

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 OneChicago, LLC – Application for Exemption from Recognition and Registration as an Exchange and Related Registration Relief – Notice and Request for Comment

##### NOTICE AND REQUEST FOR COMMENT

##### APPLICATION BY ONECHICAGO, LLC FOR EXEMPTION FROM RECOGNITION AND REGISTRATION AS AN EXCHANGE AND RELATED REGISTRATION RELIEF

#### A. Background

OneChicago, LLC (**OneChicago Exchange**) has applied to the Commission for an exemption from the requirement to be registered as an exchange pursuant to section 15 of the *Commodity Futures Act* (Ontario) (**CFA**), and the requirement to be recognized as an exchange pursuant to section 21 of the *Securities Act* (Ontario) (**OSA**).

OneChicago Exchange is regulated as a designated contract market (**DCM**) by the United States Commodity Futures Trading Commission (**CFTC**), pursuant to the U.S. Commodity Exchange Act. As a DCM, OneChicago Exchange operates an electronic trading system (**Trading System**) that offers single-stock futures products (**OneChicago Exchange Contracts**).

OneChicago Exchange proposes to offer direct access in Ontario to its Trading System and facilities to prospective participants in Ontario (**Ontario Participants**).

As OneChicago Exchange will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA and registered as a commodity futures exchange under the CFA or apply for exemptions from both requirements. OneChicago Exchange has applied for an exemption from the registration and recognition requirements on the basis that it is already subject to regulatory oversight by the CFTC.

#### B. Related Relief

OneChicago Exchange intends to provide direct access to the Trading System to Ontario Participants who will be certain Canadian financial institutions and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading futures contracts in Ontario; (ii) institutional investors and proprietary trading firms; and (iii) Banks listed in Schedule I of the *Bank Act* (Canada) (**Banks**). In each case, OneChicago Exchange expects that Ontario Participants will be (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario, (ii) Hedgers, as defined in subsection 1(1) of the CFA, or (iii) Banks.

OneChicago Exchange is requesting exemptive relief from the registration requirements under section 22 of the CFA for trades in OneChicago Exchange Contracts by Hedgers, in order for Hedgers to be able to access trading on OneChicago Exchange directly and not “through a dealer” as otherwise required under the existing CFA exemption.

OneChicago Exchange is also requesting exemptive relief for its participants from the registration requirement in section 22 of the CFA with respect to trades in OneChicago Exchange Contracts by a Bank entering orders as principal and only for its own account.

#### C. Application and Draft Exemption Order

In the application, OneChicago Exchange has outlined how it meets the criteria for exemption from recognition and from registration. The specific criteria can be found in Appendix 1 of the draft exemption order. Subject to comments received, staff intend to recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application and draft exemption order are attached as Exhibits A and B, respectively, to this Notice.

**D. Comment Process**

The Commission is publishing for public comment OneChicago Exchange's application and the draft exemption order. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before September 19, 2016, to the attention of:

Ontario Securities Commission  
20 Queen Street West  
22nd Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

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Senior Legal Counsel, Market Regulation  
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EXHIBIT "A"



July 22, 2016

Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, ON  
Canada M5H 3S8  
Attention: Secretary

*Secretary of the Ontario Securities Commission*

**OneChicago, LLC – Application for Exemption from Recognition as an Exchange and Registration as a Commodity Futures Exchange**

We are filing this application with the Ontario Securities Commission (“OSC”) for the following decisions (collectively, the “Requested Relief”):

1. A decision under Section 147 of the *Securities Act (Ontario)* (“OSA”) exempting OneChicago, LLC from the requirement to be recognized as an exchange under Section 21(1) of the OSA;
2. A decision under Section 80 of the *Commodity Futures Act (Ontario)* (“CFA”) exempting OneChicago, LLC from the requirement to be registered as a commodity futures exchange under Section 15(1) of the CFA;
3. A decision under Section 38 of the CFA exempting trades in contracts on OneChicago, LLC by a hedger (as defined in subsection 1(1) of the CFA) (“Hedger”) from the registration requirement under Section 22 of the CFA (the “Hedger Relief”); and
4. A decision under Section 38 of the CFA exempting trades in contracts on OneChicago, LLC by a bank listed in Schedule 1 to the *Bank Act (Canada)* (“Bank”) that enters orders only for its own account from the registration requirement under Section 22 of the CFA (“Bank Relief” and, together with the Hedger Relief, “Registration Relief”).

OSC Staff has prescribed criteria that it will apply when considering applications by foreign-based commodity futures exchanges for registration (or exemption from registration) under Section 15 of the CFA. These criteria are prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges*, as updated, (“Staff Notice 21-702”) in relation to applications for recognition (or exemption from recognition) by foreign exchanges under Section 21 of the OSA.

For convenience, this Application is divided into the following listed Parts consistent with the criteria in Staff Notice 21-702.

Part I Background

Part II Application of Exemption Criteria to OneChicago, LLC

1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access
5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Transparency
12. Record Keeping
13. Outsourcing
14. Fees
15. Information Sharing and Oversight Arrangements
16. IOSCO Principles

Part III Submissions

Part IV Other Matters

## Part I Background

1. OneChicago, LLC (“**OneChicago**,” “**OCX**,” or the “**Exchange**”) is a privately held company organized as a limited liability company under the laws of the State of Delaware in the United States. On June 11, 2002, the Commodity Futures Trading Commission (“**CFTC**”) designated OneChicago as a Designated Contract Market (“**DCM**”), pursuant to Sections 5 and 6(a) of the Commodity Exchange Act, 7 U.S.C. §§7 and 8(a).
2. OneChicago is also notice-registered with the Securities and Exchange Commission (“**SEC**”) as a security futures product exchange, pursuant to Section 6(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78f(g).
3. OneChicago operates the DCM from its headquarters in Chicago, Illinois in the United States. The Exchange receives a majority of its revenue from execution fees when market participants execute trades on the Exchange’s trading platform (the “**OneChicago System**”), as well as carry fees, which are assessed daily based on the size of a market participant’s position carried overnight.<sup>1</sup> Both of these fees are assessed on a notional value basis.<sup>2</sup> OneChicago lists for trading security futures (“**SFs**”) as defined in 7 U.S.C § 1a(44).<sup>3</sup> Currently, OneChicago lists SFs overlaying individual equity securities on common stock, exchange traded funds, real estate investment trusts, American depository receipts, and master limited partnerships (futures listed on OneChicago and overlaying such securities collectively referred to herein as “**OneChicago Contracts**”).
4. OneChicago provides an electronic trading system to its market participants. Pursuant to the Rules of the Exchange (“**Rules of the Exchange**”), which include OneChicago’s Rulebook (the “**OCX Rulebook**”) and Notices to Members (“**NTMs**”), market participants may fall under one of three enumerated classes: **Clearing Members**, **Exchange Members**, and **Access Persons** (collectively, “**OneChicago Participants**”).<sup>4</sup>

Clearing Member means each Person from time to time found eligible and authorized, either individually or as part of a group or category, by the Board of Directors of OneChicago (the “**Board**”) to clear trades in any or all OneChicago products. The Board has adopted an interpretation to the definition of Clearing Member to include any security futures eligible member of the Options Clearing Corporation (“**OCC**”), the clearing house for OneChicago products. OneChicago Participants that wish to access the Exchange as Clearing Members must execute (i) a Clearing Firm Registration Form, and (ii) a Responsible Administrator Designation Form. If the Clearing Firm wishes to trade, not just clear, OneChicago products, it must execute (i) an Authorized Trade Reporter Registration Form, (ii) an Access Authorization Form, and (iii) an OCXdelta1 User Agreement.<sup>5</sup> All trades that occur on OneChicago must be executed through and cleared by an OCC Clearing Member.

Exchange Member means, subject to certain limitations, any Person with member trading privileges on the CME, the Chicago Board Options Exchange (“**CBOE**”) or the Chicago Board of Trade (“**CBOT**”). OneChicago Participants that wish to access the Exchange as Exchange Members must execute (i) an Exchange Member Registration Form, (ii) a Responsible Administrator Designation Form, (iii) an Authorized Trade Reporter Registration Form, (iv) an Access Authorization Form, and (v) an OCXdelta1 User Agreement. Exchange Members must be authorized by a Clearing Member to access the Exchange.

Access Person means any Person, other than a Clearing Member or Exchange Member, or related party of either, who has been given access to OneChicago by a Clearing Member. Access Persons that wish to access the Exchange via direct market access (*i.e.*, to trade directly on the Exchange and not submit orders through a third-party broker), must complete (i) an Authorized Trade Reporter Registration Form, (ii) an Access Authorization Form, and (iii) an OCXdelta1 User Agreement. Access Persons must be authorized by a Clearing Member to access the Exchange. The term Access Person would typically include a retail investor who accesses the exchange through a Clearing Member or Exchange Member.<sup>6</sup>

5. OneChicago Contracts overlay U.S. equity securities, including common stock, exchange traded funds, real estate investment trusts, master limited partnerships, and American depository receipts. OneChicago lists for trading two different types of OneChicago Contracts, differentiated based on how the dividend is priced and handled. OneChicago Contracts are listed as either traditional (“**1C**”) or dividend-protected (“**1D**”) contracts. Dividend-protected futures

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<sup>1</sup> OneChicago does not hold or custody customer positions. The carry fees are charged to replicate the fees associated with economically equivalent financing transactions, which OneChicago Contracts provide an alternative to.

<sup>2</sup> OneChicago’s fees are available on its public website [www.onechicago.com](http://www.onechicago.com).

<sup>3</sup> SFs are a subtype of Security Futures Products (“**SFPs**”). SFPs include SFs or any put, call, straddle, option, or privilege on any SF. 7 U.S.C. § 1a(45).

<sup>4</sup> The OCX Rulebook is available at on OneChicago’s website at [http://www.onechicago.com/wp-content/uploads/content/OneChicago\\_Current\\_Rulebook.pdf](http://www.onechicago.com/wp-content/uploads/content/OneChicago_Current_Rulebook.pdf). NTMs are available at [http://www.onechicago.com/?page\\_id=2207](http://www.onechicago.com/?page_id=2207).

<sup>5</sup> OCXdelta1 is OneChicago’s current trading platform.

<sup>6</sup> The documents referenced in this section are available on OneChicago’s public website at [https://www.onechicago.com/?page\\_id=1266](https://www.onechicago.com/?page_id=1266).

remove dividend risk from the product by adjusting the price of the future downward on the morning of ex-date by the then known dividend amount. However, the adjustment does not trigger a pay/collect cycle at the clearing house, ensuring that neither side to futures contract is harmed by the dividend payment. The traditional 1C futures do not adjust this way, and therefore market participants transacting these futures must price the present value of any expected future dividend payments into the trade price of the futures contract. There is a risk that the market participants' estimate regarding the amount and timing of any expected dividend might be incorrect. The 1D product eliminates this risk.<sup>7</sup>

OneChicago Contracts may be listed as either monthly or weekly expiry contracts. In the future, OneChicago may also determine to list futures products overlaying a narrow-based security index, as that term is defined in 7 U.S.C. § 1a(35). A securities index is classified as a narrow-based security index if it meets any one of the following criteria: (1) the index has nine or fewer component securities; (2) any one of the component securities comprises more than 30 percent of the index's weighting; (3) the five highest weighted component securities together comprise more than 60 percent of the index's weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume (ADTV) of less than \$50 million (or \$30 million in the case of an index with 15 or more component securities).

Currently, all of OneChicago's futures products are physically-settled. In other words, a party holding a long futures contract that does not offset the contract before expiry becomes obligated to purchase the securities underlying the particular futures contract. Conversely, a party holding a short futures contract that does not offset the contract before expiry becomes obligated to deliver the securities underlying the particular futures contract.

6. The OneChicago System is a Central Limit Order Book ("**CLOB**") open during trading hours. The OneChicago System supports the matching of outright trades and calendar spread trades, as well as the reporting of bilateral Exchange of Future for Physical ("**EFP**") and bilateral Block ("**Block**") trades. Bilateral EFP and bilateral Block trades are off-exchange, privately negotiated transactions that are reported to the Exchange by the transacting parties. EFP and Block trades are required to conform to specific Rules of the Exchange that permit bilateral transactions, and may be reported in any futures product listed by the Exchange.
7. All OneChicago Contracts are cleared through the OCC. Founded in 1973, the OCC is the world's largest equity derivatives clearing organization. OCC operates under the jurisdiction of both the SEC and the CFTC. As a registered clearing agency under SEC jurisdiction, OCC clears transactions for exchange-listed options, SFs and OTC options. As a derivatives clearing organization under CFTC jurisdiction, OCC offers clearing and settlement services for transactions in futures and options on futures.
8. OneChicago proposes to offer direct access to the OneChicago System to prospective participants in Ontario ("**Ontario Participants**"). To obtain direct access to OneChicago, a prospective participant in Ontario must complete the agreements described above. The agreements required to be completed by the prospective Ontario Participant depend on whether the prospective Ontario Participant will access the Exchange as a Clearing Member, Exchange Member, or Access Person. Market participants accessing the Exchange through direct access must still be approved by an OCC Clearing Member. OneChicago anticipates that prospective Ontario Participants will be certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 Definitions) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading futures contracts in Ontario; and (ii) institutional investors and proprietary trading firms.

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<sup>7</sup> For further explanation of how the OCX.NoDivRisk works, please see <http://www.onechicago.com/wp-content/uploads/rules/OCX.NoDivRisk%20Overview.pdf> and Appendices A and B to Chapter 9 of the OCX Rulebook.

**Part II Application of Exemption Criteria to OneChicago**

**1 REGULATION OF THE EXCHANGE**

**1.1 Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulation (Foreign Regulator)**

1.1.1 OneChicago is a DCM within the meaning of that term under the U.S. *Commodity Exchange Act* (“**CEA**”), as amended. OneChicago is also a Security Futures Product Exchange within the meaning of that term under the U.S. *Securities Exchange Act of 1934* (“**SEA**”), as amended. The Exchange is subject to regulatory supervision by the CFTC and the SEC, each a U.S. federal regulatory agency.<sup>8</sup> The Exchange is obligated under the CEA to give the CFTC access to all records. The CFTC reviews, assesses and enforces the Exchange’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the DCM core principles (“**DCM Core Principles**”) relating to the operation and oversight of the Exchange’s markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

1.1.2 OneChicago is a DCM that operates a futures exchange providing an electronic trading system where OneChicago Participants trade and execute futures contracts overlaying individual equity securities. A list of the OneChicago Contracts traded on OneChicago’s website at [www.onechicago.com](http://www.onechicago.com) and is also included in Appendix “B” attached hereto.

1.1.3 The regulatory scheme by the CFTC for DCMs, such as OneChicago, is generally comparable to the regulatory scheme in Ontario for comparable transactions. OneChicago is obligated under the CEA to give the CFTC access to all records. The CFTC reviews, assesses, and enforces the Exchange’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the DCM Core Principles relating to financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. The CFTC’s Division of Market Oversight conducts a regular, in-depth review of every DCM known as a rule enforcement review that assesses the exchange’s ongoing compliance with its regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information.

1.1.4 To be designated and maintain a designation as a contract market, OneChicago must comply with the DCM Core Principles for operation of section 5(d) of the CEA, and the provisions of Part 38.

