



February 1, 2019

**VIA ELECTRONIC MAIL**

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2018-015 Rule Certification**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 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 (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (“Exchange Act”). This rule filing, as subsequently amended,<sup>1</sup> has been 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**

The primary purpose of the proposed rule change is to: (1) reestablish the separation of the roles of Executive Chairman and Chief Executive Officer (“CEO”) and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC’s By-Laws that the Board of Directors (“Board”) elect a Chief Administrative Officer (“CAO”) and delete the references to a CAO throughout OCC’s By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. As described below, the proposed rule change amends multiple provisions of OCC’s By-Laws and Rules to effectuate the separation of the Executive Chairman and CEO roles

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<sup>1</sup> On December 20, 2018, OCC filed a proposed rule change with the SEC in connection with the proposed changes described herein (hereinafter referred to as the “Initial Filing”). See Securities Exchange Act Release No. 84939 (December 21, 2018), 83 FR 67762 (December 31, 2018) (SR-OCC-2018-015). On February 1, 2019, OCC filed Amendment No. 1 to SR-OCC-2018-015, which was primarily intended to correct a technical errors in Exhibits 5A and 5E of the Initial Filing. This filing discusses the proposed rule changes in the Initial Filing as amended by Amendment No. 1.

and the elimination of the CAO as a required officer. The proposed rule change also amends OCC's By-Laws to provide additional flexibility for the Management Director seat on the Board and makes conforming changes to several OCC charters to implement the above amendments.

The proposed changes to OCC's By-Laws, Rules, and other governing documents ("OCC Requirements") are attached as Exhibits 5A - 5G. Material proposed to be added to the OCC Requirements as currently in effect is marked by underlining. Material proposed to be deleted from the OCC Requirements as currently in effect is marked by strikethrough. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's By-Laws and Rules.<sup>2</sup>

## **Background**

OCC is proposing amendments to its By-Laws, Rules, and certain committee charters to effectuate several changes to its governance structure. First, OCC is seeking to reestablish the separation of the Executive Chairman and CEO roles at OCC and reallocate authority and responsibilities for each of the roles.<sup>3</sup> In connection with this separation, the proposed rule change also would provide that having a Management Director on the Board, which is currently filled by the Executive Chairman/CEO, is not required. In addition, the proposed rule change would remove the requirement from OCC's By-Laws that the Board elect a CAO and, consequently, delete the references to a CAO throughout OCC's By-Laws, Rules, and charters. The purpose of the proposed rule change is to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC's governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC's operation and, consequently, OCC's ability to serve Clearing Members and the markets for which it clears and settles transactions for the reasons set forth below. Because the proposed rule change would eliminate references to the CAO throughout OCC's By-Laws and Rules, the proposed rule change would permit delegation of authority by the CEO or Chief Operating Officer ("COO") in those instances where there are only two named officers. In those instances, OCC believes that delegation is appropriate to ensure that authority can be exercised if the CEO and COO are unavailable. Finally, the proposed rule change would make conforming changes throughout OCC's By-Laws, Rules, and certain Board charters to ensure consistency throughout those documents.

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<sup>2</sup> OCC's By-Laws and Rules can be found on OCC's public website at <http://optionsclearing.com/about/publications/bylaws.jsp>. OCC's Board and Board Committee Charters are also available on OCC's public website: <https://www.theocc.com/about/>.

<sup>3</sup> Prior to the creation of an officer with the title of "Chief Executive Officer," that function was performed by the President of OCC. See Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (stating that the President will also "serve as [CEO]").

OCC's Board, as an integral part of its oversight function, may be called upon to evaluate OCC's governance structure to assess potential ways in which that structure could be improved or enhanced. Consequently, OCC has made changes to its governance structure to promote the efficient and effective management of its business designed to support OCC's management.<sup>4</sup> More specifically, and most recently, in April 2017, OCC adopted a proposed rule change that made multiple changes to OCC's management structure ("2017 Amendments").<sup>5</sup> The 2017 Amendments amended OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and Performance Committee Charter ("CPC Charter"), Dividend Policy, and Refund Policy to address the organizational changes. At that time, the Board concluded that the changes represented enhancements to OCC's existing leadership structure that would promote OCC's more efficient management and operation. The changes were intended to be a temporary measure to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO. Consequently, OCC made a number of changes to OCC's management structure, including: (1) providing that the Executive Chairman would also serve as a newly-recognized CEO; (2) removing the President as a recognized officer of OCC; (3) providing that the Board would appoint the COO and a newly recognized CAO; (4) giving the COO and CAO authority to take certain actions or grant exceptions in instances where that authority had previously been granted to the President; (5) making conforming changes to OCC's Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the changes; and (6) separating the positions of Treasurer and Chief Financial Officer ("CFO").<sup>6</sup>

Following the adoption of the 2017 Amendments, the current management structure of OCC as set forth in its By-Laws requires election by the Board of: (1) an Executive Chairman, who in this

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<sup>4</sup> See, e.g., Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure); Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Provide that The Options Clearing Corporation's President Will be its Chief Operating Officer, and that the President Will Not be a Management Director); Securities Exchange Act Release No. 70076 (July 20, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (Order Approving Proposed Rule Change to Separate the Powers and Duties Currently Combined in the Officer of OCC's Chairman in Two Offices, Chairman and President, and Create an Additional Directorship to be Occupied By the President).

<sup>5</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

<sup>6</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002). The 2017 Amendments also made a number of administrative and clean-up edits to OCC's By-Laws and Rules. Id.

role also serves as CEO<sup>7</sup> and as a Management Director;<sup>8</sup> (2) a COO;<sup>9</sup> and (3) a CAO.<sup>10</sup> Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>11</sup> In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and the administration of its day to day affairs.”<sup>12</sup> These three positions (Executive Chairman/CEO, COO, and CAO) also are specifically identified in numerous provisions of OCC’s By-Laws and Rules that authorize these specific officers (and, in some instances, their delegates) to exercise decision-making involving various issues; however, because the roles of Executive Chairman and CEO are currently combined into a single individual, these provisions generally refer to that individual only in his capacity as Executive Chairman and do not use the term “Chief Executive Officer.”<sup>13</sup> The Board now believes that the OCC management team has been substantially enhanced with the installation of key new senior members,<sup>14</sup> and thus the OCC is well positioned to return to its previous leadership structure.

### **Proposed Changes to OCC’s Governance Structure**

As part of its oversight of OCC’s governance structure, the Board determined that certain aspects of the changes made as part of the 2017 Amendments should be modified to further enhance OCC’s governance structure and re-separate the roles of the Executive Chairman and CEO. Specifically, OCC is proposing to separate the roles of the Executive Chairman and the CEO, and thus create a separate CEO role, and reallocate responsibilities and authority between the two roles. With the addition of the CEO as a separate officer, OCC is proposing to remove the requirement that

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<sup>7</sup> See OCC By-Laws, Art. IV, Sec. 6(a) (“The Executive Chairman shall also serve as the Corporation’s Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation’s business and the of its day to day affairs.”).

<sup>8</sup> See OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.”).

<sup>9</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>10</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>11</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>12</sup> OCC By-Laws, Art. IV, Sec. 6(a).

<sup>13</sup> See, e.g., OCC Rule 305, OCC Rule 309, OCC Rule 609A, OCC Rule 1001, OCC Rule 1002.

<sup>14</sup> For example, starting in 2016, and throughout 2017, OCC’s senior leadership has been staffed with highly qualified and experienced executives capable of stabilizing and strengthening OCC’s operations and compliance posture. These include, among others, the hiring of a new President and Chief Operating Officer (April, 2017), a Chief Administrative Officer (September, 2016), a Chief Security Officer (May, 2017), a Chief Information Officer (May, 2017), a Chief Financial Officer (December, 2016), a Chief Compliance Officer (December, 2016), and a new head of government relations (September, 2016).

the Board elect a CAO and to delete the references to a CAO throughout the OCC Requirements. The proposed rule change would not amend the Board's overall authority to appoint officers; rather, it would create an obligation for the Board to elect a CEO who is separate from the Executive Chairman and would eliminate the requirement for the Board to elect a CAO.<sup>15</sup> In addition, OCC is proposing changes to the Management Director provisions of the By-Laws to reflect the separation of the Executive Chairman and CEO roles and to provide additional flexibility in the provisions concerning the Management Director.<sup>16</sup> Finally, the proposed rule change would amend the Board and certain committee charters to conform to the amendments to the By-Laws and Rules.

*(1) Separation of the Executive Chairman and CEO Roles*

The 2017 Amendments amended Article IV, Section 6 of OCC's By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman/CEO is responsible for all aspects of OCC's business and the day to day administration of its affairs that are not otherwise assigned to the COO or CAO.<sup>17</sup> This approach was adopted as part of the 2017 Amendments in part to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO and to provide flexibility and avoid concentrating responsibility in any single officer; thus, the COO and CAO assumed certain responsibilities that were previously assigned to the President.

OCC believes that at this time it would benefit from a separation of the functions of the Executive Chairman and CEO roles. Since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of officers' responsibilities with their skills and experience.<sup>18</sup> As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles. Under the proposed rule change, the Executive Chairman would retain responsibility for facilitating Board leadership and management oversight as well as

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<sup>15</sup> The By-Laws currently provide that: (i) "[t]he Board of Directors shall also elect a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, a Chief Administrative Officer, a Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election" and (ii) "[t]he Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation." See OCC By-Laws, Art. IV, Sec. 1

<sup>16</sup> The proposed rule change would also make non-substantive changes to the use of the term "Executive Chairman." The proposed rule change would define the term "Executive Chairman" and amend its use in certain provisions to ensure the term is used consistently throughout the By-Laws and Rules (for example, by replacing "Executive Chairman of the Corporation" with "Executive Chairman").

<sup>17</sup> Before the 2017 Amendments, the President was responsible for all aspects of OCC's business that did not report directly to the Executive Chairman and was responsible for the day to day administration of OCC's affairs in accordance with the directions of the Executive Chairman.

<sup>18</sup> See supra n. 14.

overseeing the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. The proposed rule change would provide several benefits to OCC. For example, the separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience, and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Article IV of the By-Laws generally sets forth the selection and authorities of OCC's officers and the Executive Chairman. Section 1 establishes the selection of the Executive Chairman by the Board, and provides that the Executive Chairman "shall be elected by the Board of Directors from among the full-time employees of the Corporation."<sup>19</sup> Because, as currently structured, the Executive Chairman also serves as CEO by virtue of his role as Executive Chairman, there is no separate provision in the By-Laws for selection or appointment of a CEO. Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>20</sup> In his role as CEO, the Executive Chairman is also "an officer responsible for all aspects of [OCC's] business and . . . its day to day affairs."<sup>21</sup>

The proposed rule change would amend Sections 6 and 8 of Article IV of the By-Laws to separate these functions and divide them between the Executive Chairman and the CEO. Under the proposed rule change, the Executive Chairman would be less involved in day to day management decisions of the type more typically made by an executive but would retain his role vis-à-vis the Board.<sup>22</sup> In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations.<sup>23</sup> The CEO will be responsible for all aspects of the OCC's business and of its day to day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that do not report directly to

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<sup>19</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>20</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>21</sup> OCC By-Laws, Art. IV, Sec. 6(a).

<sup>22</sup> Because the Executive Chairman would be less involved in day to day operational issues, the proposed rule change removes the requirement that the Executive Chairman must be selected from "among the full-time employees of OCC" to require only that the Executive Chairman be selected from "among the employees of OCC." This amendment would allow the Executive Chairman to be a part-time employee.

<sup>23</sup> Although the Chief Audit Executive will report administratively to the Executive Chairman, he or she will report functionally to the Audit Committee of the Board pursuant to the committee's charter.

the Executive Chairman.<sup>24</sup> The COO would administer the day to day affairs and business of the Corporation in accordance with the directions of the CEO.

In addition to establishing separate By-Law provisions addressing the selection and roles of the Executive Chairman and CEO, there are numerous provisions throughout OCC's By-Laws and Rules that the proposed rule change would amend to change the list of officers authorized to act under the relevant provision. In each case, the proposed rule change would remove the CAO from the list of officers because the office of CAO would no longer be required by OCC's By-Laws. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. Specifically, the proposed rule change would replace the reference to the Executive Chairman with the CEO in the following By-Law and Rule provisions:

- Approval of a bank or trust company as an approved custodian (By-Laws, Art. I, Sec. 1)
- Ability to delegate authority to Designated Officers (By-Laws, Art. I, Sec. 1)
- Temporary appointment of a controller/chief accounting officer (By-Laws, Art. IV, Sec. 12)
- Temporary approval of a Clearing Member application if expedited treatment is requested (By-Laws, Art. V, Sec. 1)
- Limited delegation of authority to approve Clearing Member applications (By-Laws, Art. V, Sec. 2)
- Authority to extend the deadline to meet membership conditions (By-Laws, Art. V, Sec. 3.01)
- Ability to impose exercise restrictions (By-Laws, Art. VI, Sec. 17.01)
- Restricting certain Clearing Member transactions, positions, and activities (Rule 305)
- Imposing limitations on Managing Clearing Members with insufficient net capital (Rule 309)
- Temporarily approving a facilities management agreement (Rule 309.01, 309.02)
- Imposing limitations or restrictions on Appointed Clearing Members with insufficient net capital (Rule 309A)
- Temporarily accepting a letter of credit that does not meet rule requirements as a margin asset under unusual circumstances (Rule 604)
- Permitting filing of an exercise notice after the deadline to correct a bona fide error (Rule 801)
- Requiring reports regarding exercise allocation under certain circumstances (Rule 804)
- Remitting a filing fee (Rule 805)

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<sup>24</sup> Although the Chief Compliance Officer would report administratively to the CEO, he or she would continue to report functionally to the Audit Committee of the Board pursuant to the Audit Committee charter. Similarly, the Chief Risk Officer would report administratively to the CEO; however, he or she would continue to report functionally to the Risk Committee of the Board pursuant to the Risk Committee charter.

- Extending or postponing the time for delivery to a date regarding settlements to be made through the facilities of the correspondent clearing corporation (Rule 901)
- Extending or postponing the time for delivery on broker-to-broker settlements (Rule 903)
- Determining whether good cause exists for failure to deliver or receive (Rule 1309)
- Extending or postponing the exercise settlement date for Treasury security options (Rule 1402)
- Determining whether good cause exists for a failure to match (Rule 1405)
- Advancing or postponing the exercise settlement date for foreign currency options (Rule 1604)
- Determining whether good cause exists for failure to deliver or pay (Rule 1610).

These provisions generally involve more routine day to day business decisions or are, by their terms, temporary. Consequently, OCC believes these provisions are therefore more appropriately authorized by a member of management such as the CEO or COO rather than at the Board level by the Executive Chairman.

With respect to other provisions, the proposed rule change would add the CEO as an authorized officer but would not remove the authority of the Executive Chairman to act. These provisions include:

- those related to declaring and acting in an emergency (By-Laws, Art. III, Sec. 15; Art. IX, Sec. 14)
- the ability to appoint officers, including Vice Presidents (By-Laws, Art. IV, Secs. 2, 3 and 9)
- the suspension of Clearing Members (By-Laws, Art. IV, Sec. 6)
- signing OCC share certificates (By-Laws, Art. IX, Sec. 12)
- extending settlements (Rule 505)
- waiving margin in extraordinary circumstances (Rule 609A)
- increasing the size or amount of cash in the clearing fund (Rules 1001, 1002)
- determining reasonable methods to borrow or obtain funds using clearing fund assets (Rule 1006)
- determining not to liquidate a Clearing Member's assets (Rule 1104)
- the use of private auctions to liquidate a suspended Clearing Member's assets (Rule 1104.02)
- determining not to liquidate a suspended Clearing Member's assets or take protective actions (Rule 1106).

OCC believes that these provisions should continue to include the Executive Chairman as an authorized individual to maintain appropriate flexibility in these critical decisions, which primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day to day activities (e.g., signing OCC



share certificates), so that management has the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.

*(2) Elimination of a Mandatory CAO*

In addition to separating the roles of the Executive Chairman and CEO, the proposed rule change would eliminate the requirement in the By-Laws for the Board to elect a CAO. As part of the 2017 Amendments, the By-Laws require the Board to elect both a COO and a CAO.<sup>25</sup> The 2017 Amendments added the requirement of a CAO in part to ensure flexibility and avoid concentration of authority and responsibility in any one officer.<sup>26</sup> As discussed above, with the separation of the Executive Chairman and CEO roles to establish a separate CEO, the need for a CAO to ensure sufficient flexibility is no longer necessary. Consequently, the proposed rule change would eliminate the requirement for the Board to elect a CAO; however, OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation."<sup>27</sup> Finally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two, the proposed rule change would allow the CEO and COO to delegate authority to certain "Designated Officers" if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher<sup>28</sup> and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

The ability to have multiple officers (and, in some instances, their delegates) authorized to take action and assume responsibility helps to ensure that responsibility is not concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day to day affairs even if a particular officer is absent or is otherwise unable to perform his or her duties. Consequently, although the proposed rule change would eliminate the CAO as a required officer, the separation of the Executive Chairman and CEO roles would create another officer; thus, there will generally remain multiple officers authorized to act and assume responsibility (i.e., the CEO and COO), which will retain the current level of flexibility.

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<sup>25</sup> See OCC By-Laws, Art. IV, Sec. 8.

<sup>26</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

<sup>27</sup> OCC By-Laws, Art. IV, Sec. 1.

<sup>28</sup> OCC notes that such delegations would therefore be limited to Senior Vice Presidents and Executive Vice Presidents of OCC.

*(3) Amendments to the Management Director Provisions in OCC's By-Laws*

Article III of OCC's By-Laws mandates that the Board include one "Management Director" and that the Executive Chairman be elected to fill that seat.<sup>29</sup> In light of the changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to this Board seat. Although the concept of a Management Director would be retained, the proposed rule change would amend the By-Laws to provide a wider degree of flexibility. Specifically, the proposed rule change would amend the By-Laws to: (1) allow, but not require, a Management Director on the Board; and (2) eliminate the requirement that the Management Director also be the Executive Chairman.

OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.

*(4) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC is also proposing to make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter ("AC Charter"); (3) CPC Charter; (4) Governance and Nominating Committee Charter ("GNC Charter"); and (5) Risk Committee Charter ("RC Charter").<sup>30</sup>

OCC is proposing to amend the Board Charter to remove the references to the CAO and to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the removal of the CEO's role in certain Board matters due the CEO position no longer being linked to the position of Executive Chairman. In addition, OCC is proposing to conform the description of the Management Director in the Board Charter to the changes described in the proposed rule change.

OCC is also proposing to amend the AC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the AC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Compliance Officer would report administratively to the CEO and functionally to the Audit Committee, and OCC's Chief Audit Executive would report administratively to the Executive

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<sup>29</sup> See OCC By-Laws, Art. III, Sec. 1 ("The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, five Public Directors, and one Management Director."); see also OCC By-Laws, Art. III, Sec. 7 ("The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.").

<sup>30</sup> OCC notes that there would be no changes to its Technology Committee Charter.

Chairman and functionally to the Audit Committee. The proposed changes would further clarify that the Audit Committee would consult with the Executive Chairman in reviewing the performance of the Internal Audit function and the Chief Audit Executive and consult with the CEO in reviewing the performance of the Compliance function and Chief Compliance Officer.

OCC is also proposing to amend the CPC Charter and the GNC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the elimination of CAO as a required officer of OCC.

Finally, OCC is proposing to amend the RC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the RC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Risk Officer will report administratively to the CEO and functionally to the Risk Committee.

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

**Governance fitness standards.** OCC believes that implementing the proposed rule change would be aligned with the requirement in Core Principle O<sup>31</sup> that each DCO establish governance arrangements that are transparent to fulfill public interest requirements and permit the consideration of the views of owners and participants. The proposed rule change would amend OCC's By-Laws, Rules, and charters, which are publicly available documents, to provide explicit, clear, and transparent statements of the responsibilities and authority of the newly separated Executive Chairman and CEO roles (and the elimination of a required CAO) and direct reporting lines thereunder within the overall management structure of OCC. For example, the proposed rule change would explicitly state that the Executive Chairman would oversee the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. Moreover, in those instances where the elimination of the CAO role reduces the number of individuals authorized to take certain actions, the proposed rule change would provide a clear and transparent mechanism for the CEO and COO to delegate authority to certain Designated Officers if the CEO and COO were unavailable to exercise the authority. Additionally, the proposed changes to provide additional flexibility regarding the Management Director role would also be clearly and transparently described in OCC's By-Laws and Board Charter.

Taken together, the proposed changes would not diminish the organizational efficiency and flexibility of OCC's leadership arrangements nor would it increase or decrease the existing scope and responsibilities of officer authority; rather, it would reallocate those responsibilities and

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<sup>31</sup> 7 U.S.C. 7a-1(c)(2)(O).

authorities among different officers. Moreover, OCC's executive management team would continue to be subject to the oversight of OCC's Board and its various committees and the Board's mandate under its charter to exercise its authority to provide for governance arrangements that: are clear and transparent; clearly prioritize the safety and efficiency of OCC; support applicable public interest requirements and the objectives of owners and participants; establish that senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of clearing members' customers, securities issuers and holders, and other relevant stakeholders.

For these reasons, OCC believes the proposed rule change is consistent with Core Principle O.<sup>32</sup>

**Public Information.** OCC believes that implementing the proposed rule change will be aligned with the requirement in Core Principle L<sup>33</sup> that each DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO. Upon implementation, OCC will post the amended By-Laws, Rules, and Board and Committee Charters on its public website thereby providing the public with relevant information regarding OCC's governance arrangements and thereby providing market participants with information to identify and evaluate OCC's governance 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.

