

\$3.00 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this paragraph, the market price per share or receipt of the underlying security must be at least \$4.00.

Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including "when-issued" trading, may be taken into account in determining whether this requirement is satisfied.

(vi) If the underlying security is an ADR and was initially deemed appropriate for security futures product trading under paragraph [(viii)(b)] (x)(b) or [(viii)(c)] (x)(c) in section I, OneChicago will not open for trading security futures products having additional delivery months on the ADR unless:

(a) The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which OneChicago has in place an effective surveillance sharing agreement for any consecutive three-month period is: (1) At least 30%, without regard to the average daily trading volume in the ADR; or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 receipts;

(b) OneChicago has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

(c) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

B—D No Change.

III. No Change.

IV. No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

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") pertaining to the price requirement of an underlying security for the initial listing of a single stock future. OneChicago's current initial Listing Standards for single stock futures require, among other things, that the market price of the underlying security, as measured by the lowest closing price reported in any market, be at least \$7.50 for the majority of business days during the three calendar months preceding the selection. Provided all other initial Listing Standards requirements are met, the proposed rule change would permit a single stock future to be listed on a "covered security" as defined under section 18(b)(1)(A) for the Securities Act of 1933 ("Securities Act")⁶ that has a market price of at least \$3.00 for the five consecutive business days prior to the date on which OneChicago submits a certificate to The Options Clearing Corporation ("OCC") for listing and trading the future contract.⁷ The market price of the underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The proposed rule change also amends the initial Listing Standards to require that an underlying security that is not a "covered security" meet OneChicago's current price requirement that it have a market price of \$7.50 for the majority of the trading days for the three calendar months preceding selection.

OneChicago states that the proposed rule change would permit OneChicago to list single stock futures that would be beneficial to investors for hedging and speculative purposes, while still providing adequate protection for

investors. Under current market conditions, some securities meet all of the requirements in the initial Listing Standards for securities underlying a single stock future, except for the market price requirement of \$7.50. OneChicago believes that if those securities are "covered securities" and they meet the other requirements in the initial Listing Standards, it is appropriate to require the underlying security to have a market price of \$3.00 or above for the five business days preceding the notification to OCC. A "covered security" as used in the proposed rule change would be a security that is listed or authorized for listing on NYSE, Amex, or Nasdaq. As the Chicago Board Options Exchange, Inc. ("CBOE") noted in its proposed rule change requesting a similar amendment, "this particular criteria [no longer] serves to accomplish its presumed intended purpose, i.e., to prevent the proliferation of option classes on overlying securities that lack liquidity needed to maintain fair and orderly markets."⁸

OneChicago states that its initial Listing Standard requirements, as well as the listing requirements of the NYSE, Amex and Nasdaq, would provide adequate investor protection. Under OneChicago's initial Listing Standards, a "covered security" would still be required to have: a minimum of 7,000,000 shares owned by public investors;⁹ a minimum of 2,000 securityholders;¹⁰ and an average daily trading volume ("ADTV") of at least 109,000 shares in each of the preceding 12 months¹¹ in order for OneChicago to list a single stock future on the security. In addition to the initial Listing Standard requirements, OneChicago will monitor and adhere to its maintenance standards for single stock futures.

⁸ See Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106 (December 16, 2002) (publishing SR-CBOE-2002-62 for public comment).

⁹ OneChicago's Listing Standard I.A.iv.

¹⁰ OneChicago's Listing Standard I.A.v.

¹¹ OneChicago's Listing Standard I.A.vi. OneChicago notes that the comparable option listing standards requires a trading volume of at least 2,400,000 shares in the preceding 12 months. The Division of Market Regulation's Staff Legal Bulletin No. 15, which provided guidance to exchanges developing listing standards for security futures, states that a minimum monthly trading volume of 2,400,000 million shares is comparable to an average daily trading volume of 109,000 shares for the preceding 12 months. See Division of Market Regulation: Staff Legal Bulletin No. 15, Listing Standards for Trading Securities Futures Products (September 5, 2001), n. 6. The 109,000 figure was arrived at by dividing 2.4 million by 22, which is the typical number of trading days in a calendar month.

⁶ Section 18(b)(1)(A) of the Securities Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange ["NYSE"] or the American Stock Exchange ["Amex"], or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market ["Nasdaq"] (or any successor to such entities). * * * 15 U.S.C. 77r(b)(1)(A). The term "covered security" would not include those securities defined under section 19(b)(1)(B) of the Securities Act. 15 U.S.C. 77r(b)(1)(B).

⁷ The proposed rule change amends OneChicago's Listing Standard I.A.viii and rennumbers the subsequent initial listing standards requirements for single stock futures. The proposed rule change also makes a conforming amendment to Listing Standard II.A.vi. In addition, the proposed rule change deletes, "Absent exceptional circumstances" in OneChicago's Listing Standard II.A.