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May 3, 2022

**VIA CFTC PORTAL**

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 Certification Concerning Cash Settled ETF Flex Options**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6, The Options Clearing Corporation (“OCC”) hereby certifies changes to OCC By-Laws and Rules to accommodate the issuance, clearance and settlement of flexibly structured options on exchange-traded funds (“fund shares” or “ETFs”) that are cash settled (“Cash Settled Flex ETF Options”). The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC. The proposal has also been submitted to the Securities and Exchange Commission (“SEC”) under Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b-4 thereunder.

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

**Explanation and Analysis**

The purpose of this proposed rule change is to align OCC’s By-Laws and Rules with exchange rules to support the issuance of a Cash Settled Flex ETF Options as a new product. Proposed amendments to the By-Laws can be found in Exhibit A and changes to the Rules can be found in Exhibit B. Material proposed to be added to OCC’s By-Laws as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>1</sup>

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<sup>1</sup> OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

The NYSE American Exchange (“NYSE American”) received approval to list Cash Settled Flex ETF Options as a variation of currently-traded, physically-settled equity flex options.<sup>2</sup> Cash Settled Flex ETF Options will generally have characteristics of physically settled equity flexes; however, exercises and assignments will settle in cash (as opposed to physical settlement), with the settlement amount based on the difference between the underlying price on the date of exercise and the strike price of the exercised option.

OCC does not currently settle equity options in cash unless (i) the underlying security undergoes a corporate action resulting in the conversion of the option deliverable to only cash or (ii) the underlying security is otherwise unavailable for delivery. Since OCC does not currently settle equity options in cash except for in rare circumstances, OCC’s By-Laws and Rules are drafted on the premises that (i) all equity options are physically settled options; and (ii) certain provisions apply to physically settled options and certain provisions apply to cash settled options. To accommodate the Cash Settled Flex ETF Option product, OCC must revise its By-Laws and Rules to establish the following as further described below: (i) Cash Settled Flex ETF Options settle in cash; (ii) the distinction between Cash Settled Flex ETF Options and physically settled options on the same underlying security; (iii) certain provisions that currently apply only to physically settled options will also apply to Cash Settled Flex ETF Options; and (iv) specific deposits would not be allowed as collateral for Cash Settled Flex ETF Options.

Accordingly, OCC proposes various modifications to its By-Laws to emphasize the distinction between physically settled flexibly structured options and Cash Settled Flex ETF Options. In Article I (Definitions), Section 1(F)(8), OCC is proposing to revise the definition of “Flexibly Structured Option” to (i) emphasize that such options may be physically settled or cash settled depending on the listing exchange’s rules and (ii) clarify that Cash Settled Flex ETF Options would not be fungible with physically settled flexibly structured options and would not be consolidated with standard options listed after a flexibly structured option with the same strike, expiration date, and underlying security, as is the case with a physically settled flexibly structured option that is fungible. Additionally, in Article I (Definitions), Section 1(S)(12), OCC proposes to revise the definition of “Series” to state that the options of the same series have the same settlement method, and in Article I (Definitions), Section 1(V)(1), OCC proposes to revise the definition of “Variable Terms” to recognize that in addition to the variable terms itemized in the definition, flexibly structured options on fund shares may be either physically or cash settled.

In Article XVII (Index Options and Certain Other Cash-Settled Options), Introduction, OCC proposes to revise the introduction to add flexibly structured options that cash settle to the list of options for which Article XVII of the By-Laws applies. In Article XVII (Index Options and Certain Other Cash-Settled Options), Section 1(C)(4), OCC proposes to revise the definition of “Class of

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<sup>2</sup> See Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR-NYSEAMER-2019-38).

Options” to state that flexibly structured options that cash settle shall constitute a different class of options from physically settled options on the same underlying interest.