**1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the Exchange. This includes regular, periodic oversight reviews of the Exchange by the foreign regulator.**

1.2.1 The CFTC carries out the regulation of the futures markets in accordance with the provisions of the CEA and the U.S. *Commodity Futures Modernization Act of 2000* (“**CFMA**”). The CFTC is subject to reauthorization by the U.S. Congress every five years.

1.2.2 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory oversight responsibility over DCMs. To implement the CEA, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the DCM Core Principles described above and govern the conduct of U.S. DCMs such as OneChicago. The CFTC reviews, assesses, and enforces the Exchange’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the DCM Core Principles relating to financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. The CFTC’s Division of Market Oversight conducts a regular in-depth review of every DCM known as a rule enforcement review that assesses the exchange’s ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information.

1.2.3 OneChicago is required to demonstrate its compliance with the DCM Core Principles applicable to all U.S. DCMs. Upon request a DCM must file information related to its business as a DCM, provide written documentation demonstrating the DCM’s compliance with one or more DCM Core Principles, and information related to its participants or related positions. A DCM is required to make available to the CFTC information regarding its activities including information regarding risk assessments, internal governance, and legal proceedings.

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<sup>8</sup> OneChicago is notice-registered with the SEC as a security futures product exchange pursuant to Section 6(g) of the SEA, 15 U.S.C. § 78f(g). Section 6(g) exempts notice-registered exchanges like OneChicago from various specified provisions of the SEA, but requires that rule changes be filed with the SEC if they relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange’s obligation to enforce the securities laws pursuant to section 78s(b)(7).

- 1.2.4 To enforce the CEA and the CFTC's authority, OneChicago may suspend any OneChicago Participant without notice in compliance with the OCXdelta1 User Agreement and the OCX Rulebook. All OneChicago Participants are subject to the provisions of the OCX Rulebook, which includes rules governing trading, business conduct, and disciplinary procedure.
- 1.2.5 The CEA, the CFTC Regulations, and the DCM Core Principles, reflect standards set by the International Organization of Securities Commissions ("IOSCO"), such as "Objectives and Principles of Securities Regulation" (1998, 2002, and 2003) and "Report on Co-operation between Market Authorities and Default Procedures" as well as the "Standards for Regulated Markets" published by the Forum of European Securities Commissions in December 1999.

## **2 GOVERNANCE**

### **2.1 Governance – The governance structure and governance arrangements of the Exchange ensure:**

#### **(a) effective oversight of OneChicago**

- 2.1.1 The Board consists of eight individuals and is responsible for the oversight of the Exchange. The Board is comprised of representatives of the owners of the Exchange, as well as three public directors, which are directors having the qualifications set out in OCX Rule 207(n) ("**Public Directors**"). OCX Rule 207(n) requires that to qualify as a Public Director, a person must be found to have no relationship with the Exchange that reasonably could affect his or her independent judgment or decision making. Further, a person shall not be considered a Public Director if any of the following circumstances exist: (A) within the last year the person was an officer or employee of the Exchange or an affiliate of the Exchange; (B) within the last year, the person was a member of the Exchange or an officer or director of a member; or (C) within the last year the person or the person's employer received more than \$100,000 in combined annual payments from the Exchange. These restrictions also apply to a member of the director's immediate family, such as spouse, parents, children, and siblings.
- 2.1.2 The Board is authorized to manage the business and affairs of the Exchange in accordance with the OneChicago Limited Liability Company Agreement ("**LLC Agreement**"). Further, pursuant to the OCX Rulebook, the Board has the power and authority to call for review, and to affirm, modify, suspend or overrule any and all decisions of officers of the Exchange, except for any action of the Regulatory Oversight Committee ("**ROC**").
- 2.1.3 OneChicago was initially formed as a joint venture between the CME, CBOT, and CBOE. In 2006, Interactive Brokers Group, Inc. ("**IBG**") became a part owner of the Exchange. These four entities are each represented on the Board.<sup>9</sup>
- 2.1.4 The OneChicago management team has day-to-day management authority, such as determining which OneChicago Contracts are available from time to time for trading subject to the Rules, and will approve Rules containing contract specifications of such OneChicago Contracts. The Board has delegated authority to the Chief Executive Officer ("**CEO**") who may approve rule changes, new products, and other Exchange matters on behalf of the Board, provided that changes with respect to rules and OneChicago Contracts will be submitted to the CFTC as required by applicable law.
- 2.1.5 The Board has the authority to manage the business and affairs of OneChicago, with all rights and powers generally conferred by law or necessary, advisable, or consistent in connection with such management of the Exchange. This authority includes the designation of officers and agents of OneChicago as well as their compensation. The Board has the power to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of any committees of the Board or any panel of the Exchange's officers related to the day-to-day business operations of the Exchange, except for any action of the ROC that is not directly related to the Exchange's budget. The Board meets a minimum of six times per year. At these meetings, the Board reviews the performance of the Exchange's operations, and through the ROC review's the Exchange's compliance program, and provides guidance related to the future direction of the Exchange.
- 2.1.6 Sound corporate governance is of utmost importance to the Exchange, and is reflected in the high standards set by the Board for the Exchange. OneChicago is committed to providing OneChicago Participants with a fair, efficient, and transparent market for the trading of OneChicago Contracts. OneChicago's governance structure supports the Exchange's critical role as a self-regulatory organization subject to oversight by the CFTC and the SEC.
- 2.1.7 Three of the voting owners of the Exchange appoint directors to the Board. Consistent with DCM Core Principle 15, persons involved in the governance of, and members trading on, the Exchange are subject to fitness and eligibility criteria under the Rules of the Exchange. As described in the OCX Rulebook, the eligibility/fitness criteria to serve as a director on the Board or any committee established by OneChicago would disqualify any individual who has committed a disciplinary offense or subject to a disqualification from any registration with the CFTC.

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<sup>9</sup> In 2007, CME acquired the CBOT.

- 2.1.8 The Board has two currently standing committees: the ROC and the Compensation Committee.
- 2.1.9 The ROC consists of only Public Directors, and is tasked with overseeing the Exchange's regulatory program and assisting the Board in minimizing actual and potential conflicts of interest. The ROC has the authority to:
- (a) Monitor the Exchange's regulatory program for sufficiency, effectiveness, and independence;
  - (b) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
  - (c) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;
  - (d) Supervise the Chief Regulatory Officer ("**CRO**"), who will report jointly to the ROC for all regulatory, compliance, supervisory, and surveillance matters and to the CEO for all others matters that are not related to regulation and supervision;
  - (e) Prepare an annual report assessing the Exchange's self-regulatory program for the Board and the CFTC, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;
  - (f) Recommend changes that would ensure fair, vigorous, and effective regulation;
  - (g) Review regulatory proposals and advise the Board as to whether and how such changes may impact regulation, and
  - (h) Exercise any other functions expressly assigned to it in the Rules of the Exchange.
- 2.1.10 The Compensation Committee is empowered to make decisions regarding the compensation and benefits programs for the Exchange and to determine the annual compensation for the Exchange's Officers and employees, subject to approval of the Board. The Compensation Committee is comprised of one director from each of CME, CBOE, and IBG.
- (b) OneChicago's business and regulatory decisions are in keeping with its public interest mandate.**
- 2.1.11 OneChicago is committed to ensuring the integrity of the contracts it submits for clearing and the stability of the financial system, in which market infrastructure plays an important role. OneChicago must ensure the integrity of contracts on the exchange and the protection of customer funds held by Clearing Members under Core Principle 11 – *Financial Integrity* ("**Core Principle 11**"). OneChicago fulfills this requirement in part through compliance with other DCM Core Principles, such as Core Principle 3 – Contracts Not Readily Subject to Manipulation ("**Core Principle 3**"), Core Principle 8 – Daily Publication of Trading Information ("**Core Principle 8**"), Core Principle 9 – Execution of Transactions ("**Core Principle 9**"), and Core Principle 12 – Protection of Markets and Market Participants ("**Core Principle 12**").

OneChicago also has rules in the OCX Rulebook intended to ensure the financial integrity of transactions and OneChicago Participants. Specifically, Chapter 5 of the OCX Rulebook establishes minimum financial and related reporting and recordkeeping requirements. Chapter 5 also contains rules relating to the treatment of customer funds and securities. Additionally, OneChicago has entered into an agreement with its clearing house requiring the clearing house to conduct financial surveillance of OneChicago Clearing Members.

Stability of the market infrastructure is enhanced through compliance with Core Principle 21 – Financial Resources ("**Core Principle 21**"). Core Principle 21 requires a DCM to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. OneChicago maintains financial resources sufficient to cover its operating costs for one-year, calculated on a rolling basis. The rules, policies and activities of OneChicago are designed and focused on ensuring it fulfills its public interest mandate. OneChicago operates on a basis consistent with applicable laws and regulations, and practices of other DCMs.

Although the OCX Rulebook allows for Exchange Members, OneChicago does not independently conduct financial surveillance of any OneChicago Participants, regardless of status as an Exchange Member or otherwise. Financial surveillance of OneChicago Participants that conduct futures business with the public is undertaken by the Joint Audit Committee ("**JAC**"). The JAC was formed by the National Futures Association ("**NFA**") and the U.S. futures exchanges to monitor and enforce CFTC Regulations and exchange rules covering minimum financial, segregation/secured funds,



recordkeeping, and reporting requirements. Because many Clearing Members are members of other exchanges, the JAC assigns a "lead regulator" to common members to reduce regulatory duplication. The lead regulator, or Designated-Self Regulatory Organization ("**DSRO**"), is primarily responsible for the financial surveillance of its allocated members. OneChicago Participants that conduct securities business with the public are subject to audits and examinations by a Designated Examining Authority ("**DEA**"), which may be the Financial Industry Regulatory Authority ("**FINRA**") or a national securities exchange. OneChicago has also entered into an agreement with the OCC, whereby the OCC performs financial surveillance of Clearing Members pursuant to Part 38 of the CFTC Regulations.

2.1.12 Please refer to section (d) below for further discussion of the governance structure, arrangements and safeguards relating to the management of conflicts of interest that are relevant to OneChicago's public interest mandate.

**(c) fair, meaningful and diverse representation on the Board and any committees of the Board, including:**

- i. appropriate representation of independent directors, and**
- ii. a proper balance among the interests of the different persons or companies using the services and facilities of the Exchange,**

2.1.13 The experience and diversity of the Board has been, and continues to be, critical to OneChicago's success. The Board is comprised of directors appointed by each voting owner of the Exchange. The Board has three Public Directors comprising 37.5% of the Board. These Public Directors are experienced in the industry but are not actively using the services of the Exchange. A majority of the Public Directors have significant regulatory experience in the futures and securities industry, and help to bolster OneChicago's regulatory program and mission. The Board seeks directors from diverse professional backgrounds and expertise. Currently, OneChicago's Board is comprised of individuals representing futures exchanges, securities exchanges, broker-dealers, and market-makers.

2.1.14 Consistent with DCM Core Principle 16 and pursuant to Exchange Rule 207, at all times not less than 35% of the Board's Directors (but not fewer than two individuals) must be Public Directors, as defined by the CFTC. To qualify as a Public Director, a person cannot have a significant business relationship with the Exchange. In addition, OCX Rule 211 establishes policies and procedures for members of the Boards to abstain from deliberating on an issue in which that member has a conflict of interest.

2.1.15 Consistent with Core Principle 17 and pursuant to the LLC Agreement, the Board consists of eight directors, three of which are Public Directors as defined in CFTC Regulations. As such, 37.5% of the Board is Public Directors. Additionally, the ROC is comprised solely of Public Directors.

**(d) OneChicago has policies and procedures to appropriately identify and manage conflicts of interest, and**

2.1.16 OneChicago takes seriously its obligation to ensure the integrity and fairness of its market. To achieve that goal, OneChicago has appropriate policies and procedures in place to identify and manage conflicts of interest. OneChicago believes that these policies and procedures ensure that the Exchange is operated in a way that serves the best interest of its market participants.

2.1.17 Through its enforcement of the conflicts of interest policies in OCX Rule 211 that apply to all members of the Board and any Disciplinary Panel ("**Disciplinary Panel**"), as well as the Exchange's compliance with the CEA and CFTC Regulations, OneChicago has established a robust set of safeguards designed to ensure the Exchange's functions operate free from conflicts of interest or inappropriate influence as described above. In addition to the CFTC's oversight of the markets, OneChicago separately establishes and enforces rules governing the activity of all OneChicago Participants in their market. Furthermore, the NFA establishes rules and has regulatory authority with respect to every firm and individual who conducts futures trading business with public customers. The CFTC, in turn, oversees the effectiveness of OneChicago and the NFA in fulfilling their respective regulatory responsibilities. Similarly, FINRA establishes rules and has regulatory authority with respect to every firm and individual who conducts securities trading business with public customers. The SEC oversees the effectiveness of FINRA in fulfilling its regulatory responsibilities. Because OneChicago Contracts are considered both futures and securities, OneChicago Participants are generally overseen by several regulatory agencies. OneChicago's disciplinary procedures are outlined in Section 7 (Due Process) of this application.

2.1.18 OneChicago has adopted an Employee Manual that applies to all employees, including the executive officers. The provisions of the Employee Manual address potential and actual conflicts of interest. On an annual basis, employees are required to review the Employee Manual and recertify that they have read and understand the Employee Manual.

- 2.1.19 OneChicago is required to ensure that it meets the DCM Core Principles, which among other things require that OneChicago has processes and procedures to address potential conflicts of interest that may arise in connection with the operation of the Exchange. Significant representation of individuals who do not have relationships with the Exchange, referred to as “public directors” in the CFTC Regulations, play an important role in OneChicago’s processes to address potential conflicts of interest. The Board has assessed which directors would be considered “public directors” based upon their lack of relationship with the Exchange and the industry per the CFTC Regulations.
- 2.1.20 In accordance with OCX Rule 211, no member of the Board may vote on any matter where such member is subject to a conflict of interest. Accordingly, no member of the Board or any Disciplinary Panel will knowingly participate in such body’s deliberations or voting in any matter involving a named party in interest where such member (i) is the named party in interest in the matter, (ii) is an employer, employee or fellow employee of a named party in interest, (iii) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to OneChicago Contracts, or (iv) has a family relationship with a named party in interest.
- 2.1.21 Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the CEO, or his or her designee, whether such member has one of the relationships listed in paragraph 2.1.20 above with a named party in interest.
- 2.1.22 The CEO, or his or her designee, shall determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject to a conflicts restriction.
- 2.1.23 In addition to the named party in interest restrictions described in paragraph 2.1.22 above, OCX Rule 211 also establishes conflicts of interest prohibitions based on financial interest.
- 2.1.24 Furthermore, members of a OneChicago Disciplinary Panel must meet the same requirements as a Public Director. OneChicago Disciplinary Panels are described more fully in Section 7 below. Members of Disciplinary Panel can be disqualified based on objections from a Respondent in a Disciplinary Hearing.
- (e) There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**
- 2.1.25 OneChicago maintains directors’ and officers’ insurance, which provides professional indemnity to all directors and executive officers of the Exchange.
- 2.1.26 The LLC Agreement and the OCX Rulebook includes provisions related to limitations of liability and the indemnification of directors, officers, and in certain instances, employees and agents of OneChicago. OCX Rule 422 also limits the liability of the Exchange itself.
- 2.1.27 OneChicago hires officers and employees who are qualified for each position based on relevant experience and/or education. Officers and employees are competitively remunerated as appropriate for successful retention.
- 2.1.28 Public Directors are paid a stipend for their service and attendance. Owner-appointed directors are not compensated.
- 2.2 Fitness – The Exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.**
- 2.2.1 To be appointed as a Public Director, potential candidates must complete a background and conflict of interest questionnaire. The purpose of this questionnaire is to ensure that potential candidates for Public Directors on the Exchange’s Board are fit and proper. Public Directors are selected for their background and expertise.
- 2.2.2 Pursuant to the LLC Agreement, the owners of the Exchange appoint individual directors to the Board. Directors possess the ability to contribute to the effective oversight and management of the Exchange, taking into account the needs of the Exchange and such factors as the individual’s experience, perspective, skills and knowledge of the industry in which the Exchange operates. This shall include sufficient expertise, where applicable, in financial services, risk management, and clearing services.