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<sup>32</sup> Id.

<sup>33</sup> 7 U.S.C. 7a-1(c)(2)(L).

Christopher J. Kirkpatrick  
February 1, 2019  
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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,



Justin W. Byrne  
Vice President, Regulatory Filings

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 124	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 015	Amendment No. (req. for Amendments *)
Filing by Options Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change concerning changes to The Options Clearing Corporation's management structure."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Justin"/>	Last Name *	<input type="text" value="Byrne"/>	
Title *	<input type="text" value="Vice Presidents, Regulatory Filings"/>			
E-mail *	<input type="text" value="jbyrne@theocc.com"/>			
Telephone *	<input type="text" value="(202) 971-7238"/>	Fax	<input type="text" value="(312) 322-6280"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="12/20/2018"/>	<input type="text" value="Vice President, Regulatory Filings"/>		
By	<input type="text" value="Justin W. Byrne"/>	<input type="text" value="Justin W. Byrne"/>		
(Name *)		<input type="text" value="Justin W. Byrne"/>		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="Justin Byrne, jbyrne@theocc.com"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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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 Proposed Rule Change**

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Options Clearing Corporation (“OCC” or the “Corporation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to: (1) reestablish the separation of the roles of Executive Chairman and Chief Executive Officer (“CEO”) and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC’s By-Laws that the Board of Directors (“Board”) elect a Chief Administrative Officer (“CAO”) and delete the references to a CAO throughout OCC’s By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. As described below, the proposed rule change amends multiple provisions of OCC’s By-Laws and Rules to effectuate the separation of the Executive Chairman and CEO roles and the elimination of the CAO as a required officer. The proposed rule change also amends OCC’s By-Laws to provide additional flexibility for the Management Director seat on the Board and makes conforming changes to several OCC charters to implement the above amendments.

The proposed changes to OCC’s By-Laws, Rules, and other governing documents (“OCC Requirements”) are attached as Exhibits 5A - 5G. Material proposed to be added to the OCC Requirements as currently in effect is marked by underlining. Material proposed to be deleted from the OCC Requirements as currently in effect is marked by strikethrough. All terms with

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

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

initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's By-Laws and Rules.<sup>3</sup>

**Item 2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved for filing with the Commission by the Board of Directors of OCC at a meeting held on December 12, 2018. On December 12, 2018, the holders of all of the outstanding common stock of OCC unanimously consented to the proposed amendments in Article III and in Section 11 of Article VI in accordance with Article XI of OCC's By-Laws.<sup>4</sup>

Questions should be addressed to Megan Malone Cohen, FVP, Associate General Counsel and Corporate Secretary at (312) 322-4467.

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

A. Purpose

OCC is proposing amendments to its By-Laws, Rules, and certain committee charters to effectuate several changes to its governance structure. First, OCC is seeking to reestablish the separation of the Executive Chairman and CEO roles at OCC and allocate authority and responsibilities for each of the roles.<sup>5</sup> In connection with this separation, the proposed rule

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<sup>3</sup> OCC's By-Laws and Rules can be found on OCC's public website at <http://optionsclearing.com/about/publications/bylaws.jsp>. OCC's Board and Board Committee Charters are also available on OCC's public website: <https://www.theocc.com/about/>.

<sup>4</sup> See OCC By-Laws, Art. XI, Sec. 1 (specifying the By-Law provisions that require stockholder approval).

<sup>5</sup> Prior to the creation of an officer with the title of "Chief Executive Officer," that function was performed by the President of OCC. See Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (stating that the President will also "serve as [CEO]").

change also would provide that having a Management Director on the Board, which is currently filled by the Executive Chairman/CEO, is not required. In addition, the proposed rule change would remove the requirement from OCC's By-Laws that the Board elect a CAO and, consequently, delete the references to a CAO throughout OCC's By-Laws, Rules, and charters. The purpose of the proposed rule change is to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC's governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC's operation and, consequently, OCC's ability to serve Clearing Members and the markets for which it clears and settles transactions for the reasons set forth below. Because the proposed rule change would eliminate references to the CAO throughout OCC's By-Laws and Rules, the proposed rule change would permit delegation of authority by the CEO or Chief Operating Officer ("COO") in those instances where there are only two named officers. In those instances, OCC believes that delegation is appropriate to ensure that authority can be exercised if the CEO and COO are unavailable. Finally, the proposed rule change would make conforming changes throughout OCC's By-Laws, Rules, and certain Board charters to ensure consistency throughout those documents.

### **Background**

OCC's Board, as an integral part of its oversight function, may be called upon to evaluate OCC's governance structure to assess potential ways in which that structure could be improved or enhanced. Consequently, OCC has made changes to its governance structure to promote the

efficient and effective management of its business designed to support OCC's management.<sup>6</sup>

More specifically, and most recently, on April 26, 2017, the SEC approved a proposed rule change that made multiple changes to OCC's management structure ("2017 Amendments").<sup>7</sup>

The 2017 Amendments amended OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and Performance Committee Charter ("CPC Charter"), Dividend Policy, and Refund Policy to address the organizational changes. At that time, the Board concluded that the changes represented enhancements to OCC's existing leadership structure that would promote OCC's more efficient management and operation. The changes were intended to be a temporary measure to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO. Consequently, OCC proposed, and the SEC approved, a number of changes to OCC's management structure, including: (1) providing that the Executive Chairman would also serve as a newly-recognized CEO; (2) removing the President as a recognized officer of OCC; (3) providing that the Board would appoint the COO and a newly recognized CAO; (4) giving the COO and CAO authority to take certain actions or

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<sup>6</sup> See, e.g., Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure); Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Provide that The Options Clearing Corporation's President Will be its Chief Operating Officer, and that the President Will Not be a Management Director); Securities Exchange Act Release No. 70076 (July 20, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (Order Approving Proposed Rule Change to Separate the Powers and Duties Currently Combined in the Officer of OCC's Chairman in Two Offices, Chairman and President, and Create an Additional Directorship to be Occupied By the President).

<sup>7</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

grant exceptions in instances where that authority had previously been granted to the President; (5) making conforming changes to OCC's Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the changes; and (6) separating the positions of Treasurer and Chief Financial Officer ("CFO").<sup>8</sup>

Following the SEC's approval of the 2017 Amendments, the current management structure of OCC as set forth in its By-Laws requires election by the Board of: (1) an Executive Chairman, who in this role also serves as CEO<sup>9</sup> and as a Management Director;<sup>10</sup> (2) a COO,<sup>11</sup> and (3) a CAO.<sup>12</sup> Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>13</sup> In his role as CEO, the Executive Chairman is also "an officer responsible for all aspects of [OCC's] business and the administration of its day to day affairs."<sup>14</sup> These three positions (Executive Chairman/CEO, COO, and CAO) also are specifically identified in numerous provisions of OCC's By-Laws and Rules that authorize these specific officers (and, in some instances, their

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<sup>8</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002). The 2017 Amendments also made a number of administrative and clean-up edits to OCC's By-Laws and Rules. Id.

<sup>9</sup> See OCC By-Laws, Art. IV, Sec. 6(a) ("The Executive Chairman shall also serve as the Corporation's Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation's business and the of its day to day affairs.").

<sup>10</sup> See OCC By-Laws, Art. III, Sec. 7 ("The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.").

<sup>11</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>12</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>13</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>14</sup> OCC By-Laws, Art. IV, Sec. 6(a).

delegates) to exercise decision-making involving various issues; however, because the roles of Executive Chairman and CEO are currently combined into a single individual, these provisions generally refer to that individual only in his capacity as Executive Chairman and do not use the term “Chief Executive Officer.”<sup>15</sup> The Board now believes that the OCC management team has been substantially enhanced with the installation of key new senior members,<sup>16</sup> and thus the OCC is well positioned to return to its previous leadership structure.

### **Proposed Changes to OCC’s Governance Structure**

As part of its oversight of OCC’s governance structure, the Board determined that certain aspects of the changes made as part of the 2017 Amendments should be modified to further enhance OCC’s governance structure and re-separate the roles of the Executive Chairman and CEO. Specifically, OCC is proposing to separate the roles of the Executive Chairman and the CEO, and thus create a separate CEO role, and reallocate responsibilities and authority between the two roles. With the addition of the CEO as a separate officer, OCC is proposing to remove the requirement that the Board elect a CAO and to delete the references to a CAO throughout the OCC Requirements. The proposed rule change would not amend the Board’s overall authority to appoint officers; rather, it would create an obligation for the Board to elect a CEO who is separate from the Executive Chairman and would eliminate the requirement for the Board to

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<sup>15</sup> See, e.g., OCC Rule 305, OCC Rule 309, OCC Rule 609A, OCC Rule 1001, OCC Rule 1002.

<sup>16</sup> For example, starting in 2016, and throughout 2017, OCC’s senior leadership has been staffed with highly qualified and experienced executives capable of stabilizing and strengthening OCC’s operations and compliance posture. These include, among others, the hiring of a new President and Chief Operating Officer (April, 2017), a Chief Administrative Officer (September, 2016), a Chief Security Officer (May, 2017), a Chief Information Officer (May, 2017), a Chief Financial Officer (December, 2016), a Chief Compliance Officer (December, 2016), and a new head of government relations (September, 2016).

elect a CAO.<sup>17</sup> In addition, OCC is proposing changes to the Management Director provisions of the By-Laws to reflect the separation of the Executive Chairman and CEO roles and to provide additional flexibility in the provisions concerning the Management Director.<sup>18</sup> Finally, the proposed rule change would amend the Board and certain committee charters to conform to the amendments to the By-Laws and Rules.

*(1) Separation of the Executive Chairman and CEO Roles*

The 2017 Amendments amended Article IV, Section 6 of OCC's By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman/CEO is responsible for all aspects of OCC's business and the day to day administration of its affairs that are not otherwise assigned to the COO or CAO.<sup>19</sup> This approach was adopted as part of the 2017 Amendments in part to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO and to provide flexibility and avoid concentrating responsibility in any single officer; thus, the COO and CAO assumed certain responsibilities that were previously assigned to the President.

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<sup>17</sup> The By-Laws currently provide that: (i) "[t]he Board of Directors shall also elect a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, a Chief Administrative Officer, a Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election" and (ii) "[t]he Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation." See OCC By-Laws, Art. IV, Sec. 1

<sup>18</sup> The proposed rule change would also make non-substantive changes to the use of the term "Executive Chairman." The proposed rule change would define the term "Executive Chairman" and amend its use in certain provisions to ensure the term is used consistently throughout the By-Laws and Rules (for example, by replacing "Executive Chairman of the Corporation" with "Executive Chairman").

<sup>19</sup> Before the 2017 Amendments, the President was responsible for all aspects of OCC's business that did not report directly to the Executive Chairman and was responsible for the day to day administration of OCC's affairs in accordance with the directions of the Executive Chairman.

OCC believes that at this time it would benefit from a separation of the functions of the Executive Chairman and CEO roles. Since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of officers' responsibilities with their skills and experience.<sup>20</sup> As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles. Under the proposed rule change, the Executive Chairman would retain responsibility for facilitating Board leadership and management oversight as well as overseeing the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. The proposed rule change would provide several benefits to OCC. For example, the separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience, and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Article IV of the By-Laws generally sets forth the selection and authorities of OCC's officers and the Executive Chairman. Section 1 establishes the selection of the Executive Chairman by the Board, and provides that the Executive Chairman "shall be elected by the Board

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<sup>20</sup> See supra n. 16.



of Directors from among the full-time employees of the Corporation.”<sup>21</sup> Because, as currently structured, the Executive Chairman also serves as CEO by virtue of his role as Executive Chairman, there is no separate provision in the By-Laws for selection or appointment of a CEO. Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>22</sup> In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and . . . its day to day affairs.”<sup>23</sup>

The proposed rule change would amend Sections 6 and 8 of Article IV of the By-Laws to separate these functions and divide them between the Executive Chairman and the CEO. Under the proposed rule change, the Executive Chairman would be less involved in day to day management decisions of the type more typically made by an executive but would retain his role vis-à-vis the Board.<sup>24</sup> In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations.<sup>25</sup> The CEO will be responsible for all aspects of the OCC’s business and of its day to day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that

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<sup>21</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>22</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>23</sup> OCC By-Laws, Art. IV, Sec. 6(a).

<sup>24</sup> Because the Executive Chairman would be less involved in day to day operational issues, the proposed rule change removes the requirement that the Executive Chairman must be selected from “among the full-time employees of OCC” to require only that the Executive Chairman be selected from “among the employees of OCC.” This amendment would allow the Executive Chairman to be a part-time employee.

<sup>25</sup> Although the Chief Audit Executive will report administratively to the Executive Chairman, he or she will report functionally to the Audit Committee of the Board pursuant to the committee’s charter.

do not report directly to the Executive Chairman.<sup>26</sup> The COO would administer the day to day affairs and business of the Corporation in accordance with the directions of the CEO.

In addition to establishing separate By-Law provisions addressing the selection and roles of the Executive Chairman and CEO, there are numerous provisions throughout OCC's By-Laws and Rules that the proposed rule change would amend to change the list of officers authorized to act under the relevant provision. In each case, the proposed rule change would remove the CAO from the list of officers because the office of CAO would no longer be required by OCC's By-Laws. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. Specifically, the proposed rule change would replace the reference to the Executive Chairman with the CEO in the following By-Law and Rule provisions:

- Approval of a bank or trust company as an approved custodian (By-Laws, Art. I, Sec. 1)
- Ability to delegate authority to Designated Officers (By-Laws, Art. I, Sec. 1)
- Temporary appointment of a controller/chief accounting officer (By-Laws, Art. IV, Sec. 12)
- Temporary approval of a Clearing Member application if expedited treatment is requested (By-Laws, Art. V, Sec. 1)
- Limited delegation of authority to approve Clearing Member applications (By-Laws, Art. V, Sec. 2)
- Authority to extend the deadline to meet membership conditions (By-Laws, Art. V, Sec. 3.01)

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<sup>26</sup> Although the Chief Compliance Officer would report administratively to the CEO, he or she would continue to report functionally to the Audit Committee of the Board pursuant to the Audit Committee charter. Similarly, the Chief Risk Officer would report administratively to the CEO; however, he or she would continue to report functionally to the Risk Committee of the Board pursuant to the Risk Committee charter.

- Ability to impose exercise restrictions (By-Laws, Art. VI, Sec. 17.01)
- Restricting certain Clearing Member transactions, positions, and activities (Rule 305)
- Imposing limitations on Managing Clearing Members with insufficient net capital (Rule 309)
- Temporarily approving a facilities management agreement (Rule 309.01, 309.02)
- Imposing limitations or restrictions on Appointed Clearing Members with insufficient net capital (Rule 309A)
- Temporarily accepting a letter of credit that does not meet rule requirements as a margin asset under unusual circumstances (Rule 604)
- Permitting filing of an exercise notice after the deadline to correct a bona fide error (Rule 801)
- Requiring reports regarding exercise allocation under certain circumstances (Rule 804)
- Remitting a filing fee (Rule 805)
- Extending or postponing the time for delivery to a date regarding settlements to be made through the facilities of the correspondent clearing corporation (Rule 901)
- Extending or postponing the time for delivery on broker-to-broker settlements (Rule 903)
- Determining whether good cause exists for failure to deliver or receive (Rule 1309)
- Extending or postponing the exercise settlement date for Treasury security options (Rule 1402)
- Determining whether good cause exists for a failure to match (Rule 1405)
- Advancing or postponing the exercise settlement date for foreign currency options (Rule 1604)
- Determining whether good cause exists for failure to deliver or pay (Rule 1610).

These provisions generally involve more routine day to day business decisions or are, by their terms, temporary. Consequently, OCC believes these provisions are therefore more

appropriately authorized by a member of management such as the CEO or COO rather than at the Board level by the Executive Chairman.

With respect to other provisions, the proposed rule change would add the CEO as an authorized officer but would not remove the authority of the Executive Chairman to act. These provisions include:

- those related to declaring and acting in an emergency (By-Laws, Art. III, Sec. 15; Art. IX, Sec. 14)
- the ability to appoint officers, including Vice Presidents (By-Laws, Art. IV, Secs. 2, 3 and 9)
- the suspension of Clearing Members (By-Laws, Art. IV, Sec. 6)
- signing OCC share certificates (By-Laws, Art. IX, Sec. 12)
- extending settlements (Rule 505)
- waiving margin in extraordinary circumstances (Rule 609A)
- increasing the size or amount of cash in the clearing fund (Rules 1001, 1002)
- determining reasonable methods to borrow or obtain funds using clearing fund assets (Rule 1006)
- determining not to liquidate a Clearing Member's assets (Rule 1104)
- the use of private auctions to liquidate a suspended Clearing Member's assets (Rule 1104.02)
- determining not to liquidate a suspended Clearing Member's assets or take protective actions (Rule 1106).

OCC believes that these provisions should continue to include the Executive Chairman as an authorized individual to maintain appropriate flexibility in these critical decisions, which

primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day to day activities (e.g., signing OCC share certificates), so that management has the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.

*(2) Elimination of a Mandatory CAO*

In addition to separating the roles of the Executive Chairman and CEO, the proposed rule change would eliminate the requirement in the By-Laws for the Board to elect a CAO. As part of the 2017 Amendments, the By-Laws require the Board to elect both a COO and a CAO.<sup>27</sup> The 2017 Amendments added the requirement of a CAO in part to ensure flexibility and avoid concentration of authority and responsibility in any one officer.<sup>28</sup> As discussed above, with the separation of the Executive Chairman and CEO roles to establish a separate CEO, the need for a CAO to ensure sufficient flexibility is no longer necessary. Consequently, the proposed rule change would eliminate the requirement for the Board to elect a CAO; however, OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation."<sup>29</sup> Finally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two, the proposed rule change would allow the CEO and COO to delegate authority to certain

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<sup>27</sup> See OCC By-Laws, Art. IV, Sec. 8.

<sup>28</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

<sup>29</sup> OCC By-Laws, Art. IV, Sec. 1.

“Designated Officers” if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher<sup>30</sup> and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

The ability to have multiple officers (and, in some instances, their delegates) authorized to take action and assume responsibility helps to ensure that responsibility is not concentrated in any one officer, that OCC’s affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC’s business and day to day affairs even if a particular officer is absent or is otherwise unable to perform his or her duties. Consequently, although the proposed rule change would eliminate the CAO as a required officer, the separation of the Executive Chairman and CEO roles would create another officer; thus, there will generally remain multiple officers authorized to act and assume responsibility (i.e., the CEO and COO), which will retain the current level of flexibility.

*(3) Amendments to the Management Director Provisions in OCC’s By-Laws*

Article III of OCC’s By-Laws mandates that the Board include one “Management Director” and that the Executive Chairman be elected to fill that seat.<sup>31</sup> In light of the changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to

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<sup>30</sup> OCC notes that such delegations would therefore be limited to Senior Vice Presidents and Executive Vice Presidents of OCC.

<sup>31</sup> See OCC By-Laws, Art. III, Sec. 1 (“The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, five Public Directors, and one Management Director.”); see also OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.”).

provide flexibility with respect to this Board seat. Although the concept of a Management Director would be retained, the proposed rule change would amend the By-Laws to provide a wider degree of flexibility. Specifically, the proposed rule change would amend the By-Laws to: (1) allow, but not require, a Management Director on the Board; and (2) eliminate the requirement that the Management Director also be the Executive Chairman.

OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.

*(4) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC is also proposing to make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter (“AC Charter”); (3) CPC Charter; (4) Governance and Nominating Committee Charter (“GNC Charter”); and (5) Risk Committee Charter (“RC Charter”).<sup>32</sup>

OCC is proposing to amend the Board Charter to remove the references to the CAO and to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the removal of the CEO’s role in certain Board matters due the CEO position no longer being linked to the position of Executive Chairman. In addition, OCC is proposing to conform the description of the Management Director in the Board Charter to the changes described in the proposed rule change.

OCC is also proposing to amend the AC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each

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<sup>32</sup> OCC notes that there would be no changes to its Technology Committee Charter.

has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the AC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Compliance Officer would report administratively to the CEO and functionally to the Audit Committee, and OCC's Chief Audit Executive would report administratively to the Executive Chairman and functionally to the Audit Committee. The proposed changes would further clarify that the Audit Committee would consult with the Executive Chairman in reviewing the performance of the Internal Audit function and the Chief Audit Executive and consult with the CEO in reviewing the performance of the Compliance function and Chief Compliance Officer.

OCC is also proposing to amend the CPC Charter and the GNC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the elimination of CAO as a required officer of OCC.

Finally, OCC is proposing to amend the RC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the RC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Risk Officer will report administratively to the CEO and functionally to the Risk Committee.



B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>33</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible.<sup>34</sup> Rule 17Ad-22(e)(2) further requires, in part, that each registered clearing agency have governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.<sup>35</sup>

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act and the rules thereunder because it is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transaction for which it is responsible. By implementing certain leadership changes intended to promote OCC's efficient management and operation, OCC believes it enhances its organization and its ability to operate effectively and efficiently. Specifically, OCC believes that by reallocating certain responsibilities currently held by the Executive Chairman/CEO to two individuals, those responsibilities would be less concentrated in a single individual. As noted above, since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of officers'

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<sup>33</sup> 15 U.S.C. 78q-1.

