



February 24, 2016

**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-2016-002 Rule Certification**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission Regulation (“CFTC”) 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (the “SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act. This rule filing is intended to replace a previous submission in connection with Rule Filing SR-OCC-2016-002 that was filed with the CFTC on February 1, 2016, and certified on February 16, 2016.

OCC has requested confidential treatment for Exhibit 5E to SR-OCC-2016-002, “Amendment No. 1 to the Amended and Restated Stockholders Agreement,” contained in pages 126-130 of the enclosed filing.

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

**Explanation and Analysis**

This proposed rule change by OCC concerns enhancements to OCC’s governance arrangements. Primarily, OCC is proposing to amend its By-Laws to: (i) provide that the Compensation and Performance Committee (“CPC”)<sup>1</sup> and the Audit Committee (“AC”) each will be chaired by a Public Director; (ii) provide that an Exchange Director be a member of the Risk Committee (“RC”); (iii) better describe the nomination process for Member Directors and

---

<sup>1</sup> As described below, the Performance Committee would be renamed as the Compensation and Performance Committee.

Public Directors of OCC's Board of Directors ("Board"); (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single By-Law section as well as identify all committees of the Board in OCC's By-Laws. OCC is also proposing amendments to the Charters of the Board, AC, CPC, and RC that stem from scheduled reviews of such documents.

## **Amendments to OCC's By-Laws**

### *Committee Descriptions and Other Conforming By-Law Amendments*

OCC is proposing to amend Article III of its By-Laws in order to provide descriptions of the AC, CPC, RC, Governance and Nominating Committee ("GNC"), and Technology Committee (collectively, "Board Committees" and each a "Board Committee") in a single section of the By-Laws. Specifically, OCC is proposing to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III, Section 9 (which concerns the RC,<sup>2</sup> the Technology Committee,<sup>3</sup> and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 in order to provide a more transparent and unified statement regarding the Board Committees.

In addition, OCC is proposing to add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws. The proposed description of the AC reflects that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the Audit Committee. The proposed description of the AC would also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). The proposed description of the CPC would reflect that, on an annual basis, the Board of Directors shall appoint a CPC consisting of the Executive Chairman, the Member Vice Chairman, and at least one Public Director. Consistent with the preceding sentence, all of the CPC members will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The proposed description would also include a new requirement that the chairman of the CPC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below).

---

<sup>2</sup> The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC's existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). *See infra* note 15 and related text.

<sup>3</sup> The SEC recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. *See* Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR-OCC-2015-018).

OCC is also proposing amendments to Article IV, Section 1 to reflect the current practices that the Board elects the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elects the President of OCC (in addition to the Secretary and Treasurer). OCC also proposes to revise Article IV, Section 7 in order to delete provisions applicable to the Management Vice Chairman presiding over Board and stockholder meetings as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time<sup>4</sup> and to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman.<sup>5</sup>

#### *Compensation and Performance Committee and Audit Committee Independence*

In addition to the proposed changes described above, OCC is also proposing substantive changes to the Board Committee descriptions in proposed Article III, Sections 4(a) and (b) of the By-Laws to reflect the requirement that a Public Director<sup>6</sup> chair the AC and the CPC. The GNC recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board-level compensation committees. The review was undertaken in order to further the Board's oversight of employee compensation and benefits, recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters).<sup>7</sup> The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,<sup>8</sup> which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory organizations. Moreover, such a change would ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities. The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that would require such audit committees to be independent based

---

<sup>4</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the SEC concerning the elimination of the title of Management Vice Chairman and such further leadership transition plans.

<sup>5</sup> References to the President are proposed to be removed from Article IV, Section 7 because the President cannot preside over meetings of the Board. *See* OCC's By-Laws Article IV, Section 8.

<sup>6</sup> *See* Article III Section 6A of OCC's By-Laws regarding Public Directors.

<sup>7</sup> The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

<sup>8</sup> *See* OCC's By-Laws Article III, Section 3 and Section 5.

on facts determined by a given self-regulatory organization's Board of Directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) would not be eligible to serve on the AC.

#### *Risk Committee Membership*

OCC is proposing to amend Article III of its By-Laws in order to provide that an Exchange Director<sup>9</sup> be a member of the RC. The GNC recently reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among clearing members as well as the fact that clearing members are responsible for contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC now believes that an Exchange Director should be a member of the RC. Exchange Directors have expertise, and unique perspective, on matters such as market risk as well as sophistication as to special risks arising from trading practices and strategies, and new products.

#### *Nomination Process for Member Directors and Public Directors*

OCC is proposing to make amendments to Article III, Section 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to conform the description of the process through which the Board selects Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman to the process set forth in the GNC Charter.<sup>10</sup> Specifically, the amendments would provide that such persons would be nominated by the GNC for purposes of the Board's annual election process, and then confirmed by the Board. Such a process is consistent with the function of the GNC as set forth in the GNC Charter.

#### *Public Director Term Limits*

OCC is proposing to amend Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter in order to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. It is generally recognized that it often

---

<sup>9</sup> See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

<sup>10</sup> The GNC Charter had already been reviewed by OCC in 2014 and approved by the SEC. See Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations.<sup>11</sup> Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

## **Amendments to Board and Board Committee Charters**

### *Proposed Amendments to the Board Charter and the Fitness Standards for Directors, Clearing Members and Others*

OCC proposes amendments to the Board Charter that are intended to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and leadership transition plan; (iii) reflect recent changes involving Board Committee charters; (iv) in general, broaden the expression of the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the charter. The proposed amendments are described in more detail below.

#### Membership and Organization

OCC proposes amendments to Section II of the Board Charter regarding membership and organization requirements, which are primarily designed to align the Board Charter to OCC's leadership transition plan. Specifically, OCC proposes to delete a reference to the title of Management Vice Chairman as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time.<sup>12</sup> (OCC also proposes a related deletion in Section I of the Board Charter.) In the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC also proposes amendments that would allow for additional meetings of the Board

---

<sup>11</sup> According to the 2014 Spence Stuart Board Index, among S&P 500 companies, very few boards (only 3% - or 16 companies) specify director term limits. Of these, none imposes a term limit that is less than 10 years. The most common term limit is 15 years, and the longest term limit is 30 years.

<sup>12</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the SEC concerning the elimination of the title of Management Vice Chairman and such further leadership transition plans.

being called as the Board deems appropriate (such meetings shall be called by Executive Chairman or his designee.) Further, OCC proposes amendments that would reflect that the Executive Chairman would determine if minutes of executive sessions would be recorded, which is consistent with provisions in the Charters of the Board Committees (“Committee Charters”).<sup>13</sup>

In addition OCC proposes amendments relating to Board composition to reflect that, currently, one Management Director serves on the Board<sup>14</sup> and to reflect an increase in the number of Public Directors serving on the Board from three to five.<sup>15</sup> Additionally, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors would include 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 reflected in OCC’s By-Laws).<sup>16</sup> OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone.

#### Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily intended to either: (i) harmonize the description of the Board’s obligations in the Board Charter with the description of the Board’s obligations in OCC’s By-Laws and Rules as well as the Board’s Corporate Governance Principles<sup>17</sup> since certain specific obligations of the Board are set forth in the By-Laws and Rules as well as the Corporate Governance Principles; and (ii) provide a higher level

---

<sup>13</sup> The SEC previously approved similar changes to the Committee Charters providing that each committee chair shall determine if minutes of executive sessions are to be maintained. *See* Securities Exchange Act Release No. 71627 (February 27, 2014), 79 FR 12538 (March 5, 2014) (SR-OCC-2014-01).

<sup>14</sup> The SEC approved a proposed rule change providing that OCC’s President would not be considered a Management Director and, therefore, only one Management Director currently serves on the Board. *See* Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

<sup>15</sup> The SEC approved the increase in the minimum number of Public Directors on OCC’s Board from three to five in July 2014. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

<sup>16</sup> OCC proposes to remove a reference to geographic location as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

<sup>17</sup> The purpose of the Board’s Corporate Governance Principles is to assist OCC’s Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, the Board’s Corporate Governance Principles are meant to address OCC’s obligations as a systemically important financial market utility to have policies and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

of expression of the Board's oversight responsibilities recognizing OCC's position as a designated systemically important financial market utility.

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules or Corporate Governance Principles, OCC is proposing to remove the expression from the Board Charter. These charter provisions would be replaced by a general statement that the Board would perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.<sup>18</sup>

OCC also proposes amendments to Section IV of the Board Charter to provide for a higher level of expression of the Board's responsibilities and emphasize that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility while continuing to contain a general description of the responsibilities of the Board. Specifically, OCC proposes to amend the charter to state that the responsibilities of the Board include: (i) overseeing management's activities in managing, operating and developing OCC and evaluating OCC management's performance in executing its responsibilities; (ii) selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual Directors and committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.*, directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer); (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC proposes to modify certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC propose amendments that would specify

---

<sup>18</sup> The proposed change would remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5A.

that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. OCC also proposes amendments to specify that the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance and standards. Additionally, OCC proposes amendments to provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.<sup>19</sup>

OCC is also proposing non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC proposes amendments that would combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services. The proposed amendments would also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its charter) with oversight from the Board.

#### Other Conforming, Administrative and Non-Substantive Changes

In addition to the changes described above, certain of the proposed amendments to the Board Charter are meant to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the Technology Committee,<sup>20</sup> the Governance and Nominating Committee, and renaming of the Performance Committee to CPC, as described herein. In addition OCC is proposing non-substantive changes to Section I of the Board Charter to clarify that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC also proposes amendments that would require an annual (as opposed to the

---

<sup>19</sup> OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

<sup>20</sup> *See supra* note 3.



less specific “periodic”) review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

Fitness Standards for Directors, Clearing Members and Others

OCC also proposes to amend the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”) to remove descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in other OCC documents (such as the Committee Charters). Eliminating these redundant descriptions in the Fitness Standards would promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. The proposed amendments would also underscore that the Fitness Standards are intended to facilitate the performance of OCC’s role as a systemically important financial market utility.

*Common Proposed Amendments to Each Committee Charter*

Changes to Conform to the GNC Charter

OCC is proposing to make conforming amendments the Committee Charters as a result of the SEC recently approving certain changes to the GNC Charter.<sup>21</sup> Specifically, OCC proposes to amend each Committee Charter to confirm that each Board Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee’s purpose and responsibilities. This amendment to the Committee Charters would make explicit a longstanding principle under which each Committee has operated. Additionally, references to the “Governance Committee” in each Committee Charter would be changed to the “Governance and Nominating Committee” to reflect the formation of the GNC.

Furthermore, OCC proposes to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical since no such provision exists in the GNC Charter. Although this provision also required each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective, in that it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, historically each Board Committee has been able to convene when necessary.

*Audit Committee Charter*

OCC proposes amendments to the AC Charter intended to, among other things, (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC

---

<sup>21</sup> See *supra* note 15.

with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. The proposed changes are described in more detail below.

#### Purpose, Membership and Authority

OCC proposes changes to Sections I, II and III of the AC Charter related to the purpose, membership and organization, and authority of the AC. In Section I of the AC Charter, OCC proposes to make certain organizational changes related to the purpose of the AC. Specifically, OCC proposes to reorganize certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. These changes are non-substantive in nature. OCC is also proposing to make various non-substantive clarifying and textual changes in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which would extend throughout the entire AC Charter.

OCC also proposes amendments to Section II of the AC Charter that are intended to underscore the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC's management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.<sup>22</sup> Additionally OCC proposes an amendment that would clarify that the Management Director, as described in Section 7 of Article III of OCC's By-Laws, is ineligible to serve on the AC.<sup>23</sup> OCC also proposes to clarify that the AC will meet regularly (as opposed to "at least annually") with OCC's Chief Financial Officer (in addition to the Chief Audit Executive ("CAE") and Chief Compliance Officer ("CCO")), to reflect the fact that these meetings and interactions occur more than once per year. Section II of the AC Charter would also be amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. Further, OCC proposes an amendment to Section II of the AC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at an AC meeting by telephone is discouraged.

To align the AC Charter with the GNC Charter, OCC proposes to amend Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to

---

<sup>22</sup> The change concerning the AC Chair would conform the AC Charter with proposed Article III, Section 4(a) of OCC's By-Laws, as described above.

<sup>23</sup> In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

approve the related fee and retention terms.<sup>24</sup> Further, the language relating to the AC's ability to engage external specialists has been moved to the "Authority" section of the AC Charter and conformed to parallel language used in other Committee Charters.

### Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities. These proposed amendments are described in more detail below.

#### *Oversight of External Auditor and Financial Reporting*

OCC proposes amendments to the AC Charter regarding the AC's oversight of financial reporting and external auditors. The proposed amendments to the AC Charter are intended to underscore and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the proposed amendments explicitly state that the AC is responsible for: (i) discussing with management and external auditors OCC's audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to issuance;<sup>25</sup> (iii) reviewing with management, external auditors and OCC's Internal Audit Department 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; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing audit problems or difficulties, and management's response thereto, with external auditors.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter that would clarify that the AC is required to discuss with management: (i) the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) the qualifications of both the external auditor and engagement partner; (iii) consider whether there

---

<sup>24</sup> OCC is also proposing remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement is replaced by a broader expression of the AC's authority to hire advisors.

<sup>25</sup> This proposed amendment is intended to restate, clarify, and expand upon an existing statement in the AC Charter regarding the AC's review of annual audited financial statements (which OCC is proposing to delete).

should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

*Oversight of Internal Audit, Compliance and Compliance-Related Matters*

OCC is proposing to amend Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC proposes amendments that would clarify that the AC's responsibilities include: (i) reviewing and approving the Internal Audit Policy on an annual basis; (ii) monitoring ongoing internal audit activities; (iii) approving OCC's annual internal audit plan; and (iv) approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan.

OCC also proposes amendments to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including: (i) annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct; (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO; and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC proposes amendments to clarify the AC's responsibilities with respect to: (i) reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

*Oversight of OCC's Chief Audit Executive and Chief Compliance Officer*

OCC proposes amendments to Section IV of the AC Charter to clarify that the CAE and CCO each report functionally to the AC and administratively to the Executive Chairman to make more explicit the reporting lines for these functions.<sup>26</sup> In addition OCC proposes to eliminate provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. Specifically, as

---

<sup>26</sup> These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

amended, the AC Charter would state that the AC, in consultation with the Executive Chairman, would review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each.

### *Compensation and Performance Committee Charter*

OCC is proposing changes to its CPC Charter to more explicitly describe the committee's functions and responsibilities' with respect to, among other things, (i) OCC's Capital Plan; (ii) its human resources, compensation and employee benefit programs; and (iii) OCC's insurance programs. The proposed changes are described in more detail below.

#### Purpose, Membership, and Authority

OCC is proposing to rename the Performance Committee to the CPC in order to more accurately reflect its role. OCC is also proposing to amend Section I of the CPC Charter to more clearly articulate that the CPC is tasked with assisting the Board in oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The CPC Charter would further delineate that the CPC is also tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC proposes amendments to Section II of the CPC Charter related to the membership and organization of the CPC. Specifically, OCC proposes amendments to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws in that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the AC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels of (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.

OCC also proposes administrative amendments to Section II to clarify that the CPC would meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs

of the AC and RC would be invited to attend the annual meeting to discuss compensation of key officers, including the Chief Risk Officer (“CRO”) and CAE.<sup>27</sup>

OCC also proposes an amendment to the CPC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at a CPC meeting by telephone is discouraged. In addition, other clarifying and textual changes would be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

Additionally, OCC proposes non-substantive changes in Section III regarding the delegation of authority to the Administrative Committee.

### Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide more explicit descriptions of the committee’s responsibilities with respect to OCC’s capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust oversight framework for the CPC’s oversight functions. The proposed changes are described in more detail below. Additionally, OCC proposes to remove a requirement in Section IV that the CPC review OCC’s performance under the Corporate Plan at each regular scheduled meeting.<sup>28</sup> Comparable changes are being proposed to the AC Charter and RC Charter, as described herein.

### *Oversight of OCC’s Capital Plan*

OCC proposes amendments to Section IV of the CPC Charter to explicitly provide for the CPC’s responsibilities in connection with overseeing OCC’s capital structure, financial planning, and corporate goals and objectives. Specifically, the proposed amendments explicitly state that the CPC’s responsibilities include oversight of management’s processes for determining, monitoring and evaluating OCC’s Capital Plan,<sup>29</sup> including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments would also specify that the CPC is responsible for the annual review of OCC’s Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC proposes amendments to

---

<sup>27</sup> These changes are being made to reflect a consultative process as between the Executive Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

<sup>28</sup> For the purposes of clarification, the CPC would routinely review OCC’s performance under the Corporate Plan.

<sup>29</sup> See Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12232 (March 6, 2015) (SR-OCC-2014-813). See also Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the proposed amendments provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments also provide that the CPC is responsible for the periodic review of OCC's insurance program.

#### *Oversight of Human Resources and Compensation Programs*

OCC proposes amendments to Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable, of employee compensation, incentive and benefit programs. This proposed amendment ensures Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is proposing to amend the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is proposing amendments to the CPC Charter that would require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation. The amendments also require the CPC to seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel as well as review the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President as well as periodically review the compensation of OCC's Public Directors. The proposed amendments would also require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto. OCC proposes to remove general statements regarding the review of OCC's performance under the Corporate Plan and to oversee the administration of OCC's compensation plans as these responsibilities would be covered under the new, more detailed descriptions described herein.

#### *Oversight of Employee Benefit Programs and Other Responsibilities*

OCC also proposes amendments to Section IV of the CPC Charter to clarify the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter, which are non-substantive in nature, to clarify the CPC's

responsibilities for oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The proposed amendments also clarify the scope of employee welfare plans that the CPC reviews, and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the proposed amendments would provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and perform such other oversight duties as called for in retirement, retirement and savings and welfare plan documents. OCC further proposes amendments that clarify that the CPC is responsible for providing updates to the Board periodically regarding: (i) actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

#### *Risk Committee Charter*

OCC is proposing amendments to its RC Charter which are primarily intended to replace more granular descriptions with broader expressions of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. OCC also proposes amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above), to reflect the adoption of the Technology Committee, and to remove a conflict of interest statement. The proposed changes are described as follows.

#### Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter that are intended to better align OCC's By-Laws and the RC Charter by clarifying that while certain risks would be overseen by other Board Committees, the RC is responsible for coordinating risk oversight, as appropriate, to achieve comprehensive oversight of OCC's risk-related matters. The proposed amendments would also clarify that the RC is responsible for the review of material policies and processes relating to risks related to new initiatives.