### 3 REGULATION OF PRODUCTS

#### 3.1 Review and Approval of Products – The products traded on OneChicago and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.1.1 The CFTC has implemented Part 41 (Security Futures Products) (“**Part 41**”), which provides the process for review of new SFPs to be traded on DCMs. Specifically, section 41.21 of the CFTC Regulations defines the types of securities which DCMs may list SFPs on. For a DCM like OneChicago to list for trading an SFP overlaying a security not explicitly permitted by the Part 41 regulations, the CFTC and SEC must agree, by joint order, to permit the listing of SFPs on such other security. Section 41.22 requires that a DCM like OneChicago make certain certifications to the CFTC regarding the products to be listed. First, the DCM must certify that the underlying security satisfies the requirements of section 41.21, described above. For physically delivered SFPs, the DCM must certify that arrangements are in place with a clearing agency registered pursuant to section 17A of the SEA for the payment and delivery of the securities underlying the SFP. The DCM also must certify that only certain registered entities may solicit or accept any order for, or otherwise deal in any transaction in or in connection with SFPs.

DCMs listing SFPs must further certify that procedures are in place for coordinated surveillance among the DCM and any market on which any security underlying an SFP is traded. DCMs must also have procedures in place to coordinate regulatory trading halts between the DCM and any market on which any security underlying the SFP is traded and other markets on which any related security is traded. Finally, the DCM must certify that the margin requirements comply with relevant regulations and that the product is subject to the prohibition of dual trading in SFPs by floor brokers in section 41.27.

3.1.2 In accordance with section 41.23, a DCM wishing to list SFPs for trading must submit a filing to the CFTC no later than the day prior to the initiation of trading that meets certain requirements. This filing must be properly labeled, include a copy of the product’s rules, including its terms and conditions, include the certifications required by section 41.22, described above, include a certification that the terms and conditions of the contract comply with section 41.25, and include a certification that the SFP complies with the CEA and the rules promulgated thereunder. In addition to the certification process, DCMs may request that the CFTC approve any SFP under the procedures of section 40.5.

The DCM Core Principles relevant to products traded on the DCM include: Core Principle 2 – *Compliance with Rules* (“**Core Principle 2**”), Core Principle 3, Core Principle 4 – *Monitoring of Trading* (“**Core Principle 4**”), Core Principle 5 – *Positions Limits or Accountability*, Core Principle 7 – *Availability of General Information* (“**Core Principle 7**”), Core Principle 8, Core Principle 9, Core Principle 10 – *Trade Information* (“**Core Principle 10**”), Core Principle 11 and Core Principle 12. To show compliance with Core Principle 3, the CFTC requires DCMs to demonstrate that new products are not susceptible to manipulation. Explicit instructions to meet this requirement are at Appendix C to Core Principle 3 – *Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation* (“**Appendix C**”). Appendix C outlines general product requirements as well as requirements by derivative type (i.e., futures, swaps, and options). Appendix C includes the following general requirements: including certain contract terms and conditions in public-facing materials, reliance on publicly available information when practicable, attestations of reliability in calculating prices for trade and/or settlement, cash market descriptions based on both the national and regional/local markets relevant to the underlying commodity and price derivations that promote price discovery and are not susceptible to manipulation. Appendix C also contains varied and numerous requirements specific to each derivative type and settlement method. These specific requirements seek to foreclose the potential for price manipulation unique to each derivative type and settlement method.

#### 3.2 Product Specifications – The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.2.1 As described above, the listing of SFPs is strictly controlled and limited by Part 41 of the CFTC Regulations. Only certain underlying securities may qualify for listing. Critically, the underlying security must be registered pursuant to section 12 of the SEA. Section 12 requires that securities traded on an exchange be registered with the SEC. This registration includes information relating to the issuer of the subject securities. Accordingly, SFPs may only be listed on securities for which there is publically available information.

3.2.2 SFs listed by OneChicago are all standardized futures contracts, with contract specifications that establish the terms and conditions of the contracts. The product specifications for each SFP lists the underlying security, the futures symbol, the product code, the type of underlying security, the trading hours, the delivery months, the physical delivery settlement cycle, termination dates (if any), the trading unit, the minimum price fluctuation, position limits or position accountability level, reportable position and reportable trading volume level.

- 3.2.3 Currently, all of OneChicago's SFs are physically settled. That is, at expiry, long futures holders are obligated to take delivery of the corresponding number of underlying securities, whereas short futures holders are obligated to make delivery of the corresponding number of underlying securities.
- 3.2.4 The trading hours for SFs listed on OneChicago are established by the Rules of the Exchange. Trading hours for SFs vary based on the underlying security and the type of trading. The following are the current trading hours listed in U.S. Central Time. Outright trading of SFs based on common stock occurs from 8:30 a.m. to 3:00 p.m. Outright trading of SFs based on exchange traded funds occurs from 8:30 a.m. to 3:15 p.m. For spread transactions, trading occurs from 8:30 a.m. to 4:00 p.m. For bilateral transactions such as Blocks and EFPs, trading occurs from 7:00 a.m. to 4:00 p.m.
- 3.2.5 Daily settlement prices of OneChicago Contracts is conducted by the Exchange. Settlement prices are based on an Exchange calculation of fair value of the contracts based on various criteria including, among other factors, the price of the underlying equity, the prevailing interest rate, days to expiry, and the hard-to-borrow status of the underlying equity, if any. Accordingly, the settlement prices of OneChicago Contracts are not susceptible to manipulation by trading in the OneChicago Contracts themselves.
- 3.2.6 Due to the regulatory structure established by the United States Congress in the CFMA, the trading of SFs listed by OneChicago is subject to dual oversight by both the CFTC and the SEC. SFP exchanges like OneChicago may be primarily registered with the CFTC and notice-registered with the SEC, or vice versa. The same is true of OneChicago Participants trading SFPs. Both the CFTC and SEC have the authority to bring enforcement actions against OneChicago Participants trading SFPs that violate any applicable rules of either regulatory agency.
- 3.2.7 The underlying securities market is established and highly regulated. The United States equities market is one of the deepest and most liquid securities market in the world. Issuers of securities listed on securities exchanges are required to make periodic filings regarding the issuer's financial and other company information. The underlying securities market is subject to regulation by the SEC, which regulates the activities of national securities exchanges, broker-dealers, registered investment advisers, and registered investment companies.
- 3.2.8 OneChicago's product listings are available on OneChicago's FTP site at [ftp://www.onechicago.com/product\\_listings/](ftp://www.onechicago.com/product_listings/).
- 3.3 Risk Associated with Trading Products – The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.**
- 3.3.1 All OneChicago Contracts are settled and cleared through the OCC, the primary clearing house for equity derivatives in the United States. The OCC is exempted from recognition by the OSC as a clearing agency under Section 21.2 of the OSA. OCC Clearing Members generally consist of large financial institutions.
- 3.3.2 OneChicago requires all OneChicago Participants to access the Exchange through a Clearing Member of the OCC who is authorized to clear SFPs. OCC Clearing Members receive and hold customer funds in segregated accounts, or accounts protected by the Securities Investor Protection Corporation ("**SIPC**"). SIPC protects client accounts against the possibility of a broker-dealer's financial failure. The OCC determines the minimum margin that needs to be held for each Clearing Member. The Clearing Member must charge minimum margin to customers as determined by CFTC and SEC regulations. The Clearing Members assume the credit risk of the Participants, and OCC assumes the central counterparty risk to each OneChicago Contract.
- 3.3.3 Exchange Members with direct access and Clearing Members are required to utilize the Exchange-provided risk control, OCX.RiskMan ("**RiskMan**"). RiskMan risk controls require Clearing Members or Exchange Members to set absolute quantity and notional value limits for all orders entered on the OneChicago System. RiskMan evaluates electronic orders, as well as bilateral trades reported to the Exchange. Clearing Members have the right to suspend trading by a customer. OneChicago monitors and enforces the trade risk limits by rejecting trades that exceed the limits.
- 3.3.4 OneChicago provides the OCC with the settlement prices at the end of each day for use in settling trades and positions. Based on these prices, OCC calculates variation margin and initial margin at the Clearing Member level. Clearing Members use this information to determine customers' margin requirements and execute margin calls to customers as necessary to ensure that positions are fully margined and mark-to-market losses on a portfolio are covered in full each day.
- 3.3.5 Part 41 of the CFTC Regulations establishes spot month position limits for all OneChicago Contracts. OCX Rule 414 and Schedule A to Chapter 4 of the OCX Rulebook set forth the Exchange's position limit, position accountability and position reporting rules and aggregation standards. The Exchange may grant position limit exemptions for certain enumerated "qualified hedge transactions."

- 3.3.6 The Exchange follows the CFTC's framework regarding positions limits for SFPs. Specifically, section 41.25 of the CFTC Regulations sets position limits at either 13,500 contracts or 22,500 contracts during the last five days of trading before expiry.<sup>10</sup> These position limits are based on the shares outstanding and average daily trading volume ("ADTV") of the security underlying the SFP. The CFTC's regulations also permit for SFPs to be subject to position accountability rather than a hard position limit if the underlying security meets certain requirements regarding the number of shares outstanding and ADTV. OneChicago reviews the number of shares outstanding and ADTV of each of its underlying securities monthly. If the review indicates that a products' position limit must be reduced or may be increased, OneChicago will amend the limits.
- 3.3.7 Position accountability levels allow the Exchange to take action to address concerns about Exchange positions. Specifically, the Exchange has the authority to request information regarding the nature of the position, trading strategy, and hedging information if applicable, and to require the position holder to halt increasing their positions when so ordered.
- 3.3.8 The OneChicago Compliance Department ("CD") reviews trades in real time and is alerted to any trade that occurs a specified percentage above or below the theoretical fair value of the Contract.

## 4 ACCESS

### 4.1 Fair Access

- (a) **The Exchange has established appropriate written standards for access to its services including requirements to ensure:**
- (i) **Participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,**
  - (ii) **The competence, integrity and authority of systems users, and**
  - (iii) **Systems users are adequately supervised.**
- (b) **The access standards and the process for obtaining, limiting, and denying access are fair, transparent and applied reasonably.**
- (c) **The Exchange shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
- (d) **The Exchange does not**
- i. **permit unreasonable discrimination among participants, or**
  - ii. **impose any burden on competition that is not reasonably necessary and appropriate.**

- 4.1.1 Consistent with Core Principle 2, Chapter 3 of the OCX Rulebook provides clear and transparent access criteria to access the Exchange. OneChicago has three different classes of OneChicago Participants with equal terms of access for each group. OneChicago Participants include Clearing Members, Exchange Members, and Access Persons.

Any firm that is a SFs eligible member of the OCC qualifies as a OneChicago Clearing Member. To become a member of the OCC, a firm must (1) be a broker dealer or futures commission merchant registered with the SEC or CFTC, or a non-U.S. securities firm; (2) meet minimum net capital requirements (with an initial minimum requirement of \$2,500,000); and (3) have qualified staff and adequate facilities to self-clear financial products and interface with the OCC and other clearing members.

Exchange Members include any firm or person with member trading privileges on the CME, CBOE, or CBOT, provided that such trading privileges, trading rights or permits, and membership rights shall be those that are in effect for each of the foregoing entities as of March 15, 2006. Each of these entities has established adequate membership criteria.

A OneChicago Access Person is any person, other than a Clearing Member or Exchange Member, or Related Party of either, who has been given access to the OneChicago System by a Clearing Member. There are no established criteria for Access Persons; however, all Access Persons must be provided access and guaranteed by a Clearing Member. OneChicago does not permit access to the Exchange unless such access is provided and guaranteed by a Clearing Member.

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<sup>10</sup> 17 CFR § 41.25(a)(3).

4.1.2 OCX Rule 503 establishes minimum financial and related reporting requirements. Specifically, OCX Rule 503 requires each Clearing Member, Exchange Member and Access Person that is registered with any self-regulatory association to comply with the provisions of Applicable Law relating to minimum financial and related reporting and recordkeeping requirements. As described in section 2 above, the JAC conducts financial audits of firms conducting futures business with the public. Firms that conduct securities business with the public are subject to audits and examinations by a DEA, which may be FINRA or a national securities exchange.

OCX Rule 506 permits OneChicago to adopt additional minimum financial requirements. OCX Rule 506 requires that in addition to requirements imposed by the NFA, OneChicago Participants are required to satisfy any minimum financial standards established by the Exchange. Further, if a market participant becomes aware that it fails to satisfy minimum financial requirements applicable to it, it must notify the CEO of the Exchange immediately. Until a market participant is able to demonstrate to the Exchange that it is in compliance with minimum financial requirements, it may not engage in any transactions except for the purpose of closing open positions. OneChicago has not established any additional minimum financial requirements.

4.1.3 OneChicago is subject to CFTC Regulations 38.601 through 38.607 relating to the financial integrity of transactions. These regulations require, among other things, that OneChicago establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into on or through the Exchange. This requirement includes the mandatory clearing of transactions, establishing minimum financial standards, rules concerning the protection of customer funds, and financial surveillance of compliance with the Exchange's minimum financial standards. Further, as explained above, financial audits are conducted by each OneChicago Participant's DSRO or DEA.

4.1.4 All OneChicago Participants who access the OneChicago System directly are required to complete the OCXdelta1 User Agreement, which requires such direct participants to, among other things, agree to comply by the OCX Rulebook, represent that they are properly registered with the appropriate regulatory agencies, and agree to be bound by the jurisdiction of the Exchange.

4.1.5 All Clearing Members are required to sign the OCX Clearing Firms Registration form. This form obligates Clearing Members to guarantee and assume financial responsibility for all transactions on OneChicago resulting from any orders, bids, offers, trades, and other messages transmitted to the OneChicago System through either the connection(s) or trading screen(s) connected to the OneChicago System established or approved by the Clearing Member.

4.1.6 The Exchange may at any time revoke, suspend, limit, condition, restrict or qualify the Access Privileges of any Clearing Member, Exchange Member or Access Person if, in the sole discretion of the Exchange, such action is in the best interest of the Exchange. Furthermore, the CRO of the Exchange, after consultation with the ROC, if practicable, may summarily suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of a Member or Access Person, and may take other summary action against any member or Access Person in accordance with the Rules of the Exchange. A OneChicago Participant whose access has been summarily revoked, suspended, limited, conditioned, or qualified may appeal the Exchange's decision in accordance with the OCX Rulebook.

4.1.7 All Clearing Members, Exchange Members, and Access Persons are subject to the Rules of the Exchange. Further, any Person who accesses or enters any order into the OneChicago System agrees to be bound by the Rules of the Exchange. This includes any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been imitated or executed.

4.1.8 OneChicago will confirm that Ontario Participants are complying with Ontario securities laws or Ontario commodity futures laws or exempted from these requirements by obtaining a representation in the OCXdelta1 User Agreement that the Ontario Participant is capable and authorized to enter into the legally binding agreement, and is properly registered with the appropriate regulatory agencies.

