



September 20, 2018

VIA ELECTRONIC MAIL

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

Re: Rule Filing SR-OCC-2018-012 Rule Certification

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (“Exchange Act”). This rule filing has been submitted to the SEC under the Exchange Act.

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

Explanation and Analysis

The purpose of the proposed rule change is to make certain changes to OCC’s (1) Audit Committee (“AC”) Charter (“AC Charter”), (2) Compensation and Performance Committee (“CPC”) Charter (“CPC Charter”), (3) Governance and Nominating Committee (“GNC”) Charter (“GNC Charter”), (4) Risk Committee (“RC”) Charter (“RC Charter”), (5) Technology Committee (“TC”) Charter (“TC Charter”) and (6) Board of Directors (“Board”) Charter (“Board Charter”)¹ for consistency with requirements that are applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks) under the Exchange Act.² As described in greater detail below, the proposed changes are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its

¹ As discussed below, the changes to the Board Charter would involve incorporating provisions from OCC’s Corporate Governance Principles (“CGP”) and changing the title of the document to the Board Charter and Corporate Governance Principles.

² 17 CFR 240.17Ad-22(e)(2) and (3).

respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services.

The charters are attached as Exhibits 5A through F. Material proposed to be added to the charters as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethrough text. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.³

Background

On September 28, 2016, the SEC adopted amendments to Rule 17Ad-22⁴ and added new Rule 17Ab2-2⁵ pursuant to Section 17A of the Exchange Act,⁶ and the Payment, Clearing, and Settlement Supervision Act of 2010⁷ to establish enhanced standards for the operation and governance of those clearing agencies registered with the SEC that meet the definition of a "covered clearing agency," as defined by Rule 17Ad-22(a)(5)⁸ (collectively, the new and amended rules are herein referred to as the "CCA rules"). OCC meets the definition of a covered clearing agency and is therefore subject to the requirements of the CCA rules.⁹

Relevance of CCA Rules Regarding OCC Charters

Certain of the CCA rules impose requirements regarding governance arrangements and OCC's risk management framework that relate to its (1) AC Charter, (2) CPC Charter, (3) GNC Charter, (4) RC Charter, (5) TC Charter and (6) Board Charter. Specifically, Rules 17Ad-22(e)(2) and (3) require OCC to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable:

³ OCC's By-Laws and Rules can be found on OCC's public website:
<http://optionsclearing.com/about/publications/bylaws.jsp>.

⁴ Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70812 (October 13, 2016) ("CCA Adopting Release"); see also 17 CFR 240.17Ad-22.

⁵ 17 CFR 240.17Ab2-2.

⁶ 15 U.S.C. 78q-1.

⁷ 12 U.S.C. 5461 et. seq.

⁸ 17 CFR 240.17Ad-22(a)(5).

⁹ Id.

- provide for governance arrangements that are clear and transparent; clearly prioritize safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Exchange Act¹⁰ and the objectives of owners and participants; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; consider the interests of enumerated stakeholders;¹¹ and
- maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.¹²

OCC is proposing changes to its Board and Board committee charters to better align its governance and risk management processes with these requirements, including by shifting responsibility to the Board for enterprise risk management and aligning committee responsibilities accordingly. These changes are described below regarding each charter and key aspects of the proposed changes are noted by bullets at the beginning of each section. Many of the proposed changes are intended only to reduce redundancy and better organize the content of the charters and in some cases would remove provisions for readability in light of the fact that they are not required. Therefore, OCC proposes to relocate existing content and change word choices for readability and to more clearly state what a committee is authorized to do or must do, which OCC believes would not substantively alter the responsibilities or activities of the relevant committee.¹³ Because such changes would not change the operation or meaning of the charter provisions, they are not further

¹⁰ 17 CFR 240.17Ad-22(e)(2). The public interest requirements in Section 17A of the Exchange Act include that the “prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating and acting on behalf of investors.” See 15 U.S.C. 78q-1(a)(1)(A).

¹¹ See 17 CFR 240.17Ad-22(e)(2).

¹² See 17 CFR 240.17Ad-22(e)(3).

¹³ The following are examples of such changes. All of the charters would be amended to state that the Board or the relevant committee will review the charter “at least once every twelve months” instead of “annually” to provide further clarity around the intended frequency. The statement in the TC Charter that the TC “shall also have the authority to perform any other duties” consistent with the TC Charter would be revised to provide that the TC “is authorized to perform any other duties” consistent with the TC Charter. The statement in the AC Charter that the committee shall “approve material changes in accounting principles and practices” would instead state that it “is authorized to approve material changes in accounting principles and practices.” Consistent with this change, where a charter currently states that the Board or a committee “shall approve” a particular matter, certain changes are proposed, as appropriate, to state instead that the Board or a committee is “authorized to approve.” OCC believes such changes properly clarify the oversight role of the Board and the committees and that approval is not mandatory.

described herein. OCC also notes that the Board Charter and committee charters are intended to set forth key responsibilities, procedures, and guiding principles for the Board and the committees. The charters therefore do not enumerate every action that may be taken by the Board or committees, and OCC notes that its By-Laws, Rules and policies also set forth certain duties and responsibilities of the Board and committees (e.g., Sections 4 (Committees) and 8 (Power of the Board of Directors) of Article III of OCC's By-Laws).

Common Changes

Certain of the proposed changes represent common changes that would be made in all or most of the charters.¹⁴ For instance, OCC proposes to amend the charters to provide that in carrying out their responsibilities the Board and the committees shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including its Exchange Shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.¹⁵ OCC also proposes to amend the committee charters to address committee member vacancies to provide that in the event of a vacancy, the applicable committee will continue to undertake its responsibilities, so long as the remaining committee members are capable of satisfying the quorum requirement.¹⁶ In addition, to provide for governance arrangements provide for clear and direct lines of responsibility, OCC proposes to amend all of the charters to specify that the Board and each committee may delegate authority to one or more designated officers of OCC or may refer a risk under its oversight to another committee or the Board as advisable or appropriate. The proposed revisions would further provide, however, that the Board or the committee would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. OCC also proposes amendments to acknowledge, where relevant, that its Executive Chairman ("EC") also serves as its Chief Executive Officer ("CEO") and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. All charters would also be revised to state that a role of the Board or the committee, as applicable, is to advise management. In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board in connection

¹⁴ Certain variations on some of these changes that are specific to the Board Charter are also described below in the section addressing the Board Charter.

¹⁵ See 17 CFR 240.17Ad-22(e)(2)(ii) (requiring governance arrangements that prioritize the covered clearing agency's "safety and efficiency"), (e)(2)(iii) (requiring governance arrangements that support the "public interest requirements" applicable to covered clearing agencies), and (e)(2)(vi) (requiring governance arrangements that consider the interests of all "relevant stakeholders").

¹⁶ This same change would not be added to the Board charter. It would also not be added to the GNC Charter because it is already addressed.

with a required review once every twelve months of committee charters.¹⁷ Moreover, changes would be made to clarify that where the Board or a committee has authority to approve reports or other proposals in its business judgment, such as materials provided by management, it is not obligated to approve, and related modifications would articulate a clear means of recourse for the committee or the Board if it does not approve.¹⁸

The committee charters would also be amended to provide that each committee shall perform and is authorized to perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.¹⁹ OCC also proposes to amend the committee charters to provide that each committee shall perform any other duties consistent with their respective charters as the committee deems necessary or appropriate, or as the Board shall further delegate to the particular committee.²⁰ OCC believes that these changes will provide for flexibility for each committee to supervise and account for matters naturally within the scope of their responsibility or that may be assigned to them by the Board. OCC believes these changes also contribute to a sound risk management framework to comprehensively manage the varying risks and other matters each committee must manage and to effectively identify new risks that may arise.

Finally, in order to the promote governance arrangements are clear and transparent, OCC proposes to make a number of changes to its Board committee charters to clarify that, where certain actions were required to be performed “annually” under the charters, those actions would now be required to occur “each calendar year.” OCC believes that it is appropriate to make clear it in its rules actions which the Board or a committee may be required to perform on an every twelve months-basis, particularly in cases where a regulatory requirement exists (e.g., Risk Committee requirement to review and have the authority to approve at least once every twelve months the adequacy of OCC’s Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board) and those which they would only be required to perform on a calendar year basis. These changes include amending the committee charters to provide that the following activities must occur on a calendar year basis: (i) the appointment of directors to particular committees; (ii) that committees meet regularly, and no less than once per calendar year, with certain members of management in separate executive sessions; (iii) that each committee must provide reports to the Board summarizing its activities for the prior year; (iv) that each committee confirm to the Board that all responsibilities outlined in its Charter have been carried out; and (v) that each committee

¹⁷ See 17 CFR 240.17Ad-22(e)(3)(i) (requiring periodic review and annual Board approval of the CCA’s risk management framework).

¹⁸ The purpose of these changes is to promote governance arrangements that clearly prioritize the safety and efficiency of OCC and specify clear and direct lines of responsibility in its governance arrangements. See 17 CFR 240.17Ad-22(e)(2)(ii) and (v).

¹⁹ OCC notes that a comparable provision to this exists in the RC Charter.

²⁰ OCC notes that comparable language currently appears in the AC Charter, GNC Charter, and TC Charter.

assess its and its individual members' performance and provide results of such assessment to the GNC²¹ for review.

AC Charter

OCC proposes modifications to its AC Charter. Key aspects of the proposed changes regarding the AC Charter include:

- New responsibility for oversight of legal risks, including existing, pending and threatened litigation;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC;
- Increased oversight of OCC's compliance department, including its structure, resources and budget; and
- Introduction of mandatory periodic reporting from OCC's Chief Audit Executive ("CAE"), Chief Compliance Officer ("CCO") and General Counsel ("GC").

OCC proposes to amend the AC Charter to establish new responsibilities for the AC that include reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the structure, independence and objectivity, staffing, resources, and budget of OCC's compliance and audit departments. OCC believes that it is appropriate to extend these responsibilities to the AC since they are highly germane to its current functions (e.g., assisting the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, and OCC's process for monitoring compliance with applicable laws and regulation) and would specify clear and direct lines of responsibility.²² In addition, the responsibility for the oversight of Clearing Member investigations and enforcement would be transferred to the RC as the RC has the required expertise to properly oversee the process (as discussed further below). The AC Charter would also be amended to clarify that the AC shall oversee the independence and objectivity of the internal audit department, consistent with OCC's obligations to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors and provide for oversight of internal audit personnel by an independent audit committee of the board of directors.²³ Under the proposed rule change, the AC Charter would also be amended to provide that the AC is authorized to approve deviations to the audit plan that may arise over the course of an audit, which OCC believes is a natural extension of the AC's role and responsibilities. In addition, OCC proposes to amend the AC

²¹ The GNC is required to provide the results of its own assessment to the Board.

²² See 17 CFR 240.17Ad-22(e)(2)(v).

²³ See 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

Charter to provide that the AC shall identify risk issues relating to the areas that the committee oversees that should be escalated to the Board for its review and consideration, which OCC believes specifies clear and direct lines of responsibility.²⁴

OCC also proposes to amend the AC Charter to provide that certain mandatory reports be sent to the AC for review, including quarterly reports from the CAE regarding the internal audit plan and the GC regarding existing, pending, or threatened litigation.²⁵ OCC notes that either the AC or another committee already has responsibilities in these areas, and OCC believes that such quarterly reports will help provide the AC with the necessary information to appropriately discharge its duties and responsibilities.²⁶

OCC also proposes to streamline its description of the AC's responsibility with respect to its compliance department by providing more generally that the AC shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the CCO and inquire of management regarding steps taken to deal with items raised. As a result of this change, the AC Charter would no longer specify that the AC is responsible for approving the annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving any recommendations by the CCO relating to that plan. The purpose of this change is to shift OCC's compliance department to a monitoring role and away from its historic role of creating a specific plan to follow. This change would also help facilitate the transition of validation responsibilities to OCC's internal audit department, over which the compliance department would have monitoring responsibilities. OCC believes that this change promotes governance arrangements that are clear and transparent.²⁷

In a number of instances, OCC proposes to amend the AC charter to provide that the AC is authorized to perform certain functions. For example, OCC proposes to amend the AC charter to provide that the AC is authorized to approve management's recommendation to appoint or replace the CCO or CAE, which would further the AC's oversight of the CCO and CAE and their independence from management.²⁸ OCC believes that framing the AC's responsibilities in this

²⁴ See 17 CFR 240.17Ad-22(e)(2)(v).

²⁵ OCC proposes certain other streamlining changes to the AC Charter, such as providing that the AC will review OCC's Reporting Concerns and Whistleblower Policy (and specifying that such review will occur each calendar year) rather than providing a more detailed description of what the reporting concerns and whistleblower procedures under the relevant policy entail.

²⁶ OCC also believes that these quarterly reports to the AC help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that these officers keep the AC apprised of OCC's ongoing performance or handling of these matters, which in turn will allow the AC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

²⁷ See 17 CFR 240.17Ad-22(e)(2)(i).

²⁸ See 17 CFR 240.17Ad-22(e)(3)(iii) and (iv). OCC similarly proposes to amend the AC charter to provide that the AC is authorized to approve OCC's audited financial statements after review, is

manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities using its business judgment. OCC also proposes to amend the AC Charter (and the RC Charter) to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given its broader role in overseeing OCC's management of third party risks (which includes OCC counterparties such as Clearing Members).

OCC proposes to further amend the AC Charter to provide that the AC shall review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing. OCC believes that this is a natural extension of the AC's role and responsibility to help ensure the integrity of OCC's audits and is consistent with the public interest and the protection of investors.²⁹

In addition, the AC Charter currently provides that the AC is authorized to determine appropriate compensation for audit services and pre-approve all audit services, subject to annual approval by the Board. As proposed, the AC charter would no longer expressly require annual Board approval regarding these items. However, under the AC Charter the committee would still be required to confirm annually to the Board that all of its responsibilities have been carried out and provide an annual report to the Board summarizing its activities during the previous year.³⁰ OCC also proposes to amend the AC Charter to provide that, in addition to the CAE and CCO, the Chief Financial Officer ("CFO") also would be authorized to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC between meetings of the AC given the CFO's role as part of OCC's executive team and his/her responsibility for OCC finances.³¹

authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and is authorized to discuss certain significant issues with the external auditor.

²⁹ See 15 U.S.C. 78q-1(b)(3)(F).

³⁰ See 17 CFR 240.17Ad-22(e)(2)(v) (requiring governance arrangements with clear and direct lines of responsibility), (e)(3)(i) (requiring periodic review and annual Board approval of risk management policies, procedures and systems) and (e)(3)(iii) (requiring a risk management framework that provides internal audit personnel with sufficient authority, but also access to the Board).

³¹ As described below, OCC also proposes certain other non-substantive changes to the AC Charter to provide additional clarity. For example, OCC proposes to replace reference to "financial and senior management" to OCC's "Corporate Finance Department" in describing the AC's responsibility to facilitate open communication between external auditors and certain groups within OCC. As an additional example, the AC Charter would be amended to provide that the AC is authorized to approve the "issuance of the annual financial" statements after its review of such statements. Similarly, OCC proposes to enhance certain descriptions of the AC's responsibilities. For example, OCC proposes to revise text describing the role of the AC, along with external auditors, as responsible for "planning and carrying out audit work, as appropriate" rather than "planning and carrying out a proper audit." OCC's description of the AC's power to delegate to the CAE "within

CPC Charter

OCC proposes a number of revisions to its CPC Charter, the key aspects of which would include:

- New responsibility to oversee and monitor certain activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto, and approval of the members of the Administrative Committee;
- Introduction of mandatory quarterly reporting on OCC's corporate plan, corporate budget and capital plan; and
- Annual requirement to review succession planning activities regarding OCC's Management Committee ("Management Committee").