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>35</sup> 17 CFR 17Ad-22(e)(2).

responsibilities with their skills and experience.<sup>36</sup> As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles so that the Executive Chairman would remain focused on facilitating Board leadership and management oversight as well as overseeing the work of internal audit, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. OCC believes the proposed separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Moreover, by separating the Executive Chairman and CEO roles to establish a separate CEO, OCC believes it is no longer necessary for its By-Laws to explicitly require a CAO to ensure sufficient flexibility in its management structure. OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation."<sup>37</sup> Additionally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two, the proposed rule change would allow the CEO and COO to delegate authority to certain delegated officers if the CEO and COO

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<sup>36</sup> See supra n. 16.

<sup>37</sup> OCC By-Laws, Art. IV, Sec. 1.

were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

As discussed above, in light of the changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to the Management Director seat on the Board. The proposed rule change would provide a wider degree of flexibility by allowing, but not requiring, a Management Director on the Board and eliminating the requirement that the Management Director also be the Executive Chairman. These changes would create more flexibility for filling the role of Management Director and more easily accommodate potential future scenarios.

For the reasons set forth above, OCC believes the proposed rule change is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transaction for which it is responsible consistent with the requirements of Section 17A(b)(3)(A) of the Act.<sup>38</sup>

Rule 17Ad-22(e)(2) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.<sup>39</sup> The proposed rule change would amend OCC's By-Laws, Rules, and charters, which are publicly available documents, to provide explicit, clear, and transparent statements of the responsibilities and

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<sup>38</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>39</sup> 17 CFR 17Ad-22(e)(2)(i) and (v).

authority of the newly separated Executive Chairman and CEO roles (and the elimination of a required CAO) and direct reporting lines thereunder within the overall management structure of OCC. For example, the proposed rule change would explicitly state that the Executive Chairman would oversee the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. Moreover, in those instances where the elimination of the CAO role reduces the number of individuals authorized to take certain actions, the proposed rule change would provide a clear and transparent mechanism for the CEO and COO to delegate authority to certain Designated Officers if the CEO and COO were unavailable to exercise the authority. Additionally, the proposed changes to provide additional flexibility regarding the Management Director role would also be clearly and transparently described in OCC's By-Laws and Board Charter. As a result, OCC believes the proposed rule change is reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility in accordance with Rule 17Ad-22(e)(2).<sup>40</sup>

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

Section 17A(b)(3)(I) of the Exchange Act<sup>41</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impose any burden on competition. The proposed rule change would implement certain leadership changes within OCC's management to separate the Executive Chairman and CEO roles and to remove the CAO as a

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<sup>40</sup> 17 CFR 17Ad-22(e)(2).

<sup>41</sup> 15 U.S.C. 78q-1(b)(3)(I).

required officer. This proposed rule change would not inhibit access to OCC's services or disadvantage of favor any particular user in relationship to another. As a result, OCC believes the proposed rule change would not impact or impose a burden on competition.

**Item 5. Self-Regulatory Organization's Statement on Comment 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**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)**

Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or 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 5A. Proposed changes to OCC By-Laws.

Exhibit 5B. Proposed changes to OCC Rules.

- Exhibit 5C. Proposed changes to OCC Board Charter and Corporate Governance Principles.
- Exhibit 5D. Proposed changes to OCC Audit Committee Charter.
- Exhibit 5E. Proposed changes to OCC Compensation and Performance Committee Charter.
- Exhibit 5F. Proposed changes to OCC Governance and Nominating Committee Charter.
- Exhibit 5G. Proposed changes to OCC Risk Committee Charter.

**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:** \_\_\_\_\_

**Justin W. Byrne**

**Vice President, Regulatory Filings**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2018-015)

December \_\_, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2018, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been 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

The proposed rule change by OCC would: (1) reestablish the separation of the roles of Executive Chairman and Chief Executive Officer (“CEO”) and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC’s By-Laws that the Board of Directors (“Board”) elect a Chief Administrative Officer (“CAO”) and delete the references to a CAO throughout OCC’s By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. As described

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

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



below, the proposed rule change amends multiple provisions of OCC's By-Laws and Rules to effectuate the separation of the Executive Chairman and CEO roles and the elimination of the CAO as a required officer. The proposed rule change also amends OCC's By-Laws to provide additional flexibility for the Management Director seat on the Board and makes conforming changes to several OCC charters to implement the above amendments.

The proposed changes to OCC's By-Laws, Rules, and other governing documents ("OCC Requirements") are attached as Exhibit 5A - 5G. Material proposed to be added to the OCC Requirements as currently in effect is marked by underlining. Material proposed to be deleted from the OCC Requirements as currently in effect is marked by strikethrough. The proposed rule change, including Exhibits 5A - 5G, is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>3</sup>

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.

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<sup>3</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>. OCC's Board and Board Committee Charters are also available on OCC's public website: <https://www.theocc.com/about/>.

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

(1) Purpose

OCC is proposing amendments to its By-Laws, Rules, and certain committee charters to effectuate several changes to its governance structure. First, OCC is seeking to reestablish the separation of the Executive Chairman and CEO roles at OCC and allocate authority and responsibilities for each of the roles.<sup>4</sup> In connection with this separation, the proposed rule change also would provide that having a Management Director on the Board, which is currently filled by the Executive Chairman/CEO, is not required. In addition, the proposed rule change would remove the requirement from OCC's By-Laws that the Board elect a CAO and, consequently, delete the references to a CAO throughout OCC's By-Laws, Rules, and charters. The purpose of the proposed rule change is to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC's governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC's operation and, consequently, OCC's ability to serve Clearing Members and the markets for which it clears and settles transactions for the reasons set forth below. Because the proposed rule change would eliminate references to the CAO throughout OCC's By-Laws and Rules, the proposed rule change would permit delegation of authority by the CEO or Chief Operating Officer ("COO") in those instances where there

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<sup>4</sup> Prior to the creation of an officer with the title of "Chief Executive Officer," that function was performed by the President of OCC. See Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (stating that the President will also "serve as [CEO]").

are only two named officers. In those instances, OCC believes that delegation is appropriate to ensure that authority can be exercised if the CEO and COO are unavailable. Finally, the proposed rule change would make conforming changes throughout OCC's By-Laws, Rules, and certain Board charters to ensure consistency throughout those documents.

### **Background**

OCC's Board, as an integral part of its oversight function, may be called upon to evaluate OCC's governance structure to assess potential ways in which that structure could be improved or enhanced. Consequently, OCC has made changes to its governance structure to promote the efficient and effective management of its business designed to support OCC's management.<sup>5</sup> More specifically, and most recently, on April 26, 2017, the SEC approved a proposed rule change that made multiple changes to OCC's management structure ("2017 Amendments").<sup>6</sup> The 2017 Amendments amended OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and

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<sup>5</sup> See, e.g., Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure); Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Provide that The Options Clearing Corporation's President Will be its Chief Operating Officer, and that the President Will Not be a Management Director); Securities Exchange Act Release No. 70076 (July 20, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (Order Approving Proposed Rule Change to Separate the Powers and Duties Currently Combined in the Officer of OCC's Chairman in Two Offices, Chairman and President, and Create an Additional Directorship to be Occupied By the President).

<sup>6</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

Performance Committee Charter (“CPC Charter”), Dividend Policy, and Refund Policy to address the organizational changes. At that time, the Board concluded that the changes represented enhancements to OCC’s existing leadership structure that would promote OCC’s more efficient management and operation. The changes were intended to be a temporary measure to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO. Consequently, OCC proposed, and the SEC approved, a number of changes to OCC’s management structure, including: (1) providing that the Executive Chairman would also serve as a newly-recognized CEO; (2) removing the President as a recognized officer of OCC; (3) providing that the Board would appoint the COO and a newly recognized CAO; (4) giving the COO and CAO authority to take certain actions or grant exceptions in instances where that authority had previously been granted to the President; (5) making conforming changes to OCC’s Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the changes; and (6) separating the positions of Treasurer and Chief Financial Officer (“CFO”).<sup>7</sup>

Following the SEC’s approval of the 2017 Amendments, the current management structure of OCC as set forth in its By-Laws requires election by the Board of: (1) an Executive Chairman, who in this role also serves as CEO<sup>8</sup> and as a Management

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<sup>7</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002). The 2017 Amendments also made a number of administrative and clean-up edits to OCC’s By-Laws and Rules. Id.

<sup>8</sup> See OCC By-Laws, Art. IV, Sec. 6(a) (“The Executive Chairman shall also serve as the Corporation’s Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation’s business and the of its day to day affairs.”).

Director;<sup>9</sup> (2) a COO,<sup>10</sup> and (3) a CAO.<sup>11</sup> Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>12</sup> In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and the administration of its day to day affairs.”<sup>13</sup> These three positions (Executive Chairman/CEO, COO, and CAO) also are specifically identified in numerous provisions of OCC’s By-Laws and Rules that authorize these specific officers (and, in some instances, their delegates) to exercise decision-making involving various issues; however, because the roles of Executive Chairman and CEO are currently combined into a single individual, these provisions generally refer to that individual only in his capacity as Executive Chairman and do not use the term “Chief Executive Officer.”<sup>14</sup> The Board now believes that the OCC management team has been substantially enhanced with the installation of key new senior members,<sup>15</sup> and thus the OCC is well positioned to return to its previous leadership structure.

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<sup>9</sup> See OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.”).

<sup>10</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>11</sup> See OCC By-Laws, Art. IV, Sec. 1.

<sup>12</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>13</sup> OCC By-Laws, Art. IV, Sec. 6(a).

<sup>14</sup> See, e.g., OCC Rule 305, OCC Rule 309, OCC Rule 609A, OCC Rule 1001, OCC Rule 1002.

<sup>15</sup> For example, starting in 2016, and throughout 2017, OCC’s senior leadership has been staffed with highly qualified and experienced executives capable of stabilizing and strengthening OCC’s operations and compliance posture. These

### **Proposed Changes to OCC's Governance Structure**

As part of its oversight of OCC's governance structure, the Board determined that certain aspects of the changes made as part of the 2017 Amendments should be modified to further enhance OCC's governance structure and re-separate the roles of the Executive Chairman and CEO. Specifically, OCC is proposing to separate the roles of the Executive Chairman and the CEO, and thus create a separate CEO role, and reallocate responsibilities and authority between the two roles. With the addition of the CEO as a separate officer, OCC is proposing to remove the requirement that the Board elect a CAO and to delete the references to a CAO throughout the OCC Requirements. The proposed rule change would not amend the Board's overall authority to appoint officers; rather, it would create an obligation for the Board to elect a CEO who is separate from the Executive Chairman and would eliminate the requirement for the Board to elect a CAO.<sup>16</sup> In addition, OCC is proposing changes to the Management Director provisions of the By-Laws to reflect the separation of the Executive Chairman and CEO roles and to provide

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include, among others, the hiring of a new President and Chief Operating Officer (April, 2017), a Chief Administrative Officer (September, 2016), a Chief Security Officer (May, 2017), a Chief Information Officer (May, 2017), a Chief Financial Officer (December, 2016), a Chief Compliance Officer (December, 2016), and a new head of government relations (September, 2016).

<sup>16</sup> The By-Laws currently provide that: (i) "[t]he Board of Directors shall also elect a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, a Chief Administrative Officer, a Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election" and (ii) "[t]he Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation." See OCC By-Laws, Art. IV, Sec. 1

additional flexibility in the provisions concerning the Management Director.<sup>17</sup> Finally, the proposed rule change would amend the Board and certain committee charters to conform to the amendments to the By-Laws and Rules.

*(1) Separation of the Executive Chairman and CEO Roles*

The 2017 Amendments amended Article IV, Section 6 of OCC's By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman/CEO is responsible for all aspects of OCC's business and the day to day administration of its affairs that are not otherwise assigned to the COO or CAO.<sup>18</sup> This approach was adopted as part of the 2017 Amendments in part to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO and to provide flexibility and avoid concentrating responsibility in any single officer; thus, the COO and CAO assumed certain responsibilities that were previously assigned to the President.

OCC believes that at this time it would benefit from a separation of the functions of the Executive Chairman and CEO roles. Since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of

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<sup>17</sup> The proposed rule change would also make non-substantive changes to the use of the term "Executive Chairman." The proposed rule change would define the term "Executive Chairman" and amend its use in certain provisions to ensure the term is used consistently throughout the By-Laws and Rules (for example, by replacing "Executive Chairman of the Corporation" with "Executive Chairman").

<sup>18</sup> Before the 2017 Amendments, the President was responsible for all aspects of OCC's business that did not report directly to the Executive Chairman and was responsible for the day to day administration of OCC's affairs in accordance with the directions of the Executive Chairman.

officers' responsibilities with their skills and experience.<sup>19</sup> As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles. Under the proposed rule change, the Executive Chairman would retain responsibility for facilitating Board leadership and management oversight as well as overseeing the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. The proposed rule change would provide several benefits to OCC. For example, the separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Article IV of the By-Laws generally sets forth the selection and authorities of OCC's officers and the Executive Chairman. Section 1 establishes the selection of the Executive Chairman by the Board, and provides that the Executive Chairman "shall be elected by the Board of Directors from among the full-time employees of the Corporation."<sup>20</sup> Because, as currently structured, the Executive Chairman also serves as CEO by virtue of his role as Executive Chairman, there is no separate provision in the

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<sup>19</sup> See supra n. 15.

<sup>20</sup> See OCC By-Laws, Art. IV, Sec. 1.



By-Laws for selection or appointment of a CEO. Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.<sup>21</sup> In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and . . . its day to day affairs.”<sup>22</sup>

The proposed rule change would amend Sections 6 and 8 of Article IV of the By-Laws to separate these functions and divide them between the Executive Chairman and the CEO. Under the proposed rule change, the Executive Chairman would be less involved in day to day management decisions of the type more typically made by an executive but would retain his role vis-à-vis the Board.<sup>23</sup> In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations.<sup>24</sup> The CEO will be responsible for all aspects of the OCC’s business and of its day to day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that do not report directly to

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<sup>21</sup> See OCC By-Laws, Art. IV, Sec. 6(a).

<sup>22</sup> OCC By-Laws, Art. IV, Sec. 6(a).

<sup>23</sup> Because the Executive Chairman would be less involved in day to day operational issues, the proposed rule change removes the requirement that the Executive Chairman must be selected from “among the full-time employees of OCC” to require only that the Executive Chairman be selected from “among the employees of OCC.” This amendment would allow the Executive Chairman to be a part-time employee.

<sup>24</sup> Although the Chief Audit Executive will report administratively to the Executive Chairman, he or she will report functionally to the Audit Committee of the Board pursuant to the Audit Committee charter.

the Executive Chairman.<sup>25</sup> The COO would administer the day to day affairs and business of the Corporation in accordance with the directions of the CEO.

In addition to establishing separate By-Law provisions addressing the selection and roles of the Executive Chairman and CEO, there are numerous provisions throughout OCC's By-Laws and Rules that the proposed rule change would amend to change the list of officers authorized to act under the relevant provision. In each case, the proposed rule change would remove the CAO from the list of officers because the office of CAO would no longer be required by OCC's By-Laws. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. Specifically, the proposed rule change would replace the reference to the Executive Chairman with the CEO in the following By-Law and Rule provisions:

- Approval of a bank or trust company as an approved custodian (By-Laws, Art. I, Sec. 1)
- Ability to delegate authority to Designated Officers (By-Laws, Art. I, Sec. 1)
- Temporary appointment of a controller/chief accounting officer (By-Laws, Art. IV, Sec. 12)
- Temporary approval of a Clearing Member application if expedited treatment is requested (By-Laws, Art. V, Sec. 1)
- Limited delegation of authority to approve Clearing Member applications (By-Laws, Art. V, Sec. 2)

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<sup>25</sup> Although the Chief Compliance Officer would report administratively to the CEO, he or she would continue to report functionally to the Audit Committee of the Board pursuant to the committee's charter. Similarly, the Chief Risk Officer would report administratively to the CEO; however, he or she would continue to report functionally to the Risk Committee of the Board pursuant to the Risk Committee charter.

- Authority to extend the deadline to meet membership conditions (By-Laws, Art. V, Sec. 3.01)
- Ability to impose exercise restrictions (By-Laws, Art. VI, Sec. 17.01)
- Restricting certain Clearing Member transactions, positions, and activities (Rule 305)
- Imposing limitations on Managing Clearing Members with insufficient net capital (Rule 309)
- Temporarily approving a facilities management agreement (Rule 309.01, 309.02)
- Imposing limitations or restrictions on Appointed Clearing Members with insufficient net capital (Rule 309A)
- Temporarily accepting a letter of credit that does not meet rule requirements as a margin asset under unusual circumstances (Rule 604)
- Permitting filing of an exercise notice after the deadline to correct a bona fide error (Rule 801)
- Requiring reports regarding exercise allocation under certain circumstances (Rule 804)
- Remitting a filing fee (Rule 805)
- Extending or postponing the time for delivery to a date regarding settlements to be made through the facilities of the correspondent clearing corporation (Rule 901)
- Extending or postponing the time for delivery on broker-to-broker settlements (Rule 903)
- Determining whether good cause exists for failure to deliver or receive (Rule 1309)
- Extending or postponing the exercise settlement date for Treasury security options (Rule 1402)
- Determining whether good cause exists for a failure to match (Rule 1405)
- Advancing or postponing the exercise settlement date for foreign currency options (Rule 1604)

- Determining whether good cause exists for failure to deliver or pay (Rule 1610).

These provisions generally involve more routine day to day business decisions or are, by their terms, temporary. Consequently, OCC believes these provisions are therefore more appropriately authorized by a member of management such as the CEO or COO rather than at the Board level by the Executive Chairman.

With respect to other provisions, the proposed rule change would add the CEO as an authorized officer but would not remove the authority of the Executive Chairman to act. These provisions include:

- those related to declaring and acting in an emergency (By-Laws, Art. III, Sec. 15; Art. IX, Sec. 14)
- the ability to appoint officers, including Vice Presidents (By-Laws, Art. IV, Secs. 2, 3 and 9)
- the suspension of Clearing Members (By-Laws, Art. IV, Sec. 6)
- signing OCC share certificates (By-Laws, Art. IX, Sec. 12)
- extending settlements (Rule 505)
- waiving margin in extraordinary circumstances (Rule 609A)
- increasing the size or amount of cash in the clearing fund (Rules 1001, 1002)
- determining reasonable methods to borrow or obtain funds using clearing fund assets (Rule 1006)
- determining not to liquidate a Clearing Member's assets (Rule 1104)
- the use of private auctions to liquidate a suspended Clearing Member's assets (Rule 1104.02)
- determining not to liquidate a suspended Clearing Member's assets or take protective actions (Rule 1106).

OCC believes that these provisions should continue to include the Executive Chairman as an authorized individual to maintain appropriate flexibility in these critical decisions,

which primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day to day activities (e.g., signing OCC share certificates), so that management has the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.

*(2) Elimination of a Mandatory CAO*

In addition to separating the roles of the Executive Chairman and CEO, the proposed rule change would eliminate the requirement in the By-Laws for the Board to elect a CAO. As part of the 2017 Amendments, the By-Laws require the Board to elect both a COO and a CAO.<sup>26</sup> The 2017 Amendments added the requirement of a CAO in part to ensure flexibility and avoid concentration of authority and responsibility in any one officer.<sup>27</sup> As discussed above, with the separation of the Executive Chairman and CEO roles to establish a separate CEO, the need for a CAO to ensure sufficient flexibility is no longer necessary. Consequently, the proposed rule change would eliminate the requirement for the Board to elect a CAO; however, OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation."<sup>28</sup> Finally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two,

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<sup>26</sup> See OCC By-Laws, Art. IV, Sec. 8.

<sup>27</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

<sup>28</sup> OCC By-Laws, Art. IV, Sec. 1.

the proposed rule change would allow the CEO and COO to delegate authority to certain “Designated Officers” if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher<sup>29</sup> and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

The ability to have multiple officers (and, in some instances, their delegates) authorized to take action and assume responsibility helps to ensure that responsibility is not concentrated in any one officer, that OCC’s affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC’s business and day to day affairs even if a particular officer is absent or is otherwise unable to perform his or her duties. Consequently, although the proposed rule change would eliminate the CAO as a required officer, the separation of the Executive Chairman and CEO roles would create another officer; thus, there will generally remain multiple officers authorized to act and assume responsibility (i.e., the CEO and COO), which will retain the current level of flexibility.

*(3) Amendments to the Management Director Provisions in OCC’s By-Laws*

Article III of OCC’s By-Laws mandates that the Board include one “Management Director” and that the Executive Chairman be elected to fill that seat.<sup>30</sup> In light of the

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<sup>29</sup> OCC notes that such delegations would therefore be limited to Senior Vice Presidents and Executive Vice Presidents of OCC.

<sup>30</sup> See OCC By-Laws, Art. III, Sec. 1 (“The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, five Public Directors, and one Management Director.”); see also OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a

changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to this Board seat. Although the concept of a Management Director would be retained, the proposed rule change would amend the By-Laws to provide a wider degree of flexibility. Specifically, the proposed rule change would amend the By-Laws to: (1) allow, but not require, a Management Director on the Board; and (2) eliminate the requirement that the Management Director also be the Executive Chairman.

OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.

*(4) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC is also proposing to make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter (“AC Charter”); (3) CPC Charter; (4) Governance and Nominating Committee Charter (“GNC Charter”); and (5) Risk Committee Charter (“RC Charter”).<sup>31</sup>

OCC is proposing to amend the Board Charter to remove the references to the CAO and to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the removal of the CEO’s role in certain Board

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Management Director by the stockholders at each annual meeting of the stockholders.”).

