

among its members and issuers and other persons using its facilities.

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

The Amex does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder<sup>9</sup>. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

### **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>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-21 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-21. 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 the Amex. 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-Amex-2006-21 and should be submitted on or before April 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-4011 Filed 3-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53486; File No. SR-CBOT-2006-03]

### **Self-Regulatory Organization; Board of Trade of the City of Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Listing Standards for Security Futures Products**

March 14, 2006.

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 February 21, 2006, the Board of Trade of the City of Chicago, Inc. ("CBOT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rules described in Items I, II, and III below, which Items have been prepared by the

CBOT. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons. The CBOT also has filed the proposed rules with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>3</sup> on February 16, 2006.

### **I. Self-Regulatory Organization's Description of the Proposed Rules**

The CBOT is proposing to adopt listing standards and related regulations to permit the trading on the Exchange of physically-settled single security futures products, and the trading of security futures products based on narrow-based securities indices, in compliance with the requirements under Section 6(h)(3) of the Act<sup>4</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>5</sup> as modified by joint orders of the Commission and the CFTC.<sup>6</sup> The text of the proposed rule change is available on the CBOT's website (<http://www.cbot.com>), at the CBOT's principal office, and at the Commission's Public Reference Room.

The CBOT's Listing Standards<sup>7</sup> are, for the most part, identical to the sample listing standards ("Sample Listing Standards") included in the Commission's Staff Legal Bulletin No. 15 ("SLB 15"),<sup>8</sup> except that the CBOT's Listing Standards:

- Reflect the modifications to the statutory listing standards requirements jointly adopted by the Commission and the CFTC with respect to shares of exchange-traded funds ("ETFs"), trust-issued receipts ("TIRs"), shares of registered closed-end management investment companies ("Closed-End Fund Shares"), and American Depositary Receipts ("ADRs");<sup>9</sup>
- Permit share-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted methodologies for futures based on

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> 15 U.S.C. 78f(h)(3).

<sup>5</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>6</sup> See Joint Order Granting the Modification of Listing Standards Requirements (American Depositary Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001) and Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts, and Shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

<sup>7</sup> The CBOT's Listing Standards are set forth in proposed CBOT Regulations 5719.01 and 5818.01.

<sup>8</sup> Commission, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) (available at <http://www.sec.gov/interp/legall/mrslb15.htm>).

<sup>9</sup> See *supra* note 6.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

narrow-based security indices, subject to applicable rebalancing requirements;<sup>10</sup> and

- Contain certain provisions that reflect rule changes that have been filed by other security futures exchanges since the adoption of SLB 15, which vary from the Sample Listing Standards set forth in SLB 15.

The Exchange is also proposing to adopt regulations addressing regulatory trading halts, position limits, and procedures for determining final settlement prices for security futures products, as required by Rule 6h-1 under the Act<sup>11</sup> and CFTC Regulation 41.25.<sup>12</sup>

Proposed CBOT Regulations 431.07 and 431.08, while also referenced in Item II below, are not filed in this proposed rule change because they were the subjects of separate filings by the CBOT pursuant to Rule 19b-4 under the Act.<sup>13</sup>

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

The CBOT has prepared statements concerning the purpose of, and basis for, the proposed rules, 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 Rules

The CBOT proposes to adopt contract specifications governing physically-settled single security futures products ("single stock futures") and contract specifications governing security futures products based on narrow-based securities indices ("narrow-based stock index futures"), including proposed listing standards that comply with the requirements under Section 6(h)(3) of the Act<sup>14</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>15</sup> as modified

<sup>10</sup> Proposed CBOT Regulations 5818.01(a)(2) and 5818.01(b)(1)(B) contain listing requirements that relate to the initial listing standards and maintenance standards, respectively, for share-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted narrow-based security indices, in addition to those based on other weighting methodologies. All of these weighting methodologies have been previously approved for use by other security futures exchanges.

<sup>11</sup> 17 CFR 240.6h-1.

<sup>12</sup> 17 CFR 41.25.

<sup>13</sup> See SR-CBOT-2006-01, filed with the Commission on March 3, 2006.

<sup>14</sup> 15 U.S.C. 78f(h)(3).

<sup>15</sup> 7 U.S.C. 2(a)(1)(D)(i).

by joint orders of the Commission and the CFTC.<sup>16</sup>

Section 6(h)(3) of the Act<sup>17</sup> sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities exchange<sup>18</sup> and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.<sup>19</sup>

### 1. CBOT Listing Standards

Commission staff published SLB 15,<sup>20</sup> including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or securities indices), to provide guidance as to how an exchange would be able to comply with the foregoing requirements. SLB 15 also noted that different listing standards could also be consistent with the Act.

