOE proposes to add a rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i) is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

\* \* \* \* \*

### Chicago Board Options Exchange, Incorporated

#### Rules

\* \* \* \* \*

*RULE 3.28. Reserved.*

#### *Membership in OneChicago, LLC*

*RULE 3.29. Each member and Option Trading Permit holder (until such permit expires) with trading rights on the Exchange is a member of OneChicago, LLC, and to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.*

#### *Extension of Time Limits*

RULE 3.30 [3.28]. Any time limit imposed on an applicant, member, or other person under this Chapter may be extended by the Membership Committee in the event that the Membership Committee determines that such an such extension is warranted due to extenuating circumstances.

#### Delegation of Authority

RULE 3.31 [3.29].(a) All of the authority granted to the Exchange under this Chapter may be exercised by the Membership Committee and/or the Membership Department.

(b) The Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Rules.

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#### 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 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. 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

OneChicago, LLC is a joint venture formed by CBOE, the Chicago Mercantile Exchange, and the Chicago Board of Trade to provide a market for trading security futures products.

OneChicago has been conditionally designated by the Commodity Futures Trading Commission as a contract market under the Commodity Exchange Act and is in the process of registering with the Commission as a national securities exchange under section 6(g) of the Act.<sup>3</sup>

One of CBOE's primary goals in participating in the formation of OneChicago was to provide CBOE's membership with access to a market for trading security futures products. Accordingly, OneChicago Rule 132<sup>4</sup> provides that any person or entity with full member trading rights or option trading permits (until such permits expire) on CBOE is a member of OneChicago. A person or entity with full member trading rights on CBOE is a CBOE member with the right to enter into securities transactions at the CBOE. These persons and entities include CBOE members in a number of CBOE membership capacities including, among others, those CBOE members with an authorized floor function (*i.e.*, are approved to act as a CBOE Market-Maker and/or Floor Broker), lessees of CBOE memberships, Chicago Board of Trade exercisers, CBOE Clearing Members, and CBOE member organizations approved to transact business with the public. A person or entity with option trading permits (until such permits expire) is an Option Trading Permit holder under CBOE Rule 3.27 that is not a lessor of the Option Trading Permit.

Additionally, OneChicago Rule 307(a) provides, in pertinent part, that by accessing, or entering any order into, the OneChicago System, and without any need for any further action, undertaking or agreement, a OneChicago member agrees (i) to be bound by, and comply with, OneChicago rules, the rules of any OneChicago clearing corporation, and applicable law, to the extent applicable to it, and (ii) to become subject to the jurisdiction of OneChicago with respect to any and all matters arising from, related to, or in connection with, the status, actions, or omissions of that OneChicago member.

In this regard, CBOE proposes to add a CBOE rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i)

<sup>3</sup> 15 U.S.C. 78f(g).

<sup>4</sup> The CBOE's original filing referred to OneChicago Rule 129. The CBOE represents that the OneChicago rules have since been amended and the correct reference should now be to OneChicago Rule 132. Telephone conversation between Arthur B. Reinstein, Legal Division, CBOE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on September 24, 2002.

<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.

is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System. This rule provision would be set forth in new CBOE Rule 3.29.<sup>5</sup>

The primary purpose of this proposed rule change is two-fold. First, the right to trade on and to be a member of OneChicago is a benefit granted to CBOE members with trading rights on CBOE, and CBOE desires to provide notice of this benefit of CBOE membership in CBOE's rules. Second, CBOE desires to provide notice to CBOE members in the CBOE rules that by accessing or entering an order into the OneChicago System, a CBOE member will become bound by OneChicago rules and subject to the jurisdiction of OneChicago. In the absence of CBOE Rule 3.29, CBOE members would still be bound by OneChicago rules and subject to the jurisdiction of OneChicago by accessing or entering an order into the OneChicago System by virtue of OneChicago Rule 307(a). It is also the case that CBOE members will have notice of these provisions in the OneChicago rules and through other means such as circulars and educational sessions conducted in connection with the launch of trading on OneChicago. However, CBOE believes that it is important to also include notice of these provisions in CBOE's rules to further ensure that CBOE members, applicants for CBOE membership, and prospective CBOE members are aware of these provisions.

Although proposed CBOE Rule 3.29 would fall within the scope of the consent form that new CBOE members sign and that current CBOE members have previously signed to the effect that they agree to abide by CBOE rules as they shall be in effect from time to time, OneChicago would continue to be responsible for enforcing its own rules. It is not intended that CBOE would enforce OneChicago rules by virtue of adopting proposed CBOE Rule 3.29, and CBOE would not be assuming any responsibility or obligation to enforce OneChicago rules, or compliance by CBOE members with those rules, by virtue of this rule change. Nevertheless, OneChicago would be a third party beneficiary of proposed CBOE Rule 3.29 and would be able to rely upon the agreement by CBOE members to be

subject to proposed CBOE Rule 3.29 in enforcing OneChicago rules, in addition to the authority granted by OneChicago rules themselves.

In this regard, proposed CBOE Rule 3.29 is similar to other CBOE rules which provide important notices to CBOE members and others by including those notices in CBOE's rules and in which other parties are third party beneficiaries of those CBOE rules. For example, CBOE Rule 24.14 sets forth disclaimers of warranty and liability that are applicable with respect to reporting authorities for index options that are traded on CBOE. In addition, CBOE Rule 6.7A generally provides that CBOE members may not institute a lawsuit against, among others, CBOE contractors for actions taken or omitted to be taken in connection with the official business of CBOE.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade by further ensuring that CBOE members are aware of an important benefit of CBOE membership and of important obligations that are applicable to those who utilize that benefit.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from September 9, 2002, the date on which it was filed, the proposed rule change has become effective pursuant to

section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The CBOE provided the Commission with notice of intent to file at least five days prior to filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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. 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-53 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> Current CBOE Rules 3.28 and 3.29 would be re-numbered as CBOE Rules 3.30 and 3.31, respectively. The rule change would leave Rule 3.28 reserved for future use.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 200.30-3(a)(12).