OCC also proposes the certain modifications to its By-Laws and Rules to emphasize the application of certain provisions that otherwise apply only to physically settled options and to exclude application of certain provisions that otherwise would apply to all cash settled options. In Article I (Definitions), Section 1(C)(15), OCC proposes to revise the definition of “Clearing Member” to clarify that a Clearing Member is not an “Index Clearing Member” solely by virtue of being approved to clear Cash Settled Flex ETF Options. In Article I (Definitions), Section 1(R)(5), OCC currently defines “Reporting Authority” when used with respect of any cash-settled contract to mean the source that OCC uses as the official source for the current price or value of the underlying interest. OCC would revise this definition to emphasize that the reporting for Cash Settled Flex ETF Options will be the same source used by OCC for physically settled equity options with the same underlying interest. This change is designed to facilitate the use of the same closing price for automatic exercise determinations on both physically settled and cash settled options with the same underlying security, thereby ensuring that expiration processing for a Cash Settled Flex ETF Option will align with expiration processing for a physically settled product on the same underlying security.

Additionally, in Article XVII (Index Options and Certain Other Cash-Settled Options), Section 1(R)(3), “Reporting Authority” is also defined in Article XVII for index and certain other cash settled options. OCC proposes to revise this definition to explicitly exclude Cash Settled Flex ETF Options and to emphasize that the reporting authority for Cash Settled Flex ETF Options is the same source used by OCC for physically settled equity options. Additionally, Article XVII (Index Options and Certain Other Cash-Settled Options), Sections 3(a) and 3(h) currently states that the adjustment provisions of Article VI, Section 11A do not apply to cash settled equity contracts. Since adjustment decisions for Cash Settled Flex ETF Options and physically settled options on the same underlying should be the same, OCC is proposing to add language to this section to state explicitly that Article VI, Section 11A of the By-Laws applies to Cash Settled Flex ETF Options.

OCC also proposes to revise the following provisions of the By-Laws and Rules to accommodate unique characteristics of Cash Settled Flex ETF Options. Article XVII (Index Options and Certain Other Cash-Settled Options), Section 4(a)(2) states the method by which the exercise settlement amount for exercised contracts of an affected series is fixed for index options and certain other cash-settled options. OCC proposes to add a sentence to this provision to state that the exercise settlement amount for Cash Settled Flex ETF Options shall be determined by using the last reported sale price for the underlying security during regular trading hours. This is consistent with the expiration closing price determination for physically settled options in Rule 805.

Chapter VI (Margins), Rule 610 (Deposits in Lieu of Margin) allows for Clearing Members to use specific deposits of the underlying security as collateral to short customer positions on a call option. Specific deposits allow a short call position to be fully covered because the security that will need to be delivered if the call option writer is assigned is pledged to OCC for the purpose of covering the short position. OCC proposes to modify Rule 610 to disallow specific deposits for

Cash Settled Flex ETF Options because such options do not require delivery of the underlying security upon assignment. Consequently, a specific deposit of the underlying security will not cover the delivery requirement of Cash Settled Flex ETF Options as it does for a physically settled option. OCC would, however, allow escrow deposits to be made for Cash Settled Flex ETF Options.

Modifications are also needed for Chapter VIII (Exercise and Assignment), Rule 805 (Expiration Exercise Procedure) and Chapter XVIII (Index Options and Certain Other Cash Settled Options), Rule 1804 (Expiration Exercise Procedure for Cash-Settled Options). Rule 805(j) states that the “closing price” used for any underlying security in Rule 805 is the last reported sale price for the underlying security during regular trading hours (as determined by OCC) on the trading day immediately preceding the expiration date, or on the expiration date if the expiration date is a trading day, on such national securities exchange or other domestic securities market as OCC shall determine. OCC is proposing to revise Rule 805(j) to state explicitly that the same definition of “closing price” applies to underlying securities for Cash Settled Flex ETF Options. Rule 1804 generally provides for the expiration exercise procedure for cash-settled options. OCC is proposing to add an interpretation and policy to Rule 1804 to clarify that, notwithstanding its general application to cash-settled options, the determination of the closing price for an underlying security of a flexibly structured cash settled equity option is the same as the determination of the closing price per Rule 805(j).

In Chapter XVIII (Index Options and Certain Other Cash Settled Options), Rule 1804 (Expiration Exercise Procedure for Cash Settled Options), OCC proposes to revise Rule 1804(a) and Rule 1804(b) to state that Cash Settled Flex ETF Options will be deemed exercised on expiration if the strike price is \$0.01 or more in-the-money in accordance with the provisions of Rule 805(d). This will ensure that the threshold used for automatic exercises of Cash Settled Flex ETF Options will be the same as the threshold established for physically settled equity options rather than the \$1.00 per contract threshold established in Rule 1804.