The CBOT's Listing Standards follow the Sample Listing Standards, subject to additional modifications relating to ETFs, TIRs, and Closed-End Fund Shares; the establishment of additional weighting methodologies, identified under Item I above; and certain other rule changes that were filed with the Commission and the CFTC by OneChicago, LLC ("OneChicago")<sup>21</sup> and the CBOE Futures Exchange, LLC ("CFE"),<sup>22</sup> which pertain to OneChicago's and CFE's respective

<sup>16</sup> See *supra* note 6.

<sup>17</sup> 15 U.S.C. 78f(h)(3).

<sup>18</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>19</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>20</sup> See *supra* note 8.

<sup>21</sup> See SR-OC-2002-04 (Securities Exchange Act Release No. 47114 (December 31, 2002), 68 FR 837 (January 7, 2003)) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products). See also SR-OC-2003-01 (Securities Exchange Act Release No. 47356 (February 12, 2003), 68 FR 8064 (February 19, 2003)); SR-OC-2003-04 (Securities Exchange Act Release No. 47445 (March 5, 2003), 68 FR 11595 (March 11, 2003)); SR-OC-2003-06 (Securities Exchange Act Release No. 48191 (July 17, 2003), 68 FR 43555 (July 23, 2003)); SR-OC-2003-08 (Securities Exchange Act Release No. 48660 (October 20, 2003), 68 FR 61027 (October 24, 2003)); SR-OC-2004-02 (Securities Exchange Act Release No. 50373 (September 14, 2004), 69 FR 56470 (September 21, 2004)); and SR-OC-2005-02 (Securities Exchange Act Release No. 52180 (July 29, 2005), 70 FR 45464 (August 5, 2005)).

<sup>22</sup> See SR-CFE-2005-01 (Securities Exchange Act Release No. 52295 (August 18, 2005), 70 FR 49691 (August 24, 2005)) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by CBOE Futures Exchange, LLC Relating to Its Listing Standards for Security Futures Products).

listing standards for security futures. Therefore, the CBOT's Listing Standards as set forth herein do not contain any listing standards that have not already been reviewed by the Commission.

The CBOT's Listing Standards permit the CBOT to trade physically-settled single stock futures. The CBOT's Listing Standards also permit the CBOT to trade either cash-settled or physically-settled narrow-based stock index futures on the following types of stock indices: capitalization-weighted, modified capitalization-weighted, price-weighted, share-weighted, equal dollar-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted. The modifications to SLB 15, including the modifications that permit the CBOT to list approximately equal dollar-weighted, modified equal dollar-weighted, and share-weighted narrow-based stock index futures, are explained in further detail below.

### 2. Modifications of SLB 15

#### a. Modification relating to Shares of ETFs, TIRs, and Closed-End Fund Shares

The modifications included in the CBOT's Listing Standards that relate to shares of ETFs, TIRs, and Closed-End Fund Shares reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC subsequent to the publication of SLB 15.<sup>23</sup> These standards are incorporated in proposed CBOT Regulation 5719.01.

#### b. Modification relating to Additional Weighting Methodologies

The modifications that relate to narrow-based stock index futures: (i) Are intended to allow the CBOT to provide for additional weighting methodologies for the underlying indices, including approximately equal dollar-weighted, modified equal dollar-weighted, and share-weighted methodologies; and (ii) are designed to enhance the usefulness and effectiveness of narrow-based stock index futures in connection with hedging, arbitrage, and other investment strategies.

The proposed approximately equal dollar-weighted methodology contemplates a narrow-based stock index consisting of component securities in increments that are no less than 100 shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding will be a necessary step in the determination of the initial index composition and any

<sup>23</sup> See *supra* note 6.

subsequent rebalancing. An approximately equal dollar-weighted index will be rebalanced annually on December 31 of each year if the notional value of the largest component is at least twice the notional value of the smallest component for 50% or more of the trading days in the three months prior to December 31 of each year. The CBOT will also have the ability to rebalance an approximately equal dollar-weighted narrow-based security index on a quarterly basis at its discretion.

A modified equal dollar-weighted index is designed to be a fair measurement of a particular industry or sector without assigning an excessive weight to one or more index components that have a large market capitalization relative to other index components. In a modified equal dollar-weighted index, each component security represents a pre-determined weighting percentage of the entire index. Each security will be assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal dollar-weighted index underlying a narrow-based stock index future must be rebalanced on a quarterly basis.

A share-weighting methodology involves calculating the index by multiplying the price of each component security by an adjustment factor. The adjustment factor will be chosen to reflect the investment objective deemed appropriate by the index designer and will be published by the Exchange as part of the contract specifications for the narrow-based stock index future. The value of the index will be calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. Share-weighted indices will not be rebalanced to reflect changes in the numbers of outstanding shares of their component securities.

The CBOT's proposed Listing Standards also provide that an index underlying a narrow-based stock index future, regardless of the weighting methodology, may be rebalanced on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely on the continuity of a narrow-based stock index future, outstanding contracts will not be affected by rebalancings.

