

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 214	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 002 Amendment No. (req. for Amendments *)
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Filing by Options Clearing Corporation  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

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

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
(Title \*)

Date  Vice President, Regulatory Filings  
 By    
 (Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

Add Remove View

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

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

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Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

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

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

This proposed rule change by The Options Clearing Corporation (“OCC”) concerns modifications and enhancements to OCC’s governance arrangements. OCC is proposing to amend its Certificate of Incorporation, By-Laws, and Board of Directors (“Board”) Charter to require that only one Management Director serve on OCC’s Board (as opposed to the current requirement of two Management Directors). Moreover, OCC is proposing to amend its By-Laws and Rules to delete all references to the title and responsibilities of the Management Vice Chairman. In addition, 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) modify the composition requirements of the Risk Committee (“RC”) to, among other things, provide that an Exchange Director be a member of the Risk Committee; (iii) provide for action by the OCC Board in the nomination process for Member Directors and Public Directors; (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single section of the By-Laws. Finally, OCC is proposing amendments to the Charters of the Board and the AC, CPC, Governance and Nominating Committee (“GNC”), RC, and Technology Committee (“TC”) (collectively, “Board Committees” or “Committees” and each a “Board Committee” or “Committee”) that stem from scheduled reviews of such documents.

Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is marked by underlining and material proposed to be deleted is enclosed in bold brackets. The proposed amendments to OCC’s Certificate of Incorporation are attached as Exhibit 5A.

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

Amendment No. 1 to the Amended and Restated Stockholders Agreement, which would replace Sections 2 and 3 of the Amended and Restated Stockholders Agreement, is attached hereto as Exhibit 5B with material proposed to be added marked by underlining. The Board Charter (including OCC's Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards")), AC Charter, CPC Charter, GNC Charter, RC Charter, and TC Charter, with changes marked, are attached hereto as Exhibits 5C through 5H. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

\* \* \*

THE OPTIONS CLEARING CORPORATION

BY-LAWS

\* \* \*

ARTICLE I

**Definitions**

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

**A.**

(1) - (12) *No change*

(13) The term "approved depository" means a bank or trust company approved by the Executive Chairman[, the Management Vice Chairman] or the President.

(14) - (16) *No change*

**B. – Z.** *No change*

\* \* \*

ARTICLE II

**Meetings of Stockholders**

\* \* \*

**Notice of Meetings**

SECTION 4. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than forty days before the date of the meeting, or in case of a merger or consolidation not less than twenty nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the Executive Chairman[, the Management Vice Chairman,] or the Secretary, or the persons calling the meeting, to each stockholder of record. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails addressed to the shareholder at his address as it appears on the records of the Corporation, with postage thereon prepaid.

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ARTICLE III

**Board Directors**

\* \* \*

**Number of Directors**

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

SECTION 2 – 3. *No Change*

**[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

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<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.

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 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.

- (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.
- (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.
- (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>3</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>4</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 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>5</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

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<sup>3</sup> Language relocated from Article III, Section 4 without alteration.

<sup>4</sup> Language relocated from Article III, Section 9 with modifications (discussed below).

<sup>5</sup> The description of the TC would be relocated from Article III, Section 9 without alteration.



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 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.

SECTION 6. *No Change*

### **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.]

...Interpretations and Policies: *No change*

SECTION 7 – 8. *No change*

#### **[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>6</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.]

## **Resignations**

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

SECTION 11. *No change*

## **Filling of Vacancies and Newly Created Directorships**

SECTION 12. A vacancy occurring for any reason among the Member Directors of any Class shall be filled by a majority of the directors then in office, even though they may be less than a quorum, and the person appointed to fill such vacancy shall serve until the next election of such Class and until a successor shall be elected and qualified; provided that the vacancy shall be filled only by the appointment of a person recommended by the Governance and Nominating Committee. A vacancy or newly created directorship occurring for any reason among the Exchange Directors shall be filled by the Exchange entitled to elect such Exchange Director. A vacancy occurring for any reason among the Public Directors shall be filled by a majority of the directors then in office, even though they may be less than a quorum, with a person, not affiliated with any national securities exchange or national securities association or with any broker or

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<sup>6</sup> *Id.*

dealer in securities, selected as provided in Section 6A of this Article III (including the recommendation of the Governance and Nominating Committee), and the person appointed to fill such vacancy shall serve for the remainder of the predecessor's term of office and until a successor shall be elected and qualified. A vacancy occurring for any reason in [either] the position of Management Director shall be filled by a majority of the directors then in office, even though they may be less than a quorum, only with the person elected or appointed to fill the office of Executive Chairman [or President] of the Corporation[, whichever was held by the person whose position was vacated].

SECTION 13 – 14. *No change*

### **Emergency Powers**

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

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

(c) - (d) *No change*

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

(f) *No change*

...Interpretations and Policies. *No change*

\* \* \*

## 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, who shall by virtue of his office be a Management Director of the Corporation, shall be elected by the Board of Directors from among the full-time employees of the Corporation. Also upon the nomination of the Governance and Nominating Committee, [A]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.

#### **Appointment by Executive Chairman or President**

SECTION 2. The Executive Chairman may appoint such officers, in addition to those elected by the Board of Directors, and such agents as he shall deem necessary or appropriate to carry out the functions assigned to him, and the President may appoint such officers, in addition to those elected by the Board of Directors, and such agents as he shall deem necessary or appropriate to carry out

the functions assigned to him, in each case who shall hold their respective positions for such terms and shall exercise such powers and perform such duties as determined from time to time by the Executive Chairman or President, as applicable; provided that only the Board of Directors may elect an Executive Chairman, President, [Management Vice Chairman,] Secretary or Treasurer of the Corporation.

SECTION 3 – 6. No change

### **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.

### **President**

SECTION 8. The Board of Directors shall elect a President of the Corporation who shall be its Chief Operating Officer. The President shall be responsible for all aspects of the business of the Corporation that do not report directly to the Executive Chairman, shall administer the day to day affairs and business of the Corporation in accordance with the directions of the Executive Chairman and shall have supervision of the officers and agents appointed by him. In the absence or disability of the Executive Chairman [and the Management Vice Chairman], the President shall fulfill the duties and have the powers of the Executive Chairman, except that the President shall not preside at meetings of the Board of Directors or the stockholders.

### **Vice Presidents**

SECTION 9. To the extent such offices are filled by the Board of Directors, the Executive Chairman or the President, the Vice Presidents shall perform the respective duties and exercise the respective powers assigned to them by the Board of Directors or the Executive Chairman or President, as applicable. In the absence or disability of the Executive Chairman[, the Management Vice Chairman (if elected and serving),] and the President, the Vice Presidents shall, in the order of their seniority or such order as may have been specified by the Board of

Directors, the Executive Chairman or the President at the time of their election, perform the duties and exercise the powers of the Executive Chairman and the President, except that no Vice President shall preside at meetings of the Board of Directors or the stockholders.

\* \* \*

## ARTICLE V

### CLEARING MEMBERS

#### Qualifications

SECTION 1. *No change*

...Interpretations and Policies:

**.01 – .02** *No change*

**.03** Experience and Competence

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

a. – e. *No change*

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

**.04 - .11** *No change*

SECTION 2. *No change*

**Conditions to Admission**

SECTION 3. *No change*

...Interpretations and Policies:

**.01** Each applicant that has been approved for clearing membership subject to satisfaction of specified conditions shall meet all conditions applicable to its admission within six months from the date on which its application was approved, unless the Board of Directors prescribed an earlier date at the time the applicant was approved for clearing membership. In the event that an applicant fails to meet such conditions within the applicable time period, the approval of the application shall be deemed withdrawn and the application shall be deemed to have lapsed, unless the Corporation shall determine to extend the deadline for fulfilling such conditions. Any applicant seeking an extension under this paragraph shall submit a written request to the Secretary, specifying in detail any material changes that have occurred in applicant's financial condition, operational capability and experience and competence in clearing securities transactions from the date on which its application for clearing membership was approved by the Board of Directors. The Executive Chairman[, the Management Vice Chairman,] or the President shall have the authority to approve or disapprove the applicant's request for an extension, which shall be communicated in writing to the applicant. In no event may that deadline be extended beyond one year from the date the application originally was approved.

\* \* \*

ARTICLE VI

**Clearance of Confirmed Trades**

\* \* \*

**Exercise Restrictions**

SECTION 17. (a) – (b) *No change*

...Interpretations and Policies:

**.01** The Executive Chairman, [the Management Vice Chairman,] the President, or the delegatee of any of the foregoing shall have the authority to act on behalf of the Corporation in imposing exercise restrictions pursuant to this Section 17(b).

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## ARTICLE VIII

**Clearing Fund**

\* \* \*

**Application of Clearing Fund**SECTION 5. (a) – (d) *No change*

(e) If (i) the Corporation deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (b) but elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund; and in either case the Corporation determines that it will be unable to borrow or otherwise obtain such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation and use such assets to borrow or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions); provided, in the case of any transaction effected under the circumstances specified in clause (i) above, that the funds obtained through such transaction will be used solely for the purposes described in clause (i). The funds obtained by the Corporation pursuant to this paragraph (e), irrespective of how such funds are applied, shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Section. If all or a part of any transaction effected by the Corporation pursuant to this paragraph (e) remains outstanding after thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount of Clearing Fund assets used to support the Corporation's obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Section.

(f) – (g) *No change*...Interpretations and Policies: *No change*

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ARTICLE IX

**General Provisions**

\* \* \*

**Certificates for Shares**

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

SECTION 13. *No change*

**Suspension of Rules in Emergency Circumstances**

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

(b) – (c) *No change*

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## THE OPTIONS CLEARING CORPORATION

## RULES

\* \* \*

## CHAPTER III

**Financial Requirements**

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

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

(b) If the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation shall at any time determine that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose restrictions on such Clearing Member's facilities management activities or activities as an Appointed Clearing Member, such officer shall have the authority to prohibit such Clearing Member from engaging in such activities or to impose such limitations on such activities as such officer deems necessary or appropriate in the circumstances.

(c) Any action taken by the Executive Chairman[, the Management Vice Chairman,] or the President with respect to a Clearing Member pursuant to paragraph (a) or (b) shall be subject to review by the Risk Committee of the Corporation upon submission by the Clearing Member of a request for review to the Secretary of the Corporation within five business days of the date such action is taken. The Risk Committee shall schedule an early hearing. The Clearing Member shall

be given not less than one day's notice of the place and time of such hearing. At the hearing, the Clearing Member shall be afforded an opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A verbatim record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Risk Committee, be charged in whole or in part to the Clearing Member if the Risk Committee does not modify the action of the Chairman[, the Management Vice Chairman,] or President. The Clearing Member shall be notified in writing of the outcome of the Risk Committee's review.

(d) *No change*

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

**.01 - .06** *No change*

**.07** The Clearing Member is experiencing such operational difficulties that the Executive Chairman[, the Management Vice Chairman,] or the President determines that action under Rule 305 is necessary or advisable in the circumstances.

**.08 - .09** *No change*

**.10** The Clearing Member, the Appointed Clearing Member of the Clearing Member or CDS (if the Clearing Member is a Canadian Clearing Member described in Rule 901) is experiencing such difficulty in meeting its obligations to the correspondent clearing corporation that the Executive Chairman[, the Management Vice Chairman,] or the President determines that action under Rule 305 is necessary or advisable in the circumstances.

**.11 - .12** *No change*

RULE 306 – 308 *No change*

**RULE 309 - Managing Clearing Members and Managed Clearing Members**

(a) – (c) *No change*

(d) At any time when the net capital of a Managing Clearing Member shall be less than the minimum amount prescribed by paragraph (b) of this Rule 309, the Managing Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Managing Clearing Member and every Managed Clearing Member for which the Managing Clearing Member provides facilities management services.

(e) – (f) *No change*

*...Interpretations and Policies:*

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

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

**RULE 309A - Appointed Clearing Members and Appointing Clearing Members**

(a) – (b) *No change*

(c) At any time when the net capital of a Appointed Clearing Member shall be less than the minimum amount prescribed by paragraph (a) of this Rule 309A, the Appointed Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Appointed Clearing Member and each of its Appointing Clearing Members.

*...Interpretations and Policies: No change*

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## CHAPTER V

### Daily Cash Settlement

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#### **RULE 505 - Extension of Settlements**

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

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## CHAPTER VI

**Margins**

\* \* \*

**RULE 609A - Waiver of Margin**

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

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## CHAPTER VIII

**Exercise and Assignment**

\* \* \*

**RULE 801 - Exercise of Options**

Issued and unexpired option contracts may, subject to Exchange Rules and the By-Laws, be exercised as follows:

(a) – (c) *No change*

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

(1) – (4) *No change*

(5) The Corporation may remit, in whole or in part, any late filing fee imposed pursuant to subparagraph (d)(2), if the Executive Chairman[, Management Vice Chairman] or the President finds that the filing giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member and its customer, or that remission is otherwise equitable in the circumstances.

(6) *No change*

Rule 802 – 803 *No change*

#### **RULE 804 - Allocation of Exercises**

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

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

**.01** *No change*

#### **RULE 805 - Expiration Exercise Procedure**

(a) – (h) *No change*

(i) The Corporation may remit, in whole or in part, any filing fee imposed pursuant to subparagraph (g), if the Executive Chairman[, Management Vice Chairman] or President finds that the tendering of the supplementary exercise notice giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member or its customer, or that



remission is otherwise equitable under the circumstances.