<sup>31</sup> OCC notes that there would be no changes to its Technology Committee Charter.

matters due the CEO position no longer being linked to the position of Executive Chairman. In addition, OCC is proposing to conform the description of the Management Director in the Board Charter to the changes described in the proposed rule change.

OCC is also proposing to amend the AC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the AC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Compliance Officer would report administratively to the CEO and functionally to the Audit Committee, and OCC's Chief Audit Executive would report administratively to the Executive Chairman and functionally to the Audit Committee. The proposed changes would further clarify that the Audit Committee would consult with the Executive Chairman in reviewing the performance of the Internal Audit function and the Chief Audit Executive and consult with the CEO in reviewing the performance of the Compliance function and Chief Compliance Officer.

OCC is also proposing to amend the CPC Charter and the GNC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the elimination of CAO as a required officer of OCC.

Finally, OCC is proposing to amend the RC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the RC Charter that, following the separation of the Executive



Chairman and CEO roles, OCC's Chief Risk Officer will report administratively to the CEO and functionally to the Risk Committee.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>32</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible.<sup>33</sup> Rule 17Ad-22(e)(2) further requires, in part, that each registered clearing agency have governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.<sup>34</sup>

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act and the rules thereunder because it is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transaction for which it is responsible. By implementing certain leadership changes intended to promote OCC's efficient management and operation, OCC believes it enhances its organization and its ability to operate effectively and efficiently. Specifically, OCC believes that by reallocating certain responsibilities currently held by the Executive Chairman/CEO to two individuals, those responsibilities would be less concentrated in a single individual. As noted above, since the implementation of the

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<sup>32</sup> 15 U.S.C. 78q-1.

<sup>33</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>34</sup> 17 CFR 17Ad-22(e)(2).

2017 Amendments, OCC has taken significant steps to enhance its senior management team. OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of officers' responsibilities with their skills and experience.<sup>35</sup> As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles so that the Executive Chairman would remain focused on facilitating Board leadership and management oversight as well as overseeing the work of internal audit, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. OCC believes the proposed separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Moreover, by separating the Executive Chairman and CEO roles to establish a separate CEO, OCC believes it is no longer necessary for its By-Laws to explicitly require a CAO to ensure sufficient flexibility in its management structure. OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required

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<sup>35</sup> See supra n. 15.

for the efficient management and operation of the Corporation.”<sup>36</sup> Additionally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two, the proposed rule change would allow the CEO and COO to delegate authority to certain delegated officers if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

As discussed above, in light of the changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to the Management Director seat on the Board. The proposed rule change would provide a wider degree of flexibility by allowing, but not requiring, a Management Director on the Board and eliminating the requirement that the Management Director also be the Executive Chairman. These changes would create more flexibility for filling the role of Management Director and more easily accommodate potential future scenarios.

For the reasons set forth above, OCC believes the proposed rule change is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transaction for which it is responsible consistent with the requirements of Section 17A(b)(3)(A) of the Act.<sup>37</sup>

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<sup>36</sup> OCC By-Laws, Art. IV, Sec. 1.

<sup>37</sup> 15 U.S.C. 78q-1(b)(3)(A).

Rule 17Ad-22(e)(2) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.<sup>38</sup> The proposed rule change would amend OCC's By-Laws, Rules, and charters, which are publicly available documents, to provide explicit, clear, and transparent statements of the responsibilities and authority of the newly separated Executive Chairman and CEO roles (and the elimination of a required CAO) and direct reporting lines thereunder within the overall management structure of OCC. For example, the proposed rule change would explicitly state that the Executive Chairman would oversee the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. Moreover, in those instances where the elimination of the CAO role reduces the number of individuals authorized to take certain actions, the proposed rule change would provide a clear and transparent mechanism for the CEO and COO to delegate authority to certain Designated Officers if the CEO and COO were unavailable to exercise the authority. Additionally, the proposed changes to provide additional flexibility regarding the Management Director role would also be clearly and transparently described in OCC's By-Laws and Board Charter. As a result, OCC believes the proposed rule change is reasonably designed to provide for governance

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<sup>38</sup> 17 CFR 17Ad-22(e)(2)(i) and (v).

arrangements that are clear and transparent and specify clear and direct lines of responsibility in accordance with Rule 17Ad-22(e)(2).<sup>39</sup>

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

Section 17A(b)(3)(I) of the Exchange Act<sup>40</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impose any burden on competition. The proposed rule change would implement certain leadership changes within OCC's management to separate the Executive Chairman and CEO roles and to remove the CAO as a required officer. This proposed rule change would not inhibit access to OCC's services or disadvantage of favor any particular user in relationship to another. As a result, OCC believes the proposed rule change would not impact or 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.

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:

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<sup>39</sup> 17 CFR 17Ad-22(e)(2).

<sup>40</sup> 15 U.S.C. 78q-1(b)(3)(I).

(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 Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2018-015 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2018-015. 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 Room, 100 F Street, NE, 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

<https://www.theocc.com/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2018-015 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.<sup>41</sup>

Secretary

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<sup>41</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5A**



**By-Laws**

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text



*Article I – Definitions*

**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.

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**Approved Custodian**

(13) The term “approved custodian” means a bank or trust company approved by the ~~Executive Chairman~~Chief Executive Officer, or Chief Operating Officer or Chief Administrative Officer.

\* \* \* \* \*

D.

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**Designated Officer**

(8) The term “Designated Officer” shall mean the ~~Executive Chairman~~Chief Executive Officer, Chief Operating Officer ~~and Chief Administrative Officer~~ and any officer of the Corporation of the rank of Senior Vice President or higher to whom the ~~Executive Chairman~~Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ has delegated authority to perform a duty or exercise a power under these By-Laws and Rules.

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E.

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**Executive Chairman**

(14) The term “Executive Chairman” shall mean the individual elected by the Board of Directors as the Executive Chairman of the Board pursuant to Article IV, Section 1 of these By-Laws.

(14) through (22) are renumbered as (15) through (23)

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*Article III – Board Directors*

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**Number of Directors**

SECTION 1. The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, five Public Directors, and may include one Management Director.

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**Management Directors**

SECTION 7. ~~The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a~~One Management Director, ~~who also serves as an employee of the Corporation,~~ may be elected by the stockholders at each annual meeting of the stockholders. A Management Director shall serve until the annual meeting of stockholders following his election or appointment as Management Director, and until his successor is elected and appointed and qualified, or until his earlier death, disqualification, resignation or removal. If a Management Director shall cease to hold the office by virtue of which he was elected as a Management Director, he shall simultaneously be disqualified to serve as a Management Director.

... Interpretations and Policies:

**.01 Fitness Standards**

The Board of Directors shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, in considering nominees for election as Management Director~~Executive Chairman of the Corporation.~~

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**Resignations**

SECTION 10. A director may resign at any time by giving written notice of resignation to the Executive Chairman or to the Secretary; provided, however, that in the event ~~the~~ Management Director resigns, he must simultaneously resign ~~as the Executive Chairman of his position with~~ the Corporation. A resignation, unless specifically contingent upon its acceptance, will be effective as of its date or as of the effective date specified therein.

\* \* \* \* \*

### Filling of Vacancies and Newly Created Directorships

SECTION 12. A vacancy occurring for any reason among the Member Directors of any Class shall be filled by a majority of the directors then in office, even though they may be less than a quorum, and the person appointed to fill such vacancy shall serve until the next election of such Class and until a successor shall be elected and qualified; provided that the vacancy shall be filled only by the appointment of a person recommended by the Governance and Nominating Committee. A vacancy or newly created directorship occurring for any reason among the Exchange Directors shall be filled by the Exchange entitled to elect such Exchange Director. A vacancy occurring for any reason among the Public Directors shall be filled by a majority of the directors then in office, even though they may be less than a quorum, with a person, not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, selected as provided in Section 6A of this Article III (including the recommendation of the Governance and Nominating Committee), and the person appointed to fill such vacancy shall serve for the remainder of the predecessor's term of office and until a successor shall be elected and qualified. A vacancy occurring for any reason in the position of Management Director ~~shall~~may be filled by a majority of the directors then in office, even though they may be less than a quorum, only with the person elected or appointed to fill the office of Executive Chairman of the Corporation.

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### Emergency Powers

SECTION 15. (a) During any emergency which results, directly or indirectly, from an attack (including a terrorist attack) on the United States or on a locality in which the Corporation maintains an office or customarily holds meetings of the Board of Directors, or from a war, armed hostilities, insurrection or other calamity involving the United States or any such locality, or from any nuclear or atomic disaster, or from any other catastrophe, disaster, (including any environmental or natural disaster), communications systems failure, or other similar condition, in which a quorum (as specified in Article III of the By-Laws) of the Board of Directors or a standing committee thereof cannot readily be convened for action (an "Emergency"), the following provisions of this Section 15 shall be operative notwithstanding any other provision in any of the sections (other than Section 110) of the Delaware Corporation Law or in the Certificate of Incorporation, By-Laws or Rules of the Corporation. The Executive Chairman, Chief Executive Officer, Chief Operating Officer ~~or Chief Administrative Officer~~ or, if it is not feasible for the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ to take such action, then a Designated Officer is authorized to declare the existence of such Emergency and to declare this By-Law to be in effect. The Executive Chairman, Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or such Designated Officer, shall use his best efforts to attempt to consult with officials of the Securities and Exchange Commission ("SEC") prior to declaring the existence of such Emergency; provided, however, that the authority contained herein shall not be conditioned by such consultation. The Corporation shall advise the SEC as soon as practicable by telephone, and confirmed in writing, of the declaration of an Emergency and the reasons therefor, and a record of such declaration shall be prepared and maintained in the records of the Corporation.

(b) During an Emergency, special meetings of the Board of Directors or a committee thereof may be called by the Executive Chairman, Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or by a Designated Officer of the Corporation at any time. At least thirty minutes notice of any such special meeting shall be given to such of the directors as it may be feasible to reach at the time by such means as may be deemed feasible at the time by the Executive Chairman, Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or the Designated Officer calling such meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.

(c) through (d) [No Change.]

(e) In the event the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ is authorized or directed by the By-Laws, the Rules, any resolution of the Board of Directors or a committee thereof, or any agreement to which the Corporation is a party to take any action, and it is not feasible for such officer to take such action, then such action may be taken by one of the others, and if it is not feasible for any of them to take such action, then such action may be taken by a Designated Officer in the order of priority provided in the resolution of the Board of Directors approving such list.

(f) [No Change.]

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#### *Article IV - Officers*

##### **Selection by Board of Directors**

SECTION 1. Upon the nomination of the Governance and Nominating Committee, an Executive Chairman ~~of the Board, who shall by virtue of his office be a Management Director of the Corporation,~~ shall be elected by the Board of Directors from among the ~~full-time~~ employees of the Corporation. Also upon the nomination of the Governance and Nominating Committee, a Vice Chairman of the Board shall be elected by the Board of Directors from among the Member Directors. Such Vice Chairman shall be referred to as the Member Vice Chairman. The Board of Directors shall also elect a Chief Executive Officer, a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, ~~a Chief Administrative Officer,~~ a Secretary, and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election. The Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation. An officer shall hold his office for one year and until his successor is elected and qualified or until his earlier death, resignation or removal. Two or more offices may be held by the same person except the offices of Executive Chairman ~~of the Board,~~ Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ and Member Vice Chairman.

**Appointments by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer, ~~or Chief Administrative Officer~~**

SECTION 2. The Executive Chairman, ~~and~~ Chief Executive Officer, and Chief Operating Officer, ~~and Chief Administrative Officer~~ each may appoint such officers, in addition to those elected by the Board of Directors, and such agents as they each shall deem necessary or appropriate to carry out the functions assigned to them, who shall hold their respective positions for such terms and shall exercise such powers and perform such duties as determined from time to time by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer, ~~or Chief Administrative Officer~~, respectively; provided that the Executive Chairman and Chief Executive Officer also shall have the authority to set such terms, powers, and duties of any officer or agent appointed by the Chief Operating Officer ~~or Chief Administrative Officer~~. Notwithstanding the foregoing, only the Board of Directors may elect ~~an Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~, Secretary, or Treasurer of the Corporation.

**Removal**

SECTION 3. Any officer may be removed by the Board of Directors at any time with or without cause. Any officer or agent appointed by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer, ~~or Chief Administrative Officer~~ may be removed by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer, ~~or Chief Administrative Officer~~, respectively, at any time with or without cause; provided that the Executive Chairman and Chief Executive Officer also shall have the authority to remove any officer or agent appointed by the Chief Operating Officer ~~or Chief Administrative Officer~~. Such removal shall be without prejudice to the contract rights, if any, of the person removed.

\* \* \* \* \*

**Executive Chairman ~~of the Board~~**

SECTION 6. (a) The Executive Chairman ~~of the Board~~ shall be an Executive Chairman responsible for ~~the certain~~ control functions of the Corporation, including enterprise risk management, internal audit and compliance, and external public affairs and government relations, and shall have supervision of the officers and agents appointed by him. ~~The Executive Chairman shall also serve as the Corporation's Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation's business and the of its day to day affairs.~~ Subject to the provisions of these By-Laws and the Rules, the Executive Chairman shall have the authority to suspend Clearing Members. The Executive Chairman shall preside at all meetings of the Board of Directors and the stockholders.

(b) [No change.]

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**Chief Executive Officer and Chief Operating Officer ~~and Chief Administrative Officer~~**

SECTION 8. The Board of Directors shall elect a Chief Executive Officer and a Chief Operating Officer ~~and a Chief Administrative Officer~~. The Chief Executive Officer shall be responsible for all aspects of the Corporation's business and of its day to day affairs, including enterprise risk management and compliance, and ~~who~~ shall be responsible for all aspects of the business of the Corporation that do not report directly to the Executive Chairman, as determined by the Board of Directors, to promote the efficient and effective management and operation of the Corporation. Subject to the provisions of these By-Laws and the Rules, the Chief Executive Officer and, in his absence, Chief Operating Officer, shall have the authority to suspend Clearing Members. ~~The Chief Operating Officer shall administer the day to day affairs and business of the Corporation~~ support the operations of the Corporation in accordance with the directions and under the oversight of the ~~Executive Chairman~~ Chief Executive Officer and shall have supervision of the officers and agents appointed by them. In the absence or disability of the ~~Executive Chairman~~ Chief Executive Officer, the Chief Operating Officer ~~and Chief Administrative Officer~~ each shall fulfill the duties and have the powers of the ~~Executive Chairman~~ Chief Executive Officer provided, however, that neither the Chief Executive Officer nor the Chief Operating Officer ~~nor the Chief Administrative Officer~~ shall preside at meetings of the Board of Directors or the stockholders.

**Vice Presidents**

SECTION 9. To the extent such offices are filled by the Board of Directors, the Executive Chairman, the Chief Executive Officer, or the Chief Operating Officer ~~or the Chief Administrative Officer~~, the Vice Presidents shall perform the respective duties and exercise the respective powers assigned to them by the Board of Directors or the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~, as applicable. In the absence or disability of the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~and Chief Administrative Officer~~, the Vice Presidents shall, in the order of their seniority or such order as may have been specified by the Board of Directors, the Executive Chairman, the Chief Executive Officer, or the Chief Operating Officer ~~or Chief Administrative Officer~~ at the time of their election, perform the duties and exercise the powers of the Executive Chairman, Chief Executive Officer, and Chief Operating Officer ~~and Chief Administrative Officer~~, except that no Vice President shall preside at meetings of the Board of Directors or the stockholders.

\* \* \* \* \*

**Controller**

SECTION 12. The Controller shall serve as the chief accounting officer of the Corporation. In the event the office of Controller shall be vacant at any time, the Board of Directors or the ~~Executive Chairman~~ Chief Executive Officer, or in their absence the Chief Operating Officer, shall designate the person who will serve as chief accounting officer until the office of Controller is filled.

## Salaries

SECTION 13. The salary, if any, of those officers elected by the Board of Directors shall be fixed by the Board of Directors, and (subject to any contrary action taken by the Board of Directors) the salary, if any, of all other officers, agents and employees appointed by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ shall be fixed by the Executive Chairman, ~~and~~ Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~, respectively; provided that the Executive Chairman and the Chief Executive Officer also shall have the authority to fix the salary, if any, of any officer or agent appointed by the Chief Operating Officer ~~or Chief Administrative Officer~~. Members of the Board of Directors other than full-time employees of the Corporation shall be entitled to compensation for their services as directors at such rates as the Board of Directors may from time to time determine. Members of the Board of Directors may be reimbursed for their reasonable expenses in attending meetings of the Board of Directors or any Committee thereof.

\* \* \* \* \*

## Article V – Clearing Members

\* \* \* \* \*

## Qualifications

SECTION 1. (a) through (e) [No Change.]

... Interpretations and Policies

.01 through .02 [No Change.]

.03 Experience and Competence

The Risk Committee has discretion not to approve, and will not approve if so ordered by the SEC, any application for clearing membership if:

a. through c. [No Change.]

In addition, the Risk Committee will not approve any application for clearing membership unless:

In respect of clause (c) above, an applicant for clearing membership or at least one associated person of applicant:

a. through d. [No Change.]

In addition, the Risk Committee will not recommend the approval of any application for clearing membership unless:

d. [No Change.]

e. if the applicant has not applied for authorization to clear all types of transactions (i.e., customer transactions, firm transactions, market-maker and JBO Participant transactions), or all kinds of transactions (e.g., transactions in stock options, Treasury securities options, foreign currency options, cross-rate foreign currency options, cash-settled options, futures options, commodity options and futures), or has not applied to carry positions in its accounts on a routine basis, or has not applied to be a Hedge Clearing Member, the applicant shall have undertaken to apply to the Risk Committee for further approval before commencing to clear any type or kind of transaction for which approval is not currently being sought, before carrying positions in its accounts on a routine basis, or before participating in the Stock Loan/Hedge Program, as applicable.

In the event that expedited treatment is requested for an application submitted pursuant to clause (e) above, the ~~Executive Chairman, Chief Executive Officer~~, Chief Operating Officer, ~~Chief Administrative Officer~~, or any delegate of such officer, shall have the authority to approve or disapprove such application on a temporary basis. Any delegate shall be an officer of the rank of Senior Vice President or higher. Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the submitted application and shall determine de novo whether to approve or disapprove such application. Should the Risk Committee's determination result in the modification or reversal of the action taken by the ~~Executive Chairman, Chief Executive Officer~~, Chief Operating Officer or ~~Chief Administrative Officer~~, or any delegate of such officer, any acts taken by the Corporation prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. Notwithstanding the foregoing, in the event a Hedge Clearing Member submits an application to become a Market Loan Clearing Member pursuant to clause (e) above, the ~~Executive Chairman, Chief Executive Officer~~, Chief Operating Officer, ~~Chief Administrative Officer~~ or any delegate of such officer shall have the authority to approve or disapprove such application without further review by the Risk Committee. Any delegate shall be an officer of the rank of Senior Vice President or higher.

.04 through .11 [No Change.]

## Admission Procedure

SECTION 2. (a) No Change.

(b) Authority to approve applications for clearing membership shall be delegated to the ~~Executive Chairman, Chief Executive Officer~~, or Chief Operating Officer ~~or the Chief Administrative Officer~~, provided that: (i) the Risk Committee's designated delegates or agents do not recommend that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of this Article V, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the ~~Executive Chairman, Chief Executive Officer~~, or Chief Operating Officer ~~or Chief Administrative Officer~~ intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee



has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period.

(c) [No change.]

### Conditions to Admission

SECTION 3. [No Change.]

...Interpretations and Policies:

**.01** Each applicant that has been approved for clearing membership subject to satisfaction of specified conditions shall meet all conditions applicable to its admission within six months from the date on which its application was approved, unless the Risk Committee prescribed an earlier date at the time the applicant was approved for clearing membership. In the event that an applicant fails to meet such conditions within the applicable time period, the approval of the application shall be deemed withdrawn and the application shall be deemed to have lapsed, unless the Corporation shall determine to extend the deadline for fulfilling such conditions. Any applicant seeking an extension under this paragraph shall submit a written request to the Secretary, specifying in detail any material changes that have occurred in applicant's financial condition, operational capability and experience and competence in clearing securities transactions from the date on which its application for clearing membership was approved by the Risk Committee. The ~~Executive Chairman, Chief Executive Officer,~~ Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or the Chief Administrative Officer shall have the authority to approve or disapprove the applicant's request for an extension, which shall be communicated in writing to the applicant. In no event may that deadline be extended beyond one year from the date the application originally was approved.

\* \* \* \* \*

### *Article VI – CLEARANCE OF CONFIRMED TRADES*

\* \* \* \* \*

### Adjustment Policies and Procedures

SECTION 11. (a) through (b) [No Change.]

(c) The composition and manner of acting of the Securities Committee and panels comprised of representatives of Securities Exchanges that have authority under the By-Laws and Rules to make certain determinations with respect to cleared contracts shall be as set forth below, unless otherwise provided in the By-Laws and Rules of the Corporation:

(1) The Securities Committee shall consist of one designated representative of each Securities Exchange and the Executive Chairman ~~of the Corporation~~. The Executive Chairman ~~of the Corporation~~ shall not be a voting member of the Committee or of any panel except in the case of

a tie vote, in which case the Executive Chairman shall have the right to cast a vote to break the tie and shall, for such purpose, be deemed to be a voting member.