The proposed Listing Standards for narrow-based stock index futures based on indices that are approximately equal dollar-weighted, modified equal dollar-

weighted, and share-weighted, which are reflected in proposed CBOT Regulations 5818.01(a)(2) and (b)(1)(B), are identical to the listing standards applicable in the case of indices based on these same weighting methodologies that are set forth in OneChicago Rules 1006(a)(2) and (b)(1)(B).<sup>24</sup>

#### c. Modification of SLB 15 I(A)(vi)

The CBOT is adopting the same initial listing standard contained in OneChicago Rule 906(a)(6)<sup>25</sup> and Section A(1)(vi) of CFE Policy and Procedure VIII,<sup>26</sup> which would permit the CBOT to list a single stock future on an underlying security that had trading volume of at least 2,400,000 shares in the preceding 12 months. This standard is incorporated in proposed CBOT Regulation 5719.01(a)(6).

#### d. Modification of SLB 15 I(A)(vii)

The CBOT is proposing to adopt initial listing standards which would permit a single stock future to be listed on a "covered security," as defined under Section 18(b)(1) of the Securities Act of 1933,<sup>27</sup> that has had a market price of at least \$3.00 for the five consecutive business days prior to the date on which the single stock futures contract is listed by the Exchange. 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. Proposed CBOT regulations would also require that an underlying security that is not a "covered security" must meet the requirement that it have a market price of \$7.50 for the majority of the business days for the three calendar months preceding selection. These standards are reflected in proposed CBOT Regulations 5719.01(a)(8) and (a)(9) and are the same as those standards contained in OneChicago Rule 906(a)(8) and (a)(9)<sup>28</sup> and Section A(1)(viii) and A(1)(ix) of CFE Policy and Procedure VIII.<sup>29</sup>

#### e. Modification of SLB 15 II(A)(iv)

The CBOT is adopting the same maintenance standards implemented in OneChicago Rule 906(b)(1)(E)<sup>30</sup> and in Section B(1)(v) of CFE Policy and Procedure VIII,<sup>31</sup> pursuant to which the CBOT would not open for trading a new delivery month for a single stock futures

contract if the market price per share of the underlying security closed below \$3.00 on the previous day to the expiration of the nearest expiring contract on the underlying security. The market price per share of the underlying security would be determined by the closing price reported in the primary market in which the underlying security is traded. This standard is incorporated in proposed CBOT Regulation 5719.01(b)(1)(E).

#### 3. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act<sup>32</sup> contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how the CBOT will comply with it, whether by particular provisions in the CBOT's listing standards or otherwise.

Section 6(h)(3)(A) of the Act<sup>33</sup> requires that, except as otherwise provided in a rule, regulation, or order issued jointly by the Commission and CFTC pursuant to Section 6(h)(4) of the Act,<sup>34</sup> any security underlying a security futures product, including each component security of a narrow-based security index, must be registered pursuant to Section 12 of the Act.<sup>35</sup> These requirements are incorporated in proposed CBOT Regulations 5704.01, 5719.01(a)(2), 5719.01(b)(1)(A), 5804.01, 5818.01(a)(2)(B) and 5818.01(b)(1)(B)(i).

Section 6(h)(3)(B) of the Act<sup>36</sup> requires that, if a security futures product is not cash-settled, the market on which the security futures product is traded must have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. Pursuant to CBOT Regulations 5719.01(a) and 5818.01(a)(2), the CBOT will not list any physically-settled security futures product until it has finalized such arrangements and provided the Commission with appropriate notice regarding the nature of such arrangements through the filing of a Form 19b-7, pursuant to Section 19(b)(7) of the Act<sup>37</sup> and Rule 19b-7 under the Act.<sup>38</sup>

Section 6(h)(3)(C) of the Act<sup>39</sup> requires that the listing standards for security futures products must be no less restrictive than comparable listing

<sup>24</sup> See SR-OC-2005-02, *supra* note 21.

<sup>25</sup> See SR-OC-2004-02, *supra* note 21.

<sup>26</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>27</sup> 15 U.S.C. 77r(b)(1).

<sup>28</sup> See SR-OC-2003-01, *supra* note 21.

<sup>29</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>30</sup> See SR-OC-2003-04 (as amended by SR-OC-2003-08), *supra* note 21.

<sup>31</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>32</sup> 15 U.S.C. 78f(h)(3).

<sup>33</sup> 15 U.S.C. 78f(h)(3)(A).

<sup>34</sup> 15 U.S.C. 78f(h)(4).

<sup>35</sup> 15 U.S.C. 78l.

<sup>36</sup> 15 U.S.C. 78f(h)(3)(B).

<sup>37</sup> 15 U.S.C. 78s(b)(7).

<sup>38</sup> 17 CFR 240.19b-7.

