

requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Common Stock.

The Commission notes that Nasdaq will distribute a circular to its members that provides guidance regarding members' compliance responsibilities and requirements, including heightened suitability recommendations, when handling transactions in callable puttable common stock, and that highlights the special risks and characteristics associated with the Common Stock. Specifically, among other things, the circular will inform members that customer confirmations involving the New Dreyer's Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security. Nasdaq represents that the circular will also indicate that, given the put and call features of the Common Stock, Nasdaq will suggest that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. Nasdaq further represents that, if a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer pursuant to NASD Rule 2310 and IM-2310-2. The Commission believes that the distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the New Dreyer's Common Stock and who are able to bear the financial risks associated with transactions in the Common Stock will acquire and trade the Common Stock.

In addition, Nasdaq represents that the circular will identify the following specific risks associated with the Common Stock.<sup>14</sup> The circular will note that members should inform customers that the price at which the New Dreyer's Common Stock will trade may be influenced, prior to the expiration of the two put periods, by the existence of the put right. The circular will also note that the final rate of return on the Common Stock may be less than the market price of the Common Stock, and that after the expiration of the two put

periods, the market price of the Common Stock may decline significantly. Furthermore, customers should be aware that after the expiration of the call period on July 1, 2007, the New Dreyer's Common Stock will be converted into New Dreyer's class B common stock, and that Nestle will no longer be held to certain controlling interest and sale restrictions, as discussed above. The Commission believes that to some extent the financial risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities, and that the issuers of securities to be listed on Nasdaq or the NYSE or be an affiliate of a company listed on Nasdaq or the NYSE. In addition, the NASD's hybrid listing standards further require that the Common Stock have at least \$4 million in market value.

Furthermore, the Commission notes that Nasdaq represents that NASD's surveillance procedures for the Common Stock will be the same as its current surveillance procedures for equity securities, and that Nasdaq represents that such surveillance procedures are adequate for this product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will facilitate the trading of New Dreyer's Common Stock. Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,<sup>15</sup> to approve the proposal on an accelerated basis.

The Commission is approving Nasdaq's proposed listing standards for the New Dreyer's Common Stock. The Commission specifically notes that, notwithstanding approval of the listing standards for the Common Stock, other similarly structured products will require review by the Commission prior to being traded on Nasdaq.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2003-16) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47356; File No. SR-OC-2003-01]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by OneChicago, LLC Relating to Initial Listing Standards of Single Stock Futures

February 12, 2003.

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 January 23, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which items have been prepared by OneChicago. On January 27, 2003, OneChicago filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 5, 2003, OneChicago filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See letter dated January 24, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected technical errors in the proposed rule text and added proposed rule text that was inadvertently omitted in its initial filing.

<sup>4</sup> See letter dated February 3, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission ("Amendment No. 2"). In Amendment No. 2, the Exchange amended section II.A.2 of the proposal to specify that the proposed rule change was consistent with section 6(b)(5) of the Act. In addition the Exchange amended section II.C of the proposal to state that the Exchange has not received any comments on the proposal.

and is able to bear the financial risk of, the transaction.

<sup>14</sup> Telephone conversation between John Nachmann, Senior Attorney, Office of General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

<sup>15</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).