Changes are also needed in Chapter VIII (Exercise and Assignment) Rule 805 (Expiration Exercise Procedure) I&P.03 and Chapter XVIII (Index Options and Certain Other Cash Settled Options), Rule 1804 (Expiration Exercise Procedure for Cash Settled Options). Rule 805, interpretation and policy .03 states that the exercise procedures set forth in Rule 805 apply to flexibly structured equity options. OCC proposes to add language excepting from application of Rule 805(d) American-style Cash Settled Flex ETF Options subject to delayed settlement for any deliverable component. Similarly, OCC is proposing to add language to Rule 1804(a) to state explicitly that Rule 805(d) does not apply to American-style Cash Settled Flex ETF Options that have a deliverable component subject to delayed settlement. These changes are necessary because any such option with a pended delivery component on its expiration date should not be automatically exercised, as the total value of the option deliverable can only be estimated. OCC anticipates this outcome would be rare, and likely the result of a contract adjustment that involves cash in lieu of fractional shares that have yet to be finalized on an option’s expiration date.

OCC believes that the proposed amendments described above would align OCC's By-Laws and Rules with NYSE American's rules as applied to the clearance and settlement of Cash Settled Flex ETF Options. Because Cash Settled Flex ETF Options are fundamentally unique from currently listed flexibly structured equity options, OCC By-Laws and Rules must provide for two different types of settlement methods for flexibly structured options with ETFs as the underlying securities to provide clearance and settlement of Cash Settled Flex ETF Options. The proposed changes are necessary to make explicit the differences between Cash Settled Flex ETF Options and physically settled options on the same underlying ETF, and will allow OCC to issue, clear, and settle Cash Settled Flex ETF Options in alignment with exchange rules for this product type.

### **Consistency with DCO Core Principles**

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Act, the regulations thereunder, and the provisions applicable to a DCO that elects to be subject to the provisions of 17 CFR Subpart C ("Subpart C DCO"). During this review, OCC identified the following as potentially being impacted:

**Public Information.** OCC believes that implementing the changes will align with Core Principle L,<sup>3</sup> and CFTC Rule 39.21 thereunder,<sup>4</sup> which require, in part, that a DCO make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the DCO available to market participants,<sup>5</sup> and making its rulebook publicly available on its website.<sup>6</sup> OCC believes that implementing the changes and posting the updated By-Laws and Rules to OCC's public website would protect investors and the public interest by setting forth a clear legal framework for Cash Settled Flex ETF Options.

### Opposing Views

No substantive opposing views were expressed related to the rule amendments by OCC's Board members, Clearing Members or market participants.

### 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 this certification on OCC's website concurrently with the filing of this submission.

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<sup>3</sup> 7 U.S.C. 7a-1(c)(2)(L).

<sup>4</sup> 17 CFR 39.21.

<sup>5</sup> 7 U.S.C. 7a-1(c)(2)(L)(ii); 17 CFR 39.21(b).

<sup>6</sup> 17 CFR 39.21(c)(6). See also 7 U.S.C. 7a-1(c)(2)(L)(iii)(I) (requiring a DCO to disclose publicly the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO).

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Certification

OCC hereby certifies that the rule set forth at Exhibits A and B 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,

/s/ Mark C. Brown  
Associate General Counsel

Enclosure:   Exhibit A  
                  Exhibit B

**EXHIBIT A**



**By-Laws**

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

## ***Article I – Definitions***

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

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**C.**

### **Clearing Member**

(15) The term “Clearing Member” means a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. References in the By-Laws or Rules to the term “Clearing Member” preceded by a capitalized reference to an underlying interest or a cleared contract, e.g., a “Stock Clearing Member,” or a “Security Futures Clearing Member,” shall be deemed to be to a Clearing Member approved in accordance with Article V of the By-Laws to clear transactions in options on the specified underlying interest, or in the cleared contract, as applicable, provided that the term “Stock Clearing Member” shall be deemed to include a Clearing Member approved to clear transactions in BOUNDS as well as stock options, the term “Treasury Securities Clearing Member” shall mean a Clearing Member approved to clear transactions in Treasury Securities options excluding yield-based Treasury options and the term “Index Clearing Member” shall mean a Clearing Member approved to clear transactions in cash-settled options other than OTC options and flexibly structured options on fund shares that are cash settled. The term “OTC Index Option Clearing Member” means a person that has been approved to clear OTC index options.