OCC proposes to amend the CPC Charter to state that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments, corporate planning, compensation and human capital in addition to assisting the Board in executive management succession planning and performance assessments. The existing CPC Charter already addresses these aspects of the committee's responsibilities generally. The proposed revisions are designed to emphasize the committee's responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management's responsibility to identify, manage, monitor and report the associated risks.³²

The CPC Charter would continue to provide that the committee oversees the corporate plan and corporate budget and makes recommendations to the Board regarding their approval. However, the proposed changes would clarify that the corporate plan and budget are annual arrangements and that the committee oversees their alignment with OCC's business strategy. In addition, a new provision would require management to provide a quarterly report to the committee that contains information on OCC's performance against the corporate plan and the budget.³³

the external audit limits" would be changed for accuracy to read "within the co-sourced audit hour limits." This change is meant to reflect the fact that OCC co-sources its internal audit function through a partnership between OCC's in-house internal audit department and a third party internal audit service provider.

³² See 17 CFR 240.17Ad-22(e)(3)(i) (requiring that risk management policies, procedures and systems be subject to periodic review and annual approval by the Board) and 17 CFR 240.17Ad-22(e)(2)(v) (requiring that governance arrangements specify clear and direct lines of responsibility).

³³ OCC believes that quarterly reporting by management to the CPC, as described in this discussion of the CPC Charter, helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the CPC apprised of OCC's ongoing performance on these matters, which in turn will allow the CPC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

The CPC Charter would continue to provide that the committee oversees OCC's capital plan and would be revised to clarify that this oversight includes the written policies adopted thereunder, which include OCC's fee, dividend and refund policies (which are existing responsibilities of the CPC). Revisions also would clarify that the committee must review the capital plan at least once every twelve months and that the committee makes recommendations to the Board concerning capital requirements, refund payments, and dividend payments. In addition, a provision would be added to require management to provide a quarterly performance report to the committee against the capital plan.

OCC proposes to revise the CPC Charter to provide that the Committee would oversee and monitor the activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto and of the members of the Administrative Committee. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee and overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

In addition, OCC proposes changes to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee. A new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months.

Regarding the committee's review of Public Director compensation and the recommendations that it provides to the Board related thereto, a requirement would be added to the CPC Charter for the committee to engage in these activities not less than once every two years. OCC believes that a two year period is appropriate for such a review because the overall trends in industry compensation generally do not change dramatically from year to year. The CPC would continue to look at overall Public Director compensation each year for informational purposes, but it would not be required to perform a full review of each of the components of Public Director compensation packages and recommend adjustments to the Board on a yearly basis.

The CPC Charter would also be amended to clarify that that committee is not authorized to adopt or amend compensation, retirement and welfare benefit plans that require Board approval and to add a new requirement that the committee must review OCC's insurance program at least once every twelve months.

Certain specific responsibilities stated in the CPC Charter would be removed in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board in

furtherance of having governance arrangements that specify clear and direct lines of responsibility.³⁴ For example, an existing provision would be removed that states that the committee reviews special financial matters as requested by the Board. Provisions would also be removed that specifically address the committee's review and approval of policies and programs regarding salary compensation and incentive compensation and its review of material changes to executive management benefits.

GNC Charter

OCC also proposes changes to its GNC Charter. The key aspects of the proposed changes regarding the GNC Charter include:

- New responsibility for review and approval of related party transactions; and
- New responsibility for advising on matters pertaining to director leadership development and succession planning.

OCC proposes to amend the GNC Charter to establish new responsibilities for the GNC to approve all material changes to written policies concerning related party transactions and recommend such changes to the Board for approval. The GNC Charter would also be amended to provide that the GNC shall review and, if appropriate, approve or ratify any related party transactions involving OCC in accordance with the written policy governing such transactions. Because the GNC is already responsible for the review of conflicts of interests of directors and the manner in which such conflicts will be monitored and resolved, OCC believes that it is appropriate for the GNC to assume the additional responsibility of reviewing related party transactions. OCC also believes that it would be appropriate for the GNC to advise the Board on matters pertaining to director leadership and development to promote governance arrangements that establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities.³⁵

OCC also proposes a number of other changes to the GNC charter, which include: (i) reframing the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,³⁶ (ii) removing the ability for a designee of the chair of the GNC to call an additional

³⁴ See 17 CFR 240.17Ad-22(e)(2)(v).

³⁵ See 17 CFR 240.17Ad-22(e)(2)(iv). OCC also proposes to reframe the introductory paragraph of the GNC charter to explicitly reference relevant provisions of Rule 17Ad-22(e)(2) and specify that the GNC is responsible for assessing the clarity and transparency of OCC's governance arrangements, consistent with Rule 17Ad-22(e)(2)(i). See 17 CFR 240.17Ad-22(e)(2)(i).

³⁶ For example, rather than providing that the GNC would work toward developing a Board with a broad spectrum of experience and expertise, OCC proposes to provide that the GNC shall identify, for purposes of making recommendations to the Board, the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, the "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. In this same vein, OCC proposes to

meeting beyond the four times per year that the GNC will meet,³⁷ (iii) specifying that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically,³⁸ (iv) expanding the GNC's yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees,³⁹ (v) specifying that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and (vi) providing that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. In addition, OCC proposes to revise the GNC charter to no longer provide that the GNC is responsible for 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. The requirement that the GNC nominate candidates is provided explicitly in the By-Laws, and OCC further believes that this responsibility is adequately captured in OCC's revised description of the GNC's role to identify, screen, and review individuals qualified to be elected or appointed to serve as Member Directors or Public Directors.⁴⁰

RC Charter

OCC also proposes a number of changes to its RC Charter. The key aspects of the proposed changes regarding the RC Charter include:

- Transition of responsibilities regarding Enterprise Risk Management (“ERM”) to the Board;

delete language providing that the GNC is responsible for 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. OCC believes that this deletion is appropriate because it is adequately covered by the other provisions in the GNC charter regarding directors' qualifications, as revised, and contemplates that the Standards are approved by the Board. These changes are designed to be consistent with Rule 17Ad-22(e)(2)(iv) (regarding the establishment of governance arrangements that ensure “board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities”). See 17 CFR 240.17Ad-22(e)(2)(iv).

³⁷ OCC believes this change would help ensure that the committee's time and resources would be utilized appropriately, furthering the purpose of Rule 17Ad-22(e)(2)(ii) (requiring that a covered clearing agency's governance arrangements prioritize the “efficiency” of the covered clearing agency). See 17 CFR 240.17Ad-22(e)(2)(ii).

³⁸ This is intended to be consistent with Rule 17Ad-22(e)(2)(iii) (requiring governance arrangements that support the “public interest requirements” in 17 U.S.C. 78q-1). See 17 CFR 17Ad-22(e)(2)(iii).

³⁹ Id.

⁴⁰ See OCC By-Law Article III, Sections 5 and 6A. OCC proposes to specify in the GNC Charter that the GNC's role in this context applies specifically to Public Directors and Member Directors to promote consistency with the By-Laws.

- Increased responsibilities with respect to OCC's risk management related to credit, collateral, liquidity and third party risks;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC; and
- Introduction of mandatory periodic reporting on the effectiveness of OCC's management of risks.

OCC proposes to amend the RC Charter's statement of the committee's responsibilities. First, the RC Charter currently provides that the RC assists the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational and financial (e.g., credit, market, liquidity and systemic) risks. This would be replaced by a narrower and more specific statement that the RC would have responsibility for assisting the Board in its oversight of financial, collateral, risk model and third party risk management processes.⁴¹ In addition, the oversight of responsibility for Clearing Member investigations and enforcement outcomes of disciplinary actions would be transferred from the AC to the RC as the RC has the required expertise to properly oversee the process given its current responsibility for overseeing 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 determinations in respect of the foregoing.

The committee would also continue to be responsible for functions delegated to it under the By-Laws and Rules and as may be delegated to it by the Board. A removal of continued responsibility for strategic and operational risks would be consistent with additional changes to the RC Charter that provide that the RC would no longer have responsibilities related to the ERM program and such responsibilities would be transitioned to the Board (which is discussed in further detail below). OCC believes that these changes are appropriate because issues regarding enterprise risk management are central to OCC's comprehensive management of risk and would therefore benefit from the experience and attention of the full Board.

⁴¹ The RC Charter currently provides that the committee is responsible for overseeing OCC's overall ERM framework, 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, (v) default management planning, and (vi) risks related to new initiatives." As described in greater detail below, the revised descriptions in the RC Charter regarding its oversight of these areas would continue to involve responsibilities related to credit, market, liquidity and systemic risk but would no longer include responsibility for overseeing those aspects related to the ERM program. The committee would also continue to be responsible for identifying risks associated with its responsibilities that should be escalated to the Board for its review and consideration.

Corresponding changes would also be made to clarify that the committee has an oversight role regarding its responsibilities and that it remains OCC management's responsibility to identify, manage, monitor and report risks in these areas.

A clarifying statement would also be added to the RC Charter to state that the RC is required to perform its responsibilities in accordance with the provisions of the RC Charter and applicable regulatory requirements. A new provision would provide that, from time to time, the committee may receive reports and guidance relating to financial risk issues from, among others, OCC's Financial Risk Advisory Council ("FRAC"). The committee would consider and discuss such reports in respect of financial risk issues that may impact the options and futures industries. The committee would take such guidance into account in the exercise of its fiduciary judgment and the performance of its functions and responsibilities.

Regarding meetings of the RC, a change would be made to the RC Charter to specify that joint meetings with other Board committees count toward the requirement to meet at least six times a year. A change would also clarify that in-person attendance of meetings is preferred.

In connection with the RC no longer having responsibilities regarding the ERM program, several related provisions would be removed from the RC Charter. For example, the committee would no longer have responsibility to oversee the structure, staffing and resources of the ERM program or approve its goals and objectives on an annual basis. Additionally, it would no longer be responsible for reviewing OCC's risk appetite statements and risk tolerances because the Board would assume responsibility for approval of these matters.

As noted, the proposed changes to the RC Charter would clarify the RC's broad responsibilities for overseeing credit, collateral, liquidity and third party risks in a manner that provides risk management personnel with sufficient authority, resources, independence, and access to the board of directors, as well as a direct reporting line to and oversight by the RC, and provide for governance arrangements that specify clear and direct lines of responsibility.⁴² The RC Charter currently contains provisions that address the responsibility that the committee has for these areas, but they would be removed in favor of the more specific provisions described below. At least once every twelve months the committee would be required to review the adequacy of OCC's management of credit, collateral, liquidity, and third party risks. In connection with these responsibilities, the RC would receive monthly reports from OCC management regarding the

⁴² See 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(iii) and (iv).

effectiveness of OCC's management of credit exposures⁴³ and liquidity risks.⁴⁴ Management would also provide the committee with quarterly reports regarding the effectiveness of OCC's management of collateral and third party risks.⁴⁵ And, the RC would also be responsible for approval of all material changes to written policies regarding risk management in these areas and recommending such changes to the Board.⁴⁶

The RC Charter would continue to provide that the committee has responsibility regarding OCC's risk models, including margin models, but it would be revised to more specifically identify the committee's oversight role regarding model validations,⁴⁷ its responsibility for approving any material changes to written policies regarding model risk management, and for recommending any such change to the Board.⁴⁸

Responsibilities would also be made explicit in connection with the review and approval of any new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks. The RC would refer any such new products that it approves to the Board for its potential approval.

The RC Charter would also be amended to codify the committee's existing responsibility to oversee OCC's Recovery and Orderly Wind-down Plan.⁴⁹ At least once every twelve months, this would include reviewing the adequacy of the plan. If the committee approves the plan, it would next recommend the plan to the Board for potential Board approval. The committee would also have responsibility for reviewing and approving any material changes to the plan; however, in the event

⁴³ For example, the report regarding the effectiveness of the management of credit exposures would include the results of: (i) a comprehensive analysis of OCC's existing stress testing scenarios, models and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin models and a review of the associated parameters and assumptions for back testing.

⁴⁴ The committee would also be required to review the adequacy of OCC's secured committed liquidity facilities at least once every twelve months and recommend the size and composition of such facilities to the Board for approval.

⁴⁵ OCC believes that this quarterly reporting helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the RC apprised of OCC's ongoing performance on these matters, which in turn will allow the RC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

⁴⁶ See 17 CFR 240.17Ad-22(e)(3)(i) (requiring that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board).

⁴⁷ This would include the review and approval of OCC's risk model validation plan, plan deviations, and related reports and recommendations by OCC's Chief Risk Officer ("CRO").

⁴⁸ See 17 CFR 240.17Ad-22(e)(3)(i) (requiring that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board).

⁴⁹ See 17 CFR 240.17Ad-22(e)(3)(ii).

the committee approves any such changes, it would in turn recommend the changes to the Board for its potential approval.⁵⁰

The committee would continue to have responsibility regarding the structure and staffing of OCC's financial risk management group; however, detail would be added to the RC Charter to clarify the same responsibility for OCC's corporate risk management functions and that the RC must review structure and staffing in these areas at least once every twelve months. A provision would also be added to provide that the committee would review and approve the CRO's goals and objectives, and any material changes thereto, at least once every twelve months. OCC believes these changes would promote RC oversight of risk management personnel⁵¹ and provide for clear and direct lines of responsibility.⁵²

As noted above, OCC also proposes to amend the RC Charter to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given the committee's broader role in overseeing OCC's management of third party risks, which includes OCC counterparties such as Clearing Members. Finally, the RC Charter would continue to provide that the RC reviews the results of internal and external audits and regulatory examinations. However, a statement would be added to clarify that the committee is responsible for reviewing third party assessment reports as to financial, collateral, risk model and third party risk management processes and for reviewing OCC management's remediation efforts pertaining to any such examination and reports.

TC Charter

In addition, OCC proposes a number of changes to its TC Charter. Key aspects of the proposed changes regarding the TC Charter include:

- New responsibility for oversight of material changes to the operational execution and delivery of core clearing and settlement services with the authority to recommend approval thereof to the Board;
- New responsibility for OCC's operational initiatives, including approving major information technology ("IT") and operational initiatives, recommending any major

⁵⁰ In relevant part, the RC Charter states the following. "The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board."

⁵¹ See 17 CFR 240.17Ad-22(e)(3)(iv).

⁵² See 17 CFR 240.17Ad-22(e)(2)(v).

capital expenditures to implement to the Board, and approving the information technology and operational budget for each calendar year;

- New responsibility to review at least every twelve months the adequacy of OCC's management of information security risks, approve all material changes to written policies related to the managing information security risks and recommend such changes to the Board;
- Introduction of mandatory periodic reporting from management on major IT initiatives;⁵³ and
- New responsibility to oversee and receive a quarterly report from management on OCC's Business Continuity and Disaster Recovery Programs.

OCC proposes to amend the TC Charter to specify clear and direct lines of responsibility by providing that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities.⁵⁴ In addition, OCC proposes to amend the TC Charter so that it would no longer require that the TC work with or report to the AC and RC to monitor the quality and effectiveness of IT systems and processes that relate to or affect OCC's internal control systems and risk management systems. As noted above in the discussion of common changes to the charters, however, the TC and any other committee or the Board would have certain authority to refer risks under their oversight to promote the smooth functioning of OCC's governance arrangements. OCC also proposes to revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and instead more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the

⁵³ OCC proposes that the TC would oversee and receive quarterly reports from management that provide information on: (i) executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance; (ii) the effectiveness of the management of information security risks; (iii) OCC's Business Continuity and Disaster Recovery Programs, including the progress on executing the annual test plan and achieving recovery time objectives; and (iv) major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators. OCC believes that such reports would provide the TC with the necessary information to discharge its oversight duties and responsibilities appropriately and will facilitate dialogue between the TC and OCC's senior IT management team. OCC believes that this reporting also helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the TC apprised of OCC's ongoing performance on these matters, which in turn will allow the TC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

⁵⁴ See 17 CFR 240.17Ad-22(e)(2)(v).

information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines).

