



January 14, 2015

VIA CFTC PORTAL

Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2015-02 Rule Certification

Dear Secretary Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission Regulation (“CFTC”) 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (the “SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

In conformity with the requirements of Regulation 40.6(a)(7), OCC states the following:

Explanation and Analysis

OCC is proposing to amend its By-Laws and other governing documents, and to adopt certain policies, for the purpose of implementing a plan for raising additional capital (“Capital Plan”) under which the options exchanges that own equity in OCC (“Stockholder Exchanges” or “Stockholders”) would make an additional capital contribution and commit to replenishment capital (“Replenishment Capital”) in circumstances discussed below, and would receive, among other things, the right to receive dividends from OCC.¹ In addition to the additional capital contribution and Replenishment Capital, the main features of the Capital Plan are: (i) a policy establishing OCC’s fees at a level that would be sufficient to cover OCC’s estimated operating expenses plus a “Business Risk Buffer” as described below (“Fee Policy”), (ii) a policy establishing the amount of the annual refund to clearing members of OCC’s fees (“Refund

¹ The Capital Plan has also been filed with the SEC as an advance notice (SR-OCC-2014-813), which was amended and restated on January 14, 2015.

Policy”), and (iii) a policy for calculating the amount of dividends to be paid to the Stockholder Exchanges (“Dividend Policy”). The Capital Plan is proposed to be implemented on or about February 27, 2015, subject to all necessary regulatory approvals.²

The Capital Plan would significantly increase OCC’s capital in connection with its increased responsibilities as a systemically important financial market utility, and OCC believes that it would facilitate OCC’s compliance with new regulatory requirements applicable to such systemically important financial market utilities that have been proposed by the SEC but have not yet been adopted.³ For purposes of its capital planning, OCC has used the working assumption that the new requirements contained in the SEC’s proposed amendments to Rule 17Ad-22 of the SEC Proposed Rules will be adopted substantially as proposed, and the Capital Plan is intended to ensure OCC’s ability to comply with Rule 17Ad-22, specifically paragraph (e)(15) thereof, when the SEC Proposed Rules become effective. In addition, it is intended to address Principle 15 of the Principles for Financial Market Infrastructures published by the Bank for International Settlements and the International Organization of Securities Commissions, which provides, among other things, that a financial market utility should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue to operate as a going concern. The Capital Plan calls for an infusion of substantial additional equity capital by the Stockholder Exchanges to be made prior to February 27, 2015, subject to regulatory approval, that when added to retained earnings accumulated by OCC in 2014 will significantly increase OCC’s capital levels as compared to historical levels. Additionally, the Capital Plan includes the Replenishment Capital commitment, which would provide OCC access to additional equity contributed by the Stockholder Exchanges should OCC’s equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk in compliance with Rule 17Ad-22, as discussed more fully below.

Background

OCC is a clearing agency registered with the SEC and is also a derivatives clearing organization (“DCO”) regulated in its capacity as such by the CFTC. OCC is a Delaware business corporation and is owned equally by the Stockholder Exchanges, five national securities exchanges for which OCC provides clearing services.⁴ In addition, OCC provides clearing

² The material features of the Capital Plan are summarized in the Term Sheet that is included as Exhibit 3 to this filing. Certain details of the Term Sheet may change as a result of negotiations between OCC and the Stockholder Exchanges or changes in financial figures, but OCC does not anticipate any material changes to the Capital Plan.

³ See Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) (“SEC Proposed Rules”).

⁴ The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

services for seven other national securities exchanges that trade options (“Non-Stockholder Exchanges”). In its capacity as a DCO, OCC also provides clearing services to four futures exchanges.

OCC has been designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing and Settlement Supervision Act, and the SEC is OCC’s “Supervisory Agency” under Section 803(8) of the Payment, Clearing and Settlement Supervision Act. OCC is therefore a “covered clearing agency” (“CCA”) as defined in proposed amendments to the SEC’s Rule 17Ad-22(a)(7) and would be required to comply with the provisions of proposed Rule 17Ad-22 applicable to CCA’s, including paragraph (e)(15) thereof.⁵

Proposed Rule 17Ad-22(e)(15) provides:

Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . Identify, monitor, and manage the covered clearing agency’s general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency’s current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)-(iii) of this section, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii) of this section; and

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions; and

⁵ SEC Proposed Rules at 32-33, FR 29507, 29515 (May 22, 2014).

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.⁶

Over the last nine months, OCC has devoted substantial efforts to: 1) develop a 5-year forward looking model of expenses; 2) quantify maximum recovery and wind-down costs under OCC's Recovery and Wind-Down Plan; 3) assess and quantify OCC's operational and business risks; 4) model projected capital accumulation taking into account varying assumptions concerning business conditions, fee levels, buffer margin levels and refunds; and 5) develop an effective mechanism that provides OCC access to replenishment capital in the event of losses that could cause OCC to be non-compliant with the SEC Proposed Rules. Incorporating the results of those efforts, the proposed amendments are intended to allow OCC to implement the Capital Plan and thereby provide OCC with the means to increase its shareholders' equity and, in particular, to obtain timely compliance with Rule 17Ad-22(e)(15)⁷ as proposed by the SEC. A more detailed discussion of the manner in which the Capital Plan would allow OCC to comply with Rule 17Ad-22(e)(15) appears below.

OCC's Projected Capital Requirement

Using the methods described in detail below, OCC will annually determine a "Target Capital Requirement" consisting of (i) a "Baseline Capital Requirement" equal to the greatest of (x) six months operating expenses for the following year, (y) the maximum cost of the recovery scenario from OCC's Recovery and Wind-Down Plan, and (z) the cost to OCC of winding down operations as set forth in the Recovery and Wind-Down Plan, plus (ii) a "Target Capital Buffer" linked to plausible loss scenarios from operational risk, business risk and pension risk. OCC has determined that its currently appropriate "Target Capital Requirement" is \$247 million, reflecting a Baseline Capital Requirement of \$117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of \$130 million. This Target Capital Buffer would provide a significant capital cushion to offset potential business losses.

As of December 31, 2013, OCC had total shareholders' equity of approximately \$25 million,⁸ meaning that OCC proposes to add additional capital of \$222 million to meet its 2015 Target Capital Requirement. In addition, OCC would be obligated under paragraph (e)(15)(iii)⁹ of proposed Rule 17Ad-22 to maintain "a viable plan" for raising additional equity should its

⁶ SEC Proposed Rules at 417-418, FR 29507, 29616 (May 22, 2014).

⁷ SEC Proposed Rules at 222-223, FR 29507, 29547-29548 (May 22, 2014).

⁸ See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

⁹ SEC Proposed Rules at 418, FR 29507, 29616 (May 22, 2014).

equity fall close to or below the amount required under paragraph (e)(15)(ii) of the Rule¹⁰; i.e., the Baseline Capital Requirement. OCC has determined that its viable plan for Replenishment Capital should provide for a “Replenishment Capital Amount” which would give OCC access to additional capital as needed up to a maximum of the Baseline Capital Requirement, which is currently \$117 million.¹¹ Therefore, OCC’s proposed Capital Plan would provide OCC in 2015 with ready access to approximately \$364 million in equity capital as follows:

Baseline Capital Requirement	\$117,000,000
Target Capital Buffer	<u>\$130,000,000</u>
Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

Procedures Followed in Order to Determine Capital Requirement

Various measures were used in determining the appropriate level of capital necessary to comply with the SEC Proposed Rules. An outside consultant conducted a “bottom-up” analysis of OCC’s risks and quantified the appropriate amount of capital to be held against each risk. The analysis was comprehensive across risk types, including credit, market, pension, operational, and business risk. Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC’s operational risk was quantified at \$226 million and pension risk at \$21 million, resulting in the total Target Capital Requirement of \$247 million. Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risk to zero by adjusting the levels at which fees and refunds are set and by adopting a “Business Risk Buffer” of 25% when setting fees. Other risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks that did not require use of OCC’s capital. As discussed in more detail below in the context of OCC’s Fee Policy, the Business Risk Buffer of 25% is achieved by setting OCC’s fees at a level intended to achieve target annual revenue that will result in a 25% buffer for the year after paying all operating expenses.

An analysis was also performed to identify OCC’s risk in terms of the regulatory requirements set forth in proposed Rule 17Ad-22(e)(15)(ii).¹² This analysis estimated that, currently, OCC’s maximum recovery costs would be \$100 million and projected wind-down costs would be \$73 million. OCC’s projected expenses for 2015 are \$234 million, so that six

¹⁰ SEC Proposed Rules at 417, FR 29507, 29616 (May 22, 2014).

¹¹ The obligation to provide Replenishment Capital will be capped at \$200 million, which OCC projects will sufficiently account for increases in its capital requirements for the foreseeable future.

¹² SEC Proposed Rules at 417, FR 29507, 29616 (May 22, 2014).

months projected expenses are \$234 million/2 = \$117 million. The greater of recovery or wind-down costs and six months of operating expenses is therefore \$117 million, and OCC's Baseline Capital Requirement (minimum regulatory requirement) is therefore \$117 million. OCC then computed the appropriate amount of a Target Capital Buffer from operational risk, business risk, and pension risk. This resulted in a determination that the current Target Capital Buffer should be \$130 million. Thus, the Target Capital Requirement is \$117 million + \$130 million = \$247 million.

Overview of, and Basis for, OCC's Proposal to Acquire Additional Equity Capital

In order to meet its Target Capital Requirement, and after consideration of available alternatives, OCC's Board approved a proposal from OCC's Stockholder Exchanges under which OCC would meet its Target Capital Requirement of \$247 million in early 2015 as follows:

Shareholders' Equity as of 1/1/2014	\$ 25,000,000
Shareholders Equity Accumulated Through Retained Earnings ¹³	\$ 72,000,000
Additional Contribution from Stockholder Exchanges	<u>\$150,000,000</u>
Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

The additional contribution of the Stockholder Exchanges would be made in respect of their Class B Common Stock on a *pro rata* basis. The Stockholder Exchanges will also commit to provide additional equity capital up to the Replenishment Capital Amount, which is currently \$117 million, in the event Replenishment Capital is needed. While the Replenishment Capital Amount will increase as the Baseline Capital Requirement increases, it would be capped at a total of \$200 million that could be outstanding at any point in time. OCC has estimated that the Baseline Capital Requirement would not exceed this amount before 2022. When the limit is being approached, OCC would revise the Capital Plan as needed to address future needs. In consideration for their capital contributions and replenishment commitments, the Stockholder Exchanges will receive dividends as described in the Dividend Policy discussed below for so

¹³ See Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05) (Filing for immediate effectiveness of a proposed rule change with the SEC to reinstate OCC's permanent clearing fee schedule for securities options and securities futures that became effective May 1, 2007 ("Permanent Schedule Reinstatement Filing")). The \$72 million is after giving effect to the approximately \$40 million refund referred to below.

long as they remain stockholders and maintain their contributed capital and commitment to replenish capital up to the Replenishment Capital Amount, subject to the \$200 million cap.

Fee, Refund, and Dividend Policies

Upon reaching the Target Capital Requirement, the Capital Plan and the proposed Fee Policy require OCC to set its fees at a level that utilizes a Business Risk Buffer of 25%. The purpose of this Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Furthermore, the Capital Plan requires OCC to maintain Fee, Refund, and Dividend Policies, described in more detail below, which are designed to ensure that OCC's shareholders' equity remains well above the Baseline Capital Requirement. The proposed Fee, Refund, and Dividend Policies are attached to this filing as Exhibits 5A, 5B, and 5C respectively. The required Business Risk Buffer of 25% is below OCC's 10-year historical pre-refund average buffer of 31%. The target will remain 25% so long as OCC's shareholders' equity remains above the Target Capital Requirement amount. The reduction in buffer margin from OCC's 10-year average of 31% to 25% reflects OCC's commitment to continue to operate as an industry utility and ensuring that market participants benefit as much as possible from OCC's operational efficiencies in the future. This reduction will permit OCC to charge lower fees to market participants rather than maximizing refunds to clearing members and dividend distributions to Stockholder Exchanges. OCC will review its fee schedule on a quarterly basis to manage revenue as closely to this target as possible.¹⁴ For example, if the Business Risk Buffer is materially above 25% after the first quarter of a particular year, OCC may decrease fees for the remainder of the year, and conversely if the Business Risk Buffer is materially below 25% after the first quarter, OCC may increase fees for the remainder of the year.

The Capital Plan would allow OCC to refund approximately \$40 million from 2014 fees to clearing members in 2015 and to reduce fees in an amount to be determined by the Board, effective in the second quarter 2015. OCC will announce new fee levels early in 2015 and will make them effective following notification to clearing members and any necessary approval by the SEC. OCC will endeavor to provide clearing members with no less than 60-day advance notice of the effectiveness of changes to fee levels, particularly those that result in increases to fee levels. No dividends will be declared until December 2015 and no dividends will be paid until 2016.

Changes to the Fee, Refund, or Dividend Policies will require the affirmative vote of two-thirds of the directors then in office and approval of the holders of all of OCC's outstanding Class B Common Stock. The formulas for determining the amount of refunds and dividends under the Refund and Dividend Policies, respectively, which are described in more detail below,

¹⁴ If OCC's fee schedule needs to be changed in order to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change seeking approval of the revised fee schedule.

assume that refunds are tax-deductible but that dividends are not. The Refund and Dividend Policies would each provide that in the event that refunds payable under the Refund Policy are not tax deductible, the policies would be amended to restore the relative economic benefits between the recipients of the refunds and the Stockholder Exchanges.

Fee Policy

Under the Fee Policy, in setting fees each year, OCC would calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25%, *i.e.*, OCC will divide the expense forecast by .75. Establishing a Business Risk Buffer at 25% would allow OCC to manage the risk that fees would generate less revenue than expected due to lower-than-expected trading volume or other factors, or that expenses would be higher than projected. The Fee Policy also will include provisions from existing Article IX, Section 9 of the By-Laws to the effect that the fee schedule may also include additional amounts necessary to (i) maintain such reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to conduct development and capital planning activities in connection with OCC's services to the options exchanges, Clearing Members and the general public, and (ii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing Members and the general public; however, these provisions will be invoked only in extraordinary circumstances and to the extent that the Board has determined that the required amount of such additional reserves or additional surplus will exceed the full amount that is expected to be accumulated through the Business Risk Buffer (prior to payment of refunds or dividends) so OCC's fees will ordinarily be based on its projected operating expenses and the Business Risk Buffer of 25%.

Under the Capital Plan, OCC would calculate its annual revenue target as follows:

$$\text{Annual Revenue Target} = \text{Forward 12 Months Expense Forecast}/(1-.25).$$

Because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections would include projections as to relative volume in each such category. The clearing fee schedule would therefore be set to achieve a blended or average rate per contract sufficient, when multiplied by total projected contract volume, to achieve the Annual Revenue Target. Under extraordinary circumstances, OCC would then add any amount determined to be necessary for additional reserves or surplus and divide the resulting number by the projected contract volume to determine the applicable average fee per cleared contract needed to achieve the additional amounts required. Consistent with past practice, OCC would notify clearing members of the fees that would be applicable for any particular period by describing the change in an information memorandum distributed to all clearing members. Consistent with past practice, OCC would also notify regulators of the fees that would be applicable for any particular period by filing an amendment to its Schedule of Fees as a proposed

rule change for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder.¹⁵

Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a refund to Clearing Members in December of each year, beginning in 2015, in an amount equal to 50% of the excess, if any, of (i) pre-tax income for the year in which the refund is declared over (ii) the sum of (x) the amount of pre-tax income after the refund necessary to produce after-tax income for such year sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year plus (y) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement. Such refund will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay refunds until such time as the Target Capital Requirement is restored through the accumulation of retained earnings. Refunds in accordance with the Refund Policy would resume once the Target Capital Requirement is restored and all Replenishment Capital is repaid in full, provided that the restoration of the Target Capital Requirement and the repayment of Replenishment Capital occurred within 24 months of the issuance date of the Replenishment Capital. If, within 24 months of the issuance date of any Replenishment Capital, such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, OCC would no longer pay refunds to clearing members, even if the Target Capital Requirement is restored and all Replenishment Capital is repaid at a later date.

Dividend Policy

The Dividend Policy would provide that, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a dividend on its Class B Common Stock in December of each year in an aggregate amount equal to the excess, if any, of (i) after-tax income for the year, after application of the Refund Policy (unless the Refund Policy has been eliminated, in which case the refunds shall be deemed to be \$0) over (ii) the sum of (A) the amount required to be retained in order to maintain total shareholders' equity at the Target

¹⁵ See, e.g., the Permanent Schedule Reinstatement Filing, *supra* n. 13; Proposed Rule Change by The Options Clearing Corporation to Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance with the Options Order Protection and Locked/Crossed Market Plan to \$.01 per Contract, Securities Exchange Act Release No. 68025 (October 12, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement. Such dividend will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay dividends until such time as the Target Capital Requirement is restored.

OCC's Status as an Industry Utility

OCC has always been operated on an "industry utility" model. The Stockholder Exchanges have heretofore contributed only minimal capital to OCC.¹⁶ OCC's By-Laws currently require that OCC set its clearing fees at a level that is designed to cover operating expenses and to maintain such reserves and accumulate such additional capital as are deemed reasonably necessary for OCC to meet its obligations to its clearing members and the public. Clearing fees that are collected in excess of these amounts are refunded annually on a *pro rata* basis to the clearing members who paid them. Under this model, OCC has never paid dividends to the Stockholder Exchanges. However, OCC has paid significant refunds to clearing members each year. OCC is aware that a portion -- possibly a significant portion -- of those refunds are not passed through by the clearing members to their end user customers. Accordingly, by adopting an approach that includes paying dividends to the Stockholder Exchanges that have invested a significant amount of additional capital (\$150 million) but that also reduces the historical pre-refund average buffer of 31% by adopting a Business Risk Buffer of 25%, OCC believes that the proposed approach maintains, and perhaps better aligns with, an industry utility model.

Given the very large increase in capital that OCC has determined to be appropriate in order to assure compliance with regulatory requirements and meet the increased responsibilities imposed upon it as a systemically important financial market utility, OCC has determined that the best alternative available to it is to obtain a substantial further capital contribution from the Stockholder Exchanges. This cannot be accomplished without modification of the past practice of not providing dividends to stockholders. Accordingly, it is necessary for OCC to establish the new Fee Policy, Refund Policy, and Dividend Policy. Because of the Business Risk Buffer being set at 25%, the combination of the Fee, Refund, and Dividend Policies will effectively cap the dividends to be paid to the Stockholder Exchanges at a level that the Board (with the advice of outside financial experts) has determined results in a reasonable rate of return on contributed capital, particularly in comparison to the implied cost of capital to the clearing members and

¹⁶ OCC's common stock and paid in capital total \$2,659,999. See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

their customers of instead pursuing an approach which required the accumulation of retained earnings through higher fees and no refunds for several years. OCC will continue to refund a significant percentage of excess clearing fees to clearing members, thereby benefiting both clearing members and, to the extent that refunds are passed through by the clearing members to their end user customers, their customers. The Capital Plan therefore effectively preserves OCC's industry utility model of providing its services in an efficient manner, but enhances the benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin from OCC's 10-year average of 31% to 25%.

Clearing members and customers will benefit from the proposed Capital Plan because it will allow OCC to continue to provide clearing services at low cost. As noted, OCC expects that this capital infusion from stockholders will enable OCC to provide a significant refund of 2014 fees. OCC further expects that its current clearing fees will be reduced significantly based on the Business Risk Buffer of 25% beginning in 2015 with refunds restored, and that these lower fees will continue for the foreseeable future.

Stockholder Exchanges will benefit from the dividend return they receive and, perhaps more importantly, they will be assured that OCC will be in a position to provide clearing services for their markets on an on-going basis within the same basic structure that has served these markets well since their inception and without the need to radically change the structure to address potential demands of outside equity investors. Non-Stockholder Exchanges will also benefit by continuing to receive OCC's clearing services for their products on the same basis as they presently do.¹⁷

OCC also believes that the Capital Plan will better align the interests of Stockholder Exchanges and clearing members with respect to expenses, since changes to the level of operating expenses directly affect the Target Capital Requirement. In sum, OCC believes that the present proposal represents a fair and reasonable balancing of the interests of the Stockholder Exchanges, the other exchanges for which OCC provides clearing services, clearing members, customers, and the general public while providing an immediate infusion of capital and a structure within which OCC can meet its obligations to the public as a systemically important financial market utility, as well as the requirements under the SEC Proposed Rules.