In Section II of the RC Charter, OCC proposes clarifying and textual changes to provide that, as in the Code of Conduct for OCC Directors, attendance at a RC meeting by telephone is discouraged. OCC also proposes to remove certain mandatory recusal requirements designed to apply to Member Directors of the RC as the identification and handling of conflicts of interest are already addressed in the Corporate Governance Principles and the Code of Conduct for OCC Directors, which governs the conduct of all directors equally regardless of category or committee assignment. Moreover, and in order to enhance the independence and functional reporting relationship of the CRO to the RC, OCC proposes revisions to explicitly state that the CRO is



authorized to communicate with the RC Chair outside of regular meetings. OCC also proposes to amend the RC composition requirements in Section II in order to conform to the proposed By-Law changes discussed above. Specifically, the RC Charter would be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also proposing an amendment to Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact that the time allotted for each individual RC meeting has been expanded.

OCC also proposes to amend Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee.

#### Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to broaden the expression of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. In particular, the amendments clarify and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other oversight responsibilities.

#### *Oversight of Membership and Margin Requirements*

OCC proposes amendments to broaden the description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. These changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework. Rather, the proposed amendments would provide for a broader expression of the RC's responsibilities intended to encompass the responsibilities currently enumerated in the charter.<sup>30</sup> Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues would be replaced with a more general statement that the RC is responsible for the oversight of OCC's 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 the foregoing.

In addition, OCC proposes to modify certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures. Specifically, OCC

---

<sup>30</sup> For example, individual provisions related to specific types of membership categories and requirements would be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the deleted provisions.

proposes to consolidate and expand upon these provisions to state that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for clearing member failures, including: (i) reviewing clearing member surveillance criteria; (ii) overseeing the management processes for managing clearing members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on clearing members in a manner consistent with the By-Laws and Rules; and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to broaden the description of the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to margin and clearing fund requirements and replace them with a more high level description that would provide that the RC oversees the adequacy and effectiveness of OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying the OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof; (ii) evaluating the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules. The proposed amendment is not intended to substantively change the RC's responsibilities in the deleted provisions but would instead replace them with a broader description intended to encompass those responsibilities.

OCC also proposes amendments that would clarify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties. The proposed amendments would also clarify that the RC oversees the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. With respect to OCC's role as a systemically important financial market utility, the RC Charter would clarify that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects.

#### *Oversight of OCC's Enterprise Risk Management Program*

OCC proposes amendments that would confirm that the RC oversees OCC's Enterprise Risk Management program, including by: (i) overseeing the staffing and resources of the Enterprise Risk Management program; (ii) reviewing periodic reports regarding the Enterprise Risk Management program; (iii) reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these

systems and procedures with management; (iv) reviewing with management the interrelated nature of OCC's risks; (v) annually approving the Enterprise Risk Management program's goals and objectives; and (vi) annually reviewing and assessing the overall program. OCC also proposes amendments confirming that the RC reviews and monitors determinations of appropriate risk tolerances by reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, reviewing and recommending for Board approval the OCC Risk Appetite Statement, reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement, and recommending risk tolerance parameters to the Board. In addition, under the proposed amendments, the RC would assume the responsibility of assessing risks presented by new OCC initiatives relative to established risk tolerances and appetites and to ensure a comprehensive oversight of risk-related matters, and would coordinate risk oversight with other Board Committees. Further, the proposed amendments would confirm that the RC oversees OCC's model risk management process, policies and controls, including annual review and approval of OCC's model validation plan, and OCC's risk metric reporting as well as review the results of audits and examinations relating to significant risk items, or any other matter the RC oversees, as well as management's responses thereto.

#### *Other Oversight Responsibilities*

OCC also proposes to broaden the expression of the RC's oversight responsibilities, as set forth in the RC Charter, by eliminating some of the detail found within the existing RC Charter in favor of a statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules. Additionally, OCC proposes amendments that clarify and confirm that the RC oversees the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes to clarify the RC's oversight responsibilities, including: i) overseeing management's management of strategic, credit, market, operational and liquidity and systemic risks, including identifying issues related to these risks that should be escalated to the Board for final action and ii) reassessing reporting metrics reflecting the risks for which the RC has oversight.

#### *Conforming, Administrative and Non-Substantive Changes*

In order to conform the RC Charter to the GNC Charter and AC Charter, OCC proposes amendments to the RC Charter that would eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, under the proposed amended RC Charter, the RC, in consultation with the Executive Chairman, would review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual

compensation for the CRO.<sup>31</sup> This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

With respect to RC meetings, OCC proposes amendments to confirm that the RC shall meet with the CRO and other appropriate corporate officers in separate executive sessions to discuss certain private matters regularly, rather than at least annually. Further, the proposed amendments confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products. Moreover, OCC proposes amendments to the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

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

**Risk Management.** OCC believes that by implementing the proposed rule change it will be better able to manage the risks associated with discharging its responsibilities as set forth in the DCO Core Principles because it will institute a clearer and more transparent governance structure for the Board and the Board Committees. In addition, OCC will provide the public with information about its governance structure so that parties may more accurately identify any potential risks associated with using OCC’s services.

**Public Information.** OCC believes that by implementing the proposed rule change it will be better able to provide market participants with information to identify and evaluate OCC’s governance structure. OCC will post the amended Board Charter and Charters of the Board Committees on its public website thereby providing the public with relevant information regarding 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.

---

<sup>31</sup> This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

Christopher J. Kirkpatrick  
February 24, 2016  
Page 21

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

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

---

Form 19b-4

Proposed Rule Change  
by

**THE OPTIONS CLEARING CORPORATION**

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

**Item 1. Text of the Proposed Rule Change**

This proposed rule change by The Options Clearing Corporation (“OCC”) concerns enhancements to OCC’s governance arrangements. Primarily, OCC is proposing to amend its By-Laws to: (i) provide that the Compensation and Performance Committee (“CPC”)<sup>1</sup> and the Audit Committee (“AC”) each will be chaired by a Public Director; (ii) provide that an Exchange Director be a member of the Risk Committee (“RC”); (iii) better describe the nomination process for Member Directors and Public Directors of OCC’s Board of Directors (“Board”); (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single By-Law section as well as identify all committees of the Board in OCC’s By-Laws. OCC is also proposing amendments to the Charters of the Board, AC, CPC, and RC that stem from scheduled reviews of such documents.

Material proposed to be added to OCC’s By-Laws as currently in effect is marked by underlining and material proposed to be deleted is enclosed in bold brackets. The Board Charter (including OCC’s Fitness Standards for Directors, Clearing Members and Others), AC Charter, CPC Charter, and RC Charter, with changes marked, are attached hereto as Exhibits 5A through 5D. Amendment No. 1 to the Amended and Restated Stockholders Agreement which is entirely new, is attached hereto as Exhibit 5E with material proposed to be added marked by underlining. The Governance and Nominating Committee Charter, with changes marked, is attached hereto as Exhibit 5F.

\*\*\*

---

<sup>1</sup> As described below, the Performance Committee would be renamed as the Compensation and Performance Committee.

## THE OPTIONS CLEARING CORPORATION

### BY-LAWS

\* \* \*

### ARTICLE III

#### Board Directors

\* \* \*

#### [Governance and Nominating Committee] Committees<sup>2</sup>

SECTION 4. [On an annual basis, the Board of Directors shall appoint a Governance and Nominating Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The Governance and Nominating Committee shall consist 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 chairman of the Governance and Nominating Committee shall be designated by the Board from among the Public Director members of the Committee.] Subject to applicable law, the Certificate of Incorporation and the other provisions of these By-Laws, the Board of Directors, by resolution passed by a majority of the whole Board of Directors, may, but need not, designate persons to serve on such committees as it may deem necessary and appropriate, may delegate one or more of its powers to such committees, and may fill any vacancy occurring in any such committee and may remove any member thereof for any reason.<sup>3</sup>

(a) *Audit Committee.* On an annual basis, the Board of Directors shall appoint an Audit Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. All of the Audit 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 provided that no Management Director may serve on the Audit Committee. The chairman of the Audit Committee shall be designated by the Board from among the Public Director member(s) of the Committee.

<sup>2</sup> This By-Law provision reflects the proposed consolidation of Article III, Section 9 of the By-Laws and portions of Article IV, Section 7 into Article III, Section 4 to provide a more transparent and unified statement regarding the Board's committees.

<sup>3</sup> Language relocated from Article III, Section 9 without alteration.



- (b) Compensation and Performance Committee. On an annual basis, the Board of Directors shall appoint a Compensation and Performance Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The Compensation and Performance Committee shall consist of the Executive Chairman, the Member Vice Chairman, and at least one Public Director. Consistent with the preceding sentence, all of the Compensation and Performance 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 chairman of the Compensation and Performance Committee shall be designated by the Board from among the Public Director member(s) of the Committee.<sup>4</sup>
- (c) Governance and Nominating Committee. On an annual basis, the Board of Directors shall appoint a Governance and Nominating Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The Governance and Nominating Committee shall consist 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 chairman of the Governance and Nominating Committee shall be designated by the Board from among the Public Director members of the Committee.<sup>5</sup>
- (d) Risk Committee. On an annual basis, the Board of Directors shall appoint a Risk Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The Risk Committee shall consist of the Executive Chairman, at least one Member Director selected on a basis that shall not discriminate against any Exchange, and at least one Public Director and one Exchange Director. Consistent with preceding sentence, all of the Risk 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 chairman of the Risk Committee shall be a Director designated by the Board from among the Public Director member(s) of the Committee.<sup>6</sup>
- (e) Technology Committee. On an annual basis, the Board of Directors shall appoint a Technology Committee, having the powers and duties set forth in the By-Laws and

---

<sup>4</sup> Article IV, Section 7 references the Performance Committee.

<sup>5</sup> Language relocated from Article III, Section 4 without alteration.

<sup>6</sup> Language relocated from Article III, Section 9 and modified to reflect current practices in light of annual review of the Risk Committee Charter (as discussed below).

Rules and as delegated by the Board. All of the Technology 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 chairman of the Technology Committee shall be designated by the Board from among the members of the Committee.<sup>7</sup>

### **Nomination and Election of Member Directors**

SECTION 5. Prior to each annual meeting of stockholders, the Governance and Nominating Committee shall nominate one person for each directorship among the Member Directors to be filled at such annual meeting, designating the Class for which each such person is nominated. In selecting such nominees, the Governance and Nominating Committee shall endeavor to achieve balanced representation among Clearing Members on the Board of Directors to assure that (i) not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. The Governance and Nominating Committee shall submit a list of its nominations in writing to the Board of Directors [Secretary of the Corporation not later than thirty days prior to each annual meeting, and the Secretary shall transmit such list to all Clearing Members within five days thereafter]. The Board of Directors shall either approve such nominations or instruct the Governance and Nominating Committee regarding the submission of revised nominations; provided, however, that the Board of Directors shall approve one person for each directorship to be filled not later than thirty days prior to each annual meeting. Upon approval of any nominations by the Board of Directors, the Secretary of the Corporation shall transmit them to all Clearing Members within five days thereafter. Clearing Members shall have the right to nominate additional persons by filing with the Secretary, not less than fifteen days prior to the date of the annual meeting, a petition signed by not less than the lesser of (a) representatives of 20% of the Clearing Members or (b) representatives of 25 Clearing Members; provided that in no case shall such a petition be signed by representatives of less than 10% of the Clearing Members. Each such petition may include nominations for all or less than all of the Member Director positions to be filled on the Board of Directors at the annual meeting; provided, however, that no Clearing Member shall nominate by one or more petitions more than one candidate for each such position to be filled at such annual meeting. No petition shall be valid unless it specifies the respective position (e.g., Class I Member Director) for which each candidate named therein is nominated and unless each candidate named therein is eligible for the position for which he is nominated. In the event any question is raised as to the validity of any petition or as to the eligibility of any candidate so named for the position specified therein, such matter shall be determined by the Board of Directors. In the event no such petition is filed, the stockholders shall elect the Member Directors from the persons nominated by the Governance and Nominating Committee and approved by the Board of Directors. In the event one or more such petitions are filed, the Secretary shall, not less than ten days prior to the date of the annual meeting, transmit to

---

<sup>7</sup> The proposed description of the Technology Committee would be relocated from Article III, Section 9 without alteration.

each Clearing Member not under suspension, a ballot setting forth the names of the persons nominated by the Governance and Nominating Committee and approved by the Board of Directors and by such petitions in respect of every position for which such a petition has been filed, and the stockholders shall elect the Member Directors from the persons receiving the highest number of votes on the ballots which are returned by Clearing Members to the Secretary prior to the time the stockholders vote thereon at the annual meeting; provided, however, that no person shall be elected to a position if such election would render the composition of the Member Directors inconsistent with the provisions of Section 2 of this Article III. In the event any nominee receiving the highest number of votes is ineligible for election because of the preceding sentence, the person receiving the next highest number of votes who is eligible for election shall be elected by the stockholders. In the case of a tie, the names of the nominees involved shall be referred to the Board of Directors, and the stockholders shall elect the person selected from among such nominees by the Board of Directors upon the vote of a majority of the directors then in office. In the event that the number of persons who are nominated in accordance with this Section 5 and who are willing and able to serve should be less than the number of Member Directors to be elected at the annual meeting, the stockholders may nominate and elect any qualified person to fill those positions for which there are no other nominations. If the stockholders shall fail to elect a Member Director in accordance with the preceding sentence, the office shall be deemed to be vacant and the vacancy shall be filled in accordance with Section 12 of this Article III.

\* \* \*

### **Public Directors**

SECTION 6A. [At each annual meeting of stockholders at which one or more Public Directors are to be elected, the stockholders entitled to vote thereon shall elect as Public Director(s) such person(s),] Prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the Governance and Nominating Committee shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities[, as the Governance and Nominating Committee shall have nominated] and submit a list of its nominations in writing to the Board of Directors. The Board of Directors shall either approve such nominations or instruct the Governance and Nominating Committee regarding the submission of revised nominations, and at the annual meeting the stockholders entitled to vote thereon shall elect as Public Director(s) such person(s) as shall have been nominated by the Governance and Nominating Committee and approved by the Board of Directors. The Public Directors shall be divided into three classes, designated as Class I, Class II and Class III, respectively. The Public Director elected at the 2011 annual meeting will be designated as a Class II Public Director. One of the two Public Directors appointed prior to the 2013 annual meeting will be designated as a Class I Public Director and the other will be designated as a Class III Public Director. The successor of the initial Class I Public Director shall be elected at the 2013 annual meeting of stockholders, the successor of the initial Class II Public Director at the 2014 annual meeting and the successor of the initial Class III Public Director at the 2015 annual meeting. One of the two Public Directors first appointed or elected after the 2014 annual meeting as a result of the increase of the number of Public Directors from three to five will be designated as a Class I

Public Director and the other will be designated as a Class III Public Director so that, following such appointment or election, there shall be two Class I Public Directors, one Class II Public Director and two Class III Public Directors. The successor of the Class III Public Director appointed or elected as described in the preceding sentence shall be elected at the 2015 annual meeting of stockholders and the successor of the Class I Public Director appointed or elected as described in the preceding sentence shall be elected at the 2016 annual meeting. Except as provided above in the case of the initial Class I Public Director and the initial Class III Public Director, and in the preceding sentence of this Section 6A for the Class I Public Director and the Class III Public Director referred to therein, each Public Director shall serve [until the third annual meeting of stockholders following such Director's election and] until a successor is elected and qualified, or until the earlier death, disqualification, resignation, or removal of such Director. [No person shall be eligible to serve as a Public Director for more than two consecutive three-year terms.]

\* \* \*

#### [Committees]

SECTION 9. [On an annual basis, the Board of Directors shall appoint a Risk Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board of Directors. The Risk Committee shall consist of the Executive Chairman of the Board, the Member Vice Chairman, at least three other Member Directors selected on a basis that shall not discriminate against any Exchange, and one or more Public Directors nominated by the Executive Chairman of the Board and approved by the Board of Directors. The Chairman of the Risk Committee shall be a Public Director. If there are two or more Public Directors on the Risk Committee, the Executive Chairman of the Board shall nominate, subject to the approval of the Board of Directors, one of the Public Directors to serve as the Risk Committee Chairman.

On an annual basis, the Board of Directors shall appoint a Technology Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. All of the Technology 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 chairman of the Technology Committee shall be designated by the Board from among the members of the Committee.<sup>8</sup>

Subject to applicable law, the Certificate of Incorporation and the other provisions of these By-Laws, the Board of Directors, by resolution passed by a majority of the whole Board of Directors, may, but need not, designate persons to serve on such other committees as it may deem necessary and appropriate, may delegate one or more of its powers to such committees, and may fill any vacancy occurring in any such committee and may remove any member thereof for any reason.] [Reserved.]

---

<sup>8</sup> *Id.*

\* \* \*

## ARTICLE IV

### OFFICERS

#### Selection by Board of Directors

SECTION 1. Upon the nomination of the Governance and Nominating Committee, an [An] Executive Chairman of the Board [and a President, who shall each be by virtue of his office 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 President, 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 a Management Vice Chairman or 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, President and Member Vice Chairman.

\* \* \*

#### Vice Chairman of the Board

SECTION 7. [(a) The Management Vice Chairman, if elected and serving, shall preside at meetings of the Board of Directors and the stockholders in the absence or disability of the Executive Chairman. In addition, in the absence or disability of the Executive Chairman, the Management Vice Chairman shall fulfil all of the other duties and have all of the other powers of the Executive Chairman.

(b) The Member Vice Chairman shall preside at the meetings of any committee of the Board of Directors charged with the responsibility for evaluating the performance of the Corporation and the compensation of the officers of the Corporation.] In [addition, in] the absence or disability of the Executive Chairman, [the President and the Management Vice Chairman (if a Management Vice Chairman shall have been elected),] the Member Vice Chairman shall preside at meetings of the Board of Directors and the stockholders.

\* \* \*

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

*Procedures Concerning Submission of By-Law Amendments*

At a meeting held on March 27, 2015, the Board approved for filing with the Commission the proposed amendments to: (i) provide that the CPC and the AC each will be chaired by a Public Director; (ii) eliminate term limits for Public Directors; and, (iii) consolidate By-Law sections that identify the committees of the Board into a single By-Law section. On the same date, the holders of all the outstanding common stock of OCC also unanimously consented to such By-Law amendments.

At a meeting held on May 20, 2015, the Board approved for filing with the Commission proposed amendments to OCC's By-Laws that would permit an Exchange Director to become a member of the RC.

At a meeting held on July 22, 2015, the Board approved for filing with the Commission proposed amendments to modify the nomination process for Member Directors and Public Directors of the Board. On that same date, the holders of all the outstanding common stock of OCC also unanimously consented to such By-Law amendments.

*Procedures Concerning Submission of Amendments to the Board and Committee Level Charters*

At meetings held on December 9, 2014, and July 22, 2015, the Board approved for filing with the Commission proposed amendments to the Board Charter.