The TC Charter would continue to provide that the TC is responsible for assisting the Board in overseeing OCC's IT strategy and other company-wide operational capabilities. OCC proposes, however, to delete certain general statements regarding the TC's duty to make recommendations to the Board with respect to IT-related projects and investments and critically review the progress of such projects and/or technology architecture decisions. OCC proposes to replace these general statements with more specific duties of the TC to, for example, receive a report on management's progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priority, and review material changes to the operational execution and delivery of core clearing and settlement services as well as material changes to written policies concerning information security risk and to recommend such changes to the Board for approval.⁵⁵

OCC also proposes to remove the language stating that the TC will "periodically review and appraise . . . OCC's crisis management plans," and, instead, add language that the TC will oversee and receive a quarterly report on "OCC's Business Continuity and Disaster Recovery Programs" as the crisis management plans are incorporated within its Business Continuity and Disaster Recovery Programs. As such, the proposed revision will better clarify the full oversight responsibility of the committee and better align with the internal practices at OCC.

In addition, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. OCC believes that this change would contribute to OCC maintaining a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC by charging the TC with the task of identifying emerging risks that may arise over time.⁵⁶

Board Charter

As discussed above, OCC would amend its Board Charter by incorporating its existing CGP and retiring the separate CGP document. The title of the consolidated document would be changed to reflect that it represents OCC's "Board of Directors Charter and Corporate Governance Principles." Both the Board Charter and CGP are publicly available on OCC's website today.⁵⁷ OCC believes this step is appropriate to eliminate significant overlap between the contents

⁵⁵ OCC proposes similar changes to the TC Charter with respect to certain responsibilities of the TC. For example, OCC proposes to reframe the TC's responsibility to monitor and assess OCC's management of IT-related compliance risks as a responsibility to monitor and oversee the overall adequacy of OCC's IT and operational control environment, including the implementation of key controls in response to regulatory requirements.

⁵⁶ See 17 CFR 240.17Ad-22(e)(3).

⁵⁷ OCC's CGP and Board Charter are available at <http://www.theocc.com/about/corporate-information/what-is-occ.jsp>.

of the two existing documents and thereby make the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand, and thereby improve the clarity and transparency of OCC's governance arrangements.⁵⁸ For example, the existing CGP and Board Charter each address aspects of the Board such as its size and composition. In addition, the Board Charter and CGP also cross-reference one another, such as regarding qualification standards for directors, term limitations, the number of meetings per year and the Board's authority to hire specialists and advisors, which reduces clarity because it requires a reader to turn between the two documents to understand the Board's operation. In incorporating the CGP within the proposed Board Charter, OCC would make changes to the contents of the CGP, as appropriate, to conform the existing provisions to the structure and organization of the Board Charter and related requirements in the By-Laws and Rules.⁵⁹ However, the majority of the provisions in the CGP would be incorporated in their existing form and these provisions would address in the Board Charter, for example, the size of the Board and its composition, membership criteria, appointment of the GNC, the selection of Member, Public, Exchange and Management Directors, conduct matters, ethics and conflicts of interest, compensation, access to senior management, and Board and Board committee evaluations.

As a result of these incorporated provisions, OCC proposes to remove certain existing provisions in the Board Charter that specifically reference or are duplicative of more comprehensive descriptions from the CGP or where the imported text from the CGP otherwise covers the more truncated discussions of these items in the Board Charter. Specifically, OCC's discussions in the Board Charter would be supplanted by more detailed explanations drawn from the CGP with respect to: (i) Board composition; (ii) qualification standards for directors; (iii) election of directors, resignation and disqualification; (iv) tenure, term and age limitations; and (v) calling of Board meetings, selection of agenda items, and attendance.

OCC also proposes to amend the Board Charter to set forth certain key considerations and responsibilities in the Board Charter that include and expand upon those described above in connection with the discussion of proposed changes that are common to the charters.⁶⁰ These include providing that the Board shall exercise its authority to provide for governance arrangements that, among other things, "support [applicable] public interest requirements . . . and the objectives of owners and participants,"⁶¹ establish that the Board and senior management "have appropriate

⁵⁸ See 17 CFR 240.17Ad-22(e)(2)(i).

⁵⁹ For example, the CGP provides in one instance that all materials for Board meetings are made available online by the office of the secretary. This particular provision in the CGP would not be imported and the Board Charter would be amended to provide that OCC operates a portal for the general dissemination of meeting and other written materials to directors to reflect how OCC actually operates. In addition, OCC proposes to make clear that Public Directors do not have term limits, consistent with the requirements in Article III, Section 6 of the OCC By-Laws.

⁶⁰ See *supra* note 13-15 and accompanying text.

⁶¹ See 17 CFR 240.17Ad-22(e)(2)(iii).

experience and skills to discharge their duties and responsibilities,”⁶² specify “clear and direct lines of responsibility”⁶³ and consider the interests of Clearing Members’ customers.⁶⁴ OCC also proposes changes designed to provide for “clear and direct lines of responsibility”⁶⁵ by noting that the Board has explicitly delegated management of specific risks to the Board committees and to the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the RC.⁶⁶

Currently, the Board Charter sets forth a number of functions and responsibilities of the Board. OCC proposes to reorganize this list of functions and responsibilities in a new section regarding the mission of the Board and proposes non-substantive changes to some of the descriptions of the Board’s responsibilities. For example, the Board Charter currently provides that the Board is responsible for advising, approving, and 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. OCC proposes to amend the Board Charter to provide that the Board is responsible for overseeing OCC’s business strategies, including expansions of clearance and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest.⁶⁷ These changes are designed to improve the readability of the document as well as to specify additional, specific considerations of the Board with respect to particular

⁶² See 17 CFR 240.17Ad-22(e)(2)(iv).

⁶³ See 17 CFR 240.17Ad-22(e)(2)(v).

⁶⁴ OCC would also provide as a guiding principle that the Board is, among other things, mindful of the public interest as it fulfills its duties by complying with the obligations imposed on it under relevant law and that it discloses major decisions to relevant stakeholders and the public. See 17 CFR 240.17Ad-22(e)(2)(iii).

⁶⁵ See 17 CFR 240.17Ad-22(e)(2)(v).

⁶⁶ The amended Board Charter would further specify that the Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC but would note that the Board would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. Specifying this delegation in the Board Charter is consistent with the requirement in Rule 17Ad-22(e)(2)(v) that a covered clearing agency’s governance arrangements specify clear and direct lines of responsibility. See 17 CFR 240.17Ad-22(e)(2)(v).

⁶⁷ As a further example, OCC proposes to revise the Board’s responsibility to oversee “OCC’s information technology strategy, infrastructure, resources and risks” to provide that the Board’s responsibility is to oversee “OCC’s technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC’s provision of its clearing, settlement, and risk management services.” OCC also proposes to remove oversight of human resources programs from the Board Charter because that responsibility has been delegated to the CPC.

responsibilities.⁶⁸ OCC notes that the Board Charter would provide that the Board is responsible for the business and affairs of OCC and that the Board would continue to be responsible for performing such other functions as the Board believes appropriate or necessary or as otherwise prescribed by rules or regulations, including OCC's By-Laws and Rules.⁶⁹

In addition to the changes described above, OCC proposes to modify the description of the Board's functions and responsibilities as part of the description of the mission of the Board to include: (i) overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments;⁷⁰ (ii) ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, access to the Board, and a direct reporting line to, and oversight by, certain committees;⁷¹ (iii) ensuring that the audit committee of the Board is independent;⁷² (iv) transitioning the overall oversight of ERM to the Board; and (v) assigning responsibility for risk decisions and policies to address decision-making during a crisis. The Board Charter would also be amended to codify the Board's existing responsibility for overseeing and approving OCC's Recovery and Orderly Wind-Down Plan.⁷³

As noted above, OCC proposes to transfer responsibility for the oversight of ERM from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even further engagement by and attention from the Board regarding OCC's risk universe and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it

⁶⁸ For example, OCC also proposes to specify that the Board's authority extends to performing such functions as it believes are appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, "or other policies." This change is intended to clarify that the scope of the Board's authority extends to all of OCC's policies.

⁶⁹ Pursuant to this broad responsibility, OCC believes that the functions and responsibilities of the Board would remain consistent notwithstanding certain proposed deletions or rephrasing regarding the existing list of responsibilities. For example, the Board Charter would no longer specify that the Board would review committee charters and reports of committee activities; however, it would nevertheless provide that the Board is responsible for establishing a written charter for each committee and that each committee would be responsible for providing an annual report to the Board regarding its activities.

⁷⁰ See 17 CFR 240.17Ad-22(e)(3)(i).

⁷¹ See 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

⁷² See 17 CFR 240.17Ad-22(e)(3)(v).

⁷³ See supra note 50 and accompanying text.

would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe.

OCC also proposes a number of other changes to the Board Charter, such as deletion of the provision noting that the Member Vice Chairman of the Board has the responsibilities set forth in the By-Laws. OCC believes this is appropriate because the responsibilities of the Member Vice Chairman are already set forth in OCC's By-Laws. OCC also proposes to amend the Board Charter to no longer specify that the Board is responsible for an annual self-evaluation of its performance and the performance of its committees and individual directors.⁷⁴ Because the Board has delegated responsibility to the GNC for the annual self-evaluation of the Board and its committees, which is described in text that OCC proposes to import from the CGP, OCC believes that it is no longer necessary to specify that the Board would have this annual self-evaluation obligation.⁷⁵ Similarly, OCC proposes to amend the Board Charter to no longer provide that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and certain other officers because the Board has delegated this responsibility to the CPC.⁷⁶ Finally, OCC proposes to delete the current footnote one (1) from the Board Charter, which provides an example of an instance in which certain provisions of the By-Laws provide that the Board should not take action. The amended Board Charter would continue to provide that the Board's responsibilities and duties are subject to any exceptions provided in OCC's Amended and Restated Certificate of Incorporation or the By-Laws and Rules, but OCC believes that the footnote providing an example of such an instance is unnecessary and its deletion would improve readability of the Board Charter.

OCC also proposes to amend the Board Charter to provide that a number of different activities related to the conduct and functioning of the Board would involve participation by or input from certain other officers of OCC that serve functions relevant to the topic being discussed. For example, with respect to setting the agenda for Board meetings, the Board Charter currently provides that the Executive Chairman, in consultation with other directors or officers of OCC, as well as the Corporate Secretary, will establish an agenda for Board meetings. OCC proposes to amend this provision to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board

⁷⁴ The Board Charter would provide more generally that the Board is responsible for overseeing OCC's activities through regular assessments of Board and individual director performance.

⁷⁵ OCC also proposes to amend the Board Charter to provide that the annual self-evaluations shall no longer include a focus on individual directors' performances but will instead focus primarily on the performance of the Board and each committee as a whole. OCC has found that because not every director has the opportunity to work with each other director, focusing the annual self-evaluation on individual director performance is less effective than focusing on the performance of each committee as a whole.

⁷⁶ However, the amended Board Charter would specify that the Board is responsible for approving the compensation of such officers.

meetings.⁷⁷ These changes are designed to help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements in the public interest by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate.

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

Compliance with Core Principles Generally. OCC believes that the proposed rule change will assist OCC in its requirement to comply with Core Principle A,⁷⁸ which requires, in part, that each DCO comply with each of the Core Principles and any requirement that the Commission may impose by rule or regulation. OCC believes that implementing the proposed rule change would promote compliance with the Core Principles generally because it would enhance OCC’s governance arrangements to provide that in carrying out their responsibilities the Board and each of the committees would (i) prioritize the safety and efficiency of OCC, (ii) generally support the stability of the broader financial system and (iii) consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, taking into account prudent risk management standards (including system risk mitigation) and industry best practices. Moreover, OCC believes the proposed changes would provide clear and transparent governance arrangements designed to improve OCC’s ability to comply with the Core Principles and to serve Clearing Members and the markets for which it clears.

Risk management. OCC believes that implementing the proposed rule change will be consistent with the Core Principle D,⁷⁹ which requires, in general, that each DCO possess the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. OCC believes the proposed rule change would enhance the clarity, transparency and effectiveness of OCC’s governance arrangements, particularly with respect to the oversight responsibilities of the Board and its committees concerning the credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC. In this regard, the proposed changes would further OCC’s compliance with Core Principle D.

⁷⁷ Similarly, OCC proposes to amend the Board Charter to provide that the CEO, COO and CAO would have the authority to invite employees to Board meetings, that such officers encourage members of senior management to respond to questions posed by directors relating to their areas of expertise, and that directors shall coordinate access to members of senior management and outside advisors through such officers. The criteria for Board member eligibility would also be expanded to ensure that candidates’ experience and expertise are not only adequate to offer advice and guidance to the Executive Chairman, but also to the CEO, COO, and CAO.

⁷⁸ 7 U.S.C. 7a-1(c)(2)(A).

⁷⁹ 7 U.S.C. 7a-1(c)(2)(D).

Public Information. OCC believes that implementing the proposed rule change will be aligned with the requirement in Core Principle L⁸⁰ that each DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO. Upon implementation, OCC will post the amended Board and Committee Charters on its public website thereby providing the public with relevant information regarding OCC's governance arrangements and thereby providing market participants with information to identify and evaluate OCC's governance arrangements.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC's website concurrently with the filing of this submission.

⁸⁰ 7 U.S.C. 7a-1(c)(2)(L).

Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Justin W. Byrne
Vice President, Regulatory Filings

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 177	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2018 - * 012	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"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

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

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

Proposed rule change related to The Options Clearing Corporation's Board of Directors and Board Committee Charters.

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 * Justin	Last Name * Byrne
Title * Vice President, Regulatory Filings	
E-mail * jbyrne@theocc.com	
Telephone * (202) 971-7238	Fax (312) 322-6280

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 08/24/2018	Vice President, Regulatory Filings
By Justin W. Byrne	
(Name *)	

Justin Byrne, jbyrne@theocc.com

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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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

Add Remove View

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

Partial Amendment

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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

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”) proposes changes to its (1) Audit Committee Charter, (2) Compensation and Performance Committee Charter, (3) Governance and Nominating Committee Charter, (4) Risk Committee Charter, (5) Technology Committee Charter and (6) Board of Directors Charter in connection with requirements applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).¹

The charters are attached as Exhibits 5A through F. Material proposed to be added to the charters as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethrough text. The proposed rule change does not require any changes to the text of OCC’s By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.²

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by OCC’s Board of Directors at meetings held on February 24, 2017, and December 13, 2017.

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 the proposed rule change is to make certain changes to OCC’s (1) Audit

¹ 17 CFR 240.17Ad-22(e)(2) and (3).

² OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

Committee (“AC”) Charter (“AC Charter”), (2) Compensation and Performance Committee (“CPC”) Charter (“CPC Charter”), (3) Governance and Nominating Committee (“GNC”) Charter (“GNC Charter”), (4) Risk Committee (“RC”) Charter (“RC Charter”), (5) Technology Committee (“TC”) Charter (“TC Charter”) and (6) Board of Directors (“Board”) Charter (“Board Charter”)³ for consistency with requirements that are applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).⁴ As described in greater detail below, the proposed changes are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services.

Background

On September 28, 2016, the Commission adopted amendments to Rule 17Ad-22⁵ and added new Rule 17Ab2-2⁶ pursuant to Section 17A of the Securities Exchange Act of 1934, as

³ As discussed below, the changes to the Board Charter would involve incorporating provisions from OCC’s Corporate Governance Principles (“CGP”) and changing the title of the document to the Board Charter and Corporate Governance Principles.