Replenishment Capital Plan

OCC proposes to put in place a Replenishment Capital Plan whereby OCC's Stockholder Exchanges are obligated to provide on a *pro rata* basis a committed amount of Replenishment Capital should OCC's total shareholders' equity fall below the hard trigger (as defined below).

¹⁷ Non-Stockholder Exchanges contribute capital by purchasing a promissory note in the principal amount of \$1,000,000. See Section 2 of Article VIIB of OCC's By-Laws. The required capital contribution of Non-Stockholder exchanges will not change under the Capital Plan.

The aggregate committed amount for all five Stockholder Exchanges in the form of Replenishment Capital that could be accessed at any time would be capped at the excess of (i) the lesser of (A) the Baseline Capital Requirement, which is currently \$117 million, at the time of the relevant funding or (B) \$200 million, over (ii) amounts of outstanding Replenishment Capital (“Cap”). The \$200 million figure in the Cap formula takes into account projected growth in the Baseline Capital Requirement for the foreseeable future. The commitment to provide Replenishment Capital would not be limited by time, but only by the Cap. Replenishment Capital could be called in whole or in part after the occurrence of a “hard trigger” event described below, subject to the Cap. If the Baseline Capital Requirement approaches or exceeds \$200 million, the Board can consider, as part of its annual review of the Replenishment Capital Plan that is required by the SEC Proposed Rules, alternative arrangements to obtain replenishment capital in excess of the \$200 million committed under the Replenishment Capital Plan. In addition, the Refund Policy and the Dividend Policy will provide that, in the absence of obtaining any such alternative arrangements, the amount of the difference will be subtracted from amounts that would otherwise be available for the payment of refunds and dividends.

Replenishment Capital contributed to OCC under the Replenishment Capital Plan would take the form of a new class of common stock (“Class C Common Stock”) of OCC to be issued to the Stockholder Exchanges solely in exchange for Replenishment Capital contributions.

The Replenishment Capital Plan would be part of OCC’s overall Capital Plan. In implementing the Replenishment Capital Plan, OCC’s management would monitor OCC’s levels of shareholders’ equity to identify certain triggers, or reduced capital levels, that might require action. OCC has identified two key triggers – a soft trigger and a hard trigger – and proposes that OCC take certain steps upon the occurrence of either as described in more detail below.

The “soft trigger” for re-evaluating OCC’s capital would occur if OCC’s shareholders’ equity falls below the sum of (i) the Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. The soft trigger would be a warning sign that OCC’s capital had fallen to a level that required attention and responsive action to prevent it from falling to unacceptable levels. Upon a breach of the soft trigger, OCC’s senior management and the Board would review alternatives to increasing capital, and take appropriate action as necessary, including increasing fees or decreasing expenses, to restore shareholders’ equity to the Target Capital Requirement.

The “hard trigger” for making a mandatory Replenishment Capital call would occur if shareholders’ equity falls below 125% of the Baseline Capital Requirement (“Hard Trigger Threshold”). The hard trigger would be a sign that corrective action more significant and with a more immediate impact than increasing fees or decreasing expenses should be taken to increase OCC’s capital, either as part of a recovery plan or a wind down plan for OCC’s business. OCC’s shareholders’ equity would have to fall more than \$100 million below the fully funded capital amount described above in order for the Hard Trigger Threshold to be breached. As a result, OCC views the breach of the Hard Trigger Threshold as unlikely and occurring only as a result

of a significant, unexpected event. Upon a breach of the Hard Trigger Threshold, the Board would have to determine whether to attempt a recovery, a wind-down of OCC's operations or a sale or similar transaction, subject in each case to any necessary stockholder consent. If the Board decides to wind-down OCC's operations, OCC would access the Replenishment Capital in an amount sufficient to fund the wind-down, as such amount would be determined by the Board, and subject to the Cap described above. If the Board decides to attempt a recovery of OCC's capital and business, OCC would access the Replenishment Capital in an amount sufficient to return shareholders' equity to an amount equal to \$20 million above the Hard Trigger Threshold, subject to the Cap described above.

While Replenishment Capital is outstanding, no refunds or dividends would be paid and, if any Replenishment Capital remains outstanding for more than 24 months or the Target Capital Requirement is not restored during that period, changes would be made to how OCC calculates refunds and dividends, as described in more detail above under Refund Policy and Dividend Policy. In addition, while Replenishment Capital is outstanding, OCC would first utilize the entire amount of Available Funds to repurchase, on a *pro rata* basis from each Stockholder, to the extent permitted by applicable Delaware and federal law and regulations, outstanding shares of Class C Common Stock as soon as practicable after completion of the financial statements following the end of each calendar quarter at a price equal to the original amount paid for such shares, plus an additional "gross up" amount to compensate the holders of the Class C Common Stock for taxes on dividend income (if any) that they may have to recognize as a result of such repurchase.¹⁸ For this purpose, "Available Funds" would equal, as of the end of any calendar quarter, the excess, if any, of (x) shareholders' equity over (y) the Minimum Replenishment Level. The "Minimum Replenishment Level" would mean \$20 million above the Hard Trigger Threshold, so that OCC's shareholders' equity would remain at or above the Minimum Replenishment Level after giving effect to the repurchase. Furthermore, under the Dividend and Refund Policies, refunds and dividends would be suspended until such time as the Target Capital Requirement is restored.

Amendments to Governing Documents

In order to implement the Capital Plan, OCC proposes to make amendments to its By-Laws and Restated Certificate of Incorporation and amend and restate its Stockholders Agreement.

Amendments to By-Laws

¹⁸ Based on current federal rates, if the full amount of the payment is classified as a dividend and the recipient is entitled to a dividends received deduction, this gross up is estimated to be approximately 12% of the payment.

OCC is proposing various amendments to the By-Laws in order to implement the Capital Plan. Specifically, OCC proposes to amend the definition of Equity Exchange in Article I, Section 1 to take into account the potential ownership of Class C Common Stock by the Stockholder Exchanges.

Article II, Section 3 would be amended to change the definition of quorum such that a majority of outstanding common stock entitled to vote at a meeting of Stockholders either in person or by proxy would constitute a quorum for any such meeting of the Stockholders. In addition, OCC proposes to amend Article II, Section 5 to allow for the potential issuance of Class C Common Stock, which will not have voting rights except as required by applicable law.

Article VIIA, Section 2, would be amended to (i) provide for the potential issuance of Class C Common Stock in consideration for Replenishment Capital provided by Stockholder Exchanges, (ii) permit, consistent with the proposed amendments to the Stockholders Agreement, the transfer of shares of common stock to another Stockholder, and (iii) reflect the right of other Stockholders, consistent with the proposed amendments to the Stockholders Agreement, to purchase the shares of common stock of another Stockholder. Article VIIA, Section 3, would be amended to conform to the changes to Article VIIA, Section 2.

OCC proposes amendments to Article VIII, Section 5(d), to require that a Board decision to utilize OCC's retained earnings to compensate for a loss or deficiency to the Clearing Fund would require unanimous consent from the holders of Class A Common Stock and Class B Common Stock. This proposed amendment is intended to protect Stockholders from an action taken without their consent that could increase their likelihood of being required to provide Replenishment Capital. Similarly, Article XI, Section 1 would also be amended to account for the possible issuance of the non-voting Class C Common Stock consistent with the Restated Certificate of Incorporation as discussed below, and to require unanimous Stockholder approval for any future amendments to the new provision of Article VIII, Section 5(d) described above.

Article IX, Section 9, would be amended in three ways. First, the concept of the Business Risk Buffer would be incorporated into Article IX, Section 9(a). Second, Article IX, Section 9, would be amended to provide that OCC would only add amounts for reserves and surpluses in addition to the Business Risk Buffer in extraordinary circumstances and only to the extent that the Board has determined that the required amount of additional reserves and surplus is expected to exceed the full amount that is anticipated to be accumulated through the Business Risk Buffer prior to payment of refunds and dividends. Third, Article IX, Section 9, would be amended to expressly reference the potential payment of dividends in accordance with the Dividend Policy.

Amendments to Restated Certificate of Incorporation

OCC is proposing to amend its Restated Certificate of Incorporation in order to implement the Capital Plan. The proposed amendment to the restated Certificate of Incorporation is attached to this filing as Exhibit 5D. Article IV would be amended in multiple locations to (i) reduce the number of authorized shares of Class A Common Stock and Class B Common Stock to the number of shares currently outstanding, and the number of series of Class B Common Stock, to reflect the fact that there are only five Stockholder Exchanges, (ii) to eliminate a provision under which additional shares of Class A Common Stock and Class B Common Stock could be authorized in certain circumstances without a separate vote of each series of Class B Common Stock, (iii) create Class C Common Stock as non-voting stock, (iv) set a par value for Class C Common Stock of \$1,000 per share, (v) provide for distribution upon a liquidation or dissolution of OCC to holders of Class A, Class B, and Class C Common Stock, *pro rata* on a *pari passu* basis, the amount of the par value of their shares, and (vi) remove restrictions on the transfer of shares of Class B Common Stock to more than one entity in order to address the possible exercise by another Stockholder of its right of first refusal under the Amended and Restated Stockholders Agreement. Additionally, Article IV would be amended to make clear that the prohibition on OCC's creating or issuing rights or options to purchase OCC stock set forth in Article IV would not restrict the ability of OCC to enter into the Replenishment Capital Plan. Finally, technical changes would be made to Article VI in connection with the creation of Class C Common Stock as non-voting stock.

Amendments to Stockholders Agreement

OCC is proposing various amendments to the Stockholders Agreement to make technical changes relating to the additional contributions of capital to be made by the Stockholder Exchanges under the Capital Plan and the potential issuance of Class C Common Shares. The proposed Amended and Restated Stockholders Agreement is attached to this filing as Exhibit 5E. In part, the amendments to the Stockholders Agreement would provide Stockholders with a secondary right of refusal to be exercised if a Stockholder wished to sell its shares and OCC chose not to exercise its existing right of first refusal to purchase those shares. This change was considered necessary because after the additional contributions of capital by the Stockholder Exchanges under the Capital Plan, shares of Class B Common Stock will be significantly more valuable, making it less likely that OCC would be able to exercise its right of first refusal. Providing the non-selling Stockholder Exchanges with a secondary right of first refusal would increase the chances that a selling Stockholder Exchange would find a purchaser for its shares from among OCC's existing owners. Because OCC's Stockholders Agreement has already been amended several other times, for convenience OCC is also proposing to amend and restate the Stockholders Agreement to incorporate all previous amendments and the new amendments into a single comprehensive agreement.

Each of the proposed new amendments to the Stockholders Agreement is described below, in the order they appear in the agreement. OCC proposes a technical amendment to Section 1 of the Stockholders Agreement to refer to the definitions of Class A Common Stock, Class B Common Stock, and Class C Common Stock in the Restated Certificate of Incorporation and By-Laws. OCC proposes an amendment to Section 3 which would delete an obsolete reference to a plan relating to OCC's original reorganization into a common clearing facility for all options exchanges. OCC proposes a technical amendment to Section 5(a) to add a reference to the procedures for Stockholder Exchanges to acquire shares pursuant to their secondary rights of first refusal in certain situations that will be set out in amended Section 10(e). OCC is proposing an amendment to Section 5(b) providing that the Stockholder Exchanges may not sell or transfer less than all of their shares without the consent of OCC. OCC seeks to prevent a partial sale by a Stockholder Exchange of a portion of its shares of Class A Common Stock, Class B Common Stock, or Class C Common Stock to avoid difficulties that could arise for OCC if, as a result of a partial sale, voting rights, dividend rights, and replenishment capital were spread across Stockholder Exchanges on a non *pro rata* basis. Section 5(b) would further clarify that if OCC consented to a partial sale the Stockholder Exchanges' right of first refusal would still apply, and that a Stockholder Exchange could sell shares of Class C Common Stock to OCC without selling its shares of Class A Common Stock and Class B Common Stock. OCC proposes to amend Section 6(a) to provide Stockholders, upon the non-exercise of OCC's right of first refusal, a secondary right of first refusal to purchase shares of other Stockholders in certain circumstances discussed above, and to establish procedures governing the exercise of this right. Section 6(b) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to purchase shares of a Stockholder Exchange in the event of such Stockholder Exchange's bankruptcy or insolvency, and to create an exception from the right of first refusal for transfers to certain affiliates of a Stockholder that meet the exchange eligibility requirements set forth in the By-Laws. Section 6(c) would be amended to make any transfer or encumbrance of shares in violation of the Stockholders Agreement, either voluntarily or by operation of law, void. Section 6(d) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to repurchase shares of any Stockholder that ceases to be qualified to participate in OCC pursuant to the By-Laws. The revised Section 6(c) would take the place of current Section 6(e), which would be deleted. Section 6(e) currently provides that such a pledge or transfer would automatically be deemed to create a transfer of the shares to OCC. OCC proposes conforming amendments to Section 6(f), Section 6(g), Section 7, and Section 8 to provide for the new Stockholder Exchange right of first refusal. OCC proposes deleting Section 9 to remove the right of Stockholders to require OCC to purchase their shares of stock.

OCC proposes to amend Section 10(a) of the Stockholders Agreement to provide that the purchase price paid upon exercise of purchase rights by OCC or the Stockholder Exchanges would be equal to the lowest of (i) the book value of the shares to be purchased, (ii) the total capital contribution of the selling Stockholder and (iii) in the case of exercise of a right of first refusal, the price originally offered for such shares. OCC proposes other technical amendments

to Sections 10(a), 10(b) and 10(c) of the Stockholders Agreement concerning the purchase price formula, procedures, and timing for OCC's repurchase rights of shares (or, if applicable, the purchase of a Stockholder's shares by another Stockholder) pursuant to the terms of the Stockholders Agreement. Section 10(d) would be amended such that any consideration to be paid by OCC upon the exercise of a right of first refusal would be subordinated to all other claims of all other creditors of OCC, and to prohibit OCC from declaring or paying any dividends, acquiring for value any shares of stock or distributing assets to any Stockholder Exchange, except with regard to required purchases or redemptions of shares of Class C Common Stock or payments of dividends in accordance with the Dividend Policy. OCC proposes to amend current Section 10(e) by moving its provisions addressing the subordination of payments by OCC and non-payment of dividends under certain circumstances into the proposed Section 10(d) as discussed above. OCC proposes technical amendments to current Section 10(g), proposed Section 10(e) concerning the process under which OCC would acquire shares upon exercise of its right of first refusal. OCC also proposes to move technical provisions of the current Section 10(f) concerning the payment of such shares into Section 10(e). Section 10(f) would then be amended to address procedures for Stockholders that exercise their right of first refusal.

Section 11 of the Stockholders Agreement would be amended in order to make a Stockholder's right to transfer shares dependent upon the non-exercise of OCC's and other Stockholders' right of first refusal to the purchase of such Stockholder's shares. Additionally, Section 11 would be amended to provide that the transfer of a Stockholder's shares under that section would not be effective without the transferee's assuming the rights and obligations under the Stockholders Agreement, certain joinders to the Stockholders Agreement and other agreements between OCC and Stockholders. Section 14(a) would be amended to make reference to the Stockholders Agreement. Section 14(b) would be amended to make a technical change relating to the legend on OCC's stock certificates. Section 15 would be amended to update the mailing addresses of the Stockholder Exchanges for written notices and formal communications. Section 16(c) would be amended to clarify that a Stockholder Exchange would be able to assign its rights under the Stockholders Agreement only to a party to whom it would be permitted to transfer its shares. In addition, Section 16(c) would be amended to provide that OCC may only assign its repurchase rights under Section 6(b) or Section 6(d) of the Stockholders Agreement. OCC would be able to assign such rights with respect to all or a portion of the shares of stock owned by a Stockholder Exchange, and would be required to provide the non-selling Stockholder Exchanges with a right of first refusal in connection with any such contemplated assignment comparable to the secondary right of first refusal applicable with respect to a voluntary sale by a Stockholder Exchange and described above. Sections 16(f) and 16(g) would be amended to effectuate the amendment and restatement of the existing Stockholders Agreement.

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Commodity Exchange Act. During this review, OCC identified the following Core Principles as potentially being impacted:

Financial Resources. OCC believes that by implementing the proposed rule change it will be better able to maintain financial resources that would enable OCC to cover its operating costs for a period of one year. As described above, OCC would obtain additional capital from its participant exchanges as well as adopt a fee policy whereby, each year, OCC would set fees so that revenues over the ensuing twelve months are 25% above projected operating costs. These measures would ensure that OCC maintains financial resources that enable it to cover its operating costs for a period of one year.

Public Information. OCC believes that by implementing the proposed rule change it will be better able to provide market participants with information to identify the costs of using OCC because market participants will understand the manner in which OCC proposes to meet capital requirements applicable to registered clearing agencies. Also, the proposed rule change will be posted on OCC's public website thereby providing the public with relevant information regarding OCC's funding arrangements.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC's website concurrently with the filing of this submission.

Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Stephen Szarmack
Vice President & Associate General Counsel

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

This proposed rule change would amend OCC's By-Laws and other governing documentation in order to implement OCC's Capital Plan. Material proposed to be added to OCC's By-Laws as currently in effect is marked by underlining and material proposed to be deleted is enclosed in bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE I

Definitions

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws or Rules), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A. – D. [No change]

E.

(1) – (5) [No change]

Equity Exchange

(6) The term "Equity Exchange" means each national securities exchange that has been qualified for participation in the Corporation pursuant to the provisions of Article VIIA of the By-Laws and any national securities exchange or national securities association to which any of such exchanges transfer their Class A Common Stock and Class B Common Stock and, if applicable, Class C Common Stock of the Corporation in accordance with the Stockholders Agreement referred to in Section VIIA of the By-Laws.

(7) – (22) [No change]

F. – Z. [No change]

* * *

ARTICLE II
Meetings of Stockholders

* * *

Quorum

SECTION 3. Subject to the provisions of the Certificate of Incorporation, a majority of the outstanding Common Stock of the Corporation entitled to vote at a meeting of the stockholders, represented in person or by proxy, shall constitute a quorum at any such meeting of stockholders.

* * *

Voting

SECTION 5. Subject to the provisions of the Certificate of Incorporation, the holders of the outstanding Common Stock shall be entitled to one vote for each share of outstanding Common Stock held of record on the record date for such meeting in respect of each matter submitted to a vote at the meeting[.]; provided, that except as may be required by applicable law, shares of Class C Common Stock shall have no voting rights.[and,] [s]Subject to [such]the provisions of the preceding sentence, if a quorum is present, the affirmative vote of the majority of shares of Common Stock represented at the meeting and entitled to vote shall be the act of the stockholders.

* * *

ARTICLE VIIA
Equity Exchanges

* * *

Purchase of Stock

SECTION 2. Prior to becoming a participant Exchange, each Equity Exchange acquired 5,000 shares of the Class A Common Stock and 5,000 shares of the Class B Common Stock of the Corporation. From time to time, each Equity Exchange may also purchase shares of the Class C Common Stock of the Corporation. The shares of stock held by any Equity Exchange are not transferable to any person other than the Corporation or another stockholder of the Corporation pursuant to the Stockholders Agreement referred to in Section 3 of this Article VIIA or (in the event the Corporation and the other stockholders of the Corporation should fail to exercise their respective rights or be unable to perform under the terms of such Agreement) to a person that, upon acquisition of such shares, meets the requirements of [clause (i) of] Section 1 of this Article VIIA [and is not then a stockholder of the Corporation].

Stockholders Agreement

SECTION 3. Prior to becoming a participant Exchange, each Equity Exchange entered into a Stockholders Agreement with the Corporation and each of the other Equity Exchanges, which agreement provides, among other things, that the shares of Common Stock acquired by that Exchange (i) shall be voted in favor of the Member Directors as provided in Section 5 of Article III, one or more Public Directors as provided in Section 6A of Article III, and the Management Director[s] as provided in Section 7 of Article III and that the Exchange shall give its irrevocable proxy to the members of the Governance and Nominating Committee to vote its shares in such manner in the election of Member Directors, Public Directors, and the Management Director[s]; (ii) shall not be pledged, hypothecated or otherwise encumbered in any manner whatsoever; and (iii) shall not, except as otherwise provided therein, be sold, assigned, transferred or otherwise disposed of except after first offering all such shares to the Corporation or (in the event the Corporation should fail to exercise its rights) to the other stockholders of the Corporation for an aggregate price determined and payable as therein set forth.