<sup>39</sup> 15 U.S.C. 78f(h)(3)(C).

standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.<sup>40</sup> For the reasons discussed under Item II.A.1 above, notwithstanding specified differences between the Sample Listing Standards and the CBOT's Listing Standards, the CBOT believes that the Listing Standards set forth in its proposed CBOT Regulations 5719.01 and 5818.01 are no less restrictive than comparable listing standards for exchange-traded options.

Section 6(h)(3)(D) of the Act<sup>41</sup> provides that, except as otherwise provided in a rule, regulation, or order issued jointly by the Commission and CFTC pursuant to Section 6(h)(4) of the Act,<sup>42</sup> a security futures product must be based upon common stock or other equity securities that the Commission and CFTC jointly determine appropriate. The Commission and CFTC have jointly modified the listing standards, under Section 6(h)(4) of the Act,<sup>43</sup> to permit security futures products to be based upon ADRs, ETFs, TIRs, and Closed-End Fund Shares.<sup>44</sup> Proposed CBOT Regulations 5704.01, 5719.01(a)(1), 5719.01(b)(1), 5804.01, 5818.01(a)(2)(C), and 5818.01(b)(1)(B)(ii) limit CBOT security futures products to those that are based on these permissible underlying securities.

Section 6(h)(3)(E) of the Act<sup>45</sup> requires that security futures products must 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 a security futures product to be purchased on one market and offset on another market that trades the same product. Section 6(h)(7) of the Act<sup>46</sup> defers this requirement until the "compliance date," as defined in that Section. The CBOT expects that its Clearing Services Provider, Chicago Mercantile Exchange, Inc. ("CME"), will have provisions in place to comply with Section 6(h)(3)(E)<sup>47</sup> as of the compliance date.

Section 6(h)(3)(F) of the Act<sup>48</sup> requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act<sup>49</sup> may effect transactions in

security futures products. CBOT members that are notice-registered broker-dealers, for the purpose of effecting transactions in security futures, are bound by the applicable sales practice rules of the National Futures Association ("NFA"). The NFA is registered with the Commission as a limited purpose national securities association, and, as such, its sales practice rules relating to security futures products are comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.<sup>50</sup>

Section 6(h)(3)(G) of the Act<sup>51</sup> requires that security futures products be subject to the dual trading prohibition contained in Section 4j of the CEA<sup>52</sup> and rules and regulations thereunder (or Section 11(a) of the Act<sup>53</sup> and rules and regulations thereunder), unless otherwise permitted. Pursuant to CFTC Regulation 41.27(a)(5),<sup>54</sup> Section 4j of the CEA<sup>55</sup> and CFTC Regulation 41.27<sup>56</sup> promulgated thereunder do not apply to the CBOT because the CBOT does not intend to list any security futures products in the open auction environment and the CBOT's electronic trading system does not provide market participants with a time or place advantage or the ability to override a predetermined algorithm.

Section 6(h)(3)(H) of the Act<sup>57</sup> requires that trading in security futures products must not be readily susceptible to manipulation of the price of such security futures products, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. The CBOT's Listing Standards contained in proposed CBOT Regulations 5719.01 and 5818.01, as well as the other proposed CBOT Regulations in Chapters 57 and 58, are designed to ensure that security futures products traded on the Exchange will not be readily subject to price manipulation, nor to being used in the manipulation of the price of any underlying securities. CBOT Rule 502.00 generally prohibits market manipulation with respect to commodities, securities, and futures and options contracts.<sup>58</sup>

<sup>50</sup> *Id.*

<sup>51</sup> 15 U.S.C. 78f(h)(3)(G).

<sup>52</sup> 7 U.S.C. 6j.

<sup>53</sup> 15 U.S.C. 78k(a).

<sup>54</sup> 17 CFR 41.27(a)(5).

<sup>55</sup> 7 U.S.C. 6j.

<sup>56</sup> 17 CFR 41.27.

<sup>57</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>58</sup> CBOT Rule 502.00 (Market Manipulation) states that:

Any manipulation of prices of, or any attempt to manipulate or corner the market in, any commodity, security, or futures or options contract

The position limit standards set forth in proposed CBOT Regulations 5711.01 and 5810.01 ("Position Limits") are also designed to prevent market manipulation with respect to physically-settled single stock futures and physically-settled narrow-based stock index futures, respectively, through the adoption of position limits in accordance with CFTC Regulation 41.25.<sup>59</sup> With respect to cash-settled narrow-based stock index futures, proposed CBOT Regulation 5810.01 adopts the position limit standards set forth in OneChicago Rule 1002(e)(2)<sup>60</sup> and CFE Rule 1902(e)<sup>61</sup> and applies those standards to all CBOT cash-settled narrow-based stock index futures.<sup>62</sup> Under proposed CBOT Regulation 5810.01, the CBOT will calculate two numbers: The Market Cap Position Limit and the SSF Position Limit. The Market Cap Position Limit is based on the market capitalization of each narrow-based stock index future and the notional value compared to the market capitalization of the CME's position limit for its futures contract on the Standard & Poor's ("S&P") 500 Index. The SSF Position Limit is based on the current position limit permitted for single stock futures under CFTC Regulation 41.25.<sup>63</sup> The CBOT will impose a position limit on each cash-settled narrow-based stock index future equal to the lower of the Market Cap Position Limit and the SSF Position Limit, rounded to the nearest multiple of 1,000 contracts; provided, however, that if the lower of the two limits is less than 500 but not less than 400, the position limit for such future will be rounded up to 1,000 contracts.