At a meeting held on September 23, 2014, the Board approved for filing with the Commission, the proposed amendments to the Charters for OCC's AC, CPC, and RC. At a meeting held on March 27, 2015, the Board approved for filing with the Commission further amendments to the Charters of the AC and the CPC. At a meeting held on December 9, 2015,

the Board approved for filing with the Commission additional amendments to the Charter of the AC. At a meeting held on July 22, 2015, the Board approved for filing with the Commission amendments to the Charter of the Governance and Nominating Committee (“GNC”).

Questions should be addressed to Justin Byrne, Vice President, Regulatory Filings, at (202) 971-7238.

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

A. Purpose

The purpose of this proposed rule change is to implement a number of enhancements to OCC’s governance arrangements. Specifically, OCC is proposing to amend its By-Laws to: (i) provide that the CPC and the AC each will be chaired by a Public Director; (ii) provide that an Exchange Director be a member of the RC; (iii) better describe the nomination process for Member Directors and Public Directors of OCC’s Board; (iv) eliminate term limits for Public Directors; and, (v) consolidate By-Law sections that identify the committees of the Board into a single By-Law section as well as identify all committees of the Board in OCC’s By-Laws. OCC is also proposing amendments to the Charters of OCC’s Board, AC, CPC, and RC that stem from scheduled reviews of such documents.

**Amendments to OCC’s By-Laws**

*Committee Descriptions and Other Conforming By-Law Amendments*

OCC is proposing to amend Article III of its By-Laws in order to provide descriptions of the AC, CPC, RC, GNC, and Technology Committee (collectively, “Board Committees” and each a “Board Committee”) in a single section of the By-Laws. Specifically, OCC is proposing to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III,

Section 9 (which concerns the RC,<sup>9</sup> the Technology Committee,<sup>10</sup> and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 in order to provide a more transparent and unified statement regarding the Board Committees.<sup>11</sup>

In addition, OCC is proposing to add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws. The proposed description of the AC reflects that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the Audit Committee. The proposed description of the AC would also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). The proposed description of the CPC would reflect that, on an annual basis, the Board of Directors shall appoint a CPC consisting of the Executive Chairman, the Member Vice Chairman, and at least one Public Director. Consistent with the preceding sentence, all of the CPC members will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The proposed description would also include a new requirement that the chairman of the CPC shall be designated by the Board from

---

<sup>9</sup> The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC's existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). *See supra* note 6, *infra* note 18, and related text.

<sup>10</sup> The Commission recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. *See* Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR-OCC-2015-018).

<sup>11</sup> *See supra* notes 2-3, 5-8.



among the Public Director member(s) of the Committee (as described further below).

OCC is also proposing amendments to Article IV, Section 1 to reflect the current practices that the Board elects the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elects the President of OCC (in addition to the Secretary and Treasurer). OCC also proposes to revise Article IV, Section 7 in order to delete provisions applicable to the Management Vice Chairman presiding over Board and stockholder meetings as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time<sup>12</sup> and to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman.<sup>13</sup>

*Compensation and Performance Committee and Audit Committee Independence*

In addition to the proposed changes described above, OCC is also proposing substantive changes to the Board Committee descriptions in proposed Article III, Sections 4(a) and (b) of the By-Laws to reflect the requirement that a Public Director<sup>14</sup> chair the AC and the CPC. The GNC recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board- level compensation committees. The review was undertaken in order to further the Board's oversight of employee compensation and benefits,

---

<sup>12</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the Commission concerning the elimination of the tile of Management Vice Chairman and such further leadership transition plans.

<sup>13</sup> References to the President are proposed to be removed from Article IV, Section 7 because the President cannot preside over meetings of the Board. *See* OCC's By-Laws Article IV, Section 8.

<sup>14</sup> *See* Article III Section 6A of OCC's By-Laws regarding Public Directors.

recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters).<sup>15</sup> The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,<sup>16</sup> which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory organizations. Moreover, such a change would ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities. The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that would require such audit committees to be independent based on facts determined by a given self-regulatory organization's Board of Directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) would not be eligible to serve on the AC.

#### *Risk Committee Membership*

OCC is proposing to amend Article III of its By-Laws in order to provide that an

---

<sup>15</sup> The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

<sup>16</sup> See OCC's By-Laws Article III, Section 3 and Section 5.

Exchange Director<sup>17</sup> be a member of the RC. The GNC recently reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among clearing members as well as the fact that clearing members are responsible for contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC now believes that an Exchange Director should be a member of the RC. Exchange Directors have expertise, and unique perspective, on matters such as market risk as well as sophistication as to special risks arising from trading practices and strategies, and new products.

*Nomination Process for Member Directors and Public Directors*

OCC is proposing to make amendments to Article III, Section 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to conform the description of the process through which the Board selects Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman to the process set forth in the GNC Charter.<sup>18</sup> Specifically, the amendments would provide that such persons would be nominated by the GNC for purposes of the Board's annual election process, and then confirmed by the Board. Such a process is consistent with the function of the GNC as set forth in the GNC Charter.

---

<sup>17</sup> See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

<sup>18</sup> The GNC Charter had already been reviewed by OCC in 2014 and approved by the Commission. See Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

*Public Director Term Limits*

OCC is proposing to amend Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter in order to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. It is generally recognized that it often takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations.<sup>19</sup> Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

**Amendments to Board and Board Committee Charters**

*Proposed Amendments to the Board Charter and the Fitness Standards for Directors, Clearing Members and Others*

OCC proposes amendments to the Board Charter that are intended to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and leadership transition plan; (iii) reflect recent changes

---

<sup>19</sup> According to the 2014 Spence Stuart Board Index, among S&P 500 companies, very few boards (only 3% - or 16 companies) specify director term limits. Of these, none imposes a term limit that is less than 10 years. The most common term limit is 15 years, and the longest term limit is 30 years.

involving Board Committee charters; (iv) in general, broaden the expression of the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the charter. The proposed amendments are described in more detail below.

#### Membership and Organization

OCC proposes amendments to Section II of the Board Charter regarding membership and organization requirements, which are primarily designed to align the Board Charter to OCC's leadership transition plan. Specifically, OCC proposes to delete a reference to the title of Management Vice Chairman as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time.<sup>20</sup> (OCC also proposes a related deletion in Section I of the Board Charter.) In the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC also proposes amendments that would allow for additional meetings of the Board being called as the Board deems appropriate (such meetings shall be called by Executive Chairman or his designee.) Further, OCC proposes amendments that would reflect that the Executive Chairman would determine if minutes of executive sessions would be recorded, which is consistent with provisions in the Charters of the Board Committees ("Committee Charters").<sup>21</sup>

In addition OCC proposes amendments relating to Board composition to reflect that,

---

<sup>20</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the Commission concerning the elimination of the tile of Management Vice Chairman and such further leadership transition plans.

<sup>21</sup> The Commission previously approved similar changes to the Committee Charters providing that each committee chair shall determine if minutes of executive sessions are

currently, one Management Director serves on the Board<sup>22</sup> and to reflect an increase in the number of Public Directors serving on the Board from three to five.<sup>23</sup> Additionally, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors would include 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 reflected in OCC's By-Laws).<sup>24</sup> OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone.

#### Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily intended to either: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules as well as the Board's Corporate Governance Principles<sup>25</sup> since certain specific obligations of the Board are set forth in the By-

---

to be maintained. *See* Securities Exchange Act Release No. 71627 (February 27, 2014), 79 FR 12538 (March 5, 2014) (SR-OCC-2014-01).

<sup>22</sup> The Commission approved a proposed rule change providing that OCC's President would not be considered a Management Director and, therefore, only one Management Director currently serves on the Board. *See* Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

<sup>23</sup> The Commission approved the increase in the minimum number of Public Directors on OCC's Board from three to five in July 2014. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

<sup>24</sup> OCC proposes to remove a reference to geographic location as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

<sup>25</sup> The purpose of the Board's Corporate Governance Principles is to assist OCC's Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, the Board's Corporate Governance Principles are meant to address OCC's obligations as a systemically important financial market utility to have policies

Laws and Rules as well as the Corporate Governance Principles; and (ii) provide a higher level of expression of the Board's oversight responsibilities recognizing OCC's position as a designated systemically important financial market utility .

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules or Corporate Governance Principles, OCC is proposing to remove the expression from the Board Charter. These charter provisions would be replaced by a general statement that the Board would perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.<sup>26</sup>

OCC also proposes amendments to Section IV of the Board Charter to provide for a higher level of expression of the Board's responsibilities and emphasize that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility while continuing to contain a general description of the responsibilities of the Board. Specifically, OCC proposes to amend the charter to state that the responsibilities of the Board include: (i) overseeing management's activities in managing, operating and developing OCC and evaluating OCC management's performance in

---

and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

<sup>26</sup> The proposed change would remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5A.

executing its responsibilities; (ii) selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual Directors and committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.*, directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer); (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC proposes to modify certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC propose amendments that would specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. OCC also proposes amendments to specify that



the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance and standards. Additionally, OCC proposes amendments to provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.<sup>27</sup>

OCC is also proposing non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC proposes amendments that would combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services. The proposed amendments would also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its charter) with oversight from the Board.

#### Other Conforming, Administrative and Non-Substantive Changes

In addition to the changes described above, certain of the proposed amendments to the Board Charter are meant to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the Technology Committee,<sup>28</sup> the Governance and Nominating Committee, and renaming of the

---

<sup>27</sup> OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

<sup>28</sup> *See supra* note 100.

Performance Committee to CPC, as described herein. In addition OCC is proposing non-substantive changes to Section I of the Board Charter to clarify that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC also proposes amendments that would require an annual (as opposed to the less specific “periodic”) review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

#### Fitness Standards for Directors, Clearing Members and Others

OCC also proposes to amend the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”) to remove descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in other OCC documents (such as the Committee Charters). Eliminating these redundant descriptions in the Fitness Standards would promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. The proposed amendments would also underscore that the Fitness Standards are intended to facilitate the performance of OCC’s role as a systemically important financial market utility.

#### *Common Proposed Amendments to Each Committee Charter*

##### Changes to Conform to the GNC Charter

OCC is proposing to make conforming amendments the Committee Charters as a result of the Commission recently approving certain changes to the GNC Charter.<sup>29</sup> Specifically, OCC proposes to amend each Committee Charter to confirm that each Board Committee has access to

---

<sup>29</sup> See *supra* note 23.

all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities. This amendment to the Committee Charters would make explicit a longstanding principle under which each Committee has operated. Additionally, references to the "Governance Committee" in each Committee Charter would be changed to the "Governance and Nominating Committee" to reflect the formation of the GNC.

Furthermore, OCC proposes to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical since no such provision exists in the GNC Charter. Although this provision also required each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective, in that it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, historically each Board Committee has been able to convene when necessary.

#### *Audit Committee Charter*

OCC proposes amendments to the AC Charter intended to, among other things, (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. The proposed changes are described in more detail below.

#### Purpose, Membership and Authority

OCC proposes changes to Sections I, II and III of the AC Charter related to the purpose,

membership and organization, and authority of the AC. In Section I of the AC Charter, OCC proposes to make certain organizational changes related to the purpose of the AC. Specifically, OCC proposes to reorganize certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. These changes are non-substantive in nature. OCC is also proposing to make various non-substantive clarifying and textual changes in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which would extend throughout the entire AC Charter.

OCC also proposes amendments to Section II of the AC Charter that are intended to underscore the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC's management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.<sup>30</sup> Additionally OCC proposes an amendment that would clarify that the Management Director, as described in Section 7 of Article III of OCC's By-Laws, is ineligible to serve on the AC.<sup>31</sup> OCC also proposes to clarify that the AC will meet regularly (as opposed to "at least annually") with OCC's Chief Financial Officer (in addition to the Chief Audit Executive ("CAE") and Chief Compliance Officer ("CCO")), to reflect the fact that these meetings and interactions occur more than once per year. Section II of the AC Charter would also be amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of

---

<sup>30</sup> The change concerning the AC Chair would conform the AC Charter with proposed Article III, Section 4(a) of OCC's By-Laws, as described above.

<sup>31</sup> In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

the AC, outside of regular meetings to further underscore their independence. Further, OCC proposes an amendment to Section II of the AC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at an AC meeting by telephone is discouraged.

To align the AC Charter with the GNC Charter, OCC proposes to amend Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to approve the related fee and retention terms.<sup>32</sup> Further, the language relating to the AC's ability to engage external specialists has been moved to the "Authority" section of the AC Charter and conformed to parallel language used in other Committee Charters.

#### Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities. These proposed amendments are described in more detail below.

#### *Oversight of External Auditor and Financial Reporting*

OCC proposes amendments to the AC Charter regarding the AC's oversight of financial reporting and external auditors. The proposed amendments to the AC Charter are intended to underscore and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the proposed amendments explicitly state that the AC is responsible for: (i) discussing with management and external auditors OCC's

---

<sup>32</sup> OCC is also proposing remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement is replaced by a broader expression of the AC's authority to hire advisors.

audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to issuance;<sup>33</sup> (iii) reviewing with management, external auditors and OCC's Internal Audit Department 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; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing audit problems or difficulties, and management's response thereto, with external auditors.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter that would clarify that the AC is required to discuss with management: (i) the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) the qualifications of both the external auditor and engagement partner; (iii) consider whether there should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

*Oversight of Internal Audit, Compliance and Compliance-Related Matters*

OCC is proposing to amend Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC proposes

---

<sup>33</sup> This proposed amendment is intended to restate, clarify, and expand upon an existing statement in the AC Charter regarding the AC's review of annual audited financial statements (which OCC is proposing to delete).

amendments that would clarify that the AC's responsibilities include: (i) reviewing and approving the Internal Audit Policy on an annual basis; (ii) monitoring ongoing internal audit activities; (iii) approving OCC's annual internal audit plan; and (iv) approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan.

OCC also proposes amendments to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including: (i) annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct; (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO; and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC proposes amendments to clarify the AC's responsibilities with respect to: (i) reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

*Oversight of OCC's Chief Audit Executive and Chief Compliance Officer*

OCC proposes amendments to Section IV of the AC Charter to clarify that the CAE and

CCO each report functionally to the AC and administratively to the Executive Chairman to make more explicit the reporting lines for these functions.<sup>34</sup> In addition OCC proposes to eliminate provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. Specifically, as amended, the AC Charter would state that the AC, in consultation with the Executive Chairman, would review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each.

#### *Compensation and Performance Committee Charter*

OCC is proposing changes to its CPC Charter to more explicitly describe the committee's functions and responsibilities' with respect to, among other things, (i) OCC's Capital Plan; (ii) its human resources, compensation and employee benefit programs; and (iii) OCC's insurance programs. The proposed changes are described in more detail below.

#### Purpose, Membership, and Authority

OCC is proposing to rename the Performance Committee to the CPC in order to more accurately reflect its role. OCC is also proposing to amend Section I of the CPC Charter to more clearly articulate that the CPC is tasked with assisting the Board in oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals

---

<sup>34</sup> These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.



and objectives in light of OCC's systemically important status. The CPC Charter would further delineate that the CPC is also tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC proposes amendments to Section II of the CPC Charter related to the membership and organization of the CPC. Specifically, OCC proposes amendments to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws in that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the AC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels of (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.

OCC also proposes administrative amendments to Section II to clarify that the CPC would meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs of the AC and RC would be invited to attend the annual meeting to discuss compensation of key

officers, including the Chief Risk Officer (“CRO”) and CAE.<sup>35</sup>

OCC also proposes an amendment to the CPC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at a CPC meeting by telephone is discouraged. In addition, other clarifying and textual changes would be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

Additionally, OCC proposes non-substantive changes in Section III regarding the delegation of authority to the Administrative Committee.

#### Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide more explicit descriptions of the committee’s responsibilities with respect to OCC’s capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust oversight framework for the CPC’s oversight functions. The proposed changes are described in more detail below. Additionally, OCC proposes to remove a requirement in Section IV that the CPC review OCC’s performance under the Corporate Plan at each regular scheduled meeting.<sup>36</sup> Comparable changes are being proposed to the AC Charter and RC Charter, as described herein.

#### *Oversight of OCC’s Capital Plan*

OCC proposes amendments to Section IV of the CPC Charter to explicitly provide for the CPC’s responsibilities in connection with overseeing OCC’s capital structure, financial planning,

---

<sup>35</sup> These changes are being made to reflect a consultative process as between the Executive Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

<sup>36</sup> For the purposes of clarification, the CPC would routinely review OCC’s performance under the Corporate Plan.

and corporate goals and objectives. Specifically, the proposed amendments explicitly state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,<sup>37</sup> including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments would also specify that the CPC is responsible for the annual review of OCC's Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC proposes amendments to provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the proposed amendments provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments also provide that the CPC is responsible for the periodic review of OCC's insurance program.

#### *Oversight of Human Resources and Compensation Programs*

OCC proposes amendments to Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable,

---

<sup>37</sup> See Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12232 (March 6, 2015) (SR-OCC-2014-813). See also Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

of employee compensation, incentive and benefit programs. This proposed amendment ensures Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is proposing to amend the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is proposing amendments to the CPC Charter that would require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation. The amendments also require the CPC to seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel as well as review the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President as well as periodically review the compensation of OCC's Public Directors. The proposed amendments would also require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto. OCC proposes to remove general statements regarding the review of OCC's performance under the Corporate Plan and to oversee the administration of OCC's compensation plans as these responsibilities would be covered under the new, more detailed descriptions described herein.

*Oversight of Employee Benefit Programs and Other Responsibilities*

OCC also proposes amendments to Section IV of the CPC Charter to clarify the CPC's

oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter, which are non-substantive in nature, to clarify the CPC's responsibilities for oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The proposed amendments also clarify the scope of employee welfare plans that the CPC reviews, and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the proposed amendments would provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and perform such other oversight duties as called for in retirement, retirement and savings and welfare plan documents. OCC further proposes amendments that clarify that the CPC is responsible for providing updates to the Board periodically regarding: (i) actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

#### *Risk Committee Charter*

OCC is proposing amendments to its RC Charter which are primarily intended to replace more granular descriptions with broader expressions of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. OCC also proposes amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above), to reflect the

adoption of the Technology Committee, and to remove a conflict of interest statement. The proposed changes are described as follows.

Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter that are intended to better align OCC's By-Laws and the RC Charter by clarifying that while certain risks would be overseen by other Board Committees, the RC is responsible for coordinating risk oversight, as appropriate, to achieve comprehensive oversight of OCC's risk-related matters. The proposed amendments would also clarify that the RC is responsible for the review of material policies and processes relating to risks related to new initiatives.