(2) through (3) [No Change.]

(4) Notwithstanding the foregoing provisions of this Section 11 or any other requirements of the By-Laws and Rules, the Executive Chairman ~~of the Corporation~~ may designate any other representative of the Corporation, and any representative of an Exchange may designate any other representative of such Exchange, to serve in his place at any meeting of the Securities Committee or of any panel. In the event of such designation, the designee shall, for the purposes of such meeting, have all of the powers and duties under this Section 11 of the person designating him. Neither the Corporation nor any Exchange shall designate to serve on any panel (i) any Exchange member or Clearing Member, or any director, officer, partner, or employee of any Exchange member or Clearing Member, or (ii) any person who, to the knowledge of the self-regulatory organization designating such person, is the beneficial holder of a long or short position in the cleared contracts as to which such panel is to make a determination

\* \* \* \* \*

### **Exercise Restrictions**

SECTION 17. (a) through (b) No Change.

...Interpretations and Policies:

**.01** The ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or the delegatee of any of the foregoing shall have the authority to act on behalf of the Corporation in imposing exercise restrictions pursuant to this Section 17(b).

\* \* \* \* \*

### ***Article IX – General Provisions***

\* \* \* \* \*

### **Certificates for Shares**

SECTION 12. Certificates representing shares of the Corporation shall be in such form and shall bear such legends as may be determined by the Board of Directors. Such certificates shall be signed by the Executive Chairman, Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or a Vice-President and by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and the date of issue, shall be entered on the books of the Corporation. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, destroyed or mutilated

certificate a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

\* \* \* \* \*

### **Suspension of Rules in Emergency Circumstances**

SECTION 14. (a) The Corporation's By-Laws, Rules, policies and procedures, or any other rules issued by the Corporation may be waived or suspended, or any time fixed thereby for the doing of any act or acts may be extended, by the Board of Directors, the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or the Chief Administrative Officer~~ whenever, in his, her, or their judgment (i) an emergency exists and (ii) such suspension, waiver or extension is necessary or advisable for the protection of the Corporation or otherwise in the public interest in order for the Corporation to continue to facilitate the prompt and accurate clearance and settlement of confirmed trades or other transactions and to provide its services in a safe and sound manner. If such determination is made other than by the Board of Directors, then notice must be given to the Board of Directors as soon as practicable.

(b) through (c) [No Change.]

\* \* \* \* \*

### ***Article XIV – Binary Options; Range Options***

\* \* \* \* \*

### **Unavailability or Inaccuracy of Final Underlying Interest Value**

SECTION 5. (a) No Change.

(b) In the case of a binary option or range option that is traded on a Securities Exchange, determinations by the Corporation under this Section 5 shall be made by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman ~~of the Corporation~~. In the case of a binary option or range option that is not traded on a Securities Exchange, determinations under this Section 5 shall be made by the Corporation alone. The panel (or the Corporation, if there is no panel) shall fix the underlying interest value based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of the affected series, the maintenance of a fair and orderly market in the affected series, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel or the Corporation may fix the underlying interest value using: (i) the reported price or value for the relevant underlying interest or index component at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant underlying interest or index component at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting

authority; or (iii) a price or value for the relevant underlying interest or index component at such other time, or representing a combination or average of prices or values at such time or times, as the panel or the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman ~~of the Corporation~~ and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel or the Corporation pursuant to this Section 5 shall be within the sole discretion of such panel or the Corporation, as the case may be, and shall be conclusive and binding on all investors and not subject to review

(c) [No Change.]

\* \* \* \* \*

#### *Article XVI – Yield-Based Treasury Options*

\* \* \* \* \*

#### **Unavailability of Inaccuracy of Settlement Value of Underlying Yield**

SECTION 4. (a) [No Change.]

(1) [No Change.]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. The exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman ~~of the Corporation~~. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel may fix the exercise settlement amount using: (i) the reported value of the underlying yield at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a value was reported by the reporting authority; (ii) the reported value of the underlying yield at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening value is reported by the reporting authority; or (iii) a value for the underlying yield at such other time, or representing a combination or average of values at such time or times, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman ~~of the Corporation~~ and Exchange representatives to designate others to serve in their place on such

panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel convened pursuant to this Section shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review

(3) [No Change.]

(b) [No Change.]

\* \* \* \* \*

*Article XVII – Index Options and Certain Other Cash-Settled Options*

\* \* \* \* \*

**Unavailability or Inaccuracy of Current Underlying Interest Value**

**Effective for Series of Options Opened for Trading After September 16, 2000**

SECTION 4. (a) [No Change.]

(1) [No Change.]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. In the case of cash-settled securities options other than OTC index options, the exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman ~~of the Corporation~~. In the case of OTC index options or cash-settled commodity options, unless the By-Laws or Rules specifically provide otherwise in respect of a particular class of such options, the exercise settlement amount shall be fixed by the Corporation. The Corporation will consult with the Membership/Risk Committee when appropriate to obtain any additional or supplemental market information or data from the members of such committee that the Corporation believes will be useful in setting such exercise settlement value. The panel (or the Corporation, as the case may be) shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel (or the Corporation) may fix the exercise settlement amount using: (i) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting authority; or (iii) a price or value for the relevant security(ies), commodity(ies) or underlying interest at such other time, or representing a combination or average of prices or values at such time or times, as the

Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman ~~of the Corporation~~ and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination pursuant to this Section shall be within the sole discretion of the Corporation or the panel making such determination, as the case may be, and shall be conclusive and binding on all investors and not subject to review.

(3) [No Change.]

(b) [No Change.]

\* \* \* \* \*

#### ***Article XXII – Cash-Settled Foreign Currency Options***

\* \* \* \* \*

#### **Unavailability or Inaccuracy of Spot Price**

SECTION 4. (a) [No Change.]

(1) [No Change.]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. The exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman ~~of the Corporation~~. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel may fix the exercise settlement amount using: (i) the reported price of the underlying currency at the close of regular trading hours for options on the affected series (as determined by the Corporation) on the last preceding trading day for which such a price was reported by the reporting authority; (ii) the reported price of the underlying currency at the opening of regular trading hours for options on the affected series (as determined by the Corporation) on the next trading day for which such a price is reported by the reporting authority; or (iii) the price of the underlying currency at such other time, or representing a combination or average of prices or quotations at such time or times, and reported in such manner, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman ~~of the Corporation~~ and Exchange representatives to designate others to

serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel convened pursuant to this Section shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review

(3) [No Change.]

(b) [No Change.]

\* \* \* \* \*

**Article XXIV – BOUNDS**

\* \* \* \* \*

**Unavailability of Closing Price**

SECTION 6. (a) [No Change.]

(1) [No Change.]

(2) The Corporation may fix the Closing Price for BOUNDS contracts of an affected series. The Closing Price shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman ~~of the Corporation~~. The panel shall fix the Closing Price based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of affected BOUNDS contracts, the maintenance of a fair and orderly market in such contracts, and consistency of interpretation and practice. Without limiting the generality of the foregoing, the panel may, if it deems such action appropriate for the protection of investors and the public interest, fix the Closing Price on the basis of the price at the close of trading on the last preceding trading day for which a Closing Price was reported by the primary market. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman ~~of the Corporation~~ and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this subparagraph. Every determination of a panel convened pursuant to this subparagraph shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review

(b) [No Change.]

\* \* \* \* \*

**EXHIBIT 5B**



## OCC Rules

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text



*Chapter III – Financial Requirements*

\* \* \* \* \*

**RULE 305 - Restrictions on Certain Transactions, Positions and Activities**

**RULE 305.** (a) If the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer ~~or the Chief Administrative Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer~~ of the Corporation shall at any time determine that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose restrictions on such Clearing Member's positions and stock loan and borrow positions with the Corporation, such officer shall have the authority (i) to prohibit or to impose limitations on the clearance of opening purchase transactions or opening writing transactions by such Clearing Member, (ii) to require such Clearing Member to reduce or eliminate existing unsegregated long positions or short positions in such Clearing Member's accounts with the Corporation, (iii) to require such Clearing Member to hedge existing unsegregated long positions or existing short positions for which a deposit in lieu of margin has not been made in accordance with the Rules in such Clearing Member's accounts with the Corporation, (iv) to prohibit or to impose limitations on the acceptance by the Corporation of Stock Loans entered into by such Clearing Member, (v) to require such Clearing Member to reduce or eliminate existing stock loan positions or stock borrow positions in such Clearing Member's accounts with the Corporation, (vi) to require such Clearing Member to hedge existing stock loan positions or stock borrow positions, and/or (vii) to require such Clearing Member to transfer any account maintained by such Clearing Member with the Corporation, any position or stock loan or borrow position maintained in any such account, or any account carried by such Clearing Member, to another Clearing Member.

(b) If the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, ~~or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or the Chief Administrative Officer~~ of the Corporation shall at any time determine that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose restrictions on such Clearing Member's facilities management activities or activities as an Appointed Clearing Member, such officer shall have the authority to prohibit such Clearing Member from engaging in such activities or to impose such limitations on such activities as such officer deems necessary or appropriate in the circumstances.

(c) Any action taken by the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, ~~or Designated Officer or the Chief Administrative Officer~~ with respect to a Clearing Member pursuant to paragraph (a) or (b) shall be subject to review by the Risk Committee of the Corporation upon submission by the Clearing Member of a request for review to the Secretary of the Corporation within five business days of the date such action is taken. The Risk Committee shall schedule an early hearing. The Clearing Member shall be given not less than one day's notice of the place and time of such hearing. At the hearing, the Clearing Member shall be afforded an opportunity to be heard and to present evidence in its behalf and may be represented

by counsel. A verbatim record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Risk Committee, be charged in whole or in part to the Clearing Member if the Risk Committee does not modify the action of the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or Designated Officer ~~or the Chief Administrative Officer~~. The Clearing Member shall be notified in writing of the outcome of the Risk Committee's review.

(d) [No Change.]

*...Interpretations and Policies:*

**.01** through **.06** [No Change.]

**.07** The Clearing Member is experiencing such operational difficulties that the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or the Chief Administrative Officer~~ determines that action under Rule 305 is necessary or advisable in the circumstances.

**.08** through **.09** [No Change.]

**.10** The Clearing Member, the Appointed Clearing Member of the Clearing Member or CDS (if the Clearing Member is a Canadian Clearing Member described in Rule 901) is experiencing such difficulty in meeting its obligations to the correspondent clearing corporation that the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or the Chief Administrative Officer~~ determines that action under Rule 305 is necessary or advisable in the circumstances.

**.11** through **.12** [No Change.]

\* \* \* \* \*

**Rule 309 – Managing Clearing Members and Managed Clearing Members**

(a) through (c) [No Change.]

(d) At any time when the net capital of a Managing Clearing Member shall be less than the minimum amount prescribed by paragraph (b) of this Rule 309, the Managing Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or the Chief Administrative Officer~~ shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Managing Clearing Member and every Managed Clearing Member for which the Managing Clearing Member provides facilities management services.

(e) through (f) [No Change.]

*...Interpretations and Policies:*

**.01** A Clearing Member that proposes to become a Managed Clearing Member may request an expedited review of its proposed facilities management agreement. If the Corporation in its sole discretion consents to perform such a review, then the ~~Executive Chairman~~Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~, or any delegate of such officer shall have the authority to determine whether the submitted agreement meets the requirements of paragraph (f) of this Rule and to approve or disapprove the agreement. Any delegate shall be an officer of the rank of Senior Vice President or higher. Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the agreement and determine de novo whether such requirements have been met and approve or disapprove the agreement. Should the Risk Committee's determination result in the modification or reversal of the action taken by the ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~, or any delegate of such officer, any acts taken by the Corporation or the Clearing Member prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. If the Risk Committee disapproves a facilities management agreement that was previously approved by the Corporation's management, the Clearing Member shall be given a reasonable period of time in which to enter into an appropriately revised agreement or cease to be a Managed Clearing Member.

**.02** A Managed Clearing Member that proposes to operate without a facilities management agreement may request an expedited review of its proposal. If the Corporation in its sole discretion consents to perform such a review, then the ~~Executive Chairman~~Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~ or any delegate of such officer who is a Designated Officer shall have the authority to determine whether the Managed Clearing Member has the operational capability, experience and competency to perform the managed services as specified in paragraph (e) of this Rule and to approve or disapprove termination of its facilities management agreement. Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the Managed Clearing Member's operational capability, experience and competency to determine de novo whether the requirements of paragraph (e) have been met and approve or disapprove such termination. Should the Risk Committee's determination result in the modification or reversal of the action taken by the ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~, or any delegate of such officer who is a Designated Officer, any acts taken by the Corporation or the Clearing Member prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. If the Risk Committee disapproves the termination of a facilities management agreement that was previously approved by the Corporation's management, the Clearing Member shall be given a reasonable period of time in which to enter into a new facilities management arrangement or terminate its clearing membership.

\* \* \* \* \*

**Rule 309A – Appointed Clearing Members and Appointing Clearing Members**

(a) through (b) [No Change.]

(c) At any time when the net capital of an Appointed Clearing Member shall be less than the minimum amount prescribed by paragraph (a) of this Rule 309A, the Appointed Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or the Chief Administrative Officer of the Corporation shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Appointed Clearing Member and each of its Appointing Clearing Members.

\* \* \* \* \*

***Chapter V – Daily Cash Settlement***

\* \* \* \* \*

**Rule 505 – Extension of Settlements**

The Board of Directors, Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ of the Corporation shall be authorized to extend, to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, any or all times at which the Corporation is obligated to pay a settlement amount to Clearing Members as set forth in the By-Laws, Rules or procedures of the Corporation upon a determination that an emergency or force majeure condition exists which would make such extension necessary or advisable for the protection of the Corporation or is otherwise in the public interest. Such determination and the reasons therefor shall be promptly reported to the SEC, the CFTC and any other regulatory or supervisory agencies having jurisdiction over the Corporation, but the effectiveness of the settlement extension shall not be conditioned upon such report. As soon as practicable after such determination has been made, the Corporation shall notify Clearing Members thereof and, in general terms, what procedures shall be taken by the Corporation in connection therewith. Any determination made under this Rule shall be in the sole discretion of the Board of Directors, Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ of the Corporation, as applicable, and not subject to review. In the event a determination is made by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer or Chief Administrative Officer of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. A report detailing any extension of time for settlement shall be prepared and maintained with the records of the Corporation.

*Chapter VI – Margins*

\* \* \* \* \*

**Rule 604 – Form of Margin Assets**

\* \* \* \* \*

(a) through (b) [No Change.]

(c) *Letters of Credit.* Clearing Members may deposit with the Corporation letters of credit denominated in U.S. dollars issued by banks or trust companies approved by the Corporation for this purpose. Such letters of credit shall be in a form prescribed by the Corporation and shall meet the following criteria:

(1) through (2) [No Change.]

(3) All letters of credit shall be irrevocable.

Under unusual circumstances, the ~~Executive Chairman of the Corporation~~ Chief Executive Officer or Chief Operating Officer or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer, following consultation with the staff of the Securities and Exchange Commission, may accept, on a temporary basis, a letter of credit which varies from the preceding requirements

If a Clearing Member shall deposit with the Corporation a letter of credit which indicates on its face that it is being deposited to serve as margin for the Clearing Member's customers' account or for a segregated futures account, such letter of credit shall not constitute margin for any other account maintained by the Clearing Member until such time as the issuing bank shall instruct the Corporation by amendment to the letter of credit stating that such letter of credit is not so restricted.

Notwithstanding the provisions of any other Rule, the Corporation may draw upon a letter of credit at any time, whether or not the Clearing Member which deposited such letter of credit has been suspended by the Corporation or is in default with respect to any obligation to the Corporation, if the Corporation determines that such draw is advisable to protect the Corporation, other Clearing Members or the general public. If such a draw is made without suspending the Clearing Member, funds received pursuant to the draw will be subject to the By-Laws and Rules applicable to deposits of cash margin.

(d) through (f) [No Change.]

\* \* \* \* \*

**Rule 609A – Waiver of Margin**

The Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or the Chief Administrative Officer~~ of the Corporation shall be authorized to waive, in whole or in part, conditionally or unconditionally, any deposit of margin that would otherwise be required to be made by any Clearing Member in any account at any time during any business day upon a determination that such waiver (i) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest and for the protection of investors, and (ii) is consistent with maintaining the financial integrity of the Corporation. Such officer shall use his best efforts to attempt to consult with officials of the Securities and Exchange Commission prior to granting any such waiver; provided, however, that the authority contained herein shall not be conditioned by such consultation. The Corporation shall advise its Board of Directors and the Securities and Exchange Commission as soon as practicable in writing of the granting of any such waiver and the reasons therefor, and a record of any such waiver shall be prepared and maintained with the records of the Corporation.

\* \* \* \* \*

**Chapter VIII – Exercise and Assignment****Rule 801 – Exercise of Options**

\* \* \* \* \*

(a) through (c) [No change.]

(d) Notwithstanding the foregoing provisions of this Rule, and except as otherwise provided in this paragraph (d), the ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer ~~or the Chief Administrative Officer~~, or any delegate of such officer, may in the sole discretion of such person permit a Clearing Member to file any exercise notice after an applicable deadline prescribed pursuant to paragraph (a) of this Rule, solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer, subject to the following conditions:

(1) through (2) [No Change.]

(3) The Clearing Member shall deliver to the Corporation, within two business days after submitting a filing pursuant to this paragraph (d), a memorandum describing in reasonable detail the error that gave rise to such action. Every memorandum shall be reviewed by the Chief Executive Officer, Chief Operating Officer, ~~Chief Administrative Officer~~, or any other officer of the Corporation designated by the Chief Executive Officer or Chief Operating Officer ~~or Chief Administrative Officer~~, as applicable, and, in his or her sole discretion such officer shall make a submission for remission of any late filing fee pursuant to subparagraph (d)(5).

(4) [No Change.]

(5) The Corporation may remit, in whole or in part, any late filing fee imposed pursuant to subparagraph (d)(2), if the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or the Chief Administrative Officer~~ finds that the filing giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member and its customer, or that remission is otherwise equitable in the circumstances.

(6) [No Change.]

\* \* \* \* \*

#### **Rule 804 – Allocation of Exercises**

Except as provided in the last sentence of this Rule 804, each Clearing Member shall establish fixed procedures for the allocation of exercises assigned in respect of short positions in the Clearing Member's accounts to specific option contracts included in such short positions. The allocation shall be made in accordance with the requirements set forth in Exchange Rules and any applicable rules of any self-regulatory organization of which the Clearing Member is a member. During the term of any restriction imposed on a Clearing Member pursuant to Rule 305, the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or the Chief Administrative Officer~~ may require the Clearing Member to report to the Corporation, not later than 8:00 A.M. Central Time (9:00 A.M. Eastern Time) on each business day, the name and address of each writer to whom the Clearing Member allocated an exercise assigned to the Clearing Member on the preceding business day. Such reports shall indicate, for each writer, the series of options for which an exercise was allocated and the number of contracts included in the allocation, and shall state whether any specific deposit or escrow deposit has been made in respect of such writer's short position in such series of options. The foregoing provisions of this Rule 804 shall not apply to the allocation of exercises of OTC options; and in the case of short positions in OTC options in respect of which the Corporation has assigned exercises to a particular customer ID, the Clearing Member shall allocate the exercise only to the customer associated with such customer ID.

#### ***...Interpretations and Policies:***

**.01** [No Change.]

#### **Rule 805 – Expiration Exercise Procedure**

(a) through (h) [No Change.]

(i) The Corporation may remit, in whole or in part, any filing fee imposed pursuant to subparagraph (g), if the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or Chief Administrative Officer~~ finds that the tendering of the

supplementary exercise notice giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member or its customer, or that remission is otherwise equitable under the circumstances.

(j) through (m) [No Change.]

\* \* \* \* \*

### ***Chapter IX – Delivery of Underlying Securities and Payment***

\* \* \* \* \*

#### **Rule 901 – Settlement Through Correspondent Clearing Corporations**

(a) through (d) [No Change.]

(e) A specification in any Delivery Advice that settlement is to be made through the facilities of the correspondent clearing corporation pursuant to this Rule 901 may be revoked by the Corporation at any time prior to the obligation time by an appropriate notice to the Receiving and Delivering Clearing Members. In the event of such revocation, delivery and payment shall be made in accordance with Rules 903 through 912; provided, however, that the ~~Executive Chairman~~Chief Executive Officer or, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or the Chief Administrative Officer of the Corporation may, upon the application of the Receiving or the Delivering Clearing Member, extend or postpone the time for delivery to a date not more than two business days after the date of such revocation.

(f) through (i) [No Change.]

\* \* \* \* \*

#### **Rule 903 – Obligation to Deliver**

When a Delivery Advice or the Corporation directs that settlement be made on a broker-to-broker basis, the Delivering Clearing Member shall deliver each underlying security specified in the Delivery Advice against payment of the aggregate purchase price therefor on the delivery date specified therein, which, in the case of options, shall be the second business day following the day on which the exercise notice was, or is deemed to have been, properly tendered to the Corporation pursuant to Chapter VIII of the Rules, and, in the case of security futures, shall be the second business day following the maturity date, except for series that are designated by the Exchange on which such series are traded for settlement on the first business day following the maturity date of the applicable series, provided that:

(a) the Corporation may designate a different delivery date for property that is deliverable as a result of an adjustment of a contract pursuant to the By-Laws and Rules; and



(b) the ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer ~~or the Chief Administrative Officer~~ or delegate of such officer may extend or postpone the time for delivery whenever, in such person's opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \* \* \*

### *Chapter X – Clearing Fund Contributions*

\* \* \* \* \*

#### **Rule 1001 – Size of Clearing Fund**

(a) through (c) [No Change.]