* * *

ARTICLE VIII Clearing Fund

* * *

Application of Clearing Fund

SECTION 5.

(a) – (c) [No change]

(d) Notwithstanding the provisions of paragraphs (a) through (c), in lieu of charging a

loss or deficiency proportionately to the Clearing Fund computed contributions of non-defaulting Clearing Members pursuant thereto, the Corporation may, in its discretion, subject to the unanimous approval of the holders of Class A Common Stock and Class B Common Stock, elect to charge such loss or deficiency in whole or in part to the Corporation's current earnings or retained earnings. If such charge is made against current earnings, such charge shall be deemed a refund of clearing fees to the non-defaulting Clearing Members to whose Clearing Fund contributions the loss or deficiency would otherwise have been charged, and in that case the Corporation shall notify each such Clearing Member of the aggregate amount of the charge against current earnings, the reasons therefor, and the amount deemed to have been refunded to such Clearing Member. As used herein, the term "current earnings" shall mean the Corporation's net income before taxes for the period from the beginning of the fiscal year in which a loss or deficiency occurs to the close of the calendar month immediately preceding the occurrence of such loss or deficiency, less an amount equal to the aggregate of all refunds of clearing fees made or authorized to be made or deemed to have been made for such fiscal year. If the Corporation elects to charge a deficiency in a Clearing Member's Clearing Fund contribution to the Corporation's current earnings or retained earnings, the Clearing Member shall remain liable to the Corporation for the full amount of such deficiency until repayment thereof by such Clearing Member.

* * *

ARTICLE IX General Provisions

* * *

Fees

SECTION 9. The fee structure of the Corporation shall be designed (a) to cover the operating expenses of the Corporation (including the reimbursement of the Exchanges for their services in performing regulatory activities which are deemed by the Board of Directors to be of benefit to the Corporation) plus an additional amount determined by applying a business risk buffer specified in the policies of the Corporation, (b) to maintain such reserves as are deemed reasonably necessary by the Board of Directors to provide facilities for the conduct of the Corporation's business and to conduct development and planning activities in connection with the Corporation's services to the Exchanges, Clearing Members and the general public[, (c) to maintain capital and surplus of \$1,000,000 plus such additional amounts as the Corporation may receive upon the sale of its stock to an Exchange subsequent to January 3, 1975], and [(d)](c) to accumulate such additional surplus as the Board of Directors may deem advisable to permit the Corporation to meet its obligations to Clearing Members and the general public; provided, however, that clauses (b) and (c) of this Section 9 shall be invoked only in extraordinary

circumstances and to the extent that the Board of Directors has determined that the required amount of additional reserves and additional surplus referred to therein is expected to exceed the full amount that is expected to be accumulated through the application of the business risk buffer referred to in clause (a) above (prior to payment of refunds or dividends) for the relevant calendar year. Excess net income resulting from fees calculated pursuant to this section may be distributed as a dividend to the stockholders in accordance with the Corporation's dividend policy as may be in effect from time to time.

* * *

ARTICLE XI
Amendment of the By-Laws and the Rules

* * *

Amendment of the By-Laws

SECTION 1. The By-Laws may be amended at any time by the Board of Directors upon the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by these By-Laws); provided that Sections 2, 3 and 5 of Article II, Article III, the second sentence of Section 1 of Article IV, the first two sentences of Section 1 of Article V, the first sentence of Section 10 of Article VI, Section 11 and 11A of Article VI, Article VIIA, Article VIIB, the first sentence of Section 5(d) of Article VIII, Section 9 of Article IX, and this Section 1 of Article XI may not be amended by action of the Board of Directors without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. For purposes of this Section, the affirmative vote or consent of an Exchange Director then in office shall be deemed to constitute the approval of the stockholder that elected such Exchange Director; provided, however, that if the Exchange Director announces prior to voting in favor of an amendment, or notes on a written consent of directors approving an amendment, that such Exchange Director's vote or consent does not constitute the action of such stockholder, then the amendment shall require the written approval of such stockholder of such Common Stock.

Item 2. Procedures of the Self-Regulatory Organization

Under Article XI, Section 1 of OCC's By-Laws, certain By-Laws, including several of the provisions referred to above, may not be amended by the Board without the approval of the holders of all of the outstanding common stock of OCC. The proposed rule

change has been approved for filing with the Commission by the Board of Directors of OCC at a meeting held on December 18, 2014 and by the stockholders of OCC effective as of such date.

Questions should be addressed to James E. Brown, Executive Vice President and General Counsel, at (312) 322-6855.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

A. Purpose

OCC is proposing to amend its By-Laws and other governing documents, and to adopt certain policies, for the purpose of implementing a plan for raising additional capital (“Capital Plan”) under which the options exchanges that own equity in OCC (“Stockholder Exchanges” or “Stockholders”) would make an additional capital contribution and commit to replenishment capital (“Replenishment Capital”) in circumstances discussed below, and would receive, among other things, the right to receive dividends from OCC.¹ In addition to the additional capital contribution and Replenishment Capital, the main features of the Capital Plan are: (i) a policy establishing OCC’s fees at a level that would be sufficient to cover OCC’s estimated operating expenses plus a “Business Risk Buffer” as described below (“Fee Policy”), (ii) a policy establishing the amount of the annual refund to clearing members of OCC’s fees (“Refund Policy”), and (iii) a policy for calculating the amount of dividends to be paid to the Stockholder Exchanges (“Dividend Policy”). The Capital Plan is proposed to be implemented on

¹ The Capital Plan has also been filed with the Commission as an advance notice (SR-OCC-2014-813), which was amended and restated on January 14, 2015.

or about February 27, 2015, subject to all necessary regulatory approvals.²

The Capital Plan would significantly increase OCC's capital in connection with its increased responsibilities as a systemically important financial market utility, and OCC believes that it would facilitate OCC's compliance with new regulatory requirements applicable to such systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.³ For purposes of its capital planning, OCC has used the working assumption that the new requirements contained in the Commission's proposed amendments to Rule 17Ad-22 of the SEC Proposed Rules will be adopted substantially as proposed, and the Capital Plan is intended to ensure OCC's ability to comply with Rule 17Ad-22, specifically paragraph (e)(15) thereof, when the SEC Proposed Rules become effective. In addition, it is intended to address Principle 15 of the Principles for Financial Market Infrastructures published by the Bank for International Settlements and the International Organization of Securities Commissions, which provides, among other things, that a financial market utility should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue to operate as a going concern. The Capital Plan calls for an infusion of substantial

² The material features of the Capital Plan are summarized in the Term Sheet that is included as Exhibit 3 to this filing. Certain details of the Term Sheet may change as a result of negotiations between OCC and the Stockholder Exchanges or changes in financial figures, but OCC does not anticipate any material changes to the Capital Plan.

³ See Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) ("SEC Proposed Rules").

additional equity capital by the Stockholder Exchanges to be made prior to February 27, 2015, subject to regulatory approval, that when added to retained earnings accumulated by OCC in 2014 will significantly increase OCC's capital levels as compared to historical levels. Additionally, the Capital Plan includes the Replenishment Capital commitment, which would provide OCC access to additional equity contributed by the Stockholder Exchanges should OCC's equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk in compliance with Rule 17Ad-22, as discussed more fully below.

Background

OCC is a clearing agency registered with the Commission and is also a derivatives clearing organization ("DCO") regulated in its capacity as such by the Commodity Futures Trading Commission ("CFTC"). OCC is a Delaware business corporation and is owned equally by the Stockholder Exchanges, five national securities exchanges for which OCC provides clearing services.⁴ In addition, OCC provides clearing services for seven other national securities exchanges that trade options ("Non-Stockholder Exchanges"). In its capacity as a DCO, OCC also provides clearing services to four futures exchanges.

OCC has been designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing and Settlement Supervision Act, and the Commission is OCC's "Supervisory Agency" under Section 803(8) of the Payment, Clearing and

⁴ The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

Settlement Supervision Act. OCC is therefore a “covered clearing agency” (“CCA”) as defined in proposed amendments to the Commission’s Rule 17Ad-22(a)(7) and would be required to comply with the provisions of proposed Rule 17Ad-22 applicable to CCA’s, including paragraph (e)(15) thereof.⁵

Proposed Rule 17Ad-22(e)(15) provides:

Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . Identify, monitor, and manage the covered clearing agency’s general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency’s current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)-(iii) of this section, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii) of this section; and

⁵ SEC Proposed Rules at 32-33, FR 29507, 29515 (May 22, 2014).

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions; and

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.⁶

Over the last nine months, OCC has devoted substantial efforts to: 1) develop a 5-year forward looking model of expenses; 2) quantify maximum recovery and wind-down costs under OCC's Recovery and Wind-Down Plan; 3) assess and quantify OCC's operational and business risks; 4) model projected capital accumulation taking into account varying assumptions concerning business conditions, fee levels, buffer margin levels and refunds; and 5) develop an effective mechanism that provides OCC access to replenishment capital in the event of losses that could cause OCC to be non-compliant with the SEC Proposed Rules. Incorporating the results of those efforts, the proposed amendments are intended to allow OCC to implement the Capital Plan and thereby provide OCC with the means to increase its shareholders' equity and, in particular, to obtain timely compliance with Rule 17Ad-22(e)(15)⁷ as proposed by the Commission. A more detailed discussion of the manner in which the Capital Plan would allow OCC to comply with Rule 17Ad-22(e)(15) appears below.

OCC's Projected Capital Requirement

Using the methods described in detail below, OCC will annually determine a

⁶ *SEC Proposed Rules* at 417-418, FR 29507, 29616 (May 22, 2014).

⁷ *SEC Proposed Rules* at 222-223, FR 29507, 29547-29548 (May 22, 2014).

“Target Capital Requirement” consisting of (i) a “Baseline Capital Requirement” equal to the greatest of (x) six months operating expenses for the following year, (y) the maximum cost of the recovery scenario from OCC’s Recovery and Wind-Down Plan, and (z) the cost to OCC of winding down operations as set forth in the Recovery and Wind-Down Plan, plus (ii) a “Target Capital Buffer” linked to plausible loss scenarios from operational risk, business risk and pension risk. OCC has determined that its currently appropriate “Target Capital Requirement” is \$247 million, reflecting a Baseline Capital Requirement of \$117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of \$130 million. This Target Capital Buffer would provide a significant capital cushion to offset potential business losses.

As of December 31, 2013, OCC had total shareholders’ equity of approximately \$25 million,⁸ meaning that OCC proposes to add additional capital of \$222 million to meet its 2015 Target Capital Requirement. In addition, OCC would be obligated under paragraph (e)(15)(iii)⁹ of proposed Rule 17Ad-22 to maintain “a viable plan” for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of the Rule¹⁰; i.e., the Baseline Capital Requirement. OCC has determined that its viable plan for Replenishment Capital should provide for a “Replenishment Capital Amount” which would give

⁸ See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC’s website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

⁹ *SEC Proposed Rules* at 418, FR 29507, 29616 (May 22, 2014).

¹⁰ *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

OCC access to additional capital as needed up to a maximum of the Baseline Capital Requirement, which is currently \$117 million.¹¹ Therefore, OCC’s proposed Capital Plan would provide OCC in 2015 with ready access to approximately \$364 million in equity capital as follows:

Baseline Capital Requirement	\$117,000,000
Target Capital Buffer	<u>\$130,000,000</u>
Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

Procedures Followed in Order to Determine Capital Requirement

Various measures were used in determining the appropriate level of capital necessary to comply with the SEC Proposed Rules. An outside consultant conducted a “bottom-up” analysis of OCC’s risks and quantified the appropriate amount of capital to be held against each risk. The analysis was comprehensive across risk types, including credit, market, pension, operational, and business risk. Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC’s operational risk was quantified at \$226 million and pension risk at \$21 million, resulting in the total Target Capital Requirement of \$247 million. Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risk to zero by adjusting the levels at which fees and refunds are set and by adopting a “Business Risk Buffer” of 25% when setting fees. Other

¹¹ The obligation to provide Replenishment Capital will be capped at \$200 million, which OCC projects will sufficiently account for increases in its capital requirements for the foreseeable future.

risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks that did not require use of OCC's capital. As discussed in more detail below in the context of OCC's Fee Policy, the Business Risk Buffer of 25% is achieved by setting OCC's fees at a level intended to achieve target annual revenue that will result in a 25% buffer for the year after paying all operating expenses.

An analysis was also performed to identify OCC's risk in terms of the regulatory requirements set forth in proposed Rule 17Ad-22(e)(15)(ii).¹² This analysis estimated that, currently, OCC's maximum recovery costs would be \$100 million and projected wind-down costs would be \$73 million. OCC's projected expenses for 2015 are \$234 million, so that six months projected expenses are $\$234 \text{ million} / 2 = \117 million . The greater of recovery or wind-down costs and six months of operating expenses is therefore \$117 million, and OCC's Baseline Capital Requirement (minimum regulatory requirement) is therefore \$117 million. OCC then computed the appropriate amount of a Target Capital Buffer from operational risk, business risk, and pension risk. This resulted in a determination that the current Target Capital Buffer should be \$130 million. Thus, the Target Capital Requirement is $\$117 \text{ million} + \$130 \text{ million} = \$247 \text{ million}$.

Overview of, and Basis for, OCC's Proposal to Acquire Additional Equity Capital

In order to meet its Target Capital Requirement, and after consideration of available alternatives, OCC's Board approved a proposal from OCC's Stockholder Exchanges

¹² *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

under which OCC would meet its Target Capital Requirement of \$247 million in early 2015 as follows:

Shareholders' Equity as of 1/1/2014	\$ 25,000,000
Shareholders Equity Accumulated Through Retained Earnings ¹³	\$ 72,000,000
Additional Contribution from Stockholder Exchanges	<u>\$150,000,000</u>
Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

The additional contribution of the Stockholder Exchanges would be made in respect of their Class B Common Stock on a *pro rata* basis. The Stockholder Exchanges will also commit to provide additional equity capital up to the Replenishment Capital Amount, which is currently \$117 million, in the event Replenishment Capital is needed. While the Replenishment Capital Amount will increase as the Baseline Capital Requirement increases, it would be capped at a total of \$200 million that could be outstanding at any point in time. OCC has estimated that the Baseline Capital Requirement would not exceed this amount before 2022. When the limit is being approached, OCC would revise the Capital Plan as needed to address future needs. In consideration for their capital contributions and replenishment commitments, the Stockholder Exchanges will receive dividends as described in the Dividend Policy discussed

¹³ See Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05) (Filing for immediate effectiveness of a proposed rule change with the Commission to reinstate OCC's permanent clearing fee schedule for securities options and securities futures that became effective May 1, 2007 ("Permanent Schedule Reinstatement Filing")). The \$72 million is after giving effect to the approximately \$40 million refund referred to below.

below for so long as they remain stockholders and maintain their contributed capital and commitment to replenish capital up to the Replenishment Capital Amount, subject to the \$200 million cap.

Fee, Refund, and Dividend Policies

Upon reaching the Target Capital Requirement, the Capital Plan and the proposed Fee Policy require OCC to set its fees at a level that utilizes a Business Risk Buffer of 25%. The purpose of this Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Furthermore, the Capital Plan requires OCC to maintain Fee, Refund, and Dividend Policies, described in more detail below, which are designed to ensure that OCC's shareholders' equity remains well above the Baseline Capital Requirement. The proposed Fee, Refund, and Dividend Policies are attached to this filing as Exhibits 5A, 5B, and 5C respectively. The required Business Risk Buffer of 25% is below OCC's 10-year historical pre-refund average buffer of 31%. The target will remain 25% so long as OCC's shareholders' equity remains above the Target Capital Requirement amount. The reduction in buffer margin from OCC's 10-year average of 31% to 25% reflects OCC's commitment to continue to operate as an industry utility and ensuring that market participants benefit as much as possible from OCC's operational efficiencies in the future. This reduction will permit OCC to charge lower fees to market participants rather than maximizing refunds to clearing members and dividend distributions to Stockholder Exchanges. OCC will review its fee schedule on a quarterly basis to manage

revenue as closely to this target as possible.¹⁴ For example, if the Business Risk Buffer is materially above 25% after the first quarter of a particular year, OCC may decrease fees for the remainder of the year, and conversely if the Business Risk Buffer is materially below 25% after the first quarter, OCC may increase fees for the remainder of the year.

The Capital Plan would allow OCC to refund approximately \$40 million from 2014 fees to clearing members in 2015 and to reduce fees in an amount to be determined by the Board, effective in the second quarter 2015. OCC will announce new fee levels early in 2015 and will make them effective following notification to clearing members and any necessary approval by the Commission. OCC will endeavor to provide clearing members with no less than 60-day advance notice of the effectiveness of changes to fee levels, particularly those that result in increases to fee levels. No dividends will be declared until December 2015 and no dividends will be paid until 2016.

Changes to the Fee, Refund, or Dividend Policies will require the affirmative vote of two-thirds of the directors then in office and approval of the holders of all of OCC's outstanding Class B Common Stock. The formulas for determining the amount of refunds and dividends under the Refund and Dividend Policies, respectively, which are described in more detail below, assume that refunds are tax-deductible but that dividends are not. The Refund and Dividend Policies would each provide that in the event that refunds payable under the Refund Policy are not tax deductible, the policies would be amended to restore the relative economic

¹⁴ If OCC's fee schedule needs to be changed in order to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change seeking approval of the revised fee schedule.

benefits between the recipients of the refunds and the Stockholder Exchanges.

Fee Policy

Under the Fee Policy, in setting fees each year, OCC would calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25%, *i.e.*, OCC will divide the expense forecast by .75. Establishing a Business Risk Buffer at 25% would allow OCC to manage the risk that fees would generate less revenue than expected due to lower-than-expected trading volume or other factors, or that expenses would be higher than projected. The Fee Policy also will include provisions from existing Article IX, Section 9 of the By-Laws to the effect that the fee schedule may also include additional amounts necessary to (i) maintain such reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to conduct development and capital planning activities in connection with OCC's services to the options exchanges, Clearing Members and the general public, and (ii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing Members and the general public; however, these provisions will be invoked only in extraordinary circumstances and to the extent that the Board has determined that the required amount of such additional reserves or additional surplus will exceed the full amount that is expected to be accumulated through the Business Risk Buffer (prior to payment of refunds or dividends) so OCC's fees will ordinarily be based on its projected operating expenses and the Business Risk Buffer of 25%.

Under the Capital Plan, OCC would calculate its annual revenue target as follows:

Annual Revenue Target = Forward 12 Months Expense Forecast/(1-.25).

Because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections would include projections as to relative volume in each such category. The clearing fee schedule would therefore be set to achieve a blended or average rate per contract sufficient, when multiplied by total projected contract volume, to achieve the Annual Revenue Target. Under extraordinary circumstances, OCC would then add any amount determined to be necessary for additional reserves or surplus and divide the resulting number by the projected contract volume to determine the applicable average fee per cleared contract needed to achieve the additional amounts required. Consistent with past practice, OCC would notify clearing members of the fees that would be applicable for any particular period by describing the change in an information memorandum distributed to all clearing members. Consistent with past practice, OCC would also notify regulators of the fees that would be applicable for any particular period by filing an amendment to its Schedule of Fees as a proposed rule change for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder.¹⁵

Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a refund to Clearing Members in December

¹⁵ See, e.g., the Permanent Schedule Reinstatement Filing, *supra* n. 13; Proposed Rule Change by The Options Clearing Corporation to Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance with the Options Order Protection and Locked/Crossed Market Plan to \$.01 per Contract, Securities Exchange Act Release No. 68025 (October 12, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

of each year, beginning in 2015, in an amount equal to 50% of the excess, if any, of (i) pre-tax income for the year in which the refund is declared over (ii) the sum of (x) the amount of pre-tax income after the refund necessary to produce after-tax income for such year sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year plus (y) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement. Such refund will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay refunds until such time as the Target Capital Requirement is restored through the accumulation of retained earnings. Refunds in accordance with the Refund Policy would resume once the Target Capital Requirement is restored and all Replenishment Capital is repaid in full, provided that the restoration of the Target Capital Requirement and the repayment of Replenishment Capital occurred within 24 months of the issuance date of the Replenishment Capital. If, within 24 months of the issuance date of any Replenishment Capital, such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, OCC would no longer pay refunds to clearing members, even if the Target Capital Requirement is restored and all Replenishment Capital is repaid at a later date.