⁴ 17 CFR 240.17Ad-22(e)(2) and (3).

⁵ Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70812 (October 13, 2016) (“CCA Adopting Release”); see also 17 CFR 240.17Ad-22.

⁶ 17 CFR 240.17Ab2-2.

amended (“Exchange Act” or “Act”),⁷ and the Payment, Clearing, and Settlement Supervision Act of 2010⁸ to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a “covered clearing agency,” as defined by Rule 17Ad-22(a)(5)⁹ (collectively, the new and amended rules are herein referred to as the “CCA rules”). OCC meets the definition of a covered clearing agency and is therefore subject to the requirements of the CCA rules.¹⁰

Relevance of CCA Rules Regarding OCC Charters-

Certain of the CCA rules impose requirements regarding governance arrangements and OCC’s risk management framework that relate to its (1) AC Charter, (2) CPC Charter, (3) GNC Charter, (4) RC Charter, (5) TC Charter and (6) Board Charter. Specifically, Rules 17Ad-22(e)(2) and (3) require OCC to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable:

- provide for governance arrangements that are clear and transparent; clearly prioritize safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Act¹¹ and the objectives of owners and participants; establish that the board of directors and senior management have

⁷ 15 U.S.C. 78q-1.

⁸ 12 U.S.C. 5461 et. seq.

⁹ 17 CFR 240.17Ad-22(a)(5).

¹⁰ Id.

¹¹ 17 CFR 240.17Ad-22(e)(2). The public interest requirements in Section 17A of the Act include that the “prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating and acting on behalf of investors.” See 15 U.S.C. 78q-1(a)(1)(A).

- appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; consider the interests of enumerated stakeholders;¹² and
- maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.¹³

OCC is proposing changes to its Board and Board committee charters to better align its governance and risk management processes with these requirements, including by shifting responsibility to the Board for enterprise risk management and aligning committee responsibilities accordingly. These changes are described below regarding each charter and key aspects of the proposed changes are noted by bullets at the beginning of each section. Many of the proposed changes are intended only to reduce redundancy and better organize the content of the charters and in some cases would remove provisions for readability in light of the fact that they are not required. Therefore, OCC proposes to relocate existing content and change word choices for readability and to more clearly state what a committee is authorized to do or must do, which OCC believes would not substantively alter the responsibilities or activities of the relevant committee.¹⁴ Because such changes would not change the operation or meaning of the charter

¹² See 17 CFR 240.17Ad-22(e)(2).

¹³ See 17 CFR 240.17Ad-22(e)(3).

¹⁴ The following are examples of such changes. All of the charters would be amended to state that the Board or the relevant committee will review the charter “at least once every twelve months” instead of “annually” to provide further clarity around the intended frequency. The statement in the TC Charter that the TC “shall also have the authority to perform any other duties” consistent with the TC Charter would be revised to provide that the TC “is authorized to perform any other duties” consistent with the TC Charter. The statement in the AC Charter that the committee shall “approve material changes in

provisions, they are not further described herein. OCC also notes that the Board Charter and committee charters are intended to set forth key responsibilities, procedures, and guiding principles for the Board and the committees. The charters therefore do not enumerate every action that may be taken by the Board or committees, and OCC notes that its By-Laws, Rules and policies also set forth certain duties and responsibilities of the Board and committees (e.g., Sections 4 (Committees) and 8 (Power of the Board of Directors) of Article III of OCC's By-Laws).

Common Changes

Certain of the proposed changes represent common changes that would be made in all or most of the charters.¹⁵ For instance, OCC proposes to amend the charters to provide that in carrying out their responsibilities the Board and the committees shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including its Exchange Shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, as is consistent with Rules 17Ad-22(e)(2)(ii), (iii) and (vi).¹⁶ OCC also proposes

accounting principles and practices” would instead state that it “is authorized to approve material changes in accounting principles and practices.” Consistent with this change, where a charter currently states that the Board or a committee “shall approve” a particular matter, certain changes are proposed, as appropriate, to state instead that the Board or a committee is “authorized to approve.” OCC believes such changes properly clarify the oversight role of the Board and the committees and that approval is not mandatory.

¹⁵ Certain variations on some of these changes that are specific to the Board Charter are also described below in the section addressing the Board Charter.

¹⁶ See 17 CFR 240.17Ad-22(e)(2)(ii) (requiring governance arrangements that prioritize the covered clearing agency’s “safety and efficiency”), (e)(2)(iii) (requiring governance arrangements that support the “public interest requirements” applicable to covered

to amend the committee charters to address committee member vacancies to provide that in the event of a vacancy, the applicable committee will continue to undertake its responsibilities, so long as the remaining committee members are capable of satisfying the quorum requirement.¹⁷ In addition, to promote compliance with the requirement in Rule 17Ad-22(e)(2)(v)¹⁸ that governance arrangements provide for clear and direct lines of responsibility, OCC proposes to amend all of the charters to specify that the Board and each committee may delegate authority to one or more designated officers of OCC or may refer a risk under its oversight to another committee or the Board as advisable or appropriate. The proposed revisions would further provide, however, that the Board or the committee would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. OCC also proposes amendments to acknowledge, where relevant, that its Executive Chairman (“EC”) also serves as its Chief Executive Officer (“CEO”) and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. All charters would also be revised to state that a role of the Board or the committee, as applicable, is to advise management. In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board in connection with a required review once every twelve months of committee charters,

clearing agencies), and (e)(2)(vi) (requiring governance arrangements that consider the interests of all “relevant stakeholders”).

¹⁷ This same change would not be added to the Board charter. It would also not be added to the GNC Charter because it is already addressed.

¹⁸ 17 CFR 240.17Ad-22(e)(2)(v).

consistent with Rule 17Ad-22(e)(3)(i).¹⁹ Moreover, consistent with Rules 17Ad-22(e)(2)(i) and (v) regarding the establishment of governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility,²⁰ changes would be made to clarify that where the Board or a committee has authority to approve reports or other proposals in its business judgment, such as materials provided by management, it is not obligated to approve, and related modifications would articulate a clear means of recourse for the committee or the Board if it does not approve.²¹

The committee charters would also be amended to provide that each committee shall perform and is authorized to perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.²² OCC also proposes to amend the committee charters to provide that each committee shall perform any other duties consistent with their respective charters as the committee deems necessary or appropriate, or as the Board shall further delegate to the particular committee.²³ OCC believes that these changes will provide for flexibility for each committee to supervise and account for matters naturally within the scope of their responsibility or that may be assigned to them by the Board. OCC believes these changes also promote compliance with Rule 17Ad-

¹⁹ See 17 CFR 240.17Ad-22(e)(3)(i) (requiring periodic review and annual Board approval of the CCA's risk management framework).

²⁰ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

²¹ The purpose of these changes is to promote governance arrangements that clearly prioritize the safety and efficiency of OCC and specify clear and direct lines of responsibility in its governance arrangements. See 17 CFR 240.17Ad-22(e)(2)(ii) and (v).

²² OCC notes that a comparable provision to this exists in the RC Charter.

²³ OCC notes that comparable language currently appears in the AC Charter, GNC Charter, and TC Charter.

22(e)(3)²⁴ by establishing a sound risk management framework to comprehensively manage the varying risks and other matters each committee must manage and to effectively identify new risks that may arise.

Finally, in order to the promote compliance with the requirement in Rule 17Ad-22(e)(2)(i)²⁵ that OCC's governance arrangements be clear and transparent, OCC proposes to make a number of changes to its Board committee charters to clarify that, where certain actions were required to be performed "annually" under the charters, those actions would now be required to occur "each calendar year." OCC believes that it is appropriate to make clear it in its rules actions which the Board or a committee may be required to perform on an every twelve months-basis, particularly in cases where a regulatory requirement exists (e.g., Risk Committee requirement to review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board) and those which they would only be required to perform on a calendar year basis. These changes include amending the committee charters to provide that the following activities must occur on a calendar year basis: (i) the appointment of directors to particular committees; (ii) that committees meet regularly, and no less than once per calendar year, with certain members of management in separate executive sessions; (iii) that each committee must provide reports to the Board summarizing its activities for the prior year; (iv) that each committee confirm to the Board that all responsibilities outlined in its Charter have been carried out; and (v) that each committee assess its and its individual members' performance and provide results of such assessment to the

²⁴ 17 CFR 240.17Ad-22(e)(3).

²⁵ 17 CFR 240.17Ad-22(e)(2)(i).

GNC²⁶ for review.

AC Charter

OCC proposes modifications to its AC Charter. Key aspects of the proposed changes regarding the AC Charter include:

- New responsibility for oversight of legal risks, including existing, pending and threatened litigation;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC;
- Increased oversight of OCC's compliance department, including its structure, resources and budget; and
- Introduction of mandatory periodic reporting from OCC's Chief Audit Executive ("CAE"), Chief Compliance Officer ("CCO") and General Counsel ("GC").

OCC proposes to amend the AC Charter to establish new responsibilities for the AC that include reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the structure, independence and objectivity, staffing, resources, and budget of OCC's compliance and audit departments. OCC believes that it is appropriate to extend these responsibilities to the AC since they are highly germane to its current functions (e.g., assisting the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, and OCC's process for monitoring compliance with applicable laws and regulation) and would promote compliance

²⁶ The GNC is required to provide the results of its own assessment to the Board.

with Rule 17Ad-22(e)(2)(v)²⁷ by specifying clear and direct lines of responsibility. In addition, the responsibility for the oversight of Clearing Member investigations and enforcement would be transferred to the RC as the RC has the required expertise to properly oversee the process (as discussed further below). The AC Charter would also be amended to clarify that the AC shall oversee the independence and objectivity of the internal audit department, consistent with OCC's obligations under Rules 17Ad-22(e)(3)(iii) and (iv)²⁸ to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors and provide for oversight of internal audit personnel by an independent audit committee of the board of directors. Under the proposed rule change, the AC Charter would also be amended to provide that the AC is authorized to approve deviations to the audit plan that may arise over the course of an audit, which OCC believes is a natural extension of the AC's role and responsibilities. In addition, OCC proposes to amend the AC Charter to provide that the AC shall identify risk issues relating to the areas that the committee oversees that should be escalated to the Board for its review and consideration, which OCC believes promotes compliance with Rule 17Ad-22(e)(2)(v)²⁹ by specifying clear and direct lines of responsibility.

OCC also proposes to amend the AC Charter to provide that certain mandatory reports be sent to the AC for review, including quarterly reports from the CAE regarding the internal audit plan and the GC regarding existing, pending, or threatened litigation.³⁰ OCC notes that either the

²⁷ 17 CFR 240.17Ad-22(e)(2)(v).

²⁸ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

²⁹ 17 CFR 240.17Ad-22(e)(2)(v).

³⁰ OCC proposes certain other streamlining changes to the AC Charter, such as providing that the AC will review OCC's Reporting Concerns and Whistleblower Policy (and specifying that such review will occur each calendar year) rather than providing a more

AC or another committee already has responsibilities in these areas and OCC believes that such quarterly reports will help provide the AC with the necessary information to appropriately discharge its duties and responsibilities.³¹

OCC also proposes to streamline its description of the AC's responsibility with respect to its compliance department by providing more generally that the AC shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the CCO and inquire of management regarding steps taken to deal with items raised. As a result of this change, the AC Charter would no longer specify that the AC is responsible for approving the annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving any recommendations by the CCO relating to that plan. The purpose of this change is to shift OCC's compliance department to a monitoring role and away from its historic role of creating a specific plan to follow. This change would also help facilitate the transition of validation responsibilities to OCC's internal audit department, over which the compliance department would have monitoring responsibilities. OCC believes that this change promotes governance arrangements that are clear and transparent in accordance with Rule 17Ad-22(e)(2)(i).³²

In a number of instances, OCC proposes to amend the AC charter to provide that the AC

detailed description of what the reporting concerns and whistleblower procedures under the relevant policy entail.

³¹ OCC also believes that these quarterly reports to the AC help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that these officers keep the AC apprised of OCC's ongoing performance or handling of these matters, which in turn will allow the AC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

³² 17 CFR 240.17Ad-22(e)(2)(i).

is authorized to perform certain functions. For example, OCC proposes to amend the AC charter to provide that the AC is authorized to approve management's recommendation to appoint or replace the CCO or CAE, which is a governance arrangement that OCC believes is consistent with Rules 17Ad-22(e)(3)(iii) and (iv)³³ in that it furthers the AC's oversight of the CCO and CAE and their independence from management.³⁴ OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities using its business judgment. OCC also proposes to amend the AC Charter (and the RC Charter) to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given its broader role in overseeing OCC's management of third party risks, (which includes OCC counterparties such as Clearing Members).

OCC proposes to further amend the AC Charter to provide that the AC shall review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing. OCC believes that this is a natural extension of the AC's role and responsibility to help ensure the integrity of OCC's audits and is consistent with the public interest and the

³³ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

³⁴ OCC similarly proposes to amend the AC charter to provide that the AC is authorized to approve OCC's audited financial statements after review, is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and is authorized to discuss certain significant issues with the external auditor.

protection of investors.³⁵

In addition, the AC Charter currently provides that the AC is authorized to determine appropriate compensation for audit services and pre-approve all audit services, subject to annual approval by the Board. As proposed, the AC charter would no longer expressly require annual Board approval regarding these items. However, under the AC Charter the committee would still be required to confirm annually to the Board that all of its responsibilities have been carried out and provide an annual report to the Board summarizing its activities during the previous year, consistent with Rules 17Ad-22(e)(2)(v) and 17Ad-22(e)(3)(i) and (iii).³⁶ OCC also proposes to amend the AC Charter to provide that, in addition to the CAE and CCO, the Chief Financial Officer (“CFO”) also would be authorized to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC between meetings of the AC given the CFO’s role as part of OCC’s executive team and his/her responsibility for OCC finances.³⁷

³⁵ See 15 U.S.C. 78q-1(b)(3)(F).

³⁶ See 17 CFR 240.17Ad-22(e)(2)(v) (requiring governance arrangements with clear and direct lines of responsibility), (e)(3)(i) (requiring periodic review and annual Board approval of risk management policies, procedures and systems) and (e)(3)(iii) (requiring a risk management framework that provides internal audit personnel with sufficient authority, but also access to the Board).

³⁷ As described below, OCC also proposes certain other non-substantive changes to the AC Charter to provide additional clarity. For example, OCC proposes to replace reference to “financial and senior management” to OCC’s “Corporate Finance Department” in describing the AC’s responsibility to facilitate open communication between external auditors and certain groups within OCC. As an additional example, the AC Charter would be amended to provide that the AC is authorized to approve the “issuance of the annual financial” statements after its review of such statements. Similarly, OCC proposes to enhance certain descriptions of the AC’s responsibilities. For example, OCC proposes to revise text describing the role of the AC, along with external auditors, as responsible for “planning and carrying out audit work, as appropriate” rather than “planning and carrying out a proper audit.” OCC’s description of the AC’s power to delegate to the CAE “within the external audit limits” would be changed for accuracy to read “within the co-sourced audit hour limits.” This change is meant to reflect the fact

CPC Charter

OCC proposes a number of revisions to its CPC Charter, the key aspects of which would include:

- New responsibility to oversee and monitor certain activities of OCC’s Administrative Committee, including the approval of the Administrative Committee’s charter and changes thereto, and approval of the members of the Administrative Committee;
- Introduction of mandatory quarterly reporting on OCC’s corporate plan, corporate budget and capital plan; and
- Annual requirement to review succession planning activities regarding OCC’s Management Committee (“Management Committee”).

