



May 24, 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 Implementation of Settlement Timing Changes**

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 a proposed change to OCC’s By-Laws and Rules to provide for the delayed implementation of changes to settlement timing already certified with the CFTC and approved by the Securities and Exchange Commission (“SEC”) in File No. SR-OCC-2022-004. In the absence of a discussion of implementation in those initial filings, the proposed changes to the By-Laws and Rules would provide notice of the delayed implementation while allowing OCC to comply with SEC Rule 240.19b-4(m), which otherwise requires OCC to publish changes to its By-Laws and Rules within two business days following SEC approval. The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC.

The proposed changes to OCC’s By-Laws and Rules are attached as Exhibit A and Exhibit B, respectively. Material added by File No. SR-OCC-2022-004 is marked by underlining and material deleted is marked with strikethrough text. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is marked by double underlining and material proposed to be deleted is marked with double strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>1</sup> 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:

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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>.

## Explanation and Analysis

### **Background**

On May 19, 2022, the SEC approved a proposed rule change by OCC to change the time frame for collecting margin and Clearing Fund deficits as well as increases in the Clearing Fund cash requirement. OCC had submitted a self-certification pursuant to CFTC Rule 40.6 concerning those changes, which was deemed certified as of May 20, 2022. As OCC announced in Information Memo 50390, OCC currently plans to implement the changes to the time for collecting margin and general Clearing Fund deficits on the morning of Monday, June 27, 2022, and changes to the collection of Clearing Fund deficit resulting from the monthly re-sizing of the Clearing Fund on the morning of Friday, July 1, 2022.<sup>2</sup>

### **Proposed Change**

Because the proposed changes as described in File No. SR-OCC-2022-004 and in the Rule 40.6 certification associated with that filing did not address delayed implementation of those proposed rule changes, OCC is proposing to amend its By-Laws and Rules to retain the marked changes from File No. SR-OCC-2022-004 in its By-Laws and Rules until after the settlement time on the business day before the implementation date that OCC will announce no less than two weeks prior to the implementation date. As discussed above, the implementation date will be no earlier than June 27, 2022. For clarity, OCC is also proposing a note to be placed before By-Laws and Rules with marked changes that provides that the marked changes are not effective until that time, after which OCC will apply the marked changes and the notes automatically will be deleted from the By-Laws and Rules.<sup>3</sup> At that time, OCC will also implement the changes to the Clearing Fund Methodology Policy and the Liquidity Risk Management Framework discussed in File No. SR-OCC-2022-004.

### **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:

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<sup>2</sup> See Information Memo 50390, available at <https://infomemo.theocc.com/infomemos?number=50390>. Any changes to the dates announced in that memo would be communicated via a subsequent Information Memo.

<sup>3</sup> The affected By-Laws are the definition of “settlement time” in Article I, Section 1 and Article XV, Section 1. The affected Rules are OCC Rules 101, 605, 1002, 1004, 1005, and 1006.

**Public Information.** OCC believes that implementing the changes will align with Core Principle L,<sup>4</sup> and CFTC Rule 39.21 thereunder,<sup>5</sup> which require, in part, that a DCO make information concerning the rules and operating procedures governing the clearing and settlement systems of the DCO available to market participants,<sup>6</sup> and making its rulebook publicly available on its website.<sup>7</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 providing market participants with transparency about the current state of OCC's By-Laws and Rules pending implementation of the changes described in File No. SR-OCC-2022-004.

#### 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>4</sup> 7 U.S.C. 7a-1(c)(2)(L).

<sup>5</sup> 17 CFR 39.21.

<sup>6</sup> 7 U.S.C. 7a-1(c)(2)(L)(ii); 17 CFR 39.21(b).

<sup>7</sup> 17 CFR 39.21(c)(6).

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Certification

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

## **EXHIBIT A**

### **OCC BY-LAWS**

Underlined text indicates new text approved in File No. SR-OCC-2022-004.

~~Strikethrough~~ text indicates deleted text approved in File No. SR-OCC-2022-004.

Double Underlined text indicates new text proposed in File No. SR-OCC-2022-007.

~~Double Strikethrough~~ text indicates deleted text proposed in File No. SR-OCC-2022-007.

# THE OPTIONS CLEARING CORPORATION

## BY-LAWS

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### ARTICLE 1: DEFINITIONS

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#### S.