Dividend Policy

The Dividend Policy would provide that, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a dividend on its Class B Common Stock in December of each year in an aggregate amount equal to the excess, if any, of (i) after-tax income for the year, after application of the Refund Policy (unless the Refund Policy has been eliminated, in which case the refunds shall be deemed to be \$0) over (ii) the sum of (A) the amount required to be retained in order to maintain total shareholders' equity at the Target Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement. Such dividend will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay dividends until such time as the Target Capital Requirement is restored.

OCC's Status as an Industry Utility

OCC has always been operated on an "industry utility" model. The Stockholder Exchanges have heretofore contributed only minimal capital to OCC.¹⁶ OCC's By-Laws

¹⁶ OCC's common stock and paid in capital total \$2,659,999. See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

currently require that OCC set its clearing fees at a level that is designed to cover operating expenses and to maintain such reserves and accumulate such additional capital as are deemed reasonably necessary for OCC to meet its obligations to its clearing members and the public. Clearing fees that are collected in excess of these amounts are refunded annually on a *pro rata* basis to the clearing members who paid them. Under this model, OCC has never paid dividends to the Stockholder Exchanges. However, OCC has paid significant refunds to clearing members each year. OCC is aware that a portion -- possibly a significant portion -- of those refunds are not passed through by the clearing members to their end user customers. Accordingly, by adopting an approach that includes paying dividends to the Stockholder Exchanges that have invested a significant amount of additional capital (\$150 million) but that also reduces the historical pre-refund average buffer of 31% by adopting a Business Risk Buffer of 25%, OCC believes that the proposed approach maintains, and perhaps better aligns with, an industry utility model.

Given the very large increase in capital that OCC has determined to be appropriate in order to assure compliance with regulatory requirements and meet the increased responsibilities imposed upon it as a systemically important financial market utility, OCC has determined that the best alternative available to it is to obtain a substantial further capital contribution from the Stockholder Exchanges. This cannot be accomplished without modification of the past practice of not providing dividends to stockholders. Accordingly, it is necessary for OCC to establish the new Fee Policy, Refund Policy, and Dividend Policy. Because of the Business Risk Buffer being set at 25%, the combination of the Fee, Refund, and

Dividend Policies will effectively cap the dividends to be paid to the Stockholder Exchanges at a level that the Board (with the advice of outside financial experts) has determined results in a reasonable rate of return on contributed capital, particularly in comparison to the implied cost of capital to the clearing members and their customers of instead pursuing an approach which required the accumulation of retained earnings through higher fees and no refunds for several years. OCC will continue to refund a significant percentage of excess clearing fees to clearing members, thereby benefiting both clearing members and, to the extent that refunds are passed through by the clearing members to their end user customers, their customers. The Capital Plan therefore effectively preserves OCC's industry utility model of providing its services in an efficient manner, but enhances the benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin from OCC's 10-year average of 31% to 25%.

Clearing members and customers will benefit from the proposed Capital Plan because it will allow OCC to continue to provide clearing services at low cost. As noted, OCC expects that this capital infusion from stockholders will enable OCC to provide a significant refund of 2014 fees. OCC further expects that its current clearing fees will be reduced significantly based on the Business Risk Buffer of 25% beginning in 2015 with refunds restored, and that these lower fees will continue for the foreseeable future.

Stockholder Exchanges will benefit from the dividend return they receive and, perhaps more importantly, they will be assured that OCC will be in a position to provide clearing services for their markets on an on-going basis within the same basic structure that has served these markets well since their inception and without the need to radically change the structure to

address potential demands of outside equity investors. Non-Stockholder Exchanges will also benefit by continuing to receive OCC's clearing services for their products on the same basis as they presently do.¹⁷

OCC also believes that the Capital Plan will better align the interests of Stockholder Exchanges and clearing members with respect to expenses, since changes to the level of operating expenses directly affect the Target Capital Requirement. In sum, OCC believes that the present proposal represents a fair and reasonable balancing of the interests of the Stockholder Exchanges, the other exchanges for which OCC provides clearing services, clearing members, customers, and the general public while providing an immediate infusion of capital and a structure within which OCC can meet its obligations to the public as a systemically important financial market utility, as well as the requirements under the SEC Proposed Rules.

Replenishment Capital Plan

OCC proposes to put in place a Replenishment Capital Plan whereby OCC's Stockholder Exchanges are obligated to provide on a *pro rata* basis a committed amount of Replenishment Capital should OCC's total shareholders' equity fall below the hard trigger (as defined below). The aggregate committed amount for all five Stockholder Exchanges in the form of Replenishment Capital that could be accessed at any time would be capped at the excess of (i) the lesser of (A) the Baseline Capital Requirement, which is currently \$117 million, at the

¹⁷ Non-Stockholder Exchanges contribute capital by purchasing a promissory note in the principal amount of \$1,000,000. See Section 2 of Article VIIB of OCC's By-Laws. The required capital contribution of Non-Stockholder exchanges will not change under the Capital Plan.

time of the relevant funding or (B) \$200 million, over (ii) amounts of outstanding Replenishment Capital (“Cap”). The \$200 million figure in the Cap formula takes into account projected growth in the Baseline Capital Requirement for the foreseeable future. The commitment to provide Replenishment Capital would not be limited by time, but only by the Cap. Replenishment Capital could be called in whole or in part after the occurrence of a “hard trigger” event described below, subject to the Cap. If the Baseline Capital Requirement approaches or exceeds \$200 million, the Board can consider, as part of its annual review of the Replenishment Capital Plan that is required by the SEC Proposed Rules, alternative arrangements to obtain replenishment capital in excess of the \$200 million committed under the Replenishment Capital Plan. In addition, the Refund Policy and the Dividend Policy will provide that, in the absence of obtaining any such alternative arrangements, the amount of the difference will be subtracted from amounts that would otherwise be available for the payment of refunds and dividends.

Replenishment Capital contributed to OCC under the Replenishment Capital Plan would take the form of a new class of common stock (“Class C Common Stock”) of OCC to be issued to the Stockholder Exchanges solely in exchange for Replenishment Capital contributions.

The Replenishment Capital Plan would be part of OCC’s overall Capital Plan. In implementing the Replenishment Capital Plan, OCC’s management would monitor OCC’s levels of shareholders’ equity to identify certain triggers, or reduced capital levels, that might require action. OCC has identified two key triggers – a soft trigger and a hard trigger – and proposes that OCC take certain steps upon the occurrence of either as described in more detail below.

The “soft trigger” for re-evaluating OCC’s capital would occur if OCC’s shareholders’ equity falls below the sum of (i) the Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. The soft trigger would be a warning sign that OCC’s capital had fallen to a level that required attention and responsive action to prevent it from falling to unacceptable levels. Upon a breach of the soft trigger, OCC’s senior management and the Board would review alternatives to increasing capital, and take appropriate action as necessary, including increasing fees or decreasing expenses, to restore shareholders’ equity to the Target Capital Requirement.

The “hard trigger” for making a mandatory Replenishment Capital call would occur if shareholders’ equity falls below 125% of the Baseline Capital Requirement (“Hard Trigger Threshold”). The hard trigger would be a sign that corrective action more significant and with a more immediate impact than increasing fees or decreasing expenses should be taken to increase OCC’s capital, either as part of a recovery plan or a wind down plan for OCC’s business. OCC’s shareholders’ equity would have to fall more than \$100 million below the fully funded capital amount described above in order for the Hard Trigger Threshold to be breached. As a result, OCC views the breach of the Hard Trigger Threshold as unlikely and occurring only as a result of a significant, unexpected event. Upon a breach of the Hard Trigger Threshold, the Board would have to determine whether to attempt a recovery, a wind-down of OCC’s operations or a sale or similar transaction, subject in each case to any necessary stockholder consent. If the Board decides to wind-down OCC’s operations, OCC would access the Replenishment Capital in an amount sufficient to fund the wind-down, as such amount would be

determined by the Board, and subject to the Cap described above. If the Board decides to attempt a recovery of OCC's capital and business, OCC would access the Replenishment Capital in an amount sufficient to return shareholders' equity to an amount equal to \$20 million above the Hard Trigger Threshold, subject to the Cap described above.

While Replenishment Capital is outstanding, no refunds or dividends would be paid and, if any Replenishment Capital remains outstanding for more than 24 months or the Target Capital Requirement is not restored during that period, changes would be made to how OCC calculates refunds and dividends, as described in more detail above under Refund Policy and Dividend Policy. In addition, while Replenishment Capital is outstanding, OCC would first utilize the entire amount of Available Funds to repurchase, on a *pro rata* basis from each Stockholder, to the extent permitted by applicable Delaware and federal law and regulations, outstanding shares of Class C Common Stock as soon as practicable after completion of the financial statements following the end of each calendar quarter at a price equal to the original amount paid for such shares, plus an additional "gross up" amount to compensate the holders of the Class C Common Stock for taxes on dividend income (if any) that they may have to recognize as a result of such repurchase.¹⁸ For this purpose, "Available Funds" would equal, as of the end of any calendar quarter, the excess, if any, of (x) shareholders' equity over (y) the Minimum Replenishment Level. The "Minimum Replenishment Level" would mean \$20 million above the Hard Trigger Threshold, so that OCC's shareholders' equity would remain at

¹⁸ Based on current federal rates, if the full amount of the payment is classified as a dividend and the recipient is entitled to a dividends received deduction, this gross up is estimated to be approximately 12% of the payment.

or above the Minimum Replenishment Level after giving effect to the repurchase. Furthermore, under the Dividend and Refund Policies, refunds and dividends would be suspended until such time as the Target Capital Requirement is restored.

Amendments to Governing Documents

In order to implement the Capital Plan, OCC proposes to make amendments to its By-Laws and Restated Certificate of Incorporation and amend and restate its Stockholders Agreement.

Amendments to By-Laws

OCC is proposing various amendments to the By-Laws in order to implement the Capital Plan. Specifically, OCC proposes to amend the definition of Equity Exchange in Article I, Section 1 to take into account the potential ownership of Class C Common Stock by the Stockholder Exchanges.

Article II, Section 3 would be amended to change the definition of quorum such that a majority of outstanding common stock entitled to vote at a meeting of Stockholders either in person or by proxy would constitute a quorum for any such meeting of the Stockholders. In addition, OCC proposes to amend Article II, Section 5 to allow for the potential issuance of Class C Common Stock, which will not have voting rights except as required by applicable law.

Article VIIA, Section 2, would be amended to (i) provide for the potential issuance of Class C Common Stock in consideration for Replenishment Capital provided by Stockholder Exchanges, (ii) permit, consistent with the proposed amendments to the Stockholders Agreement, the transfer of shares of common stock to another Stockholder, and

(iii) reflect the right of other Stockholders, consistent with the proposed amendments to the Stockholders Agreement, to purchase the shares of common stock of another Stockholder. Article VIIA, Section 3, would be amended to conform to the changes to Article VIIA, Section 2.

OCC proposes amendments to Article VIII, Section 5(d), to require that a Board decision to utilize OCC's retained earnings to compensate for a loss or deficiency to the Clearing Fund would require unanimous consent from the holders of Class A Common Stock and Class B Common Stock. This proposed amendment is intended to protect Stockholders from an action taken without their consent that could increase their likelihood of being required to provide Replenishment Capital. Similarly, Article XI, Section 1 would also be amended to account for the possible issuance of the non-voting Class C Common Stock consistent with the Restated Certificate of Incorporation as discussed below, and to require unanimous Stockholder approval for any future amendments to the new provision of Article VIII, Section 5(d) described above.

Article IX, Section 9, would be amended in three ways. First, the concept of the Business Risk Buffer would be incorporated into Article IX, Section 9(a). Second, Article IX, Section 9, would be amended to provide that OCC would only add amounts for reserves and surpluses in addition to the Business Risk Buffer in extraordinary circumstances and only to the extent that the Board has determined that the required amount of additional reserves and surplus is expected to exceed the full amount that is anticipated to be accumulated through the Business Risk Buffer prior to payment of refunds and dividends. Third, Article IX, Section 9, would be amended to expressly reference the potential payment of dividends in accordance with the Dividend Policy.

Amendments to Restated Certificate of Incorporation

OCC is proposing to amend its Restated Certificate of Incorporation in order to implement the Capital Plan. The proposed amendment to the restated Certificate of Incorporation is attached to this filing as Exhibit 5D. Article IV would be amended in multiple locations to (i) reduce the number of authorized shares of Class A Common Stock and Class B Common Stock to the number of shares currently outstanding, and the number of series of Class B Common Stock, to reflect the fact that there are only five Stockholder Exchanges, (ii) to eliminate a provision under which additional shares of Class A Common Stock and Class B Common Stock could be authorized in certain circumstances without a separate vote of each series of Class B Common Stock, (iii) create Class C Common Stock as non-voting stock, (iv) set a par value for Class C Common Stock of \$1,000 per share, (v) provide for distribution upon a liquidation or dissolution of OCC to holders of Class A, Class B, and Class C Common Stock, *pro rata* on a pari passu basis, the amount of the par value of their shares, and (vi) remove restrictions on the transfer of shares of Class B Common Stock to more than one entity in order to address the possible exercise by another Stockholder of its right of first refusal under the Amended and Restated Stockholders Agreement. Additionally, Article IV would be amended to make clear that the prohibition on OCC's creating or issuing rights or options to purchase OCC stock set forth in Article IV would not restrict the ability of OCC to enter into the Replenishment Capital Plan. Finally, technical changes would be made to Article VI in connection with the creation of Class C Common Stock as non-voting stock.

Amendments to Stockholders Agreement

OCC is proposing various amendments to the Stockholders Agreement to make technical changes relating to the additional contributions of capital to be made by the Stockholder Exchanges under the Capital Plan and the potential issuance of Class C Common Shares. The proposed Amended and Restated Stockholders Agreement is attached to this filing as Exhibit 5E. In part, the amendments to the Stockholders Agreement would provide Stockholders with a secondary right of refusal to be exercised if a Stockholder wished to sell its shares and OCC chose not to exercise its existing right of first refusal to purchase those shares. This change was considered necessary because after the additional contributions of capital by the Stockholder Exchanges under the Capital Plan, shares of Class B Common Stock will be significantly more valuable, making it less likely that OCC would be able to exercise its right of first refusal. Providing the non-selling Stockholder Exchanges with a secondary right of first refusal would increase the chances that a selling Stockholder Exchange would find a purchaser for its shares from among OCC's existing owners. Because OCC's Stockholders Agreement has already been amended several other times, for convenience OCC is also proposing to amend and restate the Stockholders Agreement to incorporate all previous amendments and the new amendments into a single comprehensive agreement.

Each of the proposed new amendments to the Stockholders Agreement is described below, in the order they appear in the agreement. OCC proposes a technical amendment to Section 1 of the Stockholders Agreement to refer to the definitions of Class A Common Stock, Class B Common Stock, and Class C Common Stock in the Restated Certificate of Incorporation and By-Laws. OCC proposes an amendment to Section 3 which would delete

an obsolete reference to a plan relating to OCC's original reorganization into a common clearing facility for all options exchanges. OCC proposes a technical amendment to Section 5(a) to add a reference to the procedures for Stockholder Exchanges to acquire shares pursuant to their secondary rights of first refusal in certain situations that will be set out in amended Section 10(e). OCC is proposing an amendment to Section 5(b) providing that the Stockholder Exchanges may not sell or transfer less than all of their shares without the consent of OCC. OCC seeks to prevent a partial sale by a Stockholder Exchange of a portion of its shares of Class A Common Stock, Class B Common Stock, or Class C Common Stock to avoid difficulties that could arise for OCC if, as a result of a partial sale, voting rights, dividend rights, and replenishment capital were spread across Stockholder Exchanges on a non *pro rata* basis. Section 5(b) would further clarify that if OCC consented to a partial sale the Stockholder Exchanges' right of first refusal would still apply, and that a Stockholder Exchange could sell shares of Class C Common Stock to OCC without selling its shares of Class A Common Stock and Class B Common Stock. OCC proposes to amend Section 6(a) to provide Stockholders, upon the non-exercise of OCC's right of first refusal, a secondary right of first refusal to purchase shares of other Stockholders in certain circumstances discussed above, and to establish procedures governing the exercise of this right. Section 6(b) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to purchase shares of a Stockholder Exchange in the event of such Stockholder Exchange's bankruptcy or insolvency, and to create an exception from the right of first refusal for transfers to certain affiliates of a Stockholder that meet the exchange eligibility requirements set forth in the By-Laws. Section 6(c) would be amended to make any transfer or

encumbrance of shares in violation of the Stockholders Agreement, either voluntarily or by operation of law, void. Section 6(d) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to repurchase shares of any Stockholder that ceases to be qualified to participate in OCC pursuant to the By-Laws. The revised Section 6(c) would take the place of current Section 6(e), which would be deleted. Section 6(e) currently provides that such a pledge or transfer would automatically be deemed to create a transfer of the shares to OCC. OCC proposes conforming amendments to Section 6(f), Section 6(g), Section 7, and Section 8 to provide for the new Stockholder Exchange right of first refusal. OCC proposes deleting Section 9 to remove the right of Stockholders to require OCC to purchase their shares of stock.

OCC proposes to amend Section 10(a) of the Stockholders Agreement to provide that the purchase price paid upon exercise of purchase rights by OCC or the Stockholder Exchanges would be equal to the lowest of (i) the book value of the shares to be purchased, (ii) the total capital contribution of the selling Stockholder and (iii) in the case of exercise of a right of first refusal, the price originally offered for such shares. OCC proposes other technical amendments to Sections 10(a), 10(b) and 10)(c) of the Stockholders Agreement concerning the purchase price formula, procedures, and timing for OCC's repurchase rights of shares (or, if applicable, the purchase of a Stockholder's shares by another Stockholder) pursuant to the terms of the Stockholders Agreement. Section 10(d) would be amended such that any consideration to be paid by OCC upon the exercise of a right of first refusal would be subordinated to all other claims of all other creditors of OCC, and to prohibit OCC from declaring or paying any

dividends, acquiring for value any shares of stock or distributing assets to any Stockholder Exchange, except with regard to required purchases or redemptions of shares of Class C Common Stock or payments of dividends in accordance with the Dividend Policy. OCC proposes to amend current Section 10(e) by moving its provisions addressing the subordination of payments by OCC and non-payment of dividends under certain circumstances into the proposed Section 10(d) as discussed above. OCC proposes technical amendments to current Section 10(g), proposed Section 10(e) concerning the process under which OCC would acquire shares upon exercise of its right of first refusal. OCC also proposes to move technical provisions of the current Section 10(f) concerning the payment of such shares into Section 10(e). Section 10(f) would then be amended to address procedures for Stockholders that exercise their right of first refusal.

Section 11 of the Stockholders Agreement would be amended in order to make a Stockholder's right to transfer shares dependent upon the non-exercise of OCC's and other Stockholders' right of first refusal to the purchase of such Stockholder's shares. Additionally, Section 11 would be amended to provide that the transfer of a Stockholder's shares under that section would not be effective without the transferee's assuming the rights and obligations under the Stockholders Agreement, certain joinders to the Stockholders Agreement and other agreements between OCC and Stockholders. Section 14(a) would be amended to make reference to the Stockholders Agreement. Section 14(b) would be amended to make a technical change relating to the legend on OCC's stock certificates. Section 15 would be amended to update the mailing addresses of the Stockholder Exchanges for written notices and formal communications.

