

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50373; File No. SR-OC-2004-02)

September 14, 2004

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

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.

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.

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<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).

**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 revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term “Relevant Percentage” means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33-1/3%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security’s closing price on its primary market on the last business day prior to the date on which the

Restructure Security is selected as an underlying security for a security futures product (“Selection Date”), or the Restructure Security’s opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer’s (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the trading volume history of an Original Equity Security for any trading day unless it also relies upon the market price history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security’s trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the Original Equity Security for any trading day thereafter.

(vii) – (xi) **No Change**

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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, OneChicago 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. OneChicago 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 proposes to amend its Eligibility and Maintenance Criteria for Security Futures Products (“Listing Standards”) with respect to the trading volume requirement of an underlying security for the initial listing of a single stock future. OneChicago’s current initial Listing Standards require, among other things, that the security underlying a single stock future must have had an average daily trading volume (in all markets in which the underlying security has traded) of at least 109,000 shares in each of the preceding 12 months.<sup>4</sup> The proposed rule change adopts the standard used by some option exchanges<sup>5</sup> and allows OneChicago to list a single stock future on an underlying security that had trading volume of at least 2,400,00 shares in the preceding 12 months.

According to OneChicago, the proposed rule change allows the Exchange to list single stock futures that are beneficial to investors, for hedging and speculative purposes, while still providing adequate protection for investors. OneChicago believes that the

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<sup>4</sup> OneChicago Listing Standard I.A.(vi).

<sup>5</sup> See, e.g., Chicago Board Options Exchange, Inc. (“CBOE”) Rule 5.3, Interpretation .01(b)(1); American Stock Exchange LLC (“Amex”) Rule 915, commentary .01(3); and International Securities Exchange, Inc. (“ISE”) Rule 502(b)(4).

proposed listing standard is well established on option exchanges. In conjunction with the other listing standard criteria, the proposed listing standard also permits derivatives to trade on securities that have sufficient liquidity and provides adequate customer protection.

Section 6(h)(3)(C) of the Act<sup>6</sup> requires that OneChicago's Listing Standards be no less restrictive than comparable listing standards for options traded on a national securities exchange. The Commission has approved a similar rule for the CBOE, Amex and ISE.<sup>7</sup> Since CBOE, Amex and ISE have a comparable listing standard, OneChicago believes that the proposed rule change meets the requirement of Section 6(h)(3)(C) of the Act.<sup>8</sup>

## 2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, and is designed to protect investors and the public interest. OneChicago also believes that the proposed rule change promotes competition and is designed to protect investors and the public interest by providing products that could be used by investors for hedging and speculative purposes. The proposed rule change is an established criterion used by other option exchanges. According to OneChicago, the experience of those option exchanges establish that the proposed rule change, along with the other Listing Standard requirements, are designed to provide investor protection.

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

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<sup>6</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>7</sup> See supra note 5.

<sup>8</sup> 15 U.S.C. 78f(h)(3)(C).

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

OneChicago believes that the proposed rule change will not unduly burden competition. In fact, the OneChicago believes that the proposed rule change will promote competition by allowing OneChicago to list a broader array of single stock futures, without jeopardizing investor protection.

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 with respect to the proposed rule change.

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

The proposed rule change became effective on August 26, 2004. 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 refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>10</sup>

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>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OC-2004-02 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(1).

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-OC-2004-02. 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 also will be available for inspection and copying at the principal office of OneChicago. 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-2004-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(75).