(d) *Temporary Increase to Clearing Fund Size.* The Risk Committee, or the Executive Chairman, Chief Executive Officer, ~~Chief Administrative Officer~~, or Chief Operating Officer, upon notice to the Risk Committee, shall have the authority to increase the size of the Clearing Fund at any time for the protection of the Corporation, Clearing Members or the general public. Any determination by the Executive Chairman, Chief Executive Officer, ~~Chief Administrative Officer~~, or Chief Operating Officer to implement a temporary increase in Clearing Fund size would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Any temporary increase in the Clearing Fund shall be reviewed by the Risk Committee as soon as practical and, if such temporary increase is still in effect, the Risk Committee shall determine whether (A) the increase in the cash Clearing Fund requirement is no longer required, or (B) OCC's rules should be modified to ensure that OCC continues to maintain sufficient prefunded financial resources.

#### *...Interpretations and Policies:*

.01 [No Change.]

#### **Rule 1002 – Clearing Fund Contributions**

(a) *Form and Method of Contributions.* Contributions to the Clearing Fund shall be in cash or in Government securities.

(i) *Cash Clearing Fund Requirement.* Clearing Members shall collectively contribute \$3 billion in cash to the Clearing Fund ("Cash Clearing Fund Requirement"). Each Clearing Member's proportionate share of the Cash Clearing Fund Requirement shall be equal in percentage to its proportionate share of the Clearing Fund as determined by Rule 1003(a)(y). The Executive Chairman, Chief Executive Officer~~Chief Administrative Officer~~, or Chief Operating Officer, upon providing notice to the Risk Committee, shall have the authority to temporarily increase the amount of cash required to be maintained in the Clearing Fund, up to an amount that includes the size of the Clearing Fund as determined in accordance with Rule 1001, for the protection of

OCC, Clearing Members or the general public in accordance with the Corporation's policies and procedures. Any determination by the Executive Chairman, ~~Chief Executive Officer~~ ~~Chief Administrative Officer~~, or Chief Operating Officer to implement a temporary increase in the Cash Clearing Fund Requirement would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Any temporary increase in the Cash Clearing Fund Requirement shall be reviewed by the Risk Committee as soon as practical (but in any event, such review must occur within 20 calendar days of such increase) and, if such temporary increase is still in effect, the Risk Committee shall determine whether (A) the increase in the Cash Clearing Fund Requirement is no longer required, or (B) OCC's rules should be modified to ensure that OCC continues to maintain sufficient liquidity resources.

(ii) through (iii) [No Change.]

(b) through (f) [No Change.]

\* \* \* \* \*

#### **Rule 1006 – Purpose and Use of Clearing Fund**

(a) through (e) [No Change.]

(f) *Borrowings*. If (i) the Corporation deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension, or in anticipation of the potential default or suspension, of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (c) but elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund; or (iii) the Corporation reasonably believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, and in any case the Corporation determines that it will be unable to borrow or otherwise obtain such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation and use such assets to borrow or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, ~~Chief Executive Officer~~, or Chief Operating Officer ~~or the Chief Administrative Officer~~ of the Corporation in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions); provided, in the case of any transaction effected under the circumstances specified in clause (i) or clause (iii) above, that the funds obtained through such transaction will be used solely for the purposes described in clause (i) or clause (iii), as applicable. The funds obtained by the Corporation pursuant to this paragraph (f), irrespective of how such funds are applied, shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the

amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Chapter X. If all or a part of any transaction effected by the Corporation pursuant to this paragraph (f) remains outstanding after thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount of Clearing Fund assets used to support the Corporation's obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Chapter X.

(g) through (j) [No Change.]

\* \* \* \* \*

### *Chapter XI – Suspension of a Clearing Member*

\* \* \* \* \*

### **Rule 1104 – Creation of Liquidating Settlement Account**

(a) [No Change.]

(b) Notwithstanding the provisions of Rule 1104(a), if the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or the Chief Administrative Officer~~ shall determine in his discretion, taking into account the size and nature of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as such officer deems relevant, that the immediate liquidation of some or all of the suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the Corporation, other Clearing Members, or the general public, such assets need not be immediately liquidated. In such case, pending the ultimate disposition of the suspended Clearing Member's margin deposits and contributions to the Clearing Fund, the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or the Chief Administrative Officer~~ of the Corporation may, for purposes of satisfying such Clearing Member's obligations under the By-Laws and Rules, cause the Corporation to use such Clearing Member's margin deposits and/or contributions to the Clearing Fund to borrow or otherwise obtain funds from third parties through any means determined to be reasonable by such officer in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions). Any determination made pursuant to this paragraph shall be reported to the Board of Directors within 24 hours.

(c) through (f) [No Change.]

### *...Interpretations and Policies:*

**.01** [No Change.]

**.02** (a) For purposes of this Rule 1104 and Rules 1106, 1107, 2210 and 2210A, in order to minimize the execution and liquidity risks associated with (i) liquidating a suspended Clearing Member's margins deposited with the Corporation and Clearing Fund contributions (collectively referred to in this Interpretation and Policy as "Collateral"), (ii) closing out such Clearing Member's open positions in cleared contracts and stock loans (collectively referred to in this Interpretation and Policy as "Open Positions") and (iii) closing out exercised or matured cleared contracts to which such Clearing Member was a party either as the exercising Clearing Member or as the assigned Clearing Member (collectively referred to in this Interpretation and Policy as "Exercised/Matured Contracts"), the Corporation may elect to use one or more private auctions to liquidate all or any part of such Collateral, Open Positions and/or Exercised/Matured Contracts, as determined by the Board of Directors, the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ of the Corporation. As used in this interpretation, the term "private auction" means an auction open to bidders invited by the Corporation pursuant to this interpretation and with respect to which bidders submit confidential bids. If such determination is made by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. The option to elect a private auction process is discretionary; the Corporation may use other procedures as provided for or permitted in the By-Laws and Rules to liquidate a suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts if the Corporation decides that circumstances warrant. The Corporation shall provide prompt notice to the Risk Committee (or other committee of the Board of Directors to which the auction oversight function is delegated) whenever a private auction is expected to be conducted.

(b) through (g) [No Change.]

**.03** through **.04** [No Change.]

\* \* \* \* \*

### **Rule 1106 – Open Positions**

(a) through (d) [No Change.]

(e) Exceptions.

(1) Notwithstanding the preceding provisions of this Rule, if the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ shall determine in his discretion, taking into account the size and nature of a suspended Clearing Member's positions, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as such officer deems relevant, that the closing out of some or all of the suspended Clearing Member's unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, would not be in the best interests of the Corporation, other Clearing Members, or the general public, such positions need not be closed out, provided that any determination made pursuant to this paragraph shall be reported to the Board of Directors within 24 hours. This

paragraph shall not apply to positions of any suspended Clearing Member as to which an application for a protective decree may be filed under Section 5(a)(3) of the Securities Investor Protection Act of 1970, as amended, except upon a determination by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ in his discretion, taking into account the circumstances enumerated in the preceding sentence, that the closing out of the suspended Clearing Member's open positions in accordance with the other provisions of this Rule would likely result in a loss to the Corporation (after application of such Clearing Member's margin and Clearing Fund deposits but before any proportionate charge to the Clearing Fund deposits of other Clearing Members).

(2) [No Change.]

(f) Protective Action.

If the Executive Chairman, Chief Executive Officer, or Chief Operating Officer ~~or Chief Administrative Officer~~ shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to liquidate any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to liquidate any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours, and any such transactions that are executed shall be reported to the Risk Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account, and (iii) costs, expenses and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the

purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

(g) [No Change.]

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### **Rule 1110 – Right of Appeal**

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(a) [No Change.]

(b) *Consideration of Appeals.* Appeals shall be considered and decided by an appeals panel appointed by the Executive Chairman ~~of the Board~~, composed of two officers or employees of the ~~Clearing~~ Corporation and one director. Appeals shall be heard as promptly as possible, and in no event more than fourteen days after the filing of the notice of appeal. The appellant shall be notified of the time, place and date of the hearing not less than three days in advance of such date. At the hearing, the appellant shall be afforded an opportunity to be heard and to present evidence in its own behalf, and may, if it so desires, be represented by counsel. As promptly as possible after the hearing, the panel shall, by the vote of a majority of its members, affirm or reverse the suspension. The appellant shall be notified in writing of the panel's decision; and if the decision shall have been to affirm the suspension, the appellant shall be given a written statement of the grounds therefor.

(c) through (e) [No Change.]

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### ***Chapter XIII – Futures, Futures Options and Commodity Options***

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### **Rule 1309 – Disciplinary Action for Failure to Deliver or Receive**

If, without good cause, a Delivering Clearing Member fails to discharge its delivery obligations under Rule 1308A or 1308B, or a Receiving Clearing Member refuses to accept or fails to pay the settlement amount for an underlying interest tendered to it pursuant to Rule 1308A or 1308B, such failure or refusal may be deemed to constitute a delay embarrassing the operations of the Corporation, and may be subject to discipline under Chapter XII of the Rules. The ~~Executive Chairman Chief Executive Officer, or~~ Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or Chief Administrative Officer of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or receive.

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***Chapter XIV – Treasury Securities Options***

\* \* \* \* \*

**Rule 1402 – Exercise Settlement Date for Treasury Securities Options**

(a) [No Change.]

(b) The ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer ~~or Chief Administrative Officer~~, or the delegate of any such officer, may extend or postpone any exercise settlement date for Treasury securities options whenever, in its opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \* \* \*

**Rule 1405 – Disciplinary Action for Failure to Match**

If a Delivering Clearing Member or a Receiving Clearing Member fails, without good cause, to timely submit accurate trade information to the real time trade matching system of FICC under Rule 1403, and the Corporation receives notice pursuant to Rule 1404(a) that the failure has not been resolved and the trade has not been successfully matched, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall be subject to discipline under Chapter XII of the Rules. The ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer or Chief Administrative Officer shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or receive.

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***Chapter XVI – Foreign Currency Options***

\* \* \* \* \*

**Rule 1604 – Exercise Settlement Date for Foreign Currency Options**

(a) [No Change.]

(b) The ~~Executive Chairman or President~~ Chief Executive Officer, Chief Operating Officer, or delegate of such officer may advance or postpone any exercise settlement date for foreign currency options whenever, in its opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \* \* \*

**Rule 1610 – Disciplinary Action for Failure to Deliver or Pay**

If, without good cause, a Delivering Clearing Member fails to discharge its guarantee or delivery obligations under Rule 1606, or a Paying Clearing Member fails to pay the settlement amount due pursuant to Rule 1606, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The ~~Executive Chairman~~ Chief Executive Officer, Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer ~~or Chief Administrative Officer~~ shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or pay.

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**EXHIBIT 5C**

**THE OPTIONS CLEARING CORPORATION  
BOARD OF DIRECTORS  
CHARTER  
AND  
CORPORATE GOVERNANCE PRINCIPLES**

The following Board of Directors Charter and Corporate Governance Principles (“Principles”) have been adopted by the Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) to assist the Board in the exercise of its responsibilities.

The Board is responsible for advising management and overseeing the management of the business and affairs of OCC (except as may otherwise be provided in OCC’s Amended and Restated Certificate of Incorporation or its By-Laws and Rules). The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of all relevant stakeholders of OCC. In doing so, the Board exercises its authority to provide for governance arrangements that: are clear and transparent; clearly prioritize the safety and efficiency of OCC; support applicable public interest requirements and the objectives of owners and participants; establish that the Board and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of clearing members’ customers, securities issuers and holders, and other relevant stakeholders. The Board additionally seeks to: promote the safe and efficient operation of OCC; maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC in light of OCC’s role as a systemically important financial market utility (“SIFMU”); and pursue objectives that are consistent with the interests of its stakeholders and support the public interest. In consideration of its responsibility to maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC, the Board has explicitly delegated the management of specific risks to the Board committees. To the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the Risk Committee. Accordingly, the Board is mindful of the public interest as it fulfills its duties by complying with the obligations imposed upon the Board by federal and state laws and regulations applicable to OCC and ensures that major decisions of OCC are appropriately disclosed to relevant stakeholders and to the public. Where the Board is authorized to approve reports or proposals provided to it by management or a committee, the Board may or may not approve such matters in its business judgment. If the Board does not approve such a report or proposal, it shall report to management or the relevant committee(s) that it has not approved such matter and may provide direction as to the revisions or alternative courses of action as appropriate.

These Principles set forth the shared vision of the Board and OCC’s management regarding the governance, management, and oversight practices to be

followed at OCC, and reflect the Board's commitment to monitor the effectiveness of policy and decision-making both at the Board and management level. The Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC. However, in all instances, the Board retains the obligation to oversee such delegated activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

These Principles are not intended to change or interpret any Federal or state law or regulation, including the Delaware General Corporation Law, or the OCC Amended and Restated Certificate of Incorporation, the OCC By-Laws, or the Rules of OCC.<sup>1</sup> These Principles are subject to modification from time to time by the Board.

## **THE MISSION OF THE BOARD**

The Board performs an oversight role (either directly or indirectly through delegating certain authority to its committees) to ensure: that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities as a SIFMU in connection with providing its clearance and settlement services, and that OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe and efficient manner.

The Board fulfills its oversight role by:

- Overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with these Principles and regulatory requirements, including through regular assessments of Board and individual director performance;
- Ensuring that the Board and senior management have appropriate experience and skills to discharge their respective responsibilities and have established clear and direct lines of responsibility between the Board and senior management;
- Ensuring that risk management, compliance and internal audit personnel have sufficient authority, resources, independence from management, and access to the Board;

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<sup>1</sup> OCC is subject to comprehensive regulation and supervision by the Securities and Exchange Commission (with respect to its clearing agency registration) and by the Commodity Futures Trading Commission (with respect to its derivatives clearing organization registration). As a SIFMU, OCC is also subject to supervision by the Board of Governors of the Federal Reserve System under Title VIII of the Dodd-Frank Act. Capitalized terms used in these Principles shall have the meanings set forth in OCC's By-Laws and Rules unless otherwise indicated.

- Ensuring that risk management, compliance and internal audit personnel have a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board, respectively;
- Ensuring that the Audit Committee of the Board is independent as determined by the Board;
- Periodically reviewing and approving the amount of compensation for Public Directors;
- Setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC;
- Overseeing management's activities in managing and operating OCC and evaluating senior management's performance in executing its responsibilities;
- Selecting and overseeing and, where appropriate, replacing the Executive Chairman ~~and~~, Chief Executive Officer, ~~and~~ the Chief Operating Officer, ~~and the Chief Administrative Officer~~ as well as counseling and advising such officers in the management of OCC's business and affairs;
- Overseeing the development and design of employee compensation, incentive, and benefit programs and evaluating the performance of the Executive Chairman ~~and~~, Chief Executive Officer, ~~and~~ the Chief Operating Officer, ~~and the Chief Administrative Officer~~ and approving the compensation of each such officer;
- Overseeing management succession planning and talent management processes;
- Overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest;
- Monitoring OCC's performance in delivering clearance and settlement services;
- Reviewing and approving major corporate plans and actions, including capital expenditures, the annual budget and corporate plan, financial objectives, operating capital and capital structure, and fee structure, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearance and settlement

services;

- Overseeing OCC's processes and framework for comprehensively managing the range of risks that arise in or are borne by OCC, including the risk management policies, procedures, and systems designed to identify, measure, monitor, and manage such risks consistent within the risk appetite and risk tolerances approved by the Board;
- Assigning responsibility and accountability for risk decisions and overseeing the establishment of policies addressing decision-making in crises and emergencies;
- Overseeing and approving OCC's Recovery and Orderly Wind-Down Plan;
- Overseeing OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of major changes in auditing and accounting principles and practices;
- Overseeing OCC's processes designed to ensure compliance with applicable laws and regulations, including banking, securities, and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;
- Overseeing OCC's system of internal controls, including review of the annual study and evaluation of OCC's system of internal accounting controls;
- Overseeing OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services; and
- Performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, or other policies.

## BOARD ISSUES

### *Membership*

1. **Size of Board; Composition.** OCC's By-Laws currently provide that the size of the Board shall be up to twenty members and shall be comprised of:

- Nine directors who represent OCC clearing members ("Member Directors");  
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- Five directors designated by and representing each of OCC's Equity Exchanges ("Exchange Directors");
- Five directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities ("Public Directors"); and
- One Management Director, who serves as the Executive Chairman may be chosen from the employees of the Corporation ("Management Director").

It is the policy of the Board that the Board at all times reflect the following characteristics:

- Each director shall at all times be committed to discharging effectively OCC's regulatory responsibilities in connection with its provision of clearance and settlement services as a SIFMU;
- Each director shall at all times exhibit high standards of integrity and commitment;
- Each director shall dedicate sufficient time, energy, and attention to ensure the diligent performance of his or her duties, including by attending meetings of the Board and committees of which he or she is a member, and by reviewing in advance all meeting materials;
- The Board shall encompass a range of talent, skill, industry knowledge, and expertise sufficient to provide sound and prudent guidance with respect to all of OCC's business, operations and interests;
- The Board shall reflect the diversity of OCC's employees and the employees of the market participants that OCC serves; and
- A substantial portion of directors shall be "independent" of OCC and OCC's management as defined by applicable regulatory requirements and the judgment of the Board.

The Governance and Nominating Committee is responsible for making recommendations to the Board regarding the composition of the Board as a whole, including whether the Board reflects: the appropriate balance of Member Directors, Exchange Directors, Public Directors and the Management Director; business specialization, technical skills, diversity (including diverse professional backgrounds); and other desired qualities such as sound judgment and a reputation for integrity.

2. **Board Membership Criteria.** The Board seeks directors from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity. In making their nominations, the Governance and Nominating Committee and the Board shall take into consideration applicable board of directors composition requirements of the Securities and Exchange Commission (as well as the Commodity Futures Trading Commission, to the extent applicable to OCC). As provided in OCC's By-Laws, the Governance and Nominating Committee and the Board also shall

use the criteria of the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”) in considering nominees for election to the Board. In addition, Board members should have the highest professional and personal ethics and values, the relevant expertise and experience required to offer advice and guidance to the Executive Chairman ~~and~~, Chief Executive Officer, and Chief Operating ~~Officer, Chief Administrative~~ Officer, and other members of senior management, the ability to make independent analytical inquiries, a commitment to discharging effectively OCC’s regulatory responsibilities and an understanding of OCC’s business, and should be willing to devote adequate time and effort to Board responsibilities. Each Board member is expected to ensure that his or her other commitments do not materially interfere with his or her service overall as a director. The Governance and Nominating Committee shall take the foregoing criteria into account in connection with its recommendations for nomination of the Member Directors and Public Directors, as well as other considerations discussed in Section 4 below. In addition, in determining whether to recommend a Member Director or a Public Director for re-election, the Governance and Nominating Committee shall also consider the director’s past performance, including attendance at meetings and participation and contributions to the activities of the Board.

Resignations and disqualifications from the Board shall be addressed as provided in the By-Laws.

3. **Appointment of Governance and Nominating Committee.** As provided in the By-Laws, on an annual basis, the Board shall appoint a Governance and Nominating Committee consisting of at least one Public Director, at least one Exchange Director and at least one Member Director. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The Chair of the Governance and Nominating Committee shall be designated by the Board, after consultation with the Executive Chairman ~~and Chief Executive Officer~~, from among the Public Director members of the Governance and Nominating Committee.
4. **Selection of Member Directors and Public Directors.** As provided in its Charter, the Governance and Nominating Committee conducts periodic assessments of the overall composition of the Board in light of OCC’s current and expected business needs and, as a result of such assessments, the Governance and Nominating Committee shall recommend to the Board specific qualifications that it determines would be desirable to seek in candidates for Member Directors and Public Directors. In light of such assessments, the Governance and Nominating Committee may seek to identify new candidates for the Board who possess the specific qualifications approved by the Board and satisfy the other requirements for Board service, including those set forth in OCC’s By-Laws. It is acknowledged that, over time, different skill sets are likely to be determined to be

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desirable, so that the specific qualifications are likely to change. Moreover, it is acknowledged that it is not expected that the Board will necessarily include all identified skill sets at all times in light of the pool of candidates available to the Governance and Nominating Committee and other considerations such as re-nominating incumbent directors to maintain continuity and particular skills that they may have. In identifying new director candidates, the Governance and Nominating Committee seeks advice and names of candidates from Governance and Nominating Committee members, other members of the Board, members of management, and other public and private sources. The Governance and Nominating Committee may also, but need not, retain a search firm in order to assist it in these efforts.

As provided in the By-Laws, prior to each annual meeting of stockholders, the Governance and Nominating Committee shall nominate for approval by the Board one person for each directorship among the Member Directors and the Public Directors to be filled at such annual meeting. In selecting such nominees, the Governance and Nominating Committee shall follow the Director Nomination Procedure as in effect from time to time. With respect to Public Directors, the Governance and Nominating Committee shall consider whether the candidate lacks material relationships to OCC, OCC's senior management, and other directors such that the Public Director may be considered to be "independent" by the Board. With respect to Member Directors, in order to achieve a balanced representation on the Board among Member Directors, the Board has determined that other considerations are to be taken into account in the nomination of Member Directors, including the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. As further provided in the By-Laws, the Board shall be responsible for filling vacancies on the Board among the Member Directors or the Public Directors that may occur between annual meetings of stockholders, in each case with a nominee recommended by the Governance and Nominating Committee.