4.1.9 Some OneChicago Participants may qualify as "hedgers," in accordance with section 1 of the CFA because as a necessary part of their commercial activities, OneChicago Participants may "become exposed to risks upon fluctuations in the price of a commodity and offset that risk through trading in contracts for the commodity or related commodities."

4.1.10 OneChicago expects Ontario residents that become OneChicago Participants to maintain a compliance program in accordance with the OCX Rulebook. The Participant's compliance program is designed, in part, to ensure conduct in accordance with applicable laws and regulations. Accordingly, OneChicago will expect Ontario residents that become OneChicago Participants to be cognizant of their Ontario and other Canadian regulatory requirements, as appropriate.

4.1.11 OneChicago does not unreasonably prohibit, condition, or limit access to its services. The restrictions on access to OneChicago are consistent with regulatory requirements and risk limits established by Clearing and Exchange

Members. OneChicago may need to prohibit, condition, or limit access in the case of extenuating market circumstances which include, but are not limited to, any occurrence or circumstance which threatens or may threaten such matters as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any OneChicago Contracts, and which in the opinion of Exchange administration requires immediate action. The process implemented by OneChicago to exercise such emergency authority is reasonable and consistent with the process used by similar markets in order to protect the integrity of the market.

- 4.1.12 Any rules pertaining to membership criteria or selection must be self-certified under CFTC Regulation 40.6. CFTC Regulation 40.6 requires the Exchange to provide certification and explanatory analysis that the revised rules comply with the CEA, CFTC Regulations, and the DCM Core Principles. The CFTC reviews all self-certifications of rules and rule amendments under CFTC Regulation 40.6 for compliance with the DCM Core Principles. Core Principle 12 requires exchanges to establish and enforce rules that protect OneChicago Participants from fraudulent, noncompetitive or unfair actions committed by any party, and further, to discipline such behavior under Core Principle 2. Membership rules that are unreasonably discriminatory or access and fee rules that unreasonably discriminate among participant classes would not meet DCM Core Principle requirements and therefore the CFTC would instruct OneChicago to withdraw its self-certification of such rules.
- 4.1.13 Based on the foregoing, OneChicago does not impose any burden on competition that is not reasonably necessary and appropriate.

## **5 REGULATION OF PARTICIPANTS ON THE EXCHANGE**

### **5.1 Regulation – The Exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.**

- 5.1.1 In accordance with CFTC Regulation 38.151, and pursuant to the OCXdelta1 User Agreement and Exchange Rule 307, OneChicago Participants must consent to the jurisdiction of the Exchange before being granted access to the Exchange. OCX Rule 702 requires OneChicago Participants to appear and testify and respond in writing to interrogatories sent by CD in connection with an investigation. OneChicago Participants are also obligated to produce books, records, paper, documents or other tangible evidence in connection with an investigation.
- 5.1.2 Chapter 6 of the OCX Rulebook imposes Business Conduct Rules designed to encourage ethical conduct and protect OneChicago Participants from abusive, disruptive, fraudulent or noncompetitive conduct or trade practices. Specifically, Chapter 6 of the OCX Rulebook prohibits fraudulent acts (Rule 601), fictitious transactions (Rule 602), market manipulation (603), misstatements (606), acts detrimental to the Exchange and acts inconsistent with just and equitable principles of trade (Rule 608), pre-arranged trades (Rule 614), and disruptive practices (617).
- 5.1.3 The Exchange's ROC prepares an annual report assessing the Exchange's regulatory program for the Exchange's Board. The ROC's annual report must (i) set forth the regulatory program's expenses, (ii) describe the staffing and structure of the regulatory program, (iii) catalogue disciplinary actions taken during the year, and (iv) review the performance of disciplinary panels.
- 5.1.4 CD, in accordance with Chapter 7 of the OCX Rulebook, is responsible for ensuring that the Rules of the Exchange are followed. CD monitors overall activity on the Exchange on a real-time and post-trade basis, using a proprietary compliance system developed for monitoring OneChicago's market. Specifically, CD views all activity on the Exchange, including orders, transactions and Block and EFP trades, reviews the trades executed on the OneChicago System, tracks the activity of specific traders, monitors price and volume information and is alerted when any trading or order activity exceeds certain pre-defined parameters with regard to wash trades, pre-arranged trades, trades occurring at prices away from the fair value, trades or positions in futures for which the underlying security had a large increase or decrease in price, errors in large trader reporting, or unexplained changes in open interest. OneChicago conducts real-time surveillance of its markets, and opens investigations into any unusual or aberrant trading activity. Finally, the Exchange conducts routine monthly spot checks of Block and EFP trades.
- 5.1.5 Pursuant to OCX Rule 701, CD will (i) conduct market surveillance and trade practice surveillance using data from the trading system with programs and procedures designed to alert the Exchange when potentially unusual trading activity takes place, and (ii) initiate reviews and, where appropriate, commence investigations of unusual trading activity or other activity that CD has reasonable cause to believe could constitute a violation of the Rules of the Exchange.
- 5.1.6 Pursuant to OCX Rule 702, CD will investigate any matter within the Exchange's disciplinary jurisdiction which it has reasonable cause to believe could constitute a violation of the OneChicago Rules. CD is required to function independently of any commercial interests of the Exchange. To advance the goal of market regulation, CD has the

authority to (i) initiate and conduct inquiries and investigations, (ii) prepare investigative reports and make recommendations concerning disciplinary proceedings, (iii) prosecute alleged violations within the Exchange's disciplinary jurisdiction, and (iv) represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

- 5.1.7 CD maintains a log of all investigations commenced, as well as their disposition. CD prepares a written report for each investigation. The investigation report contains certain information such as all relevant facts and evidence gathered, and the recommendation of the Exchange as to the outcome of the investigation ("**Investigation Report**"). Specifically, in each investigation, CD makes a recommendation to either (i) close the investigation without further action, (ii) take summary action, (iii) resolve the investigation through an informal disposition, such as the issuance of a warning letter, or (iv) initiate formal disciplinary proceedings.
- 5.1.8 Pursuant to OCX Rule 213, the Exchange may from time to time enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade 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 CFTC may require.
- 5.1.9 Consistent with Core Principle 4, and pursuant to Exchange Rule 207, the ROC oversees the Exchange's regulatory program on behalf of the Board and shall assist the Board in minimizing actual and potential conflicts of interest. The Board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate. The ROC is comprised of only Public Directors who provide a non-interested perspective during Board meetings. The ROC shall have the authority to: (i) monitor the Exchange's regulatory program for sufficiency, effectiveness, and independence; (ii) oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations; (iii) review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel; (iv) supervise the CRO, who will report jointly to the ROC for all regulatory, compliance, supervisory, and surveillance matters and to the CEO for all others matters that are not related to regulation and supervision; (v) prepare an annual report assessing the Exchange's self-regulatory program for the Board and the CFTC, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels; (vi) recommend changes that would ensure fair, vigorous, and effective regulation; (vii) review regulatory proposals and advise the Board as to whether and how such changes may impact regulation, and (viii) exercise any other functions expressly assigned to it in the Rules of the Exchange.
- 5.1.10 The ROC, in conjunction with the CRO and CD, implement the Exchange's monitoring, surveillance and other enforcement functions. The Rules of the Exchange provide the framework for the Exchange's enforcement activities. CD monitors trading activity on a real-time and post-trade basis, and the Exchange's automated trade practice surveillance system monitors trading activity on a real-time and "trade date plus one" (T+1) basis. OneChicago utilizes audit trail data to support its enforcement efforts.
- 5.1.11 Pursuant to OCX Rule 403 and NTM 2016-1, OneChicago Participants that electronically enter orders directly into the OneChicago System are responsible for maintaining such front-end audit trail information. Audit trail information must be maintained for a minimum of five years, and OneChicago Participants must produce audit trail data upon request to the Exchange.
- 5.1.12 CD has access to information related to the Exchange's contracts, including relevant news events and economic reports, and historical price and volume information. In addition, the Rules of the Exchange specifically contemplate information-sharing arrangements with other markets. See OCX Rule 213.
- 5.1.13 OneChicago is a member of the Intermarket Surveillance Group ("**ISG**"), which is an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. CD reviews ISG investigations opened by other exchanges and regulators to determine if similar, concurrent activity had occurred on OneChicago. When appropriate, OneChicago will initiate ISG investigations and notify other ISG members.
- 5.1.14 OneChicago Members are required to utilize OneChicago's proprietary risk management system to set risk parameters for all trading for which the Member is responsible for. Members must set absolute quantity per order or trade, notional value per order or trade, notional value per day risk limits. Also, firms may set a list of restricted products for which the Exchange will not accept orders or trades.



- 5.1.15 Chapter 7 of the OCX Rules describe the Exchange's compliance and enforcement procedures, which include inquiries, investigations, disciplinary proceedings, and provide for arbitrations related to Exchange activity.
- 5.1.16 Consistent with Core Principle 8, the Exchange will publish daily information on settlement prices, volume, open interest and opening and closing ranges for actively traded OneChicago Contracts on its website. The Exchange also publishes the total quantity of EFP and Block trades that are included in trading volume for each trading day. That daily information can be found on OneChicago's public website at <ftp://www.onechicago.com/>.
- 5.1.17 Consistent with Core Principle 12, Chapter 6 of the OCX Rules protects the market and OneChicago Participants from abusive, disruptive, fraudulent, noncompetitive and unfair conduct and trade practices. Improper conduct and trade practices will be investigated and adjudicated as described in Chapter 7 of the Rules (Discipline and Enforcement).
- 5.1.18 Consistent with Core Principle 13, Chapter 7 of the OCX Rules describes the disciplinary procedures of the Exchange that authorize the Exchange to discipline, suspend, or expel OneChicago Participants that violate the Rules of the Exchange. Pursuant to the Rules of the Exchange OneChicago's jurisdiction extends to any person who enters orders, or has orders entered on their behalf, to the Exchange.
- 5.1.19 CD conducts inquiries and investigations relating to real-time surveillance, trade practice, and market surveillance. In the event such investigations result in further disciplinary proceedings, Rules 706 through 720 provide procedures regarding service of notice, answers to charges, settlements, hearings, appeals, sanctions (which may include limitation or termination of trading privileges, censure, restitution, suspension and/or fines), summary actions and rights and responsibilities after suspension or termination.
- 5.1.20 In continual support of its regulatory function, OneChicago has invested in, and continues to invest in, technology and staff dedicated to developing and continually maintaining the regulatory technology structure to evolve with the changing dynamics of the marketplace. OneChicago's regulatory and compliance tools are built completely in-house, and are tailor-made for OneChicago's unique marketplace. The Exchange's regulatory technological systems are highly scalable and customized for trade practice surveillance that allow surveillance staff to monitor trading in real time and conduct detailed analysis of historical trading and order patterns. These systems include tools to examine audit trail data of market activity, detect trading patterns potentially indicative of market abuses, and help protect against market disruptions.

## **6 RULEMAKING**

### **6.1 Purpose of Rules**

- (a) **The Exchange has rules, policies and other similar instruments that are designed to appropriately govern the operations and activities of participants.**
  - (b) **The Rules are not contrary to the public interest and are designed to**
    - (i) **Ensure compliance with applicable legislation,**
    - (ii) **prevent fraudulent and manipulative acts and practices,**
    - (iii) **promote just and equitable principles of trade,**
    - (iv) **foster cooperation and coordination with persons or companies engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in products traded on the Exchange,**
    - (v) **provide a framework for disciplinary and enforcement actions, and**
    - (vi) **ensure a fair and orderly market.**
- 6.1.1 Pursuant to its obligation under the CEA and more specifically 7 U.S.C 2, 5, 6, 6c, 7, 7a-2, 12a and Part 38 of the CFTC Regulations, OneChicago has implemented rules, policies and other similar instruments that govern the operations and activities of its OneChicago Participants.
  - 6.1.2 OneChicago is primarily registered with the CFTC as a DCM under section 5 of the CEA. OneChicago is notice-registered as a national securities exchange for the limited purpose of trading SFs under section 6(g) of the SEA.

OneChicago is obligated to comply with the CEA, the DCM Core Principles and the CFTC Regulations (collectively, the “**U.S. Futures Regulations**”). The U.S. Futures Regulations require compliance on behalf of OneChicago and that OneChicago implement rules that require compliance with the U.S. Futures Regulations by its OneChicago Participants. OneChicago Rules are recorded in the OCX Rulebook, which is reviewed by the CFTC for the Exchange’s DCM registration to ensure compliance with the CEA and the CFTC Regulations. Revisions to the OCX Rulebook must be submitted to the CFTC for review pursuant to CFTC Regulation 40.6 or 41.24, which requires the Exchange to provide certification and explanatory analysis that the revised Rules comply with the CEA and the CFTC Regulations, including the DCM Core Principles.

- 6.1.3 All activity on OneChicago is conducted in accordance with the OneChicago Rules. The OneChicago Rules are applicable to OneChicago Participants without regard to jurisdictional boundaries as such obligations arise by virtue of the submission of orders into the OneChicago System by any person. The OCX Rulebook contains substantive provisions relating to membership standards, procedural provisions relating to discipline, arbitration, and other provisions. OneChicago Participants are required to act in accordance with the spirit as well as the letter of the OneChicago Rules.
- 6.1.4 The OneChicago Rules are designed to enable OneChicago to fulfill its requirement to provide a fair and orderly market. OneChicago Rule 421 explicitly permits the Exchange to adjust market hours and suspend market activities in the event of extenuating market circumstances that may threaten the fair and orderly trading in, or the liquidation of or delivery pursuant to any OneChicago Contracts, which in the opinion of the CEO or CEO’s designee requires immediate action.
- 6.1.5 In accordance with Core Principle 12 (Protection of Markets and Market Participants), Chapter 6 of the OCX Rulebook is designed to protect the market and OneChicago Participants from abusive, disruptive, fraudulent, noncompetitive and unfair conduct and trade practices. In relation to the prevention of fraudulent and manipulative acts and practices, OCX Rule 615 – Simultaneous Buying and Selling Order prohibits OneChicago Participants from accepting simultaneous buy and sell orders from the same beneficial owner for the same delivery month of a particular futures contract. Similarly, OCX Rule 602 – Fictitious Transactions prohibits OneChicago Participants from creating fictitious transactions or executing any order for a fictitious transaction with knowledge of its nature.
- 6.1.6 In addition, Rule 603 – Market Manipulation prevents OneChicago Participants from engaging in fraudulent and manipulative acts including transactions used to create a false, misleading, or artificial price, trading volume, or appearance of market activity that does not reflect the true state of the market in OneChicago Contracts. Rule 614 prevents OneChicago Participants from entering any order into the OneChicago trading platform which has been pre-arranged, except as expressly permitted by Rules 416 and 417 or in accordance with any policies or procedures for pre-execution discussions from time to time adopted by the Exchange.
- 6.1.7 In relation to promoting just and equitable principles of trade, the Exchange operates in accordance with Core Principle 12. Accordingly, OCX Rule 608 makes it an offense to violate any Rule of the Exchange or Rule of the Clearing Corporation regulating the conduct or business of a Clearing Member, Exchange Member (including their respective Related Parties) or Access Person, or any agreement made with the Exchange, or to engage in any act detrimental to the Exchange or in conduct inconsistent with just and equitable principles of trade. OneChicago also has rules regarding the execution of transactions on the Exchange. Specifically, OCX Rules 416 and 417 discuss the rules relating to the execution of EFP and Block trades. Chapter 4 of the OCX Rulebook generally establishes rules relating to the execution of trades on OneChicago.
- 6.1.8 OCX Rule 213 – Regulatory Cooperation authorizes the Exchange to “enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade 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 [CFTC] may require.” OneChicago is a member of the ISG, which is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. OneChicago is also a member of the JAC, which ensures that U.S. futures exchange members are complying with minimum financial requirements. Finally, OneChicago is a member of the Joint Compliance Committee, which is a committee formed by U.S. futures exchanges for the purposes of fostering improvements and uniformity in their systems and procedures used for trade practice compliance.
- 6.1.9 In accordance with Core Principle 13 (Disciplinary Procedures) and OCX Rule 307, OneChicago Participants are subject to disciplinary action in the event of failure to comply with OneChicago Rules. Disciplinary action may result in censure, suspension, expulsion, and/or monetary fines. Clearing Members, Exchange Members, or Access Persons may be held accountable for the actions of their users accessing OneChicago.