(j) - (m) *No change*

**...Interpretations and Policies:** *No change*

\* \* \*

## Chapter IX

### Delivery of Underlying Securities and Payment

Introduction *No change*

#### **RULE 901 Settlement Through Correspondent Clearing Corporations**

(a) - (c) *No change*

(d) A specification in any Delivery Advice that settlement is to be made through the facilities of the correspondent clearing corporation may be revoked by the Corporation at any time prior to the opening of business on the delivery date by an appropriate notice to the Receiving and Delivering Clearing Members. In the event of such revocation, delivery and payment shall be made in accordance with Rules 903 through 912; provided, however, that the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation may, upon the application of the Receiving or the Delivering Clearing Member, extend or postpone the time for delivery to a date not more than three business days after the date of such revocation

(e) – (h) *No change*

**...Interpretations and Policies:** *No change*

RULE 902 *No change*

#### **RULE 903- Obligation to Deliver**

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

maturity date of the applicable series, provided that:

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

(b) the Executive Chairman[, Management Vice Chairman] or President or delegate of such officer may extend or postpone the time for delivery whenever, in such person's opinion, such action is required in the public interest or to meet unusual conditions.

**...Interpretations and Policies:** *No change*

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## Chapter XI

### Suspension of a Clearing Member

\* \* \*

#### **RULE 1104 - Creation of Liquidating Settlement Account**

(a) *No change*

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

(c) – (f) *No change*

**...Interpretations and Policies:** *No change*

RULE 1105 *No change*

**RULE 1106 - Open Positions**

(a) – (d) *No change*

(e) Exceptions.

(1) Notwithstanding the preceding provisions of this Rule, if the Executive Chairman[, the Management Vice Chairman,] or the President shall determine in his discretion, taking into account the size and nature of a suspended Clearing Member's positions, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as such officer deems relevant, that the closing out of some or all of the suspended Clearing Member's unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, would not be in the best interests of the Corporation, other Clearing Members, or the general public, such positions need not be closed out, provided that any determination made pursuant to this paragraph shall be reported to the Board of Directors within 24 hours. This paragraph shall not apply to positions of any suspended Clearing Member as to which an application for a protective decree may be filed under Section 5(a)(3) of the Securities Investor Protection Act of 1970, as amended, except upon a determination by the Executive Chairman[, the Management Vice Chairman,] or the President in his discretion, taking into account the circumstances enumerated in the preceding sentence, that the closing out of the suspended Clearing Member's open positions in accordance with the other provisions of this Rule would likely result in a loss to the Corporation (after application of such Clearing Member's margin and Clearing Fund deposits but before any proportionate charge to the Clearing Fund deposits of other Clearing Members).

(2) *No change*

(f) *Protective Action.*

If the Executive Chairman[, the Management Vice Chairman,] or the President of the Corporation shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to liquidate any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to liquidate any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within

such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours, and any such transactions that are executed shall be reported to the Risk Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account, and (iii) costs, expenses and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

**...Interpretations and Policies:** *No change*

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### Chapter XIII

#### Futures, Futures Options and Commodity Options

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#### **RULE 1309 - Disciplinary Action for Failure to Deliver or Receive**

If, without good cause, a Delivering Clearing Member fails to discharge its delivery obligations under Rule 1308A or 1308B, or a Receiving Clearing Member refuses to accept or fails to pay the settlement amount for an underlying interest tendered to it pursuant to Rule 1308A or 1308B, such failure or refusal may be deemed to constitute a delay embarrassing the operations of the Corporation, and may be subject to discipline under Chapter XII of the Rules. The Executive Chairman[, the Management Vice Chairman,] or President of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or receive.

**...Interpretations and Policies:** *No change*

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## Chapter XIV

### Treasury Securities Options

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#### **RULE 1402 - Exercise Settlement Date for Treasury Securities Options**

(a) The exercise settlement date for Treasury securities options shall be the second business day following the expiration date.

(b) The Executive Chairman[, Management Vice Chairman,] or the President of the Corporation, or the delegate of any such officer, may extend or postpone any exercise settlement date for Treasury securities options whenever, in its opinion, such action is required in the public interest or to meet unusual conditions.

RULE 1403 – 1404 *No changes*

#### **RULE 1405 - Disciplinary Action for Failure to Match**

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

**...Interpretations and Policies:** *No change*

\* \* \*

**Chapter XVI**

**Foreign Currency Options**

\* \* \*

**RULE 1604 - Exercise Settlement Date for Foreign Currency Options**

(a) *No change*

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

*...Interpretations and Policies: No change*

RULE 1605 - 1609

**RULE 1610 - Disciplinary Action for Failure to Deliver or Pay**

If, without good cause, a Delivering Clearing Member fails to discharge its guarantee or delivery obligations under Rule 1606, or a Paying Clearing Member fails to pay the settlement amount due pursuant to Rule 1606, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman[, the Management Vice Chairman,] or President of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or pay.

*...Interpretations and Policies: No change*

\* \* \*

**Chapter XXI**

**Cross-Rate Foreign Currency Options**

\* \* \*

**RULE 2104 - Exercise Settlement Date for Cross-Rate Foreign Currency Options**

(a) *No change*

(b) The Executive Chairman[, Management Vice Chairman] or President or delegate of such officer may advance or postpone any exercise settlement date for cross-rate foreign currency options whenever, in his or her opinion, such action is required in the public interest or to meet unusual conditions

*...Interpretations and Policies: No change*

RULE 2105 – 2109

**RULE 2110 - Disciplinary Action for Failure to Deliver or Pay**

If, without good cause, a Paying Clearing Member fails to pay the Payment Amount pursuant to Rule 2106, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman[, the Management Vice Chairman,] or President of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or pay.

*...Interpretations and Policies: No change*

\* \* \*

**Chapter XXIV**

**Flexibly Structured Index Options Denominated in a Foreign Currency**

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**RULE 2408 - Disciplinary Action for Failure to Pay**

If, without good cause, a FX Index Option Clearing Member fails to pay the settlement amount due pursuant to Rule 2405, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman[, the Management Vice Chairman,] or President of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to pay.

*...Interpretations and Policies: No change*

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**Item 2. Procedures of the Self-Regulatory Organization***Procedures Concerning Submission of Certificate of Incorporation, By-Laws, and Rules 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 sections of the By-Laws that identify the committees of the Board into a single section of the By-Laws. 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. 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 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, including the proposed Amendment No. 1 to the Amended and Restated Stockholder Agreement. On that same date, the holders of all the outstanding common stock of OCC also unanimously consented to such By-Law amendments.

At a meeting of the Board held on May 4, 2016, the Board approved for filing with the Commission proposed amendments to its Certificate of Incorporation, By-Laws, Rules, and Board Charter to eliminate one Management Director position on OCC's Board and to delete all references to the title and responsibilities of the Management Vice Chairman. OCC expects to receive unanimous stockholder consent for the proposed changes to its Certificate of



Incorporation and the amendments to Article III, Sections 1, 10, 12, and 15 of its By-Laws following the July 2016 meeting of its Board. OCC will amend the proposed rule change at that time to confirm stockholder approval of those changes.

*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 July 22, 2015, the Board approved for filing with the Commission additional amendments to the Charters for OCC's AC, CPC, GNC, 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 May 4, 2016, the Board approved for filing with the Commission additional amendments to the Board, AC, CPC, GNC, RC and TC Charters

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 modifications and enhancements to OCC's governance arrangements. Specifically, as a result of the Board's continual evaluation of OCC's governance arrangements, OCC is proposing to change the composition requirements of its Board to require that one Management Director serves on

OCC's Board (as opposed to two) and to eliminate the role of Management Vice Chairman to provide more clarity and transparency regarding the status of these roles at OCC. In addition, OCC is proposing to amend its By-Laws to, among other things: (i) provide that the CPC and the AC each will be chaired by a Public Director to underscore and reinforce the independence of those committees and align with governance best practices and practices of other self-regulatory organizations; (ii) modify the composition requirements of the RC, including to provide that an Exchange Director be a member of the RC to provide the RC with additional expertise and unique perspective on matters such as market risk and special risks arising from trading practices and strategies, and new products; (iii) provide for Board action in the nomination process for Member Directors and Public Directors of OCC's Board to ensure an appropriate level of oversight and participation by the Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications; (iv) eliminate term limits for Public Directors in the interest of ensuring that OCC has access to the full benefits of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as that knowledge develops over time; and (v) consolidate By-Laws sections that identify the committees of the Board into a single section of the By-Laws to provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is also proposing amendments to the Charters of OCC's Board, AC, CPC, GNC, RC, and TC that stem from scheduled reviews of such documents. The proposed amendments to the Board and Committee Charters are designed, in general, to provide more clarity and transparency around the oversight functions and responsibilities of the Board and each of its Committees and provide for a more comprehensive and robust oversight framework for the

financial reporting, audit and compliance, compensation and performance, governance and nomination, risk, and technology functions at OCC.

The proposed amendments to OCC's Certificate of Incorporation, By-Laws, Rules, Board and Committee Charters, and Amended and Restated Stockholders Agreement are described in detail below.

### **Proposed Amendments to OCC's Certificate of Incorporation**

OCC is proposing to amend its Certificate of Incorporation to state that the number of Management Directors serving on OCC's Board shall be such number as shall be fixed by or pursuant to OCC's By-Laws.<sup>7</sup> The purpose of this proposed change is ultimately to require that only one Management Director shall serve on OCC's Board as OCC is also proposing to amend its By-Laws to state that one Management Director shall serve on OCC's Board (as discussed in more detail below). The proposed amendments would also ensure consistency between all of OCC's governing documents concerning the number of Management Directors on OCC's Board. OCC's Certificate of Incorporation and By-Laws currently state that OCC's Board shall be composed of Members Directors, Exchange Directors, Public Directors, and two Management Directors. Recently, however, there has been a vacancy for one Management Director position and only one Management Director is serving on the Board at this time.<sup>8</sup> OCC's Board

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<sup>7</sup> The number of Management Directors required to serve on OCC's Board would be stipulated by Article III, Section 1 of OCC's By-Laws. Article XI, Section 1 of OCC's By-Laws states that Article III of the By-Laws may not be amended by action of the Board without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. Accordingly, any proposed change in the number of Management Directors required to serve on OCC's Board would continue to be subject to stockholder approval.

<sup>8</sup> In 2014, 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 (the Executive Chairman) 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).

continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience since the vacancy of the second Management Director position, believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Furthermore, OCC notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board.<sup>9</sup> Accordingly, OCC believes that the proposed amendments would continue to provide for prudent governance arrangements at OCC. OCC is also proposing conforming changes to the Board Charter as described below.

### **Proposed Amendments to OCC's By-Laws and Rules**

#### *Number of Management Directors on OCC's Board*

OCC is proposing to amend Article III, Section 1 of its By-Laws to state that only one Management Director will serve on OCC's Board (as opposed to the current requirement of two). As noted above, OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and believes that amending the Board composition to require one Management Director on OCC's Board would

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<sup>9</sup> In 2013, the Commission approved a proposed rule change by OCC to provide for the separation of the powers and duties combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman and President, and to create an additional directorship to be occupied by the President. *See* Securities Exchange Act Release No. 34-70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09).

continue to provide an appropriate level of management representation in the Board-level oversight of OCC. OCC is also proposing conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, would be serving on OCC's Board.

*Elimination of Management Vice Chairman Role*

OCC proposes to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. During that time, the thought process surrounding leadership roles at OCC has evolved. OCC believes that any of the responsibilities of the Management Vice Chairman are already appropriately handled by other officers of OCC, primarily the Executive Chairman and President (or where applicable, other officers such as the Secretary or Directors such as the Member Vice Chairman<sup>10</sup>) and as a result, this role is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office, ensure consistency across all of OCC's governing documents, and provide more clarity and transparency regarding OCC's intended governance arrangements.

In particular, OCC is proposing to amend (i) By-Laws Article I.A.(13); Article II, Section 4; Article III, Section 15; Article IV; Article V, Sections 1 and 3; Article VI, Section 17; Article VIII, Section 5; Article IX, Sections 12 and 14 and (ii) Rules 305, 309, 309A, 505, 609A, 801,

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<sup>10</sup> For example, under proposed revisions to Article IV, Section 7, the Member Vice Chairman would preside over Board and stockholder meetings in the absence of the Executive Chairman.

804, 805, 901, 903, 1104, 1106, 1309, 1402, 1405, 1604, 1610, 2104, 2110, and 2408 to remove all references to and responsibilities of the role of Management Vice Chairman.

*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, GNC, RC, and TC 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>11</sup> the TC,<sup>12</sup> and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4<sup>13</sup> and add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws in order to provide a more transparent, centralized, and unified statement describing all of the Board Committees. In addition, OCC proposes to make a non-substantive drafting clarification to existing language being relocated from Article III, Section 9 to the introductory section of Article III, Section 4 to clarify that the Board is required to designate persons to serve on the specifically enumerated Committees therein.

The proposed description of the AC would reflect existing requirements in the AC and GNC Charters 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

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<sup>11</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 4, *infra* note 19, and related text.

<sup>12</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>13</sup> *See supra* notes 2-5.

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 the existing requirement that, on an annual basis, the Board of Directors shall appoint a CPC and that the CPC generally consists of the Executive Chairman, the Member Vice Chairman, and at least one Public Director.<sup>14</sup>

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). OCC believes that consolidating the descriptions of all Board Committees into Article III, Section 4 of its By-Laws would provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is proposing amendments to Article IV, Section 1 of the By-Laws to provide that the Board will elect the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elect the President of OCC (in addition to the Secretary and Treasurer). In addition, OCC proposes amendments to Article IV, Section 7 to delete a requirement that the Member Vice Chairman preside at the meetings of any Committee of the

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<sup>14</sup> The proposed description of the CPC in the By-Laws includes the general requirement that CPC shall include the Executive Chairman, the Member Vice Chairman, and at least one Public Director. The proposed description is not intended to change the more specific CPC composition requirements in the CPC Charter that the committee consist of a Public Director chair, the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board.

Board of Directors charged with the responsibility for evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director. OCC also proposes amendments to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board.<sup>15</sup>

*Compensation and Performance Committee and Audit Committee Independence*

In addition to the proposed changes described above, OCC is also proposing 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>16</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.<sup>17</sup> 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). The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,<sup>18</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

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<sup>15</sup> See OCC's By-Laws Article IV, Section 8.