5. **Selection of Exchange Directors.** As provided in the By-Laws, each Exchange Director shall be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders. An individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange. As further provided in the By-Laws, a vacancy occurring for any reason among the Exchange Directors shall be filled by the Equity Exchange entitled to elect such Exchange Director.
6. **Selection of Management Director.** As provided in the By-Laws, the Executive Chairman, by virtue of holding his or her office of Executive Chairman, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders. If a Management Director shall cease to hold the office by virtue of which he or she was elected as a

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Management Director, he or she shall simultaneously be disqualified to serve as a Management Director. As further provided in the By-Laws, a vacancy occurring for any reason in the position of Management Director shall be filled by the Board with the person elected or appointed to fill the office of Executive Chairman.

7. **Extending Invitation to New Board Members.** The Executive Chairman shall extend the invitation to potential candidates to stand for election to the Board.

8. **Retirement.**

***Term Limits.*** As provided in the By-Laws, Member Directors are limited to serving three consecutive three-year terms; Exchange Directors, Public Directors, and the Management Director do not have term limits. As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee is responsible for reviewing periodically the continued appropriateness of the term limits applicable to Member Directors set forth in the By-Laws and for recommending to the Board, where appropriate, changes to such provisions.

***Retirement Policy.*** The Board does not favor a mandatory retirement age for directors, therefore no age limitations are imposed with respect to any category of director.

***Retirement Policy – Management Director.*** As provided in the By-Laws, a Management Director is no longer eligible to serve if he or she ceases to hold the office of Executive Chairman.

***Member Directors Changing Their Employment.*** If a Member Director ceases to be employed by the Clearing Member Organization that employed him or her at the time of his or her election as a Member Director, the director shall notify the Executive Chairman ~~and Chief Executive Officer.~~ As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee shall assess the appropriateness of such Member Director continuing to serve on the Board, and shall recommend to the Board any action to be taken with respect thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Member Director. The affected director is expected to act in accordance with the Board's decision following such review. The Governance and Nominating Committee, in accordance with the By-Laws, is responsible for recommending a replacement in the event that any such resignation is accepted by the Board.

***Other Board Commitments.*** It is the policy of the Board that non-employee directors shall disclose to the Executive Chairman information regarding each other board of directors on which a non-employee director serves at the time of his or her election to the Board, and after election shall advise the Executive



Chairman ~~and Chief Executive Officer~~ in advance of accepting an invitation to serve on another board, in each case to ensure that such additional board service will not impact such director's ability to serve on OCC's Board and does not create a conflict of interest. The Management Director should not accept an invitation to serve on another board without prior approval of the Governance and Nominating Committee.

The Executive Chairman ~~and Chief Executive Officer~~ may request the voluntary resignation of a director whose other board service (i) interferes with the director's ability to dedicate sufficient time, energy and attention to the performance of his or her duties as a director of OCC, or (ii) results in the need for the director to recuse himself or herself regularly as a result of conflicts of interest.

## **Conduct**

### **1. Board Meetings.**

**Selection of Agenda Items.** The Executive Chairman ~~and Chief Executive Officer~~, in consultation with the Chief ~~Executive Officer and Chief~~ Operating ~~Officer and Chief Administrative~~ Officer, other directors or officers of OCC, and the Corporate Secretary, shall establish the agenda for Board meetings. Any director may request that an item be included on any meeting agenda.

**Calling Board Meetings.** Meetings of the Board shall be called by the Executive Chairman ~~and Chief Executive Officer~~, his designee, or as provided in the By-Laws.

**Attendance.** Directors are expected to prepare for, attend, and participate in all Board and applicable committee meetings. Directors should use their best efforts to attend Board and committee meetings in person. When necessary, a director who is unable to attend in person may attend by telephone or other means of communication that allows all participants to hear and speak to each other if appropriate under the circumstances. A director who is unable to attend a meeting (which it is understood will occur on occasion) or who wishes to participate telephonically or use other communications equipment is expected to notify the Corporate Secretary or the Executive Chairman in advance of such meeting. As provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

**Distribution of Materials; Board Presentations.** It is important for directors to have materials on topics to be discussed sufficiently in advance of a meeting date and for directors to be kept abreast of developments between Board meetings. OCC regularly informs directors of internal and competitive developments between such meetings.

Directors can generally expect to receive summaries/slides of presentations at least a week in advance of a meeting to permit meaningful review and enable them to prepare for the meeting. Directors should review material distributed in advance of such meetings. In the event of a pressing need for the Board to meet on short notice or if such materials would otherwise contain highly confidential or sensitive information, it is recognized that written materials may not be available in advance of the meeting. OCC operates a board portal for the general dissemination of meeting and other written material to directors.

**Attendance of Non-Directors.** The Board believes that attendance of key executive officers relevant for the topic being discussed augments the meeting process. Members of OCC's senior management team and other employees may attend Board meetings at the invitation of the Executive Chairman ~~and,~~ Chief Executive Officer, ~~Chief Operating Officer,~~ or Chief ~~Administrative~~Operating Officer, and provide pertinent information as is necessary. Such persons may be excluded from Executive Sessions either of the Board or any Committee thereof.

The Executive Chairman ~~and,~~ Chief Executive Officer, ~~and~~ Chief Operating ~~Officer, and Chief Administrative~~ Officer encourage members of senior management to respond to questions posed by directors relating to their areas of expertise. The Board also believes that members of senior management of OCC can assist the Board with its deliberations and provide critical insights and analyses, particularly when the Board hears presentations on the business plan for the upcoming year. Attendance of such officers allows the most knowledgeable and accountable executives to communicate directly with the Board. It also provides the Board direct access to individuals critical to OCC's succession planning.

**Participation in Strategic Issues Discussions.** To facilitate the Board's oversight of OCC's major strategic, financial, and business activities, OCC will hold a meeting of the Board and management focused on the overall strategic objectives of OCC each calendar year.

**Number of Meetings.** The Board shall hold a minimum of five meetings per year with additional meetings called as the Board deems appropriate.

**Quorum.** Except as may otherwise be provided in the By-Laws, a majority of the Directors then in office, but not less than six (6) Directors, shall constitute a quorum for the transaction of business.

**Minutes.** The Board shall maintain minutes of all Board meetings, which shall be furnished to the directors for review.

2. **Executive Sessions.** The Board and each Board committee may call executive

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sessions from which members of management and invited guests may be excluded. While it is up to the Board and each committee to decide when to call an executive session and who will participate in such sessions, it is expected that management will be excluded from executive sessions or portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual members of the Board and of a committee also may be excluded from executive sessions or portions thereof at which the discussion concerns a matter as to which that member has an actual or potential conflict of interest. The Board shall select a director to chair executive sessions in the absence of the Executive Chairman. The Chair or Acting Chair of each committee shall chair an executive session of the committee. The chair of the executive session shall determine if separate minutes of an executive session are to be recorded as well as determine the level of detail to be included in such minutes, taking into account the sensitivity of the matters to be discussed and the possibility that candor may be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed in executive session.

- 3. Ethics and Conflicts of Interest.** Each director is required to act in good faith in the best interests of OCC and with due regard to the fiduciary responsibilities owed to OCC as a business and SIFMU. The Board has adopted a Code of Conduct for OCC

Directors that includes a Conflict of Interest Policy. The Conflict of Interest Policy incorporates various provisions of applicable corporate law and other standards adopted by OCC to ensure that Board and committee decisions are not impacted by conflicts of interest. Directors are expected to avoid any action, position or interest that conflicts with an interest of OCC, or gives the appearance of a conflict, in accordance with the Conflict of Interest Policy. Each calendar year, OCC solicits information from directors in order to monitor potential conflicts of interest and directors are expected to be mindful of their fiduciary obligations to OCC as set forth in the Code of Conduct. Public Directors are expected to refrain from entering into material business relationships with other directors.

When faced with a situation involving a potential conflict of interest, directors are at all times expected to err on the side of caution and immediately bring to the attention of the Executive Chairman and ~~Chief Executive Officer and~~ OCC's General Counsel any matters that may involve conflicts of interest or be reasonably perceived by others to raise questions about potential conflicts even if the director does not believe that an actual conflict exists.

Each director is required to comply with the provisions of the Code of Conduct for OCC Directors, including, without limitation, the provisions relating to

conflicts of interest and confidentiality. Directors are required to confirm each calendar year their compliance with the Code of Conduct for OCC Directors.

- 3. Board Compensation.** A Management Director shall not receive additional compensation for service as a director. Because OCC is an industry utility that benefits both clearing members and participant exchanges, Member Directors and Exchange Directors are not paid an annual retainer, but instead are each entitled to be paid \$100 for each meeting attended.

OCC believes that compensation for Public Directors should be competitive. The Compensation and Performance Committee will periodically review the level of the compensation for Public Directors, including how such compensation relates to director compensation of companies of comparable size and complexity. Changes to the compensation for Public Directors will be proposed to the full Board for consideration and approval.

- 4. Board Access to Senior Management and Independent Advisors.** In discharging its oversight role, the Board may inquire into any matter it considers appropriate to carry out its duties and responsibilities. Directors should have complete and open access to members of senior management and, as appropriate, to OCC's outside advisors. Directors shall coordinate such access through the Executive Chairman ~~and~~, Chief Executive Officer, or Chief Operating Officer, ~~or Chief Administrative Officer~~. Directors will use their judgment to assure that this access is not distracting to the business operation of OCC.

The Board shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Board also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Board shall have the right at any time to retain independent outside financial, legal or other advisors. The Board committees may retain independent outside financial, legal or other advisors, and OCC will provide appropriate funding, as determined by the relevant committee, for the payment of reasonable compensation to such advisors. When providing the annual report of its activities to the Board, the relevant committee will include information concerning any engagement of outside advisors and the associated fees and expenses.

- 5. Board Interaction with Media and Others.** The Code of Conduct for OCC Directors includes provisions related to inquiries made to directors from media and others (including regulators). Directors are expected to comply with these provisions.

- 6. Confidentiality of Information.** In order to facilitate open discussion, confidentiality of information and deliberations is an imperative. As provided in

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the Code of Conduct for OCC Directors, each director has an affirmative duty to safeguard the confidentiality of information provided to the Board as well as the nature of Board room deliberations.

7. **Board Orientation and Continuing Education.** OCC shall provide new directors with a director orientation program to familiarize such directors with, among other things, OCC's business, strategic plans, significant financial, accounting and risk management issues, compliance programs, conflicts policies, the Code of Conduct for OCC Directors, the OCC By-Laws and Rules, the Principles, principal officers, internal auditors, and external auditors. Each director is encouraged to participate in continuing education programs as necessary or appropriate to assist him or her in performing his or her responsibilities as a director. The Corporate Secretary will periodically advise directors of available educational opportunities.
8. **Board and Committee Evaluations.** The Governance and Nominating Committee is responsible for developing and administering an annual self-evaluation of the Board and its committees. The Governance and Nominating Committee shall be responsible for establishing the evaluation criteria, implementing the process for such evaluation, as well as making appropriate recommendations for improving performance. These self-evaluations will focus primarily on the performance of the Board and each committee as a whole and shall concentrate on areas where performance might be improved.

## COMMITTEES

1. **Board Committees.** The Board shall establish any standing and other committees that it deems necessary or appropriate to discharge its responsibilities. The Board currently has the following Board-level committees: Audit, Compensation and Performance, Governance and Nominating, Risk, and Technology. The Board may form a new committee or disband a current committee depending on circumstances. The Board may form such other committees, including subcommittees, as it from time to time deems appropriate, and may delegate authority to one or more designated members of such committees. In addition, the Board may determine to form ad hoc committees or groups from time to time, and determine the composition and areas of responsibility of such committees or groups.
2. **Independence Criteria for Audit Committee Service.** The Board has adopted the following independence criteria with respect to the Audit Committee. The Management Director does not qualify as independent for Audit Committee purposes provided that any Non-Executive Chairman of OCC shall not be deemed to be a Management Director for this purpose. Exchange Directors, Member Directors, and Public Directors qualify as independent for Audit Committee purposes, subject to an assessment by the Board (through the Governance and Nominating Committee) of individual directors for other

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disqualifying material relationships with OCC, OCC's senior management and other directors.

- 3. Committee Assignments and Chairs.** The Chairs of the committees shall be determined in accordance with the terms of the applicable Committee Charter and, if applicable, the By-Laws. The Board shall have the authority to approve and shall each calendar year review committee assignments.

The Governance and Nominating Committee, after consultation with the Executive Chairman, shall be responsible for making recommendations to the Board with respect to the assignment of directors to various committees, including the designation of Chair. After reviewing the recommendations, the Board shall be responsible for appointing the members to the committees.

Committee assignments and the designation of committee Chairs should be based on the director's knowledge, interests and areas of expertise. The Board does not favor mandatory rotation of committee assignments or Chairs. The Board believes experience and continuity are more important than rotation and that directors and Chairs should be rotated only if a change is likely to increase Committee performance or facilitate committee work.

- 4. Frequency and Length of Board Committee Meetings.** Committee Chairs should regularly consult with the Executive Chairman ~~and~~, Chief Executive Officer, or Chief Operating ~~Officer, or Chief Administrative~~ Officer to obtain their insights and to optimize committee performance. The committee Chairs, in consultation with the Executive Chairman ~~and~~, Chief Executive Officer, ~~Chief Operating Officer~~, or Chief ~~Administrative~~Operating Officer, as necessary, should establish the frequency and length of committee meetings. The Board agendas shall include regular reports from the Chairs of each of the Board committees.
- 5. Development of Committee Agendas.** The committee Chairs, working with the Executive Chairman ~~and Chief Executive Officer~~, should establish committee agendas for the year. All standing committees should meet regularly during the year and receive reports from OCC personnel on developments affecting the committee's work.
- 6. Attendance at and Preparation for Committee Meetings.** Directors are expected to attend all meetings of committees to which they are appointed, review all materials in advance and be prepared to participate fully in the committee's meetings.
- 7. Charters.** For each standing committee the Board shall establish a written charter which shall set forth the responsibilities of that committee, as well as Committee structure and operations, and any required reporting to the full Board.

For each of the Audit, Compensation and Performance, Governance and Nominating, Risk, and Technology Committees the charter shall set forth the purposes, goals, and responsibilities of such committee, the qualifications for committee membership, and committee reporting to the Board (which shall include a requirement that each committee provide the Board with an annual report summarizing the committee's activities over the prior year). Current versions of these charters shall be available on OCC's website.

## MANAGEMENT STRUCTURE, EVALUATION AND SUCCESSION

1. **Management Structure.** OCC's By-Laws provide the Board with the flexibility to select the appropriate management leadership structure for OCC. OCC's current management leadership structure is comprised of an Executive Chairman ~~and, a~~ Chief Executive Officer, ~~and~~ a Chief Operating Officer, ~~and a Chief Administrative Officer~~. In making leadership determinations, the Board considers many factors, including the specific needs of the business and what is in the best interests of OCC and the market participants that it serves.

2. **Selection and Evaluation of Management.** As required by the By-Laws, the Board annually elects certain corporate officers including the Executive Chairman, Chief ~~Operating Executive~~ Officer, Chief ~~Administrative Operating~~ Officer, Secretary, and Treasurer. Each of these officers has the authorities, responsibilities and duties allocated to them as set forth in the By-Laws and Rules and such other duties as may be delegated to them as provided in the By-Laws or otherwise.

The Compensation and Performance Committee shall conduct an annual evaluation of the performance of each of the Executive Chairman ~~and, Chief~~ Executive Officer, ~~and~~ Chief Operating ~~Officer and Chief Administrative~~ Officer, including performance against his or her established goals. The Compensation and Performance Committee shall take such evaluations into consideration in recommending to the Board each such officer's compensation. After reviewing the recommendations of the Compensation and Performance Committee, the Board shall be responsible for establishing each such officer's compensation.

3. **Management Succession Planning.** Succession planning for OCC's senior management, including its Executive Chairman ~~and, Chief~~ Executive Officer, ~~and~~ Chief Operating Officer, ~~and Chief Administrative Officer~~, is critical to OCC's long-term success. To assist the Board, the Executive Chairman ~~and, Chief~~ Executive Officer, ~~and~~ Chief Operating ~~Officer, and Chief Administrative~~ Officer shall provide an annual succession planning report to the Compensation and Performance Committee. There should also be available, on a continuing basis, the recommendations of the Executive Chairman ~~and, Chief~~ Executive Officer, ~~and~~ Chief Operating ~~Officer, and Chief Administrative~~ Officer as a successor should any of them unexpectedly become unable to serve.

4. **Review Cycle**. These Principles, along with the Fitness Standards, shall be reviewed by the Board at least once every twelve months.



**EXHIBIT 5D****THE OPTIONS CLEARING CORPORATION  
AUDIT COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established an Audit Committee (the “Committee”) to assist the Board in overseeing OCC’s financial reporting process, OCC’s system of internal control, OCC’s auditing process, OCC’s process for monitoring compliance with applicable laws and regulation, and OCC’s compliance and legal risks. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

**II. Membership and Organization**

- A. **Composition.** The Committee shall be comprised of three or more directors as appointed each calendar year by the Board. The Board may remove or replace any member of the Committee at any time. All members of the Committee shall be independent from management as determined by the Board of Directors. Management Directors do not qualify as independent and may not serve on the Committee. All members of the Committee shall have a working familiarity with basic finance and accounting practices. At least one member of the Committee shall have accounting or related financial management expertise. The Chair shall be a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair.<sup>1</sup>

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<sup>1</sup> In the event OCC has a Non-Executive Chairman, such individual shall not be considered a Management Director.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

- B. **Meetings**. The Committee will meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

The Committee will meet at least once each calendar year with management, the Chief Audit Executive, the Chief Compliance Officer, the Chief Financial Officer, and the external auditors in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Audit Executive, the Chief Compliance Officer and the Chief Financial Officer are authorized to communicate directly with the Chair with respect to any of the responsibilities of the Audit Committee.

- C. **Quorum**. A majority of the Committee members shall constitute a quorum for the transaction of business.
- D. **Minutes and Reports**. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board. Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### III. Authority

- A. **Scope.** Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

**Delegation.** The Committee may form and delegate authority to subcommittees, and may delegate authority to one or more designated members of the Committee, including the approval of non-audit services performed by the external auditors as set forth below. The Committee may also delegate authority to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

### IV. Functions and Responsibilities

The Committee's role is that of oversight and its primary duties and responsibilities are to serve as an independent and objective party to oversee:

- OCC's financial reporting process, including the integrity of its financial statements;
- The impact of litigation and other legal matters that may have a material impact on the financial statements;
- OCC's system of internal control;
- The audit efforts of OCC's external auditors and the Internal Audit Department;
- OCC's compliance environment and processes; and
- The facilitation of open communication among the external auditors, the Corporate Finance Department, the Compliance Department, and the Board.

In fulfilling their responsibilities, it is recognized that the members of the Committee are not full-time employees of OCC and are not, and do not represent themselves to be, accountants or auditors of OCC. It is not the duty or responsibility of the Committee or its members to conduct fieldwork or other types of auditing, accounting, or compliance reviews or procedures. It is the responsibility of OCC management to develop, implement and maintain appropriate accounting, compliance and financial reporting principles and policies, internal controls and procedures that comply with accounting standards and applicable laws and regulation as well as to identify, manage, monitor and report on compliance and legal risks. The external auditors and the Internal Audit Department of OCC are responsible for planning and carrying out audit work, as appropriate.

The Committee shall have the following functions and responsibilities in discharging its oversight role:

- The Committee shall review, as appropriate, with management and the external auditor the audited and unaudited financial statements. The Committee is authorized to resolve any disagreements between management and the external auditor regarding financial reporting.
- The Committee is authorized to approve OCC's annual audited financial statements and issuance of the annual financial statements after reviewing such statements with management and the external auditor prior to issuance and receiving management's recommendations with regard to such issuance.
- The Committee is authorized to review with management, the external auditor and Internal Audit (as appropriate) significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting

principles and financial statement presentation and the effect of regulatory and accounting initiatives.

- The Committee is authorized to approve material changes in accounting principles and practices.
- The Committee shall receive a report each quarter from the General Counsel on existing, pending or threatened litigation and discuss any legal matters that may have a material impact on OCC's financial statements. Each calendar year, the General Counsel shall report on OCC's use of external counsel services, including costs thereof.
- The Committee is authorized to ensure that there is a clear understanding with management and the external auditor that the external auditor is ultimately accountable to the Board and the Committee. The Committee is authorized to review and discuss with the external auditor any audit problems or difficulties and management's response thereto.
- The Committee is authorized to: pre-approve all audit and other services provided by the external auditor each calendar year; approve the fees related to such services, including any adjustments thereto; and review and approve the scope and approach of the external auditor's annual service plan and any adjustments thereto. The Committee shall review reports of the external auditor issued in connection with its annual service plan, as well as any other special reports, and inquire of management regarding steps taken to deal with items raised.
- The Committee shall at least once every calendar year monitor and evaluate the external auditor's qualifications, performance and independence and, based upon such evaluations, recommend to the Board the appointment or dismissal of the external auditor.
- The Committee shall at least once in a calendar year obtain and review reports prepared by the external auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review or peer review, or by any inquiry or investigation conducted by governmental or professional authorities during the preceding five years with respect to independent audits carried out by the firm, and any steps taken to deal with any such issues; and all relationships between the external auditors and OCC that could be thought to bear on its independence, as well as its independence status within the meaning of the Securities Acts administered by the Securities and Exchange Commission. These reports are to be used to evaluate the external auditor's qualifications, performance, and independence.
- The Committee is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor as well as any other

active audit engagement team partner and consider whether there should be a regular rotation of the audit firm itself.