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**F.**

### **Flexibly Structured Option**

(8) The term “flexibly structured option” means an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to the variable terms of any series of non-flexibly structured options previously opened for trading on the Exchange. Flexibly structured options may be physically settled or cash settled pursuant to Exchange Rules. Once a series of non-flexibly structured options is opened for trading on an Exchange, any existing flexibly structured option contracts that have identical variable terms and that physically settle shall be fully fungible with options in such series, and shall cease to be flexibly structured options. Flexibly structured options on fund shares that are cash settled shall not be fungible with flexibly structured options that have identical variable terms but physically settle, and once a series of non-flexibly structured options is opened for trading on an Exchange, any flexibly structured options on fund shares that are cash settled shall not be fungible with options in such series and shall not cease to be flexibly structured options that cash settle.



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**R.**

**Reporting Authority**

(5) When used in respect of any cash-settled contract, the term “reporting authority” shall mean the source that is relied upon by the Corporation as the official source for the current price or value of the underlying interest. In respect of flexibly structured options on fund shares that are cash settled, the reporting authority shall be the same institution or reporting service used by the Corporation for physically settled equity options with the same underlying interest.

**S.**

**Series**

(12) The term “series,” when used in respect of options, means all option contracts of the same class and having otherwise identical terms including exercise price (or, in the case of delayed start option contracts that do not yet have a set exercise price, the same exercise price setting formula and exercise price setting date), expiration date, unit of trading, settlement method and, in the case of futures options or commodity options, series marker if any; and when used in respect of futures, means all futures of the same class having identical terms, including the same maturity date and series marker, if any.

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**V.**

**Variable Terms**

(1) The term “variable terms” in respect of a series of option contracts other than OTC options means the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option), and the expiration date of such option contract. In addition to these variable terms, flexibly structured options on fund shares may settle physically or settle in cash. The term “variable terms” in respect of a series of OTC options means the terms of such options that are permitted to be negotiated bilaterally between the parties within the range of values specified by the Corporation therefor as set forth in the By-Laws and Rules. “Variable terms,” when used in respect of a series of futures means the name of the underlying interest, the maturity date, the method of determining the final settlement price, and the series marker, if any, and in the case of a flexibly structured index future, the index value determinant and the index multiplier.

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

### **Introduction**

By-Laws in this Article are applicable only to cash-settled options that are not specifically addressed elsewhere in these By-Laws, including flexibly structured options that cash settle, Exchange-listed index options, OTC index options and cash-settled commodity options other than binary options or range options (which are governed by the provisions of Article XIV). Section 1 of Article XII is also applicable to cash-settled commodity options. By-Laws in Articles I-XI are also applicable to cash-settled options, in some cases supplemented by one or more By-Laws in this Article, except for By-Laws that have been replaced in respect of such options by one or more By-Laws in this Article and except where the context otherwise requires. Whenever a By-Law in this Article supplements or, for purposes of this Article, replaces one or more By-Laws in Articles I-XI, that fact is indicated in brackets following the By-Law in this Article.

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### **Definitions**

#### **SECTION 1.**

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#### **C.**

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### **Class of Options**

(4) The term “class of options” used in respect of cash-settled options means all such options of the same type and style (and, in addition, in the case of flexibly structured index options and OTC index options, having the same index value determinant) and having the same underlying interest, provided that OTC index options shall constitute a separate class of options from other cash-settled options of the same type and style and having the same underlying interest and flexibly structured options that cash settle shall constitute a different class of options from physically settled options on the same underlying interest.