To calculate the Market Cap Position Limit, the CBOT will determine the market capitalization of the S&P 500 Index (as of the selection date for the

is prohibited. Purchases or sales of commodities, securities, or futures or options contracts, or offers to purchase or sell commodities, securities, or futures or options contracts, for the purpose of upsetting the equilibrium of the market or creating a condition in which prices do not or will not reflect fair market values, are prohibited, and any person who makes or assists in making such purchase or sale or offers to purchase or sell with knowledge of the purpose thereof, or who, with such knowledge assists in carrying out any plan or scheme for the making of such purchases or sales or offers to purchase or sell, shall be deemed to have engaged in an act inconsistent with just and equitable principles of trade and an act detrimental to the interest or welfare of the Exchange.

<sup>59</sup> 17 CFR 41.25.

<sup>60</sup> See SR-OC-2003-06, *supra* note 21.

<sup>61</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>62</sup> Consistent with CFTC Regulation 41.25, position limits apply to positions in any cash-settled narrow-based stock index futures held during the last five trading days of an expiring contract.

<sup>63</sup> 17 CFR 41.25.

<sup>40</sup> 15 U.S.C. 78o-3(a).

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

<sup>42</sup> 15 U.S.C. 78f(h)(4).

<sup>43</sup> *Id.*

<sup>44</sup> See *supra* note 6.

<sup>45</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>46</sup> 15 U.S.C. 78f(h)(7).

<sup>47</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>48</sup> 15 U.S.C. 78f(h)(3)(F).

<sup>49</sup> 15 U.S.C. 78o-3(a).

component securities in the index underlying the narrow-based stock index future), then will calculate the notional value of a position at the limit of CME's S&P 500 Index futures contract ("S&P 500 Notional Value Limit")<sup>64</sup> and then will divide the first amount by the second to determine the market capitalization ratio ("Market Cap Ratio").<sup>65</sup> The CBOT then will determine the market capitalization of the index underlying the narrow-based stock index future ("Stock Index Market Cap")<sup>66</sup> and the notional value of the index underlying the narrow-based stock index future ("Notional Value").<sup>67</sup> To calculate the Market Cap Position Limit, the CBOT will divide the Stock Index Market Cap by the Notional Value multiplied by the Market Cap Ratio.<sup>68</sup>

To calculate the SSF Position Limit for a narrow-based stock index future, the CBOT will first calculate its Notional Value in the same manner described above.<sup>69</sup> Then, for each component security in the index underlying the narrow-based stock index future, the CBOT will multiply the index weight of the component security<sup>70</sup> by the Notional Value to determine the security's proportion of the narrow-based stock index future ("Share Weighting"). The CBOT will then divide each security's Share Weighting by its price to calculate the number of shares of that security represented in the narrow-based stock index futures contract ("Implied Shares"). The CBOT then, for each component security in the index underlying the narrow-based stock index future, will divide its Implied Shares by 100 to obtain the implied number of 100-share contracts of each component security in each narrow-based stock index futures contract. The CBOT then will divide the applicable single stock futures contract position limit permitted under CFTC Regulation

41.25(a)(3)<sup>71</sup> (either 13,500 or 22,500 contracts) for each component security by the number of implied 100-share contracts. This equals the number of narrow-based stock index futures contracts that could be held without exceeding the speculative position limit on a futures contract on that component security ("Implied SSF Speculative Limit"). If a component security qualifies for position accountability under CFTC Regulation 41.25(a)(3),<sup>72</sup> that security would be ignored for purposes of this calculation. After calculating the Implied SSF Speculative Limit for each security in the index underlying the narrow-based stock index future, the CBOT will identify the lowest Implied SSF Speculative Limit as the SSF Position Limit for that narrow-based stock index future.

The CBOT's proposed CBOT Regulations 5712.01 and 5811.01 regarding regulatory trading halts, and proposed CBOT Regulations 5713.01, 5714.01, 5812.01, and 5813.01 regarding settlement prices, implement the requirements contained in Rule 6h-1 under the Act<sup>73</sup> relating to regulatory halts and settlement with respect to security futures products.