Section 16(c) would be amended to clarify that a Stockholder Exchange would be able to assign its rights under the Stockholders Agreement only to a party to whom it would be permitted to transfer its shares. In addition, Section 16(c) would be amended to provide that OCC may only assign its repurchase rights under Section 6(b) or Section 6(d) of the Stockholders Agreement. OCC would be able to assign such rights with respect to all or a portion of the shares of stock owned by a Stockholder Exchange, and would be required to provide the non-selling Stockholder Exchanges with a right of first refusal in connection with any such contemplated assignment comparable to the secondary right of first refusal applicable with respect to a voluntary sale by a Stockholder Exchange and described above. Sections 16(f) and 16(g) would be amended to effectuate the amendment and restatement of the existing Stockholders Agreement.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (“Act”),¹⁹ and the rules and regulations thereunder, because by implementing the Capital Plan, OCC would ensure that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. By ensuring that it maintains sufficient capital and that it can replenish the capital in the event it falls below desirable levels, the Capital Plan would also enable OCC to maintain safe and secure obligations, in compliance with Rule 17Ad-22(d)(6).²⁰ The proposed

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22((d)(6).

Capital Plan would also, as discussed in more detail above, ensure OCC's compliance with new regulatory requirements proposed by the Commission seeking to promote the safe and reliable operation of registered clearing agencies, and in particular proposed subsection (e)(15) of Rule 17Ad-22.²¹ The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.²² OCC believes that the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed changes relate to OCC's plan for raising and maintaining adequate capital from its owner exchanges, and therefore do not affect clearing members' or others' access to OCC's services or the nature of these services.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

²¹ *SEC Proposed Rules* at 156, FR 29507, 29616 (May 22, 2014).

²² 15 U.S.C. 78q-1(b)(3)(I).

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

OCC requests acceleration to the extent necessary to be effective no later than February 27, 2015, which is the date by which the additional capital contributions contemplated by the Capital Plan must be received in order for the refund of 2014 clearing fees contemplated by the Capital Plan to be reflected in OCC's financial statements for the year ended December 31, 2014. Good cause exists for this request because implementing the Capital Plan in sufficient time to permit its application with respect to the 2014 refund will allow OCC to strengthen its capital position, and therefore gain additional assurance with respect to its continued ability to promptly and accurately clear securities transactions, earlier than would otherwise be the case.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the
Federal Register.

Exhibit 3. Term Sheet for Capital Replenishment Plan

Exhibit 5A. Fee Policy

Exhibit 5B. Refund Policy

Exhibit 5C. Dividend Policy

Exhibit 5D. Restated Certificate of Incorporation

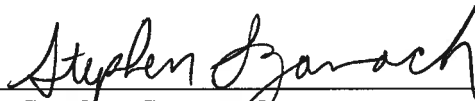
Exhibit 5E. Amended and Restated Stockholders Agreement

CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBITS 3, 5A, 5B AND 5C

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: 

Stephen Szarmack
Vice President and Associate General
Counsel

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2015-02)

January 14, 2015

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning a Proposed Capital Plan for Raising Additional Capital That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on January 14, 2015, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change is filed by OCC in order to set forth a proposed Capital Plan for raising additional capital that would support OCC's function as a systemically important financial market utility and facilitate OCC's compliance with new regulatory requirements applicable to systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to amend its By-Laws and other governing documents, and to adopt certain policies, for the purpose of implementing a plan for raising additional capital ("Capital Plan") under which the options exchanges that own equity in OCC ("Stockholder Exchanges" or "Stockholders") would make an additional capital contribution and commit to replenishment capital ("Replenishment Capital") in circumstances discussed below, and would receive, among other things, the right to receive dividends from OCC.³ In addition to the additional capital contribution and Replenishment Capital, the main features of the Capital Plan are: (i) a policy establishing OCC's fees at a level that would be sufficient to cover OCC's estimated operating expenses plus a "Business Risk Buffer" as described below ("Fee Policy"), (ii) a policy establishing the amount of the annual refund to clearing members of OCC's fees ("Refund Policy"), and (iii) a policy for calculating the amount of dividends to be paid to the

³ The Capital Plan has also been filed with the Commission as an advance notice (SR-OCC-2014-813), which was amended and restated on January 14, 2015.

Stockholder Exchanges (“Dividend Policy”). The Capital Plan is proposed to be implemented on or about February 27, 2015, subject to all necessary regulatory approvals.⁴

The Capital Plan would significantly increase OCC’s capital in connection with its increased responsibilities as a systemically important financial market utility, and OCC believes that it would facilitate OCC’s compliance with new regulatory requirements applicable to such systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.⁵ For purposes of its capital planning, OCC has used the working assumption that the new requirements contained in the Commission’s proposed amendments to Rule 17Ad-22 of the SEC Proposed Rules will be adopted substantially as proposed, and the Capital Plan is intended to ensure OCC’s ability to comply with Rule 17Ad-22, specifically paragraph (e)(15) thereof, when the SEC Proposed Rules become effective. In addition, it is intended to address Principle 15 of the Principles for Financial Market Infrastructures published by the Bank for International Settlements and the International Organization of Securities Commissions, which provides, among other things, that a financial market utility should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue to operate as a going concern. The Capital Plan calls for an infusion of substantial additional equity capital by the Stockholder Exchanges to be made prior to February 27, 2015,

⁴ The material features of the Capital Plan are summarized in the Term Sheet that is included as Exhibit 3 to this filing. Certain details of the Term Sheet may change as a result of negotiations between OCC and the Stockholder Exchanges or changes in financial figures, but OCC does not anticipate any material changes to the Capital Plan.

⁵ See Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) (“SEC Proposed Rules”).

subject to regulatory approval, that when added to retained earnings accumulated by OCC in 2014 will significantly increase OCC's capital levels as compared to historical levels. Additionally, the Capital Plan includes the Replenishment Capital commitment, which would provide OCC access to additional equity contributed by the Stockholder Exchanges should OCC's equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk in compliance with Rule 17Ad-22, as discussed more fully below.

Background

OCC is a clearing agency registered with the Commission and is also a derivatives clearing organization ("DCO") regulated in its capacity as such by the Commodity Futures Trading Commission ("CFTC"). OCC is a Delaware business corporation and is owned equally by the Stockholder Exchanges, five national securities exchanges for which OCC provides clearing services.⁶ In addition, OCC provides clearing services for seven other national securities exchanges that trade options ("Non-Stockholder Exchanges"). In its capacity as a DCO, OCC also provides clearing services to four futures exchanges.

OCC has been designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing and Settlement Supervision Act, and the Commission is OCC's "Supervisory Agency" under Section 803(8) of the Payment, Clearing and Settlement Supervision Act. OCC is therefore a "covered clearing agency" ("CCA") as defined in proposed amendments to the Commission's Rule 17Ad-22(a)(7) and would be required to

⁶ The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

comply with the provisions of proposed Rule 17Ad-22 applicable to CCA's, including paragraph (e)(15) thereof.⁷

Proposed Rule 17Ad-22(e)(15) provides:

Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)-(iii) of this section, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii) of this section; and

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions; and

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity

⁷ SEC Proposed Rules at 32-33, FR 29507, 29515 (May 22, 2014).

should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.⁸

Over the last nine months, OCC has devoted substantial efforts to: 1) develop a 5-year forward looking model of expenses; 2) quantify maximum recovery and wind-down costs under OCC's Recovery and Wind-Down Plan; 3) assess and quantify OCC's operational and business risks; 4) model projected capital accumulation taking into account varying assumptions concerning business conditions, fee levels, buffer margin levels and refunds; and 5) develop an effective mechanism that provides OCC access to replenishment capital in the event of losses that could cause OCC to be non-compliant with the SEC Proposed Rules. Incorporating the results of those efforts, the proposed amendments are intended to allow OCC to implement the Capital Plan and thereby provide OCC with the means to increase its shareholders' equity and, in particular, to obtain timely compliance with Rule 17Ad-22(e)(15)⁹ as proposed by the Commission. A more detailed discussion of the manner in which the Capital Plan would allow OCC to comply with Rule 17Ad-22(e)(15) appears below.

OCC's Projected Capital Requirement

Using the methods described in detail below, OCC will annually determine a "Target Capital Requirement" consisting of (i) a "Baseline Capital Requirement" equal to the greatest of (x) six months operating expenses for the following year, (y) the maximum cost of the recovery scenario from OCC's Recovery and Wind-Down Plan, and (z) the cost to OCC of winding down operations as set forth in the Recovery and Wind-Down Plan, plus (ii) a "Target Capital Buffer" linked to plausible loss scenarios from operational risk, business risk and pension

⁸ *SEC Proposed Rules* at 417-418, FR 29507, 29616 (May 22, 2014).

⁹ *SEC Proposed Rules* at 222-223, FR 29507, 29547-29548 (May 22, 2014).

risk. OCC has determined that its currently appropriate “Target Capital Requirement” is \$247 million, reflecting a Baseline Capital Requirement of \$117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of \$130 million. This Target Capital Buffer would provide a significant capital cushion to offset potential business losses.

As of December 31, 2013, OCC had total shareholders’ equity of approximately \$25 million,¹⁰ meaning that OCC proposes to add additional capital of \$222 million to meet its 2015 Target Capital Requirement. In addition, OCC would be obligated under paragraph (e)(15)(iii)¹¹ of proposed Rule 17Ad-22 to maintain “a viable plan” for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of the Rule¹²; i.e., the Baseline Capital Requirement. OCC has determined that its viable plan for Replenishment Capital should provide for a “Replenishment Capital Amount” which would give OCC access to additional capital as needed up to a maximum of the Baseline Capital Requirement, which is currently \$117 million.¹³ Therefore, OCC’s proposed Capital Plan would provide OCC in 2015 with ready access to approximately \$364 million in equity capital as follows:

Baseline Capital Requirement	\$117,000,000
Target Capital Buffer	<u>\$130,000,000</u>

¹⁰ See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC’s website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

¹¹ *SEC Proposed Rules* at 418, FR 29507, 29616 (May 22, 2014).

¹² *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

¹³ The obligation to provide Replenishment Capital will be capped at \$200 million, which OCC projects will sufficiently account for increases in its capital requirements for the foreseeable future.

Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

Procedures Followed in Order to Determine Capital Requirement

Various measures were used in determining the appropriate level of capital necessary to comply with the SEC Proposed Rules. An outside consultant conducted a “bottom-up” analysis of OCC’s risks and quantified the appropriate amount of capital to be held against each risk. The analysis was comprehensive across risk types, including credit, market, pension, operational, and business risk. Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC’s operational risk was quantified at \$226 million and pension risk at \$21 million, resulting in the total Target Capital Requirement of \$247 million. Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risk to zero by adjusting the levels at which fees and refunds are set and by adopting a “Business Risk Buffer” of 25% when setting fees. Other risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks that did not require use of OCC’s capital. As discussed in more detail below in the context of OCC’s Fee Policy, the Business Risk Buffer of 25% is achieved by setting OCC’s fees at a level intended to achieve target annual revenue that will result in a 25% buffer for the year after paying all operating expenses.

An analysis was also performed to identify OCC's risk in terms of the regulatory requirements set forth in proposed Rule 17Ad-22(e)(15)(ii).¹⁴ This analysis estimated that, currently, OCC's maximum recovery costs would be \$100 million and projected wind-down costs would be \$73 million. OCC's projected expenses for 2015 are \$234 million, so that six months projected expenses are $\$234 \text{ million} / 2 = \117 million . The greater of recovery or wind-down costs and six months of operating expenses is therefore \$117 million, and OCC's Baseline Capital Requirement (minimum regulatory requirement) is therefore \$117 million. OCC then computed the appropriate amount of a Target Capital Buffer from operational risk, business risk, and pension risk. This resulted in a determination that the current Target Capital Buffer should be \$130 million. Thus, the Target Capital Requirement is $\$117 \text{ million} + \$130 \text{ million} = \$247 \text{ million}$.

Overview of, and Basis for, OCC's Proposal to Acquire Additional Equity Capital

In order to meet its Target Capital Requirement, and after consideration of available alternatives, OCC's Board approved a proposal from OCC's Stockholder Exchanges under which OCC would meet its Target Capital Requirement of \$247 million in early 2015 as follows:

Shareholders' Equity as of 1/1/2014	\$ 25,000,000
Shareholders Equity Accumulated Through Retained Earnings ¹⁵	\$ 72,000,000

¹⁴ *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

¹⁵ *See Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule*, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05) (Filing for immediate effectiveness of a proposed rule change with the Commission to reinstate OCC's permanent clearing fee schedule for securities options and securities futures that became effective May 1, 2007 ("Permanent Schedule Reinstatement Filing")). The \$72 million is after giving effect to the approximately \$40 million refund referred to below.

Additional Contribution from Stockholder Exchanges	<u>\$150,000,000</u>
Target Capital Requirement	\$247,000,000
Replenishment Capital Amount	<u>\$117,000,000</u>
Total OCC Capital Resources	\$364,000,000

The additional contribution of the Stockholder Exchanges would be made in respect of their Class B Common Stock on a *pro rata* basis. The Stockholder Exchanges will also commit to provide additional equity capital up to the Replenishment Capital Amount, which is currently \$117 million, in the event Replenishment Capital is needed. While the Replenishment Capital Amount will increase as the Baseline Capital Requirement increases, it would be capped at a total of \$200 million that could be outstanding at any point in time. OCC has estimated that the Baseline Capital Requirement would not exceed this amount before 2022. When the limit is being approached, OCC would revise the Capital Plan as needed to address future needs. In consideration for their capital contributions and replenishment commitments, the Stockholder Exchanges will receive dividends as described in the Dividend Policy discussed below for so long as they remain stockholders and maintain their contributed capital and commitment to replenish capital up to the Replenishment Capital Amount, subject to the \$200 million cap.

Fee, Refund, and Dividend Policies

Upon reaching the Target Capital Requirement, the Capital Plan and the proposed Fee Policy require OCC to set its fees at a level that utilizes a Business Risk Buffer of 25%. The purpose of this Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Furthermore, the Capital Plan requires OCC to maintain Fee, Refund, and Dividend Policies, described in more detail below, which are designed to ensure that OCC's

shareholders' equity remains well above the Baseline Capital Requirement. The proposed Fee, Refund, and Dividend Policies are attached to this filing as Exhibits 5A, 5B, and 5C respectively. The required Business Risk Buffer of 25% is below OCC's 10-year historical pre-refund average buffer of 31%. The target will remain 25% so long as OCC's shareholders' equity remains above the Target Capital Requirement amount. The reduction in buffer margin from OCC's 10-year average of 31% to 25% reflects OCC's commitment to continue to operate as an industry utility and ensuring that market participants benefit as much as possible from OCC's operational efficiencies in the future. This reduction will permit OCC to charge lower fees to market participants rather than maximizing refunds to clearing members and dividend distributions to Stockholder Exchanges. OCC will review its fee schedule on a quarterly basis to manage revenue as closely to this target as possible.¹⁶ For example, if the Business Risk Buffer is materially above 25% after the first quarter of a particular year, OCC may decrease fees for the remainder of the year, and conversely if the Business Risk Buffer is materially below 25% after the first quarter, OCC may increase fees for the remainder of the year.

The Capital Plan would allow OCC to refund approximately \$40 million from 2014 fees to clearing members in 2015 and to reduce fees in an amount to be determined by the Board, effective in the second quarter 2015. OCC will announce new fee levels early in 2015 and will make them effective following notification to clearing members and any necessary approval by the Commission. OCC will endeavor to provide clearing members with no less than 60-day advance notice of the effectiveness of changes to fee levels, particularly those that result

¹⁶ If OCC's fee schedule needs to be changed in order to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change seeking approval of the revised fee schedule.

in increases to fee levels. No dividends will be declared until December 2015 and no dividends will be paid until 2016.

Changes to the Fee, Refund, or Dividend Policies will require the affirmative vote of two-thirds of the directors then in office and approval of the holders of all of OCC's outstanding Class B Common Stock. The formulas for determining the amount of refunds and dividends under the Refund and Dividend Policies, respectively, which are described in more detail below, assume that refunds are tax-deductible but that dividends are not. The Refund and Dividend Policies would each provide that in the event that refunds payable under the Refund Policy are not tax deductible, the policies would be amended to restore the relative economic benefits between the recipients of the refunds and the Stockholder Exchanges.

Fee Policy

Under the Fee Policy, in setting fees each year, OCC would calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25%, *i.e.*, OCC will divide the expense forecast by .75. Establishing a Business Risk Buffer at 25% would allow OCC to manage the risk that fees would generate less revenue than expected due to lower-than-expected trading volume or other factors, or that expenses would be higher than projected. The Fee Policy also will include provisions from existing Article IX, Section 9 of the By-Laws to the effect that the fee schedule may also include additional amounts necessary to (i) maintain such reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to conduct development and capital planning activities in connection with OCC's services to the options exchanges, Clearing Members and the general public, and (ii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing

Members and the general public; however, these provisions will be invoked only in extraordinary circumstances and to the extent that the Board has determined that the required amount of such additional reserves or additional surplus will exceed the full amount that is expected to be accumulated through the Business Risk Buffer (prior to payment of refunds or dividends) so OCC's fees will ordinarily be based on its projected operating expenses and the Business Risk Buffer of 25%.

Under the Capital Plan, OCC would calculate its annual revenue target as follows:

$$\text{Annual Revenue Target} = \text{Forward 12 Months Expense Forecast} / (1 - .25).$$

Because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections would include projections as to relative volume in each such category. The clearing fee schedule would therefore be set to achieve a blended or average rate per contract sufficient, when multiplied by total projected contract volume, to achieve the Annual Revenue Target. Under extraordinary circumstances, OCC would then add any amount determined to be necessary for additional reserves or surplus and divide the resulting number by the projected contract volume to determine the applicable average fee per cleared contract needed to achieve the additional amounts required. Consistent with past practice, OCC would notify clearing members of the fees that would be applicable for any particular period by describing the change in an information memorandum distributed to all clearing members. Consistent with past practice, OCC would also notify regulators of the fees that would be applicable for any particular period by filing an amendment to its Schedule of Fees as a proposed

rule change for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder.¹⁷

Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a refund to Clearing Members in December of each year, beginning in 2015, in an amount equal to 50% of the excess, if any, of (i) pre-tax income for the year in which the refund is declared over (ii) the sum of (x) the amount of pre-tax income after the refund necessary to produce after-tax income for such year sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year plus (y) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement. Such refund will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay refunds until such time as the Target Capital Requirement is restored through the accumulation of retained earnings. Refunds in accordance with the Refund Policy would resume once the Target Capital

¹⁷ See, e.g., the Permanent Schedule Reinstatement Filing, *supra* n. 13; Proposed Rule Change by The Options Clearing Corporation to Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance with the Options Order Protection and Locked/Crossed Market Plan to \$.01 per Contract, Securities Exchange Act Release No. 68025 (October 12, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

Requirement is restored and all Replenishment Capital is repaid in full, provided that the restoration of the Target Capital Requirement and the repayment of Replenishment Capital occurred within 24 months of the issuance date of the Replenishment Capital. If, within 24 months of the issuance date of any Replenishment Capital, such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, OCC would no longer pay refunds to clearing members, even if the Target Capital Requirement is restored and all Replenishment Capital is repaid at a later date.

Dividend Policy

The Dividend Policy would provide that, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a dividend on its Class B Common Stock in December of each year in an aggregate amount equal to the excess, if any, of (i) after-tax income for the year, after application of the Refund Policy (unless the Refund Policy has been eliminated, in which case the refunds shall be deemed to be \$0) over (ii) the sum of (A) the amount required to be retained in order to maintain total shareholders' equity at the Target Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement. Such dividend will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay dividends until such time as the Target Capital Requirement is restored.

OCC's Status as an Industry Utility

OCC has always been operated on an “industry utility” model. The Stockholder Exchanges have heretofore contributed only minimal capital to OCC.¹⁸ OCC’s By-Laws currently require that OCC set its clearing fees at a level that is designed to cover operating expenses and to maintain such reserves and accumulate such additional capital as are deemed reasonably necessary for OCC to meet its obligations to its clearing members and the public. Clearing fees that are collected in excess of these amounts are refunded annually on a *pro rata* basis to the clearing members who paid them. Under this model, OCC has never paid dividends to the Stockholder Exchanges. However, OCC has paid significant refunds to clearing members each year. OCC is aware that a portion -- possibly a significant portion -- of those refunds are not passed through by the clearing members to their end user customers. Accordingly, by adopting an approach that includes paying dividends to the Stockholder Exchanges that have invested a significant amount of additional capital (\$150 million) but that also reduces the historical pre-refund average buffer of 31% by adopting a Business Risk Buffer of 25%, OCC believes that the proposed approach maintains, and perhaps better aligns with, an industry utility model.