OCC proposes to amend the CPC Charter to state that the CPC assists the Board in overseeing risks related to OCC’s general business, regulatory capital, investments, corporate planning, compensation and human capital in addition to assisting the Board in executive management succession planning and performance assessments. The existing CPC Charter already addresses these aspects of the committee’s responsibilities generally. The proposed revisions are designed to emphasize the committee’s responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management’s responsibility to identify, manage, monitor and report the associated risks, as is consistent with the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures and systems be subject to periodic review and annual approval by the Board³⁸ and the Rule

that OCC co-sources its internal audit function through a partnership between OCC’s in-house internal audit department and a third party internal audit service provider.

³⁸ 17 CFR 240.17Ad-22(e)(3)(i).

17Ad-22(e)(2)(v) requirement that governance arrangement “specify clear and direct lines of responsibility.”³⁹

The CPC Charter would continue to provide that the committee oversees the corporate plan and corporate budget and makes recommendations to the Board regarding their approval. However, the proposed changes would clarify that the corporate plan and budget are annual arrangements and that the committee oversees their alignment with OCC’s business strategy. In addition, a new provision would require management to provide a quarterly report to the committee that contains information on OCC’s performance against the corporate plan and the budget.⁴⁰

The CPC Charter would continue to provide that the committee oversees OCC’s capital plan and would be revised to clarify that this oversight includes the written policies adopted thereunder, which include OCC’s fee, dividend and refund policies (which are existing responsibilities of the CPC). Revisions also would clarify that the committee must review the capital plan at least once every twelve months and that the committee makes recommendations to the Board concerning capital requirements, refund payments, and dividend payments. In addition, a provision would be added to require management to provide a quarterly performance report to the committee against the capital plan.

³⁹ 17 CFR 240.17Ad-22(e)(2)(v).

⁴⁰ OCC believes that quarterly reporting by management to the CPC, as described in this discussion of the CPC Charter, helps specify clear and direct lines of responsibility in OCC’s governance arrangements by ensuring that management keeps the CPC apprised of OCC’s ongoing performance on these matters, which in turn will allow the CPC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

OCC proposes to revise the CPC Charter to provide that the Committee would oversee and monitor the activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto and of the members of the Administrative Committee. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee and overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

In addition, OCC proposes changes to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee. A new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months.

Regarding the committee's review of Public Director compensation and the recommendations that it provides to the Board related thereto, a requirement would be added to the CPC Charter for the committee to engage in these activities not less than once every two years. OCC believes that a two year period is appropriate for such a review because the overall trends in industry compensation generally do not change dramatically from year to year. The CPC would continue to look at overall Public Director compensation each year for informational purposes, but it would not be required to perform a full review of each of the components of Public Director compensation packages and recommend adjustments to the Board on a yearly basis.

The CPC Charter would also be amended to clarify that that committee is not authorized to adopt or amend compensation, retirement and welfare benefit plans that require Board approval and to add a new requirement that the committee must review OCC's insurance program at least once every twelve months.

Certain specific responsibilities stated in the CPC Charter would be removed in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, furthering the purposes of the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.⁴¹ For example, an existing provision would be removed that states that the committee reviews special financial matters as requested by the Board. Provisions would also be removed that specifically address the committee's review and approval of policies and programs regarding salary compensation and incentive compensation and its review of material changes to executive management benefits.

GNC Charter

OCC also proposes changes to its GNC Charter. The key aspects of the proposed changes regarding the GNC Charter include:

- New responsibility for review and approval of related party transactions; and
- New responsibility for advising on matters pertaining to director leadership development and succession planning.

⁴¹ 17 CFR 240.17Ad-22(e)(2)(v).

OCC proposes to amend the GNC Charter to establish new responsibilities for the GNC to approve all material changes to written policies concerning related party transactions and recommend such changes to the Board for approval. The GNC Charter would also be amended to provide that the GNC shall review and, if appropriate, approve or ratify any related party transactions involving OCC in accordance with the written policy governing such transactions. Because the GNC is already responsible for the review of conflicts of interests of directors and the manner in which such conflicts will be monitored and resolved, OCC believes that it is appropriate for the GNC to assume the additional responsibility of reviewing related party transactions. OCC also believes that it would be appropriate for the GNC to advise the Board on matters pertaining to director leadership and development to promote compliance with the Rule 17Ad-22(e)(2)(iv)⁴² requirement that OCC's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities.⁴³

OCC also proposes a number of other changes to the GNC charter, which include: (i) reframing the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,⁴⁴ (ii) removing the ability for a designee of the chair of the GNC to call an additional

⁴² 17 CFR 240.17Ad-22(e)(2)(iv).

⁴³ OCC also proposes to reframe the introductory paragraph of the GNC charter to explicitly reference relevant provisions of Rule 17Ad-22(e)(2) and specify that the GNC is responsible for assessing the clarity and transparency of OCC's governance arrangements, consistent with Rule 17Ad-22(e)(2)(i). See 17 CFR 240.17Ad-22(e)(2)(i).

⁴⁴ For example, rather than providing that the GNC would work toward developing a Board with a broad spectrum of experience and expertise, OCC proposes to provide that the GNC shall identify, for purposes of making recommendations to the Board, the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, the "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. In this same vein, OCC proposes to delete language providing that the GNC is responsible for recommending to the Board for approval and overseeing the implementation and effectiveness of OCC's policies and procedures for identifying and

meeting beyond the four times per year that the GNC will meet,⁴⁵ (iii) specifying that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically,⁴⁶ (iv) expanding the GNC's yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees,⁴⁷ (v) specifying that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and (vi) providing that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. In addition, OCC proposes to revise the GNC charter to no longer provide that the GNC is responsible for 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. The requirement that the GNC nominate candidates is provided explicitly in the By-Laws, and OCC further believes that this responsibility is adequately captured in OCC's revised description of the GNC's role to identify,

reviewing Board nominee candidates, including the criteria for Board nominees. OCC believes that this deletion is appropriate because it is adequately covered by the other provisions in the GNC charter regarding directors' qualifications, as revised, and contemplates that the Standards are approved by the Board. These changes are designed to be consistent with Rule 17Ad-22(e)(2)(iv) (regarding the establishment of governance arrangements that ensure "board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities"). See 17 CFR 240.17Ad-22(e)(2)(iv).

⁴⁵ OCC believes this change would help ensure that the committee's time and resources would be utilized appropriately, furthering the purpose of Rule 17Ad-22(e)(2)(ii) requiring that a covered clearing agency's governance arrangements prioritize the "efficiency" of the covered clearing agency. See 17 CFR 240.17Ad-22(e)(2)(ii).

⁴⁶ This is intended to be consistent with 17 CFR 17Ad-22(e)(2)(iii) (requiring governance arrangements that support the "public interest requirements" in 17 U.S.C. 78q-1).

⁴⁷ Id.

screen, and review individuals qualified to be elected or appointed to serve as Member Directors or Public Directors.⁴⁸

RC Charter

OCC also proposes a number of changes to its RC Charter. The key aspects of the proposed changes regarding the RC Charter include:

- Transition of responsibilities regarding Enterprise Risk Management (“ERM”) to the Board;
- Increased responsibilities with respect to OCC’s risk management related to credit, collateral, liquidity and third party risks;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC; and
- Introduction of mandatory periodic reporting on the effectiveness of OCC’s management of risks.

OCC proposes to amend the RC Charter’s statement of the committee’s responsibilities. First, the RC Charter currently provides that the RC assists the Board in overseeing OCC’s policies and processes for identifying and addressing strategic, operational and financial (e.g., credit, market, liquidity and systemic) risks. This would be replaced by a narrower and more specific statement that the RC would have responsibility for assisting the Board in its oversight of financial, collateral, risk model and third party risk management processes.⁴⁹ In addition, the

⁴⁸ See OCC By-Law Article III, Sections 5 and 6A. OCC proposes to specify in the GNC Charter that the GNC’s role in this context applies specifically to Public Directors and Member Directors to promote consistency with the By-Laws.

⁴⁹ The RC Charter currently provides that the committee is responsible for overseeing OCC’s overall ERM framework, including “reviewing material policies and processes

oversight of responsibility for Clearing Member investigations and enforcement outcomes of disciplinary actions would be transferred from the AC to the RC as the RC has the required expertise to properly oversee the process given its current responsibility for overseeing 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 determinations in respect of the foregoing.

The committee would also continue to be responsible for functions delegated to it under the By-Laws and Rules and as may be delegated to it by the Board. A removal of continued responsibility for strategic and operational risks would be consistent with additional changes to the RC Charter that provide that the RC would no longer have responsibilities related to the ERM program and such responsibilities would be transitioned to the Board (which is discussed in further detail below). OCC believes that these changes are appropriate because issues regarding enterprise risk management are central to OCC's comprehensive management of risk and would therefore benefit from the experience and attention of the full Board.

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, (v) default management planning, and (vi) risks related to new initiatives." As described in greater detail below, the revised descriptions in the RC Charter regarding its oversight of these areas would continue to involve responsibilities related to credit, market, liquidity and systemic risk but would no longer include responsibility for overseeing those aspects related to the ERM program. The committee would also continue to be responsible for identifying risks associated with its responsibilities that should be escalated to the Board for its review and consideration.

Corresponding changes would also be made to clarify that the committee has an oversight role regarding its responsibilities and that it remains OCC management's responsibility to identify, manage, monitor and report risks in these areas.

A clarifying statement would also be added to the RC Charter to state that the RC is required to perform its responsibilities in accordance with the provisions of the RC Charter and applicable regulatory requirements. A new provision would provide that, from time to time, the committee may receive reports and guidance relating to financial risk issues from, among others, OCC's Financial Risk Advisory Council ("FRAC"). The committee would consider and discuss such reports in respect of financial risk issues that may impact the options and futures industries. The committee would take such guidance into account in the exercise of its fiduciary judgment and the performance of its functions and responsibilities.

Regarding meetings of the RC, a change would be made to the RC Charter to specify that joint meetings with other Board committees count toward the requirement to meet at least six times a year. A change would also clarify that in-person attendance of meetings is preferred.

In connection with the RC no longer having responsibilities regarding the ERM program, several related provisions would be removed from the RC Charter. For example, the committee would no longer have responsibility to oversee the structure, staffing and resources of the ERM program or approve its goals and objectives on an annual basis. Additionally, it would no longer be responsible for reviewing OCC's risk appetite statements and risk tolerances because the Board would assume responsibility for approval of these matters.

As noted, the proposed changes to the RC Charter would clarify the RC's broad responsibilities for overseeing credit, collateral, liquidity and third party risks in a manner

consistent with the Rule 17Ad-22(e)(3)(iii) and (iv) requirements that risk management personnel be provided with sufficient authority, resources, independence, and access to the board of directors, as well as a direct reporting line to and oversight by the RC, and with the Rule 17 Ad-22(e)(2)(v) requirement that OCC's governance arrangements specify clear and direct lines of responsibility.⁵⁰ The RC Charter currently contains provisions that address the responsibility that the committee has for these areas, but they would be removed in favor of the more specific provisions described below. At least once every twelve months the committee would be required to review the adequacy of OCC's management of credit, collateral, liquidity, and third party risks. In connection with these responsibilities, the RC would receive monthly reports from OCC management regarding the effectiveness of OCC's management of credit exposures⁵¹ and liquidity risks.⁵² Management would also provide the committee with quarterly reports regarding the effectiveness of OCC's management of collateral and third party risks.⁵³ And, the RC would also be responsible for approval of all material changes to written policies regarding risk management in these areas and recommending such changes to the Board, consistent with

⁵⁰ 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(iii) and (iv).

⁵¹ For example, the report regarding the effectiveness of the management of credit exposures would include the results of: (i) a comprehensive analysis of OCC's existing stress testing scenarios, models and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin models and a review of the associated parameters and assumptions for back testing.

⁵² The committee would also be required to review the adequacy of OCC's secured committed liquidity facilities at least once every twelve months and recommend the size and composition of such facilities to the Board for approval.

⁵³ OCC believes that this quarterly reporting helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the RC apprised of OCC's ongoing performance on these matters, which in turn will allow the RC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board.⁵⁴

The RC Charter would continue to provide that the committee has responsibility regarding OCC's risk models, including margin models, but it would be revised to more specifically identify the committee's oversight role regarding model validations,⁵⁵ its responsibility for approving any material changes to written policies regarding model risk management, and for recommending any such change to the Board, consistent with the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board.⁵⁶

Responsibilities would also be made explicit in connection with the review and approval of any new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks. The RC would refer any such new products that it approves to the Board for its potential approval.

The RC Charter would also be amended to codify the committee's existing responsibility to oversee OCC's Recovery and Orderly Wind-down Plan, consistent with the requirement in Rule 17Ad-22(e)(3)(ii).⁵⁷ At least once every twelve months, this would include reviewing the adequacy of the plan. If the committee approves the plan, it would next recommend the plan to

⁵⁴ 17 CFR 240.17Ad-22(e)(3)(i).

⁵⁵ This would include the review and approval of OCC's risk model validation plan, plan deviations, and related reports and recommendations by OCC's Chief Risk Officer ("CRO").

⁵⁶ 17 CFR 240.17Ad-22(e)(3)(i).

⁵⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

the Board for potential Board approval. The committee would also have responsibility for reviewing and approving any material changes to the plan; however, in the event the committee approves any such changes, it would in turn recommend the changes to the Board for its potential approval.⁵⁸

The committee would continue to have responsibility regarding the structure and staffing of OCC's financial risk management group; however, detail would be added to the RC Charter to clarify the same responsibility for OCC's corporate risk management functions and that the RC must review structure and staffing in these areas at least once every twelve months. A provision would also be added to provide that the committee would review and approve the CRO's goals and objectives, and any material changes thereto, at least once every twelve months. OCC believes these changes are consistent with the Rule 17Ad-22(e)(3)(iv) requirement that the RC provide oversight of risk management personnel,⁵⁹ as well as the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements provide for clear and direct lines of responsibility.⁶⁰

As noted above, OCC also proposes to amend the RC Charter to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given the committee's broader

⁵⁸ In relevant part, the RC Charter states the following. "The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board."

⁵⁹ 17 CFR 240.17Ad-22(e)(3)(iv).

⁶⁰ 17 CFR 240.17Ad-22(e)(2)(v).

role in overseeing OCC's management of third party risks, which includes OCC counterparties such as Clearing Members. Finally, the RC Charter would continue to provide that the RC reviews the results of internal and external audits and regulatory examinations. However, a statement would be added to clarify that the committee is responsible for reviewing third party assessment reports as to financial, collateral, risk model and third party risk management processes and for reviewing OCC management's remediation efforts pertaining to any such examination and reports.

TC Charter

In addition, OCC proposes a number of changes to its TC Charter. Key aspects of the proposed changes regarding the TC Charter include:

- New responsibility for oversight of material changes to the operational execution and delivery of core clearing and settlement services with the authority to recommend approval thereof to the Board;
- New responsibility for OCC's operational initiatives, including approving major information technology ("IT") and operational initiatives, recommending any major capital expenditures to implement to the Board, and approving the information technology and operational budget for each calendar year;
- New responsibility to review at least every twelve months the adequacy of OCC's management of information security risks, approve all material changes to written policies related to the managing information security risks and recommend such changes to the Board;

- Introduction of mandatory periodic reporting from management on major IT initiatives;⁶¹ and
- New responsibility to oversee and receive a quarterly report from management on OCC's Business Continuity and Disaster Recovery Programs.