- 6.1.10 Chapter 6 of the OCX Rulebook establishes business conduct standards for OneChicago Participants. The purpose of Chapter 6 is to ensure trading practices are fair and that ethical standards are maintained by OneChicago Participants.
- 6.1.11 Chapter 6 generally prohibits activities that unlawfully restrain competition, including collusion with other OneChicago Participants to affect the price of any OneChicago Contract.
- 6.1.12 The OCX Rulebook describes the trading practices and actions that constitute violations that may be subject to penalties including, but not limited to, temporary and permanent suspension from the Exchange. CD is led by the CRO, who is appointed by the CEO. The CRO and CD are authorized by the ROC to provide market surveillance and investigation of trading activities on the Exchange to ensure compliance with the Rules and applicable law.
- 6.1.13 Pursuant to OCX Rule 706, CD may issue Notice of Charges against a OneChicago Participant who is found to have violated a Rule of the Exchange. OneChicago Participants in receipt of a Notice of Charges are afforded the opportunity to provide an answer. OneChicago Participants may make CD an offer to settle at any time after receiving a Notice of Charges. If no settlement offer is made or accepted, CD will commence a disciplinary proceeding against the market participant.
- 6.1.14 Disciplinary Proceedings are conducted in accordance with OCX Rule 711. Disciplinary Proceedings are conducted before a Disciplinary Panel. OCX Rule 127 establishes that a Disciplinary Panel shall consist of three individuals selected by the CRO from the Public Directors on the Exchange's Board and/or members of the public, all of which would qualify as a Public Director at OneChicago, ensuring that the panel members are uninterested and non-conflicted. OneChicago staff also asks potential panel members whether they are familiar with any respondent in an upcoming case, or whether they might have a financial interest in the outcome of the case. Once panel members are selected, the respondent has the ability to refuse the selection any panel member for cause. OneChicago also retains counsel on behalf of the Disciplinary Panel. This counsel serves as a disinterested advisor regarding futures regulation and Rules of the Exchange, and assists the panel in making impartial decisions, uninfluenced by Exchange staff.
- The responding OneChicago Participant may elect to be represented by counsel and has the power to cross-examine witnesses. The burden of proof is on CD, which shall prosecute the case. The Disciplinary Panel will determine violations by a majority vote and determine disciplinary action to be taken by the Exchange.
- 6.1.15 Consistent with Core Principle 14 (Dispute Resolution), Chapter 8 of the OCX Rulebook establishes rules concerning alternative dispute resolution, which provide for the resolution of disputes between or among OneChicago Participants through NFA arbitration.

## **7 DUE PROCESS**

- 7.1 Due Process – For any decision made by the Exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:**
- (a) parties are given an opportunity to be heard or make representations, and**
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.**
- 7.1.1 CD provides market surveillance and investigation of trading on the Exchange to ensure compliance with the Rules of the Exchange and applicable law. The CRO reviews completed Investigation Reports and determines whether a reasonable basis exists to believe that violation within the Exchange's jurisdiction has occurred or will occur. After receiving completion of an investigation, the CRO determines for each potential respondent whether to authorize:
- a. the commencement of disciplinary proceedings;
- b. the informal disposition of the investigation by issuing a warning letter or otherwise; or
- c. the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.
- 7.1.2 In accordance with OCX Rule 306, the Exchange may at any time revoke, suspend, limit, condition, restrict or qualify the Access Privileges of any OneChicago Participant if, in the sole discretion of the Exchange, such action is in the best interest of the Exchange.
- 7.1.3 Notice of Charges. Once the CRO authorizes disciplinary proceedings, CD will prepare and serve a notice of charges that will:

- a. State the acts, practices or conduct that the respondent is alleged to have engaged in;
- b. State the Rule of the Exchange or provision of Applicable Law alleged to have been violated or about to be violated;
- c. State the proposed sanctions;
- d. Advise the respondent of its right to a hearing;
- e. State the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than 20 days after service of the notice of charges;
- f. Advise the respondent that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; and
- g. Advise the respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

The service of notice upon the respondent will be delivered by electronic mail to the respondent at the address as it appears on the books and records of the Exchange.

7.1.4 Answer to Notice of Charges. If the respondent determines to answer a notice of charges, the respondent must file answers within 20 days after being served with such notice, or within such other time period determined appropriate by the hearings staff.

- a. To answer a notice of charges, the respondent must in writing:
  - i. Specify the allegations that the respondent denies or admits;
  - ii. Specify the allegations that the respondent does not have sufficient information to either deny or admit;
  - iii. Specify any specific facts that contradict the notice of charges;
  - iv. Specify any affirmative defenses to the notice of charges;
  - v. Sign and serve the answer on the hearings staff.

Failure by the respondent to timely serve an answer to a notice of charges will be deemed to be an admission to the allegations in such notice. Any failure by the respondent to answer one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. Any allegation in a notice of charges that the respondent fails to expressly deny will be deemed admitted. Respondents may not submit a general denial to a notice of charges.

7.1.5 Settlements. A respondent or potential respondent may at any time propose in writing an offer of settlement to anticipated or instituted disciplinary proceedings. Settlement offers should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to CD. A respondent or potential respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the notice of charges but must accept the jurisdiction of the Exchange over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.

7.1.6 If a respondent or potential respondent submits an offer of settlement, CD will forward the offer to the CRO with a recommendation on whether to accept or reject the offer. Any preliminary determination by the CRO to accept the offer shall be submitted for review by the ROC. If the ROC agrees, then the CRO conditionally accepts the offer of settlement, and a notice that the settlement will become final upon the expiration of 20 days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.

7.1.7 If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to notice, opportunity for a hearing and review and appeal under the Rules of the Exchange. If the offer of settlement of a respondent or potential respondent is not accepted by agreement between the CRO and the ROC, fails to become final or is withdrawn by the respondent or potential respondent, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent or potential respondent nor CD may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, disciplinary proceedings.

- 7.1.8 Hearings. If the CRO determines to commence disciplinary proceedings against a respondent, such disciplinary proceedings will take place before a Disciplinary Panel composed of at least three individuals selected by the CRO from the Public Directors on the Exchange's Board and/or members of the public, all of which would qualify as a Public Director at OneChicago. Within ten days of being notified of the appointment of the Disciplinary Panel, a respondent may seek to disqualify any individual named to the Disciplinary Panel for the reasons identified in the Rules of the Exchange or for any other reasonable grounds. The respondent may elect to be represented by counsel and has the power to cross-examine witnesses.
- 7.1.9 As promptly as reasonable following a hearing, the Disciplinary Panel will issue an order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the panel constitutes the decision of the entire panel. The order must include:
- a. The notice of charges or summary of the allegations;
  - b. The answer, if any, or a summary of the answer;
  - c. A summary of the evidence introduced at the hearing;
  - d. A statement of findings of fact and conclusions, and a complete explanation of the evidentiary and other basis for such findings and conclusions concerning each allegation, including each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated.
  - e. A declaration of the imposition of sanctions, if any, and the effective date of each sanction; and
  - f. Notice of the respondent's right to appeal pursuant to OCX Rule 716.
- 7.1.10 Consistent with Core Principle 13, Chapter 7 of the OCX Rulebook describes the disciplinary procedures of the Exchange that authorize the Exchange to discipline, suspend, or expel OneChicago Participants that violate the Rules of the Exchange.
- 7.1.11 Summary Suspensions. The CRO may, after consultation with the ROC, if practicable, summarily suspend, revoke, limit, condition, restrict or qualify the trading privileges of a market participant. The CRO must reasonably believe that the business, conduct, or activities of the market participant in question is not in the best interests of the Exchange or the marketplace.
- 7.1.12 Appeals Procedures. A respondent found by the Disciplinary Panel to have violated a Rule of the Exchange, a provision of Applicable Law, or who is subject to any summary fine or summary action may appeal the decision within 20 days of receiving the order of the disciplinary or summary action by filing a notice of appeal with the CRO. While an appeal is pending, the effect of the order of disciplinary proceedings or the summary action shall be suspended.
- 7.1.13 Appeals Panel. Within 30 days after the last submission filed, the CRO will request that the ROC appoint an appeals panel, consisting of three Board Members, one of which must be a public director, to consider and determine the appeal. The Public Director will act as chairman of the Appeals Panel.
- 7.1.14 Review by the Appeals Panel. The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint an expert to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by evidentiary or procedural rules or law.
- 7.1.15 Final Decision. As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the weight of the evidence before the Appeals Panel. The decision of the Appeals Panel will include a statement of findings of fact and conclusions, and a complete explanation of the evidentiary and other basis for such finding and conclusions, and a complete explanation of the evidentiary and other basis for such finding and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost. The Appeals Panel's written order on appeal will be the final action of the Exchange and will not be subject to appeal within the Exchange.
- 7.1.16 As described in section 12, all records related to the Exchange's disciplinary process are maintained in accordance with the Exchange's recordkeeping requirements.

**8 CLEARING AND SETTLEMENT**

**8.1 Clearing Arrangements – The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.<sup>11</sup>**

8.1.1 OneChicago is not a clearing house. All Trades in OneChicago Contracts are settled and cleared through the OCC in accordance with the clearing agreement between OneChicago and the OCC. The OCC is exempted from recognition by the OSC as a clearing agency under Section 21.2 of the OSA. Accordingly, appropriate arrangements that are regulated by the OSC exist for the clearing and settlement of OneChicago Contracts.

**8.2 Regulation of the Clearing House – The clearing house is subject to acceptable regulation.**

8.2.1 The OCC is an entity formed in the United States and is subject to the regulations of both the SEC and the CFTC. The OCC is registered as a clearing agency under Section 17A of the SEA and as a derivatives clearing organization under section 7a-1 of the Commodity Exchange Act. It has been designated by the U.S. Financial Stability Oversight Council (“FSOC”) as a systematically important financial market utility (“SIFMU”) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In addition, the OCC is required to comply with the terms and conditions imposed by the OSC and compliance with these regulatory requirements are overseen by the OSC. As part of its oversight, the OSC reviews required filings and reviews any new substantive rules or substantive changes to current rules relating to access criteria, default management that are specific to the clearing services utilized by Ontario clearing members.

**8.3 Authority of Regulator – A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.**

8.3.1 The SEA establishes conditions that registered clearing agencies must satisfy relating to, among other things, the clearing agency's capacity to promptly and accurately clear and settle transactions, safeguarding of funds and securities, enforcement of the clearing agency's rules, equitable allocation of fees and charges among participants, and avoiding any unnecessary burden on competition. Similarly, the CEA establishes core principles with which registered DCOs must comply relating to, among other things, financial resources, appropriate admission and eligibility standards for participants, risk management, timely completion of settlements, ensuring the safety of funds and enforcement of the DCO's rules.

8.3.2 As appropriate and/or upon request and in a form and manner specific by the CFTC, the OCC must file information related to its business as a DCO, written demonstration of its compliance with one or more core principles, and information related to counterparties or related positions. The OCC is required to make available to the CFTC information regarding its activities including information regarding stress test results, internal governance, and legal proceedings.

**8.4 Access to the Clearing House**

- (a) **The clearing house has established appropriate written standards for access to its services.**
- (b) **The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**

8.4.1 The OCC has established written criteria for clearing membership, including minimum levels of net capital, appropriate banking arrangements, staff experience and knowledge of products being cleared, appropriate systems to cope with clearing activities, and adequate credit support and facilities. All member applicants must sign legal agreements, remit the application fee and minimum contributions upon approval. Membership criteria are available on the OCC website; such criteria are deemed to be applied reasonably and fairly on all applicants.

**8.5 Sophistication of Technology of Clearing House – The Exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.**

8.5.1 The OCC maintains secure, safe, and reliable technology solutions. The OCC is currently the largest clearing house in the world, and has been clearing trades since 1973. The OCC currently clears trades for all thirteen U.S. options exchanges, and several futures exchanges. In 2012, the OCC was designated as a SIFMU by the FSOC. FSOC designation as a SIFMU requires compliance with prescribed risk management standards and heightened oversight by U.S. financial regulators.

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<sup>11</sup> For purposes of these criteria, “clearing house” also means a “clearing agency.”

8.5.2 The OCC is regulated by both the CFTC and the SEC. The CFTC and the SEC subject the OCC's technology and risk management systems to scrutiny and oversight. The CFTC and SEC also require the OCC to demonstrate that it has adequate operational resources to complete settlements on a timely basis under varying circumstances. The OCC must also comply with the applicable CFTC and SEC regulations requiring adequate and appropriate systems safeguards, emergency procedures, and plan for disaster recovery.

**8.6 Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.**

8.6.1 The OCC has appropriate risk management policies and procedures that includes default protections, valuation and variation margining, intra-day risk monitoring, operational risk management, risk committees, and management of risks in payments, settlement, and delivery.

8.6.2 The DCO core principles promulgated by the CFTC require that the OCC maintain adequate and appropriate risk management capabilities. The clearing house may comply with these core principles by documenting its use of risk analysis tools and procedures by showing how the adequacy of financial resources is tested on an ongoing periodic basis in a variety of market conditions. The clearing house may show their use of specific risk management tools such as stress testing and value at risk calculations, and what contingency plans exist for managing extreme market events.

8.6.3 The clearing house must demonstrate to the CFTC and SEC that its collateral and credit limits are used to adequately secure obligations arising from clearing transactions. The clearing house must document the factors considered in determining appropriate margin levels for OneChicago Contracts cleared and for clearing members and participants. The OCC uses a margin methodology called System for Theoretical Analysis and Numerical Simulations ("**STANS**"). STANS has been approved by U.S. regulatory agencies. Under the STANS methodology, the daily margin calculation for each account is based on full portfolio Monte Carlo simulations and is constructed conservatively to ensure a very high level of assurance that the overall value of cleared products in the account, plus collateral posted to meet margin requirements, will not be appreciably negative at a two-day horizon. The clearing house systems are implemented to monitor exposure, current funds at the clearing house, and financial resources of clearing firms.

8.6.4 The OCC has a default management plan to be activated in the event of a clearing member default that clearly outlines the responsibilities of each party and the necessary timing for the various activities.