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#### **R.**

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### **Reporting Authority**

(3) The term “reporting authority” in respect of cash-settled options other than OTC index options and flexibly structured options on fund shares that are cash settled means the institution

or reporting service designated by an Exchange as the official source for the current value of a particular underlying interest or reference variable. Unless another reporting authority is identified by the listing Exchange for a class of cash-settled options, the listing Exchange will be the reporting authority. In respect of OTC index options, the reporting authority shall be the institution or reporting service designated by the Corporation as the official source for the current value of a particular underlying interest or reference variable. In respect of flexibly structured options on fund shares that are cash settled, the reporting authority shall be the institution or reporting service used by the Corporation for the value of the underlying interest for physically settled equity options.

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## **Adjustments**

SECTION 3. (a) Except in the case of flexibly structured options on fund shares that are cash settled, Section 11A of Article VI of the By-Laws shall not apply to cash-settled option contracts.

(b) In the case of cash-settled options that have a single commodity as their underlying interest, except as expressly provided otherwise in the By-Laws or Rules relating to a particular cleared contract, determinations as to whether and how to adjust the terms of such options to reflect events affecting the underlying interest shall be made by the Corporation based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers of such options, the maintenance of a fair and orderly market in such options and consistency of interpretation and practice.

(c) No adjustments will ordinarily be made in the terms of index option contracts in the event that index components are added to or deleted from the underlying index or reference index or when the relative weight of one or more such index components has changed. However, if the Corporation shall determine in its sole discretion that any such addition, deletion, or change causes significant discontinuity in the level of the underlying index, the Corporation may adjust the terms of the affected index option contracts by adjusting the index multiplier and/or exercise price with respect to such contracts or by taking such other action as the Corporation in its sole discretion deems fair to both the holders and writers of such contracts.

(d) If an Exchange shall increase or decrease the index multiplier for any index option contract, or the reporting authority shall change the method of calculation of an underlying index or reference index so as to create a discontinuity or change in the level of the index that does not reflect a change in the prices or values of the index securities, or the Corporation shall substitute one underlying index or reference index for another pursuant to paragraph (e) of this Section 3, the Corporation shall make such adjustments in the number of outstanding affected options or the exercise prices of such options or such other adjustments, if any, as the Corporation in its sole discretion deems fair to both the holders and the writers of such options.

(e) In the event the Corporation determines that: (i) publication of an underlying index or reference index has been discontinued; (ii) an underlying index or reference index has been replaced by another index, or (iii) the composition or method of calculation of an underlying

index or reference index is so materially changed since its selection as an underlying index or reference index that it is deemed to be a different index, the Corporation may substitute another index (a "successor index") as the underlying index or reference index. A successor index shall be reasonably comparable, as determined by the Corporation in its discretion, to the original underlying index or reference index for which it substitutes. An index may be created specifically for the purpose of becoming a successor index.

(f) In the event that the value of an underlying relative performance index falls below zero, any such negative value of the index will be deemed by the Corporation to be zero; provided, however, that if it is deemed impractical for systems reasons to have an index value of zero, then any index value of zero or below will be deemed to be an economically nominal positive number. Such an adjustment will have the effect of limiting the maximum exercise settlement amount for in-the-money put options on such indexes to the difference between the exercise price and the nominal positive number substituted for the actual index value (times the applicable multiplier).

(g) In the event that any individual reference security in an underlying relative performance index is eliminated as the result of a cash-out merger or other event, the reporting authority may cease to publish the index. In that case, the exercise settlement value of the options would become fixed based upon the last published value for the index, and the Exchange on which such options are traded may determine to accelerate the expiration date for such options (and, in the case of European-style options, their exercisability). The expiration date for such options will ordinarily be accelerated to fall on the next regularly scheduled expiration date for the same class of options or such other date as the Corporation may establish in consultation with the Exchange on which such options are traded.

(h) Except in the case of OTC index options or any of the events described in paragraphs (f) and (g) of this Section 3, determinations with respect to adjustments pursuant to this Section shall be made by the Corporation. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation pursuant to this Article XVII, Section 3 and to adjustments made by the Corporation pursuant to Article VI, Section 11A for flexibly structured options on fund shares that are cash settled.

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

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

SECTION 4. (a) If the Corporation shall determine that the primary market(s) (as determined by the Corporation) for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a "required value") for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that the Corporation may be entitled to take under the By-Laws and Rules, the Corporation shall be empowered to do any or all of the following with respect to any series of options on such index ("affected series"):

(1) The Corporation may suspend the settlement obligations of exercising and assigned Clearing Members with respect to cash-settled option contracts of the affected series. At such time as the Corporation determines that the required value is available or the Corporation has fixed the exercise settlement amount pursuant to subparagraph (2) of this Section, the Corporation shall fix a new date for settlement of exercised option contracts.