<sup>16</sup> See Article III Section 6A of OCC's By-Laws regarding Public Directors.

<sup>17</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>18</sup> See OCC's By-Laws Article III, Section 3 and Section 5.



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 to modify the composition requirements of OCC's RC. Existing Article III, Section 9 of OCC's By-Laws currently requires that the RC shall consist of the Executive Chairman, 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. OCC is proposing to replace this description of the RC with new Article III, Section 4(d), which would relocate and modify the RC composition requirements to (i) provide that an Exchange Director<sup>19</sup> be a member of the RC and (ii) require that at least one Member Director serve on the RC (as opposed to the current minimum requirement of four Member Directors) and (iii) remove a specific requirement that one of the Member Directors on the RC be the Member Vice Chairman.

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<sup>19</sup> See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

The GNC 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 the 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, strategies and new products.

In addition, the GNC recommended, and the Board approved, a reduction in the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. OCC believes that Member Director participation on the RC is vital and would therefore continue to require that at least one Member Director serves on the RC. OCC also believes, however, that it is necessary and appropriate to maintain flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC.

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

OCC is proposing to make amendments to Article III, Sections 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman, and Member Vice Chairman in conformance with the process set forth in

the GNC Charter.<sup>20</sup> Currently, Board action is not a part of the annual election process for Member Directors and Public Directors as described in the By-Laws and the Amended and Restated Stockholders Agreement. The proposed 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. OCC believes that the proposed rule change would help ensure an appropriate level of oversight and participation by the full Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications.

*Elimination of 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>21</sup> Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of

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<sup>20</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).

<sup>21</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.

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.

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

#### *Amendments to the Board Charter and the Fitness Standards*

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 By-Laws; (iii) reflect recent changes involving Board Committee Charters; (iv) in general, restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's 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 to reflect the elimination of the role of Management Vice Chairman as described above. As a result, 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 the Executive Chairman or his designee)

and to specify that the Executive Chairman shall consult with the Corporate Secretary (in addition to other directors or officers) when establishing Board meeting agendas.

OCC also proposes amendments intended to strengthen the Board's governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. In particular, the proposed amendments would: (i) require that the Board meet in executive session at each regular meeting of the Board; (ii) allow the Board to determine who will participate in such sessions; (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest; and (iv) require the Board to select a Director to chair executive sessions in the absence of the Executive Chairman. The proposed amendments would also require that Board meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. Specifically, the chair of the executive session would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Board meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed Certificate of Incorporation and By-Laws changes described above. The

Board Charter would also be amended to reflect an increase in the number of Public Directors serving on the Board from three to five.<sup>22</sup>

Additionally, in order to achieve a balanced representation on the Board among Member Directors, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors should 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. The proposed amendments reinforce the existing requirement in Article III, Section 5 of OCC's By-Laws that the GNC 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. OCC proposes to remove geographic location of Clearing Members as a factor for consideration as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone as currently provided in the Code of Conduct for OCC Directors. Attendance by telephone would be generally discouraged because OCC believes

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<sup>22</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).

the Board may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Board members were to meet in person.

#### Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily 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 as well as the Board's Corporate Governance Principles<sup>23</sup> and (ii) restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of 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, OCC is proposing to remove the obligation 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>24</sup>

OCC also proposes amendments to Section IV of the Board Charter designed to provide for prudent governance arrangements emphasizing that the Board's oversight role should operate

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<sup>23</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>24</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 5C.

in a manner consistent with its responsibilities as a designated systemically important financial market utility. 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) as well as reviewing the annual study and evaluation of OCC's system of internal accounting controls; (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>25</sup> 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.

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

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<sup>25</sup> OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services.

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 TC<sup>26</sup> the GNC, and renaming of the Performance Committee to the CPC, as described herein. In addition OCC is proposing to amend Section I of the Board Charter to more accurately state 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 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 Article III of OCC's By-Laws and the relevant 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

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<sup>26</sup> See *supra* note 12.

underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility.

*Common Amendments to Each Committee Charter*

OCC is proposing to make conforming amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.<sup>27</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. 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 because 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.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the

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<sup>27</sup> See *supra* note 20.

convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. Specifically, each Committee Charter would be amended to: (i) require that each Committee meet in executive session at each regular meeting of the Committee; (ii) allow the Committee to determine who will participate in such sessions; and (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest. The proposed amendments would also require that each Committee's meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. In particular, the Chair (or Acting Chair) would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Committee meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval. Generally speaking, Committees must obtain pre-approval from the Board to hire advisors. While not universal, OCC's understanding is that public company board committees frequently are authorized to engage advisors without board pre-approval at the company's expense to preserve autonomy and independence and to assist them in the execution of their responsibilities as deemed necessary. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its

delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms.

OCC is also proposing amendments to its Committee Charters to specify that that each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process.

#### *Amendments to the Audit Committee Charter*

OCC proposes amendments to the AC Charter intended to, among other things: (i) reinforce the independence of the AC; (ii) more accurately memorialize 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 organizational changes to 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. The proposed amendments to change "independent accountants" to "external auditors" are not

intended to signify a change in roles or responsibilities but to more accurately state that the activities described in the AC Charter as being performed by “independent accountants” are actually performed by a party acting in its capacity as OCC’s “external auditor.”

OCC also proposes amendments to Section II of the AC Charter that are intended to reinforce 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>28</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>29</sup> OCC also proposes to revise the AC Charter to state that the AC will meet regularly, and no less than once annually (as opposed to “at least annually”), with management, OCC’s Chief Financial Officer, Chief Audit Executive (“CAE”) and Chief Compliance Officer (“CCO”) in executive sessions to discuss certain private matters. The purpose of this change is to signify 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 attendance at an AC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have

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<sup>28</sup> The change concerning the AC Chair would conform the AC Charter to proposed Article III, Section 4(a) of OCC’s By-Laws, as described above.

<sup>29</sup> In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person.

OCC also proposes to amend the AC Charter to provide that the AC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the AC and the Board is in line with requirements in other Committee Charters.

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>30</sup> In addition to more accurately reflecting current Committee practice, it would conform the AC charter to OCC's other Committee Charters (i.e., the CPC, GNC, RC and TC Charters) with respect their authority to hire advisors and approve related fees and retention terms. As noted above, each of OCC's Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval in order to foster Committee independence as well as timely access to relevant expertise from outside specialists or advisors. The proposed amendments would clarify that this authority also extends to the approval of related fee and retention terms.

#### Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to reinforce 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

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<sup>30</sup> OCC is also proposing to remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement would be replaced by a broader expression of the AC's authority to hire advisors.

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 more accurately memorialize 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>31</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 with external auditors any audit problems or difficulties, and management's response thereto.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter to state that the AC is required to: (i) discuss with management the timing and process for implementing a rotation of the engagement partner of the

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<sup>31</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.



external auditor and any other active audit engagement team partner; (ii) monitor and evaluate 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 to state that the AC's responsibilities include reviewing and approving the Internal Audit Policy on an annual basis and monitoring ongoing internal audit activities. OCC also proposes amendments to state that the AC is responsible for approving OCC's annual internal audit plan and approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan to explicitly codify these existing AC practices in the AC Charter. OCC believes that the AC, which serves as an independent and objective party tasked with the oversight of OCC's system of internal control, auditing, accounting, and compliance processes, is the appropriate body to approve OCC's internal audit plan and any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan. The proposed amendments would provide more clarity and transparency regarding OCC's governance arrangements by codifying these responsibilities in the AC Charter.

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 provide that the CAE and CCO would each report functionally to the AC and administratively to the Executive Chairman.<sup>32</sup> The proposed amendments would make more explicit the reporting lines for these functions and underscore the independence of the CAE and CCO. 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,

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<sup>32</sup> This change would explicitly note existing reporting lines in the AC Charter, but would not revise those reporting lines. These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

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. The proposed changes related to the performance and compensation setting regime for the CAE and CCO are intended to reflect the fact that the CAE and CCO report administratively to the Executive Chairman while reporting functionally to the AC.

*Amendments to the Compensation and Performance Committee Charter*

OCC is proposing changes to its CPC Charter to explicitly describe the Committee's functions and responsibilities with respect to OCC's human resources, compensation and employee benefit programs, and insurance programs. The proposed amendments would also provide for CPC oversight of OCC's Capital Plan in recognition of the importance of providing for Board-level oversight to ensure OCC's capital and Capital Plan meet or exceed minimum regulatory standards. 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 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 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 to state that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the CPC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

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>33</sup> The CPC Charter would also be

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<sup>33</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.

amended to require that minutes of Committee meetings be circulated to the Board in conformance with general requirements applicable to all Board Committees.<sup>34</sup>

OCC also proposes an amendment to the CPC Charter under which attendance at a CPC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. 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 organizational changes in Section III regarding the delegation of authority to the Administrative Committee that do not change the meaning of the rule text.

#### Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide 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 framework for the CPC's oversight functions. The proposed changes are described in more detail below.

Additionally, OCC proposes to remove explicit requirements in Section IV that the CPC review the Corporate Plan and Budget and OCC's performance under the Corporate Plan at each regularly scheduled meeting in favor of more general descriptions regarding the CPC's responsibilities for the oversight of the corporate financial planning process, including the corporate budget, and corporate goals and objectives. The proposed amendments are intended to

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<sup>34</sup> This requirement is already included in the AC, GNC, RC, and TC Charters.

accommodate CPC review of annual Corporate Plans and Budgets and performance thereunder (as currently contemplated by the CPC Charter) as well as consideration of longer-term horizons and implications in the strategic planning process.

*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 would state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,<sup>35</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

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<sup>35</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).

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 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. The proposed amendments would also require the CPC to review and approve 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. Additionally the proposed amendments would 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 from the CPC Charter certain statements regarding the review of OCC's performance under the Corporate Plan and the oversight of the administration of OCC's compensation plans as these responsibilities would be covered under the newly proposed descriptions contained therein. OCC believes that it is prudent and appropriate to provide for CPC oversight in the areas of human resources, performance, and compensation and that the proposed amendments will enhance OCC's overall governance arrangements with respect to the oversight and review of performance and compensation at OCC.

*Oversight of Employee Benefit Programs and Other Responsibilities*

OCC also proposes amendments to Section IV of the CPC Charter related to the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter to specify 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 specify 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 performing such other oversight duties as called for in retirement, retirement and savings, and welfare plan documents.

OCC further proposes amendments that state 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.

#### *Amendments to the Risk Committee Charter*

OCC is proposing amendments to its RC Charter which are primarily intended to enhance OCC's governance arrangements with respect to the RC's oversight functions and responsibilities. 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) and to reflect the adoption of the TC. The proposed changes are described as follows.

##### Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter to provide that the RC would be responsible for coordinating risk oversight with other Board Committees tasked with overseeing certain risks (e.g., the TC, which assists the Board in overseeing OCC's information technology risks) in order to achieve comprehensive and holistic oversight of OCC's risk-related matters. The proposed amendments would also provide that the RC is responsible for the review of material policies and processes associated with risks related to new initiatives.

In Section II of the RC Charter, OCC proposes amendments to provide that attendance at a RC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of

interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to remove from the RC Charter, and by extension its rules, a requirement that a RC 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. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors,<sup>36</sup> which governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, OCC notes that, as a corporation incorporated in the state of Delaware, OCC's Directors have a fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders<sup>37</sup> and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director.<sup>38</sup>

With respect to RC meetings, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters. The purpose of the proposed change is to signify that these meetings occur more frequently than once per year. The proposed changes would also more specifically require that the RC meet in executive session regularly with

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<sup>36</sup> See Code of Conduct for OCC Directors available at <http://www.optionsclearing.com/components/docs/about/corporate-information/occ-code-of-conduct.pdf>.

<sup>37</sup> See *Cede & Co. v. Technicolor*, 634 A.2d 345, 360-361 (Del. 1993)

<sup>38</sup> See *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. 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. Furthermore, OCC proposes to amend Section II of the RC Charter to state that, unless a Chair is elected by the full Board, the members of the RC shall designate a Chair by majority vote. This proposed amendment is in conformance with OCC's current practices for electing Committee Chairs and as described in other Committee Charters.

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. As described herein, the RC is responsible for assisting the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks and for overseeing the overall enterprise risk management framework implemented by management. The proposed amendment would allow the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee to carry out certain tasks and responsibilities in the day-to-day risk management of

OCC and to implement proposals that have been approved in concept by the RC where the RC deems such delegation of authority to be appropriate.

#### Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to enhance its governance arrangements in connection with the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other responsibilities.

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

OCC proposes amendments to the RC Charter to provide a broader description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. In general, 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 and would continue to encompass the responsibilities currently enumerated in the charter.<sup>39</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;<sup>40</sup> (ii) overseeing the processes established for reviewing and monitoring clearing

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<sup>39</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.

<sup>40</sup> This proposed provision is a restatement of an existing RC responsibility for periodically reviewing and recommending changes to the initial and ongoing requirements for membership and would also replace and encompass the responsibilities in an existing provision of the RC Charter stating that the RC is responsible for recommending to the Board membership requirements for non-broker-dealers.

membership (including in respect of the continuance of potentially problematic members);<sup>41</sup> 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 these provisions to restate 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;<sup>42</sup> and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to restate the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to the oversight of margin and clearing fund requirements and replace them with a more high level description that would provide that the RC oversees OCC's processes for establishing, monitoring and adjusting margin consistent with the

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<sup>41</sup> This proposed provision would replace and encompass the RC's responsibilities contained in existing RC Charter provisions related to the conducting of hearings for applicants proposed to be disapproved by the RC, the review and approval/disapproval of requests to participate in the Stock Loan Programs, and the approval/disapproval of the continued membership of managed Clearing Members.