OCC proposes to amend the TC Charter to specify clear and direct lines of responsibility that provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities, consistent with Rule 17Ad-22(e)(2)(v).⁶² In addition, OCC proposes to amend the TC Charter so that it would no longer require that the TC work with or report to the AC and RC to monitor the quality and effectiveness of IT systems and processes that relate to or affect OCC's internal control systems and risk management systems. As noted above in the discussion of common changes to the charters, however, the TC and any other committee or the Board would have certain authority to refer risks under their oversight to

⁶¹ OCC proposes that the TC would oversee and receive quarterly reports from management that provide information on: (i) executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance; (ii) the effectiveness of the management of information security risks; (iii) OCC's Business Continuity and Disaster Recovery Programs, including the progress on executing the annual test plan and achieving recovery time objectives; and (iv) major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators. OCC believes that such reports would provide the TC with the necessary information to discharge its oversight duties and responsibilities appropriately and will facilitate dialogue between the TC and OCC's senior IT management team. OCC believes that this reporting also helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the TC apprised of OCC's ongoing performance on these matters, which in turn will allow the TC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

⁶² 17 CFR 240.17Ad-22(e)(2)(v).

promote the smooth functioning of OCC's governance arrangements. OCC also proposes to revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and instead more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines).

The TC Charter would continue to provide that the TC is responsible for assisting the Board in overseeing OCC's IT strategy and other company-wide operational capabilities. OCC proposes, however, to delete certain general statements regarding the TC's duty to make recommendations to the Board with respect to IT-related projects and investments and critically review the progress of such projects and/or technology architecture decisions. OCC proposes to replace these general statements with more specific duties of the TC to, for example, receive a report on management's progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priority, and review material changes to the operational execution and delivery of core clearing and settlement services as well as material changes to written policies concerning information security risk and to recommend such changes to the Board for approval.⁶³

OCC also proposes to remove the language stating that the TC will "periodically review

⁶³ OCC proposes similar changes to the TC Charter with respect to certain responsibilities of the TC. For example, OCC proposes to reframe the TC's responsibility to monitor and assess OCC's management of IT-related compliance risks as a responsibility to monitor and oversee the overall adequacy of OCC's IT and operational control environment, including the implementation of key controls in response to regulatory requirements.

and appraise . . . OCC’s crisis management plans,” and, instead, add language that the TC will oversee and receive a quarterly report on “OCC’s Business Continuity and Disaster Recovery Programs” as the crisis management plans are incorporated within its Business Continuity and Disaster Recovery Programs. As such, the proposed revision will better clarify the full oversight responsibility of the committee and better align with the internal practices at OCC.

In addition, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. OCC believes that this change promotes compliance with the Rule 17Ad-22(e)(3) requirement to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC by charging the TC with the task of identifying emerging risks that may arise over time.⁶⁴

Board Charter

As discussed above, OCC would amend its Board Charter by incorporating its existing CGP and retiring the separate CGP document. The title of the consolidated document would be changed to reflect that it represents OCC’s “Board of Directors Charter and Corporate Governance Principles.” Both the Board Charter and CGP are publicly available on OCC’s website today.⁶⁵ OCC believes this step is appropriate to eliminate significant overlap between the contents of the two existing documents and thereby make the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand, and thereby further the purposes of Rule 17Ad-22(e)(2)(i) by improving the clarity

⁶⁴ 17 CFR 240.17Ad-22(e)(3).

⁶⁵ OCC’s CGP and Board Charter are available at <http://www.theocc.com/about/corporate-information/what-is-occ.jsp>.

and transparency of OCC's governance arrangements.⁶⁶ For example, the existing CGP and Board Charter each address aspects of the Board such as its size and composition. In addition, the Board Charter and CGP also cross-reference one another, such as regarding qualification standards for directors, term limitations, the number of meetings per year and the Board's authority to hire specialists and advisors, which reduces clarity because it requires a reader to turn between the two documents to understand the Board's operation. In incorporating the CGP within the proposed Board Charter, OCC would make changes to the contents of the CGP, as appropriate, to conform the existing provisions to the structure and organization of the Board Charter and related requirements in the By-Laws and Rules.⁶⁷ However, the majority of the provisions in the CGP would be incorporated in their existing form and these provisions would address in the Board Charter, for example, the size of the Board and its composition, membership criteria, appointment of the GNC, the selection of Member, Public, Exchange and Management Directors, conduct matters, ethics and conflicts of interest, compensation, access to senior management, and Board and Board committee evaluations.

As a result of these incorporated provisions, OCC proposes to remove certain existing provisions in the Board Charter that specifically reference or are duplicative of more comprehensive descriptions from the CGP or where the imported text from the CGP otherwise covers the more truncated discussions of these items in the Board Charter. Specifically, OCC's

⁶⁶ 17 CFR 240.17Ad-22(e)(2)(i).

⁶⁷ For example, the CGP provides in one instance that all materials for Board meetings are made available online by the office of the secretary. This particular provision in the CGP would not be imported and the Board Charter would be amended to provide that OCC operates a portal for the general dissemination of meeting and other written materials to directors to reflect how OCC actually operates. In addition, OCC proposes to make clear that Public Directors do not have term limits, consistent with the requirements in Article III, Section 6 of the OCC By-Laws.

discussions in the Board Charter would be supplanted by more detailed explanations drawn from the CGP with respect to: (i) Board composition; (ii) qualification standards for directors; (iii) election of directors, resignation and disqualification; (iv) tenure, term and age limitations; and (v) calling of Board meetings, selection of agenda items, and attendance.

OCC also proposes to amend the Board Charter to set forth certain key considerations and responsibilities in the Board Charter consistent with Rule 17Ad-22 that include and expand upon those described above in connection with the discussion of proposed changes that are common to the charters.⁶⁸ These include providing that the Board shall exercise its authority to provide for governance arrangements that, among other things, “support [applicable] public interest requirements . . . and the objectives of owners and participants,”⁶⁹ establish that the Board and senior management “have appropriate experience and skills to discharge their duties and responsibilities,”⁷⁰ specify “clear and direct lines of responsibility”⁷¹ and consider the interests of Clearing Members’ customers.⁷² OCC also proposes changes designed to provide for “clear and direct lines of responsibility”⁷³ by noting that the Board has explicitly delegated management of specific risks to the Board committees and to the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by

⁶⁸ See supra note 14-16 and accompanying text.

⁶⁹ 17 CFR 240.17Ad-22(e)(2)(iii).

⁷⁰ 17 CFR 240.17Ad-22(e)(2)(iv).

⁷¹ 17 CFR 240.17Ad-22(e)(2)(v).

⁷² OCC would also provide as a guiding principle that the Board is, among other things, mindful of the public interest as it fulfills its duties by complying with the obligations imposed on it under relevant law and that it discloses major decisions to relevant stakeholders and the public. 17 CFR 240.17Ad-22(e)(2)(iii).

⁷³ 17 CFR 240.17Ad-22(e)(2)(v).

the RC.⁷⁴

Currently, the Board Charter sets forth a number of functions and responsibilities of the Board. OCC proposes to reorganize this list of functions and responsibilities in a new section regarding the mission of the Board and proposes non-substantive changes to some of the descriptions of the Board's responsibilities. For example, the Board Charter currently provides that the Board is responsible for advising, approving, and 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. OCC proposes to amend the Board Charter to provide that the Board is responsible for overseeing OCC's business strategies, including expansions of clearance and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest.⁷⁵ These changes are designed to improve the readability of the document as well as to specify additional, specific considerations of the Board with

⁷⁴ The amended Board Charter would further specify that the Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC but would note that the Board would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. Specifying this delegation in the Board Charter is consistent with the requirement in Rule 17Ad-22(e)(2)(v) that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility. See 17 CFR 240.17Ad-22(e)(2)(v).

⁷⁵ As a further example, OCC proposes to revise the Board's responsibility to oversee "OCC's information technology strategy, infrastructure, resources and risks" to provide that the Board's responsibility is to oversee "OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services." OCC also proposes to remove oversight of human resources programs from the Board Charter because that responsibility has been delegated to the CPC.

respect to particular responsibilities.⁷⁶ OCC notes that the Board Charter would provide that the Board is responsible for the business and affairs of OCC and that the Board would continue to be responsible for performing such other functions as the Board believes appropriate or necessary or as otherwise prescribed by rules or regulations, including OCC's By-Laws and Rules.⁷⁷

In addition to the changes described above, OCC proposes to modify the description of the Board's functions and responsibilities as part of the description of the mission of the Board to include: (i) overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments, consistent with the requirements of Rule 17Ad-22(e)(3)(i);⁷⁸ (ii) ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, access to the Board, and a direct reporting line to, and oversight by, certain committees, consistent with the requirements of Rules 17Ad-22(e)(3)(iii) and (iv);⁷⁹ (iii) ensuring that the audit committee of the Board is

⁷⁶ For example, OCC also proposes to specify that the Board's authority extends to performing such functions as it believes are appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, "or other policies." This change is intended to clarify that the scope of the Board's authority extends to all of OCC's policies.

⁷⁷ Pursuant to this broad responsibility, OCC believes that the functions and responsibilities of the Board would remain consistent notwithstanding certain proposed deletions or rephrasing regarding the existing list of responsibilities. For example, the Board Charter would no longer specify that the Board would review committee charters and reports of committee activities; however, it would nevertheless provide that the Board is responsible for establishing a written charter for each committee and that each committee would be responsible for providing an annual report to the Board regarding its activities.

⁷⁸ 17 CFR 240.17Ad-22(e)(3)(i).

⁷⁹ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

independent, consistent with the requirements of Rule 17Ad-22(e)(3)(v);⁸⁰ (iv) transitioning the overall oversight of ERM to the Board; and (v) assigning responsibility for risk decisions and policies to address decision-making during a crisis. The Board Charter would also be amended to codify the Board's existing responsibility for overseeing and approving OCC's Recovery and Orderly Wind-Down Plan.⁸¹

As noted above, OCC proposes to transfer responsibility for the oversight of ERM from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even further engagement by and attention from the Board regarding OCC's risk universe and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe.

OCC also proposes a number of other changes to the Board Charter, such as deletion of the provision noting that the Member Vice Chairman of the Board has the responsibilities set forth in the By-Laws. OCC believes this is appropriate because the responsibilities of the Member Vice Chairman are already set forth in OCC's By-Laws. OCC also proposes to amend

⁸⁰ 17 CFR 240.17Ad-22(e)(3)(v).

⁸¹ See supra note 58 and accompanying text.

the Board Charter to no longer specify that the Board is responsible for an annual self-evaluation of its performance and the performance of its committees and individual directors.⁸² Because the Board has delegated responsibility to the GNC for the annual self-evaluation of the Board and its committees, which is described in text that OCC proposes to import from the CGP, OCC believes that it is no longer necessary to specify that the Board would have this annual self-evaluation obligation.⁸³ Similarly, OCC proposes to amend the Board Charter to no longer provide that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and certain other officers because the Board has delegated this responsibility to the CPC.⁸⁴ Finally, OCC proposes to delete the current footnote one (1) from the Board Charter, which provides an example of an instance in which certain provisions of the By-Laws provide that the Board should not take action. The amended Board Charter would continue to provide that the Board's responsibilities and duties are subject to any exceptions provided in OCC's Amended and Restated Certificate of Incorporation or the By-Laws and Rules, but OCC believes that the footnote providing an example of such an instance is unnecessary and its deletion would improve readability of the Board Charter.

OCC also proposes to amend the Board Charter to provide that a number of different

⁸² The Board Charter would provide more generally that the Board is responsible for overseeing OCC's activities through regular assessments of Board and individual director performance.

⁸³ OCC also proposes to amend the Board Charter to provide that the annual self-evaluations shall no longer include a focus on individual directors' performances but will instead focus primarily on the performance of the Board and each committee as a whole. OCC has found that because not every director has the opportunity to work with each other director, focusing the annual self-evaluation on individual director performance is less effective than focusing on the performance of each committee as a whole.

⁸⁴ However, the amended Board Charter would specify that the Board is responsible for approving the compensation of such officers.

activities related to the conduct and functioning of the Board would involve participation by or input from certain other officers of OCC that serve functions relevant to the topic being discussed. For example, with respect to setting the agenda for Board meetings, the Board Charter currently provides that the Executive Chairman, in consultation with other directors or officers of OCC, as well as the Corporate Secretary, will establish an agenda for Board meetings. OCC proposes to amend this provision to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings.⁸⁵ These changes are designed to help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements in the public interest pursuant to Rule 17Ad-22(e)(2) by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act⁸⁶ and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act⁸⁷ requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the

⁸⁵ Similarly, OCC proposes to amend the Board Charter to provide that the CEO, COO and CAO would have the authority to invite employees to Board meetings, that such officers encourage members of senior management to respond to questions posed by directors relating to their areas of expertise, and that directors shall coordinate access to members of senior management and outside advisors through such officers. The criteria for Board member eligibility would also be expanded to ensure that candidates' experience and expertise are not only adequate to offer advice and guidance to the Executive Chairman, but also to the CEO, COO, and CAO.

⁸⁶ 15 U.S.C. 78q-1.

⁸⁷ 15 U.S.C. 78q-1(b)(3)(F).

public interest. When considered together, the proposed changes described herein are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services. OCC therefore believes that the proposed rule change would provide for governance arrangements that are designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act⁸⁸ and that are consistent with the rules thereunder, as discussed in further detail below.⁸⁹

Common Changes

As described in Item 3.A. above, OCC believes that all of the proposed common changes to the charters are designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in Section 17A of the Act⁹⁰ and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of OCC. First, the proposed rule change would require the Board and the committees to prioritize the safety and

⁸⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁹ See supra notes 16, 18, 20, 21, 25, 27, 29, 31, 36, 39-46, 50, 53, 60-62, 69-74 and accompanying text for changes related to Rules 17Ad-22(e)(2). 17 CFR 240.17Ad-22(e)(2). See supra notes 19, 24, 28, 31-33, 36, 38, 40, 50, 53-54, 56-57, 59, 61, 64, 78-81 and accompanying text for changes related to Rules 17Ad-22(e)(3). 17 CFR 240.17Ad-22(e)(3).

⁹⁰ 15 U.S.C. 78q-1.

efficiency of OCC in carrying out their responsibilities.⁹¹ Second, the charters, as revised, would require the Board and the committees to carry out their responsibilities to generally support the stability of the broader financial system, which OCC believes requires them to act in a manner that would, in part, also promote the prompt and accurate clearance and settlement of securities transactions for the protection of investors and persons facilitating transactions by and acting on behalf of investors, which is one of the public interest findings in Section 17A of the Act.⁹² Third, the revised charters would require the Board and the committees to consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, which is consistent with providing for governance arrangements that consider the interests of Clearing Member's customers and other relevant stakeholders of OCC.⁹³ Moreover, OCC would amend the committee charters to provide that in the event of a committee vacancy, the applicable committee would continue to undertake its responsibilities (including those enumerated above), so long as the remaining committee members are capable of satisfying the quorum requirement, to ensure that the committee can continue to effectively carry out its responsibilities in such a scenario.⁹⁴ OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of

⁹¹ See supra notes 16, 21, and 45 and accompanying text.

⁹² See supra notes 16, 46-47, 69, and 72 and accompanying text.

⁹³ See supra note 16 and accompanying text.

⁹⁴ This same change would not be added to the Board Charter. It would also not be added to the GNC Charter because it is already addressed.

risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.⁹⁵ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in Section 17A of the Act applicable to clearing agencies and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of a covered clearing agency consistent with Rules 17Ad-22(e)(2)(ii), (iii) and (vi).⁹⁶

OCC believes the proposed common changes also would help to provide governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. For example, all charters would be revised to clearly state that a role of the Board or the committee, as applicable, is to advise management. In addition, all of the charters would be amended to provide that the Board and the committees may delegate authority to one or more designated officers of OCC but that in any such instance the Board or the committee retains responsibility to oversee the activity and assure itself that the reliance on the work of any delegate is reasonable.⁹⁷ As a further example, OCC also proposes amendments to acknowledge, where relevant, that its EC also serves as the CEO and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. The charters would also be amended to specify clear and direct lines of responsibility by providing that, in

⁹⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁹⁶ 17 CFR 240.17Ad-22(e)(2)(ii), (iii), and (vi).