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. In the case of flexibly structured options on fund shares that are cash settled, the exercise settlement amount will be determined by using the last reported sale price for the underlying security during regular trading hours, consistent with the expiration closing price determination procedures of Rule 805. In the case of cash-settled securities options other than flexibly structured cash settled options on fund shares that are cash settled and OTC index options, the exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Executive Chairman. In the case of OTC index options or cash-settled commodity options, unless the By-Laws or Rules specifically provide otherwise in respect of a particular class of such options, the exercise settlement amount shall be fixed by the Corporation. The Corporation will consult with the Membership/Risk Committee when appropriate to obtain any additional or supplemental market information or data from the members of such committee that the Corporation believes will be useful in setting such exercise settlement value. The panel (or the Corporation, as the case may be) shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel (or the Corporation) may fix the exercise settlement amount using: (i) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting authority; or (iii) a price or value for the relevant security(ies), commodity(ies) or underlying interest at such other time, or representing a combination or average of prices or values at such time or times, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Executive Chairman and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination pursuant to this Section shall be within the sole discretion of the Corporation or the panel making such determination, as the case may be, and shall be conclusive and binding on all investors and not subject to review.

(3) If the Corporation or a panel acting pursuant to subsection (2) above delays fixing an exercise settlement amount for a series of options past the last trading day before expiration of that series, the expiration date exercise procedures of Rules 805 and 1804 shall not apply to expiring cash settled options of the affected series and each Clearing Member shall be deemed to have properly

and irrevocably tendered to the Corporation prior to the Expiration Time an exercise notice with respect to each expiring cash-settled option contract of the affected series carried in a long position in each account of the Clearing Member if, and only if, the exercise settlement amount fixed for options of that series is \$1.00 or more. The exercise settlement date for such options shall be postponed until the business day next following the day on which the exercise settlement amount is fixed. Options for which the exercise settlement amount is fixed at less than \$1.00 shall be deemed to have expired unexercised.

(b) [No change]

**EXHIBIT B**



**Rules**

Underlined text indicates new text

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## **CHAPTER VI – MARGINS**

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### **RULE 610 – Deposits in Lieu of Margin**

(a) In lieu of depositing margin in respect of certain options carried in a short position for the account of a customer (including any Market Maker that is not a proprietary Market Maker), a Clearing Member or an approved custodian may deposit eligible collateral in respect of certain option contracts included in a short position, in each case as specified herein, and further described in Rules 610A, 610B and 610C, as applicable. Each such deposit shall be referred to as a “deposit in lieu of margin.” The types of deposits in lieu of margin permitted by the Corporation are “specific deposits” and “escrow deposits.” Specific deposits may be either “member specific deposits,” which are provided for in Rule 610A, or “third-party specific deposits,” which are provided for in Rule 610B. Escrow deposits are provided for in Rule 610C. All deposits in lieu of margin are also subject to this Rule 610. Specific deposits are limited to physically-settled stock call option contracts, and only the underlying securities may be deposited in respect of such options. Escrow deposits may be made in respect of stock, flexibly structured options on fund shares that are cash settled, and index put options and index call options. Escrow deposits in respect of stock and index puts shall consist of cash or U.S. Government securities, or any combination thereof, and escrow deposits in respect of index calls shall consist of cash, U.S. Government securities or any securities that would be eligible for deposit as margin under Rule 604(b)(4).