**9 SYSTEMS AND TECHNOLOGY**

**9.1 Systems and Technology – Each of the Exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**

- a. order entry,
- b. order routing,
- c. execution,
- d. trade reporting,
- e. trade comparison,
- f. data feeds,
- g. market surveillance,
- h. trade clearing, and
- i. financial reporting

9.1.1 All OneChicago Contracts are traded or reported electronically on OneChicago's proprietary trade matching engine. The OneChicago System is in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO as applied flexibly and pragmatically by the CFTC. OCXdelta1 is a CLOB open during trading hours. The OneChicago System accepts and validates orders for the CLOB, runs the CLOB matching engine, and sends the completed trades to the clearing house to be cleared through a

Clearing Member of the clearing house. OCXdelta1 also permits the reporting of bilateral Block and EFP trades. Block and EFP trades are privately-negotiated transactions that are reported by the transacting parties to the Exchange.

Orders may be entered, and trades may be reported, to the OneChicago System either through the exchange-provided Graphical User Interface (“**GUI**”) or through the Application Programming Interface (“**API**”). The GUI is a downloadable and executable java applet that allows OneChicago Participants to enter orders and report trades manually. The API permits OneChicago Participants to connect their own trading programs directly to the OneChicago System for order entry and trade reporting. Use of the API permits electronic or algorithmic trading. The specifications that provide OneChicago Participants with instructions to connect to the API are available on OneChicago’s public website.

The OneChicago System records information about both CLOB and reported trades. CD uses this information to monitor the market and ensure that OneChicago Participants are not violating the Rules of the Exchange. Orders, including reported trades, are ran through a pre-execution risk limit to ensure that the completed trade will not exceed risk parameters set by the OneChicago Participant. Pre-trade risk parameters include maximum order or trade quantity, maximum notional value per order or trade, maximum cumulative notional value per day, as well as restricted list functionality.

- 9.1.2 The OneChicago System accepts limit orders for single contracts or combination trades known as calendar spreads. The OneChicago System operates on a price-time priority algorithm. Orders can be placed into the OneChicago System using the Exchange-provided GUI or by writing directly to the Exchange API, as described above.
- 9.1.3 The OneChicago System is designed to run on a cluster of servers, and is deployed in the production environment with an “N+1” configuration so that the failure of a single server will not disrupt trading. The industry standard FIX gateway for trade reporting and the engine supporting the match algorithms are also deployed in this fashion.
- 9.1.4 OneChicago maintains both a production data center in the metropolitan New Jersey area and a disaster recovery site in Chicago, Illinois. Both sites are housed at Tier I data centers with extensive security systems and provisions for backup power. Failover to the disaster recovery site is tested on a routine basis.
- 9.1.5 OneChicago has a documented Business Continuity/Disaster Recovery (“**BC-DR**”) plan which contains procedures for operating through significant business disruptions. OneChicago conducts yearly tests of its BC-DR plan with its trading community.
- 9.1.6 OneChicago’s architecture is designed in an industry standard client server model. All access to OneChicago is via FIX Gateways and require strong passwords. Users who incorrectly attempt a password too many times are locked out.
- 9.1.7 OneChicago employs numerous monitoring programs to assess the performance of its hardware and software. These monitoring programs generate automatic alerts should any performance or availability deviate from prescribed standards.
- 9.1.8 OneChicago has a variety of security features to protect it from external attacks, such as unauthorized access or a denial of service attack. OneChicago periodically conducts security audits to identify any system vulnerabilities.

OneChicago also conducts regular, periodic, objective testing and review of: (1) its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and (2) its BC-DR capabilities. The Exchange will ensure that all such tests meet the following requirements:

- (a) *Testing by Qualified Personnel.* Testing is performed by qualified professionals, which may be Exchange employees or independent third parties.
- (b) *Coordination with Service Providers.* The Exchange will ensure that the BC-DR Plan takes into account the business continuity and disaster recovery plans of its telecommunications, power, water, clearing and other essential service providers.

OneChicago staff also conducts an annual assessment of internal controls for the Exchange. OneChicago participates in a number of industry security focus groups, including with the SEC, CFTC, and U.S. Federal Bureau of Investigations-sponsored Infragard.

- 9.1.9 OneChicago deploys virus protection programs on all OneChicago computers.
- 9.1.10 OneChicago has multiple controls and systems to mitigate against data loss.



- 9.1.11 OneChicago employs a suite of performance tests to ensure that the OneChicago System will withstand extreme user and trading volumes relative to the levels the system is currently experiencing in production.
- 9.1.12 Consistent with Core Principle 20, the Exchange has developed a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems that are reliable, secure, and have adequate scalable capacity. This program includes information regarding the security of those systems, the Exchange's risk assessment reviews, internal controls for operations, functional testing, security testing and capacity planning and testing. It also describes the Exchange's emergency plan and includes a description of the back-up systems and emergency procedures that include recovery time objectives. In addition, during an emergency, OCX Rule 421 authorizes the Exchange to implement temporary emergency procedures and rules.
- 9.2 System Capability/Scalability – Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data fees, trade reporting and trade comparison, the Exchange:**
- (a) makes reasonable current and future capacity estimates;**
  - (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
  - (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
  - (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;**
  - (e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
  - (f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
  - (g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**
- 9.2.1 OneChicago maintains the systems capacity necessary to fully support its current and projected twelve month needs with regard to its trading systems. Currently, OneChicago has sufficient excess capacity to readily increase its allocated message traffic by 300%.
- 9.2.2 OneChicago conducts tests of its trading system's configuration and performance every time a systems change is made that may impact performance. The OneChicago technology staff determine whether any systems change that has been made may impact performance. One of the purposes of these reviews is to identify potential points of failure, and to ensure that all systems have back-up redundant capabilities, where applicable. In addition to reviews performed upon systems changes, OneChicago also conducts a formal annual review of its systems.
- 9.2.3 The development of all OneChicago systems is documented in its development specifications for each system. These development specifications allow market participants that are users of OneChicago systems, to review and understand the processes and functioning of each of these systems. In addition to these external development specifications, OneChicago also creates and maintains internal developer specifications for use by exchange employees. Additionally, OneChicago creates documentation for the testing methodology of its systems. These testing documents are reviewed and updated on an as-needed basis whenever a review of the underlying system is being conducted.
- 9.2.4 OneChicago tests its systems to ensure that the protections established by the Exchange are operating as expected. These include tests of protections to either internal or external threats. Additionally, access to OneChicago's systems is monitored by alerts that are sent to multiple exchange employees. All systems, applications, hardware, and networking appliances are fully monitored through an operational intelligence and log management tool, which alerts Exchange staff to specific issues with the technology. OneChicago has policies in place for all of its employees covering various issues including change control, passwords, credentials, servers, disaster recovery, security incidents, backups, computer use, remote access, extranets and regulatory information. These systems and policies are reviewed by

Exchange staff on a regular basis. All of the Exchange's firewalls employ intruder detection/prevention and anti-virus checks that scan all traffic, and drop traffic that matches pre-defined parameters. Furthermore, the Exchange's office firewalls use web filtering to prevent access to security risk websites, including file transfer websites. There is no outside customer or vendor access to any servers located in OneChicago's offices.

With regard to physical hazards and natural disasters, OneChicago has established and maintains business continuity-disaster recovery plans for all of its systems. This plan calls for OneChicago to recover its markets for trading by the following business day. The disaster recovery system is monitored in the same way as the Exchange's primary trading system. OneChicago participates in an annual industry-wide disaster recovery test.

OneChicago also maintains physical security related to its offices and hardware. Access to the building in which the OneChicago offices are located is restricted to tenants and their guests through a key card system. The OneChicago offices are locked 24 hours per day and seven days per week, with access permitted only via assigned keycard or physical key. OneChicago's data room in its corporate headquarters is even further restricted. OneChicago's data centers have state of the art physical security measures in place, including man-traps and biometric access.

The testing and auditing of these safeguards are required by the CFTC's currently proposed rule titled *System Safeguards Testing Requirements*.<sup>12</sup> Pursuant to these rules, systems testing must be conducted by an independent contractor. However, recognizing that it is appropriate to reduce costs and burdens for smaller entities while still achieving the goals of the rule, the CFTC's proposed rule exempts small DCMs like OneChicago from the independent contractor testing requirement. As such, OneChicago plans to continue to have its own employees with the requisite knowledge and experience to conduct the ongoing audit and testing of these systems and applicable testing procedures.

- 9.2.5 OneChicago has configured its systems in a manner to allow them to be reviewed by Exchange staff. Customers' access to the trading system is limited to cross connect or VPN within the data center; no general internet access is supported. Each connection to the trading system is further restricted to the appropriate servers and ports required to support that particular customer's business line.
- 9.2.6 As described in section 9.1, OneChicago maintains reasonable back-up contingency and business continuity plans, disaster recovery plans, and internal controls. The operation of OneChicago's systems is fully documented, as are the operations of its back up or disaster recovery plans. OneChicago reviews these policies and procedures on a routine basis.
- 9.2.7 Consistent with Core Principle 6, the Exchange has adopted procedures and guidelines for implementing an emergency intervention in the market. Under OCX Rule 421, the CEO may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the CEO or any individual designated by the CEO and approved by the Board, to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following actions: (i) limiting trading to liquidation only; (ii) extending or shortening, as applicable, the Expiration Date or Expiration Month of any Contract; (iii) extending the time of delivery, changing delivery points or the means of delivery provided in the rules governing any Contract; (iv) imposing or modifying position or price limits with respect to any Contract; (v) ordering the liquidation of Contracts, the fixing of a settlement price or any reduction in positions; (vi) ordering the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of Customers by any Clearing Member to one or more other Clearing Members willing to assume such Contracts or obligated to do so; (vii) extending, limiting or changing hours of trading; (viii) suspending or curtailing trading in any or all Contracts or modifying circuit breakers; (ix) requiring Clearing Members, Exchange Members, Access Persons or Customers to meet special margin requirements; (x) modifying or suspending any provision of the Rules of the Exchange or the Rules of the Clearing Corporation.
- 9.2.8 Whenever the CEO or the individual designated by the CEO takes actions necessary or appropriate to respond to an Emergency, the Exchange will notify the CFTC in accordance with CFTC Regulations.
- 9.2.9 An Emergency Rule placed into effect in accordance with OCX Rule 421 shall be reviewed by the Board as soon as practicable under the circumstances, and may be revoked, suspended or modified by the Board.
- 9.2.10 Emergency actions taken pursuant to OCX Rule 421 are subject to the conflict of interest provisions set forth in OCX Rule 211.

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<sup>12</sup> 80 FR 80139.

9.2.11 OneChicago has an error trade policy that establishes procedures for handling an error trade on the OneChicago System. The error trade policy also permits the Exchange to cancel any trade that may have a material, adverse effect on the integrity of the market.

9.2.12 OneChicago has technology in place to coordinate trading halts and circuit breakers with the underlying equity markets on which OneChicago Contracts are based. OneChicago will halt trading in the case of a regulatory trading halt or activation of a circuit breaker in the underlying market.

## **10 FINANCIAL VIABILITY AND REPORTING**

### **10.1 Financial Viability – The Exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.**

10.1.1 Consistent with Core Principle 21, OneChicago has adequate financial, operational, and managerial resources to discharge each responsibility of the Exchange. As required by the CFTC, the financial resources of the Exchange exceed the total amount that would enable the Exchange to cover its operating costs for a one-year period, as calculated on a rolling basis. On a monthly basis, OneChicago assesses the adequacy of its financial resources and capital to meet its requirements, and submits a quarterly report to the CFTC that provides the Exchange's financial information to demonstrate compliance with CFTC Regulations. In addition, the Exchange maintains unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs.

10.1.2 In accordance with applicable CFTC Regulations, OneChicago is required to maintain regulatory capital in an amount at least equal to one year of projected operating expenses as well as cash, liquid securities, or a line of credit at least equal to six months of projected operating expenses. On an ongoing basis, OneChicago assesses the adequacy of its financial resources to meet its requirements, and submits a report quarterly to the CFTC that provides the Exchange's financial information to demonstrate compliance with the CFTC Regulations.

10.1.3 OneChicago maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed to meet CFTC requirements.

## **11 TRANSPARENCY**

### **11.1 Transparency – The Exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.**

11.1.1 The Rules of the Exchange describe sound trading practices and the accuracy of market information provided by OneChicago Participants to ensure the transparency of market behavior of all OneChicago Participants.

11.1.2 OneChicago provides its settlement pricing daily to all OneChicago Participants. Consistent with Core Principle 8, OneChicago publishes daily information on settlement prices, volume, open interest and opening and closing prices for OneChicago Contracts on its website. The Exchange also publishes the total quantity of EFP and Block trades that are included in trading volume for each trading day.

11.1.3 OneChicago provides the public with the opportunity to access a real time market data stream containing all bids, offers, and trades during the trading day.

## **12 RECORD KEEPING**

### **12.1 Record Keeping - The Exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the Exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.**

12.1.1 The Controller of OneChicago maintains its financial books and records to ensure adequate representation of the Exchange's financial condition. External auditors conduct the annual audit to confirm that the Exchange's books and records are properly maintained in order to issue an independent audit opinion.

12.1.2 Consistent with Core Principle 10, OneChicago maintains audit trail data with all information with respect to each order (whether or not such order results in a consummated trade) and each consummated trade. As such, any order submitted to OneChicago can be tracked from the time it is entered into the system until the time that it is matched, canceled or otherwise removed.

- 12.1.3 The Exchange's recordkeeping program satisfies the relevant criteria set forth in the CFTC's Regulations. The Exchange retains all books and records on electronic storage media in a write once, read many times format that is stored at multiple locations to ensure redundancy and critical safeguarding of the data.
- 12.1.4 CD's recordkeeping program satisfies the relevant criteria set forth in the CFTC's Regulations. CD maintains a log of all investigations and their disposition. The Investigation Report will include the reasons for initiating the investigation, all relevant facts and evidence gathered, analysis and conclusions, the Respondent's disciplinary history at the Exchange, and the staff's recommendation. Compliance retains books and records pertaining to investigations on limited access electronic storage media in a write once, read many times format that is stored at multiple locations to ensure redundancy and critical safeguarding of the data. Additionally, the Rules of the Exchange require OneChicago participants to maintain records and make such records available to the Exchange upon request.
- 12.1.5 OneChicago maintains audit trail records relating to orders and transactions that occur on the Exchange. The Rules of the Exchange also require market participants to maintain their own audit trail records, which OneChicago reviews on a yearly basis.

### **13 OUTSOURCING**

#### **13.1 Outsourcing - Where the Exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations, and that are in accordance with industry best practices.**

- 13.1.1 OneChicago Contracts are settled and cleared by the OCC. The OCC is recognized by the OSC as a clearing agency under Section 21.2 of the OSA. Accordingly, appropriate and formal arrangements and processes in place to ensure that the clearing obligation is met in accordance with industry best practices.
- 13.1.2 For those functions that OneChicago outsources, the Exchange has appropriate, formal and legal arrangements in place to ensure its obligations are met in accordance with industry best practices.

### **14 FEES**

#### **14.1 Fees**

- (a) **All fees imposed by the Exchange are reasonable and equitably allocated and do not have the effect of creating unreasonable condition or limit on access by participants to the services offered by the exchange.**
- (b) **The process for setting fees is fair and appropriate, and the fee model is transparent.**

- 14.1.1 All fees imposed by OneChicago are equitably allocated and do not have the effect of creating unreasonable barriers to access. All OneChicago Participants are subject to the same fee schedule.
- 14.1.2 All changes in OneChicago's fee structure are communicated to OneChicago Participants in advance. Before making any changes to its fee structure, OneChicago carefully considers how any changes to its fees impact the market place and its OneChicago Participants. OneChicago files any changes to its fee structure with the CFTC.
- 14.1.3 OneChicago may offer fee discounts to liquidity providers. At its discretion, OneChicago may offer a liquidity provider program that provides incentives to OneChicago Participants willing to supply substantial numbers of bids and offers or traded volume in the market. The liquidity provider program may offer reduced fees, among other incentives, for qualified liquidity providers as determined by the Exchange. As of this application, OneChicago does not have such a program currently ongoing.
- 14.1.4 OneChicago fees are made available on the Exchange's website.