Proposed CBOT Regulation 5818.01(a)(2)(P) provides that if a narrow-based stock index future is cash-settled, it must be designated as AM-settled, which mirrors OneChicago Rule 1006(a)(2)(P).<sup>74</sup>

Proposed CBOT Regulation 5813.01 incorporates the special procedures for determining the final settlement price of cash-settled narrow-based stock index futures, which are required by Rule 6h-1(b) under the Act<sup>75</sup> and CFTC Regulation 41.25(b)<sup>76</sup> and mirrors OneChicago Rule 1002(i)(2)<sup>77</sup> and CFE Rule 1902(i).<sup>78</sup> Under proposed CBOT Regulation 5813.01, a special opening quotation of the relevant index underlying the cash-settled narrow-based stock index future will be derived from the sum of the opening prices<sup>79</sup> of

each component stock. When all of the component stocks have opened, the final special opening quotation will be calculated and disseminated.

If the price of one or more of the component securities is not readily available<sup>80</sup> on the day scheduled for determination of the final settlement price, the price of the component security or securities shall be based on the next available opening price of that security, unless the Exchange determines that one or more component securities are not likely to open within a reasonable time. If the Exchange makes such a determination, the price of the relevant component security or securities for purposes of calculating the final settlement price will be the last trading price of the security or securities during the most recent regular trading session for such security or securities. Proposed CBOT Regulation 5813.01(d) also provides that the CBOT Regulation shall not be used to calculate the final settlement price of a cash-settled narrow-based stock index future if the Exchange's Clearing Services Provider fixes the final settlement price in accordance with its rules and as permitted under Rule 6h-1(b)(3) under the Act<sup>81</sup> and CFTC Regulation 41.25(b)(3).<sup>82</sup>

Section 6(h)(3)(I) of the Act<sup>83</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 related securities are traded to detect manipulation and insider trading. Coordinated surveillance with respect to security futures products is addressed in the Listing Standards in proposed CBOT Regulations 5719.01(a)(10), 5719.01(b)(1)(F), 5818.01(a)(2)(G), and 5818.01(b)(1)(B)(vi). CBOT Regulation 190.01 sets forth the Exchange's general authority to enter into agreements for

price at which a security opened for trading on the primary market for the security. If a component security is an ADR traded on a national securities exchange or national securities association, the opening price for the ADR would be derived from the national securities exchange or national securities association that lists it.

<sup>80</sup> Under proposed CBOT Regulation 5813.01(c)(iv), the price of a security is "not readily available" if the national securities exchange or national securities association that lists it does not open on the day scheduled for determination of the final settlement price, or if the security does not trade on the listing national securities exchange or national securities association during the regular trading session.

<sup>81</sup> 17 CFR 240.6h-1(b)(3).

<sup>82</sup> 17 CFR 41.25(b)(3).

<sup>83</sup> 15 U.S.C. 78f(h)(3)(I).

<sup>64</sup> The speculative position limit for CME's S&P 500 Index futures contract is 20,000 contracts (in all months combined) and the contract multiplier is \$250. The S&P 500 Notional Value Limit = Index \* 20,000 \* 250.

<sup>65</sup> Market Cap Ratio = Market Capitalization of S&P 500 Index/S&P 500 Notional Value Limit.

<sup>66</sup> The Stock Index Market Cap is calculated by adding the market capitalization of each stock comprising the underlying narrow-based security index.

<sup>67</sup> Notional Value = Level of the Index underlying the narrow-based stock index future \* contract multiplier.

<sup>68</sup> Market Cap Position Limit = Stock Index Market Cap/(Notional Value \* Market Cap Ratio).

<sup>69</sup> See *supra* note 64.

<sup>70</sup> Index weight of the component security = (assigned shares \* price) of the component security/ the sum of (assigned shares \* price) for each component security.

<sup>71</sup> 17 CFR 41.25(a)(3).

<sup>72</sup> *Id.*

<sup>73</sup> 17 CFR 240.6h-1.

<sup>74</sup> See SR-OC-2005-02, *supra* note 21.

<sup>75</sup> 17 CFR 240.6h-1(b).

<sup>76</sup> 17 CFR 41.25(b).

<sup>77</sup> See SR-OC-2003-06, *supra* note 21.

<sup>78</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>79</sup> Consistent with Rule 6h-1(a)(1) under the Act, 17 CFR 240.6h-1(a)(1), and CFTC Regulation 41.1(j), 17 CFR 41.1(j), proposed CBOT Regulation 5813.01(c)(i) defines "opening price" as follows:

"Opening price" means the official price at which a security opened for trading during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then "opening price" shall mean the

regulatory cooperation.<sup>84</sup> The CBOT is an affiliate member of the Intermarket Surveillance Group (“ISG”) and has signed the following agreements: (1) An Agreement to Share Market Surveillance and Regulatory Information between the CBOT and the full members of ISG; (2) the Agreement to Share Market Surveillance and Regulatory Information between the CBOT and the affiliate members of ISG; and (3) the Addendum for Security Futures Products to agreements between the full members of ISG and the affiliate members of ISG trading security futures products.