In Section II of the RC Charter, OCC proposes clarifying and textual changes to provide that, as in the Code of Conduct for OCC Directors, attendance at a RC meeting by telephone is discouraged. OCC also proposes to remove certain mandatory recusal requirements designed to apply to Member Directors of the RC as the identification and handling of conflicts of interest are already addressed in the Corporate Governance Principles and the Code of Conduct for OCC Directors, which governs the conduct of all directors equally regardless of category or committee assignment. Moreover, and in order to enhance the independence and functional reporting relationship of the CRO to the RC, OCC proposes revisions to explicitly state that the CRO is authorized to communicate with the RC Chair outside of regular meetings. OCC also proposes to amend the RC composition requirements in Section II in order to conform to the proposed By-Law changes discussed above. Specifically, the RC Charter would be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also proposing an amendment to Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact

that the time allotted for each individual RC meeting has been expanded.

OCC also proposes to amend Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee.

#### Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to broaden the expression of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. In particular, the amendments clarify and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other oversight responsibilities.

#### *Oversight of Membership and Margin Requirements*

OCC proposes amendments to broaden the description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. These changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework. Rather, the proposed amendments would provide for a broader expression of the RC's responsibilities intended to encompass the responsibilities currently enumerated in the charter.<sup>38</sup> Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues would be replaced with a more general statement that the RC is responsible for the oversight of

---

<sup>38</sup> For example, individual provisions related to specific types of membership categories and requirements would be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the deleted provisions.

OCC's 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 the foregoing.

In addition, OCC proposes to modify certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures. Specifically, OCC proposes to consolidate and expand upon these provisions to state that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for clearing member failures, including: (i) reviewing clearing member surveillance criteria; (ii) overseeing the management processes for managing clearing members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on clearing members in a manner consistent with the By-Laws and Rules; and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to broaden the description of the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to margin and clearing fund requirements and replace them with a more high level description that would provide that the RC oversees the adequacy and effectiveness of OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying the OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to



the Board, as applicable, in respect thereof; (ii) evaluating the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules. The proposed amendment is not intended to substantively change the RC's responsibilities in the deleted provisions but would instead replace them with a broader description intended to encompass those responsibilities.

OCC also proposes amendments that would clarify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties. The proposed amendments would also clarify that the RC oversees the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. With respect to OCC's role as a systemically important financial market utility, the RC Charter would clarify that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects.

#### *Oversight of OCC's Enterprise Risk Management Program*

OCC proposes amendments that would confirm that the RC oversees OCC's Enterprise Risk Management program, including by: (i) overseeing the staffing and resources of the Enterprise Risk Management program; (ii) reviewing periodic reports regarding the Enterprise Risk Management program; (iii) reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these

systems and procedures with management; (iv) reviewing with management the interrelated nature of OCC's risks; (v) annually approving the Enterprise Risk Management program's goals and objectives; and (vi) annually reviewing and assessing the overall program. OCC also proposes amendments confirming that the RC reviews and monitors determinations of appropriate risk tolerances by reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, reviewing and recommending for Board approval the OCC Risk Appetite Statement, reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement, and recommending risk tolerance parameters to the Board. In addition, under the proposed amendments, the RC would assume the responsibility of assessing risks presented by new OCC initiatives relative to established risk tolerances and appetites and to ensure a comprehensive oversight of risk-related matters, and would coordinate risk oversight with other Board Committees. Further, the proposed amendments would confirm that the RC oversees OCC's model risk management process, policies and controls, including annual review and approval of OCC's model validation plan, and OCC's risk metric reporting as well as review the results of audits and examinations relating to significant risk items, or any other matter the RC oversees, as well as management's responses thereto.

#### *Other Oversight Responsibilities*

OCC also proposes to broaden the expression of the RC's oversight responsibilities, as set forth in the RC Charter, by eliminating some of the detail found within the existing RC Charter in favor of a statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules. Additionally, OCC proposes amendments that clarify and confirm that the RC oversees the structure, staffing and resources of OCC's Financial

Risk Management department. In addition, OCC proposes to clarify the RC's oversight responsibilities, including: i) overseeing management's management of strategic, credit, market, operational and liquidity and systemic risks, including identifying issues related to these risks that should be escalated to the Board for final action and ii) reassessing reporting metrics reflecting the risks for which the RC has oversight.

*Conforming, Administrative and Non-Substantive Changes*

In order to conform the RC Charter to the GNC Charter and AC Charter, OCC proposes amendments to the RC Charter that would eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, under the proposed amended RC Charter, the RC, in consultation with the Executive Chairman, would review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for the CRO.<sup>39</sup> This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

With respect to RC meetings, OCC proposes amendments to confirm that the RC shall meet with the CRO and other appropriate corporate officers in separate executive sessions to discuss certain private matters regularly, rather than at least annually. Further, the proposed amendments confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products.

---

<sup>39</sup> This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

Moreover, OCC proposes amendments to the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

B. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the “Act”),<sup>40</sup> and the rules thereunder applicable to OCC. OCC’s governance arrangements, which include, but are not limited to, OCC’s By-Laws, the Board Charter, and the Committee Charters promote the effectiveness of OCC’s Board and Board Committees’ oversight on OCC’s business, risk management, and operational processes. OCC believes that the proposed changes to its governance arrangements would enhance the effectiveness of the Board and Board Committees’ oversight on such matters and are designed to provide more clarity and transparency with respect to OCC’s governance arrangements, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and in general, protecting investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>41</sup> and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)<sup>42</sup> thereunder, as further described below. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

**Amendments to OCC’s By-Laws**

The proposed amendments to OCC’s By-Laws would require that the CPC and AC each

---

<sup>40</sup> 15 U.S.C. 78q-1.

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

<sup>42</sup> 17 CFR 240.17Ad-22(d)(8).

be chaired by a Public Director, which is aligned with governance best practices for self-regulatory organizations and will help to ensure the objectiveness and independence of those committees. It would also eliminate term limits for Public Directors, allowing OCC's Public Directors the time necessary to develop the particularized degree of knowledge and understanding of OCC's business to ensure that they are able to provide significant value in the governance process. OCC therefore believes that the proposed changes are reasonably designed to be clear and transparent to support the public interest requirements of Section 17A of the Act<sup>43</sup> in accordance with Rule 17Ad-22(d)(8)<sup>44</sup> thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC. The addition of an Exchange Director to the RC will enhance the RC's oversight capabilities by providing additional expertise and unique perspectives on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies, and new products. OCC therefore believes that the proposed change is designed to promote the prompt and accurate clearance and settlement of securities transactions, to protect investors and the public, and to promote the effectiveness of OCC's risk management procedures in accordance with Section 17A(b)(3)(F) of the Act<sup>45</sup> and Rule 17Ad-22(d)(8)<sup>46</sup> thereunder.

OCC is also proposing a number of other changes to better align its By-Laws and Board and Board Committee charters, to ensure that those documents accurately and comprehensively reflect existing practices, and to provide more clarity and transparency with respect to OCC's

---

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>44</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>45</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>46</sup> 17 CFR 240.17Ad-22(d)(8).

governance arrangements. OCC believes that these proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures, consistent with Section 17A(b)(3)(F) of the Act<sup>47</sup> and Rule 17Ad-22(d)(8)<sup>48</sup> thereunder.

### **Amendments to the Board Charter**

The proposed rule change would amend the Board Charter, as described in detail above, to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and leadership transition plan; (iii) reflect recent changes involving Board Committee charters; (iv) reflect recent changes to the Board's composition; and (v) in general, broaden the expression of the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility. The proposed amendments would provide more clarity around the responsibilities of the Board, specifically with respect to its role in: (i) overseeing management's activities in managing, operating and developing OCC, including the selection, oversight and replacement of key positions (i.e., Executive Chairman, CEO, and the President) as well as evaluating their performance and compensation awards; (ii) setting expectations about the tone and ethical culture at OCC and its ability to ensure compliance with applicable law and

---

<sup>47</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>48</sup> 17 CFR 240.17Ad-22(d)(8).

regulation; (iii) reviewing and approving financial objectives and strategies, capital plan and capital structure, fee structure, capital expenditures and budgets; (iv) the oversight of governance processes, including self-evaluation process on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. As a result, OCC believes the proposed changes are reasonably designed to ensure that OCC has governance arrangements that promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act<sup>49</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8).<sup>50</sup>

#### **Audit Committee Charter**

The proposed amendments to the AC Charter are designed to: (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. Specifically, the proposed changes would underscore the independence of the AC by providing that all members of the AC be independent from OCC's management, as determined by the Board from time to time; that the Chair of the AC be a Public Director; and clarify that the Management Director is ineligible to serve on the AC. The proposed changes explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular

---

<sup>49</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

meetings to further underscore their independence. In addition, the proposed changes underscore and expand upon the AC's oversight role in connection with OCC's financial reporting processes, enhance the independence and objectivity in connection therewith, and more explicitly describe the AC's functions and responsibilities with respect to its oversight of external auditors as well as OCC's internal audit and compliance functions (as described in detail above). OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework and providing further clarity around the AC's functions and responsibilities, the proposed changes are reasonably designed to ensure that OCC's governance arrangements with respect to the role of the AC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>51</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>52</sup>

### **Compensation and Performance Committee Charter**

OCC proposes amendments to the CPC Charter intended to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The proposed amendments would provide a more robust framework for the CPC's oversight functions by clearly stating the CPC's role in: (i) recommending the compensation of OCC's Executive Chairman and President and approving the

---

<sup>51</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>52</sup> 17 CFR 240.17Ad-22(d)(8).



compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan, capital structure, financial planning and corporate goals and objectives; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning. Accordingly, OCC believes that the proposed changes to the CPC Charter are reasonably designed to ensure that OCC's governance arrangements with respect to the CPC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>53</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>54</sup>

### **Risk Committee Charter**

OCC proposes amendments to its RC Charter primarily intended to better align the RC Charter with the OCC By-Laws (including, for example, changes in the composition requirements of the RC (as described above) and to reflect the adoption of the Technology Committee), confirm a number of functions and responsibilities for which the RC is currently responsible, and replace more granular descriptions with broader expressions of the RC's functions and responsibilities, as described in detail above. In particular, the amendments would clarify and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other oversight responsibilities (e.g., the RC's role in overseeing the adequacy and

---

<sup>53</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>54</sup> 17 CFR 240.17Ad-22(d)(8).

effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties and the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility). With respect to OCC's role as a systemically important financial market utility, the RC Charter would clarify that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects. OCC therefore believes that the proposed amendments to the RC Charter are designed to promote the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>55</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>56</sup>

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

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.<sup>57</sup> The proposed changes to OCC's By-Laws, the Board Charter, and the Committee Charters would promote the effectiveness of OCC's Board and Board

---

<sup>55</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>56</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>57</sup> 15 U.S.C. 78q-1(b)(3)(I).

Committees' oversight on OCC's business, risk management, and operational processes and provide more clarity and transparency with respect to OCC's governance arrangements. The proposed rule change would also clarify and enhance the descriptions of the duties and functions of the Board and its members as well as the AC, the CPC, and the RC. The proposed rule change also promotes more effective governance arrangements for OCC, for example, by removing term limits for Public Directors and requiring the Chair of the AC and the CPC to be Public Directors. As a result, OCC does not believe that the proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants. The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities.

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

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

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

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

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

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

Exhibit 5A. Board of Directors Charter (including OCC's Fitness Standards for Directors, Clearing Members and Others).

Exhibit 5B. Audit Committee Charter.

Exhibit 5C. Compensation and Performance Committee Charter.

Exhibit 5D. Risk Committee Charter.

**Exhibit 5E. Amendment No. 1 to the Amended and Restated Stockholder Agreement.**

Exhibit 5F. Governance and Nominating Committee Charter.

**(Confidential Treatment is Requested for Exhibit 5E Pursuant to SEC Rule 24b-2)**

**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

**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-2016-002)

February 17, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Concerning Enhancements to The Options Clearing Corporation's Governance Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on February 17, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change by The Options Clearing Corporation ("OCC") concerns enhancements to OCC's governance arrangements. Primarily, OCC is proposing to amend its By-Laws to: (i) provide that the Compensation and Performance Committee ("CPC")<sup>3</sup> and the Audit Committee ("AC") each will be chaired by a Public Director; (ii) provide that an Exchange Director be a member of the Risk Committee ("RC"); (iii) better describe the nomination process for Member Directors and Public Directors of OCC's Board of Directors ("Board"); (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the

---

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

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

<sup>3</sup> As described below, the Performance Committee would be renamed as the Compensation and Performance Committee.

committees of the Board into a single By-Law section as well as identify all committees of the Board in OCC's By-Laws. OCC is also proposing amendments to the Charters of the Board, AC, CPC, and RC that stem from scheduled reviews of such documents.

The proposed changes to OCC's By-Laws, Board Charter, and Committee Charters can be viewed in Exhibit 5 to the proposed rule change.

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

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

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

1. Purpose

The purpose of this proposed rule change is to implement a number of enhancements to OCC's governance arrangements. Specifically, OCC is proposing to amend its By-Laws to: (i) provide that the CPC and the AC each will be chaired by a Public Director; (ii) provide that an Exchange Director be a member of the RC; (iii) better describe the nomination process for Member Directors and Public Directors of OCC's Board; (iv) eliminate term limits for Public Directors; and, (v) consolidate By-Law sections that identify the committees of the Board into a single By-Law section as well as identify all committees of the Board in OCC's By-Laws. OCC is also proposing amendments to the Charters of OCC's Board, AC, CPC, and RC that stem from scheduled reviews of such documents.



## Amendments to OCC's By-Laws

### *Committee Descriptions and Other Conforming By-Law Amendments*

OCC is proposing to amend Article III of its By-Laws in order to provide descriptions of the AC, CPC, RC, GNC, and Technology Committee (collectively, “Board Committees” and each a “Board Committee”) in a single section of the By-Laws. Specifically, OCC is proposing to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III, Section 9 (which concerns the RC,<sup>4</sup> the Technology Committee,<sup>5</sup> and the Board’s ability to designate persons to serve on Committees, generally), into Article III, Section 4 in order to provide a more transparent and unified statement regarding the Board Committees.

In addition, OCC is proposing to add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws. The proposed description of the AC reflects that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the Audit Committee. The proposed description of the AC would also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). The proposed description of the CPC would reflect that, on an annual basis, the Board of Directors shall appoint a CPC consisting of the Executive Chairman, the Member Vice Chairman, and at least one Public Director. Consistent

---

<sup>4</sup> The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC’s existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). *See infra* note 17 and related text.

<sup>5</sup> The Commission recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. *See* Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR-OCC-2015-018).

with the preceding sentence, all of the CPC members will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The proposed description would also include a new requirement that the chairman of the CPC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below).

OCC is also proposing amendments to Article IV, Section 1 to reflect the current practices that the Board elects the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elects the President of OCC (in addition to the Secretary and Treasurer). OCC also proposes to revise Article IV, Section 7 in order to delete provisions applicable to the Management Vice Chairman presiding over Board and stockholder meetings as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time<sup>6</sup> and to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman.<sup>7</sup>

#### *Compensation and Performance Committee and Audit Committee Independence*

In addition to the proposed changes described above, OCC is also proposing substantive changes to the Board Committee descriptions in proposed Article III, Sections 4(a) and (b) of the By-Laws to reflect the requirement that a Public Director<sup>8</sup> chair the AC and the CPC. The GNC

---

<sup>6</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the Commission concerning the elimination of the tile of Management Vice Chairman and such further leadership transition plans.

<sup>7</sup> References to the President are proposed to be removed from Article IV, Section 7 because the President cannot preside over meetings of the Board. *See* OCC's By-Laws Article IV, Section 8.

<sup>8</sup> *See* Article III Section 6A of OCC's By-Laws regarding Public Directors.

recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board- level compensation committees. The review was undertaken in order to further the Board's oversight of employee compensation and benefits, recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters).<sup>9</sup> The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,<sup>10</sup> which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory organizations. Moreover, such a change would ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities. The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that would require such audit committees to be independent based on facts determined by a given self-regulatory organization's Board of Directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) would not be eligible to serve on the AC.

---

<sup>9</sup> The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

<sup>10</sup> See OCC's By-Laws Article III, Section 3 and Section 5.

*Risk Committee Membership*

OCC is proposing to amend Article III of its By-Laws in order to provide that an Exchange Director<sup>11</sup> be a member of the RC. The GNC recently reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among clearing members as well as the fact that clearing members are responsible for contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC now believes that an Exchange Director should be a member of the RC. Exchange Directors have expertise, and unique perspective, on matters such as market risk as well as sophistication as to special risks arising from trading practices and strategies, and new products.

*Nomination Process for Member Directors and Public Directors*

OCC is proposing to make amendments to Article III, Section 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to conform the description of the process through which the Board selects Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman to the process set forth in the GNC Charter.<sup>12</sup> Specifically, the amendments would provide that such persons would be nominated by the GNC for purposes of the Board's annual election process, and then

---

<sup>11</sup> See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

<sup>12</sup> The GNC Charter had already been reviewed by OCC in 2014 and approved by the Commission. See Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

confirmed by the Board. Such a process is consistent with the function of the GNC as set forth in the GNC Charter.

#### *Public Director Term Limits*

OCC is proposing to amend Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter in order to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. It is generally recognized that it often takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations.<sup>13</sup> Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

#### **Amendments to Board and Board Committee Charters**

##### *Proposed Amendments to the Board Charter and the Fitness Standards for Directors, Clearing Members and Others*

OCC proposes amendments to the Board Charter that are intended to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's

---

<sup>13</sup> According to the 2014 Spence Stuart Board Index, among S&P 500 companies, very few boards (only 3% - or 16 companies) specify director term limits. Of these, none imposes a term limit that is less than 10 years. The most common term limit is 15 years, and the longest term limit is 30 years.

Corporate Governance Principles and leadership transition plan; (iii) reflect recent changes involving Board Committee charters; (iv) in general, broaden the expression of the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the charter. The proposed amendments are described in more detail below.

#### Membership and Organization

OCC proposes amendments to Section II of the Board Charter regarding membership and organization requirements, which are primarily designed to align the Board Charter to OCC's leadership transition plan. Specifically, OCC proposes to delete a reference to the title of Management Vice Chairman as this position is currently vacant and is not included in the Board's discussions regarding management succession planning at this time.<sup>14</sup> (OCC also proposes a related deletion in Section I of the Board Charter.) In the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC also proposes amendments that would allow for additional meetings of the Board being called as the Board deems appropriate (such meetings shall be called by Executive Chairman or his designee.) Further, OCC proposes amendments that would reflect that the

---

<sup>14</sup> OCC intends that the title of Management Vice Chairman would be eliminated entirely from the By-Laws and Rules as OCC makes additional future leadership transition plans. OCC would file a proposed rule change with the Commission concerning the elimination of the tile of Management Vice Chairman and such further leadership transition plans.