### **15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS**

#### **15.1 Information Sharing and Regulatory Cooperation – The Exchange has mechanisms in place to enable it to share information and otherwise co-operate with the OSC, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.**

- 15.1.1 OneChicago has mechanisms in place to share information (including records of trade details) with the OCC, as authorized by the clearing agreement between the OCC and OneChicago.

- 15.1.2 OneChicago has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis. OneChicago monitors trading on the Exchange through market surveillance, compliance and disciplinary practices and procedures as described in the OCX Rulebook. By executing one of the various agreements applicable to each market participant, participants consent to the collection of such information by OneChicago in order to perform its monitoring functions and carry out its self- regulatory functions.
- 15.1.3 OCX Rule 213 authorizes the Exchange to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the OneChicago Contracts trade. As described above, OneChicago is a member of ISG, JAC, and JCC.
- 15.1.4 In compliance with Core Principle 7 – Availability of General Information – the Exchange posts general information, including its contract specifications and the OCX Rulebook on the Exchange’s website.
- 15.1.5 Core Principle 2(c) (Compliance with Rules – Requirement of Rules) requires DCM rules to provide the DCM with “the ability and authority to obtain any necessary information to perform any function in this section [CFTC Regulations Part 38], including the capacity to carry out such international information-sharing agreements as the [CFTC] may require.” OCX Rule 213 authorizes OneChicago to enter into information-sharing agreements with other markets in furtherance of the Exchange’s purpose or duties under its Rules or any law or regulation.

**15.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the OSC and the Foreign Regulator.**

- 15.2.1 The OSC, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission, recently entered into a Memorandum of Understanding with the CFTC concerning regulatory cooperation related to the supervision and oversight of regulated entities that operate in both the United States and Canada (the “**Supervisory MOU**”). The Supervisory MOU provides a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of cross-border regulated entities and enhances the OSC’s ability to supervise these entities. The Supervisory MOU became effective on March 25, 2014. The OSC has also entered into a similar agreement with the SEC.

**16 IOSCO PRINCIPLES**

**16.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, the Exchange adheres to the standards of IOSCO including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).**

- 16.1.1 OneChicago adheres to the IOSCO principles by virtue of the fact that the Exchange must comply with the CEA and the CFTC Regulations, which reflect the IOSCO standards. The CFTC is a signatory to the IOSCO Memorandum of Understanding that provides for the international exchange of information to investigate and enforce laws regarding securities and derivatives violations.
- 16.1.2 OneChicago adheres to the IOSCO principles set out in the “Objectives and Principles of Securities Regulation” (2003) applicable to exchanges and trading systems. Consistent with the CEA and CFTC Regulations, OneChicago maintains operations to achieve the following:
- (a) ensure the integrity of trading through fair and equitable rules that strike an appropriate balance between the demands of different market participants;
  - (b) promote transparency of trading;
  - (c) detect and deter manipulation and other unfair trading practices;
  - (d) ensure proper management of large exposures, default risk and market disruption; and
  - (e) ensure that clearing and settlement of transactions are fair, effective and efficient, and that they reduce systemic risk.

**Part III Submissions by OneChicago**

**1. Submissions Concerning the Exchange Relief**

- A. All contracts traded on OneChicago fall under the definition of “commodity futures contract” set out in section 1 of the CFA, as further clarified by OSC Rule 14-502 (Designation of Additional Commodities). OneChicago is therefore considered a “commodity futures exchange” as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration under section 15 of the CFA. OneChicago seeks to provide Ontario Participants with direct, electronic access to trading in OneChicago Contracts and may therefore be considered to be “carrying on business as a commodity futures exchange” in Ontario.
- B. OneChicago is not registered with or recognized by the OSC as a commodity futures exchange under the CFA and no OneChicago Contracts have been accepted by the Director (as defined in the OSA) under the CFA. Therefore, OneChicago Contracts are considered “securities” under paragraph (p) of the definition of “security” set out in subsection 1(1) of the OSA and OneChicago is considered an “Exchange” under the OSA. Therefore, OneChicago is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA. OneChicago seeks to provide participants located in Ontario with direct, electronic access to trading in OneChicago Contracts. If it does so, it would be considered by the OSC to be carrying on business as a commodity futures exchange in Ontario and would be required to be registered as a commodity futures exchange or exempted from the requirement to be registered pursuant to section 15 of the CFA. If it were so exempted, OneChicago Contracts would be securities pursuant to paragraph (p) of the definition of “security” in the OSA, and OneChicago would be required to be recognized as an exchange or exempted from recognition pursuant to section 21 of the OSC.
- C. OneChicago satisfies all the criteria for registration or exemption from registration as a commodity futures exchange and recognition or exemption from recognition as an exchange set out by OSC Staff, as described under Part II of this application. Ontario Participants that trade in commodity futures would benefit from the ability to trade on OneChicago, as they would have access to a range of exchange-traded SFs based on U.S. issuers, which are not currently available in Ontario. OneChicago would offer its Ontario Participants access to a transparent, efficient and liquid market to trade OneChicago Contracts. OneChicago uses sophisticated information systems and has adopted rules and compliance functions subject to CFTC oversight that will ensure that Ontario users are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would not be prejudicial to the public interest to grant the Requested Relief.
- D. Provided that the OSC exempts OneChicago from registration as a commodity futures exchange under the CFA, OneChicago will be an “exempt exchange” as defined in OSC Rule 92-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (“**OSC Rule 91-503**”) and the OneChicago Contracts will be “exempt exchange contracts” under OSC Rule 91-503. We submit that OSC Rule 91-503 applies to OneChicago as “situate outside Ontario” and that separate exemptive relief for trades in OneChicago Contracts is not required from the registration requirement in Section 25 of the OSA and prospectus requirement in section 53 of the OSA pursuant to Part II of OSC Rule 91-503.
- E. Additionally, pursuant to the deemed rule entitled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America*, trades by any persons or companies in commodity futures contracts and commodity futures options entered into on commodity futures exchanges designated by the CFTC as DCMs under the CEA are not subject to the registration requirement in section 25 of the OSA and the prospectus requirement in section 53 of the OSA. Therefore, no registration or prospectus relief will be required under the OSA for trades in OneChicago Contracts in Ontario.

**2. Submissions Concerning the Hedger Relief**

- A. OneChicago seeks to provide direct access to trading in OneChicago Contracts to Ontario Participants that may be “hedgers” as defined in subsection 1(1) of the CFA. Section 32(1)(a) of the CFA provides an *exemption from registration for trades “by a hedger through a dealer,”* which will not be available to Ontario resident hedgers because they will have direct access to OneChicago and will not be considered to be executing “through a dealer.” To become OneChicago Participants, Ontario resident hedgers must execute a OneChicago user agreement agreeing to comply with the Rules of the Exchange and all applicable law pertaining to the use of the Exchange, and obtain a guarantee from an OCC Clearing Member that clears for the Exchange unless the Ontario Participant is an OCC Clearing Member clearing for its proprietary account.

- B. The relevant OCC Clearing Member with which an Ontario resident hedger seeks to open an account for the purpose of trading on OneChicago will complete appropriate account opening procedures prior to entering into clearing agreements with all clients and on an ongoing basis in accordance with CFTC, SEC, and OneChicago requirements. Furthermore, because OCC Clearing Members are ultimately responsible for the trading activity of any Ontario Participants that they agree to guarantee, they can be expected to ensure that such Ontario Participants will have the requisite sophistication and proficiency in the trading of OneChicago Contracts to satisfy investor protection concerns associated with having direct access to OneChicago.
- C. OneChicago intends to confirm that Ontario Participants that seek to rely on the Hedger Relief are “hedgers” (as defined in subsection 1(1) of the CFA) by obtaining a representation stating such from the Ontario resident hedgers as part of their onboarding documentation. The documentation will specify that this representation is deemed to be repeated by the Ontario Participant each time it enters an order for a OneChicago Contract and that the Ontario Participant must be a “hedger” for the purposes of each trade resulting from such an order.
- D. The requested Hedger Relief will allow sophisticated Ontario residents who meet the definition of “hedger” to become Ontario Participants and gain the benefits of direct access to the OneChicago System. Given the sophistication of such Ontario Participants and the fact that the financial responsibility for their trading activity ultimate lies with the OCC Clearing Member that guarantees their trades, or the Ontario Participant itself if it is an OCC Clearing Member, it is not necessary for the protection of other investors or the integrity of the market to require such Ontario Participants to send their Orders through a dealer rather than accessing OneChicago directly.

**3. Submissions Concerning the Bank Relief**

- A. Section 35.1 of the OSA provides that financial institutions are exempt from the requirement to be registered under the OSA to act as dealers provided that the conditions of the exemption are met. However, there is no corresponding exemption from registration for trades by financial institutions in the CFA. For this reason, OneChicago is seeking Commission approval for the Bank Relief.
- B. OneChicago intends to confirm that Ontario Participants that seek to rely on the Bank Relief are banks listed in Schedule 1 to the *Bank Act* (Canada) by obtaining a representation stating such from the Ontario resident banks as part of their onboarding documentation. The documentation will specify that this representation is deemed to be repeated by the Ontario Participant each time it enters an order for a OneChicago Contract.
- C. The requested Bank Relief will allow sophisticated Ontario residents who are banks listed in Schedule 1 to the *Bank Act* (Canada) to become Ontario Participants and gain the benefits of direct access to the OneChicago System. Given the sophistication of such Ontario Participants, it is not necessary for the protection of other investors or the integrity of the market to require such Ontario Participants to send their Orders through a dealer rather than accessing OneChicago directly.

**Part IV Other Matters**

- 1. In support of this application, we are enclosing the following:
  - a. a verification statement from an officer of OneChicago confirming our authority to prepare and file this application, and certifying the truth of the facts contained herein as Appendix A;
  - b. a cheque in the amount of the fees payable to the OSC; and
  - c. a draft form of the order
- 2. OneChicago consents to the publication of this Application for public comment in the OSC Bulletin.

**Appendix A**

**Verification Certificate**

**To: Ontario Securities Commission**

Dear Sirs/Mesdames:

**Re: Application by OneChicago, LLC**

I, David G. Downey as Chief Executive Officer of OneChicago, do hereby certify that the preparation and compilation of the attached application to the Ontario Securities Commission is authorized and confirm the truth of the facts contained therein as they relate to OneChicago.

DATED July 22, 2016

"David G. Downey"  
David G. Downey  
Chief Executive Officer  
OneChicago, LLC



**Appendix B**

**List of OneChicago Contracts**

The list of OneChicago Contracts is available for download as a CSV on the Exchange's FTP site:  
[ftp://www.onechicago.com/product\\_listings/](ftp://www.onechicago.com/product_listings/)

EXHIBIT "B"

OneChicago, LLC Draft Exemption Order

IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S. 5, AS AMENDED  
(THE OSA)

AND

IN THE MATTER OF  
THE COMMODITY FUTURES ACT  
R.S.O. 1990, CHAPTER C.20, AS AMENDED  
(THE CFA)

AND

IN THE MATTER OF  
ONECHICAGO, LLC

ORDER

(Section 147 of the OSA and sections 38 and 80 of the CFA)

**WHEREAS** OneChicago, LLC (**OneChicago**) has filed an application (**Application**) with the Ontario Securities Commission (**Commission**) requesting:

- a. an order pursuant to section 147 of the OSA exempting OneChicago from the requirement to be recognized as an exchange under subsection 21(1) of the OSA;
- b. an order pursuant to section 80 of the CFA exempting OneChicago from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (together with the requested order above, **Exchange Relief**);
- c. an order pursuant to section 38 of the CFA exempting trades in contracts on OneChicago by a "hedger," as defined in subsection 1(1) of the CFA (**Hedger**), from the registration requirement under section 22 of the CFA (**Hedger Relief**); and
- d. an order pursuant to section 38 of the CFA exempting trades in contracts on OneChicago by a bank listed in Schedule I to the Bank Act (Canada) (**Bank**) entering orders as principal and for its own account only from the registration requirement under Section 22 of the CFA (**Bank Relief** and, together with the Hedger Relief, **Registration Relief**).

**AND WHEREAS** OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situated Outside of Ontario* (**Rule 91-503**) exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

**AND WHEREAS** the deemed rule titled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America* provides that section 33 of the CFA does not apply to trades entered into a commodity futures exchange designated by the United States (**U.S.**) Commodity Futures Trading Commission (**CFTC**) under the U.S. Commodity Exchange Act (**CEA**);

**AND WHEREAS** OneChicago has represented to the Commission that:

1. OneChicago is a limited liability company organized under the laws of the State of Delaware;
2. OneChicago receives a majority of its revenue from transaction and carry fees, which include electronic trading fees and charges for carrying positions in futures contracts listed on OneChicago (**OneChicago Contracts**);
3. OneChicago is a designated contract market (**DCM**) by the CFTC, within the meaning of that term under the CEA. OneChicago is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. OneChicago is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces OneChicago's adherence to the CEA and regulations thereunder on an ongoing basis, including DCM core principles (**DCM Core Principles**) relating to the operation and oversight of OneChicago's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection;

4. OneChicago is notice registered with the U.S. Securities and Exchange Commission (**SEC**) as a national securities exchange for the limited purpose of trading security futures products. As a condition of its notice-registration, OneChicago is required to comply with certain sections of the Securities Exchange Act of 1934 (**SEA**);
5. The CFTC's Division of Market Oversight, Compliance Branch conducts regular in-depth reviews of each DCM's ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information. The results of these rule enforcement reviews are in most cases summarized in reports by the CFTC which are made available to the public and posted on the CFTC's website;
6. OneChicago provides trading services for its market participants (**OneChicago Participants**) transacting in physically-settled security futures products and may list for trading cash-settled security futures products. OneChicago Contracts overlay publicly-traded equity securities. OneChicago Participants may include commercial and investment banks, money managers, hedge funds, proprietary trading firms, and retail investors. All OneChicago Contracts are cleared through the Options Clearing Corporation (**OCC**), which is exempted by the Commission from the requirement to be recognized as a clearing agency under Section 21.2 of the OSA, by OCC Clearing Members (**OCC Clearing Member**);
7. OneChicago maintains and operates an electronic trading system known as OCXdelta1, which functions as an electronic central limit order book (**Trading System**) where entities trade OneChicago Contracts. OneChicago Participants trade OneChicago Contracts on both a proprietary and agency basis. Agency trades are handled by broker dealers (**BDS**) or futures commission merchants (**FCMs**);
8. OCXdelta1 also supports the reporting of privately-negotiated, bilateral trades such as block trades (**Block Trades**) and Exchange of Future for Physical (**EFP**) trades in accordance with CFTC regulations and the OneChicago Rulebook;
9. Orders entered, and trades reported, into OCXdelta1 are subject to risk limit checks by OneChicago's proprietary risk management system, OCX.RiskMan (**RiskMan**). RiskMan performs risk checks such as maximum order contract quantity, maximum order notional value, maximum daily notional value, and restricted list functionality;
10. OneChicago does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;
11. OneChicago proposes to offer direct access in Ontario to its Trading System and facilities to prospective participants in Ontario (**Ontario Participants**). To obtain direct access to the Trading System and facilities of OneChicago, an Ontario Participant must execute (i) an OCXdelta1 User Agreement, (ii) a Responsible Administrator Form, and (iii) an Authorized Trade Reporter Form. Additional agreements may need to be completed depending on whether the Ontario Participant intends to access OneChicago as a Clearing Member, Exchange Member, or Access Person;
12. OneChicago expects that Ontario Participants will be certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 Definitions) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading futures contracts in Ontario; and (ii) institutional investors and proprietary trading firms;
13. OneChicago Contracts fall within the definition of "commodity futures contract" as defined in section 1 of the CFA, as interpreted by OSC Rule 14-502. Therefore, OneChicago is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;
14. As OneChicago intends to provide Ontario Participants with access in Ontario to its Trading System and facilities to trade OneChicago Contracts, OneChicago is considered to be "carrying on business as a commodity futures exchange in Ontario";
15. Additionally, the exemption from registration in subsection 32(a) of the CFA applies for trades "by a hedger through a dealer." This exemption will not be available for trades in OneChicago Contracts by Ontario resident Hedgers that become OneChicago Participants since they will have direct access to OneChicago but will not be considered to be executing "through a dealer." For this reason, OneChicago is seeking Commission approval for the Hedger Relief;
16. Section 35.1 of the OSA provides that financial institutions are exempt from the requirement to be registered under the OSA to act as dealers provided that the conditions of the exemption are met. However, there is no corresponding exemption from registration for trades by financial institutions in the CFA. For this reason, OneChicago is seeking Commission approval for the Bank Relief;