⁹⁷ See supra notes 18, 41, and 73-74 and accompanying text.

cases where the Board or a committee has authority to approve reports or other matters that are provided to it, the Board or the committee is not obligated to approve and has clear means of recourse if it does not.⁹⁸ In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board. OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.⁹⁹ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility consistent with the requirements in Rules 17Ad-22(e)(2)(i)¹⁰⁰ and (v).¹⁰¹

OCC also proposes to make a number of changes to the charters to clarify that, where certain actions were required to be performed "annually" under the charters, those actions would now be required to occur "each calendar year."¹⁰² OCC believes that adding more specificity in its charters regarding the frequency of these activities would provide for governance

⁹⁸ See supra notes 20-21 and accompanying text.

⁹⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰⁰ 17 CFR 240.17Ad-22(e)(2)(i).

¹⁰¹ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁰² See supra note 25 and accompanying text.

arrangements that are clear and transparent by eliminating ambiguity as to when the Board or a committee is responsible for taking certain actions. OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and the effectiveness of the Board and Board committees' oversight and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁰³ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent consistent with the requirements in Rule 17Ad-22(e)(2)(i).¹⁰⁴

AC Charter Changes

As described in Item 3.A. above, OCC believes certain of the proposed changes applicable to the AC Charter are generally designed to achieve a risk management framework that provides: (i) risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to OCC's Board;¹⁰⁵ (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board;¹⁰⁶ and (iii) an independent audit committee.¹⁰⁷ For example, the AC Charter would be amended to clarify that the AC shall

¹⁰³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰⁴ 17 CFR 240.17Ad-22(e)(2)(i).

¹⁰⁵ See supra notes 33, 36, and accompanying text. See also supra notes 50 and 79 and accompanying text for similar changes to other charters.

¹⁰⁶ See supra note 33 and accompanying text. See also supra notes 50, 60, and 79 and accompanying text for similar changes to other charters.

¹⁰⁷ See supra note 80 and accompanying text (describing a change to the Board Charter to ensure an independent audit committee).

oversee the independence and objectivity along with the budget and resources of OCC's internal audit department so that OCC's risk framework provides internal audit personnel with sufficient authority, resources, independence from management, and access to the Board and a direct reporting line to, and oversight by, an independent audit committee of the Board. OCC also proposes to amend the AC charter to provide that the AC is authorized to review and approve OCC's audited financial statements, oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and discuss certain significant issues with the external auditor. OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities with respect to OCC's internal audit function. OCC believes the proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁰⁸ OCC believes the proposed changes are also consistent with the requirements of Rules 17Ad-22(e)(3)(iii), (iv) and (v)¹⁰⁹ that OCC's risk management framework provide: (i) risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors; (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the board of directors; and (iii) an independent audit committee.

OCC also believes that certain of the proposed amendments to the AC Charter are

¹⁰⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰⁹ 17 CFR 240.17Ad-22(e)(3)(iii), (iv), and (v).

designed to provide for governance arrangements that specify clear and direct lines of responsibility. For example, OCC proposes to amend the AC Charter to establish the AC's responsibility for reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the staffing, resources, and budget of OCC's compliance and audit departments.¹¹⁰ As an additional example, OCC proposes to amend the AC Charter to provide that certain mandatory reports must be sent to the AC for review, which OCC believes would help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that the AC remains apprised of OCC's ongoing performance in respect of matters covered by the reports. OCC believes these proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹¹ OCC believes the proposed changes are also consistent with Rule 17Ad-22(e)(2)(v),¹¹² which requires OCC to provide for governance arrangements that specify clear and direct lines of responsibility.

CPC Charter Changes

As described in Item 3.A. above, OCC believes that certain of the proposed changes applicable to the CPC Charter are designed to provide for governance arrangement that specify clear and direct lines of responsibility. For example, OCC proposes to amend the CPC Charter to clarify that the CPC assists the Board in overseeing risks related to OCC's general business,

¹¹⁰ See supra note 27 and accompanying text.

¹¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹¹² 17 CFR 240.17Ad-22(e)(2)(v).

regulatory capital, investments, corporate planning, compensation, and human capital in addition to assisting the Board in executive management succession planning and performance assessments. While the CPC Charter already addresses these aspects of the committee's responsibilities generally, the proposed revisions are designed to emphasize the committee's responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management's responsibility to identify, manage, monitor and report the associated risks.

OCC also proposes to remove certain specific responsibilities stated in the CPC Charter in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, which OCC believes further specifies clear and direct lines of responsibility. Changes would be made to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee, and a new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months. Changes would also be made to clarify the CPC's role with respect to the oversight of OCC's Administrative Committee, including the CPC's authority to approve the Administrative Committee charter. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

OCC believes these proposed changes to the CPC Charter would provide clarity

regarding the responsibilities of the CPC and allow the CPC to more effectively carry out its oversight functions concerning those risks for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹³ Moreover, OCC believes the proposed changes to the CPC Charter are consistent with, among other provisions, the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures, and systems be subject to periodic review and annual approval by the Board¹¹⁴ and the Rule 17Ad-22(e)(2)(v) requirement that governance arrangement specify clear and direct lines of responsibility.¹¹⁵

GNC Charter Changes

As described in Item 3.A. above, OCC believes that certain of the proposed changes applicable to the GNC Charter are designed to ensure that Board directors have appropriate experience and skills to discharge their duties and responsibilities and to ensure that OCC's governance arrangements specify clear and direct lines of responsibility. For example, OCC proposes to amend the GNC Charter to reframe the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,¹¹⁶ and to specify that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically. OCC also proposes to expand the GNC's yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees, to specify that the

¹¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹¹⁴ 17 CFR 240.17Ad-22(e)(3)(i).

¹¹⁵ 17 CFR 240.17Ad-22(e)(2)(v).

¹¹⁶ See supra note 44 and accompanying text.

GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and to provide that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. Under the proposed rule change, the GNC Charter would also be amended to assign new responsibility for advising on matters pertaining to director leadership development and succession planning. OCC believes that these proposed changes to the GNC Charter would enhance OCC's governance arrangements by helping to ensure that OCC's directors are appropriately qualified and would help promote clear and direct lines of responsibility and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹¹⁷ OCC also believes the proposed changes are consistent with the requirement of Rule 17Ad-22(e)(2)(iv)¹¹⁸ that a covered clearing agency's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities and the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.¹¹⁹

RC Charter Changes

As described in Item 3.A. above, OCC believes that certain of the proposed changes applicable to the RC Charter are designed to provide for a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are

¹¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹¹⁸ 17 CFR 240.17Ad-22(e)(2)(iv).

¹¹⁹ 17 CFR 240.17Ad-22(e)(2)(v).

subject to review on a periodic basis and approved annually by the Board.¹²⁰ The RC Charter currently contains provisions that address certain narrow responsibilities that the committee has for the oversight of credit, collateral, liquidity and third party risks. These provisions would be removed in favor of new provisions that more accurately reflect the RC's broader responsibility to oversee these particular risks. For example, changes to the RC Charter, including those related to the committee's general function and responsibilities, would be made to better align the RC's responsibilities with OCC's regulatory requirements and would provide that, among other things, the RC would be required to review OCC's management of credit, collateral, liquidity, and third party risks at least once every twelve months and that management would be required to provide the RC with monthly reports regarding the effectiveness of OCC's management of credit exposures and liquidity risks and quarterly reports regarding the effectiveness of OCC's management of collateral and third party risks.¹²¹ OCC believes the proposed changes to the RC Charter would provide additional clarity regarding OCC's governance arrangements and improve the effectiveness of the RC's oversight, particularly with respect to OCC's credit, collateral, liquidity and third party risks, and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹²² OCC also believes that the proposed changes to the RC Charter are generally consistent with, among other provisions, the requirements of Rule 17Ad-22(e)(3)(i)¹²³ to

¹²⁰ See supra notes 52-53, and 56, and accompanying text. See also supra notes 19, 31, 36, 38, 40, 61, and 78 and accompanying text for similar changes with respect to other committee charters.

¹²¹ See supra note 53 and accompanying text.

¹²² 15 U.S.C. 78q-1(b)(3)(F).

¹²³ 17 CFR 240.17Ad-22(e)(3)(i).

establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board.

OCC also proposes changes to the RC Charter to specify the RC's responsibilities concerning plans for OCC's recovery and orderly wind-down ("Recovery and Orderly Wind-down Plan").¹²⁴ OCC believes the proposed changes would provide additional clarity regarding OCC's governance arrangements concerning matters of critical importance and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹²⁵ OCC also believes these proposed changes to the RC Charter are consistent with the requirements in Rule 17Ad-22(e)(3)(ii) that OCC maintain a sound risk management framework that includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹²⁶

Finally, OCC proposes to reassign the oversight of the investigations and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members to the RC because OCC believes that the RC is more appropriately situated to review investigations and enforcement outcomes of disciplinary actions given its oversight of OCC's Clearing Membership

¹²⁴ See supra note 57 and accompanying text.

¹²⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹²⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

framework. OCC believes the proposed changes to the RC Charter would establish clear and direct responsibility for the oversight of investigations and enforcement outcomes of disciplinary actions taken by OCC by an appropriate committee of OCC's Board and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act¹²⁷ and are consistent with the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.¹²⁸

TC Charter Changes

As described in Item 3.A. above, OCC believes that certain of the proposed changes applicable to the TC Charter are designed to provide for governance arrangements that specify clear and direct lines of responsibility and to ensure that OCC maintains a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC. For example, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. As a further example, OCC also proposes to amend the TC Charter to provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities while the Committee will oversee the progress in executing on major IT initiatives, technology architecture decisions and IT priorities. Other language was also revised to more clearly describe the TC's responsibilities related to the oversight of internal controls, and review of the crisis management plans as these topics often fall within other areas (such as Business Continuity and Disaster Recovery). OCC believes these revisions will strengthen the

¹²⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹²⁸ 17 CFR 240.17Ad-22(e)(2)(v).

transparency and clarity of its governance structure. Finally, OCC would revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and to more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines). OCC believes that these changes will promote a sound risk management framework and add greater clarity to the responsibilities of the TC.

For the reasons set forth above, OCC believes that the proposed changes to the TC Charter would provide additional clarity to OCC's governance arrangements and improve the effectiveness of the TC's oversight of OCC's IT and other operational risks and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹²⁹ Moreover, OCC believes the proposed changes are reasonably designed to meet the requirements of Rule 17Ad-22(e)(2)(v)¹³⁰ to provide for governance arrangements that specify clear and direct lines of responsibility and Rule 17Ad-22(e)(3)¹³¹ to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC.

Board Charter Changes

As described in Item 3.A. above, OCC believes that certain of the proposed changes

¹²⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹³⁰ 17 CFR 240.17Ad-22(e)(2)(v).

¹³¹ 17 CFR 240.17Ad-22(e)(3).

applicable to the Board Charter are designed to improve the clarity and transparency of OCC's governance arrangements and provide for governance structures and processes that are designed to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments. For example, as noted above, incorporating the CGP within the Board Charter would promote clarity and transparency by eliminating significant overlap between the two existing documents and thereby making the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand.¹³² As a further example, OCC proposes to amend the Board Charter to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings, which is designed to help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate. As a further example, OCC believes the proposed changes to the Board Charter would make clear that the Board is responsible for ensuring that the AC of the Board is independent.¹³³ OCC believes that the proposed changes to the Board Charter would enhance the clarity of OCC's governance arrangements and improve the effectiveness of the Board's oversight and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹³⁴ Moreover, OCC believes the proposed changes are generally consistent with, among other things, the Rule 17Ad-

¹³² See supra note 66 and accompanying text.

¹³³ See supra note 80 and accompanying text.

¹³⁴ 15 U.S.C. 78q-1(b)(3)(F).

22(e)(2)(i)¹³⁵ requirement to provide for governance arrangements that are clear and transparent, the Rule 17Ad-22(e)(3)¹³⁶ requirement to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, and the Rule 17Ad-22(e)(3)(iii)¹³⁷ requirement to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors.

In addition, OCC proposes to transfer responsibility for the oversight of the ERM function from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even greater director engagement and attention regarding OCC's risk universe (i.e., the range of risks to which OCC is exposed) and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe. OCC believes that the proposed changes to the Board Charter would enhance the effectiveness of the Board's oversight, particularly with respect to OCC's

¹³⁵ 17 CFR 240.17Ad-22(e)(2)(i).

¹³⁶ 17 CFR 240.17Ad-22(e)(3).

¹³⁷ 17 CFR 240.17Ad-22(e)(3)(iii).

ERM functions, and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹³⁸ In addition, OCC believes the proposed change is reasonably designed to provide for a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC consistent with Rule 17Ad-22(e)(3).¹³⁹

Finally, OCC notes that the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impact or impose any burden on competition.¹⁴⁰ The proposed rule change addresses the charters used in OCC's governance structure, and all Clearing Members would be equally subject to these governance arrangements. Consequently, the amended charters would not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

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 impact or impose a burden on competition.

¹³⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹³⁹ 17 CFR 240.17Ad-22(e)(3).

¹⁴⁰ 15 U.S.C. 78q-1(b)(3)(I).

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

Not applicable.

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

Not applicable.

Item 8. Proposed Rule Change Based on Rule 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. AC Charter

Exhibit 5B. CPC Charter

Exhibit 5C. GNC Charter

Exhibit 5D. RC Charter

Exhibit 5E. TC Charter

Exhibit 5F. Board Charter

SIGNATURES

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

THE OPTIONS CLEARING CORPORATION

By: _____
Justin W. Byrne
Vice President, Regulatory Filings

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2018-012)

September __, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Board of Directors and Board Committee Charters

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 24, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change by OCC concerns changes to its (1) Audit Committee Charter, (2) Compensation and Performance Committee Charter, (3) Governance and Nominating Committee Charter, (4) Risk Committee Charter, (5) Technology Committee Charter and (6) Board of Directors Charter in connection with requirements applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17Ad-22(e)(2) and (3).

The charters are attached as Exhibits 5A through F to the filing. Material proposed to be added to the charters as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethrough text. The proposed rule change, including Exhibits 5A through F, is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

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

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

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

(1) Purpose

The purpose of the proposed rule change is to make certain changes to OCC's (1) Audit Committee ("AC") Charter ("AC Charter"), (2) Compensation and Performance Committee ("CPC") Charter ("CPC Charter"), (3) Governance and Nominating Committee ("GNC") Charter ("GNC Charter"), (4) Risk Committee ("RC") Charter ("RC Charter"), (5) Technology Committee ("TC") Charter ("TC Charter") and (6) Board of

⁴ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

Directors (“Board”) Charter (“Board Charter”)⁵ for consistency with requirements that are applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).⁶ As described in greater detail below, the proposed changes are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services.

Background

On September 28, 2016, the Commission adopted amendments to Rule 17Ad-22⁷ and added new Rule 17Ab2-2⁸ pursuant to Section 17A of the Securities Exchange Act of 1934, as amended (“Exchange Act” or “Act”),⁹ and the Payment, Clearing, and Settlement Supervision Act of 2010¹⁰ to establish enhanced standards for the operation

⁵ As discussed below, the changes to the Board Charter would involve incorporating provisions from OCC’s Corporate Governance Principles (“CGP”) and changing the title of the document to the Board Charter and Corporate Governance Principles.

⁶ 17 CFR 240.17Ad-22(e)(2) and (3).

⁷ Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70812 (October 13, 2016) (“CCA Adopting Release”); see also 17 CFR 240.17Ad-22.

⁸ 17 CFR 240.17Ab2-2.

⁹ 15 U.S.C. 78q-1.