Executive Chairman would determine if minutes of executive sessions would be recorded, which is consistent with provisions in the Charters of the Board Committees (“Committee Charters”).<sup>15</sup>

In addition OCC proposes amendments relating to Board composition to reflect that, currently, one Management Director serves on the Board<sup>16</sup> and to reflect an increase in the number of Public Directors serving on the Board from three to five.<sup>17</sup> Additionally, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors would include 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 reflected in OCC’s By-Laws).<sup>18</sup> OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone.

#### Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily intended to either: (i) harmonize the description of the Board’s obligations in the Board Charter with the description of the Board’s obligations in OCC’s By-Laws and Rules as well as the Board’s Corporate

---

<sup>15</sup> The Commission previously approved similar changes to the Committee Charters providing that each committee chair shall determine if minutes of executive sessions are to be maintained. *See* Securities Exchange Act Release No. 71627 (February 27, 2014), 79 FR 12538 (March 5, 2014) (SR-OCC-2014-01).

<sup>16</sup> The Commission approved a proposed rule change providing that OCC’s President would not be considered a Management Director and, therefore, only one Management Director currently serves on the Board. *See* Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

<sup>17</sup> The Commission approved the increase in the minimum number of Public Directors on OCC’s Board from three to five in July 2014. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

<sup>18</sup> OCC proposes to remove a reference to geographic location as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

Governance Principles<sup>19</sup> since certain specific obligations of the Board are set forth in the By-Laws and Rules as well as the Corporate Governance Principles; and (ii) provide a higher level of expression of the Board's oversight responsibilities recognizing OCC's position as a designated systemically important financial market utility .

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules or Corporate Governance Principles, OCC is proposing to remove the expression from the Board Charter. These charter provisions would be replaced by a general statement that the Board would perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.<sup>20</sup>

OCC also proposes amendments to Section IV of the Board Charter to provide for a higher level of expression of the Board's responsibilities and emphasize that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility while continuing to contain a general description of the responsibilities of the Board. Specifically, OCC proposes to amend the charter to state

---

<sup>19</sup> The purpose of the Board's Corporate Governance Principles is to assist OCC's Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, the Board's Corporate Governance Principles are meant to address OCC's obligations as a systemically important financial market utility to have policies and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

<sup>20</sup> The proposed change would remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5A.



that the responsibilities of the Board include: (i) overseeing management's activities in managing, operating and developing OCC and evaluating OCC management's performance in executing its responsibilities; (ii) selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual Directors and committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.*, directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer); (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC proposes to modify certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC propose amendments that would specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage

available in light of OCC's clearing operations. OCC also proposes amendments to specify that the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance and standards. Additionally, OCC proposes amendments to provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.<sup>21</sup>

OCC is also proposing non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC proposes amendments that would combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services. The proposed amendments would also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its charter) with oversight from the Board.

#### Other Conforming, Administrative and Non-Substantive Changes

In addition to the changes described above, certain of the proposed amendments to the Board Charter are meant to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the Technology Committee,<sup>22</sup> the Governance and Nominating Committee, and renaming of the

---

<sup>21</sup> OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

<sup>22</sup> See *supra* note 5.

Performance Committee to CPC, as described herein. In addition OCC is proposing non-substantive changes to Section I of the Board Charter to clarify that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC also proposes amendments that would require an annual (as opposed to the less specific “periodic”) review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

#### Fitness Standards for Directors, Clearing Members and Others

OCC also proposes to amend the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”) to remove descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in other OCC documents (such as the Committee Charters). Eliminating these redundant descriptions in the Fitness Standards would promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. The proposed amendments would also underscore that the Fitness Standards are intended to facilitate the performance of OCC’s role as a systemically important financial market utility.

#### *Common Proposed Amendments to Each Committee Charter*

##### Changes to Conform to the GNC Charter

OCC is proposing to make conforming amendments the Committee Charters as a result of the Commission recently approving certain changes to the GNC Charter.<sup>23</sup> Specifically, OCC proposes to amend each Committee Charter to confirm that each Board Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board

---

<sup>23</sup> See *supra* note 17.

Committee's purpose and responsibilities. This amendment to the Committee Charters would make explicit a longstanding principle under which each Committee has operated. Additionally, references to the "Governance Committee" in each Committee Charter would be changed to the "Governance and Nominating Committee" to reflect the formation of the GNC.

Furthermore, OCC proposes to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical since no such provision exists in the GNC Charter. Although this provision also required each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective, in that it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, historically each Board Committee has been able to convene when necessary.

#### *Audit Committee Charter*

OCC proposes amendments to the AC Charter intended to, among other things, (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. The proposed changes are described in more detail below.

#### Purpose, Membership and Authority

OCC proposes changes to Sections I, II and III of the AC Charter related to the purpose, membership and organization, and authority of the AC. In Section I of the AC Charter, OCC proposes to make certain organizational changes related to the purpose of the AC. Specifically,

OCC proposes to reorganize certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. These changes are non-substantive in nature. OCC is also proposing to make various non-substantive clarifying and textual changes in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which would extend throughout the entire AC Charter.

OCC also proposes amendments to Section II of the AC Charter that are intended to underscore the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC's management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.<sup>24</sup> Additionally OCC proposes an amendment that would clarify that the Management Director, as described in Section 7 of Article III of OCC's By-Laws, is ineligible to serve on the AC.<sup>25</sup> OCC also proposes to clarify that the AC will meet regularly (as opposed to "at least annually") with OCC's Chief Financial Officer (in addition to the Chief Audit Executive ("CAE") and Chief Compliance Officer ("CCO")), to reflect the fact that these meetings and interactions occur more than once per year. Section II of the AC Charter would also be amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. Further, OCC

---

<sup>24</sup> The change concerning the AC Chair would conform the AC Charter with proposed Article III, Section 4(a) of OCC's By-Laws, as described above.

<sup>25</sup> In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

proposes an amendment to Section II of the AC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at an AC meeting by telephone is discouraged.

To align the AC Charter with the GNC Charter, OCC proposes to amend Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to approve the related fee and retention terms.<sup>26</sup> Further, the language relating to the AC's ability to engage external specialists has been moved to the "Authority" section of the AC Charter and conformed to parallel language used in other Committee Charters.

#### Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities. These proposed amendments are described in more detail below.

#### *Oversight of External Auditor and Financial Reporting*

OCC proposes amendments to the AC Charter regarding the AC's oversight of financial reporting and external auditors. The proposed amendments to the AC Charter are intended to underscore and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the proposed amendments explicitly state that the AC is responsible for: (i) discussing with management and external auditors OCC's audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to

---

<sup>26</sup> OCC is also proposing remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement is replaced by a broader expression of the AC's authority to hire advisors.

issuance;<sup>27</sup> (iii) reviewing with management, external auditors and OCC's Internal Audit Department 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; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing audit problems or difficulties, and management's response thereto, with external auditors.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter that would clarify that the AC is required to discuss with management: (i) the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) the qualifications of both the external auditor and engagement partner; (iii) consider whether there should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

*Oversight of Internal Audit, Compliance and Compliance-Related Matters*

OCC is proposing to amend Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC proposes amendments that would clarify that the AC's responsibilities include: (i) reviewing and approving the Internal Audit Policy on an annual basis; (ii) monitoring ongoing internal audit activities; (iii) approving OCC's annual internal audit plan; and (iv) approving any CAE

---

<sup>27</sup> This proposed amendment is intended to restate, clarify, and expand upon an existing statement in the AC Charter regarding the AC's review of annual audited financial statements (which OCC is proposing to delete).

recommendations for removing or deferring any audits from a previously approved internal audit plan.

OCC also proposes amendments to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including:

- (i) annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct;
- (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO;
- and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC proposes amendments to clarify the AC's responsibilities with respect to: (i) reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

*Oversight of OCC's Chief Audit Executive and Chief Compliance Officer*

OCC proposes amendments to Section IV of the AC Charter to clarify that the CAE and CCO each report functionally to the AC and administratively to the Executive Chairman to make more explicit the reporting lines for these functions.<sup>28</sup> In addition OCC proposes to eliminate

---

<sup>28</sup> These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.



provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. Specifically, as amended, the AC Charter would state that the AC, in consultation with the Executive Chairman, would review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each.

#### *Compensation and Performance Committee Charter*

OCC is proposing changes to its CPC Charter to more explicitly describe the committee's functions and responsibilities' with respect to, among other things, (i) OCC's Capital Plan; (ii) its human resources, compensation and employee benefit programs; and (iii) OCC's insurance programs. The proposed changes are described in more detail below.

#### Purpose, Membership, and Authority

OCC is proposing to rename the Performance Committee to the CPC in order to more accurately reflect its role. OCC is also proposing to amend Section I of the CPC Charter to more clearly articulate that the CPC is tasked with assisting the Board in oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The CPC Charter would further delineate that the CPC is also tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee

compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC proposes amendments to Section II of the CPC Charter related to the membership and organization of the CPC. Specifically, OCC proposes amendments to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws in that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the AC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels of (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.

OCC also proposes administrative amendments to Section II to clarify that the CPC would meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs

of the AC and RC would be invited to attend the annual meeting to discuss compensation of key officers, including the Chief Risk Officer (“CRO”) and CAE.<sup>29</sup>

OCC also proposes an amendment to the CPC Charter under which, as provided for in the Code of Conduct for OCC Directors, attendance at a CPC meeting by telephone is discouraged. In addition, other clarifying and textual changes would be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

Additionally, OCC proposes non-substantive changes in Section III regarding the delegation of authority to the Administrative Committee.

#### Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide more explicit descriptions of the committee’s responsibilities with respect to OCC’s capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust oversight framework for the CPC’s oversight functions. The proposed changes are described in more detail below.

Additionally, OCC proposes to remove a requirement in Section IV that the CPC review OCC’s performance under the Corporate Plan at each regular scheduled meeting.<sup>30</sup> Comparable changes are being proposed to the AC Charter and RC Charter, as described herein.

#### *Oversight of OCC’s Capital Plan*

OCC proposes amendments to Section IV of the CPC Charter to explicitly provide for the CPC’s responsibilities in connection with overseeing OCC’s capital structure, financial planning,

---

<sup>29</sup> These changes are being made to reflect a consultative process as between the Executive Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

<sup>30</sup> For the purposes of clarification, the CPC would routinely review OCC’s performance under the Corporate Plan.

and corporate goals and objectives. Specifically, the proposed amendments explicitly state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,<sup>31</sup> including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments would also specify that the CPC is responsible for the annual review of OCC's Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC proposes amendments to provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the proposed amendments provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments also provide that the CPC is responsible for the periodic review of OCC's insurance program.

#### *Oversight of Human Resources and Compensation Programs*

OCC proposes amendments to Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable, of employee compensation, incentive and benefit programs. This proposed amendment ensures

---

<sup>31</sup> See Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12232 (March 6, 2015) (SR-OCC-2014-813). See also Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is proposing to amend the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is proposing amendments to the CPC Charter that would require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation. The amendments also require the CPC to seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel as well as review the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President as well as periodically review the compensation of OCC's Public Directors. The proposed amendments would also require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto. OCC proposes to remove general statements regarding the review of OCC's performance under the Corporate Plan and to oversee the administration of OCC's compensation plans as these responsibilities would be covered under the new, more detailed descriptions described herein.

#### *Oversight of Employee Benefit Programs and Other Responsibilities*

OCC also proposes amendments to Section IV of the CPC Charter to clarify the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter, which are non-substantive in nature, to clarify the CPC's

responsibilities for oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The proposed amendments also clarify the scope of employee welfare plans that the CPC reviews, and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the proposed amendments would provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and perform such other oversight duties as called for in retirement, retirement and savings and welfare plan documents. OCC further proposes amendments that clarify that the CPC is responsible for providing updates to the Board periodically regarding: (i) actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial

position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

#### *Risk Committee Charter*

OCC is proposing amendments to its RC Charter which are primarily intended to replace more granular descriptions with broader expressions of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. OCC also proposes amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above), to reflect the adoption of the Technology Committee, and to remove a conflict of interest statement. The proposed changes are described as follows.

##### Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter that are intended to better align OCC's By-Laws and the RC Charter by clarifying that while certain risks would be overseen by other Board Committees, the RC is responsible for coordinating risk oversight, as appropriate, to achieve comprehensive oversight of OCC's risk-related matters. The proposed amendments would also clarify that the RC is responsible for the review of material policies and processes relating to risks related to new initiatives.

In Section II of the RC Charter, OCC proposes clarifying and textual changes to provide that, as in the Code of Conduct for OCC Directors, attendance at a RC meeting by telephone is discouraged. OCC also proposes to remove certain mandatory recusal requirements designed to apply to Member Directors of the RC as the identification and handling of conflicts of interest are already addressed in the Corporate Governance Principles and the Code of Conduct for OCC Directors, which governs the conduct of all directors equally regardless of category or committee assignment. Moreover, and in order to enhance the independence and functional reporting

relationship of the CRO to the RC, OCC proposes revisions to explicitly state that the CRO is authorized to communicate with the RC Chair outside of regular meetings. OCC also proposes to amend the RC composition requirements in Section II in order to conform to the proposed By-Law changes discussed above. Specifically, the RC Charter would be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also proposing an amendment to Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact that the time allotted for each individual RC meeting has been expanded.

OCC also proposes to amend Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee.

#### Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to broaden the expression of the RC's functions and responsibilities and confirm a number of functions and responsibilities for which the RC is currently responsible. In particular, the amendments clarify and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other oversight responsibilities.

#### *Oversight of Membership and Margin Requirements*

OCC proposes amendments to broaden the description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. These changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework. Rather, the proposed amendments would provide for a broader expression of the RC's responsibilities intended to



encompass the responsibilities currently enumerated in the charter.<sup>32</sup> Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues would be replaced with a more general statement that the RC is responsible for the oversight of OCC's 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 the foregoing.

In addition, OCC proposes to modify certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures. Specifically, OCC proposes to consolidate and expand upon these provisions to state that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for clearing member failures, including: (i) reviewing clearing member surveillance criteria; (ii) overseeing the management processes for managing clearing members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on clearing members in a manner consistent with the By-Laws and Rules; and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to broaden the description of the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to margin and clearing fund

---

<sup>32</sup> For example, individual provisions related to specific types of membership categories and requirements would be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the deleted provisions.

requirements and replace them with a more high level description that would provide that the RC oversees the adequacy and effectiveness of OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying the OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof; (ii) evaluating the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules. The proposed amendment is not intended to substantively change the RC's responsibilities in the

deleted provisions but would instead replace them with a broader description intended to encompass those responsibilities.

OCC also proposes amendments that would clarify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties. The proposed amendments would also clarify that the RC oversees the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. With respect to OCC's role as a systemically important financial market utility, the RC Charter would clarify that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects.

*Oversight of OCC's Enterprise Risk Management Program*

OCC proposes amendments that would confirm that the RC oversees OCC's Enterprise Risk Management program, including by: (i) overseeing the staffing and resources of the Enterprise Risk Management program; (ii) reviewing periodic reports regarding the Enterprise Risk Management program; (iii) reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these systems and procedures with management; (iv) reviewing with management the interrelated nature of OCC's risks; (v) annually approving the Enterprise Risk Management program's goals and objectives; and (vi) annually reviewing and assessing the overall program. OCC also proposes amendments confirming that the RC reviews and monitors determinations of appropriate risk tolerances by reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, reviewing and

recommending for Board approval the OCC Risk Appetite Statement, reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement, and recommending risk tolerance parameters to the Board. In addition, under the proposed amendments, the RC would assume the responsibility of assessing risks presented by new OCC initiatives relative to established risk tolerances and appetites and to ensure a comprehensive oversight of risk-related matters, and would coordinate risk oversight with other Board Committees. Further, the proposed amendments would confirm that the RC oversees OCC's model risk management process, policies and controls, including annual review and approval of OCC's model validation plan, and OCC's risk metric reporting as well as review the results of audits and examinations

relating to significant risk items, or any other matter the RC oversees, as well as management's responses thereto.

*Other Oversight Responsibilities*

OCC also proposes to broaden the expression of the RC's oversight responsibilities, as set forth in the RC Charter, by eliminating some of the detail found within the existing RC Charter in favor of a statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules. Additionally, OCC proposes amendments that clarify and confirm that the RC oversees the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes to clarify the RC's oversight responsibilities, including: i) overseeing management's management of strategic, credit, market, operational and liquidity and systemic risks, including identifying issues related to these risks that should be escalated to the Board for final action and ii) reassessing reporting metrics reflecting the risks for which the RC has oversight.

*Conforming, Administrative and Non-Substantive Changes*

In order to conform the RC Charter to the GNC Charter and AC Charter, OCC proposes amendments to the RC Charter that would eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, under the proposed amended RC Charter, the RC, in consultation with the Executive Chairman, would review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual

compensation for the CRO.<sup>33</sup> This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

With respect to RC meetings, OCC proposes amendments to confirm that the RC shall meet with the CRO and other appropriate corporate officers in separate executive sessions to discuss certain private matters regularly, rather than at least annually. Further, the proposed amendments confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products. Moreover, OCC proposes amendments to the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

## 2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the “Act”),<sup>34</sup> and the rules thereunder applicable to OCC. OCC’s governance arrangements, which include, but are not limited to, OCC’s By-Laws, the Board Charter, and the Committee Charters promote the effectiveness of OCC’s Board and Board Committees’ oversight on OCC’s business, risk management, and operational processes. OCC believes that the proposed changes to its governance arrangements would enhance the effectiveness of the Board and Board Committees’ oversight on such matters and are designed to provide more clarity and transparency with respect to OCC’s governance arrangements, thereby promoting the prompt and accurate clearance and settlement of securities

---

<sup>33</sup> This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

<sup>34</sup> 15 U.S.C. 78q-1.

transactions, and in general, protecting investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>35</sup> and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)<sup>36</sup> thereunder, as further described below. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

### **Amendments to OCC's By-Laws**

The proposed amendments to OCC's By-Laws would require that the CPC and AC each be chaired by a Public Director, which is aligned with governance best practices for self-regulatory organizations and will help to ensure the objectiveness and independence of those committees. It would also eliminate term limits for Public Directors, allowing OCC's Public Directors the time necessary to develop the particularized degree of knowledge and understanding of OCC's business to ensure that they are able to provide significant value in the governance process. OCC therefore believes that the proposed changes are reasonably designed to be clear and transparent to support the public interest requirements of Section 17A of the Act<sup>37</sup> in accordance with Rule 17Ad-22(d)(8)<sup>38</sup> thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC. The addition of an Exchange Director to the RC will enhance the RC's oversight capabilities by providing additional expertise and unique perspectives on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies, and new products. OCC therefore believes that the proposed change is designed to

---

<sup>35</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>36</sup> 17 CFR 240.17Ad-22(d)(8).