<sup>42</sup> This proposed provision would replace and encompass the responsibilities in an existing RC Charter provision related to the RC's responsibility for reviewing and modifying or reversing restrictions or additional requirements imposed on Clearing Members pursuant to Rule 305.

protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying 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;<sup>43</sup> (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.<sup>44</sup> In general, the proposed amendments are 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 is proposing, however, to delete an existing RC Charter provision specifically requiring the RC to periodically review the inputs to OCC's margin formula and modify them to the extent it deems such action to be consistent with the protection of OCC, Clearing Members, or the general public. While this specific requirement is being removed from the Charter, OCC believes that the Charter continues to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula

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<sup>43</sup> This proposed provision would include language from an existing Charter provision stating that the RC will review methodologies used for calculating margin and clearing fund requirements.

<sup>44</sup> This proposed provision would replace and encompass the RC's responsibilities contained in existing Charter provisions related to the oversight of acceptable margin and clearing fund assets, including the approval of classes of GSE securities for deposit as margin, prescribing intervals for revaluing debt securities deposited as margin of clearing fund, and specifying haircuts for securities provided as margin.

and would provide the RC with continued authority to modify margin formula inputs if it deems such modification to be appropriate.<sup>45</sup>

OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. While the RC is responsible for overseeing standards used to admit non-U.S. institutions, OCC's President and Executive Chairman have general responsibility for approving financial institutions seeking to become non-U.S. letter of credit banks and that meet the requirements of OCC Rule 604, Interpretation and Policy .01 (with the exception of certain "equivalent country" and "equivalent institution" determinations that are required to be made by the RC pursuant to OCC Rule 604, Interpretations and Policies .01(b)(3) and .01(b)(4)(b)).

*Oversight of OCC's Enterprise Risk Management Program and Risk Tolerances*

OCC proposes amendments to restate and expand upon the RC's responsibility for overseeing OCC's Enterprise Risk Management program. Currently, the RC is responsible for overseeing the structure, staffing and resources of the Enterprise Risk Management program, reviewing periodic reports regarding the Enterprise Risk Management program, and annually reviewing and assessing the overall program. OCC proposes amendments to the RC Charter that would restate these existing responsibilities and add new responsibilities designed to enhance the risk oversight framework for the Enterprise Risk Management program. Specifically, the proposed amendments would state that the RC is responsible for overseeing OCC's Enterprise

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<sup>45</sup> As noted above, the proposed amendments to the RC Charter provide that the RC is responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula.

Risk Management program, including (in addition to the existing responsibilities noted above), 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, reviewing with management the interrelated nature of OCC's risks, and annually approving the Enterprise Risk Management program's goals and objectives. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for the Enterprise Risk Management program.

OCC also proposes amendments to restate and expand upon the RC's responsibility for the oversight of OCC's risk appetite and risk tolerances. Currently, the RC Charter provides that the RC is responsible for reviewing and recommending for Board approval the OCC Risk Appetite Statement and reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement. The proposed amendments to the RC Charter would state that, in addition to these responsibilities, the RC would be responsible for reviewing and monitoring determinations regarding appropriate risk tolerances, including reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, and recommending risk tolerance parameters to the Board. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for OCC's risk appetite and risk tolerances.

#### *Other Oversight Responsibilities*

Section I of the RC Charter currently provides that the RC is responsible for the oversight and review of material policies and processes relating to member and other counterparty risk exposure assessments. OCC proposes amendments to Section IV that would further specify 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, financial market utilities and trade sources. OCC believes that the oversight of such risk exposures is critical to ensuring the safety and soundness of OCC and that specifically including this responsibility in the RC Charter will provide for greater clarity and transparency regarding the RC's role in overseeing these risks. Section I of the RC Charter also currently provides that the RC is responsible for the oversight and review of material policies and processes (i) for identifying liquidity risks and (ii) relating to liquidity requirements and the maintenance of financial resources. The proposed amendments to Section IV would further specify 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. OCC believes that comprehensive oversight of liquidity risks and liquidity risk management is critical to ensuring the safety, soundness, and resilience of OCC and that providing more specificity regarding the RC's responsibilities with respect to liquidity risk will provide for greater clarity and transparency regarding the RC's role in such oversight. In addition, the RC Charter would be amended to provide 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 believes it is prudent for management and the RC to engage in regular discussions concerning OCC's actions in extreme market events and the potential impacts on systemic stability given OCC's role as a systemically important financial market utility.

OCC also proposes to elaborate on the statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules by specifying that

this would include the authorization of the filing of regulatory submissions pursuant to such delegation. Additionally, OCC proposes amendments to state that the RC would oversee management's responsibility for handling financial (i.e., credit, market, liquidity and systemic) risks, including the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes amendments to state that the RC's oversight responsibilities include: (i) identifying issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action and (ii) reviewing, approving and reassessing reporting metrics reflecting the risks for which the RC has oversight.

Further, the proposed amendments would specify that the RC oversees OCC's model risk management process, 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. Moreover, the amendments would provide that the RC is responsible for reviewing 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 RC oversees, as well as management's responses pertaining to matters that are subject to the oversight of the RC.

*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>46</sup> This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

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.

*Amendments to the Governance and Nominating Committee Charter*

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above and to state that attendance of GNC meetings by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee because OCC believes that experience has shown that designating a formal role for a liaison was unnecessary. Deleting

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<sup>46</sup> This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

this requirement would also maintain uniformity across all Committee Charters, as no other Committee has a formally designated liaison.

OCC also proposes amendments to the GNC Charter to specify that the Chair (or the Chair's designee) shall consult with the Corporate Secretary, in addition to management, to prepare an agenda in advance of each GNC meeting as the Corporate Secretary is responsible for coordinating the preparation and distribution of Board and Board Committee meeting agendas. In addition, OCC is proposing non-substantive drafting changes regarding: (i) the numbering of certain provisions in Section I of the GNC Charter and (ii) the requirements for GNC Committee reports to the Board in Section II of the Charter.

#### *Amendments to the Technology Committee Charter*

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's Chief Security Officer ("CSO") and to provide that the CSO is authorized to communicate with directly with the Chair of the TC in between meetings of the Committee in order to strengthen the autonomy and independence of the CSO role at OCC. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the TC and the Board is in line with requirements in other Committee Charters.

OCC also proposes non-substantive amendments to Section III of the TC Charter to eliminate a provision that referenced approval of non-audit services which appeared to be an inadvertent carry-over from the Audit Committee Charter and to Section IV of the Charter to change the term "the Company" to "OCC" and "Board of Directors" to "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>47</sup> and the rules thereunder applicable to OCC. OCC’s governance arrangements, which include, but are not limited to, OCC’s Certificate of Incorporation, 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>48</sup> and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)<sup>49</sup> thereunder. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended. The statutory basis for the proposed amendments is discussed in more detail below.

#### **Amendments to OCC’s Certificate of Incorporation, By-Laws, and Rules**

OCC is proposing to amend its Certificate of Incorporation and By-Laws to modify the composition requirements for OCC’s Board to require that only one Management Director shall serve on OCC’s board. Currently, there is a vacancy for one Management Director position on the Board (OCC also notes that, prior to the addition of a second Management Director seat in

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<sup>47</sup> 15 U.S.C. 78q-1.

<sup>48</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>49</sup> 17 CFR 240.17Ad-22(d)(8).

2013, OCC has historically had only one Management Director serving on its Board). OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience with the current Management Director vacancy, the Board believes that amending the Board composition to require one Management Director would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Accordingly, OCC believes that the proposed amendments to OCC's governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>50</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>51</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>52</sup> thereunder.

OCC is also proposing to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. OCC believes that the responsibilities of the Management Vice Chairman are appropriately handled by other officers of OCC (and are currently handled by such officers), primarily the Executive Chairman and President, or where applicable, other

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<sup>50</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>51</sup> 15 U.S.C. 78q-1.

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

officers such as the Secretary or directors such as the Member Vice Chairman, and as a result, the title is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office of Member Vice Chairman, ensure consistency across all of OCC's governing documents, provide more clarity and transparency regarding OCC's intended governance arrangements, and continue to provide for appropriate and prudent governance arrangements at OCC. Accordingly, OCC believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>53</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>54</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>55</sup> thereunder.

The proposed amendments to OCC's By-Laws also would require that the CPC and AC each be chaired by a Public Director, which 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 designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>56</sup> and are reasonably designed to be clear and transparent to fulfill the

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

<sup>54</sup> 15 U.S.C. 78q-1.

<sup>55</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>56</sup> 15 U.S.C. 78q-1(b)(3)(F).

public interest requirements in Section 17A of the Act<sup>57</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>58</sup> thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC and would reduce the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on 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. Moreover, the reduction in the minimum number of Member Directors serving on the RC would provide OCC with greater flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC. It would also continue to ensure the fair representation of Member Directors on OCC's RC as the minimum number Member Directors would be consistent with requirements that the Executive Chairman (as the lone Management Director), one Exchange Director, and at least one Public Director serve on the RC. OCC therefore believes that the proposed amendments are designed, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act,<sup>59</sup> are reasonably designed to be clear and transparent to promote the effectiveness of OCC's risk management procedures in accordance with Rule 17Ad-22(d)(8)<sup>60</sup> thereunder, and are designed to ensure a fair representation of OCC's members and participants

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<sup>57</sup> 15 U.S.C. 78q-1.

<sup>58</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>59</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>60</sup> 17 CFR 240.17Ad-22(d)(8).



in the administration of its affairs (as they pertain to the oversight of risk matters at OCC) in accordance with Section 17A(b)(3)(C) of the Act.<sup>61</sup>

OCC is also proposing a number of other amendments to better align its By-Laws and Board and Board Committee Charters and to provide more clarity and transparency with respect to OCC's governance arrangements. In particular, OCC proposes amendments to Article IV, Section 7 to: (i) delete a requirement that the Member Vice Chairman preside at the meetings of any committee of the Board charged with reviewing and evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director and (ii) clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board. OCC believes that the proposed changes would provide more clarity, transparency, and accuracy regarding its governance arrangements with respect to the responsibilities of the Member Vice Chairman and President and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>62</sup> in accordance with Rule 17Ad-22(d)(8).<sup>63</sup>

#### **Amendments to the Board Charter and the Fitness Standards**

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) reflect recent changes involving Board Committee Charters; (iii) reflect recent changes to the Board's composition; and

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<sup>61</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>62</sup> 15 U.S.C. 78q-1.

<sup>63</sup> 17 CFR 240.17Ad-22(d)(8).

(iv) in general, restate 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 laws and regulations; (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 performing annual self-evaluations on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. OCC believes the proposed changes would provide for prudent governance arrangements with respect to the Board's oversight role over OCC as a systemically important financial market utility and are therefore reasonably designed to ensure that OCC has governance arrangements that, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act<sup>64</sup> and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>65</sup> applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8) thereunder.<sup>66</sup>

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance

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<sup>64</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>65</sup> 15 U.S.C. 78q-1.

<sup>66</sup> 17 CFR 240.17Ad-22(d)(8).

with the proposed amendments to the Certificate of Incorporation and By-Laws described above. OCC also proposes amendments to the Fitness Standards to remove redundant descriptions of Board composition and the nomination process and to underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility. OCC believes that the proposed changes provide additional clarity and transparency regarding its governance arrangements and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>67</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8).<sup>68</sup>

Additionally, OCC proposes amendments that would allow for additional meetings of the Board to be called as the Board deems appropriate (such meetings being called by the Executive Chairman or his designee), which will provide the Board with increased flexibility in performing its oversight functions. Accordingly, OCC believes the proposed amendments to its governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>69</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>70</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>71</sup> thereunder.

### **Common Amendments to the Committee Charters**

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<sup>67</sup> 15 U.S.C. 78q-1.

<sup>68</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>69</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>70</sup> 15 U.S.C. 78q-1.

<sup>71</sup> 17 CFR 240.17Ad-22(d)(8).

OCC is proposing to make a number of common amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.<sup>72</sup> Specifically, OCC proposes to amend each Committee Charter to confirm that each Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities and 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. The proposed amendments would ensure that each Committee has access to all books, records, facilities and personnel of OCC in carrying out its respective responsibilities and would support deliberation and action by a Board Committee as a whole, rather than action by solely its Chair, and as a result, would help to ensure that each Committee is able to make fully informed, collective decisions regarding the governance of OCC. OCC therefore believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>73</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>74</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>75</sup> thereunder.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the

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<sup>72</sup> See *supra* note 20.

<sup>73</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>74</sup> 15 U.S.C. 78q-1.

<sup>75</sup> 17 CFR 240.17Ad-22(d)(8).

convening and attendance of executive sessions (and specifically requiring that each Committee meet in executive session at each regular meeting of the Committee) and by promoting the enhanced recordation of important meeting events and discussions by requiring that each Committee's meeting minutes reflect, at a minimum, that an executive session was convened and broadly describe the topic(s) discussed. OCC believes that meetings in executive session are an important tool for Board Committees to discuss matters of a sensitive nature or for which certain persons may have conflicts of interest; however, OCC also believes that it is important that these sessions be documented, at least in summary fashion, in the interest of transparency. OCC therefore believes the proposed amendments providing for added structure regarding the convening, attendance, and recordation of executive sessions are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>76</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>77</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>78</sup> thereunder.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without requiring pre-approval from the Board. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated

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<sup>76</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>77</sup> 15 U.S.C. 78q-1.

<sup>78</sup> 17 CFR 240.17Ad-22(d)(8).

responsibilities while preserving Board oversight via the application of existing reporting mechanisms. Accordingly, OCC believes that the proposed amendments are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>79</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>80</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>81</sup> thereunder.

OCC is also proposing amendments to its Committee Charters to specify that that each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process. OCC believes the proposed amendments are therefore reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>82</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>83</sup> thereunder.

