

Listing Standards for ADRs. Under both the Bulletin No. 15 model listing standards and the proposed Listing Standards, a large portion of component securities must meet the listing standard requirements for single stock futures.³⁵ The ADR requirement for single stock futures deviates from what is suggested for ADRs under the Bulletin No. 15 model listing standard for a security futures product based on narrow-based security index.³⁶ OneChicago states that the listing standard requirement for single stock futures relating to ADRs³⁷ was incorporated into the proposed Listing Standard requirement for MicroSector Futures as an alternative.³⁸ In addition, eight new requirements were added to the proposed Listing Standards to accommodate this unique product.³⁹

One Chicago states that the proposed Listing Standards incorporate the standards annunciated by the Division in Bulletin No. 15. Therefore, OneChicago believes that the proposed Listing Standards meet the requirement of section 6(h)(3)(C) of the Act.⁴⁰

Section 6(h)(3)(D) of the Act⁴¹ requires that all SFPs be based on common stock and such other equity securities as SEC and CFTC have jointly determined is appropriate. The SEC and CFTC have jointly permitted that SFPs may also be based on depositary shares.⁴² Under the OneChicago Listing Standards, each component security

must meet the initial listing standard requirement for security futures that it be a common stock or an American Depositary Receipt.⁴³ Therefore, OneChicago's Listing Standards meet this requirement.

Section 6(h)(3)(E) of the Act⁴⁴ requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to section 6(h)(7) of the Act,⁴⁵ the foregoing requirement is deferred until the "compliance date" (as defined therein). OneChicago expects that both The Options Clearing Corporation and the Chicago Mercantile Exchange ("CME") clearinghouse will have in place procedures complying with the requirements of clause (E) after such "compliance date."

Section 6(h)(3)(F) of the Act⁴⁶ requires that broker-dealers must be subject to suitability rules comparable to those of a national securities association to effect transactions in SFPs. OneChicago satisfies this requirement through its Rule 605 which requires members to comply with the sales practice rules of the National Futures Association ("NFA") or the National Association of Securities Dealers, Inc. ("NASD"), which include suitability rules. Therefore, OneChicago meets this listing standard requirement.

Section 6(h)(3)(G) of the Act requires that SFPs be subject to the prohibition against dual trading in section 4j of the CEA⁴⁷ and CFTC regulations. Pursuant to section 4j of the CEA,⁴⁸ CFTC promulgated Regulation 41.27, which states that an electronic futures exchange is subject to the dual trading rule if the exchange provides market participants with a time or place advantage or the ability to override a predetermined algorithm.⁴⁹ Market

participants have no such advantage or ability, so the dual trading rule does not apply to OneChicago.

Section 6(h)(3)(H) of the Act provides that SFPs must not be readily susceptible to manipulation of the price of the SFP, the price of the underlying security, the price of the option on such security, or options on a group or index including such securities. OneChicago believes that the design of the MicroSector futures fulfills this requirement. OneChicago states that the proposed Listing Standards require that component securities be highly capitalized with substantial daily trading volumes for the 12 months preceding the stocks' selection into the Dow Jones MicroSector Index. In addition, the proposed rule change to OneChicago Rule 1002(e) and (i) regarding the final settlement price and position limits of MicroSector Futures are also designed to deter manipulation.

The proposed rule change to Rule 1002(e) proposes a methodology to calculate position limits for cash-settled futures on narrow-based security indices. While OneChicago believes that these limits are appropriate for the launch of these products, because this product is unique and there is no other similar product to look to for guidance as to the appropriate position limit, once trading has begun OneChicago will monitor trading patterns in the MicroSector Futures and reassess the appropriateness of these position limits. OneChicago undertakes that if trading patterns indicate the position limits are not set at levels appropriate to deter manipulation, OneChicago will make the necessary adjustments to the position limits. In addition, OneChicago undertakes to coordinate surveillance with the relevant underlying stock markets to monitor for manipulation.

OneChicago has also proposed a final settlement rule that is designed to deter manipulation. Under proposed Rule 1002(i) the final settlement price of MicroSector Futures would be based on the opening price of each component stock. OneChicago believes that since the termination of MicroSector Futures will coincide with the expiration or termination of stock indices, options on stock indices and futures on stock indices, using the opening prices of each component security will reflect the price of the underlying securities when they are very liquid and thus more difficult to manipulate. The calculation of the final settlement price for these MicroSector Futures will be done on the same day and in a similar manner to the final settlement price for the options on the S&P 500 and the futures on the S&P 500. The expiration or termination of

³⁵ See Bulletin No. 15 model listing standard III.A.ii.c and IV.A.ii.b and proposed Listing Standard V.A.ii.h and VI.A.ii.b, which require that except for ADTV, the component securities that account for at least 90 percent of the total index weight and at least 80 percent of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in Section I.

³⁶ See Bulletin No. 15 model listing standard III.A.ii.g and IV.A.ii.f.

³⁷ See OneChicago listing standard I.A.x.

³⁸ See proposed Listing Standards V.A.ii.k and VI.A.ii.k.

³⁹ See proposed Listing Standards V.A.ii.a (approximate equal dollar-weighted), V.A.ii.c. (component securities must be component securities in the Dow Jones U.S. Total Market Index or an ADR linked to a security in the Dow Jones Global Index), V.A.ii.d. (component securities must have U.S. exchange-traded options on the securities), V.A.ii.e. (component securities must have a trading history on a U.S. exchange for at least 12 months), V.A.ii.g (component securities must close at or above \$7.50 for each of the trading days in the three months prior to Selection), V.A.ii.m (rebalancing of the index), V.A.ii.o (indexes will only be created for industry groups having five or more qualifying securities) and VI.A.ii.i (rebalancing of the index).

⁴⁰ 15 U.S.C. 78f(h)(3)(C).

⁴¹ 15 U.S.C. 78f(h)(3)(D).

⁴² Securities Exchange Act Release No. 44725 (August 20, 2001). "A depositary share is defined as a security evidenced by an American Depositary Receipt that represents a foreign security or a multiple or fractions thereof. See 17 CFR 240.12b-2." Id. at footnote 14.

⁴³ Proposed Listing Standard V.A.ii.h requires that except for the ADTV, "component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements for listing a single-security futures contract, as set forth in Section I." Section I.A.i. requires that the security underlying futures product based on a single security be a common stock or an American Depositary Receipt representing common stock.

⁴⁴ 15 U.S.C. 78f(h)(3)(D).

⁴⁵ 15 U.S.C. 78f(h)(7).

⁴⁶ 15 U.S.C. 78f(h)(3)(F).

⁴⁷ 7 U.S.C. 6i.

⁴⁸ Id.

⁴⁹ 17 C.F.R. 41.27(b)(2).