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

<sup>38</sup> 17 CFR 240.17Ad-22(d)(8).

promote the prompt and accurate clearance and settlement of securities transactions, to protect investors and the public, and to promote the effectiveness of OCC's risk management procedures in accordance with Section 17A(b)(3)(F) of the Act<sup>39</sup> and Rule 17Ad-22(d)(8)<sup>40</sup> thereunder.

OCC is also proposing a number of other changes to better align its By-Laws and Board and Board Committee charters, to ensure that those documents accurately and comprehensively reflect existing practices, and to provide more clarity and transparency with respect to OCC's governance arrangements. OCC believes that these proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures, consistent with Section 17A(b)(3)(F) of the Act<sup>41</sup> and Rule 17Ad-22(d)(8)<sup>42</sup> thereunder.

#### **Amendments to the Board Charter**

The proposed rule change would amend the Board Charter, as described in detail above, to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and leadership transition plan; (iii) reflect recent changes involving Board Committee charters; (iv) reflect recent changes to the Board's composition; and (v) in general, broaden the expression of the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically

---

<sup>39</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>40</sup> 17 CFR 240.17Ad-22(d)(8).

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

<sup>42</sup> 17 CFR 240.17Ad-22(d)(8).



important financial market utility. The proposed amendments would provide more clarity around the responsibilities of the Board, specifically with respect to its role in: (i) overseeing management's activities in managing, operating and developing OCC, including the selection, oversight and replacement of key positions (i.e., Executive Chairman, CEO, and the President) as well as evaluating their performance and compensation awards; (ii) setting expectations about the tone and ethical culture at OCC and its ability to ensure compliance with applicable law and regulation; (iii) reviewing and approving financial objectives and strategies, capital plan and capital structure, fee structure, capital expenditures and budgets; (iv) the oversight of governance processes, including self-evaluation process on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. As a result, OCC believes the proposed changes are reasonably designed to ensure that OCC has governance arrangements that promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act<sup>43</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8).<sup>44</sup>

### **Audit Committee Charter**

The proposed amendments to the AC Charter are designed to: (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. Specifically, the proposed changes would underscore the

---

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>44</sup> *Id.*

independence of the AC by providing that all members of the AC be independent from OCC's management, as determined by the Board from time to time; that the Chair of the AC be a Public Director; and clarify that the Management Director is ineligible to serve on the AC. The proposed changes explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. In addition, the proposed changes underscore and expand upon the AC's oversight role in connection with OCC's financial reporting processes, enhance the independence and objectivity in connection therewith, and more explicitly describe the AC's functions and responsibilities with respect to its oversight of external auditors as well as OCC's internal audit and compliance functions (as described in detail above). OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework and providing further clarity around the AC's functions and responsibilities, the proposed changes are reasonably designed to ensure that OCC's governance arrangements with respect to the role of the AC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>45</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>46</sup>

### **Compensation and Performance Committee Charter**

OCC proposes amendments to the CPC Charter intended to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services

---

<sup>45</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>46</sup> 17 CFR 240.17Ad-22(d)(8).

and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The proposed amendments would provide a more robust framework for the CPC's oversight functions by clearly stating the CPC's role in: (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan, capital structure, financial planning and corporate goals and objectives; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning. Accordingly, OCC believes that the proposed changes to the CPC Charter are reasonably designed to ensure that OCC's governance arrangements with respect to the CPC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>47</sup> and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>48</sup>

### **Risk Committee Charter**

OCC proposes amendments to its RC Charter primarily intended to better align the RC Charter with the OCC By-Laws (including, for example, changes in the composition requirements of the RC (as described above) and to reflect the adoption of the Technology Committee), confirm a number of functions and responsibilities for which the RC is currently responsible, and replace more granular descriptions with broader expressions of the RC's functions and responsibilities, as described in detail above. In particular, the amendments would

---

<sup>47</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>48</sup> 17 CFR 240.17Ad-22(d)(8).

clarify and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other oversight responsibilities (e.g., the RC's role in overseeing the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties and the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility). With respect to OCC's role as a systemically important financial market utility, the RC Charter would clarify that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects. OCC therefore believes that the proposed amendments to the RC Charter are designed to promote the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>49</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>50</sup>

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

---

<sup>49</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>50</sup> 17 CFR 240.17Ad-22(d)(8).

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.<sup>51</sup> The proposed changes to OCC's By-Laws, the Board Charter, and the Committee Charters would promote the effectiveness of OCC's Board and Board Committees' oversight on OCC's business, risk management, and operational processes and provide more clarity and transparency with respect to OCC's governance arrangements. The proposed rule change would also clarify and enhance the descriptions of the duties and functions of the Board and its members as well as the AC, the CPC, and the RC. The proposed rule change also promotes more effective governance arrangements for OCC, for example, by removing term limits for Public Directors and requiring the Chair of the AC and the CPC to be Public Directors. As a result, OCC does not believe that the proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants. The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not have any 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

---

<sup>51</sup> 15 U.S.C. 78q-1(b)(3)(I).

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

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

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the 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-2016-002 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-OCC-2016-002. 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

[http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_16\\_002.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_002.pdf)

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

All submissions should refer to File Number SR-OCC-2016-002 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>52</sup>

Robert W. Errett  
Deputy Secretary

Action as set forth recommended herein  
APPROVED pursuant to authority delegated by  
the Commission under Public Law 87-592.

For: Division of Trading and Markets

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

---

<sup>52</sup> 17 CFR 200.30-3(a)(12).



**THE OPTIONS CLEARING CORPORATION  
BOARD OF DIRECTORS  
CHARTER**

**I. ~~INTRODUCTION PURPOSE~~**

~~Oversight of the management of the business and affairs~~ The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC” or the “Corporation”) is ~~vested in its Board of Directors (the “Board”)~~ responsible for providing direction to and overseeing the conduct of the affairs of the Corporation (except as may otherwise be provided in OCC’s Certificate of Incorporation or its ~~by-laws~~ By-Laws and ~~rules~~ Rules).<sup>1</sup>

The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of OCC’s stakeholders- ~~(i.e., stockholders, clearing members, cleared markets, market participants, and regulatory authorities)~~. In doing so, the Board exercises its authority to promote the safe, sound and efficient operation of OCC and the development of safe, sound and prudent principles for risk assessment, monitoring and management in light of OCC’s role as a systemically important financial market utility.

~~Capitalized terms used in this Charter shall have the meanings set forth in OCC’s by-laws and rules unless otherwise indicated.~~ \_\_\_\_\_

**II. MEMBERSHIP AND ORGANIZATION**

A. ~~A. Size and Composition.~~ As provided for in the by-laws, the ~~The~~ Board ~~presently~~ is comprised of ~~two (2)~~ at least one Management Director; five Public Directors ~~one of whom is the Executive Chairman of the Board and the other of whom is the President; five (5);~~ five Exchange Directors representing each of OCC’s Equity Exchanges ~~(i.e., stockholders); and~~ and ~~nine (9)~~ nine Member Directors representing OCC clearing members; ~~and three (3) Public Directors.~~ ~~Board size may be increased or decreased as specified in the by-laws.~~<sup>1</sup> \_\_\_\_\_

B. ~~B. Qualification Standards.~~ As ~~provided for~~ set forth in the ~~by-laws~~ Corporate Governance Principles, the Board has adopted certain principles and criteria to be used ~~by designated persons~~ in considering nominees for service as a Director ~~(i.e., a member of OCC’s Board).~~ The, including the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”), ~~as adopted and amended by the Board, set forth such criteria and~~ which is attached hereto. ~~Such Fitness Standards are periodically reviewed by the~~

<sup>1</sup> For example, Article III, Section 8 of OCC’s ~~by-laws~~ By-Laws states that the Board shall not take action in respect of matters as to which the Corporation has agreed to limit its authority under the provisions of its agreements with its Equity Exchanges. Such provisions include the requirement that amendment of certain ~~by-law~~ By-Law provisions requires the unanimous consent of OCC’s stockholders. Capitalized terms used in this Charter shall have the meanings set forth in OCC’s By-Laws and Rules unless otherwise indicated.<sup>1</sup>

~~Board. In addition, the by-laws set forth~~In addition and 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 ~~for purposes of achieving balanced representation on the Board among Member Directors.~~ Those considerations include the ~~various business activities of clearing members and their geographical distribution.<sup>ii</sup>~~ 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.

C. ~~C.—Election of Directors, Resignation and Disqualification.~~ Election of the categories of Directors shall occur as ~~provided~~discussed in the ~~by-laws~~Corporate Governance Principles and the By-Laws. Resignations and disqualifications from the Board as well as the filling of any vacancy shall be addressed as provided in the ~~by-laws.~~<sup>iii</sup>By-Laws.

D. ~~D.—Tenure, Term and Age Limitations.~~ The tenure of service of each category of Director is specified in OCC's ~~by-laws~~By-Laws. The Management ~~Directors~~Director and the Exchange Directors are elected at each annual stockholder meeting. ~~There and there are no term limitations with respect to such categories of Directors. Each class of Public Director is elected to a term of three years and there~~ are no term limitations with respect to such categories of Directors. Each class of Member Director ~~and Public Director~~ is elected to a term of three years subject to the term limitations ~~set forth~~described in the ~~by-laws~~Corporate Governance Principles and By-Laws. No age limitations are imposed with respect to any category of Director.<sup>iv</sup>

E. ~~E.—Vice Chairmen of the Board.~~ ~~If elected by the Board and serving, the Management Vice Chairman of the Board shall have the responsibilities and duties set forth in the by-laws in the event of the absence or disability of the Executive Chairman~~Chairman of the Board. The Member Vice Chairman, who is elected by the Board from the Member Directors, shall have the responsibilities and duties set forth in the ~~by-laws~~By-Laws, including those in the event of the absence or disability of the Executive Chairman ~~and the Management Vice Chairman, if elected and serving.~~<sup>v</sup>

F. ~~F.—Meetings.~~ ~~Generally, the~~The Board ~~regularly meets~~shall meet a minimum of five times per year. ~~Directors are expected to attend all meetings of the Board, review all materials in advance and be prepared to participate fully in the meeting. Special meetings may be called as provided for in the by-laws. Briefing materials are generally distributed in advance of each Board meeting.~~<sup>vi</sup> with additional meetings called as the Board deems appropriate. Meetings of the Board shall be called by the Executive Chairman or the Executive Chairman's designee. The Executive Chairman ~~of the Board~~shall, in consultation with ~~the President as well as the Secretary, shall~~other directors or

officers of OCC, as appropriate, establish ~~the~~an agenda ~~for~~in advance of each Board meeting. ~~A, provided that a~~ Director may request that an item be included on any meeting agenda. The Executive Chairman may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Board may call executive sessions from which guests of the Board may be excluded. The Executive Chairman shall determine whether minutes of the executive sessions are to be recorded, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are recorded. Directors 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.

G. ~~G.—~~Quorum. Except as may otherwise be provided in the ~~by laws~~By-Laws, a majority of the Directors then in office, but not less than six (6) Directors, shall constitute a quorum ~~of the Board~~ for the ~~conduct~~transaction of business.<sup>vii</sup>

H. ~~H.—~~Minutes. ~~The Secretary or such other person appointed by~~Except as otherwise noted above, the Board ~~will prepare the~~shall maintain minutes of ~~each meeting of the~~all Board meetings, which shall be furnished to the Directors for review.<sup>viii</sup>

### III. AUTHORITY

A. Scope. Except as otherwise provided in the Certificate of Incorporation and the ~~by laws~~By-Laws, the Board oversees the management of the business and affairs of OCC. As required by the ~~by laws~~By-Laws, the Board annually elects certain corporate officers including the Executive Chairman of the Board and the President ~~(who are also the Management Directors)~~, the Secretary, and the Treasurer. Each of these officers has the authorities, responsibilities and duties set forth in the ~~by laws~~By-Laws and ~~rules~~Rules and such other duties as may be delegated to them as provided in ~~accordance with the by laws.~~the By-Laws or otherwise.

In discharging its oversight role, the Board may inquire into any matter it considers appropriate to carry out its duties and responsibilities. The Board shall confer with management and other employees of the Corporation to the extent it may deem necessary or appropriate to fulfill its duties. 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.

- B. Board Committees and Delegation. The Board shall establish any standing and other committees that it deems necessary or appropriate to discharge its responsibilities. The Board presently has established ~~three~~ the following standing committees: the Audit Committee, the Compensation and Performance Committee, the Governance and Nominating Committee, the Risk Committee and the ~~Performance~~Technology Committee.\*

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. The Chairs of such Committees shall be determined in accordance with the terms of the applicable Committee Charter and, if applicable, the ~~by laws. Subject to and as provided in the by laws, the~~ By-Laws. The Board shall approve and annually review Committee assignments. 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.

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.

- ~~C. Review of Charter. This Charter shall be periodically reviewed by the Board of Directors.~~

#### IV. FUNCTIONS AND RESPONSIBILITIES

The Board performs an oversight role to ensure that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities in connection with its provision of clearance and settlement services as an industry utility and its responsibilities as a designated systemically important financial market utility. The Board is responsible for acting as a steward of OCC to make certain OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe, sound, efficient and prudential manner.

Either directly or indirectly through delegating certain responsibilities to its Committees, the Board has the following functions to discharge its management oversight responsibilities:

- ~~To oversee governance processes in a manner consistent with this Charter, including reviewing Committee charters and reports of Committee activities, effecting Committee appointments, and periodically evaluating the Fitness Standards;~~ Overseeing management's activities in managing, operating and developing OCC as a firm and evaluating management's performance in executing its responsibilities;

- Selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President;
- Providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed;
- ~~To approve~~ Advising on, approving and ~~oversee~~ overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines; as well as, monitoring OCC's performance in delivering clearance and settlement services;
- ~~To monitor~~ OCC's performance in delivering clearance and settlement services; Setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC;
- ~~To oversee OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk;~~ Reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, annual budget and corporate plan, OCC's fee structure, and major corporate plans and actions, including capital expenditures, as well as, periodic review of the types and amounts of insurance coverage available in light of OCC's clearing operations;
- ~~To oversee OCC's financial reporting, auditing, accounting and compliance processes;~~ Providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee;
- ~~To foster~~ OCC's processes designed Fostering OCC's ability to ensure compliance with applicable laws and regulations ~~and,~~ 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 governance processes in a manner consistent with this Charter, including reviewing Committee charters and reports of Committee activities; effecting Committee appointments; performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual Directors and committee members; and evaluating the Corporate Governance Principles and Fitness Standards;
- Reviewing the amount of compensation for Public Directors;

- Providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices;
- ~~To oversee~~ Reviewing the annual study and evaluation of OCC's system of internal accounting controls;
- ~~To oversee major capital expenditures and to approve the annual budget and corporate plan;~~
- ~~To assure management succession; and~~
- ~~To oversee~~ Evaluating and fixing the compensation of the Executive Chairman and President, overseeing succession planning, human resource programs, and talent management processes, and overseeing the development and design of employee compensation, incentive and benefit programs ~~and to regularly evaluate senior management performance and approve the compensation of the Executive Chairman and President.;~~

~~In addition, the Board shall perform such functions and responsibilities as set forth in OCC's by-laws and rules, including, but not limited to:~~

- ~~Determining disqualifications from Board service and making appointments to fill vacancies among the Management Directors, Member Directors and Public Directors as specified in the by-laws<sup>xi</sup>;~~
- ~~Electing designated corporate officers<sup>xiii</sup>;~~
- ~~Approving applications for clearing membership and initial contributions to the clearing fund of newly admitted clearing members, subject to the by-laws and rules<sup>xiii</sup>;~~
- ~~Approving OCC's fee structure consistent with the by-law requirements as well as rebates, discounts and refunds of clearing fees<sup>xiv</sup>;~~
- ~~Approving additions to, amendments of, and deletions from OCC's by-laws and rules subject to the provisions of the by-laws<sup>xv</sup>;~~
- ~~Conducting convened hearings in connection with a denial of membership or a suspension determination<sup>xvi</sup>;~~
- ~~Suspending a clearing member<sup>xvii</sup>;~~ and Overseeing OCC's information technology strategy, infrastructure, resources and risks; and

- Performing such other functions ~~reserved to the Board under the by-laws and rules~~ as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules.

## V. DUTIES AND RESPONSIBILITIES OF DIRECTORS

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 systemically important financial market utility. In addition, 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.

-

## VI. REVIEW CYCLE

This Charter, along with the Corporate Governance Principles and the Fitness Standards, shall be annually reviewed by the Board of Directors.

- 
- ~~<sup>i</sup> Article III, Section 1.~~
  - ~~<sup>ii</sup> Article III, Sections 2, 5, 6, 6A and 7.~~
  - ~~<sup>iii</sup> Article III, Sections 5, 6, 6A, 7, 10, 11 and 12.~~
  - ~~<sup>iv</sup> Article III, Sections 2, 6, 6A and 7; Article IV, Section 1.~~
  - ~~<sup>v</sup> Article IV, Sections 1 and 7.~~
  - ~~<sup>vi</sup> Article III, Section 14.~~
  - ~~<sup>vii</sup> Article III, Section 13.~~
  - ~~<sup>viii</sup> Article IV, Section 10.~~
  - ~~<sup>ix</sup> Article III, Section 8; Article IV Sections 1, 2 and 5.~~
  - ~~<sup>x</sup> Article III, Section 9.~~
  - ~~<sup>xi</sup> See end note iii.~~
  - ~~<sup>xii</sup> See end note ix.~~
  - ~~<sup>xiii</sup> Article V, Section 2; Article VIII, Section 2.~~
  - ~~<sup>xiv</sup> Article III, Section 8; Article IX, Section 9.~~
  - ~~<sup>xv</sup> Article XI, Sections 1 and 2.~~
  - ~~<sup>xvi</sup> Article V, Section 2; Rule 1110.~~
  - ~~<sup>xvii</sup> Article III, Section 8; Rule 1102.~~





# The Options Clearing Corporation: Fitness Standards for Directors, Clearing Members and Others

## The Options Clearing Corporation Fitness Standards

The Board of Directors and the stockholders of The Options Clearing Corporation (the "Corporation") have established qualification and fitness standards (the "Fitness Standards") for (i) directors, (ii) Clearing Members, and (iii) any person affiliated with a director or a Clearing Member. The criteria of the applicable Fitness Standards shall be used in nominating directors and in admitting Clearing Members or otherwise granting direct access to the settlement or clearing activities of the Corporation.