Given the very large increase in capital that OCC has determined to be appropriate in order to assure compliance with regulatory requirements and meet the increased responsibilities imposed upon it as a systemically important financial market utility, OCC has determined that the best alternative available to it is to obtain a substantial further capital contribution from the Stockholder Exchanges. This cannot be accomplished without

¹⁸ OCC’s common stock and paid in capital total \$2,659,999. See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC’s website, http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.

modification of the past practice of not providing dividends to stockholders. Accordingly, it is necessary for OCC to establish the new Fee Policy, Refund Policy, and Dividend Policy. Because of the Business Risk Buffer being set at 25%, the combination of the Fee, Refund, and Dividend Policies will effectively cap the dividends to be paid to the Stockholder Exchanges at a level that the Board (with the advice of outside financial experts) has determined results in a reasonable rate of return on contributed capital, particularly in comparison to the implied cost of capital to the clearing members and their customers of instead pursuing an approach which required the accumulation of retained earnings through higher fees and no refunds for several years. OCC will continue to refund a significant percentage of excess clearing fees to clearing members, thereby benefiting both clearing members and, to the extent that refunds are passed through by the clearing members to their end user customers, their customers. The Capital Plan therefore effectively preserves OCC's industry utility model of providing its services in an efficient manner, but enhances the benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin from OCC's 10-year average of 31% to 25%.

Clearing members and customers will benefit from the proposed Capital Plan because it will allow OCC to continue to provide clearing services at low cost. As noted, OCC expects that this capital infusion from stockholders will enable OCC to provide a significant refund of 2014 fees. OCC further expects that its current clearing fees will be reduced significantly based on the Business Risk Buffer of 25% beginning in 2015 with refunds restored, and that these lower fees will continue for the foreseeable future.

Stockholder Exchanges will benefit from the dividend return they receive and, perhaps more importantly, they will be assured that OCC will be in a position to provide clearing services for their markets on an on-going basis within the same basic structure that has served

these markets well since their inception and without the need to radically change the structure to address potential demands of outside equity investors. Non-Stockholder Exchanges will also benefit by continuing to receive OCC's clearing services for their products on the same basis as they presently do.¹⁹

OCC also believes that the Capital Plan will better align the interests of Stockholder Exchanges and clearing members with respect to expenses, since changes to the level of operating expenses directly affect the Target Capital Requirement. In sum, OCC believes that the present proposal represents a fair and reasonable balancing of the interests of the Stockholder Exchanges, the other exchanges for which OCC provides clearing services, clearing members, customers, and the general public while providing an immediate infusion of capital and a structure within which OCC can meet its obligations to the public as a systemically important financial market utility, as well as the requirements under the SEC Proposed Rules.

Replenishment Capital Plan

OCC proposes to put in place a Replenishment Capital Plan whereby OCC's Stockholder Exchanges are obligated to provide on a *pro rata* basis a committed amount of Replenishment Capital should OCC's total shareholders' equity fall below the hard trigger (as defined below). The aggregate committed amount for all five Stockholder Exchanges in the form of Replenishment Capital that could be accessed at any time would be capped at the excess of (i) the lesser of (A) the Baseline Capital Requirement, which is currently \$117 million, at the time of the relevant funding or (B) \$200 million, over (ii) amounts of outstanding Replenishment

¹⁹ Non-Stockholder Exchanges contribute capital by purchasing a promissory note in the principal amount of \$1,000,000. *See* Section 2 of Article VIIB of OCC's By-Laws. The required capital contribution of Non-Stockholder exchanges will not change under the Capital Plan.

Capital (“Cap”). The \$200 million figure in the Cap formula takes into account projected growth in the Baseline Capital Requirement for the foreseeable future. The commitment to provide Replenishment Capital would not be limited by time, but only by the Cap. Replenishment Capital could be called in whole or in part after the occurrence of a “hard trigger” event described below, subject to the Cap. If the Baseline Capital Requirement approaches or exceeds \$200 million, the Board can consider, as part of its annual review of the Replenishment Capital Plan that is required by the SEC Proposed Rules, alternative arrangements to obtain replenishment capital in excess of the \$200 million committed under the Replenishment Capital Plan. In addition, the Refund Policy and the Dividend Policy will provide that, in the absence of obtaining any such alternative arrangements, the amount of the difference will be subtracted from amounts that would otherwise be available for the payment of refunds and dividends.

Replenishment Capital contributed to OCC under the Replenishment Capital Plan would take the form of a new class of common stock (“Class C Common Stock”) of OCC to be issued to the Stockholder Exchanges solely in exchange for Replenishment Capital contributions.

The Replenishment Capital Plan would be part of OCC’s overall Capital Plan. In implementing the Replenishment Capital Plan, OCC’s management would monitor OCC’s levels of shareholders’ equity to identify certain triggers, or reduced capital levels, that might require action. OCC has identified two key triggers – a soft trigger and a hard trigger – and proposes that OCC take certain steps upon the occurrence of either as described in more detail below.

The “soft trigger” for re-evaluating OCC’s capital would occur if OCC’s shareholders’ equity falls below the sum of (i) the Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. The soft trigger would be a warning sign that OCC’s capital had fallen to a level that required attention and responsive action to prevent it from falling to

unacceptable levels. Upon a breach of the soft trigger, OCC's senior management and the Board would review alternatives to increasing capital, and take appropriate action as necessary, including increasing fees or decreasing expenses, to restore shareholders' equity to the Target Capital Requirement.

The "hard trigger" for making a mandatory Replenishment Capital call would occur if shareholders' equity falls below 125% of the Baseline Capital Requirement ("Hard Trigger Threshold"). The hard trigger would be a sign that corrective action more significant and with a more immediate impact than increasing fees or decreasing expenses should be taken to increase OCC's capital, either as part of a recovery plan or a wind down plan for OCC's business. OCC's shareholders' equity would have to fall more than \$100 million below the fully funded capital amount described above in order for the Hard Trigger Threshold to be breached. As a result, OCC views the breach of the Hard Trigger Threshold as unlikely and occurring only as a result of a significant, unexpected event. Upon a breach of the Hard Trigger Threshold, the Board would have to determine whether to attempt a recovery, a wind-down of OCC's operations or a sale or similar transaction, subject in each case to any necessary stockholder consent. If the Board decides to wind-down OCC's operations, OCC would access the Replenishment Capital in an amount sufficient to fund the wind-down, as such amount would be determined by the Board, and subject to the Cap described above. If the Board decides to attempt a recovery of OCC's capital and business, OCC would access the Replenishment Capital in an amount sufficient to return shareholders' equity to an amount equal to \$20 million above the Hard Trigger Threshold, subject to the Cap described above.

While Replenishment Capital is outstanding, no refunds or dividends would be paid and, if any Replenishment Capital remains outstanding for more than 24 months or the

Target Capital Requirement is not restored during that period, changes would be made to how OCC calculates refunds and dividends, as described in more detail above under Refund Policy and Dividend Policy. In addition, while Replenishment Capital is outstanding, OCC would first utilize the entire amount of Available Funds to repurchase, on a *pro rata* basis from each Stockholder, to the extent permitted by applicable Delaware and federal law and regulations, outstanding shares of Class C Common Stock as soon as practicable after completion of the financial statements following the end of each calendar quarter at a price equal to the original amount paid for such shares, plus an additional “gross up” amount to compensate the holders of the Class C Common Stock for taxes on dividend income (if any) that they may have to recognize as a result of such repurchase.²⁰ For this purpose, “Available Funds” would equal, as of the end of any calendar quarter, the excess, if any, of (x) shareholders’ equity over (y) the Minimum Replenishment Level. The “Minimum Replenishment Level” would mean \$20 million above the Hard Trigger Threshold, so that OCC’s shareholders’ equity would remain at or above the Minimum Replenishment Level after giving effect to the repurchase. Furthermore, under the Dividend and Refund Policies, refunds and dividends would be suspended until such time as the Target Capital Requirement is restored.

Amendments to Governing Documents

In order to implement the Capital Plan, OCC proposes to make amendments to its By-Laws and Restated Certificate of Incorporation and amend and restate its Stockholders Agreement.

²⁰ Based on current federal rates, if the full amount of the payment is classified as a dividend and the recipient is entitled to a dividends received deduction, this gross up is estimated to be approximately 12% of the payment.

Amendments to By-Laws

OCC is proposing various amendments to the By-Laws in order to implement the Capital Plan. Specifically, OCC proposes to amend the definition of Equity Exchange in Article I, Section 1 to take into account the potential ownership of Class C Common Stock by the Stockholder Exchanges.

Article II, Section 3 would be amended to change the definition of quorum such that a majority of outstanding common stock entitled to vote at a meeting of Stockholders either in person or by proxy would constitute a quorum for any such meeting of the Stockholders. In addition, OCC proposes to amend Article II, Section 5 to allow for the potential issuance of Class C Common Stock, which will not have voting rights except as required by applicable law.

Article VIIA, Section 2, would be amended to (i) provide for the potential issuance of Class C Common Stock in consideration for Replenishment Capital provided by Stockholder Exchanges, (ii) permit, consistent with the proposed amendments to the Stockholders Agreement, the transfer of shares of common stock to another Stockholder, and (iii) reflect the right of other Stockholders, consistent with the proposed amendments to the Stockholders Agreement, to purchase the shares of common stock of another Stockholder. Article VIIA, Section 3, would be amended to conform to the changes to Article VIIA, Section 2.

OCC proposes amendments to Article VIII, Section 5(d), to require that a Board decision to utilize OCC's retained earnings to compensate for a loss or deficiency to the Clearing Fund would require unanimous consent from the holders of Class A Common Stock and Class B Common Stock. This proposed amendment is intended to protect Stockholders from an action taken without their consent that could increase their likelihood of being required to provide Replenishment Capital. Similarly, Article XI, Section 1 would also be amended to account for

the possible issuance of the non-voting Class C Common Stock consistent with the Restated Certificate of Incorporation as discussed below, and to require unanimous Stockholder approval for any future amendments to the new provision of Article VIII, Section 5(d) described above.

Article IX, Section 9, would be amended in three ways. First, the concept of the Business Risk Buffer would be incorporated into Article IX, Section 9(a). Second, Article IX, Section 9, would be amended to provide that OCC would only add amounts for reserves and surpluses in addition to the Business Risk Buffer in extraordinary circumstances and only to the extent that the Board has determined that the required amount of additional reserves and surplus is expected to exceed the full amount that is anticipated to be accumulated through the Business Risk Buffer prior to payment of refunds and dividends. Third, Article IX, Section 9, would be amended to expressly reference the potential payment of dividends in accordance with the Dividend Policy.

Amendments to Restated Certificate of Incorporation

OCC is proposing to amend its Restated Certificate of Incorporation in order to implement the Capital Plan. The proposed amendment to the restated Certificate of Incorporation is attached to this filing as Exhibit 5D. Article IV would be amended in multiple locations to (i) reduce the number of authorized shares of Class A Common Stock and Class B Common Stock to the number of shares currently outstanding, and the number of series of Class B Common Stock, to reflect the fact that there are only five Stockholder Exchanges, (ii) to eliminate a provision under which additional shares of Class A Common Stock and Class B Common Stock could be authorized in certain circumstances without a separate vote of each series of Class B Common Stock, (iii) create Class C Common Stock as non-voting stock, (iv) set a par value for Class C Common Stock of \$1,000 per share, (v) provide for distribution upon

a liquidation or dissolution of OCC to holders of Class A, Class B, and Class C Common Stock, *pro rata* on a pari passu basis, the amount of the par value of their shares, and (vi) remove restrictions on the transfer of shares of Class B Common Stock to more than one entity in order to address the possible exercise by another Stockholder of its right of first refusal under the Amended and Restated Stockholders Agreement. Additionally, Article IV would be amended to make clear that the prohibition on OCC's creating or issuing rights or options to purchase OCC stock set forth in Article IV would not restrict the ability of OCC to enter into the Replenishment Capital Plan. Finally, technical changes would be made to Article VI in connection with the creation of Class C Common Stock as non-voting stock.

Amendments to Stockholders Agreement

OCC is proposing various amendments to the Stockholders Agreement to make technical changes relating to the additional contributions of capital to be made by the Stockholder Exchanges under the Capital Plan and the potential issuance of Class C Common Shares. The proposed Amended and Restated Stockholders Agreement is attached to this filing as Exhibit 5E. In part, the amendments to the Stockholders Agreement would provide Stockholders with a secondary right of refusal to be exercised if a Stockholder wished to sell its shares and OCC chose not to exercise its existing right of first refusal to purchase those shares. This change was considered necessary because after the additional contributions of capital by the Stockholder Exchanges under the Capital Plan, shares of Class B Common Stock will be significantly more valuable, making it less likely that OCC would be able to exercise its right of first refusal. Providing the non-selling Stockholder Exchanges with a secondary right of first refusal would increase the chances that a selling Stockholder Exchange would find a purchaser for its shares from among OCC's existing owners. Because OCC's Stockholders Agreement has

already been amended several other times, for convenience OCC is also proposing to amend and restate the Stockholders Agreement to incorporate all previous amendments and the new amendments into a single comprehensive agreement.

Each of the proposed new amendments to the Stockholders Agreement is described below, in the order they appear in the agreement. OCC proposes a technical amendment to Section 1 of the Stockholders Agreement to refer to the definitions of Class A Common Stock, Class B Common Stock, and Class C Common Stock in the Restated Certificate of Incorporation and By-Laws. OCC proposes an amendment to Section 3 which would delete an obsolete reference to a plan relating to OCC's original reorganization into a common clearing facility for all options exchanges. OCC proposes a technical amendment to Section 5(a) to add a reference to the procedures for Stockholder Exchanges to acquire shares pursuant to their secondary rights of first refusal in certain situations that will be set out in amended Section 10(e). OCC is proposing an amendment to Section 5(b) providing that the Stockholder Exchanges may not sell or transfer less than all of their shares without the consent of OCC. OCC seeks to prevent a partial sale by a Stockholder Exchange of a portion of its shares of Class A Common Stock, Class B Common Stock, or Class C Common Stock to avoid difficulties that could arise for OCC if, as a result of a partial sale, voting rights, dividend rights, and replenishment capital were spread across Stockholder Exchanges on a non *pro rata* basis. Section 5(b) would further clarify that if OCC consented to a partial sale the Stockholder Exchanges' right of first refusal would still apply, and that a Stockholder Exchange could sell shares of Class C Common Stock to OCC without selling its shares of Class A Common Stock and Class B Common Stock. OCC proposes to amend Section 6(a) to provide Stockholders, upon the non-exercise of OCC's right of first refusal, a secondary right of first refusal to purchase shares of other Stockholders in

certain circumstances discussed above, and to establish procedures governing the exercise of this right. Section 6(b) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to purchase shares of a Stockholder Exchange in the event of such Stockholder Exchange's bankruptcy or insolvency, and to create an exception from the right of first refusal for transfers to certain affiliates of a Stockholder that meet the exchange eligibility requirements set forth in the By-Laws. Section 6(c) would be amended to make any transfer or encumbrance of shares in violation of the Stockholders Agreement, either voluntarily or by operation of law, void. Section 6(d) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to repurchase shares of any Stockholder that ceases to be qualified to participate in OCC pursuant to the By-Laws. The revised Section 6(c) would take the place of current Section 6(e), which would be deleted. Section 6(e) currently provides that such a pledge or transfer would automatically be deemed to create a transfer of the shares to OCC. OCC proposes conforming amendments to Section 6(f), Section 6(g), Section 7, and Section 8 to provide for the new Stockholder Exchange right of first refusal. OCC proposes deleting Section 9 to remove the right of Stockholders to require OCC to purchase their shares of stock.

OCC proposes to amend Section 10(a) of the Stockholders Agreement to provide that the purchase price paid upon exercise of purchase rights by OCC or the Stockholder Exchanges would be equal to the lowest of (i) the book value of the shares to be purchased, (ii) the total capital contribution of the selling Stockholder and (iii) in the case of exercise of a right of first refusal, the price originally offered for such shares. OCC proposes other technical amendments to Sections 10(a), 10(b) and 10)(c) of the Stockholders Agreement concerning the purchase price formula, procedures, and timing for OCC's repurchase rights of shares (or, if

applicable, the purchase of a Stockholder's shares by another Stockholder) pursuant to the terms of the Stockholders Agreement. Section 10(d) would be amended such that any consideration to be paid by OCC upon the exercise of a right of first refusal would be subordinated to all other claims of all other creditors of OCC, and to prohibit OCC from declaring or paying any dividends, acquiring for value any shares of stock or distributing assets to any Stockholder Exchange, except with regard to required purchases or redemptions of shares of Class C Common Stock or payments of dividends in accordance with the Dividend Policy. OCC proposes to amend current Section 10(e) by moving its provisions addressing the subordination of payments by OCC and non-payment of dividends under certain circumstances into the proposed Section 10(d) as discussed above. OCC proposes technical amendments to current Section 10(g), proposed Section 10(e) concerning the process under which OCC would acquire shares upon exercise of its right of first refusal. OCC also proposes to move technical provisions of the current Section 10(f) concerning the payment of such shares into Section 10(e). Section 10(f) would then be amended to address procedures for Stockholders that exercise their right of first refusal.

Section 11 of the Stockholders Agreement would be amended in order to make a Stockholder's right to transfer shares dependent upon the non-exercise of OCC's and other Stockholders' right of first refusal to the purchase of such Stockholder's shares. Additionally, Section 11 would be amended to provide that the transfer of a Stockholder's shares under that section would not be effective without the transferee's assuming the rights and obligations under the Stockholders Agreement, certain joinders to the Stockholders Agreement and other agreements between OCC and Stockholders. Section 14(a) would be amended to make reference to the Stockholders Agreement. Section 14(b) would be amended to make a technical change

relating to the legend on OCC's stock certificates. Section 15 would be amended to update the mailing addresses of the Stockholder Exchanges for written notices and formal communications. Section 16(c) would be amended to clarify that a Stockholder Exchange would be able to assign its rights under the Stockholders Agreement only to a party to whom it would be permitted to transfer its shares. In addition, Section 16(c) would be amended to provide that OCC may only assign its repurchase rights under Section 6(b) or Section 6(d) of the Stockholders Agreement. OCC would be able to assign such rights with respect to all or a portion of the shares of stock owned by a Stockholder Exchange, and would be required to provide the non-selling Stockholder Exchanges with a right of first refusal in connection with any such contemplated assignment comparable to the secondary right of first refusal applicable with respect to a voluntary sale by a Stockholder Exchange and described above. Sections 16(f) and 16(g) would be amended to effectuate the amendment and restatement of the existing Stockholders Agreement.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended ("Act"),²¹ and the rules and regulations thereunder, because by implementing the Capital Plan, OCC would ensure that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. By ensuring that it maintains sufficient capital and that it can replenish the capital in the event it falls below desirable levels, the Capital Plan would also enable OCC to maintain safe and secure obligations, in compliance with Rule 17Ad-22(d)(6).²² The proposed

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(d)(6).

Capital Plan would also, as discussed in more detail above, ensure OCC's compliance with new regulatory requirements proposed by the Commission seeking to promote the safe and reliable operation of registered clearing agencies, and in particular proposed subsection (e)(15) of Rule 17Ad-22.²³ The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.²⁴ OCC believes that the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed changes relate to OCC's plan for raising and maintaining adequate capital from its owner exchanges, and therefore do not affect clearing members' or others' access to OCC's services or the nature of these services.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

²³ *SEC Proposed Rules* at 156, FR 29507, 29616 (May 22, 2014).

²⁴ 15 U.S.C. 78q-1(b)(3)(I).