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#### **Settlement Time**

*[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]*

~~(16) The term “settlement time”, when used in respect of a Clearing Member’s obligation to pay the Corporation amounts owed to settle confirmed trades and/or stock loan transactions or any other obligations to the Corporation, other than such transactions settling outside the United States, means 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the settlement day for such confirmed trades and/or stock loan transaction or other obligation. Amended December 14, 2012.~~

~~The term “settlement time”, when used in respect of the Corporation’s obligation to pay a Clearing Member amounts owed to settle confirmed trades and/or stock loan transactions or any other obligations to a Clearing Member, other than such transactions settling outside the United States, means 1:00 P.M. Central Time (2:00 P.M. Eastern Time) on the settlement day for such confirmed trades and/or stock loan transaction or other obligation. For confirmed trades and/or stock loan transactions or other obligations settling outside the United States, the settlement time therefor shall be as specified in the By-Laws, Rules or procedures of the Corporation. Amended November 7, 1991, November 1, 1994; October 28, 2002; June 24, 2011; December 14, 2012.~~

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#### **Short Position**

~~(16)~~<sup>(17)</sup> The term “short position” in respect of options or BOUNDS means a person’s obligation as the writer (or as an agent for the writer) of one or more option contracts of a series of options or one or more BOUNDS of a series of BOUNDS. In respect of futures, the term “short position” means a person’s position as the seller (or as an agent for the Seller) of the underlying interest under one or more contracts in a series of futures.

#### **Short Term Option**

~~(17)~~<sup>(18)</sup> The term "short term option" means an option of a series of options that expires one week after it is opened for trading. Short term option series may be opened in any option class. Series of short term options may be opened on a Friday that is a business day and shall expire, at the expiration time, on the

next Friday that is a business day; provided, however, that if a Friday is not a business day, the series shall be opened (or shall expire) on the first business day immediately prior to that Friday.

#### **Statutory Disqualification**

(~~18~~<sup>19</sup>) The term "statutory disqualification" shall have the meaning given to it in Section 3(a) of the Securities Exchange Act of 1934, as amended.

#### **Statutory Rules**

(~~19~~<sup>20</sup>) The term "statutory rules" in respect of the Corporation means the Certificate of Incorporation, the By-Laws, the Rules, and such of the stated policies, practices and interpretations of the Corporation as are deemed to be rules and have become effective under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder.

#### **Stock Borrow Position**

(~~20~~<sup>21</sup>) The term "stock borrow position" means the position of a Borrowing Clearing Member in respect of a Stock Loan.

#### **Stock Future**

(~~21~~<sup>22</sup>) The term "stock future" means a security future for which the underlying security is an equity security or an index-linked security.

#### **Stock Loan**

(~~22~~<sup>23</sup>) The term "Stock Loan" means either a "Hedge Loan" or a "Market Loan" or both as the context requires.

#### **Stock Loan/Hedge Program**

(~~23~~<sup>24</sup>) The term "Stock Loan/Hedge Program" means the Corporation's program for processing and monitoring Stock Loans and hedging stock loan positions and stock borrow positions against stock option positions, all as further described in the By-Laws and Rules.

#### **Stock Loan Position**

(~~24~~<sup>25</sup>) The term "stock loan position" means the position of a Lending Clearing Member in respect of a Stock Loan.

#### **Stock Market-Maker; Stock Specialist**

(~~25~~<sup>26</sup>) The term "stock specialist" or "stock market-maker" means a member of a national securities exchange or national securities association who is acting as a market-maker or specialist, or a group of such members acting as a specialist unit, pursuant to the rules of such exchange or association in a stock that is an underlying security in respect of any stock option contract issued by the Corporation.

#### **Style of Option**

(~~26~~<sup>27</sup>) The term "style of option" means the classification of an option as an American option, a European option or a capped option.

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ARTICLE XV – FOREIGN CURRENCY OPTIONS

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**Definitions**

SECTION 1.

\* \* \*

**S.**

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**Settlement Time**

*[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]*

(1) The term “settlement time” in respect of a confirmed trade in foreign currency options settling in the United States means ~~8:00~~ 9:00-A.M. Central time (~~9:00~~ 10:00-A.M. Eastern time) on the first business day immediately following the day on which the Corporation receives confirmed trade information in respect of such transaction from the Exchange on which such transaction was effected. The term “settlement time” in respect of a confirmed trade in foreign currency options settling outside the United States means 11:00 A.M. local time in the country of origin of the trading currency (i.e., the premium currency), or such other time as the Corporation may specify, on the first foreign business day in that country immediately following the business day on which the Corporation receives confirmed trade information in respect of such transaction from the Exchange on which such transaction was effected.

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## **EXHIBIT B**



## **OCC RULES**

Underlined text indicates new text approved in File No. SR-OCC-2022-004.

~~Strikethrough~~ text indicates deleted text approved in File No. SR-OCC-2022-004.

Double Underlined text indicates new text proposed in File No. SR-OCC-2022-007.

~~Double Strikethrough~~ text indicates deleted text proposed in File No. SR-OCC-2022-007.

**THE OPTIONS CLEARING CORPORATION  
RULES**

\* \* \*

**RULE 101 – Definitions**

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**S.**

*[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]*

**Settlement Time**

(1) The term “settlement time”, when used in respect of a Clearing Member’s obligation to pay the Corporation amounts owed to settle confirmed trades and/or stock loan transactions or any other obligations to the Corporation, other than those related to any cross-margining program with a Participating CCO and transactions settling outside the United States, means 8:00 A.M. Central Time (9:00 A.M. Eastern Time) on the settlement day for such confirmed trades and/or stock loan transaction or other obligation.

The term “settlement time”, when used in respect of the Corporation’s obligation to pay a Clearing Member amounts owed to settle confirmed trades and/or stock loan transactions or any other obligations to a Clearing Member, other than such transactions settling outside the United States, means 1:00 P.M. Central Time (2:00 P.M. Eastern Time) on the settlement day for such confirmed trades and/or stock loan transaction or other obligation. For confirmed trades and/or stock loan transactions or other obligations settling outside the United States, and transactions related to any cross-margining program with a Participating CCO the settlement time therefor shall be as specified in the By-Laws, Rules or procedures of the Corporation.

Adopted May 19, 2022.

**Spot Month Series**

(~~2~~4) The term "spot month series," used as of the third Friday or any prior business day in any calendar month, shall mean any series of options expiring in that calendar month. Used as of any business day in a calendar month after the third Friday, such term shall mean any series of options expiring in the next succeeding calendar month.

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**RULE 605 – Daily Margin Report**

*[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]*

Prior to ~~8:00~~ ~~9:00~~ A.M. Central Time (~~9:00~~ ~~10:00~~ A.M. Eastern Time) of each business day, the Corporation shall make available to each Clearing Member a Daily Margin Report for each account maintained by the Clearing Member with the Corporation. The Daily Margin Report shall show the amount

of margin required by the Corporation on the Clearing Member's short positions in options (including futures options and commodity options that are subject to the Corporation's margin requirements pursuant to any Participating CCO Agreement), the Clearing Member's positions in futures (including commodity futures that are subject to the Corporation's margin requirements pursuant to any Participating CCO Agreement), and the Clearing Member's exercised contracts and stock loan and borrow positions. Margins previously deposited by the Clearing Member and any surplus over the amount required or deficit to be satisfied, as the case may be, will also be shown. A deficit in any account of a Clearing Member as shown in the Daily Margin Report of a particular day shall be satisfied by Settlement Time 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on such day, notwithstanding any error in such Report and notwithstanding any margin excess that may exist in another account of the Clearing Member. Subject to the provisions of Rule 606, the Corporation shall be authorized to withdraw from the Clearing Member's bank account established in respect of any account an amount equal to such deficit as shown on the Daily Margin Report. All errors in the Daily Margin Report shall be reported to the Corporation promptly, and any correction or adjustment in the amount of required margin shall be shown on the next day's Daily Margin Report.

~~--- Interpretations and Policies:~~

~~.01 The Daily Margin Report will not include the amount of margin required by the Corporation on the Clearing Member's positions in variance futures. Instead, the Corporation will advise Clearing Members of such margin requirement separately, but in any event before 9:00 A.M. Central Time. For all purposes of the By-Laws and Rules, including Rule 605, the margin requirement with respect to variance futures will be treated as if it were included in the Daily Margin Report.~~

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## CHAPTER X – CLEARING FUND CONTRIBUTIONS

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### RULE 1002 – Clearing Fund Contributions

~~[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]~~

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(e) *Deficits Due to Amendments.* If the contribution to the Clearing Fund to be made by a Clearing Member is increased as a result of an amendment of the Rules, the increase shall not become effective ~~until unless~~ the Clearing Member is given ~~two at least five~~ business days prior written notice of the effective date of the amendment. Unless a Clearing Member notifies the Corporation in writing that it wishes to terminate its clearing membership and closes out or transfers all of its open long and short positions before the effective date of such amendment, such Clearing Member shall be liable to make the increased contribution by ~~9:00 A.M. Central Time (10:00 A.M. Eastern Time)~~ the Settlement Time on the ~~second business day following the day on which notice is~~ effective date of the amendment or such later time as provided by the Corporation.

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**. . . Interpretations and Policies:**

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.03 For purposes of Rule 1002(a)(i), a Clearing Member shall satisfy any increase in its required cash contribution pursuant to an increase in Clearing Fund Cash Requirement by the first Settlement Time following such notification ~~no later than the second business day following the day on which notice is provided by the Corporation~~ unless the Clearing Member is notified by an officer of the Corporation of an alternative time to satisfy such obligation.