- The Committee is authorized to discuss with the external auditor any significant issues that may be required in accordance with generally accepted auditing standards relating to the conduct of the financial statement audit.
- The Committee is authorized to approve management's recommendation to appoint or replace the Chief Audit Executive. The Chief Audit Executive shall report functionally to the Committee and administratively to the Executive Chairman ~~and Chief Executive Officer.~~
- The Committee shall review at least once every twelve months the Internal Audit Policy. The Committee is authorized to approve the Internal Audit Policy and ensure there are no unjustified scope restrictions or limitations placed on the Internal Audit Department.
- The Committee shall review the Internal Audit Department process for establishing the risk-based annual internal audit plan, is authorized to approve the annual internal audit plan and deviations to the plan, shall monitor progress against the annual internal audit plan through the receipt of reports on at least a quarterly basis, and is authorized to approve any Chief Audit Executive recommendations for removing or deferring any audits from a previously approved annual internal audit plan.
- The Committee shall monitor ongoing internal audit activities by reviewing reports and other communications prepared by the Internal Audit Department and inquire of management regarding steps taken to deal with items raised.
- The Committee shall oversee the structure, independence and objectivity, staffing, resources and budget of the Internal Audit Department.
- The Committee is authorized to delegate to the Chief Audit Executive the authority to approve, within the co-sourced audit hour limits of the approved annual internal audit plan, the following:
  - Hiring of the internal audit co-sourcing service providers whenever it is determined a specialist is needed to review particular areas of the OCC, to augment the resources available internally within OCC's Internal Audit Department or for any other practical purpose.
  - Reviewing the performance of the internal audit co-sourcing service providers and exercising final approval on the appointment, retention or discharge of such providers.
  - Approving the scope of services to be performed by the internal audit co-sourcing service provider.

- The Committee shall review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing.
- The Committee shall review at least once every twelve months the Reporting Concerns and Whistleblower Policy, the Code of Conduct and the Compliance Policy. The Committee is authorized to approve each of these policies. The Committee shall discuss with relevant parties, management staff or advisors any material issues, including those relating to questionable accounting or auditing matters, reported under these policies.
- The Committee is authorized to approve management's recommendation to appoint or replace the Chief Compliance Officer. The Chief Compliance Officer shall report functionally to the Committee and administratively to the ~~Executive Chairman and~~ Chief Executive Officer.
- Each calendar year, the Committee shall receive a report from the Chief Compliance Officer concerning OCC's system to communicate and monitor compliance with and enforcement of its Code of Conduct and Reporting Concerns and Whistleblower Policy.
- The Committee shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the Chief Compliance Officer and inquire of management regarding steps taken to deal with items raised.
- The Committee shall oversee the structure, staffing, resources and budget of the Compliance Department.
- The Committee shall review periodic regulatory inspection reports, management's responses thereto, and the Compliance Department's tracking of remediation by OCC of noted items.
- The Committee is authorized to review and evaluate any Annual Compliance Report certified by the Chief Compliance Officer as required by regulation.
- The Committee shall regularly review with management OCC's system of internal controls. The Committee shall review any (i) significant deficiencies and material weaknesses in the design or operation of internal control, and (ii) any fraud, whether or not material, that involves management or other employees.
- In consultation with the Executive Chairman and Chief Executive Officer, the Committee shall review the performance of the Internal Audit function and the Chief Audit Executive, and the Compliance function and the Chief Compliance Officer, and determine whether to accept or modify the recommendations of the Executive Chairman ~~and/or~~ Chief Executive Officer, as appropriate, with respect to the performance assessment and annual compensation for each.

- The Committee is authorized to approve management's decision to hire employees or former employees of the external auditor who were engaged on OCC's account.
- The Committee is authorized to delegate authority to one of its members to approve non-audit services performed by the external auditors, with such decisions communicated regularly to the Committee.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall review its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

## **V. Review Cycle**

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.



**EXHIBIT 5E****THE OPTIONS CLEARING CORPORATION  
COMPENSATION AND PERFORMANCE COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Compensation and Performance Committee (the “Committee”) to assist the Board in overseeing general business, regulatory capital, investment, corporate planning, compensation and human capital risks as well as executive management succession planning and performance assessment, including recommending to the Board for approval the annual compensation awards of the Executive Chairman and Chief Executive Officer, the Chief Administrative Officer and Chief Operating Officer. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

**II. Membership and Organization**

- A. **Composition.** The Committee shall consist of the Executive Chairman ~~and Chief Executive Officer~~, the Member Vice Chairman, and three or more other directors appointed each calendar year by the Board. The Board may remove or replace any member of the Committee at any time. The Chair of the Committee shall be a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

- B. **Meetings.** The Committee will meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded.

Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair of the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

The Committee shall meet at least once each calendar year with the Executive Chairman and Chief Executive Officer, and any other OCC officers the Committee deems appropriate, to discuss and review the performance and compensation awards of members of the Management Committee. Except as otherwise requested by the other members of the Committee, the Executive Chairman and Chief Executive Officer shall recuse himself from any discussion of his individual compensation, benefits, or perquisites.

- C. **Quorum**. A majority of the Committee members shall constitute a quorum for the transaction of business.
- D. **Minutes and Reports**. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board. Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### III. Authority

- A. **Scope**. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire

into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of the OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

**Delegation.** The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee, the Administrative Committee, and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

#### **IV. Functions and Responsibilities**

The Committee's role is one of oversight. It remains the responsibility of OCC management to identify, manage, monitor and report on general business risks, including as they relate to OCC's Corporate Plan and Corporate Budget, capital requirements, human capital, compensation and benefit programs, management succession planning and management performance assessment processes, arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

The Committee shall have the following functions and responsibilities in discharging its oversight role:

- The Committee shall oversee the annual Corporate Plan and Corporate Budget, including their alignment with OCC's business strategy. The Committee shall review the annual Corporate Plan and Budget and recommend approval thereof to the Board. The Committee shall receive a quarterly report from management that

provides information on performance against the Corporate Plan and Corporate Budget.

- The Committee shall review and have the authority to approve the annual goals and objectives of the Executive Chairman ~~and~~, Chief Executive Officer, ~~Chief Administrative Officer~~ and Chief Operating Officer.
- The Committee shall oversee and review at least once every twelve months OCC's Capital Plan, including written policies adopted thereunder, and make recommendations to the Board regarding any changes to the Capital Plan or associated policies. The Committee shall make recommendations to the Board concerning capital requirements, refund payments, and dividend payments, if any. The Committee shall receive a quarterly report from management that provides information on performance against the Capital Plan. The Committee is authorized to review and approve changes in OCC's fees pursuant to the Capital Plan, including authorizing the filing of regulatory submissions relating thereto.
- The Committee is authorized to review and approve significant unanticipated capital expenditures or, where required, make recommendations with respect thereto to the Board.
- The Committee is authorized to review and recommend to the Board changes to OCC's fee structure.
- The Committee shall oversee Management Committee succession planning and performance assessment processes. At least once every twelve months the Committee shall review the results of Management Committee succession planning activities.
- For each calendar year, the Committee shall review the performance of the members of the Management Committee and have the authority to approve their compensation awards. For each calendar year, the Committee shall assess the performance and make recommendations to the Board regarding the compensation awards of the Executive Chairman ~~and~~, Chief Executive Officer, ~~Chief Administrative Officer~~ and the Chief Operating Officer.
- The Committee shall meet at least once each calendar year with the Executive Chairman ~~and~~, Chief Executive Officer, ~~the Chief Administrative Officer, the~~ and Chief Operating Officer, and any other corporate officers the Committee deems appropriate to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.
- The Committee shall oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, performance

management, training and development, benefits and succession planning for key roles.

- The Committee shall oversee OCC's employee benefit, retiree benefit, and welfare benefit programs and plans, as well as the operation and administration thereof, including funding obligations (if any).
- At least once every twelve months, the Committee shall provide a report to the Board (with more frequent reporting as the Committee deems necessary or advisable under the circumstances) relating to: (i) actions taken by the Committee with respect to its review of OCC's retirement and welfare benefit plans, (ii) the financial position and performance of such plans, and (iii) adherence to investment guidelines, in each case, where applicable.
- The Committee shall oversee the Administrative Committee. The Committee shall be authorized to: approve the charter of the Administrative Committee and any changes thereto, appoint and remove members of the Administrative Committee, and oversee and monitor the activities of the Administrative Committee with regard to the matters set forth in the Administrative Committee's charter.
- The Committee shall be authorized to adopt new compensation, retirement and welfare benefit plans and to amend or terminate existing plans other than such plans that require Board action to approve, amend or terminate.
- No less frequently than every two years, the Committee shall review the compensation of Public Directors and recommend to the Board any changes thereto.
- At least once every twelve months, the Committee shall review OCC's insurance program.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

**V. Review Cycle**

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

**EXHIBIT 5F****THE OPTIONS CLEARING CORPORATION  
GOVERNANCE AND NOMINATING COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Governance and Nominating Committee (the “Committee”) to assist the Board in overseeing OCC’s corporate governance processes, including assessing that OCC’s governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

**II. Membership and Organization**

- A. Composition. The Committee will be composed of at least one Public Director, one Exchange Director, and one Member Director. No Management Director will be a member of the Committee. All of the Committee members will be selected by the Board from among the Directors recommended by the Committee after consultation with the Executive Chairman, and shall serve at the pleasure of the Board. The Committee Chair will be designated by the Board from among the Public Director Committee members. In the absence of the Chair at any meeting of the Committee, those members of the Committee present will designate a Committee member to serve as the Acting Chair.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

- B. Meetings. The Committee shall meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Chair or its designee shall, in consultation with management, as well as the Corporate Secretary, prepare an agenda in advance of each meeting. The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited

guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for an executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

- C. Quorum. A majority of the Committee members will constitute a quorum for the transaction of business.
- D. Minutes and Reports. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the Board. Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### III. Authority

- A. Scope. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual



report to the Board will reference any engagement of specialists or outside advisors, including fees and expenses associated therewith. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

#### IV. Functions and Responsibilities

The Committee shall have the following functions and responsibilities in discharging its oversight role:

- The Committee shall identify for purposes of making recommendations to the Board the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities.
- The Committee shall identify, screen and review individuals qualified to be elected or appointed, as the case may be, to serve as Member Directors and Public Directors, consistent with the Standards approved by the Board (including evaluation of incumbent directors for potential re-nomination, taking into consideration, among other things, an incumbent director's past performance, including attendance at meetings and participation and contributions to the activities of the Board), after consultation with the Executive Chairman ~~and Chief Executive Officer~~.
- The Committee shall assess the appropriateness of a director continuing to serve on the Board where such director submits his or her offer to resign upon the director ceasing to hold the principal occupation or business association that such director held when originally invited to join the Board, and recommend to the Board any action to be taken related thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a director.

- The Committee shall review at least every three years the composition of the Board as a whole for consistency with public interest and regulatory requirements, including whether the Board reflects the appropriate balance across the categories of directors (i.e., Member Directors, Exchange Directors, Public Directors and Management Director).
- The Committee shall review at least every three years the continued appropriateness of the term limits applicable to Member Directors set forth in the By-Laws and recommend to the Board, where appropriate, changes to such provisions.
- The Committee shall review at least once every twelve months the Board's Charter and Corporate Governance Principles and the charters of the Board's committees for consistency with the public interest and other regulatory requirements, transparency of the governance process, and other sound governance practices.
- The Committee shall recommend to the Board, where appropriate, changes to the charters of the Board and its committees, including this Charter.
- Each calendar year, the Committee shall review and advise the Board with regard to whether directors are independent as defined by the Board.
- The Committee shall advise the Board with respect to committee structure, operations and charters, including:
  - Reviewing periodically the committee structure of the Board; and
  - Recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Executive Chairman ~~and Chief Executive Officer.~~
- The Committee shall consider and advise the Board on matters pertaining to director leadership development and Board succession planning.
- For each calendar year, the Committee shall develop and recommend to the Board, and coordinate and provide oversight of, the annual process of self-evaluation of the role and performance of the Board's committees and directors in the governance of OCC.
- The Committee shall oversee, review and consider changes to the orientation program for new directors and continuing director training and education opportunities.
- The Committee shall review and consider changes to OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct, and recommend such changes to the Board. The Committee shall review any director conflicts of interest and the manner in which they are to be monitored and resolved.

- The Committee shall have the authority to approve all material changes to written policies related to related party transactions and recommend such changes to the Board for approval. The Committee shall review and, if appropriate, approve or ratify any related party transactions involving OCC, in accordance with the written policy governing such transactions.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Board for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

#### **V. Review Cycle**

The Committee shall review this Charter at least once every twelve months. The Committee shall submit this Charter to the Board for approval, with such changes, if any, as the Committee deems advisable.

**EXHIBIT 5G****THE OPTIONS CLEARING CORPORATION  
RISK COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Risk Committee (the “Committee”) to assist the Board in overseeing OCC’s financial, collateral, risk model and third party risk management processes. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation. Additionally, the Committee is responsible for performing those functions delegated to the Committee under OCC’s By-Laws and Rules. In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

**II. Membership and Organization**

- A. Composition. The Committee shall consist of (i) the Executive Chairman, (ii) at least one Exchange Director, (iii) at least one Member Director, and (iv) at least one Public Director, each of whom shall be appointed each calendar year by the Board. The Board may remove or replace any member of the Committee at any time. The Committee shall be chaired by a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as the Acting Chair.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

Meetings. The Committee will meet at least six times a year, inclusive of joint meetings with other Board committees. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests of the Committee may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The

Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or the Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, in person attendance is preferred. The Committee shall meet regularly, and at least once each calendar year, with members of management and the Chief Risk Officer in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Risk Officer is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

- B. Quorum. A majority of the Committee members shall constitute a quorum for the transaction of business.
- C. Minutes and Reports. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of an executive session are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board. Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### III. Authority

- A. Scope. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not

approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

From time to time, the Committee may receive reports and guidance relating to financial risk issues from, among others, the OCC Financial Risk Advisory Council and, in the exercise of its fiduciary judgment, shall take such guidance into account in the performance of its functions and responsibilities.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

The Committee shall perform its responsibilities in accordance with this Charter and applicable regulatory requirements.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

#### **IV. Functions and Responsibilities**

The Committee's role is one of oversight. It remains the responsibility of OCC management to identify, manage, monitor and report on financial, collateral, risk model and third party risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

The Committee shall have the following functions and responsibilities in discharging its oversight role:

- The Committee shall review at least once every twelve months the adequacy of OCC's management of risks related to credit exposures, including its margin and clearing fund methodologies. The Committee shall have the authority to approve all material changes to written policies with respect to the management of risks

related to credit exposures and recommend such changes to the Board for approval. The Committee shall receive a monthly report from management that provides information on the effectiveness of the management of risks related to credit exposures, including the results of (i) a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin model and a review of the margin model's parameters and assumptions for back testing.

- The Committee shall review at least once every twelve months the adequacy of OCC's management of collateral risks. The Committee shall have the authority to approve all material changes to written policies related to the management of collateral risks and recommend such changes to the Board for approval. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of collateral risks.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of liquidity risks. The Committee shall have the authority to approve all material changes to written policies with respect to the management of liquidity risks and recommend such changes to the Board for approval. The Committee shall receive a monthly report from management that provides information on the effectiveness of OCC's management of liquidity risks, including the results of a comprehensive analysis of existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources.
- The Committee shall review at least once every twelve months the adequacy of OCC's secured committed liquidity facilities, including an analysis of the size and composition of such facilities, and recommend approval thereof to the Board.
- The Committee shall oversee OCC's risk models and risk model validation process. The Committee shall have the authority to approve all material changes to written policies with respect to risk model management and recommend such changes to the Board for approval. The Committee shall review and have the authority to approve all new risk models and material changes to existing risk models, except that the Committee shall refer material changes to OCC's margin and clearing fund methodologies to the Board, which the Board shall have the authority to approve. Additionally, the Committee shall review and have the authority to approve the annual risk model validation plan and plan deviations, and any Chief Risk Officer recommendations for removing or deferring any risk model validation from a previously approved risk model validation plan. The Committee shall receive a quarterly report from the Chief Risk Officer that provides information on progress against the annual risk model validation plan and measures being taken by management regarding findings made. The Committee also shall review the results of any third party validations of OCC's risk models and, if any, recommended actions and remediation plans.

- The Committee shall review and have the authority to approve new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks and shall refer such products to the Board for approval.
- The Committee shall oversee OCC's Recovery and Orderly Wind-Down Plan. The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board.
- The Committee shall consider and discuss reports and guidance from the Financial Risk Advisory Council relating to financial risk issues that may impact the options and futures industries, including the potential impact on the businesses of OCC, linked relationships and participants.
- The Committee shall oversee the framework for Clearing Membership, including (i) periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for Clearing Membership, (ii) overseeing the processes established for reviewing and monitoring Clearing Membership (including in respect of the continuance of potentially problematic members), and (iii) making recommendations to the Board, as applicable, for final determination in respect of the foregoing. At least once each calendar year, the Committee shall review the investigation and enforcement outcomes of disciplinary actions taken by the OCC against Clearing Members through its established processes.
- The Committee shall at least once every twelve months review the adequacy of OCC's management of third party risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third party risks, including key linked and vendor relationships.
- The Committee shall have the authority to approve management's recommendation to appoint or replace the Chief Risk Officer. The Chief Risk Officer shall report functionally to the Committee and administratively to the ~~Executive Chairman and~~ Chief Executive Officer. The Committee shall at least once every twelve months review and have the authority to approve the Chief Risk Officer's goals and objectives and any material changes thereto. The Committee, in consultation with the ~~Executive Chairman and~~ Chief Executive Officer and upon consideration of input from the other committees, as appropriate, shall at least once every twelve months review the performance of the Chief Risk Officer, and determine whether to accept or modify the recommendations of the ~~Executive Chairman and~~ Chief Executive Officer with respect to performance assessment and annual compensation for the Chief Risk Officer.



- The Committee shall at least once every twelve months review the structure and staffing of OCC's financial risk management and corporate risk management functions.
- The Committee shall review the results of any audits (internal and external), regulatory examinations and third party assessment reports as to financial, collateral, risk model and third party risk management processes or any other matter relating to the areas that the Committee oversees, as well as management's responses and remediation efforts pertaining to such examinations and reports.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

#### **V. Review Cycle**

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by Options Clearing Corporation  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*       Last Name \*

Title \*

E-mail \*

Telephone \*       Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date      

By      

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

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

**Partial Amendment No. 1 to SR-OCC-2018-015**

The Options Clearing Corporation (“OCC”) is filing this partial amendment (“Partial Amendment No. 1”) to proposed rule change SR-OCC-2018-015, which concerns proposed changes to OCC’s management structure (“Initial Filing”).<sup>1</sup> Partial Amendment No. 1 is intended to correct errors in the proposed rule text in Exhibits 5A and 5E of the Initial Filing (the OCC By-Laws and Compensation and Performance Committee Charter (“CPC Charter”), respectively). As described in the Initial Filing, one of the primary purposes of the proposed rule change is to remove the requirement from OCC’s By-Laws that the Board of Directors elect a Chief Administrative Officer (“CAO”) and to delete the references to the CAO throughout OCC’s By-Laws, Rules, and other Governing Documents. The proposed amendments would remove references to OCC’s CAO that were not deleted in the Initial Filing.

The Initial Filing inadvertently marked existing rule text in the definition of “Approved Custodian” in Article 1 of the OCC By-Laws concerning OCC’s CAO with underlining as opposed to strikethrough text to properly indicate the proposed deletion of this rule text. OCC proposes to amend the following text on page 52 in Exhibit 5A of the Initial Filing to properly mark the proposed deletion of “Chief Administrative Officer” in the definition of “Approved Custodian” in Article 1 of the OCC By-Laws.

***Article I – Definitions***

**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.**

\* \* \* \* \*

**Approved Custodian**

(13) The term “approved custodian” means a bank or trust company approved by the ~~Executive Chairman~~Chief Executive Officer, or Chief Operating Officer or Chief Administrative Officer.

\* \* \* \* \*

In addition, OCC proposes to amend the following text on page 108 in Exhibit 5E of the Initial Filing to remove a reference to OCC’s CAO in Section I of the CPC Charter.

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<sup>1</sup> See Securities Exchange Act Release No. 84939 (December 21, 2018), 83 FR 67762 (December 31, 2018) (SR-OCC-2018-015).

**THE OPTIONS CLEARING CORPORATION  
COMPENSATION AND PERFORMANCE COMMITTEE CHARTER**

**I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Compensation and Performance Committee (the “Committee”) to assist the Board in overseeing general business, regulatory capital, investment, corporate planning, compensation and human capital risks as well as executive management succession planning and performance assessment, including recommending to the Board for approval the annual compensation awards of the Executive Chairman, ~~and Chief Executive Officer, the Chief Administrative Officer~~ and Chief Operating Officer. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

\* \* \* \* \*

The partial amendment would not change the purpose of or statutory basis for the proposed rule change. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

By: \_\_\_\_\_  
**Justin W. Byrne**  
**Vice President, Regulatory Filings**