#### **Amendments to the 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; (iii) promote effective communication between the CAE, CCO, CFO and the AC and between the AC and the Board; and (iv) in general, provide more

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<sup>79</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>80</sup> 15 U.S.C. 78q-1.

<sup>81</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>82</sup> 15 U.S.C. 78q-1.

<sup>83</sup> 17 CFR 240.17Ad-22(d)(8).

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 would also require the AC to meet regularly, and no less than once annually, (as opposed to at least annually) with management, the CAE, CCO, and CFO in executive sessions to discuss certain private matters and 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 the independence these roles at OCC. 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). The proposed amendments would also provide that the AC shall make such reports to the Board as deemed necessary or advisable.

OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework, promoting effective communication between certain officers, the AC, and the Board, 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>84</sup> and are clear and transparent to fulfill the

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<sup>84</sup> 15 U.S.C. 78q-1(b)(3)(F).

public interest requirements in Section 17A of the Act<sup>85</sup> applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>86</sup>

### **Amendments to the 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 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>87</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>88</sup>

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<sup>85</sup> 15 U.S.C. 78q-1.

<sup>86</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>87</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>88</sup> 17 CFR 240.17Ad-22(d)(8).



## **Amendments to the 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 and to reflect the adoption of the TC), to restate and elaborate on the responsibilities of the RC, and to replace more granular descriptions with general statements regarding the RC's functions and responsibilities, as described in detail above. In particular, the amendments would restate 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 OCC's risk appetite and risk tolerances. The proposed amendments also elaborate on 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. Additionally, in recognition of OCC's role as a systemically important financial market utility, the RC Charter would provide 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 believes that the proposed amendments to the RC Charter provide for comprehensive and robust governance arrangements with respect to the RC's oversight role at OCC and are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, and in general, to

protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>89</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>90</sup> 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>91</sup>

Additionally, OCC proposes to delete an existing RC Charter provision specifically requiring the RC to periodically review and modify the inputs to OCC's margin formula and would amend the RC Charter to state that the RC is generally responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula. OCC believes that the proposed amendments continue to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would provide the RC with the continued authority to modify margin formula inputs if it deems such modification to be appropriate. OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding the approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. Accordingly, OCC believes that the proposed changes are reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>92</sup>

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<sup>89</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>90</sup> 15 U.S.C. 78q-1.

<sup>91</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>92</sup> *Id.*

In addition, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than “at least annually”) with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters to provide more specificity regarding the frequency of these meetings (i.e., that these meetings occur more frequently than once per year). The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. OCC believes that the proposed amendments provide more clarity and transparency with respect to RC meetings in executive session and are therefore reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>93</sup>

Finally, OCC proposes to remove from the RC Charter certain mandatory recusal requirements designed to apply to Member Directors of the RC. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors, which is a publicly available document that governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, as discussed above, OCC's Directors have a fiduciary duty under Delaware law to protect the interests of the corporation and to act in the best interests of its shareholders and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director. OCC believes that this specific recusal requirement contained in

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<sup>93</sup>*Id.*

the RC charter is unnecessary in light of the existing requirements under Delaware law and OCC's Code of Conduct for OCC Directors. Accordingly, OCC believes that its governance arrangements with respect to conflicts of interest for RC members continue to be designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>94</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>95</sup> 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>96</sup>

#### **Amendments to the Governance and Nominating Committee Charter**

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above, to state that attendance of GNC meetings by telephone is discouraged, and to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee. The proposed amendments are primarily intended to conform the GNC Charter with proposed changes to the By-Laws and existing practices contained in other Committee Charters and would continue to provide for appropriate governance arrangements with respect to the GNC's oversight role. OCC therefore believes the proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of

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<sup>94</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>95</sup> 15 U.S.C. 78q-1.

<sup>96</sup> 17 CFR 240.17Ad-22(d)(8).

Section 17A of the Act<sup>97</sup> applicable to clearing agencies as required under Rule 17Ad-22(d)(8).<sup>98</sup>

### **Amendments to the Technology Committee Charter**

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's CSO and to provide that the CSO is authorized to communicate with directly with the Chair of the TC in between meetings of the Committee. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. The proposed amendments are designed to strengthen the autonomy and independence of the CSO role at OCC and to promote effective communication between the CSO and the TC and between TC and the Board and are in line with requirements in other Committee Charters. OCC therefore believes the proposed amendments are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>99</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>100</sup>

### **Amendment No. 1 to Amended and Restated Stockholders Agreement**

OCC also proposes to adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman in conformance with the process set forth in the GNC Charter. The proposed change would ensure an appropriate level of Board oversight and participation in the nomination process and provide consistency between the

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<sup>97</sup> 15 U.S.C. 78q-1.

<sup>98</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>99</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>100</sup> 17 CFR 240.17Ad-22(d)(8).

processes described in the GNC Charter and Amended and Restated Stockholders Agreement thereby ensuring that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>101</sup> applicable to clearing agencies as required under Rule 17Ad-22(d)(8).<sup>102</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>103</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 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.

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<sup>101</sup> 15 U.S.C. 78q-1.

<sup>102</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>103</sup> 15 U.S.C. 78q-1(b)(3)(I).

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. OCC Certificate of Incorporation.

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

**Agreement.**

- Exhibit 5C. Board of Directors Charter (including OCC's Fitness Standards for Directors, Clearing Members and Others).
- Exhibit 5D. Audit Committee Charter.
- Exhibit 5E. Compensation and Performance Committee Charter.
- Exhibit 5F. Governance and Nominating Committee Charter.
- Exhibit 5G. Risk Committee Charter.
- Exhibit 5H. Technology Committee Charter.

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



**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

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

**Justin Byrne**  
**Vice President, Regulatory Filings**

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2016-002)

July 15, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of 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 July 15, 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 modifications and enhancements to OCC's governance arrangements. OCC is proposing to amend its Certificate of Incorporation, By-Laws, and Board of Directors ("Board") Charter to require that only one Management Director serve on OCC's Board (as opposed to the current requirement of two Management Directors). Moreover, OCC is proposing to amend its By-Laws and Rules to delete all references to the title and responsibilities of the Management Vice Chairman. In addition, OCC is proposing to amend its By-Laws to: (i) provide that the

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

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

Compensation and Performance Committee (“CPC”)<sup>3</sup> and the Audit Committee (“AC”) each will be chaired by a Public Director; (ii) modify the composition requirements of the Risk Committee (“RC”) to, among other things, provide that an Exchange Director be a member of the Risk Committee; (iii) provide for action by the OCC Board in the nomination process for Member Directors and Public Directors; (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single section of the By-Laws. Finally, OCC is proposing amendments to the Charters of the Board and the AC, CPC, Governance and Nominating Committee (“GNC”), RC, and Technology Committee (“TC”) (collectively, “Board Committees” or “Committees” and each a “Board Committee” or “Committee”) that stem from scheduled reviews of such documents.

All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

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

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

The purpose of this proposed rule change is to implement a number of modifications and enhancements to OCC's governance arrangements. Specifically, as a result of the Board's continual evaluation of OCC's governance arrangements, OCC is proposing to change the composition requirements of its Board to require that one Management Director serves on OCC's Board (as opposed to two) and to eliminate the role of Management Vice Chairman to provide more clarity and transparency regarding the status of these roles at OCC. In addition, OCC is proposing to amend its By-Laws to, among other things: (i) provide that the CPC and the AC each will be chaired by a Public Director to underscore and reinforce the independence of those committees and align with governance best practices and practices of other self-regulatory organizations; (ii) modify the composition requirements of the RC, including to provide that an Exchange Director be a member of the RC to provide the RC with additional expertise and unique perspective on matters such as market risk and special risks arising from trading practices and strategies, and new products; (iii) provide for Board action in the nomination process for Member Directors and Public Directors of OCC's Board to ensure an appropriate level of oversight and participation by the Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications; (iv) eliminate term limits for Public Directors in the interest of ensuring that OCC has access to the full benefits of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as that knowledge develops over time; and (v) consolidate By-Laws sections that identify the committees of the Board into a single section of the By-Laws to provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is also proposing amendments to the Charters of OCC's Board, AC, CPC, GNC, RC, and TC that stem from scheduled reviews of such documents. The proposed amendments to

the Board and Committee Charters are designed, in general, to provide more clarity and transparency around the oversight functions and responsibilities of the Board and each of its Committees and provide for a more comprehensive and robust oversight framework for the financial reporting, audit and compliance, compensation and performance, governance and nomination, risk, and technology functions at OCC.

The proposed amendments to OCC's Certificate of Incorporation, By-Laws, Rules, Board and Committee Charters, and Amended and Restated Stockholders Agreement are described in detail below.

### **Proposed Amendments to OCC's Certificate of Incorporation**

OCC is proposing to amend its Certificate of Incorporation to state that the number of Management Directors serving on OCC's Board shall be such number as shall be fixed by or pursuant to OCC's By-Laws.<sup>4</sup> The purpose of this proposed change is ultimately to require that only one Management Director shall serve on OCC's Board as OCC is also proposing to amend its By-Laws to state that one Management Director shall serve on OCC's Board (as discussed in more detail below). The proposed amendments would also ensure consistency between all of OCC's governing documents concerning the number of Management Directors on OCC's Board. OCC's Certificate of Incorporation and By-Laws currently state that OCC's Board shall be composed of Members Directors, Exchange Directors, Public Directors, and two Management Directors. Recently, however, there has been a vacancy for one Management Director position

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<sup>4</sup> The number of Management Directors required to serve on OCC's Board would be stipulated by Article III, Section 1 of OCC's By-Laws. Article XI, Section 1 of OCC's By-Laws states that Article III of the By-Laws may not be amended by action of the Board without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. Accordingly, any proposed change in the number of Management Directors required to serve on OCC's Board would continue to be subject to stockholder approval.

and only one Management Director is serving on the Board at this time.<sup>5</sup> OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience since the vacancy of the second Management Director position, believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Furthermore, OCC notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board.<sup>6</sup> Accordingly, OCC believes that the proposed amendments would continue to provide for prudent governance arrangements at OCC. OCC is also proposing conforming changes to the Board Charter as described below.

### **Proposed Amendments to OCC's By-Laws and Rules**

#### *Number of Management Directors on OCC's Board*

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<sup>5</sup> In 2014, 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 (the Executive Chairman) 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>6</sup> In 2013, the Commission approved a proposed rule change by OCC to provide for the separation of the powers and duties combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman and President, and to create an additional directorship to be occupied by the President. *See* Securities Exchange Act Release No. 34-70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09).

OCC is proposing to amend Article III, Section 1 of its By-Laws to state that only one Management Director will serve on OCC's Board (as opposed to the current requirement of two). As noted above, OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. OCC is also proposing conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, would be serving on OCC's Board.

*Elimination of Management Vice Chairman Role*

OCC proposes to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. During that time, the thought process surrounding leadership roles at OCC has evolved. OCC believes that any of the responsibilities of the Management Vice Chairman are already appropriately handled by other officers of OCC, primarily the Executive Chairman and President (or where applicable, other officers such as the Secretary or Directors such as the Member Vice Chairman<sup>7</sup>) and as a result, this role is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state

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<sup>7</sup> For example, under proposed revisions to Article IV, Section 7, the Member Vice Chairman would preside over Board and stockholder meetings in the absence of the Executive Chairman.

of affairs regarding the office, ensure consistency across all of OCC's governing documents, and provide more clarity and transparency regarding OCC's intended governance arrangements.

In particular, OCC is proposing to amend (i) By-Laws Article I.A.(13); Article II, Section 4; Article III, Section 15; Article IV; Article V, Sections 1 and 3; Article VI, Section 17; Article VIII, Section 5; Article IX, Sections 12 and 14 and (ii) Rules 305, 309, 309A, 505, 609A, 801, 804, 805, 901, 903, 1104, 1106, 1309, 1402, 1405, 1604, 1610, 2104, 2110, and 2408 to remove all references to and responsibilities of the role of Management Vice Chairman.

#### *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, GNC, RC, and TC 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>8</sup> the TC,<sup>9</sup> and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 and add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws in order to provide a more transparent, centralized, and unified statement describing all of the Board Committees. In addition, OCC proposes to make a non-substantive drafting clarification to existing language being relocated from Article III, Section 9 to the introductory section of Article III, Section 4 to clarify that the Board is required to designate persons to serve on the specifically enumerated Committees therein.

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<sup>8</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>9</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).



The proposed description of the AC would reflect existing requirements in the AC and GNC Charters 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 the existing requirement that, on an annual basis, the Board of Directors shall appoint a CPC and that the CPC generally consists of the Executive Chairman, the Member Vice Chairman, and at least one Public Director.<sup>10</sup> 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). OCC believes that consolidating the descriptions of all Board Committees into Article III, Section 4 of its By-Laws would provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is proposing amendments to Article IV, Section 1 of the By-Laws to provide that the Board will elect the Executive Chairman and Vice Chairman of the Board upon the

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<sup>10</sup> The proposed description of the CPC in the By-Laws includes the general requirement that CPC shall include the Executive Chairman, the Member Vice Chairman, and at least one Public Director. The proposed description is not intended to change the more specific CPC composition requirements in the CPC Charter that the committee consist of a Public Director chair, the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board.

nomination of the GNC and also elect the President of OCC (in addition to the Secretary and Treasurer). In addition, OCC proposes amendments to Article IV, Section 7 to delete a requirement that the Member Vice Chairman preside at the meetings of any Committee of the Board of Directors charged with the responsibility for evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director. OCC also proposes amendments to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board.<sup>11</sup>

*Compensation and Performance Committee and Audit Committee Independence*

In addition to the proposed changes described above, OCC is also proposing 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>12</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.<sup>13</sup> 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). The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,<sup>14</sup> which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory

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<sup>11</sup> See OCC's By-Laws Article IV, Section 8.