Section 6(h)(3)(J) of the Act<sup>85</sup> requires that a market on which security futures products are traded must have audit trails that are necessary or appropriate to facilitate the coordinated surveillance addressed in the preceding paragraph. The CBOT utilizes the LIFFE CONNECT® software, pursuant to a license agreement, to power e-cbot®, the Exchange’s electronic trading system. The e-cbot system creates an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on the Exchange. The information recorded with respect to each order includes: time received, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, e-cbot User ID, and clearing firm. This information enables the CBOT to trace each order back to the clearing firm by or through which it was submitted. If any question arises as to the source of an order prior to submission by or through a clearing firm, the CBOT will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into the e-cbot system, and therefore will not be recorded electronically at the time they are placed, CBOT Regulation 9B.11 (Order

Entry) requires that the member or Registered User receiving the order must make a record of the order including the order instructions, account designation, date, time of receipt, and any other information that is required by the Exchange.<sup>86</sup> CBOT Regulation 9B.18 (Records of Transactions Effected Through the e-cbot System) requires that all written orders and any other original records pertaining to orders entered through the e-cbot system must be retained for five years.<sup>87</sup>

The Exchange’s sophisticated electronic surveillance system facilitates the analysis of trading data to identify possible violations with respect to both customer and market abuse. The Exchange retains all audit trail data for a period of five years in compliance with CFTC Regulation 1.31(a)(1).<sup>88</sup>

Section 6(h)(3)(K) of the Act<sup>89</sup> requires that an exchange on which security futures products are traded must have in place procedures to coordinate trading halts with any market on which any security underlying such security futures products are traded and other markets on which any related securities are traded. The CBOT’s proposed CBOT Regulation 5712.01 requires the CBOT to halt trading of a security futures

<sup>86</sup> CBOT Regulation 9B.11 (Order Entry) states that:

(c) It shall be the duty of each member or Registered User to: (1) submit orders through the e-cbot system under his registered e-cbot User ID and (2) input for each order the price, quantity, product, expiration month, correct CTI code and appropriate account designation and, for options, put or call and strike price. A suspense account may be used at the time of order entry provided that a contemporaneous written record of the order, with the correct account designation, is made, time-stamped and maintained in accordance with CBOT Regulation 9B.18, and provided that the correct account designation is entered into the clearing system prior to the end of the trading day. A suspense account may also be used at the time of order entry for bunched orders that are eligible for post-trade allocation, and are executed pursuant to and in accordance with CFTC Regulation 1.35(a–1)(5).

(d) With respect to orders received by a member or Registered User which are immediately entered into the e-cbot system, no separate record need be made. However, if a member or Registered User receives an order that is not immediately entered into the e-cbot system, a record of the order including the order instructions, account designation, date, time of receipt and any other information that is required by the Exchange must be made. The order must be entered into the e-cbot system when it becomes executable.

<sup>87</sup> CBOT Regulation 9B.18 (Records of Transactions Effected Through the e-cbot System) provides that “[a]ll written orders and any other original records pertaining to orders entered through the e-cbot system must be retained for five years. For orders entered into the e-cbot system immediately upon receipt, the data contained in the e-cbot system shall be deemed the original records of the transaction.”

<sup>88</sup> 17 CFR 1.31(a)(1).

<sup>89</sup> 15 U.S.C. 78f(h)(3)(K).

product based on a single security during any regulatory halt (as defined in CFTC Regulation 41.1(1)<sup>90</sup> and Rule 6h–1(a)(3) under the Act<sup>91</sup>) imposed on the underlying security. Proposed CBOT Regulation 5811.01 also requires the CBOT to halt trading of a security futures product based on a narrow-based stock index during any regulatory halt of one or more underlying securities that constitute 50% or more of the market capitalization of the narrow-based stock index. The CBOT believes that these proposed regulations comply with Section 6(h)(3)(K) of the Act<sup>92</sup> and Rule 6h–1(c)<sup>93</sup> thereunder.

Section 6(h)(3)(L) of the Act<sup>94</sup> requires that security futures margin requirements comply with the regulations prescribed under Section 7(c)(2)(B) of the Act.<sup>95</sup> The CBOT believes that its proposed CBOT Regulations 431.07 (Customer Margins for Security Futures Positions Held in Futures Accounts) and 431.08 (Acceptable Margin for Security Futures and Treatment of Undermargined Accounts), which have been filed with the Commission<sup>96</sup> pursuant to Section 19(b)(2) of the Act,<sup>97</sup> together with a written certification under Section 5c(c) of the CEA,<sup>98</sup> are consistent with the requirements of the Act regarding customer margin.

Proposed Chapters 57 and 58 of the CBOT Rulebook contain general specifications for single stock futures and narrow-based stock index futures, respectively. Specific terms applicable to particular single stock futures or narrow-based stock index futures will be provided in Specifications Supplements, described in proposed CBOT Regulations 5703.01, 5718.01, 5803.01, and 5817.01. This is the same approach set forth in CFE Rules 1802(a), 1806, 1902(a), and 1906.<sup>99</sup>

For the reasons discussed above, the CBOT submits that the CBOT’s Listing Standards satisfy the requirements set forth in Section 6(h)(3) of the Act.<sup>100</sup>

#### 4. Statutory Basis

The Exchange has filed these proposed regulations pursuant to Section 19(b)(7) of the Act.<sup>101</sup> The CBOT believes the CBOT’s Listing

<sup>90</sup> 17 CFR 41.1(l).

<sup>91</sup> 17 CFR 240.6h–1(a)(3).

<sup>92</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>93</sup> 17 CFR 240.6h–1(c).

<sup>94</sup> 15 U.S.C. 78f(h)(3)(L).

<sup>95</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>96</sup> See SR–CBOT–2006–01, *supra* note 13.

<sup>97</sup> 15 U.S.C. 78s(b)(2).

<sup>98</sup> 7 U.S.C. 7a–2(c)(1).

<sup>99</sup> See SR–CFE–2005–01, *supra* at note 22.

<sup>100</sup> 15 U.S.C. 78f(h)(3).

<sup>101</sup> 15 U.S.C. 78s(b)(7).

<sup>84</sup> CBOT Regulation 190.01 (Regulatory Cooperation) states that:

The Exchange may from time to time enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade, clearing organizations, and their respective regulators providing for the exchange of information and other forms of mutual assistance for financial surveillance, routine audits, market surveillance, investigative, enforcement and other regulatory purposes as the Exchange may consider necessary or appropriate or as the Commodity Futures Trading Commission may require. The Exchange is authorized to provide information to any such organization, association, board of trade, clearing organization or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement.

<sup>85</sup> 15 U.S.C. 78f(h)(3)(J).

Standards are authorized by, and consistent with, Section 6(b)(5) of the Act,<sup>102</sup> because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

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

The CBOT does not believe that the proposed regulations will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Since the proposed regulations, in conjunction with other related regulatory filings being made by the CBOT, will permit the CBOT to become authorized to provide a trading venue for security futures, these regulations will serve to enhance and promote competition by allowing an additional exchange to list and trade security futures.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Received From Members, Participants, or Others*

The CBOT neither solicited nor received any written comments on the proposed regulations.

### **III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action**

Pursuant to Section 19(b)(7)(B) of the Act,<sup>103</sup> the proposed regulations became effective on February 21, 2006.<sup>104</sup> Within 60 days of the date of effectiveness of the proposed regulations, the Commission, after consultation with the CFTC, may summarily abrogate the proposed regulations and require that the proposed regulations be re-filed in accordance with the provisions of Section 19(b)(1) of the Act.<sup>105</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>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOT-2006-03 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOT-2006-03. 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 will also be available for inspection and copying at the principal office of the CBOT. All comments received will be posted without change; the Commission does not edit identifying personal information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOT-2006-03 and should be submitted on or before April 11, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>106</sup>

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53493; File No. SR-CHX-2005-27]

#### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments To Commission Rules Regarding Removal From Listing and Withdrawal From Registration**

March 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 17, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC or Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CHX filed Amendment No. 1 to the proposal on December 14, 2005.<sup>3</sup> On February 17, 2006, CHX filed Amendment No. 2 to the proposal.<sup>4</sup> On March 15, CHX filed Amendment No. 3 to the proposal.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the text of its rule relating to the delisting

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, CHX made several changes to the proposed rule text of CHX Article XXVIII, Rule 4 to clarify the organization of the Rule; incorporate the requirement that issuers provide notice to the Exchange upon filing a Form 25; and clarify the effective dates for the old and the new CHX Rule 4.

<sup>4</sup> In Amendment No. 2, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 relating to the timing of certain issuer obligations under SEC Rule 12d2-2 and made other grammatical corrections to the proposed rule text.

<sup>5</sup> In Amendment No. 3, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 stating that if an issuer seeks to voluntarily withdraw its securities from listing and has either received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or is aware that it is below such continued listing policies and standards even if it has not received such notice from the Exchange, the issuer must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its written notice to the Exchange of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its public press release and website notice required by Rule 12d2-2(c)(2)(iii) under the Act.

<sup>102</sup> 15 U.S.C. 78f(b)(5).

<sup>103</sup> 15 U.S.C. 78s(b)(7)(B).

<sup>104</sup> The CBOT filed the proposed regulations with the CFTC, together with a written certification under Section 5c(c) of the CEA, 7 U.S.C. 7a-2(c), on February 16, 2006.

<sup>105</sup> 15 U.S.C. 78s(b)(1).

<sup>106</sup> 17 CFR 200.30-3(a)(75).