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2015-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2015-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_02.pdf

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2015-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.²⁵

Kevin M. O'Neill
Deputy Secretary

Action as set forth recommended herein
APPROVED pursuant to authority delegated by
the Commission under Public Law 87-592.
For: Division of Trading and Markets

By: _____

Print Name: _____

Date: _____

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

THE OPTIONS CLEARING CORPORATION

**TERM SHEET
FOR
CAPITAL PLAN**

January 14, 2015

[Redacted pursuant to Rule 24b-2]

[Redacted pursuant to Rule 24b-2]

[Redacted pursuant to Rule 24b-2]

[Redacted pursuant to Rule 24b-2]

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[Redacted pursuant to Rule 24b-2]

[Redacted pursuant to Rule 24b-2]



Fee Policy

EXHIBIT 5A

FEE POLICY

[Redacted pursuant to Rule 24b-2]



Fee Policy

[Redacted pursuant to Rule 24b-2]



Fee Policy

[Redacted pursuant to Rule 24b-2]



Fee Policy

[Redacted pursuant to Rule 24b-2]



Refund Policy

EXHIBIT 5B

REFUND POLICY

[Redacted pursuant to Rule 24b-2]



Refund Policy

[Redacted pursuant to Rule 24b-2]



Refund Policy

[Redacted pursuant to Rule 24b-2]



Refund Policy

[Redacted pursuant to Rule 24b-2]



Refund Policy

[Redacted pursuant to Rule 24b-2]



Dividend Policy

EXHIBIT 5C

DIVIDEND POLICY

[Redacted pursuant to Rule 24b-2]



Dividend Policy

[Redacted pursuant to Rule 24b-2]



Dividend Policy

[Redacted pursuant to Rule 24b-2]



Dividend Policy

[Redacted pursuant to Rule 24b-2]

EXHIBIT 5D

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION
OF
THE OPTIONS CLEARING CORPORATION

THE OPTIONS CLEARING CORPORATION, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation (hereinafter called the “corporation”) is THE OPTIONS CLEARING CORPORATION.

2. The Restated Certificate of Incorporation of the corporation is hereby amended by striking out Article IV thereof and by substituting in lieu of said Article IV the following new Article IV:

“ARTICLE IV. CAPITAL STOCK.

The capital stock of the Corporation shall consist of 350,000 shares of Common Stock, comprised as follows: 25,000 shares shall be Class A Common Stock, par value of \$10.00 per share; 25,000 shares shall be Class B Common Stock, par value of \$10.00 per share; and 300,000 shares shall be Class C Common Stock, par value of \$1,000.00 per share. The Class B Common Stock shall be divided into five series, each consisting of 5,000 shares, designated as Series 1 through 5, respectively. Except as hereinafter provided in this Article IV, each share of Class A Common Stock and each share of Class B Common Stock of the Corporation shall entitle the holder thereof to one vote, in person or by proxy, on each proposition submitted to the stockholders for their vote thereon or their written consent thereto. Except as otherwise provided by applicable law, shares of Class C Common Stock shall have no voting rights.

The holders of the issued and outstanding shares of Class A Common Stock, voting separately as a class, shall have the right, by the vote of a majority in number of said shares, to elect the Member Directors of the Corporation. The holders of the issued and outstanding shares of Class B Common Stock, voting separately as a class, shall have the right, by the vote of a majority in number of said shares, to elect the Public Directors and the Management Director(s) of the Corporation. The holders of the issued and outstanding shares of each series of Class B Common Stock, voting separately as a series, shall have the right, by the vote of a majority in number of the shares of said series, to elect one Exchange Director of the Corporation; provided, however, that the holders of any series of Class B Common Stock issued after six such series shall be issued and outstanding shall not be entitled to elect an Exchange Director until the first annual meeting following the date on which shares of such series shall have been issued and outstanding for sixty days.

The vote of a majority of the issued and outstanding shares of each series of Class B Common Stock, voting separately as a series, shall be required to amend Articles I, IV, V, and

VI of the Certificate of Incorporation of the Corporation, or to adopt an agreement of merger or consolidation of the Corporation with or into any other corporation, or to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation, or to authorize or consent to the dissolution of the Corporation; provided, however, that such series vote shall not be required to approve an amendment to this Article IV which is limited to increasing the number of authorized shares of Class C Common Stock.

Upon partial or final liquidation or dissolution of the Corporation, the assets available for distribution to stockholders shall be distributed as follows. First, there shall be distributed pro rata to the holders of Class A Common Stock, Class B Common Stock and Class C Common Stock, *pari passu*, an amount equal to the aggregate par value of their shares. Second, there shall be distributed pro rata to the holders of Class B Common Stock an amount equal to \$1,000,000 multiplied by the number of series of Class B Common Stock outstanding. Third, there shall be distributed pro rata to the holders of those outstanding series of Class B Common Stock that were first issued prior to December 31, 1998 an amount equal to the Corporation's stockholders' equity at December 31, 1998, as set forth in the Corporation's audited financial statements, minus the aggregate amount distributed to holders of Class A Common Stock and Class B Common Stock pursuant to the two preceding sentences. Any remaining assets shall be distributed pro rata to the holders of Class B Common Stock.

Subject to the foregoing limitations, the holders of the shares of each series of Class B Common Stock shall be entitled to all the rights and privileges pertaining to common stock under the laws of the State of Delaware; and except as otherwise expressly provided herein, the shares of each series of Class B Common Stock, and the rights and privileges of the holders thereof, shall be identical in each and every respect, including, without limitation, the right to dividends. Subject to the same limitations, the holders of the Class A Common Stock and Class C Common Stock shall be entitled to all of the rights and privileges pertaining to common stock under the laws of the State of Delaware with the exception of the right to receive dividends.

Shares of Class A Common Stock and Class B Common Stock of the Corporation shall be issued and transferred only in units, each unit to consist of an equal number of shares of Class A and Class B Common Stock.

The Corporation shall not have the authority to create or issue any rights or options entitling the holders thereof to purchase from the Corporation any shares of its capital stock; provided, however, that the foregoing limitation shall not restrict the authority of the Corporation to enter into any agreement in connection with the issuance, or future issuance, of Class C Common Stock."

3. The Restated Certificate of Incorporation of the corporation is hereby amended by inserting the phrase "Class A and Class B" immediately before the phrase "Common Stock" at the end of the first sentence of Article VI.

4. The foregoing amendments of the Restated Certificate of Incorporation herein certified have been duly adopted and written consent has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

[Remainder of page intentionally left blank.]

THE UNDERSIGNED, being a duly authorized officer of the Corporation hereinbefore named, does make this certificate under penalties of perjury, hereby declaring and certifying that this is his act and deed and the facts herein stated are true, and accordingly have hereunto set his hand this ____ day of [_____] 2015.

THE OPTIONS CLEARING CORPORATION

By: _____

Name: James E. Brown

Title: Executive Vice President and
General Counsel

EXHIBIT 5E**AMENDED AND RESTATED
STOCKHOLDERS AGREEMENT**

AGREEMENT (this “Stockholders Agreement”), dated as of this _____ day of _____, 2015 among THE OPTIONS CLEARING CORPORATION, a Delaware corporation (the “Clearing Corporation”), CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED, a Delaware corporation (“CBOE”), INTERNATIONAL SECURITIES EXCHANGE, LLC, a Delaware limited liability company (“ISE”), NASDAQ OMX PHLX LLC, a Delaware limited liability company (“PHLX”), NYSE MKT LLC, a Delaware limited liability company (“NYSE MKT”), NYSE ARCA, INC., a Delaware corporation (“NYSE ARCA”) and such other holders of the Class A Common Stock (“Class A Stock”), Class B Common Stock (“Class B Stock”) and, if applicable, Class C Common Stock (“Class C Stock”) of the Clearing Corporation who hereafter become parties to this Stockholders Agreement in the manner hereinafter provided (CBOE, ISE, PHLX, NYSE MKT, NYSE ARCA, and such new stockholders being herein sometimes individually called a “Stockholder” and sometimes collectively called the “Stockholders”). This Stockholders Agreement amends and restates the Original Agreement (as defined below) in its entirety.

WITNESSETH:

WHEREAS, the Clearing Corporation, CBOE, ISE, PHLX, NYSE

MKT and NYSE ARCA are parties to a Stockholders Agreement dated January 3, 1975, as amended (the "Original Agreement");

WHEREAS, Article IV of the Certificate of Incorporation of the Clearing Corporation provides that shares of Class A Stock and Class B Stock shall be issued and transferred only in units, each unit to consist of an equal number of shares of Class A Stock and Class B Stock;

WHEREAS, Section 2 of Article VIIA of the By-Laws of the Clearing Corporation provides that, prior to its becoming a participant Exchange, each Stockholder acquired 5,000 shares of Class A Stock and 5,000 shares of Class B Stock and that the shares of Stock held by any Stockholder shall not be transferable to any person other than the Clearing Corporation or another Stockholder pursuant to this Stockholders Agreement or (in the event the Corporation and the other Stockholders should fail to exercise their respective rights or be unable to perform under the terms of this Stockholders Agreement) to a person that, upon acquisition of such shares, meets the requirements of clause (i) of Section 1 of Article VIIA of the By-Laws;

WHEREAS, Section 3 of Article VIIA of the By-Laws of the Clearing Corporation provides that prior to becoming a participant in the Clearing Corporation, each Stockholder entered into the Original Agreement providing for the manner in which the shares of Stock held by such Stockholder will be voted in respect of specified matters, imposing certain

restrictions on the disposition or encumbrance of the Stock and providing for the right of purchase by the Clearing Corporation or the other Stockholders of such Stockholder's interest in the Clearing Corporation under specified conditions;

WHEREAS, the parties desire that the Clearing Corporation be a "clearing corporation" within the meaning thereof set forth in Article 8 of the Uniform Commercial Code as in force in the States of Illinois and New York and certain other states;

WHEREAS, it is the mutual purpose of the Clearing Corporation and the Stockholders to be parties to this Stockholders Agreement in satisfaction of such requirements of Article VIIA of the By- Laws of the Clearing Corporation to assure satisfaction of the requisite provisions of the Uniform Commercial Code; and

WHEREAS, the parties to the Original Agreement desire to amend and restate in its entirety the Original Agreement as follows.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, terms and conditions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions.

The terms Class A Common Stock, Class B Common Stock, Class C Common Stock, Clearing Members, Exchange, Member Directors, Public

Directors, Management Directors, Governance and Nominating Committee, members of the Governance and Nominating Committee, as used herein, shall have the same respective meanings as in the Certificate of Incorporation of the Clearing Corporation (the "Certificate of Incorporation") and the By-Laws of the Clearing Corporation (the "By-Laws").

Section 2. Voting of Shares of Stock.

Each Stockholder agrees to vote, at each annual meeting of stockholders of the Clearing Corporation (or any other meeting of stockholders of the Clearing Corporation at which any of the matters specified in clauses (i) or (ii) of this Section 2 is submitted to a vote of stockholders), or any adjournments thereof, duly called and held during the term of this Stockholders Agreement, (i) all the shares of Class A Stock which such Stockholder is entitled to vote at such meeting in favor of the election of the individuals duly nominated by the Governance and Nominating Committee, or otherwise duly selected by the Clearing Members, as Member Directors in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation; and (ii) all the shares of Class B Stock which such Stockholder is entitled to vote at such meeting as part of the class in favor of (a) the election of the Executive Chairman of the Clearing Corporation as a Management Director, and (b) if one or more Public Directors are to be elected at such meeting, the election of such person(s), not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, as the Governance and Nominating Committee

shall have nominated, as Public Director(s).

Section 3. Proxy to Vote Shares of Stock.

Each Stockholder agrees to, and does hereby, irrevocably appoint the members of the Governance and Nominating Committee of the Clearing Corporation, or any one or more of them, as its attorney with the full power such Stockholder would have to represent such Stockholder at each annual meeting of stockholders of the Clearing Corporation (or any other meeting of stockholders of the Clearing Corporation at which any of the matters specified in clauses (i) or (ii) of this Section 3 is submitted to a vote of stockholders), or any adjournments thereof, duly called and held, for the purpose of voting on the following specified matters, and to vote on such matters as follows, and for no other purpose:

(i) To vote all of the shares of Class A Stock which such Stockholder is entitled to vote at such meeting in favor of the election of the individuals duly nominated by the Governance and Nominating Committee, or otherwise duly selected by the Clearing Members, as Member Directors in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation; and

(ii) To vote all of the shares of Class B Stock which such Stockholder is entitled to vote at such meeting as part of the class in favor of (a) the election of the Executive Chairman of the Clearing Corporation as a Management Director and (b) if one or more Public Directors are to be elected at such meeting, the election of such person(s), not affiliated with any national

securities exchange or national securities association or with any broker or dealer in securities, as the Governance and Nominating Committee shall have nominated, as Public Director(s).

The power vested hereby is given in furtherance of the interest of each Stockholder and the Clearing Members to assure that the management of the Clearing Corporation is elected in accordance with the provisions of the By-Laws, and this power shall remain outstanding for the term of this Stockholders Agreement.

Section 4. Restriction on Disposition or Encumbrance of Shares of Stock.

Each Stockholder agrees neither to pledge, hypothecate or otherwise voluntarily encumber, in any manner whatsoever, any of the shares of Stock owned of record or beneficially by it, nor to sell, transfer, assign or otherwise dispose of any such shares except as hereinafter specifically provided.

Section 5. Restrictions on Transfer of Shares of Stock.

(a) Shares of Stock shall be issued only in the name of the Exchange which is the beneficial owner thereof, and no transfer of such shares of Stock (whether voluntary or involuntary, by operation of law or otherwise) shall be effected except on the stock books of the Clearing Corporation upon surrender of stock certificates duly endorsed with all requisite transfer tax stamps affixed or provided for; provided, however, that the foregoing shall not affect the acquisition by the Clearing

Corporation or ROFR Participating Stockholder(s) (as defined below) of the entire interest in the Stock of any Stockholder pursuant to the provisions of Section 10(e) of this Stockholders Agreement (including in the event of the failure of such a Stockholder to deliver any stock certificate duly endorsed with all requisite transfer tax stamps affixed or provided for). All shares of Stock shall at all times be held subject to all of the agreements, conditions and restrictions set forth in the Certificate of Incorporation, the By-Laws and this Stockholders Agreement, the provisions of which shall at all times apply equally to an original holder of shares of Stock and to each and every subsequent holder thereof. Each Stockholder by the acceptance of a stock certificate representing any shares of Stock agrees with the Clearing Corporation, and with each other Stockholder, to the agreements, conditions and restrictions set forth in the Certificate of Incorporation, the By-Laws and this Stockholders Agreement.

(b) Except as otherwise expressly permitted in this Agreement or in any other agreement as to which the Clearing Corporation and all of the Stockholders are parties, no Stockholder shall sell, assign, transfer or otherwise dispose of or propose to sell, assign, transfer or otherwise dispose of less than all of its shares of Stock without the prior written consent of the Clearing Corporation, except that a Stockholder may sell shares of Class C Stock to the Clearing Corporation without selling its other shares of Stock. For the sake of clarity, in the event the Clearing

Corporation permits a Stockholder to transfer less than all of such Stockholder's shares of Stock and the transfer would have been subject to Section 6(a) hereof if all such shares had been transferred, the terms of Section 6(a) hereof shall still be applicable to such transfer.

Section 6. Clearing Corporation's and Other Stockholders' Right of First Refusal to Purchase Shares of Stock.

(a) Except as provided in Sections 11 and 16 of this Stockholders Agreement, a transfer to an Exempt Transferee (as defined below) or for the sale of shares of Class C Stock to the Clearing Corporation, whenever and as often as any Stockholder shall desire to sell, assign, transfer, or otherwise dispose of its shares of Stock (for the sake of clarity, other than pursuant to paragraphs (b) or (d) of this Section 6), such Stockholder shall give written notice (a "ROFR Notice") to the Clearing Corporation and the other Stockholders of such intent, stating the number of shares of Class A Stock, Class B Stock and Class C Stock (if applicable) owned by it, the name of the person to whom it desires to make such sale, assignment, transfer or other disposition, and the terms and conditions thereof, including the proposed purchase price ("the "Offered Price"). Upon receipt of such ROFR Notice, the Clearing Corporation shall have the right (the "OCC ROFR Right"), exercisable for a period of forty-five (45) days from the date of its receipt of such ROFR Notice (the "OCC ROFR Period"), to purchase all of the shares of Stock owned of record or beneficially by such Stockholder for the

consideration and upon the terms set forth in Sections 7 and 10 hereof by delivering written notice of its decision to exercise such right to such Stockholder and the other Stockholders prior to the end of the OCC ROFR Period. If the Clearing Corporation does not so deliver notice of its exercise of the OCC ROFR Right within the OCC ROFR Period, then each of the other Stockholders shall have the right (the "Other Stockholders' ROFR Right") exercisable for a period of forty-five (45) days following the expiration of the OCC ROFR Period (the "Other Stockholders' ROFR Period"), to purchase such other Stockholder's ROFR Participation Percentage of the shares of Stock owned of record or beneficially by such Stockholder for the consideration and upon the terms set forth in Sections 7 and 10 hereof by delivering written notice of its decision to exercise such right to such Stockholder, the other Stockholders and the Clearing Corporation prior to the end of the Other Stockholders' ROFR Period. The "ROFR Participation Percentage" for each other Stockholder electing to exercise the Other Stockholders' ROFR Right (each such electing other Stockholder being a "ROFR Participating Stockholder") shall be determined by dividing (i) the percentage of the total issued and outstanding Class A Stock and Class B Stock then owned of record by such ROFR Participating Stockholder by (ii) the total percentage of the total issued and outstanding Class A Stock and Class B Stock then owned of record by all of the ROFR Participating Stockholders, provided that the ROFR Participation Percentage for each

ROFR Participating Stockholder may otherwise be agreed to in writing by all of the ROFR Participation Stockholders so long as such otherwise agreed to ROFR Participation Percentages of all of the ROFR Participating Stockholders total 100%. No Stockholder shall have the right to sell, assign, transfer, or otherwise dispose of its shares of Stock during the period any right of the Clearing Corporation or other Stockholder under this paragraph (a) to purchase such shares of Stock of such Stockholder remains outstanding. Any purported sale, assignment, transfer or other disposition of any shares of Stock by any Stockholder in violation of the provisions of Section 5 or this Section 6 shall constitute a material violation of this Stockholders Agreement, and shall be void and of no force or effect.

Notwithstanding any provision of this Stockholders Agreement to the contrary, subject to compliance with the conditions to effectiveness of a transfer to an Exempt Transferee set forth in clauses (1) and (2) of this Section 6(a) below, a Stockholder shall be permitted to transfer its shares of Stock to an Exempt Transferee. For purposes of this Agreement, an "Exempt Transferee" of a Stockholder is an affiliate of such Stockholder (i) who meets the requirements of Section 1 of Article VIIA of the By-Laws of the Clearing Corporation upon acquisition of such shares, (ii) who is either (A) such Stockholder's sole equity holder, (B) such Stockholder's wholly-owned subsidiary or (C) wholly-owned by such Stockholder's sole equity holder, (iii) to whom at the time of such transfer, such Stockholder has assigned its rights and obligations under this

Agreement and any other agreement as to which the Clearing Corporation and all of the Stockholders are parties, and (iv) with respect to such transfer to such affiliate, the transferring Stockholder has provided at least fifteen (15) days advance written notice of such intended transfer to the Clearing Corporation and the other Stockholders. The effectiveness of any transfer to an Exempt Transferee shall be conditioned on (1) the Exempt Transferee assuming and being liable for the transferring Stockholder's rights and obligations under this Stockholders Agreement and any other agreement as to which the Clearing Corporation and all of the Stockholders are parties from and after the date of such transfer, and such Exempt Transferee executing and delivering to the Clearing Corporation such joinders (including a joinder to this Stockholders Agreement) and acknowledgements as the Clearing Corporation in its sole determination requires, in each case in form and substance reasonably acceptable to the Clearing Corporation and (2) the transferring Stockholder executing and delivering to the Clearing Corporation one or more acknowledgements as the Clearing Corporation in its sole determination may require, each such acknowledgement in form and substance reasonably acceptable to the Clearing Corporation. Any purported transfer that fails to comply with all of the requirements of this Section 6(a) shall be void and of no force or effect.