### Fitness Standards for Directors

The Corporation's By-Laws contain governance standards designed to provide fair representation to stockholders and Clearing Members. ~~The Board currently has 21 members consisting of nine Clearing Member directors ("Member Directors"), five directors nominated by the stockholder exchanges ("Exchange Directors"), five directors who are not affiliated with any national securities exchange, national securities association or broker or dealer in securities (the "Public Directors"), and two management directors, one of whom is the Corporation's Executive Chairman (the "Management Directors"). The Governance and Nominating Committee consists 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 chairman of the Governance and Nominating Committee shall be designated by the Board from among the Public Director members of the Committee. Prior to each annual meeting of stockholders, the Governance and Nominating Committee nominates a slate of nominees for election to the class of Member Directors and the class of non-director members of the Committee whose terms expire at that meeting. Each Exchange Director serves a one-year term and is nominated by one of the five stockholder exchanges, although a single Exchange Director may represent more than one exchange. The Public Directors are divided into three classes, with two Class I Public Directors, one Class II Public Director, and two Class III Public Directors. Each Public Director is elected for staggered three-year terms (with the exception of: (i) the initial Class I Public Director who serves a one-year term ending in 2013 after which the Class I Public Director will be elected for a three-year term; (ii) the Class I Public Director first appointed or elected after the 2014 annual meeting who serves a term ending in 2016, after which the successor to such Class I Public Director will be elected for a three-year term at the 2016 annual meeting, and (iii) the Class III Public Director first appointed or elected after the 2014 annual meeting who serves a term ending in 2015, after which the successor to such Class III Public Director will be elected for a three-year term at the 2015 annual meeting) and are nominated by the Executive Chairman, with the approval of the Board of Directors. The Management Directors, one of whom is the Corporation's Executive Chairman, serve one-year terms. This governance structure was carefully designed to meet the statutory requirements of "fair representation" and These standards also facilitates the performance of the Corporation's role as a systemically important financial market utility.~~

The criteria below shall be used by the Governance and Nominating Committee, the stockholder exchanges, and the Board of Directors in considering nominees for election or appointment to the Board and service on the Disciplinary Committee.

*Criteria Applicable to all Directors*

- Characteristics essential for effectiveness as a member of the Board, including, but not limited to, integrity, objectivity, sound judgment, and leadership;
- Expertise and experience in an area relevant to governance of the Corporation, including, but not limited to: (i) strategic planning, such as new business development, expansion of markets, products and customers, and joint venture development; (ii) risk management relevant to risks such as credit, market, liquidity, operational, legal and regulatory compliance, payment systems, clearance and settlement, new products, risk modeling, risk valuation, and systemic risk management; (iii) technology, such as infrastructure, applications development and maintenance, information security, and disaster recovery; (iv) operations; (v) trading; (vi) business management; (vii) finance; (viii) audit; (ix) governmental and legislative relationship management; (x) compensation and human resources; and (xi) legal, regulatory, and compliance expertise.
- Substantial seniority in own firm;
- Knowledge of securities and/or futures industries;
- Appropriate educational credentials or other certifications;
- For current directors eligible for re-election, length of service on the Board and attendance, and participation, and contribution at Board and committee meetings; and
- Appropriate weight given to diversity factors.

In addition, no person shall be qualified to serve on the Board if such person:

- is subject to a “statutory disqualification” under Section 3(a)(39) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”);
- may be refused registration under the Commodity Exchange Act (“CEA”) pursuant to Section 8a(2) of the CEA; or
- has a history of serious disciplinary offenses, including, but not limited to, those that would be disqualifying under Commodity Futures Trading Commission (“CFTC”) Regulation § 1.63.

*Additional Criteria for Member Directors*

- Balanced representation among all Clearing Members;
- Balanced representation of all business activities of Clearing Members;

- Nature of the firm with which each prospective director is associated;
- Industry affiliations;
- Assure that not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume; and
- Develop a mix of Member Directors that includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors.

*Additional Criteria for Exchange Directors*

- Ownership of common stock of the Corporation by the exchange nominating an Exchange Director.

*Additional Criteria for the Public Directors*

- No affiliation with any national securities exchange or national securities association or with any broker or dealer in securities, as stated in the Corporation's By-Laws.

**Fitness Standards for Clearing Members**

Clearing Members of the Corporation are subject to extensive regulation by either or both of the SEC and the CFTC, or, in the case of Non-U.S. Securities Firms, the regulatory authority of the country or countries in which the firm conducts business. Clearing Member applicants must be:

- Registered as a broker or dealer under the Exchange Act;
- A futures commission merchant registered under Section 4f(a)(1) of the CEA; or
- A Non-U.S. Securities Firm, as defined in the By-Laws.

The Risk Committee may refuse to admit any person as a Clearing Member if the person is subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act. No person shall be qualified to be admitted as a Clearing Member if the person is subject to statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act.

**Fitness Standards for Affiliates and Access Persons**

~~No~~ Any person affiliated, within the meaning of Section 5b(c)(2)(O) of the CEA, with a director of the Corporation or a Clearing Member ("Affiliates") shall not:

- ~~be subject to meet~~ criteria for refusal to register a person under Section 8a(2) of the CEA; unless
- the Risk Committee finds that there are special circumstances warranting the waiver of such disqualification with respect to the Affiliate.

With respect to Affiliates, the Board shall be entitled to rely on a certification from the relevant director or Clearing Member that, to the best of such person's knowledge, none of its affiliates is subject to disqualification pursuant to the Corporation's Fitness Standards and that such person will notify the Corporation if at any time such director or Clearing Member becomes aware that any such affiliate fails to meet the Fitness Standards.

Section 5b(c)(2)(O)(ii)(IV) of the CEA requires each derivative clearing organization ("DCO") to establish Fitness Standards for persons with direct access to the settlement or clearing activities of the DCO ("Access Persons"). The Corporation believes that there are presently no persons with such access other than the Clearing Members.

## THE OPTIONS CLEARING CORPORATION AUDIT COMMITTEE CHARTER

### I. ~~PURPOSE~~Purpose

The Board of Directors ~~of OCC (the~~ (“Board”) of The Options Clearing Corporation (“OCC”) has established an Audit Committee (the “Committee”) to assist the Board ~~of Directors~~ in overseeing ~~the Corporation~~ OCC’s financial reporting process, ~~the Corporation~~ OCC’s system of internal control, and ~~the Corporation~~ OCC’s auditing, accounting, and compliance processes. 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:

- ~~Serve as an independent and objective party to oversee (i) the Corporation~~ OCC’s financial reporting process, including the integrity of its financial statements, ~~(ii) the Corporation’s system of internal control, and (iii) the Corporation’s compliance environment and processes.~~
- OCC’s system of internal control;
- The audit efforts of OCC’s external auditors and the Internal Audit Department;
- ~~Oversee the audit efforts of the Corporation’s independent accountants and the internal audit department.~~ OCC’s compliance environment and processes; and
- ~~Facilitate~~ The facilitation of open communication among the ~~independent accountants~~ external auditors, financial and senior management, the ~~internal audit department, the compliance department~~ Internal Audit Department, the Compliance Department, and the Board ~~of Directors~~.

In fulfilling their responsibilities, it is recognized that the members of the Committee are not full-time employees of ~~the Corporation~~ OCC and are not, and do not represent themselves to be, accountants or auditors of ~~the Corporation~~ OCC. It is not the duty or responsibility of the Committee or its members to conduct field work or other types of auditing, accounting, or compliance reviews or procedures. Management of ~~the Corporation~~ OCC is responsible for maintaining appropriate accounting, compliance and financial reporting principles and policies and internal controls and procedures that comply with accounting standards and applicable laws. The ~~independent accountants and the internal audit department of the Corporation~~ external auditors and the Internal Audit Department of OCC are responsible for planning and carrying out a proper audit.

### II. ~~MEMBERSHIP AND ORGANIZATION~~Membership and Organization

- A. Composition. The Committee shall be comprised of three or more directors as appointed annually by the Board. ~~At least one Committee member shall be a Public Director.~~ 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, and ~~if possible,~~ 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 ~~should~~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>
- 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 guests of the Committee may be excluded. The Chair shall determine whether minutes of executive sessions are to be maintained, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are maintained. 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 annually~~regularly with management, the Chief Audit Executive, the Chief Compliance Officer, the Chief ~~Audit Executive~~Financial Officer, and the ~~independent accountants~~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 and the Chief Compliance 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.

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

- D. Minutes and Reports. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and shall make such reports to the Board as deemed necessary or advisable. Minutes of Committee meetings shall be circulated to the Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year.

The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board.

### **III. AUTHORITY**

#### **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 Corporation~~OCC to the extent it may deem necessary or appropriate to fulfill its duties.

Subject to the approval of the Board, 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.

- B. 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 ~~independent accountant~~external auditors as set forth below.

- ~~C. Authority of the Chair. The Chair of the Committee may act on behalf of the Committee in such circumstances when immediate action is required and it is impractical to convene the Committee. In such instances, the Chair shall report on any actions taken as soon as practicable to the Committee for its ratification.~~

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

The following shall be the common recurring activities of the Committee in carrying out its oversight function. These activities are set forth as a guide with the understanding that the Committee may modify this guidance as appropriate given the circumstances.

The Committee shall:

Financial Statements and ~~Independent Accountants~~ Financial Reporting

- Discuss with management and the external auditors (as appropriate) the audited and unaudited financial statements.
- Upon management's recommendation, approve OCC's annual audited financial statements after reviewing with management and the external auditors prior to issuance.
- Review with management, the external auditors 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.
- Approve material changes in accounting principles and practices.
- Resolve any disagreements between management and the external auditors regarding financial reporting.
- Review and discuss with the external auditors any audit problems or difficulties and management's response thereto.

External Auditors Independence, Performance and Services

- Have a clear understanding with management and the ~~independent-accountants~~ external auditors that the ~~independent-accountants~~ external auditors are ultimately accountable to the Board and the Committee.
- Monitor and evaluate the ~~independent-accountant~~ external auditors' and engagement partner's qualifications, performance and independence and based upon such evaluations recommend the appointment or dismissal of the ~~independent-accountants~~ external auditors, determine appropriate compensation for their services, and pre-approve all audit services provided, subject to annual approval by the Board.
- Discuss with management the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner and consider whether there should be a regular rotation of the audit firm itself.
- Review and approve the scope and approach of the annual audit plan and the annual internal control attestation engagement with the ~~independent-accountants-~~ external auditors.



- ~~Review the Corporation's annual audited financial statements with management and the independent accountants prior to issuance.~~
- Review reports of the ~~independent accountants~~external auditors issued in connection with the annual audit and the annual internal control attestation engagement, as well as any other special reports, and inquire of management regarding steps taken to deal with items raised.
- Discuss with the ~~independent accountants~~external auditors any significant issues that may be required in accordance with generally accepted auditing standards relating to the conduct of the financial statement audit.
- ~~Resolve any disagreements between management and the independent accountants regarding financial reporting.~~
- Obtain and review annually reports prepared by the ~~independent accountant~~external auditors 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 ~~independent accountant and the Corporation~~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 should be used to evaluate the ~~independent accountant~~external auditor's qualifications, performance, and independence.
- Pre-approve ~~non-audit~~all services ~~with the independent accountants.~~  
provided by the external auditors.
- Review fees paid to the ~~independent accountants.~~  
external auditors.

#### Internal Audit-

- Review and approve annually the Internal Audit ~~Department Charter~~Policy. Ensure there are no unjustified scope restrictions or limitations placed on the Internal Audit Department.–
- 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.

- Review the ~~internal audit department~~Internal Audit Department process for establishing the risk-based annual internal audit plan ~~and, approve the annual internal audit plan,~~ monitor progress against the annual internal audit plan, and approve any Chief Audit Executive recommendations for removing or deferring any audits from a previously approved annual internal audit plan.
- ~~Review~~Monitor ongoing internal audit activities by reviewing reports and other communications prepared by the ~~internal audit department~~Internal Audit Department and inquire of management regarding steps taken to deal with items raised.
- ~~Assess the performance of the Chief Audit Executive and the internal audit department, including review of periodic external assessment reports regarding compliance of the internal audit department with standards published by the Institute of Internal Auditors.~~
- 
- ~~Approve the Chief Audit Executive's annual compensation, but delegate to the Chair the ability to modify the approved amount as a result of the Chair's participation in the annual meeting of the Performance Committee at which the compensation for senior management is determined.—~~
- ~~Oversee the structure, staffing and resources of the Internal Audit Department.—~~
- Have the ability to delegate to the Chief Audit Executive the authority to approve, within the external audit hour limits of the approved annual internal audit plan, the following:-
  - ~~• Hire~~Hiring of the internal audit co-sourcing service providers whenever it is determined a specialist is needed to review particular areas of the ~~Corporation~~OCC, to augment the resources available internally within OCC's Internal Audit Department or for any other practical purpose.
  - ~~• Review~~Reviewing the performance of the internal audit co-sourcing service providers, and ~~exercise~~exercising final approval on the appointment, retention or discharge of the audit firm.
  - ~~• Approve~~Approving the scope of services to be performed by the internal audit co-sourcing service provider.

Compliance-

- Review and approve annually the Code of Conduct and Compliance Charter Policy.
- 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.
- Review the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, approve the annual Compliance Testing Plan, monitor progress against the annual Compliance Testing Plan, and approve any Chief Compliance Officer recommendations for removing or deferring any tests from a previously approved annual Compliance Testing Plan.
- ~~Assess the performance and the effectiveness of the compliance program, including monitoring, testing and issue resolution processes.~~ Monitor ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the Chief Compliance Officer, and inquire of management regarding steps taken to deal with items raised.
- Review ~~the Corporation~~OCC's system to communicate and monitor compliance with and enforcement of its Code of Conduct.-
- Review periodic regulatory inspection reports, management's responses thereto, and the ~~compliance department~~Compliance Department's tracking of remediation by the ~~Corporation~~OCC of noted items.
- Review the investigation and enforcement outcomes of disciplinary actions taken by the ~~Corporation~~OCC against clearing members through its established processes.
- Review and evaluate any Annual Compliance Report certified by the Chief Compliance Officer as required by regulation.

#### Other

- Regularly review with management OCC's system of internal controls. 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.
- ~~Review periodic reports on the Corporation's enterprise risk management program and the corporate security program.~~ In consultation with the Executive Chairman, 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 Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each.

## ~~V.~~ **GENERAL**

### ~~The Committee shall:~~

- Approve management's decision to hire employees or former employees of the ~~independent accountants~~external auditors who were engaged on the ~~the Corporation~~OCC's account.
- ~~Have the authority to obtain advice, at the Corporation's expense, from independent counsel, accountants, or others to assist it in fulfilling its duties.~~
- Have the ability to delegate authority to one of its members to approve non-audit services performed by the ~~independent accountant~~external auditors, with such decisions communicated regularly to the Committee.
- ~~Establish~~Review and approve "whistleblower procedures" for the reporting by personnel of any concerns regarding unethical or illegal conduct; questionable accounting, internal controls, or auditing matters; or fraudulent, deliberate errors or misrepresentations in financial reporting. Discuss with any relevant parties, departments or advisors any material issues identified through these procedures.
- Confirm annually that all responsibilities outlined in this Charter have been carried out.
- Evaluate the Committee's and individual members' performance on a regular basis and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall also have the authority to perform any other duties consistent with this Charter, as the Committee or Board deems necessary.

## ~~VI.~~ **REVIEW CYCLE**

### ~~V.~~ Review Cycle

The Committee will review this Charter annually. The Committee shall submit this Charter to the Board for reapproval, with such changes, if any, as the Committee deems advisable.

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

**I. PURPOSE**

**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 (i) overseeing the overall performance of ~~the Corporation~~OCC in promptly and accurately delivering clearance, settlement and other designated industry services, and the accomplishment of other periodically established corporate goals and objectives in light of ~~the Corporation~~OCC’s role as ~~ana~~ systemically important financial market utility; (ii) overseeing OCC’s Capital Plan and financial performance; (iii) overseeing OCC’s Human Resources program; (iv) overseeing the structure, design and funding, as applicable, of employee (including management) compensation, incentive and benefit programs; and (v) recommending the compensation of the Executive Chairman, ~~the Management Vice Chairman,~~ and the President to the Board and approving the compensation of members of the Management Committee and certain other officers; and (iii) ~~reviewing and approving the structure and design of employee compensation, incentive and benefit programs~~key officers, as appropriate.

**II. MEMBERSHIP AND ORGANIZATION**

**II. Membership and Organization**

- A. Composition. The Committee shall consist of the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board. ~~At least one member of the Committee shall be a Public Director.~~—The Board may remove or replace any member of the Committee at any time. The Chair of the Committee shall be ~~chaired by the Member Vice Chairman.~~ ~~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.~~ 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.

B. 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.

C. ~~B.-Meetings. Generally, the~~The Committee will meet ~~in advance of each regularly scheduled Board meeting, 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 guests of the Committee may be excluded. The Chair shall determine whether minutes of executive sessions are to be maintained, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are maintained. 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 Chair shall meet at least annually in private session with the Chair of the Governance Committee to discuss the performance of key officers.—~~

The Committee shall meet at least annually with the Executive Chairman, the President and any other corporate officers the Committee deems appropriate to discuss and review the performance and compensation levels ~~of~~(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 meet annually to determine the compensation levels of members of the Management Committee and certain other key officers.—~~The Chairs of the Audit and Risk Committees shall be invited to attend such meeting in order to discuss the performance of the CAE and CRO, respectively, as well as to advise on the compensation levels approved for such officers as provided for in each such Committee's Charter.—, as appropriate.~~ Except as otherwise requested by the other members of the Committee, the Executive Chairman shall recuse himself from any discussion of his individual compensation, benefits, or perquisites.

D. ~~C.-Quorum.~~ A majority of the Committee members shall constitute a quorum for the transaction of business.

- E. ~~D.~~ Minutes and Reports. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and shall make such reports to the Board as deemed necessary or advisable. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board.

### **III. AUTHORITY**

#### **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 ~~Corporation~~OCC to the extent it may deem necessary or appropriate to fulfill its duties.

Subject to the approval of the Board, 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.

- B. Delegation. The Committee may form and delegate authority to subcommittees, ~~including the Administrative Committee, and~~ may delegate authority to one or more designated members of the Committee, and may delegate authority to the Administrative Committee.

- ~~C. Authority of the Chair. The Chair of the Committee may act on behalf of the Committee in such circumstances when immediate action is required and it is impractical to convene the Committee. In such instances, the Chair shall report on any actions taken as soon as practicable to the Committee for its ratification.~~

### **IV. FUNCTIONS AND RESPONSIBILITIES**

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

The Committee's role is one of oversight. Management is responsible for identifying, organizing, and managing the operational, systems, technology, financial, human, and other resources necessary to support the Corporation OCC's clearance, settlement and other business activities in light of its role as an a systemically important financial market utility.

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

#### Capital Structure, Financial Planning, and Corporate Goals and Objectives

- To oversee management's processes for determining, monitoring and evaluating the adequacy of OCC's Capital Plan, including the maintenance of required regulatory capital, and to recommend any Capital Plan changes to the Board.
- To review and approve changes in OCC's fees pursuant to the Capital Plan, including authorizing the filing of regulatory submissions relating thereto.
- To review annually the Fee, Refund and Dividend Policies, make recommendations to the Board regarding changes, if any, to such Policies, and make recommendations to the Board for payments, if any, under the Refund and Dividend Policies.
- To ~~review the Corporate Plan and Budget~~ oversee the corporate financial planning process, including reviewing the corporate budget for each fiscal year (including anticipated capital expenditures) and make recommendations to the Board regarding revisions thereto and the adoption ~~and revision~~ thereof.
- To ~~review anticipated capital expenditures included in the annual Budget and to~~ review and approve significant unanticipated capital expenditures or, where appropriate, ~~recommend approval thereof~~ make recommendations with respect thereto to the Board.
- To review and recommend to the Board changes to OCC's fee structure.
- To review special financial matters as requested by the Board.
- To review the annual corporate goals and objectives and recommend their approval to the Board and routinely receive reports regarding progress in achieving such goals and objectives.

#### Human Resources and Compensation Programs



- To 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.
- To periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation; and seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel.
- To review and approve the annual goals and objectives of the Executive Chairman and the President.
- ~~To review the Corporation's performance under the approved Corporate Plan at each regularly scheduled meeting.~~ approve on an annual basis funding, if any, of OCC's incentive compensation programs.
- ~~At the end of each year, to~~ To review performance and approve compensation of ~~key employees and~~ Management Committee members and other key officers, as appropriate, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman, ~~the Management Vice-Chairman,~~ and the President.
- In general, to oversee the compensation, benefits, and perquisites of OCC's executive management personnel, provided that decisions with respect to those of the Executive Chairman and the President and any special benefits or perquisites for those officers shall be made in the form of recommendations to the Board.
- To review proposed material changes to executive management benefits.
- ~~To oversee the administration of the Corporation's compensation plans, including but not limited to the Incentive Compensation Program, the Capital Accumulation Plan, the Discretionary Bonus Program, the Special Retention Program, the Executive Deferred Compensation Plan, and any other deferred compensation plans.~~ periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.

#### Employee Benefit Programs

- ~~To oversee the administration of the Corporation's retirement and retiree benefit plans, including but not limited to the Retirement Plan, the Supplemental Executive Retirement Plan, the Retirement Savings Plan, and the Retiree Welfare Plan.~~ 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).

- ~~To oversee the administration of the Corporation's welfare benefit plans, including but not limited to the Flexible Benefit Plan.~~
- To appoint (and remove) members of the Administrative Committee and oversee and monitor the activities of the Administrative Committee with respect to ~~any duties and responsibilities delegated to the Administrative Committee by the Committee, including but not limited to the power to administer and amend the Flexible Benefit Plan~~ retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and perform such other oversight duties as called for in retirement, retirement and savings and welfare plan documents.
- ~~To adopt new compensation, retirement and welfare benefit plans and to amend or terminate existing plans other than the Capital Accumulation Plan (which by its terms requires Board action to amend or terminate).~~

#### Other

- To review employment contracts and approve the same, or, in the case of contracts with the Executive Chairman, ~~the Management Vice Chairman,~~ or the President, to make recommendations to the Board with respect to the approval thereof.
- ~~In general, to oversee the compensation, benefits, and perquisites of the Corporation's executive and management personnel, provided that decisions with respect to the individual compensation of the Executive Chairman, the Management Vice Chairman, and the President and any special benefits or perquisites for those officers shall be made in the form of recommendations to the Board.~~
- To ~~review and recommend to the Board, as necessary, changes in the Corporation's fee structure.~~ provide periodic updates as may be necessary or advisable under the circumstances (but not less frequently than annually) to the Board regarding (i) actions taken by the Committee with respect to its review of OCC's compensation, 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.
- ~~To review special financial matters as requested by the Board.~~ 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 amend or terminate.
- To periodically ~~assess, as deemed necessary or appropriate, succession plans for key executives~~ review OCC's insurance program.

- To perform such other activities consistent with the Charter, as the Committee or the Board may deem necessary or appropriate.
- ~~Confirm~~To confirm annually that all responsibilities outlined in this Charter have been carried out.
  - ~~Evaluate~~To evaluate the Committee's and individual members' performance on a regular basis and provide results of such assessment to the Governance and Nominating Committee for review.

#### ~~V. REVIEW CYCLE~~

#### V. Review Cycle

The Committee will review this Charter annually. The Committee shall submit this Charter to the Board for reapproval, with such changes, if any, as the Committee deems advisable.

-

## THE OPTIONS CLEARING CORPORATION RISK COMMITTEE CHARTER

### I. ~~PURPOSE~~ Purpose

The Board of Directors ~~of OCC (the~~ (“Board”) of The Options Clearing Corporation (“OCC”) has established a Risk Committee (the “Committee”) to assist the Board in overseeing the ~~Corporation~~OCC’s policies and processes for identifying and addressing strategic, operational and financial (i.e., credit, market, liquidity and systemic) risks. The Committee is responsible for overseeing the overall enterprise risk management framework implemented by management, including reviewing material policies and processes relating to

(i) membership criteria and financial safeguards, (ii) member and other counterparty risk exposure assessments, (iii) liquidity requirements and maintenance of financial resources, (iv) risk modeling and assessments, ~~and~~ (v) default management planning, and (vi) risks related to new initiatives. The Committee is also responsible for performing those functions delegated to the Committee under ~~the Corporation’s By-Laws and Rules.~~ OCC’s By-Laws and Rules. While certain risks will be overseen by other Board committees, the Committee will, nonetheless, coordinate risk oversight with these Board committees as appropriate to achieve a comprehensive and holistic oversight of the organization’s risk-related matters.

### II. ~~MEMBERSHIP AND ORGANIZATION~~ Membership and Organization

~~A.~~ A. Composition. The Committee shall consist of (i) the Executive Chairman, the Member Vice Chairman, and three or more Member Directors (iii) at least one Exchange Director, (iii) at least one Member Director, and (iv) at least one Public Director, who shall be appointed annually by the Board. ~~At least one member of the Committee shall be a Public Director.~~ The Board may remove or replace any member of the Committee at any time. The Committee shall be chaired by a Public Director. 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.

~~B.~~ B. Meetings. Generally, the Committee will meet at least ~~seven~~six 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 guests of the Committee may be excluded. The Chair shall determine whether minutes of executive sessions are to be maintained,

taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are maintained. 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 annually~~regularly with the Chief Risk Officer and any other corporate officers the Committee deems appropriate 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 Risk Committee.

~~A Committee member shall recuse himself from any matter in which his firm has an interest, other than a common interest shared with Clearing Members generally or a particular class of Clearing Members.~~

~~C.~~C. Quorum. A majority of the Committee members shall constitute a quorum for the transaction of business.

~~D.~~D. Minutes and Reports. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and shall make such reports to the Board as deemed necessary or advisable. Copies of Committee minutes shall be circulated to the Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board.

### III. ~~AUTHORITY~~Authority

~~A.~~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 Corporation~~OCC to the extent it may deem necessary or appropriate to fulfill its duties.

Subject to the approval of the Board, 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.

~~B. 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 the Management Committee and the Enterprise Risk Management Committee.

~~C. Authority of the Chair. The Chair of the Committee may act on behalf of the Committee in such circumstances when immediate action is required and it is impractical to convene the Committee. In such instances, the Chair shall report on any actions taken as soon as practicable to the Committee for its ratification.~~

#### IV. ~~FUNCTIONS AND RESPONSIBILITIES~~ Functions and Responsibilities

The Committee's role is one of oversight. Management is responsible for identifying, addressing and reporting on strategic, operational and financial risks arising from ~~the Corporation~~ OCC's clearance, settlement and other business activities in light of ~~the Corporation~~ OCC's role as ~~an~~ a systemically important financial market utility.

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

- ~~- To review applications for Clearing Membership and recommend approval or disapproval thereof to the Board on such conditions as the Committee may deem appropriate.~~
- ~~- To conduct hearings, as required by the By Laws, if requested by applicants whose applications are proposed to be disapproved by the Committee.~~
- ~~- To approve or disapprove continued Clearing Membership by (i) Clearing Members that propose to become managed Clearing Members and (ii) managed Clearing Members after termination of their facilities management agreements, and to ratify, modify or reverse temporary approvals of such requests by the Executive Chairman, the Management Vice Chairman, or the President.~~ To oversee management's responsibility for handling financial (i.e., credit, market, liquidity and systemic) risks, including the structure, staffing and resources of Financial Risk Management.
- To 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 the foregoing.

- ~~•~~ To review and approve or disapprove requests by Clearing Members to expand clearing activities to include additional account types and/or products, and to ratify, modify, or reverse ~~temporary approvals of such requests by the Executive Chairman, the Management Vice Chairman, or the President~~ actions taken by OCC officers having delegated authority to consider such requests.
- ~~-~~ To review and approve or disapprove requests by Clearing Members to participate in the Stock Loan Programs.
- ~~-~~ To periodically review the Corporation's initial and ongoing requirements for Clearing Membership and to recommend to the Board such changes therein as the Committee deems appropriate.
- ~~-~~ If required, to develop and recommend to the Board membership requirements and standards for entities other than broker-dealers.
- ~~-~~ To periodically review the inputs to the Corporation's margin formula and modify them to the extent that the Committee deems such action consistent with the protection of the Corporation, Clearing Members, or the general public.
- ~~-~~ To increase the amount of margin required in respect of any contract or position if the Committee deems such increase advisable for the protection of the Corporation, Clearing Members, or the general public.
- ~~-~~ To establish and periodically review guidelines for requiring the deposit of additional margin for the purpose of protecting the Corporation, Clearing Members, or the general public.
- ~~-~~ To periodically review the methodologies used for determining margin and clearing fund requirements and to recommend to the Board such changes therein as the Committee deems appropriate.
- To oversee the adequacy and effectiveness of OCC's contingency plan for Clearing Member failures, including (i) reviewing Clearing Member surveillance criteria, (ii) overseeing the management processes for managing Clearing Members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty, (iii) imposing and modifying restrictions and requirements already imposed on Clearing Members in a manner consistent with the By-Laws and Rules, and (iv) making recommendations to the Board in respect of the foregoing.
- ~~-~~ To periodically review Clearing Member surveillance criteria and make such changes therein as the Committee deems appropriate.
- To oversee the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including (i) reviewing and modifying the OCC's margin formula, the

methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof, (ii) evaluating (including, increasing) the amount of margin required in respect of any contract or position, (iii) establishing and reviewing guidelines for requiring the deposit of additional margin, and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules.



- To oversee the processes established for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, financial market utilities, and trade sources, including performing such reviews as may be required under OCC's exchange pre-trade risk control program.
- ~~To review, as appropriate, the adequacy and effectiveness of the Corporation's contingency plan for Clearing Member failures and to approve or recommend to the Board such changes therein as the Committee deems appropriate.~~
- To discuss on a regular basis with management the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event (including the impending or actual failure of a Clearing Member), and the development of strategies to mitigate these effects.
- ~~To review the financial and operational condition of Clearing Members that are subject to closer than normal surveillance (Watch Levels III and IV) and impose such restrictions on their activities, consistent with the By-Laws and Rules, as the Committee deems appropriate.~~
- To oversee the processes established for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility.
- ~~To advise management regarding actions to be taken with respect to Clearing Members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty.~~
- To oversee OCC's Enterprise Risk Management ("ERM") program, including (i) overseeing the structure, staffing and resources of the ERM program, (ii) annually approving the ERM program's goals and objectives, (iii) reviewing periodic reports from the ERM program, (iii) regularly discussing with management and reviewing the systems and procedures that management has developed to identify, monitor, mitigate and otherwise manage the risks to OCC's business and operations, (iv) reviewing with management the interrelated nature of risks facing OCC, and (v) annually reviewing and assessing the ERM program.
- ~~To review in accordance with the Rules, if timely requested by a Clearing Member, and to modify or reverse, restrictions and/or requirements imposed on the Clearing Member by the Executive Chairman, the Management Vice Chairman, or the President pursuant to Rule 305.~~
- To review and monitor determinations regarding appropriate risk tolerances, including (i) reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether management's view is appropriate, (ii) reviewing and recommending the OCC Risk Appetite Statement for approval by the Board annually, (iii) reviewing and monitoring the risk profile of OCC for consistency with OCC's Risk Appetite Statement, and (iv) recommending to the Board for final approval the parameters of OCC's risk tolerances.
- ~~To approve classes of GSE debt securities for deposit as margin.~~

- To oversee OCC's model risk management processes, policies and controls, including (i) overseeing model risk governance, (ii) reviewing the findings of any third party engaged by management to evaluate OCC's risk models, and (iii) annually reviewing and approving the Model Validation Plan and receiving periodic reports thereunder.
- ~~To prescribe intervals for revaluing debt securities deposited as margin or clearing fund deposits as provided in the Rules.~~
- To review, approve and reassess periodically reporting metrics reflecting the OCC's risks for which the Committee has oversight.
- ~~To specify "haircuts" for securities deposited as margin as provided in the Rules.~~
- To review the results of any audits (internal and external), regulatory examinations and supervisory examination reports as to significant risk items or any other matter relating to the areas that the Committee oversees, as well as management's responses pertaining to matters that are subject to the oversight of the Committee.
- ~~To make the determinations regarding approval of non-U.S. institutions to issue letters of credit provided for in the Interpretations under Rule 604.~~
- To perform such other responsibilities and functions as shall from time to time be assigned to it by the By-Laws and Rules or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- ~~To review and recommend the OCC Risk Appetite Statement for approval by the Board annually.~~
- To identify issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action.
- ~~To review and monitor the risk profile of OCC for consistency with OCC's Risk Appetite Statement.~~
- ~~To review periodic reports from the Enterprise Risk Management program.~~
- ~~To review and assess OCC's Enterprise Risk Management program annually.~~
- ~~Approve:~~ 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.
- ~~Assess:~~ In consultation with the Executive Chairman, to review the performance of the ~~Chief Risk Officer and the Enterprise Risk Management department. Also approve any~~ ERM and Model Validation programs and the Chief Risk Officer ~~annual compensation or salary adjustments, but delegate to the Chair the ability to modify the approved amount as a result of the Chair's participation in the annual meeting of the Performance Committee at which the,~~ and to determine

whether to accept or modify the Executive Chairman's recommendations with respect to performance assessment and annual compensation for senior management is determined.  
~~the Chief Risk Officer.~~

- ~~Oversee the structure, staffing and resources of the Enterprise Risk Management department.~~
- ~~Confirm.~~ To confirm annually that all responsibilities outlined in this Charter have been carried out.
- ~~Evaluate.~~ To evaluate the Committee's and individual members' performance on a regular basis and provide results of such assessment to the Governance and Nominating Committee for review.
- ~~To perform such other functions as shall from time to time be assigned to it by the By Laws and Rules or delegated to it by the Board.~~

#### V. ~~REVIEW CYCLE~~Review Cycle

The Committee will review this Charter annually. The Committee shall submit this Charter to the Board for reapproval, with such changes, if any, as the Committee deems advisable.

**THE OPTIONS CLEARING CORPORATION  
GOVERNANCE AND NOMINATING COMMITTEE CHARTER**

**I. Purpose**

The Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) has established a Governance and Nominating Committee (“Committee”) to assist the Board in: (a) identifying, screening and reviewing individuals qualified to serve as Directors and recommending to the Board candidates for nomination for election at the annual meeting of stockholders or to fill Board vacancies; (b) developing, recommending to the Board and overseeing implementation of OCC’s Board Code of Conduct; and (c) reviewing on a regular basis the overall corporate governance of OCC and recommending improvements to the Board when necessary.

**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, with additional meetings called as the Committee deems appropriate. Meetings of the Committee shall be called by the Chair or the Chair’s designee. The Chair or the Chair’s designee shall, in consultation with management, as appropriate, 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 guests of the Committee may be excluded. The Chair shall determine whether minutes of executive sessions are to be recorded, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are recorded. 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. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and shall make such reports to the Board as deemed necessary or advisable. Copies of Committee minutes shall be circulated to the Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year. In addition, the Chair shall be responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the Board.
- ~~E. Staff Liaison. A designated officer of management shall serve to assist the Committee and to perform liaison functions between staff and the Committee.~~

### 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.

Subject to the approval of the Board, 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.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee.

### IV. Functions and Responsibilities

The following responsibilities are set forth to guide the Committee in fulfilling its purpose. In addition, the Committee may undertake other and different activities as appropriate for that purpose, or as may be delegated to it by the Board. The Committee shall:

#### Board Composition

1. Seek to develop a Board that consists of individuals from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity by:
  - Recommending to the Board for approval and overseeing the implementation and effectiveness of OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees (including experience, qualifications, attributes or skills in light of OCC's business and structure);

- Identifying, screening and reviewing individuals qualified to serve as Directors of OCC, consistent with criteria approved by the Board (including evaluation of incumbent Directors for potential renomination, 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);
- Recommending to the Board candidates for nomination for election or re-election by the stockholders and any Board vacancies that are to be filled by the Board, after consultation with the Executive Chairman;
- Assessing 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 recommending to the Board any action to be taken thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Director;
- Reviewing periodically the composition of the Board as a whole, including whether the Board reflects the appropriate balance of Member Directors, Exchange Directors, Public Directors and Management Directors, business specialization, technical skills, diversity (including diverse professional backgrounds) and other desired qualities such as sound judgment and a reputation for integrity; and
- Reviewing periodically the continued appropriateness of the term limits applicable to Member Directors ~~and Public Directors~~ set forth in the By-Laws and recommend to the Board, where appropriate, changes to such provisions.

### **Governance Practices**

2. Review the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices, including:
  - Recommending to the Board, where appropriate, changes to the Board's Charter;
  - Recommending to the Board, where appropriate, changes to Committee charters, including this Charter;
  - Developing and recommending to the Board, and coordinating and providing oversight of, the annual process of self-evaluation of the role and performance of the Board and its committees in the governance of OCC;
  - Reviewing and considering whether changes are appropriate to OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct;
  - Developing and recommending to the Board corporate governance principles applicable to OCC, and reviewing those principles at least once a year;
  - Reviewing and considering whether changes are needed to, and provide oversight of, the orientation program for new Directors and continuing Director training and education opportunities; and

- Advising 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 of the Board.

#### **Conflicts of Interest**

3. Review conflicts of interest of Directors and the manner in which any such conflicts are to be monitored and resolved.

#### **Evaluation and Reporting**

4. Evaluate the Committee's and individual members' performance on a regular basis and provide results of such assessment to the Board for review.
5. Prepare and deliver an annual report to the Board of the activities undertaken by the Committee during the preceding year, which report includes a statement that all responsibilities outlined in this Charter have been carried out.

#### **General**

6. 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 annually. The Committee shall submit this Charter to the Board for reapproval, with such changes, if any, as the Committee deems advisable.