17. OneChicago is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and none of the OneChicago Contracts have been accepted by the Director (as defined in the OSA) under the CFA. As a result, OneChicago Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA and OneChicago is considered to be an “exchange” under the OSA. Therefore, OneChicago is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA;
18. Further, while OneChicago Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA for the reasons outlined in the preceding paragraph, OneChicago Contracts would not be considered “securities” under any other paragraph contained in that definition, nor would any OneChicago Contract be considered a “derivative” as defined in section 1(1) of the OSA;
19. Similar to paragraph 14 above, since OneChicago seeks to provide Ontario Participants with access in Ontario to trade OneChicago Contracts, OneChicago is considered to be “carrying on business as an exchange in Ontario”;
20. OneChicago ensures that all applicants to become OneChicago Participants must satisfy certain criteria, including, among other things: validly organized and in good standing, good reputation, business integrity and adequate financial resources to assume the responsibilities and privileges of being a OneChicago market participant;
21. All OCC Clearing Members holding customer accounts to guarantee the trades of OneChicago Participants under paragraph 11 will be registered or notice-registered as FCMs with the CFTC. Such OCC Clearing Members are subject to the compliance requirements of the CEA, the CFTC, and the National Futures Association as they relate to customer accounts, including various know-your-client, suitability, risk disclosure, anti-money laundering and anti-fraud requirements. These requirements, in conjunction with the margin requirements for OneChicago Contracts applicable to OneChicago Participants, ensure that Ontario Participants seeking to become OneChicago Participants are subjected to appropriate due diligence procedures and fitness criteria. Notice-registered FCMs are subject to the compliance requirements of the SEA, the SEC, and the Financial Industry Regulatory Authority;
22. Based on the facts set out in the Application, OneChicago satisfies the criteria for exemption set out in Appendix 1 of Schedule A to this order;

**AND WHEREAS** the Commission will monitor developments in international and domestic capital markets and OneChicago’s activities on an ongoing basis to determine whether it is appropriate for the Commission to continue to grant the Exchange Relief or Registration Relief and, if so, whether it is appropriate for the Exchange Relief and Registration to continue to be granted subject to the terms and conditions set out in Schedule A to this order;

**AND WHEREAS** OneChicago has acknowledged to the Commission that the scope of the Exchange Relief or Registration Relief and the terms and conditions imposed by the Commission set out in Schedule A to this order may change as a result of its monitoring of developments in international and domestic capital markets or OneChicago’s activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives, commodity futures contracts, commodity futures options or securities;

**AND WHEREAS** based on the Application, together with the representations made by and acknowledgements of OneChicago to the Commission, the Commission has determined that:

- a. OneChicago satisfies the criteria for exemption set out in Appendix 1 of Schedule A;
- b. The granting of the Exchange Relief would not be prejudicial to the public interest; and
- c. The granting of the Registration Relief would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** by the Commission that:

- a. Pursuant to section 147 of the OSA, OneChicago is exempt from recognition as an exchange under subsection 21(1) of the OSA;
- b. Pursuant to section 80 of the CFA, OneChicago is exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;
- c. Pursuant to section 38 of the CFA, trades in OneChicago Contracts by Hedgers who are Ontario Participants are exempt from the registration requirement under section 22 of the CFA; and
- d. Pursuant to section 38 of the CFA, trades in OneChicago Contracts by Banks who are Ontario Participants entering orders as principal and only for their own accounts are exempt from the registration requirement under section 22 of the CFA;

**PROVIDED THAT**

- a. OneChicago complies with the terms and conditions attached hereto as Schedule A; and
- b. The Bank Relief shall expire on the earliest of:
  - (i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;
  - (ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA; and
  - (iii) five years after the date of this order.

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. OneChicago will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

**Regulation and Oversight of OneChicago**

2. OneChicago will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.
3. OneChicago will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.
4. OneChicago must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

**Access**

5. OneChicago will maintain and operate a Trading System where OneChicago Participants trade on a proprietary or agency basis through an intermediary such as a broker dealer or FCM.
6. OneChicago will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in OneChicago Contracts, is a Hedger, or a Bank; in making this determination, OneChicago may reasonably rely on a written representation from the Ontario Participant that specifies that it is appropriately registered to trade in OneChicago Contracts or that it is a Hedger, or a Bank, and OneChicago will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a OneChicago Contract.
7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in OneChicago Contracts:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that OneChicago deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for a OneChicago Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify OneChicago if it ceases to be a Hedger;
  - (d) represent that it will only enter orders for its own account;
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
  - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on OneChicago will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.
8. Each Ontario Participant that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in OneChicago Contracts:
  - (a) represent that it will only enter orders as principal and for its own account only;
  - (b) represent that it is a Bank;
  - (c) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities; and

- (d) represent that it is not engaging in activities prohibited by its governing legislation.
- 9. OneChicago will require Ontario Participants to notify OneChicago if their applicable registration has been revoked, suspended or amended by the Commission or if they have ceased to be eligible for the Registration Relief and, following notice from the Ontario Participant or the Commission and subject to applicable laws, OneChicago will promptly restrict the Ontario Participant's access to OneChicago if the Ontario Participant is no longer appropriately registered with the Commission, or is no longer eligible for the Registration Relief.
- 10. OneChicago must make available to Ontario Participants appropriate training for each person who has access to trade in OneChicago Contracts.

**Trading by Ontario Participants**

- 11. OneChicago will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of OneChicago, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
- 12. OneChicago will not provide access to an Ontario Participant to trading in OneChicago Contracts other than those that meet the definition of "commodity futures contract" or "commodity futures option" as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

- 13. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of OneChicago in Ontario, OneChicago will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
- 14. OneChicago will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of OneChicago's activities in Ontario.

**Disclosure**

- 15. OneChicago will provide to its Ontario Participants disclosure that states that:
  - (a) rights and remedies against OneChicago may only be governed by the laws of the U.S., rather than the laws of Ontario, and may be required to be pursued in the U.S. rather than in Ontario; and
  - (b) the rules applicable to trading on OneChicago may be governed by the laws of the U.S., rather than the laws of Ontario.

**Filings with the CFTC**

- 16. OneChicago will promptly provide staff of the Commission copies of all material rules of OneChicago, and material amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
- 17. OneChicago will promptly provide staff of the Commission copies of all material contract specifications and material amended contract specifications that it files with the CFTC and SEC under the regulations pertaining to self-certification and/or approval.
- 18. OneChicago will promptly provide staff of the Commission the following information to the extent it is required to file such information with the CFTC:
  - (a) the annual Board of Directors' report regarding the activities of the Board and its committees;
  - (b) the annual financial statements of OneChicago;
  - (c) details of any material legal proceeding instituted against OneChicago;

- (d) notification that OneChicago has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate OneChicago or has a proceeding for any such petition instituted against it; and
- (e) the appointment of a receiver or the making of any voluntary arrangement with creditors.

**Prompt Notice or Filing**

19. OneChicago will promptly notify staff of the Commission of any of the following:
- (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
    - (i) changes to the regulatory oversight by the CFTC;
    - (ii) the corporate governance structure of OneChicago
    - (iii) the access model, including eligibility criteria, for Ontario Participants;
    - (iv) systems and technology; and
    - (v) the clearing and settlement arrangements for OneChicago;
  - (b) any change in OneChicago's regulations or the laws, rules and regulations in the U.S. relevant to futures and options where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this schedule;
  - (c) any condition or change in circumstances whereby OneChicago is unable or anticipates it will not be able to continue to meet the DCM Core Principles or any applicable requirements of the CEA or CFTC regulations;
  - (d) any revocation or suspension of, or amendment to, OneChicago's registration as a DCM by the CFTC or if the basis on which OneChicago's registration as a DCM was granted has significantly changed;
  - (e) any known investigations of, or disciplinary action against, OneChicago by the CFTC or any other regulatory authority to which it is subject;
  - (f) any matter known to OneChicago that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
  - (g) any default, insolvency, or bankruptcy of any OneChicago market participant known to OneChicago or its representatives that may have a material, adverse impact upon OneChicago or any Ontario Participant.
20. OneChicago will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding OneChicago.

**Quarterly Reporting**

21. OneChicago will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Participants, and, to the extent known by OneChicago, a list of other persons or companies located in Ontario trading as customers of participants (**Other Ontario Users**), specifically identifying for each Ontario Participant or Other Ontario User:
    - (i) its status as a Clearing Member, Exchange Member, or Access Person of OneChicago, and
    - (ii) the basis upon which it represented to OneChicago that it could be provided with direct access (i.e., that it is appropriately registered to trade in OneChicago Contracts, or is a Hedger, or is a Bank);
  - (b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by OneChicago or, to the best of OneChicago's knowledge, by the CFTC with respect to such Ontario Participants' activities on OneChicago;



- (c) a list of all referrals to the OneChicago Chief Regulatory Officer by the OneChicago Compliance Department concerning Ontario Participants;
- (d) a list of all Ontario applicants for status as an Ontario Participant who were denied such status or access to OneChicago during the quarter;
- (e) a list of all new by-laws, rules, and contract specifications, and changes to by laws, rules and contract specifications, not already reported under sections 15 and 16 of this schedule;
- (f) a list of all OneChicago Contracts available for trading during the quarter, identifying any additions, deletions or changes since the prior quarter;
- (g) for each OneChicago Contract,
  - (i) the total trading volume and value originating from Ontario Participants, presented on a per Ontario Participant basis, and, to the extent known by the OneChicago, the total trading volume and value originating from Other Ontario Users presented on a per Other Ontario User basis; and
  - (ii) the proportion of worldwide trading volume and value on OneChicago conducted by Ontario Participants, and, to the extent known by OneChicago, by Other Ontario Users, presented in the aggregate for such Ontario Participants and Other Ontario Users;
- (h) a list outlining each incident of a significant system outage that occurred at any time during the quarter for any system impacting Ontario Participants' trading activity, including trading, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken.

#### **Annual Reporting**

- 22. OneChicago will arrange to have the annual audited financial statements of OneChicago filed with the Commission promptly after their issuance.

#### **Reporting**

- 23. If an IT Service Auditor's Report (**Report**) is prepared for OneChicago, OneChicago will promptly file with the Commission the Report after the Report is issued as final by its independent auditor.

#### **Information Sharing**

- 24. OneChicago will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.
- 25. If OneChicago trades any security futures with the underlying that is listed on an exchange recognized in Canada, OneChicago will coordinate with the Investment Industry Regulatory Organization of Canada on any issues that involve securities of issuers listed on an exchange recognized in Canada, including trading halts and investigations of trading activity involving these.

## **APPENDIX 1**

### **CRITERIA FOR EXEMPTION**

#### **PART 1 REGULATION OF THE EXCHANGE**

##### **1.1 Regulation of the Exchange**

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

##### **1.2 Authority of the Foreign Regulator**

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

#### **PART 2 GOVERNANCE**

##### **2.1 Governance**

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
  - (i) appropriate representation of independent directors, and
  - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

##### **2.2 Fitness**

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

#### **PART 3 REGULATION OF PRODUCTS**

##### **3.1 Review and Approval of Products**

The products traded on the exchange and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

##### **3.2 Product Specifications**

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

##### **3.3 Risks Associated with Trading Products**

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

## **PART 4 ACCESS**

### **4.1 Fair Access**

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
  - (i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,
  - (ii) the competence, integrity and authority of systems users, and
  - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
  - (i) permit unreasonable discrimination among participants, or
  - (ii) impose any burden on competition that is not reasonably necessary and appropriate.

## **PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE**

### **5.1 Regulation**

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

## **PART 6 RULEMAKING**

### **6.1 Purpose of Rules**

- (a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.
- (b) The Rules are not contrary to the public interest and are designed to
  - (i) ensure compliance with applicable legislation,
  - (ii) prevent fraudulent and manipulative acts and practices,
  - (iii) promote just and equitable principles of trade,
  - (iv) foster co-operation and co-ordination with persons or companies engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,
  - (v) provide a framework for disciplinary and enforcement actions, and
  - (vi) ensure a fair and orderly market.

## **PART 7 DUE PROCESS**

### **7.1 Due Process**

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

## **PART 8 CLEARING AND SETTLEMENT**

### **8.1 Clearing Arrangements**

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.<sup>1</sup>

### **8.2 Regulation of the Clearing House**

The clearing house is subject to acceptable regulation.

### **8.3 Authority of Regulator**

A Foreign Regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the Foreign Regulator.

### **8.4 Access to the Clearing House**

- (a) The clearing house has established appropriate written standards for access to its services.
- (b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

### **8.5 Sophistication of Technology of Clearing House**

The exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

### **8.6 Risk Management of Clearing House**

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

## **PART 9 SYSTEMS AND TECHNOLOGY**

### **9.1 Systems and Technology**

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

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<sup>1</sup> For the purposes of these criteria, "clearing house" also means "clearing agency."

## **9.2 System Capability/Scalability**

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data fees, trade reporting and trade comparison, the exchange:

- (a) makes reasonable current and future capacity estimates;
- (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;
- (e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;
- (f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and
- (g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

## **PART 10 FINANCIAL VIABILITY AND REPORTING**

### **10.1 Financial Viability**

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## **PART 11 TRANSPARENCY**

### **11.1 Transparency**

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

## **PART 12 RECORD KEEPING**

### **12.1 Record Keeping**

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

## **PART 13 OUTSOURCING**

### **13.1 Outsourcing**

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

## **PART 14 FEES**

### **14.1 Fees**

- (a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## **PART 15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS**

### **15.1 Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

### **15.2 Oversight Arrangements**

Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

## **PART 16 IOSCO PRINCIPLES**

### **16.1 IOSCO Principles**

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivative Markets” (2011).