<sup>12</sup> See Article III Section 6A of OCC's By-Laws regarding Public Directors.

<sup>13</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>14</sup> See OCC's By-Laws Article III, Section 3 and Section 5.

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 to modify the composition requirements of OCC's RC. Existing Article III, Section 9 of OCC's By-Laws currently requires that the RC shall consist of the Executive Chairman, 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. OCC is proposing to replace this description of the RC with new Article III, Section 4(d), which would relocate and modify the RC composition requirements to (i) provide that an Exchange Director<sup>15</sup> be a member of the RC and (ii) require that at least one Member Director serve on the RC (as opposed to the current minimum requirement of four

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<sup>15</sup> See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

Member Directors) and (iii) remove a specific requirement that one of the Member Directors on the RC be the Member Vice Chairman.

The GNC 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 the 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, strategies and new products.

In addition, the GNC recommended, and the Board approved, a reduction in the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. OCC believes that Member Director participation on the RC is vital and would therefore continue to require that at least one Member Director serves on the RC. OCC also believes, however, that it is necessary and appropriate to maintain flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC.

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

OCC is proposing to make amendments to Article III, Sections 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement to provide for Board action in the nomination process for Member Directors, Public Directors, the

Executive Chairman, and Member Vice Chairman in conformance with the process set forth in the GNC Charter.<sup>16</sup> Currently, Board action is not a part of the annual election process for Member Directors and Public Directors as described in the By-Laws and the Amended and Restated Stockholders Agreement. The proposed 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. OCC believes that the proposed rule change would help ensure an appropriate level of oversight and participation by the full Board in determining its own composition and that the composition of the Board fulfills its needs for particular skills and qualifications.

*Elimination of 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>17</sup>

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<sup>16</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).

<sup>17</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.

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.

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

#### *Amendments to the Board Charter and the Fitness Standards*

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 By-Laws; (iii) reflect recent changes involving Board Committee Charters; (iv) in general, restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's 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 to reflect the elimination of the role of Management Vice Chairman as described above. As a result, 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 the Executive Chairman or his designee)

and to specify that the Executive Chairman shall consult with the Corporate Secretary (in addition to other directors or officers) when establishing Board meeting agendas.

OCC also proposes amendments intended to strengthen the Board's governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. In particular, the proposed amendments would: (i) require that the Board meet in executive session at each regular meeting of the Board; (ii) allow the Board to determine who will participate in such sessions; (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest; and (iv) require the Board to select a Director to chair executive sessions in the absence of the Executive Chairman. The proposed amendments would also require that Board meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. Specifically, the chair of the executive session would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Board meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed Certificate of Incorporation and By-Laws changes described above. The

Board Charter would also be amended to reflect an increase in the number of Public Directors serving on the Board from three to five.<sup>18</sup>

Additionally, in order to achieve a balanced representation on the Board among Member Directors, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors should 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. The proposed amendments reinforce the existing requirement in Article III, Section 5 of OCC's By-Laws that the GNC 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. OCC proposes to remove geographic location of Clearing Members as a factor for consideration as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone as currently provided in the Code of Conduct for OCC Directors. Attendance by telephone would be generally discouraged because OCC believes

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<sup>18</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).



the Board may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Board members were to meet in person.

#### Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily 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 as well as the Board's Corporate Governance Principles<sup>19</sup> and (ii) restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of 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, OCC is proposing to remove the obligation 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 designed to provide for prudent governance arrangements emphasizing that the Board's oversight role should operate

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<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.

in a manner consistent with its responsibilities as a designated systemically important financial market utility. 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) as well as reviewing the annual study and evaluation of OCC's system of internal accounting controls; (vii) providing oversight of internal and external audit processes and financial reporting, including approving

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The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5C.

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> 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.

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

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<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.

Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services.

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 TC<sup>22</sup> the GNC, and renaming of the Performance Committee to the CPC, as described herein. In addition OCC is proposing to amend Section I of the Board Charter to more accurately state 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 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 Article III of OCC's By-Laws and the relevant 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

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<sup>22</sup> See *supra* note 9.

underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility.

*Common Amendments to Each Committee Charter*

OCC is proposing to make conforming amendments to the Committee Charters as a result of the Commission 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 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. 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 because 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.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the

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<sup>23</sup> See *supra* note 16.

convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. Specifically, each Committee Charter would be amended to: (i) require that each Committee meet in executive session at each regular meeting of the Committee; (ii) allow the Committee to determine who will participate in such sessions; and (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest. The proposed amendments would also require that each Committee's meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. In particular, the Chair (or Acting Chair) would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Committee meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval. Generally speaking, Committees must obtain pre-approval from the Board to hire advisors. While not universal, OCC's understanding is that public company board committees frequently are authorized to engage advisors without board pre-approval at the company's expense to preserve autonomy and independence and to assist them in the execution of their responsibilities as deemed necessary. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its

delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms.

OCC is also proposing amendments to its Committee Charters to specify that that each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process.

#### *Amendments to the Audit Committee Charter*

OCC proposes amendments to the AC Charter intended to, among other things: (i) reinforce the independence of the AC; (ii) more accurately memorialize 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 organizational changes to 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. The proposed amendments to change "independent accountants" to "external auditors" are not intended to signify a change in roles or responsibilities but to more accurately state that the

activities described in the AC Charter as being performed by “independent accountants” are actually performed by a party acting in its capacity as OCC’s “external auditor.”

OCC also proposes amendments to Section II of the AC Charter that are intended to reinforce 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 revise the AC Charter to state that the AC will meet regularly, and no less than once annually (as opposed to “at least annually”), with management, OCC’s Chief Financial Officer, Chief Audit Executive (“CAE”) and Chief Compliance Officer (“CCO”) in executive sessions to discuss certain private matters. The purpose of this change is to signify 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 attendance at an AC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have

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<sup>24</sup> The change concerning the AC Chair would conform the AC Charter to 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.



the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person.

OCC also proposes to amend the AC Charter to provide that the AC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the AC and the Board is in line with requirements in other Committee Charters.

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> In addition to more accurately reflecting current Committee practice, it would conform the AC charter to OCC's other Committee Charters (i.e., the CPC, GNC, RC and TC Charters) with respect their authority to hire advisors and approve related fees and retention terms. As noted above, each of OCC's Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval in order to foster Committee independence as well as timely access to relevant expertise from outside specialists or advisors. The proposed amendments would clarify that this authority also extends to the approval of related fee and retention terms.

#### Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to reinforce 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

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

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 more accurately memorialize 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>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 with external auditors any audit problems or difficulties, and management's response thereto.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter to state that the AC is required to: (i) discuss with management the timing and process for implementing a rotation of the engagement partner of the

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<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.

external auditor and any other active audit engagement team partner; (ii) monitor and evaluate 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 to state that the AC's responsibilities include reviewing and approving the Internal Audit Policy on an annual basis and monitoring ongoing internal audit activities. OCC also proposes amendments to state that the AC is responsible for approving OCC's annual internal audit plan and approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan to explicitly codify these existing AC practices in the AC Charter. OCC believes that the AC, which serves as an independent and objective party tasked with the oversight of OCC's system of internal control, auditing, accounting, and compliance processes, is the appropriate body to approve OCC's internal audit plan and any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan. The proposed amendments would provide more clarity and transparency regarding OCC's governance arrangements by codifying these responsibilities in the AC Charter.

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 provide that the CAE and CCO would each report functionally to the AC and administratively to the Executive Chairman.<sup>28</sup> The proposed amendments would make more explicit the reporting lines for these functions and underscore the independence of the CAE and CCO. 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

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<sup>28</sup> This change would explicitly note existing reporting lines in the AC Charter, but would not revise those reporting lines. These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

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. The proposed changes related to the performance and compensation setting regime for the CAE and CCO are intended to reflect the fact that the CAE and CCO report administratively to the Executive Chairman while reporting functionally to the AC.

*Amendments to the Compensation and Performance Committee Charter*

OCC is proposing changes to its CPC Charter to explicitly describe the Committee's functions and responsibilities with respect to OCC's human resources, compensation and employee benefit programs, and insurance programs. The proposed amendments would also provide for CPC oversight of OCC's Capital Plan in recognition of the importance of providing for Board-level oversight to ensure OCC's capital and Capital Plan meet or exceed minimum regulatory standards. 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 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 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 to state that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the CPC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

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> The CPC Charter would also be

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<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.

amended to require that minutes of Committee meetings be circulated to the Board in conformance with general requirements applicable to all Board Committees.<sup>30</sup>

OCC also proposes an amendment to the CPC Charter under which attendance at a CPC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. 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 organizational changes in Section III regarding the delegation of authority to the Administrative Committee that do not change the meaning of the rule text.

#### Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide 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 framework for the CPC's oversight functions. The proposed changes are described in more detail below.

Additionally, OCC proposes to remove explicit requirements in Section IV that the CPC review the Corporate Plan and Budget and OCC's performance under the Corporate Plan at each regularly scheduled meeting in favor of more general descriptions regarding the CPC's responsibilities for the oversight of the corporate financial planning process, including the corporate budget, and corporate goals and objectives. The proposed amendments are intended to

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<sup>30</sup> This requirement is already included in the AC, GNC, RC, and TC Charters.

accommodate CPC review of annual Corporate Plans and Budgets and performance thereunder (as currently contemplated by the CPC Charter) as well as consideration of longer-term horizons and implications in the strategic planning process.

*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 would 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

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<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).



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 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. The proposed amendments would also require the CPC to review and approve 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. Additionally the proposed amendments would 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 from the CPC Charter certain statements regarding the review of OCC's performance under the Corporate Plan and the oversight of the administration of OCC's compensation plans as these responsibilities would be covered under the newly proposed descriptions contained therein. OCC believes that it is prudent and appropriate to provide for CPC oversight in the areas of human resources, performance, and compensation and that the proposed amendments will enhance OCC's overall governance arrangements with respect to the oversight and review of performance and compensation at OCC.

*Oversight of Employee Benefit Programs and Other Responsibilities*

OCC also proposes amendments to Section IV of the CPC Charter related to the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter to specify 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 specify 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 performing such other oversight duties as called for in retirement, retirement and savings, and welfare plan documents.

OCC further proposes amendments that state 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.

#### *Amendments to the Risk Committee Charter*

OCC is proposing amendments to its RC Charter which are primarily intended to enhance OCC's governance arrangements with respect to the RC's oversight functions and responsibilities. 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) and to reflect the adoption of the TC. The proposed changes are described as follows.

#### Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter to provide that the RC would be responsible for coordinating risk oversight with other Board Committees tasked with overseeing certain risks (e.g., the TC, which assists the Board in overseeing OCC's information technology risks) in order to achieve comprehensive and holistic oversight of OCC's risk-related matters. The proposed amendments would also provide that the RC is responsible for the review of material policies and processes associated with risks related to new initiatives.

In Section II of the RC Charter, OCC proposes amendments to provide that attendance at a RC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members

were to meet in person. OCC also proposes to remove from the RC Charter, and by extension its rules, a requirement that a RC 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. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors,<sup>32</sup> which governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, OCC notes that, as a corporation incorporated in the state of Delaware, OCC's Directors have a fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders<sup>33</sup> and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director.<sup>34</sup>

With respect to RC meetings, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters. The purpose of the proposed change is to signify that these meetings occur more frequently than once per year. The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common

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<sup>32</sup> See Code of Conduct for OCC Directors available at <http://www.optionsclearing.com/components/docs/about/corporate-information/occ-code-of-conduct.pdf>.

<sup>33</sup> See *Cede & Co. v. Technicolor*, 634 A.2d 345, 360-361 (Del. 1993)

<sup>34</sup> See *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

charter amendments described above. 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. Furthermore, OCC proposes to amend Section II of the RC Charter to state that, unless a Chair is elected by the full Board, the members of the RC shall designate a Chair by majority vote. This proposed amendment is in conformance with OCC's current practices for electing Committee Chairs and as described in other Committee Charters.

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. As described herein, the RC is responsible for assisting the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks and for overseeing the overall enterprise risk management framework implemented by management. The proposed amendment would allow the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee to carry out certain tasks and responsibilities in the day-to-day risk management of

OCC and to implement proposals that have been approved in concept by the RC where the RC deems such delegation of authority to be appropriate.

#### Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to enhance its governance arrangements in connection with the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other responsibilities.

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

OCC proposes amendments to the RC Charter to provide a broader description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. In general, 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 and would continue to encompass the responsibilities currently enumerated in the charter.<sup>35</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;<sup>36</sup> (ii) overseeing the processes established for reviewing and monitoring clearing

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<sup>35</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.

<sup>36</sup> This proposed provision is a restatement of an existing RC responsibility for periodically reviewing and recommending changes to the initial and ongoing requirements for membership and would also replace and encompass the responsibilities in an existing provision of the RC Charter stating that the RC is responsible for recommending to the Board membership requirements for non-broker-dealers.

membership (including in respect of the continuance of potentially problematic members);<sup>37</sup> 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 these provisions to restate 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;<sup>38</sup> and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to restate the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to the oversight of margin and clearing fund requirements and replace them with a more high level description that would provide that the RC oversees OCC's processes for establishing, monitoring and adjusting margin consistent with the

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<sup>37</sup> This proposed provision would replace and encompass the RC's responsibilities contained in existing RC Charter provisions related to the conducting of hearings for applicants proposed to be disapproved by the RC, the review and approval/disapproval of requests to participate in the Stock Loan Programs, and the approval/disapproval of the continued membership of managed Clearing Members.

<sup>38</sup> This proposed provision would replace and encompass the responsibilities in an existing RC Charter provision related to the RC's responsibility for reviewing and modifying or reversing restrictions or additional requirements imposed on Clearing Members pursuant to Rule 305.

protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying 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;<sup>39</sup> (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.<sup>40</sup> In general, the proposed amendments are 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 is proposing, however, to delete an existing RC Charter provision specifically requiring the RC to periodically review the inputs to OCC's margin formula and modify them to the extent it deems such action to be consistent with the protection of OCC, Clearing Members, or the general public. While this specific requirement is being removed from the Charter, OCC believes that the Charter continues to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula

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<sup>39</sup> This proposed provision would include language from an existing Charter provision stating that the RC will review methodologies used for calculating margin and clearing fund requirements.

<sup>40</sup> This proposed provision would replace and encompass the RC's responsibilities contained in existing Charter provisions related to the oversight of acceptable margin and clearing fund assets, including the approval of classes of GSE securities for deposit as margin, prescribing intervals for revaluing debt securities deposited as margin of clearing fund, and specifying haircuts for securities provided as margin.



and would provide the RC with continued authority to modify margin formula inputs if it deems such modification to be appropriate.<sup>41</sup>

OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. While the RC is responsible for overseeing standards used to admit non-U.S. institutions, OCC's President and Executive Chairman have general responsibility for approving financial institutions seeking to become non-U.S. letter of credit banks and that meet the requirements of OCC Rule 604, Interpretation and Policy .01 (with the exception of certain "equivalent country" and "equivalent institution" determinations that are required to be made by the RC pursuant to OCC Rule 604, Interpretations and Policies .01(b)(3) and .01(b)(4)(b)).

*Oversight of OCC's Enterprise Risk Management Program and Risk Tolerances*

OCC proposes amendments to restate and expand upon the RC's responsibility for overseeing OCC's Enterprise Risk Management program. Currently, the RC is responsible for overseeing the structure, staffing and resources of the Enterprise Risk Management program, reviewing periodic reports regarding the Enterprise Risk Management program, and annually reviewing and assessing the overall program. OCC proposes amendments to the RC Charter that would restate these existing responsibilities and add new responsibilities designed to enhance the risk oversight framework for the Enterprise Risk Management program. Specifically, the proposed amendments would state that the RC is responsible for overseeing OCC's Enterprise Risk Management program, including (in addition to the existing responsibilities noted above),

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<sup>41</sup> As noted above, the proposed amendments to the RC Charter provide that the RC is responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula.

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, reviewing with management the interrelated nature of OCC's risks, and annually approving the Enterprise Risk Management program's goals and objectives. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for the Enterprise Risk Management program.

OCC also proposes amendments to restate and expand upon the RC's responsibility for the oversight of OCC's risk appetite and risk tolerances. Currently, the RC Charter provides that the RC is responsible for reviewing and recommending for Board approval the OCC Risk Appetite Statement and reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement. The proposed amendments to the RC Charter would state that, in addition to these responsibilities, the RC would be responsible for reviewing and monitoring determinations regarding appropriate risk tolerances, including reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, and recommending risk tolerance parameters to the Board. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for OCC's risk appetite and risk tolerances.

#### *Other Oversight Responsibilities*

Section I of the RC Charter currently provides that the RC is responsible for the oversight and review of material policies and processes relating to member and other counterparty risk exposure assessments. OCC proposes amendments to Section IV that would further specify 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, financial market utilities and trade sources. OCC believes that the oversight of such risk exposures is critical to ensuring the

safety and soundness of OCC and that specifically including this responsibility in the RC Charter will provide for greater clarity and transparency regarding the RC's role in overseeing these risks. Section I of the RC Charter also currently provides that the RC is responsible for the oversight and review of material policies and processes (i) for identifying liquidity risks and (ii) relating to liquidity requirements and the maintenance of financial resources. The proposed amendments to Section IV would further specify 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. OCC believes that comprehensive oversight of liquidity risks and liquidity risk management is critical to ensuring the safety, soundness, and resilience of OCC and that providing more specificity regarding the RC's responsibilities with respect to liquidity risk will provide for greater clarity and transparency regarding the RC's role in such oversight. In addition, the RC Charter would be amended to provide 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 believes it is prudent for management and the RC to engage in regular discussions concerning OCC's actions in extreme market events and the potential impacts on systemic stability given OCC's role as a systemically important financial market utility.

OCC also proposes to elaborate on the statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules by specifying that this would include the authorization of the filing of regulatory submissions pursuant to such delegation. Additionally, OCC proposes amendments to state that the RC would oversee management's responsibility for handling financial (i.e., credit, market, liquidity and systemic)

risks, including the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes amendments to state that the RC's oversight responsibilities include: (i) identifying issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action and (ii) reviewing, approving and reassessing reporting metrics reflecting the risks for which the RC has oversight.

Further, the proposed amendments would specify that the RC oversees OCC's model risk management process, 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. Moreover, the amendments would provide that the RC is responsible for reviewing 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 RC oversees, as well as management's responses pertaining to matters that are subject to the oversight of the RC.

*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>42</sup> This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

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.

*Amendments to the Governance and Nominating Committee Charter*

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above and to state that attendance of GNC meetings by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee because OCC believes that experience has shown that designating a formal role for a liaison was unnecessary. Deleting this requirement would also maintain uniformity across all Committee Charters, as no other Committee has a formally designated liaison.

OCC also proposes amendments to the GNC Charter to specify that the Chair (or the Chair's designee) shall consult with the Corporate Secretary, in addition to management, to prepare an agenda in advance of each GNC meeting as the Corporate Secretary is responsible for

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<sup>42</sup> This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

coordinating the preparation and distribution of Board and Board Committee meeting agendas.

In addition, OCC is proposing non-substantive drafting changes regarding: (i) the numbering of certain provisions in Section I of the GNC Charter and (ii) the requirements for GNC Committee reports to the Board in Section II of the Charter.

*Amendments to the Technology Committee Charter*

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's Chief Security Officer ("CSO") and to provide that the CSO is authorized to communicate with directly with the Chair of the TC in between meetings of the Committee in order to strengthen the autonomy and independence of the CSO role at OCC. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the TC and the Board is in line with requirements in other Committee Charters.

OCC also proposes non-substantive amendments to Section III of the TC Charter to eliminate a provision that referenced approval of non-audit services which appeared to be an inadvertent carry-over from the Audit Committee Charter and to Section IV of the Charter to change the term "the Company" to "OCC" and "Board of Directors" to "Board."

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act<sup>43</sup> and the rules thereunder applicable to OCC. OCC's governance arrangements, which include, but are not limited to, OCC's Certificate of Incorporation, By-Laws, the Board Charter, and the Committee Charters promote the effectiveness of OCC's Board and Board Committees'

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<sup>43</sup> 15 U.S.C. 78q-1.

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>44</sup> and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)<sup>45</sup> thereunder. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended. The statutory basis for the proposed amendments is discussed in more detail below.

#### **Amendments to OCC's Certificate of Incorporation, By-Laws, and Rules**

OCC is proposing to amend its Certificate of Incorporation and By-Laws to modify the composition requirements for OCC's Board to require that only one Management Director shall serve on OCC's board. Currently, there is a vacancy for one Management Director position on the Board (OCC also notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board). OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience with the current Management Director vacancy, the Board believes that amending the Board composition to require one Management Director would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management

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<sup>44</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>45</sup> 17 CFR 240.17Ad-22(d)(8).

Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Accordingly, OCC believes that the proposed amendments to OCC's governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>46</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>47</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>48</sup> thereunder.

OCC is also proposing to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. OCC believes that the responsibilities of the Management Vice Chairman are appropriately handled by other officers of OCC (and are currently handled by such officers), primarily the Executive Chairman and President, or where applicable, other officers such as the Secretary or directors such as the Member Vice Chairman, and as a result, the title is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office of Member Vice Chairman, ensure consistency across all of OCC's governing documents, provide more clarity and transparency regarding OCC's intended governance arrangements, and continue to provide for appropriate and prudent governance arrangements at OCC. Accordingly, OCC believes the proposed amendments are designed in general, to protect investors and the public

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<sup>46</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>47</sup> 15 U.S.C. 78q-1.

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



interest in accordance with Section 17A(b)(3)(F) of the Act<sup>49</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>50</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>51</sup> thereunder.

The proposed amendments to OCC's By-Laws also would require that the CPC and AC each be chaired by a Public Director, which 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 designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>52</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>53</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>54</sup> thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC and would reduce the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. The addition of an Exchange Director to the RC will enhance the RC's oversight capabilities by providing additional expertise and unique

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

<sup>50</sup> 15 U.S.C. 78q-1.

<sup>51</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>52</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>53</sup> 15 U.S.C. 78q-1.

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

perspectives on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies, and new products. Moreover, the reduction in the minimum number of Member Directors serving on the RC would provide OCC with greater flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC. It would also continue to ensure the fair representation of Member Directors on OCC's RC as the minimum number Member Directors would be consistent with requirements that the Executive Chairman (as the lone Management Director), one Exchange Director, and at least one Public Director serve on the RC. OCC therefore believes that the proposed amendments are designed, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act,<sup>55</sup> are reasonably designed to be clear and transparent to promote the effectiveness of OCC's risk management procedures in accordance with Rule 17Ad-22(d)(8)<sup>56</sup> thereunder, and are designed to ensure a fair representation of OCC's members and participants in the administration of its affairs (as they pertain to the oversight of risk matters at OCC) in accordance with Section 17A(b)(3)(C) of the Act.<sup>57</sup>

OCC is also proposing a number of other amendments to better align its By-Laws and Board and Board Committee Charters and to provide more clarity and transparency with respect to OCC's governance arrangements. In particular, OCC proposes amendments to Article IV, Section 7 to: (i) delete a requirement that the Member Vice Chairman preside at the meetings of any committee of the Board charged with reviewing and evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director and (ii) clarify

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<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)(C).

that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board. OCC believes that the proposed changes would provide more clarity, transparency, and accuracy regarding its governance arrangements with respect to the responsibilities of the Member Vice Chairman and President and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>58</sup> in accordance with Rule 17Ad-22(d)(8).<sup>59</sup>

### **Amendments to the Board Charter and the Fitness Standards**

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) reflect recent changes involving Board Committee Charters; (iii) reflect recent changes to the Board's composition; and (iv) in general, restate 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 laws and regulations; (iii) reviewing and approving financial objectives and strategies, capital plan and capital structure, fee

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<sup>58</sup> 15 U.S.C. 78q-1.

<sup>59</sup> 17 CFR 240.17Ad-22(d)(8).

structure, capital expenditures and budgets; (iv) the oversight of governance processes, including performing annual self-evaluations on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. OCC believes the proposed changes would provide for prudent governance arrangements with respect to the Board's oversight role over OCC as a systemically important financial market utility and are therefore reasonably designed to ensure that OCC has governance arrangements that, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act<sup>60</sup> and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>61</sup> applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8) thereunder.<sup>62</sup>

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed amendments to the Certificate of Incorporation and By-Laws described above. OCC also proposes amendments to the Fitness Standards to remove redundant descriptions of Board composition and the nomination process and to underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility. OCC believes that the proposed changes provide additional clarity and transparency regarding its governance arrangements and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in

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<sup>60</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>61</sup> 15 U.S.C. 78q-1.

<sup>62</sup> 17 CFR 240.17Ad-22(d)(8).

Section 17A of the Act<sup>63</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8).<sup>64</sup>

Additionally, OCC proposes amendments that would allow for additional meetings of the Board to be called as the Board deems appropriate (such meetings being be called by the Executive Chairman or his designee), which will provide the Board with increased flexibility in performing its oversight functions. Accordingly, OCC believes the proposed amendments to its governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>65</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>66</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>67</sup> thereunder.

#### **Common Amendments to the Committee Charters**

OCC is proposing to make a number of common amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.<sup>68</sup> Specifically, OCC proposes to amend each Committee Charter to confirm that each Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities and 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

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<sup>63</sup> 15 U.S.C. 78q-1.

<sup>64</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>65</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>66</sup> 15 U.S.C. 78q-1.

<sup>67</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>68</sup> *See supra* note 16.

Committee meeting was impractical. The proposed amendments would ensure that each Committee has access to all books, records, facilities and personnel of OCC in carrying out its respective responsibilities and would support deliberation and action by a Board Committee as a whole, rather than action by solely its Chair, and as a result, would help to ensure that each Committee is able to make fully informed, collective decisions regarding the governance of OCC. OCC therefore believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>69</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>70</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>71</sup> thereunder.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions (and specifically requiring that each Committee meet in executive session at each regular meeting of the Committee) and by promoting the enhanced recordation of important meeting events and discussions by requiring that each Committee's meeting minutes reflect, at a minimum, that an executive session was convened and broadly describe the topic(s) discussed. OCC believes that meetings in executive session are an important tool for Board Committees to discuss matters of a sensitive nature or for which certain persons may have conflicts of interest; however, OCC also believes that it is important that these sessions be documented, at least in summary fashion, in the interest of transparency. OCC

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<sup>69</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>70</sup> 15 U.S.C. 78q-1.

<sup>71</sup> 17 CFR 240.17Ad-22(d)(8).

therefore believes the proposed amendments providing for added structure regarding the convening, attendance, and recordation of executive sessions are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>72</sup> and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>73</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>74</sup> thereunder.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without requiring pre-approval from the Board. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms. Accordingly, OCC believes that the proposed amendments are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>75</sup> and are reasonably designed to be clear and transparent to fulfill the public interest

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<sup>72</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>73</sup> 15 U.S.C. 78q-1.

<sup>74</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>75</sup> 15 U.S.C. 78q-1(b)(3)(F).

requirements in Section 17A of the Act<sup>76</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>77</sup> thereunder.

OCC is also proposing amendments to its Committee Charters to specify that that each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process. OCC believes the proposed amendments are therefore reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>78</sup> applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)<sup>79</sup> thereunder.

#### **Amendments to the 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; (iii) promote effective communication between the CAE, CCO, CFO and the AC and between the AC and the Board; and (iv) 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 would also require the AC to meet regularly, and no less

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<sup>76</sup> 15 U.S.C. 78q-1.