(b) Whenever any of the following events shall have occurred with respect to any Stockholder:

(i) the entry of a decree or order by a court having jurisdiction in the premises adjudicating the Stockholder a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Stockholder under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee (or similar official) of the Stockholder or of any substantial part of its property, or ordering the winding up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(ii) the institution by the Stockholder of proceedings to be adjudicated a bankrupt or insolvent, or the written consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable Federal or State law, or the written consent by it to the filing of any such petition, or to the appointment of a receiver, liquidator, assignee, trustee (or similar official) of it or any substantial part of its property, or the making by it of an assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due or the taking of corporate action by it in furtherance of any such action;

then the Clearing Corporation shall have the continuing right, exercisable at any time so long as such event remain uncured, to purchase all of the shares of Stock owned of record or beneficially by such Stockholder for the consideration and upon the terms set forth in Sections 7 and 10 hereof, which right shall be assignable by the Clearing Corporation as provided in Section 16(c) hereof.

(c) Any attempted pledge, hypothecation or other encumbrance, sale, assignment, transfer or other disposition (in each case, whether voluntary or involuntary and by operation of law or otherwise) of shares of Stock owned of record or beneficially by any Stockholder in violation of this Stockholders Agreement, including, but not limited to, transfers arising from the levy upon the shares of Stock by a creditor or other claimant (and in each case, whether or not such shares are presented for transfer, or the record ownership of such shares has been transferred, on the books of the Clearing Corporation), shall be void and of no force or effect. Any Stockholder and each purported transferee shall be obligated to give written notice to the Clearing Corporation of any purported encumbrance or transfer immediately upon the occurrence thereof, though no such notice shall in any way validate an encumbrance or transfer that is void under the terms of this Stockholders Agreement.

(d) In the event that any Stockholder shall cease to be qualified to participate in the Clearing Corporation as provided in Section 5 of Article VIIA of the By-Laws of the Clearing Corporation, the Clearing Corporation shall, upon its determination of such disqualification, have the continuing right, exercisable at

any time so long as such disqualification shall continue to exist, to purchase all of the shares of Stock owned of record or beneficially by such Stockholder for the consideration and upon the terms set forth in Sections 7 and 10, which right shall be assignable by the Clearing Corporation as provided in Section 16(c) hereof.

(e) Whenever the Clearing Corporation or the ROFR Participating Stockholder(s) (as applicable) shall be entitled to purchase from a Stockholder any shares of Stock upon the exercise of any right arising pursuant to the provisions of any of paragraphs (a), (b) or (d) of this Section 6, such right shall be exercisable only with respect to all of the shares of Stock owned of record or beneficially by such Stockholder.

(f) Whenever the Clearing Corporation or the ROFR Participating Stockholder(s) (as applicable) shall exercise any right arising pursuant to this Section 6, the Clearing Corporation or the ROFR Participating Stockholders (as applicable) shall give prompt written notice thereof and, in any event, the Clearing Corporation shall then give prompt written notice of the "Price" (as defined in Section 10 hereof) to each Stockholder.

Section 7. Method of Exercising Clearing Corporation's and ROFR Participating Stockholder's Right to Purchase Stock.

The Clearing Corporation's or a ROFR Participating Stockholder's (as applicable) exercise of any right arising pursuant to the provisions of paragraph (a) of Section 6 shall be effected by the Clearing Corporation's or such ROFR Participating Stockholder's (as applicable) giving written notice to the

Stockholders (and in the case of a ROFR Participating Stockholder, also the Clearing Corporation) not later than the close of business on the date of expiration of the OCC ROFR Period or Other Stockholders' ROFR Period, as applicable (or if such date is not a business day for the Clearing Corporation, then on or before the close of business on the next succeeding day which is a business day), advising the Stockholders (and in the case of a ROFR Participating Stockholder, also the Clearing Corporation) of the Clearing Corporation's or ROFR Participating Stockholder's election to exercise the OCC ROFR Right or Other Stockholders' ROFR Right (as applicable). The exercise by the Clearing Corporation (or any assignee of the Clearing Corporation) of any right arising pursuant to the provisions of paragraph (b) or (d) of Section 6 shall be effected by the Clearing Corporation's giving to the Stockholder whose Stock is subject to such right thirty (30) days' written notice (a "Purchase Election Notice") of the election by the Clearing Corporation (or its assignee) to exercise its right to purchase such shares.

Section 8. Failure by Clearing Corporation or Other Stockholder to Exercise Right to Purchase Not to Operate as Waiver.

The failure by the Clearing Corporation to exercise any right accruing to it pursuant to any one of the paragraphs of Section 6 of this Stockholders Agreement shall not prevent the exercise by the Clearing Corporation of any right subsequently accruing to it pursuant to any one or more of said paragraphs, whether such subsequent right shall accrue pursuant to the same or a different

paragraph. Correspondingly, the failure by another Stockholder to exercise the Other Stockholders' ROFR Right accruing to it pursuant to paragraph (a) of Section 6 of this Stockholders Agreement shall not prevent the exercise by such other Stockholder of any Other Stockholders' ROFR Right subsequently accruing to it pursuant to said paragraph (a).

Section 9. Reserved.

Section 10. The Purchase Price to be Paid by Clearing Corporation or the ROFR Participating Stockholder(s) (as applicable) for Stock and Manner and Time of Payment.

(a) The aggregate consideration ("Price") to be paid by the Clearing Corporation or the ROFR Participating Stockholder(s) (as applicable) for the shares of Stock purchased from any Stockholder upon the exercise of any right arising pursuant to Section 6 hereof (such shares being the "ROFR Shares") shall be an amount equal to the lowest of (i) the aggregate book value (as hereinafter determined) of the ROFR Shares, (ii) the total capital contribution paid to the Clearing Corporation by such selling Stockholder (and, if applicable, any previous Stockholder who transferred shares of Stock to such Stockholder) for or on account of the ROFR Shares, and (iii) for a right arising under Section 6(a) hereof, the Offered Price for the ROFR shares. For the purposes hereof, the total capital contribution paid by each of CBOE and NYSE MKT for its Stock shall be deemed to be \$30,333,333. The aggregate book value of the shares of Stock shall be determined as at

the end of the calendar month immediately preceding the month in which the relevant ROFR Notice or Purchase Election Notice (as applicable) is given. Such determination shall be made by the Clearing Corporation as promptly as possible based upon the unaudited financial statements of the Clearing Corporation in accordance with generally accepted accounting principles applied on a consistent basis. The Price as so determined by the Clearing Corporation shall be set forth in the Price notice required to be delivered by the Clearing Corporation in Section 6(f) of this Stockholders Agreement. The determination of the Price by the Clearing Corporation shall be conclusive, unless such selling Stockholder or a ROFR Participating Stockholder shall, within ten (10) days after the giving of such Price notice, file a written request with the Clearing Corporation for a determination of the Price by the independent certified public accountants of the Clearing Corporation based upon audited financial statements of the Clearing Corporation as at the end of such calendar month prepared in accordance with generally accepted accounting principles applied on a consistent basis, and such selling Stockholder or ROFR Participating Stockholder agrees to pay all fees and expenses incurred by the Clearing Corporation in connection with the preparation of such audited financial statements, in which case the determination by such independent certified public accountants shall be conclusive.

(b) The purchase and sale of any shares of Stock to be purchased upon the exercise of any right arising pursuant to Section 6 hereof shall take place on the date (the "Transfer Date") that is fifteen (15) days after the later of (i) the exercise of such right and (ii) the final determination of the Price (or if such date is not a business day for the Clearing Corporation, then on the next succeeding day which is a business day).

(c) On the Transfer Date, each Stockholder whose Stock is purchased by the Clearing Corporation or a ROFR Participating Stockholder (as applicable) shall surrender to the Clearing Corporation for cancellation (and in the case of a purchase by the ROFR Participating Stockholder, for issuance of new certificates in the name of such ROFR Participating Stockholder) the certificates representing all of the shares of its Stock, duly endorsed for transfer and with all requisite transfer and with all requisite transfer tax stamps attached or provided for, against payment of the Price by certified or bank cashier's check or by wire transfer of immediately available funds.

(d) The obligation of the Clearing Corporation to make payment of the Price to a Stockholder pursuant to the provisions of this Section 10 shall be subordinated to the claims of all other creditors of the Clearing Corporation, whether such claims arose before the exercise of the right or thereafter. During any period when the Clearing Corporation is obligated to pay for ROFR Shares prior to the Transfer Date, it shall not declare or pay any dividends, or purchase, redeem or otherwise acquire for value any Stock otherwise than pursuant to this

Stockholders Agreement, or make any distribution of its assets to any Stockholder, provided that the Clearing Corporation may purchase, redeem or otherwise acquire for value, Class C Stock in accordance with the terms of any other agreement as to which the Clearing Corporation and all of the Stockholders are parties and the Clearing Corporation may pay dividends in accordance with the Clearing Corporation's dividend policy.

(e) Any unpaid portion of the Price which the Clearing Corporation is obligated to pay need not, prior to the Transfer Date, be set aside or held in trust by the Clearing Corporation for the benefit of the Stockholder entitled thereto. If, on any Transfer Date, any certificate or certificates for shares of Stock being purchased by the Clearing Corporation pursuant to the provisions of this Stockholders Agreement shall not have been delivered to the Clearing Corporation duly endorsed with all requisite transfer tax stamps affixed or provided for, the Price payable for such shares shall be set aside by the Clearing Corporation or a ROFR Participating Stockholder, as the case may be, on the Transfer Date for the benefit of such transferring Stockholder, to be delivered to such Stockholder upon surrender of the certificate or certificates for the shares of Stock purchased. Thereafter, all rights of such transferring Stockholder with respect to all shares of its Stock and all obligations of such transferring Stockholder (in each case, in its capacity as a Stockholder) under any other agreement among such Stockholder and the Clearing Corporation shall automatically cease (except to the extent otherwise provided in such other

agreement), and the only right such Stockholder shall have with respect to such shares is the right to receive payment of the Price, in the amount determined as provided in this Section 10, and all such shares of Stock shall be deemed to be transferred (and in the case of transfer to the Clearing Corporation, no longer to be outstanding) as of the Transfer Date, regardless of whether the certificates representing such shares have been surrendered to the Clearing Corporation.

(f) In the case of the exercise by a ROFR Participating Stockholder of the Other Stockholders' ROFR's Right to purchase shares of Stock owned by any Stockholder, from and after the Transfer Date, such ROFR Participating Stockholder shall automatically assume and be liable for such ROFR Participating Stockholder's ROFR Participating Percentage of the rights and obligations of such transferring Stockholder under any other agreement as to which the Clearing Corporation and all of the Stockholders are parties. Although not required in order for the automatic transfer of such rights and liabilities of such transferring Stockholder to such ROFR Participating Stockholder to be effective, to further evidence such transfer of such rights and liabilities, the Clearing Corporation at its sole determination may require one or more acknowledgements of such automatic transfer in form and substance reasonably acceptable to the Clearing Corporation from such transferring Stockholder or purchasing ROFR Participating Stockholder as a condition to the Price being paid to such transferring Stockholder or the issuance of stock certificates to such purchasing ROFR Participating Stockholder for such transferred shares of Stock.

Section 11. Right of Stockholder to Transfer Shares Upon Non-Exercise by Clearing Corporation and Other Stockholders of Right of First Refusal to Purchase.

When the OCC ROFR Right or Other Stockholders' ROFR Right (if applicable) apply pursuant to the provisions of Section 6(a) of this Stockholders Agreement and the Clearing Corporation and other Stockholders (if applicable) fail to give notice in the manner and within the time prescribed by Section 7 of this Stockholders Agreement that they are exercising the OCC ROFR Right or Other Stockholders' ROFR Right (as applicable), then the Stockholder giving the ROFR Notice, upon the expiration of the Other Stockholders' ROFR Period, shall be free for a period of one hundred eighty (180) days after the expiration of the Other Stockholders' ROFR Period, to sell, assign, transfer or otherwise entirely dispose of all (but not less than all) of its shares of Stock to any person who, upon acquisition of such shares, meets the requirements of Section 1 of Article VIIA of the By-Laws of the Clearing Corporation; provided, however, that such shares shall, after such transfer or, if not so transferred, after the expiration of the period of one hundred eighty (180) days during which such Stockholder shall have been free to so transfer them, again become subject to all of the provisions (including Section 6(a)) of this Stockholders Agreement. The effectiveness of any transfer pursuant to this Section 11 shall be conditioned on (i) the transferee person assuming and being liable for the transferring Stockholder's rights and obligations under this Stockholders Agreement and any other agreement among the

transferring Stockholder (in its capacity as a stockholder of the Clearing Corporation) and the Clearing Corporation from and after the date of such transfer, and such transferee person executing and delivering to the Clearing Corporation such joinders (including a joinder to this Stockholders Agreement) and acknowledgements as the Clearing Corporation in its sole determination requires, in each case in form and substance reasonably acceptable to the Clearing Corporation and (ii) the transferring Stockholder executing and delivering to the Clearing Corporation one or more acknowledgements as the Clearing Corporation in its sole determination may require, each such acknowledgement in form and substance reasonably acceptable to the Clearing Corporation. Any purported transfer under this Section 11 that fails to comply with all of the requirements of this Section 11 shall be void and of no force or effect.

Section 12. Reserved.

Section 13. Term of Agreement.

This Stockholders Agreement shall remain in effect until terminated by the mutual agreement of the Clearing Corporation and each Stockholder.

Section 14. Restrictions on Issuance of Stock.

(a) The Clearing Corporation shall not issue any shares of Stock to any person unless such person has, at or before the issuance of such shares, become a party to this Stockholders Agreement by executing this Stockholders Agreement or by executing a Declaration of Endorsement and

Adoption of Stockholders Agreement, substantially in the form of Exhibit A hereto.

(b) Each certificate representing shares of Stock issued after the date hereof shall have conspicuously noted thereon, in addition to other legends which may be appropriate to reflect restrictions in the Certificate of Incorporation, the By-Laws or any other agreement, a legend in substantially the following form:

"Any pledge, hypothecation, sale, assignment, transfer or other encumbrance or disposition of the shares represented by this certificate is restricted under a Stockholders Agreement dated [February __], 2015, as the same may be amended or restated from time to time. The Corporation is not obligated to recognize any transfer of the shares represented by this certificate unless the terms of such Stockholders Agreement are strictly complied with. Such Stockholders Agreement also imposes restrictions on the voting of such shares. A copy of such Agreement is on file in the office of the Corporation."

Section 15. Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by first class registered mail, return receipt requested, postage and

registry fees prepaid and addressed as follows:

- (a) If to the Clearing Corporation:

The Options Clearing Corporation
One North Wacker Drive, Suite 500
Chicago, Illinois 60606

Attention: Secretary

- (b) If to CBOE:

Chicago Board Options Exchange, Incorporated
400 South LaSalle Street
Chicago, Illinois 60605

Attention: Secretary

- (c) If to ISE:

International Securities Exchange, LLC
60 Broad Street #26
New York, NY 10004

Attention: General Counsel

- (d) If to PHLX:

NASDAQ OMX PHLX LLC
One Liberty Plaza,
165 Broadway
New York, NY 10006

Attention: Secretary

- (d) If to NYSE MKT:

NYSE MKT LLC
20 Broad Street
New York, New York 10005

Attention: Secretary

(e) If to NYSE ARCA:

NYSE ARCA, INC.
20 Broad Street
New York, New York 10005

Attention: Secretary

(f) If to any other Stockholder, addressed
in the manner specified in writing by
the addressee.

Addresses may be changed by notice in writing signed by the addressee.

Section 16. Miscellaneous.

(a) This Stockholders Agreement shall be construed and enforced in accordance with and governed by the by the laws of the State of Delaware.

(b) Neither this Stockholders Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

(c) All of the terms of this Stockholders Agreement, whether so expressed or not, shall be binding upon the respective successors and permitted assigns of the parties hereto and shall inure to the benefit and be enforceable by the parties hereto and their respective successors and permitted assigns; provided that only the following assignments of terms of this Agreement shall be permitted:

(i) A Stockholder may only assign such Stockholder's rights and obligations under this Stockholders Agreement to a permitted transferee of

such Stockholder's shares of Stock (including, without limitation, to an Exempt Transferee of such Stockholder) in connection with a transfer of such shares of Stock.

(ii) The Clearing Corporation may only assign its rights under paragraph (b) or (d) of Section 6 hereof (together with any corresponding rights and obligations under Sections 6, 7 and 10 hereof), as then applicable. The Clearing Corporation may assign such rights to purchase all or a portion (such portion being the shares the Clearing Corporation does not intend to purchase itself) of the shares of Stock owned of record or beneficially by a Stockholder (the "Subject Stockholder"), and if the Clearing Corporation decides to so assign such rights (and any corresponding rights and obligations), the Clearing Corporation shall give written notice of such contemplated assignment to the other Stockholders (i.e., the Stockholders other than the Subject Stockholder) and the Subject Stockholder. Upon receipt of such written notice, each of the other Stockholders shall have the right (the "Assignment Participation Right") exercisable for a period of fifteen (15) days (the "Participation Decision Period") following the giving of such notice to purchase such other Stockholder's Assignment Participation Percentage of all, or the applicable assigned portion of, the shares of Stock owned of record or beneficially by the Subject Stockholder for the consideration and upon the terms set forth in Sections 7 and 10 hereof by delivering written notice of its decision to

exercise such right to the Subject Stockholder, the other Stockholders and the Clearing Corporation prior to the end of the Participation Decision Period. The "Assignment Participation Percentage" for each other Stockholder electing to exercise the Assignment Participation Right (each such electing other Stockholder being an "Assignment Participating Stockholder") shall be the percentage determined by dividing (i) the total number of issued and outstanding shares of Class A Stock and Class B Stock then owned of record by such Assignment Participating Stockholder by (ii) the total number of total issued and outstanding shares of Class A Stock and Class B Stock then owned of record by all of the Assignment Participating Stockholders, provided that the Assignment Participation Percentage for each Assignment Participating Stockholder may otherwise be agreed to in writing by all of the Assignment Participating Stockholders so long as such otherwise agreed to Assignment Participation Percentages of all of the Assignment Participating Stockholders total 100%. If none of the other Stockholders gives timely notice of the exercise of the Assignment Participation Right, the Clearing Corporation shall have the right to assign to an Exchange that, upon the acquisition of such Stock, meets the requirements of Section 1 of Article VIIA of the By-Laws of the Clearing Corporation, the right to purchase all or a portion of such shares of Stock of the Subject Stockholder for a period of one hundred eighty (180) days after the expiration of the Participation Decision Period;

provided, however, that such assignment right shall, after the expiration of such period, again become subject to this clause (ii) of Section 16(c) of this Stockholders Agreement.

Notwithstanding any other provision of this Stockholders Agreement, no transfer by any Stockholder of all of its Stock solely as a result of a merger, consolidation, reorganization, reincorporation, or sale of all or substantially all of its assets as a going concern, shall be deemed to be in violation of this Stockholders Agreement or to give rise to any rights in favor of the Clearing Corporation or the other Stockholders under Section 6 hereof, so long as the transferee, upon acquisition of such Stock, meets the requirements of Section 1 of Article VIIA of the By-Laws of the Clearing Corporation.

(d) In the event any one or more of the provisions contained in this Stockholders Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Stockholders Agreement, but this Stockholders Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

(e) The headings of this Stockholders Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

(f) Any reference in this Stockholders Agreement to any agreement, instrument or other document, including the Certificate of Incorporation and By-Laws, in each case shall mean such agreement, instrument or other document,

as amended, restated or otherwise modified from time to time pursuant to the terms thereof. Any reference in this Stockholders Agreement to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Exhibit referred to herein shall be construed with and as an integral part of this Stockholders Agreement to the same extent as if it were set forth verbatim herein. For purposes of this Stockholders Agreement, (i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” (ii) the word “or” is not exclusive and (iii) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Stockholders Agreement as a whole. Unless the context otherwise requires, references herein to Sections mean the Sections of this Stockholders Agreement. This Stockholders Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(g) This Stockholders Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this
Stockholders Agreement as of the day first above written.

THE OPTIONS CLEARING CORPORATION

By:

Name:

Title:

CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED

By:

Name:

Title:

INTERNATIONAL SECURITIES EXCHANGE,
LLC

By:

Name:

Title:

NASDAQ OMX PHLX LLC

By:

Name:

Title:

NYSE MKT LLC

By:

Name:

Title:

NYSE ARCA, INC.

By:

Name:

Title: