

Clause (I) of Section 6(h)(3) of the Act<sup>40</sup> requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The relevant provisions are OneChicago Rules 601, 602 and 603, which prohibit fraudulent acts, fictitious transactions and market manipulation, respectively. OneChicago notes that it is an affiliate member of the Intermarket Surveillance Group ("ISG") and has executed an affiliate agreement, an agreement to share market surveillance and regulatory information and an addendum to the foregoing agreements with the other ISG members. The Information Sharing Rule permits OneChicago to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators. To the extent permitted by any such agreement, OneChicago's Chief Executive Officer, or his or her designee, will be authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement. Additional provisions related to coordinated surveillance are contained in sections I.A.(ix)(a), III.A(ii)(g) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (J) of Section 6(h)(3) of the Act<sup>41</sup> requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The audit trail capability provided by CBOE*direct*, the trade matching engine utilized by OneChicago, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on OneChicago. This applies to orders entered through CBOE*direct* terminals as well as to orders routed to CBOE*direct* through CME's Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct* or Globex®), terms of the order, order type, instrument and contract month, price, quantity, account type, account

designation, user code and clearing firm.

OneChicago's electronic audit trail will consist of data recorded by CBOE*direct* and Globex®, and OneChicago will have full access to all such data. Information logged by CBOE*direct*, including in respect of orders received through CBOE*direct* terminals, will be archived and provided to OneChicago each day. Orders received through Globex® will be archived and maintained at CME. Together these data sets will enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either Chicago Board Options Exchange, Inc ("CBOE") or CME systems, and therefore will not be recorded electronically by CBOE*direct* and Globex® at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped and include the account designation, date and other required information (*i.e.*, order terms, order type, instrument and contract month, price and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member and Access Person must keep all books and records as required to be kept by it pursuant to the CEA, CFTC regulations, the Act, regulations under the Act and the Rules of OneChicago. OneChicago Rule 501 also requires that such books and records be made available to OneChicago upon request. Current CFTC regulations require books and records to be maintained for a period of five years.

Block trades will be entered in CBOE*direct* by OneChicago's operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to OneChicago. Generally, the same

procedures apply to exchange of future for physical ("EFP") transactions, except that no verbal report is required for such transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE's or CME's systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the procedures specified in the preceding paragraph.

Clause (K) of Section 6(h)(3) of the Act<sup>42</sup> requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. OneChicago Rule 419 provides for trading in a security future to be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Clause (L) of Section 6(h)(3) of the Act<sup>43</sup> requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.<sup>44</sup> OneChicago believes that its proposed Rule 515 regarding customer margin is consistent with the requirements of the Act.<sup>45</sup>

For the reasons described above, OneChicago submits that the OneChicago Listing Standards and the proposed changes to the Information Sharing Rule, the Market Manipulation Rule, the Sales Practice Rule, the Trading Ahead Rule, the Trading Against Rule and the other proposed OneChicago rules filed herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.<sup>46</sup>

## 2. Statutory Basis

One Chicago has filed these proposed rules pursuant to Section 19(b)(7) of the Act.<sup>47</sup> OneChicago believes that the OneChicago Listing Standards are authorized by, and consistent with, Section 6(b)(5)<sup>48</sup> of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to

<sup>42</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>43</sup> 15 U.S.C. 78f(h)(3)(L).

<sup>44</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>45</sup> The Commission notes that OneChicago's Rule 515 regarding customer margin was approved on November 7, 2002. Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR-OC-2002-01). See *supra* note 9.

<sup>46</sup> 15 U.S.C. 78f(h)(3).

<sup>47</sup> 15 U.S.C. 78s(b)(7).

<sup>48</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> 15 U.S.C. 78f(h)(3)(I).

<sup>41</sup> 15 U.S.C. 78f(h)(3)(J).