<sup>77</sup> 17 CFR 240.17Ad-22(d)(8).

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

<sup>79</sup> 17 CFR 240.17Ad-22(d)(8).



than once annually, (as opposed to at least annually) with management, the CAE, CCO, and CFO in executive sessions to discuss certain private matters and 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 the independence these roles at OCC. 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). The proposed amendments would also provide that the AC shall make such reports to the Board as deemed necessary or advisable.

OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework, promoting effective communication between certain officers, the AC, and the Board, 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>80</sup> and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>81</sup> applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).<sup>82</sup>

### **Amendments to the 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

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<sup>80</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>81</sup> 15 U.S.C. 78q-1.

<sup>82</sup> 17 CFR 240.17Ad-22(d)(8).

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 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>83</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>84</sup>

#### **Amendments to the 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 and to reflect the adoption of the TC), to restate and elaborate on the responsibilities of the RC, and to replace more granular descriptions with general statements regarding the RC's functions and responsibilities, as described in detail above. In particular, the

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<sup>83</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>84</sup> 17 CFR 240.17Ad-22(d)(8).

amendments would restate 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 OCC's risk appetite and risk tolerances. The proposed amendments also elaborate on 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. Additionally, in recognition of OCC's role as a systemically important financial market utility, the RC Charter would provide 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 believes that the proposed amendments to the RC Charter provide for comprehensive and robust governance arrangements with respect to the RC's oversight role at OCC and are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>85</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>86</sup> 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>87</sup>

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<sup>85</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>86</sup> 15 U.S.C. 78q-1.

<sup>87</sup> 17 CFR 240.17Ad-22(d)(8).

Additionally, OCC proposes to delete an existing RC Charter provision specifically requiring the RC to periodically review and modify the inputs to OCC's margin formula and would amend the RC Charter to state that the RC is generally responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula. OCC believes that the proposed amendments continue to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would provide the RC with the continued authority to modify margin formula inputs if it deems such modification to be appropriate. OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding the approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. Accordingly, OCC believes that the proposed changes are reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>88</sup>

In addition, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters to provide more specificity regarding the frequency of these meetings (i.e., that these meetings occur more frequently than once per year). The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other

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<sup>88</sup>*Id.*

officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. OCC believes that the proposed amendments provide more clarity and transparency with respect to RC meetings in executive session and are therefore reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).<sup>89</sup>

Finally, OCC proposes to remove from the RC Charter certain mandatory recusal requirements designed to apply to Member Directors of the RC. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors, which is a publicly available document that governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, as discussed above, OCC's Directors have a fiduciary duty under Delaware law to protect the interests of the corporation and to act in the best interests of its shareholders and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director. OCC believes that this specific recusal requirement contained in the RC charter is unnecessary in light of the existing requirements under Delaware law and OCC's Code of Conduct for OCC Directors. Accordingly, OCC believes that its governance arrangements with respect to conflicts of interest for RC members continue to be designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>90</sup> and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>91</sup> applicable

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<sup>89</sup> *Id.*

<sup>90</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>91</sup> 15 U.S.C. 78q-1.

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>92</sup>

### **Amendments to the Governance and Nominating Committee Charter**

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above, to state that attendance of GNC meetings by telephone is discouraged, and to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee. The proposed amendments are primarily intended to conform the GNC Charter with proposed changes to the By-Laws and existing practices contained in other Committee Charters and would continue to provide for appropriate governance arrangements with respect to the GNC's oversight role. OCC therefore believes the proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>93</sup> applicable to clearing agencies as required under Rule 17Ad-22(d)(8).<sup>94</sup>

### **Amendments to the Technology Committee Charter**

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's CSO and to provide that the CSO is authorized to communicate with directly with the Chair of the TC in between meetings of the Committee. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. The proposed amendments are designed to strengthen the autonomy and independence of the CSO role at OCC and to promote effective

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<sup>92</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>93</sup> 15 U.S.C. 78q-1.

<sup>94</sup> 17 CFR 240.17Ad-22(d)(8).

communication between the CSO and the TC and between TC and the Board and are in line with requirements in other Committee Charters. OCC therefore believes the proposed amendments are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>95</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>96</sup>

### **Amendment No. 1 to Amended and Restated Stockholders Agreement**

OCC also proposes to adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman in conformance with the process set forth in the GNC Charter. The proposed change would ensure an appropriate level of Board oversight and participation in the nomination process and provide consistency between the processes described in the GNC Charter and Amended and Restated Stockholders Agreement thereby ensuring that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>97</sup> applicable to clearing agencies as required under Rule 17Ad-22(d)(8).<sup>98</sup>

#### **(B) Clearing Agency'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>99</sup> The proposed changes to OCC's By-Laws, the Board Charter, and

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<sup>95</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>96</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>97</sup> 15 U.S.C. 78q-1.

<sup>98</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>99</sup> 15 U.S.C. 78q-1(b)(3)(I).

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 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

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>100</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: \_\_\_\_\_

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<sup>100</sup> 17 CFR 200.30-3(a)(12).

RESTATED CERTIFICATE OF INCORPORATION  
OF  
THE OPTIONS CLEARING CORPORATION

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

1. The name of the corporation is THE OPTIONS CLEARING CORPORATION. The name under which the corporation was originally incorporated was the CHICAGO BOARD OPTIONS EXCHANGE CLEARING CORPORATION, and the date of filing of the corporation's original Certificate of Incorporation with the Secretary of State of Delaware was August 28, 1972.

2. The text of the Restated Certificate of Incorporation of the corporation as amended herewith is hereby restated to read as herein set forth in full:

\* \* \*

ARTICLE V. DIRECTORS.

The Board of Directors shall be composed of Member Directors, Exchange Directors, Public Directors and ~~two~~ Management Directors. Each director shall be entitled to one vote on each proposition submitted to the Board of Directors for a vote thereon or for written consent thereto. The number of Member Directors shall be such number, not less than nine, as shall be fixed by or pursuant to the By-Laws, divided into three classes, as provided therein. Each class of Member Directors shall be elected for a term which expires at the third annual meeting of stockholders following their election and upon the election and qualification of their successors, subject to their earlier death, disqualification, resignation or removal. The number of Exchange Directors shall be such number as shall be fixed by or pursuant to the By-Laws, consistent with the provisions of the second paragraph of Article IV hereof. The number of Public Directors shall be such number as shall be fixed by or pursuant to the By-Laws. The number of Management Directors shall be such number as shall be fixed by or pursuant to the By-Laws. Each Management Director and each Exchange Director shall serve until the annual meeting of stockholders following their election or appointment and until the election or appointment and qualification of their respective successors, or until their earlier death, disqualification, resignation or removal. Except as otherwise provided in the By-Laws, 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. Election of directors need not be by

written ballot. Any director of the Corporation may be removed at any time, with or without cause, by the vote of a majority in number of the shares of the class or series of Common Stock which elected such director; provided, however, that Member Directors and Public Directors may be removed only for cause. Vacancies shall be filled in the manner provided in the By-Laws. The management of the business and affairs of the Corporation shall be vested in the Board of Directors except to the extent such management may be delegated by or pursuant to the By-Laws to a Committee of the Corporation and except as otherwise provided in this certificate of incorporation or in the By-Laws.

\* \* \*

[redacted]

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[redacted]

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**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)~~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 ~~nine (9)~~ 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~~

<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.

~~and which~~ is attached hereto. ~~Such Fitness Standards are periodically reviewed by the 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~~other directors or officers of OCC, as well as the Corporate Secretary, shall 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 members of management and invited guests of the Board may be excluded. It is expected that management will be excluded from executive sessions or portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual Directors also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that Director has an actual or potential conflict of interest. The Board will meet in executive session at each regular Board meeting and will determine who will participate in such session. The Board shall select a Director to chair executive sessions in the absence of the Executive Chairman. The chair of the executive session shall determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. 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 the Board will prepare the~~Board 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.~~<sup>x</sup> 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~~ 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 OCC's fee structure consistent with the by-law requirements as well as rebates, discounts and refunds of clearing fees<sup>xiii</sup>;~~
- ~~• Approving additions to, amendments of, and deletions from OCC's by-laws and rules subject to the provisions of the by-laws<sup>xiv</sup>;~~
- ~~• Conducting convened hearings in connection with a denial of membership or a suspension determination<sup>xv</sup>;~~
- ~~Suspending a clearing member<sup>xvi</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.

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- ~~i Article III, Section 1.~~
  - ~~ii Article III, Sections 2, 5, 6, 6A and 7.~~
  - ~~iii Article III, Sections 5, 6, 6A, 7, 10, 11 and 12.~~
  - ~~iv Article III, Sections 2, 6, 6A and 7; Article IV, Section 1.~~
  - ~~v Article IV, Sections 1 and 7.~~
  - ~~vi Article III, Section 14.~~
  - ~~vii Article III, Section 13.~~
  - ~~viii Article IV, Section 10.~~
  - ~~ix Article III, Section 8; Article IV Sections 1, 2 and 5.~~
  - ~~x Article III, Section 9.~~
  - ~~xi See end note iii.~~
  - ~~xii See end note ix.~~
  - ~~xiii Article III, Section 8; Article IX, Section 9.~~
  - ~~xiv Article XI, Sections 1 and 2.~~
  - ~~xv Article V, Section 2; Rule 1110.~~
  - ~~xvi 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 members of management and invited 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.~~ Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

The Committee will meet ~~at least~~regularly, but no less than once annually, 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

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



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.

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

~~D. — Minutes and Reports. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and The Committee 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. 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.

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

~~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 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 annually 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 ~~an~~ a 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~~a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as ~~the~~ Acting Chair.
- 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 members of management and invited 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.~~ Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair of the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

~~The 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 GRO, 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.

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

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

~~D. — Minutes and Reports. Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and~~The Committee 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. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year.

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

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 annually 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 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~~ well as the Corporate Secretary, prepare an agenda in advance of each meeting. The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited guests ~~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.~~ Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will

serve as chair for an executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

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

The Committee shall make such reports to the Board as deemed necessary or advisable. ~~Copies of Committee minutes shall be circulated~~The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely 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~~The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including fees and expenses associated therewith.

- 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 annually 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.

## 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. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as the Acting Chair.

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

The Committee shall meet at least regularly, and no less than once annually, with members of management and 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 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.~~

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

The Committee shall make such reports to the Board as deemed necessary or advisable. ~~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. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year.

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

~~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 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.
- Approving applications for clearing membership and initial contributions to the clearing fund of newly admitted clearing members, subject to the By- Laws and Rules.

- ~~— 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 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 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~~

- ~~•~~ 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 to recommend to the Board such changes therein as the Committee deems appropriate.~~ 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 periodically review Clearing Member surveillance criteria and make such changes therein as the Committee deems appropriate.~~

- ~~•~~ 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, (ii) 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 annually 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 TECHNOLOGY COMMITTEE CHARTER

### I. Purpose

The Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) has established a Technology Committee (the “Committee”) to assist the Board in overseeing OCC’s information technology (“IT”) strategy, infrastructure, resources and risks, including:

- Overseeing major IT related strategies, projects and technology architecture decisions;
- Monitoring whether OCC’s IT programs effectively support OCC’s business objectives and strategies;
- Monitoring OCC’s IT risk management efforts and the security of OCC’s information systems and physical security of information system assets; and
- Conferring with OCC’s senior IT management team and informing the Board on IT related matters.

In fulfilling their responsibilities, it is recognized that the members of the Committee are not full-time employees of OCC and are not, and do not represent themselves to be, technology experts.

### II. Membership and Organization

- A. Composition. The Committee shall be comprised of three or more directors as appointed annually by the Board. The Board may remove or replace any member of the Committee at any time. 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. Meetings. The Committee will meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests ~~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.~~ Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or the Acting Chair, as applicable, will serve as chair for an executive session. The 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~~shall meet regularly, and no less than once annually, with members of management in separate executive sessions to discuss any matters that either side believes should be discussed privately. The Committee shall meet regularly, and no less than once annually, in separate executive sessions with the Chief Security Officer ("CSO") in order provide for the CSO's autonomy and independence. Between meetings of the Committee, the CSO is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

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

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely

to the full Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### III. Authority

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

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

- 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 external auditor as set forth below.~~

### IV. Functions and Responsibilities

The Committee shall:

#### IT Strategy and Projects

- Evaluate ~~the Company~~OCC's IT strategies and the financial, tactical and strategic benefits of proposed major IT related projects and technology architecture alternatives.
- Critically review the progress of major IT related projects and technology architecture decisions.
- Discuss IT costs and internal processes for approval of major IT related capital expenditures.
- Make recommendations to the Board ~~of Directors~~ with respect to IT related projects and investments that require Board approval.

#### IT and Physical Security

- Monitor the quality and effectiveness of ~~the Company~~OCC's IT and physical security.
- Periodically review and appraise ~~the Company~~OCC's IT disaster recovery capabilities and related crisis management plans.

#### Internal Controls

- In coordination and cooperation with the Audit Committee, monitor the quality and effectiveness of IT systems and processes that relate to or affect ~~the Company~~OCC's internal control systems.
- Monitor and assess ~~the Company~~OCC's management of IT-related compliance risks.
- As necessary report to and consult with the Board ~~of Directors~~ and other Board committees (including the Audit Committee and the Risk Committee) regarding IT systems and processes that relate to or affect ~~the Company~~OCC's internal control and risk management systems.

#### Advisory Role

- As necessary, consult with ~~the Company~~OCC's senior IT management team.
- Stay informed of, assess and confer with ~~the Company~~OCC's senior IT management team with respect to new technologies, applications and systems that relate to or affect ~~the Company~~OCC's IT strategy or programs.
- Inform and make recommendations to the Board and its committees with respect IT related matters.

#### Other

- Confirm annually that all responsibilities outlined in this Charter have been carried out.
- Evaluate annually 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.

**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.