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## **RULE 1004 – Adjustments to Clearing Fund Contributions**

~~[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]~~

*Adjusted Contribution.* The required Clearing Fund contribution of a Clearing Member may be adjusted by the Corporation due to mergers, consolidations, position transfers, business expansions, membership approval or other similar events in connection with the calculations made in respect of a particular calendar month or at any other time. The Corporation shall provide notice to affected Clearing Members, by means of the reports described in Rule 1007, as soon as practicable after any such adjustment is determined. Any deficit resulting from the adjusted contribution shall be satisfied by the Clearing Member as provided in Rule 1005(a); ~~provided, however that a deficit that would otherwise be required to be satisfied on the first business day of a calendar month may be satisfied on the second business day if the deficit coincides with a deficit due to regular monthly sizing of the Clearing Fund as provided for in Rule 1005(b).~~ All individual adjustments as of a particular date, taken together, may result in a corresponding increase in the amount of the Clearing Fund but shall not be deemed to be a change in the calculated Clearing Fund size as that may be determined under Rule 1001. Any adjusted contribution resulting from any adjustment shall be in effect until the earlier of the next adjustment of the calculated size of the Clearing Fund under Rule 1001, or the next adjustment of the Clearing Member's required contribution pursuant to this paragraph.

## **RULE 1005 – Deficits and Increased Contributions**

~~[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]~~

(a) *Deficits Generally.* Except as otherwise provided in this Chapter X, including but not limited to paragraph (b) below and Rule 1002(e), or as the Corporation may otherwise agree from time to time in writing, whenever a report for a Clearing Member described in Rule 1007 shows a deficit, including but not limited to a deficit caused by a decrease in the value of the Clearing Member's contribution or an adjusted contribution pursuant to Rule 1004, such Clearing Member shall satisfy the deficit by (i) the Settlement Time if the Corporation provides the Clearing Member with notice of such deficit at least one hour prior to the Settlement Time, (ii) a deposit in a form approved by the Corporation ~~no later than one hour after being notified by the Corporation of such deficit~~ if notice is not provided at least one hour prior to the Settlement Time on the day the notice is provided, or (iii) such later time as provided by the Corporation.

(b) *Deficits Due to Intra-Month and Regular Monthly Sizing.* Whenever a report described in Rule 1007 is made available in connection with regular monthly or intra-month determination of the calculated size of the Clearing Fund under Rule 1001 and the report shows a deficit for any Clearing Member, such Clearing Member shall satisfy the deficit by a deposit in a form approved by the Corporation. Deficits due to standard monthly resizing of the Clearing Fund shall be satisfied by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the second business day following the day on which notice is provided by the Corporation. Settlement Time on the first business day of the month or such later time as provided by the Corporation. Deficits due to an intra-month resizing shall be due by the first Settlement Time following notification or such later time as provided by the Corporation.

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

[marked changes from File No. SR-OCC-2022-004 are not effective until after the settlement time on the business day before the implementation date that the Corporation will announce at least two weeks prior to implementation, at which point the changes will be applied and this note automatically will be deleted]

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(h) *Making Good of Charges to the Clearing Fund.* (A) *Replenishment.* Whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member, whether by proportionate charge or otherwise, such Clearing Member shall be liable to promptly make good the deficiency in its required contribution resulting from such payment by replenishment of the Clearing Fund. Each Clearing Member shall have and shall at all times maintain the ability to replenish any deficiency described in this Rule 1006(h) by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) the first Settlement Time on the first business day following the day on which the Corporation notifies following notification to the Clearing Member of such deficiency or such later time as provided by the Corporation.

(B) *Cooling-Off Period; Assessments.* Notwithstanding anything in this Rule 1006(h) and except as provided for below, if an amount is paid out of the Clearing Fund as a result of a proportionate charge under Rule 1006(b) resulting from any of the events described in clauses (i) through (vi) of Rule 1006(a), then starting on the date of such proportionate charge there shall automatically commence a cooling-off period during which a Clearing Member will not be liable to make good more than an additional 200% of the amount of its then required contribution (for definitional purposes, amounts in excess of a Clearing Member's then required contribution shall be "assessments"). The cooling-off period shall be fifteen consecutive calendar days from the date of such proportionate charge; provided however, that if one or more subsequent events described in clauses (i) through (vi) of Rule 1006(a) occur during the fifteen-day period and result in one or more proportionate charges against the Clearing Fund, the cooling-off period shall be extended through (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth calendar day from the date of the initial proportionate charge, whichever is sooner. After the cooling-off period ends, Clearing Members shall not be liable for any deficiency arising from losses or expenses suffered by the Corporation as a result of any event described in clauses (i) through (vi) of Rule 1006(a) that occurred during the cooling-off period. Each Clearing Member shall have and shall at all times maintain the ability to make good any deficiency described in this Rule 1006(h) by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) the first Settlement Time on the first business day following the day on which the Corporation notifies notification to the Clearing Member of such deficiency or such later time as provided by the Corporation.