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## **CHAPTER VIII – EXERCISE AND ASSIGNMENTS**

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### **RULE 805 – EXPIRATION EXERCISE PROCEDURE**

(a) – (i) [No change]

(j) The term "closing price", as used with respect to an underlying security in this Rule 805, including the underlying security for cash-settled equity flex options, means the last reported sale price for the underlying security during regular trading hours (as determined by the Corporation) on the trading day immediately preceding the expiration date, or on the expiration date if the expiration date is a trading day, on such national securities exchange or other domestic securities market as the Corporation shall determine. Notwithstanding the foregoing, if an underlying security was not traded on such market during regular trading hours on the trading day immediately preceding the expiration date, or if the underlying security was traded during regular trading hours on such trading day but the Corporation is unable to obtain a last sale price,



the Corporation may, in its discretion, (i) fix a closing price on such basis as it deems appropriate in the circumstances (including, without limitation, using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available) or (ii) suspend the application of subparagraph (d)(2) to option contracts for which that security is an underlying security. During the term of any such suspension, Clearing Members may exercise such option contracts only by giving affirmative exercise instructions in accordance with subparagraph (b) or (c).

(m) [No change]

*. . . Interpretations and Policies:*

.01 - .02 [No change]

.03 The exercise procedures set forth in Rule 805 shall apply to the exercise of flexibly structured equity options (physically settled and cash settled, except that an American-style flexibly structured option on fund shares that is cash settled and subject to delayed settlement for any deliverable component will not be subject to Rule 805(d)), quarterly equity options, monthly equity options, weekly equity options and short term equity options, except that the time when the Corporation makes an Expiration Exercise Report available pursuant to paragraph (a) of Rule 805, and the time specified by the Corporation as the deadline for the submission of exercise instructions pursuant to paragraph (b) of Rule 805 for such options, may be different from the corresponding times that apply to standard.

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**CHAPTER XVIII – INDEX OPTIONS AND CERTAIN OTHER CASH-SETTLED OPTIONS**

\* \* \*

**RULE 1804 - Expiration Exercise Procedure for Cash-Settled Options**

(a) The expiration exercise procedures set forth in Rule 805 shall apply to cash-settled option contracts except that American-style flexibly structured options on fund shares that are cash settled and subject to delayed settlement for any deliverable component will not be subject to Rule 805(d), and except as provided in paragraphs (b) and (c) of this Rule.

(b) A Clearing Member shall be deemed to have properly and irrevocably tendered to the Corporation, immediately prior to the expiration time on each expiration date, an exercise notice with respect to every expiring cash-settled option contract identified in the Clearing Member's Expiration Exercise Report, other than a flexibly structured option on fund shares that is cash settled, a flexibly structured index option contract, quarterly index option contract, monthly index option contract, weekly index option contract, short term index option contract or OTC index option contract, that has an exercise settlement value of \$1.00 or more per contract, or such other amount as the Corporation may from time to time establish on not less than 30 days prior notice to all Index Clearing Members, unless the Clearing Member shall have duly instructed the Corporation, in accordance with Rule 805(b), to exercise none, or fewer than all, of such

contracts. If a Clearing Member desires that any such option contract not be exercised, it shall be the responsibility of the Clearing Member to give appropriate instructions to the Corporation in accordance with Rule 805(b).

(c) A Clearing Member shall be automatically deemed to have exercised, immediately prior to the expiration time on each expiration date, every expiring OTC index option contract, flexibly structured index option contract, quarterly index option contract, monthly index option contract, weekly index option contract, and short term index option contract identified in the Clearing Member's Expiration Exercise Report that has an exercise settlement amount of \$0.01 or more per contract in the case of OTC index option contracts and \$1.00 or more per contract in the case of all other types of index option contracts, or such other amount as the Corporation may from time to time establish on not less than 30 days prior notice to all Index Clearing Members.

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

**.01** Except in the case of options that are subject to automatic exercise, the exercise thresholds provided for in this Rule 1804 and elsewhere in the Rules are part of the administrative procedures established by the Corporation to expedite its processing of exercises of expiring options by Clearing Members, and are not intended to dictate to Clearing Members which positions in the customers' account should or must be exercised.

**.02** The foregoing expiration exercise procedures are modified by the provisions of Article XVII, Section 4 of the By-Laws under the special circumstances referred to therein relating to the unavailability or inaccuracy of the current value for an underlying interest.

**.03** The Corporation has determined that, for purposes of paragraph (c) of this Rule 1804, an OTC index option will be automatically exercised at expiration if the exercise settlement amount is any positive amount.

**.04** "Closing price" as used with respect to an underlying security in Rule 805 pertains to the expiration exercise procedure for flexibly structured options on fund shares that are cash settled.