¹⁰ 12 U.S.C. 5461 et. seq.

and governance of those clearing agencies registered with the Commission that meet the definition of a “covered clearing agency,” as defined by Rule 17Ad-22(a)(5)¹¹ (collectively, the new and amended rules are herein referred to as the “CCA rules”). OCC meets the definition of a covered clearing agency and is therefore subject to the requirements of the CCA rules.¹²

Relevance of CCA Rules Regarding OCC Charters-

Certain of the CCA rules impose requirements regarding governance arrangements and OCC’s risk management framework that relate to its (1) AC Charter, (2) CPC Charter, (3) GNC Charter, (4) RC Charter, (5) TC Charter and (6) Board Charter. Specifically, Rules 17Ad-22(e)(2) and (3) require OCC to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable:

- provide for governance arrangements that are clear and transparent; clearly prioritize safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Act¹³ and the objectives of owners and participants; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties

¹¹ 17 CFR 240.17Ad-22(a)(5).

¹² Id.

¹³ 17 CFR 240.17Ad-22(e)(2). The public interest requirements in Section 17A of the Act include that the “prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating and acting on behalf of investors.” See 15 U.S.C. 78q-1(a)(1)(A).

and responsibilities; specify clear and direct lines of responsibility; consider the interests of enumerated stakeholders;¹⁴ and

- maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.¹⁵

OCC is proposing changes to its Board and Board committee charters to better align its governance and risk management processes with these requirements, including by shifting responsibility to the Board for enterprise risk management and aligning committee responsibilities accordingly. These changes are described below regarding each charter and key aspects of the proposed changes are noted by bullets at the beginning of each section. Many of the proposed changes are intended only to reduce redundancy and better organize the content of the charters and in some cases would remove provisions for readability in light of the fact that they are not required. Therefore, OCC proposes to relocate existing content and change word choices for readability and to more clearly state what a committee is authorized to do or must do, which OCC believes would not substantively alter the responsibilities or activities of the relevant committee.¹⁶ Because such changes would not change the operation or meaning

¹⁴ See 17 CFR 240.17Ad-22(e)(2).

¹⁵ See 17 CFR 240.17Ad-22(e)(3).

¹⁶ The following are examples of such changes. All of the charters would be amended to state that the Board or the relevant committee will review the charter “at least once every twelve months” instead of “annually” to provide further clarity around the intended frequency. The statement in the TC Charter that the TC “shall also have the authority to perform any other duties” consistent with the TC Charter would be revised to provide that the TC “is authorized to perform any other duties” consistent with the TC Charter. The statement in the AC Charter that the committee shall “approve material changes in accounting principles and

of the charter provisions, they are not further described herein. OCC also notes that the Board Charter and committee charters are intended to set forth key responsibilities, procedures, and guiding principles for the Board and the committees. The charters therefore do not enumerate every action that may be taken by the Board or committees, and OCC notes that its By-Laws, Rules and policies also set forth certain duties and responsibilities of the Board and committees (e.g., Sections 4 (Committees) and 8 (Power of the Board of Directors) of Article III of OCC's By-Laws).

Common Changes

Certain of the proposed changes represent common changes that would be made in all or most of the charters.¹⁷ For instance, OCC proposes to amend the charters to provide that in carrying out their responsibilities the Board and the committees shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including its Exchange Shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, as is consistent with

practices” would instead state that it “is authorized to approve material changes in accounting principles and practices.” Consistent with this change, where a charter currently states that the Board or a committee “shall approve” a particular matter, certain changes are proposed, as appropriate, to state instead that the Board or a committee is “authorized to approve.” OCC believes such changes properly clarify the oversight role of the Board and the committees and that approval is not mandatory.

¹⁷ Certain variations on some of these changes that are specific to the Board Charter are also described below in the section addressing the Board Charter.

Rules 17Ad-22(e)(2)(ii), (iii) and (vi).¹⁸ OCC also proposes to amend the committee charters to address committee member vacancies to provide that in the event of a vacancy, the applicable committee will continue to undertake its responsibilities, so long as the remaining committee members are capable of satisfying the quorum requirement.¹⁹ In addition, to promote compliance with the requirement in Rule 17Ad-22(e)(2)(v)²⁰ that governance arrangements provide for clear and direct lines of responsibility, OCC proposes to amend all of the charters to specify that the Board and each committee may delegate authority to one or more designated officers of OCC or may refer a risk under its oversight to another committee or the Board as advisable or appropriate. The proposed revisions would further provide, however, that the Board or the committee would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. OCC also proposes amendments to acknowledge, where relevant, that its Executive Chairman (“EC”) also serves as its Chief Executive Officer (“CEO”) and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. All charters would also be revised to state that a role of the Board or the committee, as applicable, is to advise management. In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board in

¹⁸ See 17 CFR 240.17Ad-22(e)(2)(ii) (requiring governance arrangements that prioritize the covered clearing agency’s “safety and efficiency”), (e)(2)(iii) (requiring governance arrangements that support the “public interest requirements” applicable to covered clearing agencies), and (e)(2)(vi) (requiring governance arrangements that consider the interests of all “relevant stakeholders”).

¹⁹ This same change would not be added to the Board charter. It would also not be added to the GNC Charter because it is already addressed.

²⁰ 17 CFR 240.17Ad-22(e)(2)(v).

connection with a required review once every twelve months of committee charters, consistent with Rule 17Ad-22(e)(3)(i).²¹ Moreover, consistent with Rules 17Ad-22(e)(2)(i) and (v) regarding the establishment of governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility,²² changes would be made to clarify that where the Board or a committee has authority to approve reports or other proposals in its business judgment, such as materials provided by management, it is not obligated to approve, and related modifications would articulate a clear means of recourse for the committee or the Board if it does not approve.²³

The committee charters would also be amended to provide that each committee shall perform and is authorized to perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.²⁴ OCC also proposes to amend the committee charters to provide that each committee shall perform any other duties consistent with their respective charters as the committee deems necessary or appropriate, or as the Board shall further delegate to the particular committee.²⁵ OCC believes that these changes will provide for flexibility for each committee to supervise and account for matters naturally within the scope of their responsibility or that may be assigned to them by the Board.

²¹ See 17 CFR 240.17Ad-22(e)(3)(i) (requiring periodic review and annual Board approval of the CCA's risk management framework).

²² 17 CFR 240.17Ad-22(e)(2)(i) and (v).

²³ The purpose of these changes is to promote governance arrangements that clearly prioritize the safety and efficiency of OCC and specify clear and direct lines of responsibility in its governance arrangements. See 17 CFR 240.17Ad-22(e)(2)(ii) and (v).

²⁴ OCC notes that a comparable provision to this exists in the RC Charter.

²⁵ OCC notes that comparable language currently appears in the AC Charter, GNC Charter, and TC Charter.

OCC believes these changes also promote compliance with Rule 17Ad-22(e)(3)²⁶ by establishing a sound risk management framework to comprehensively manage the varying risks and other matters each committee must manage and to effectively identify new risks that may arise.

Finally, in order to the promote compliance with the requirement in Rule 17Ad-22(e)(2)(i)²⁷ that OCC's governance arrangements be clear and transparent, OCC proposes to make a number of changes to its Board committee charters to clarify that, where certain actions were required to be performed "annually" under the charters, those actions would now be required to occur "each calendar year." OCC believes that it is appropriate to make clear it in its rules actions which the Board or a committee may be required to perform on an every twelve months-basis, particularly in cases where a regulatory requirement exists (e.g., Risk Committee requirement to review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board) and those which they would only be required to perform on a calendar year basis. These changes include amending the committee charters to provide that the following activities must occur on a calendar year basis: (i) the appointment of directors to particular committees; (ii) that committees meet regularly, and no less than once per calendar year, with certain members of management in separate executive sessions; (iii) that each committee must provide reports to the Board summarizing its activities for the prior year; (iv) that each committee confirm to the Board that all responsibilities outlined in its Charter have been

²⁶ 17 CFR 240.17Ad-22(e)(3).

²⁷ 17 CFR 240.17Ad-22(e)(2)(i).

carried out; and (v) that each committee assess its and its individual members' performance and provide results of such assessment to the GNC²⁸ for review.

AC Charter

OCC proposes modifications to its AC Charter. Key aspects of the proposed changes regarding the AC Charter include:

- New responsibility for oversight of legal risks, including existing, pending and threatened litigation;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC;
- Increased oversight of OCC's compliance department, including its structure, resources and budget; and
- Introduction of mandatory periodic reporting from OCC's Chief Audit Executive ("CAE"), Chief Compliance Officer ("CCO") and General Counsel ("GC").

OCC proposes to amend the AC Charter to establish new responsibilities for the AC that include reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the structure, independence and objectivity, staffing, resources, and budget of OCC's compliance and audit departments. OCC believes that it is appropriate to extend these responsibilities to the AC since they are highly germane to its current functions (e.g., assisting the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, and OCC's process for monitoring compliance with applicable laws and

²⁸ The GNC is required to provide the results of its own assessment to the Board.

regulation) and would promote compliance with Rule 17Ad-22(e)(2)(v)²⁹ by specifying clear and direct lines of responsibility. In addition, the responsibility for the oversight of Clearing Member investigations and enforcement would be transferred to the RC as the RC has the required expertise to properly oversee the process (as discussed further below). The AC Charter would also be amended to clarify that the AC shall oversee the independence and objectivity of the internal audit department, consistent with OCC's obligations under Rules 17Ad-22(e)(3)(iii) and (iv)³⁰ to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors and provide for oversight of internal audit personnel by an independent audit committee of the board of directors. Under the proposed rule change, the AC Charter would also be amended to provide that the AC is authorized to approve deviations to the audit plan that may arise over the course of an audit, which OCC believes is a natural extension of the AC's role and responsibilities. In addition, OCC proposes to amend the AC Charter to provide that the AC shall identify risk issues relating to the areas that the committee oversees that should be escalated to the Board for its review and consideration, which OCC believes promotes compliance with Rule 17Ad-22(e)(2)(v)³¹ by specifying clear and direct lines of responsibility.

OCC also proposes to amend the AC Charter to provide that certain mandatory reports be sent to the AC for review, including quarterly reports from the CAE regarding

²⁹ 17 CFR 240.17Ad-22(e)(2)(v).

³⁰ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

³¹ 17 CFR 240.17Ad-22(e)(2)(v).

the internal audit plan and the GC regarding existing, pending, or threatened litigation.³²

OCC notes that either the AC or another committee already has responsibilities in these areas and OCC believes that such quarterly reports will help provide the AC with the necessary information to appropriately discharge its duties and responsibilities.³³

OCC also proposes to streamline its description of the AC's responsibility with respect to its compliance department by providing more generally that the AC shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the CCO and inquire of management regarding steps taken to deal with items raised. As a result of this change, the AC Charter would no longer specify that the AC is responsible for approving the annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving any recommendations by the CCO relating to that plan. The purpose of this change is to shift OCC's compliance department to a monitoring role and away from its historic role of creating a specific plan to follow. This change would also help facilitate the transition of validation responsibilities to OCC's internal audit department, over which the compliance department would have monitoring responsibilities. OCC believes that this change

³² OCC proposes certain other streamlining changes to the AC Charter, such as providing that the AC will review OCC's Reporting Concerns and Whistleblower Policy (and specifying that such review will occur each calendar year) rather than providing a more detailed description of what the reporting concerns and whistleblower procedures under the relevant policy entail.

³³ OCC also believes that these quarterly reports to the AC help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that these officers keep the AC apprised of OCC's ongoing performance or handling of these matters, which in turn will allow the AC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

promotes governance arrangements that are clear and transparent in accordance with Rule 17Ad-22(e)(2)(i).³⁴

In a number of instances, OCC proposes to amend the AC charter to provide that the AC is authorized to perform certain functions. For example, OCC proposes to amend the AC charter to provide that the AC is authorized to approve management's recommendation to appoint or replace the CCO or CAE, which is a governance arrangement that OCC believes is consistent with Rules 17Ad-22(e)(3)(iii) and (iv)³⁵ in that it furthers the AC's oversight of the CCO and CAE and their independence from management.³⁶ OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities using its business judgment. OCC also proposes to amend the AC Charter (and the RC Charter) to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given its broader role in overseeing OCC's management of third party risks, (which includes OCC counterparties such as Clearing Members).

OCC proposes to further amend the AC Charter to provide that the AC shall review the effectiveness of the internal audit function, including conformance with the

³⁴ 17 CFR 240.17Ad-22(e)(2)(i).

³⁵ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

³⁶ OCC similarly proposes to amend the AC charter to provide that the AC is authorized to approve OCC's audited financial statements after review, is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and is authorized to discuss certain significant issues with the external auditor.

Institute of Internal Auditor’s Code of Ethics and the International Standards for Professional Practice of Internal Auditing. OCC believes that this is a natural extension of the AC’s role and responsibility to help ensure the integrity of OCC’s audits and is consistent with the public interest and the protection of investors.³⁷

In addition, the AC Charter currently provides that the AC is authorized to determine appropriate compensation for audit services and pre-approve all audit services, subject to annual approval by the Board. As proposed, the AC charter would no longer expressly require annual Board approval regarding these items. However, under the AC Charter the committee would still be required to confirm annually to the Board that all of its responsibilities have been carried out and provide an annual report to the Board summarizing its activities during the previous year, consistent with Rules 17Ad-22(e)(2)(v) and 17Ad-22(e)(3)(i) and (iii).³⁸ OCC also proposes to amend the AC Charter to provide that, in addition to the CAE and CCO, the Chief Financial Officer (“CFO”) also would be authorized to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC between meetings of the AC given the CFO’s role as part of OCC’s executive team and his/her responsibility for OCC finances.³⁹

³⁷ See 15 U.S.C. 78q-1(b)(3)(F).

³⁸ See 17 CFR 240.17Ad-22(e)(2)(v) (requiring governance arrangements with clear and direct lines of responsibility), (e)(3)(i) (requiring periodic review and annual Board approval of risk management policies, procedures and systems) and (e)(3)(iii) (requiring a risk management framework that provides internal audit personnel with sufficient authority, but also access to the Board).

³⁹ As described below, OCC also proposes certain other non-substantive changes to the AC Charter to provide additional clarity. For example, OCC proposes to replace reference to “financial and senior management” to OCC’s “Corporate Finance Department” in describing the AC’s responsibility to facilitate open

CPC Charter

OCC proposes a number of revisions to its CPC Charter, the key aspects of which would include:

- New responsibility to oversee and monitor certain activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto, and approval of the members of the Administrative Committee;
- Introduction of mandatory quarterly reporting on OCC's corporate plan, corporate budget and capital plan; and
- Annual requirement to review succession planning activities regarding OCC's Management Committee ("Management Committee").

OCC proposes to amend the CPC Charter to state that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments, corporate planning, compensation and human capital in addition to assisting the Board in executive management succession planning and performance assessments. The existing CPC Charter already addresses these aspects of the committee's responsibilities

communication between external auditors and certain groups within OCC. As an additional example, the AC Charter would be amended to provide that the AC is authorized to approve the "issuance of the annual financial" statements after its review of such statements. Similarly, OCC proposes to enhance certain descriptions of the AC's responsibilities. For example, OCC proposes to revise text describing the role of the AC, along with external auditors, as responsible for "planning and carrying out audit work, as appropriate" rather than "planning and carrying out a proper audit." OCC's description of the AC's power to delegate to the CAE "within the external audit limits" would be changed for accuracy to read "within the co-sourced audit hour limits." This change is meant to reflect the fact that OCC co-sources its internal audit function through a partnership between OCC's in-house internal audit department and a third party internal audit service provider.

generally. The proposed revisions are designed to emphasize the committee's responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management's responsibility to identify, manage, monitor and report the associated risks, as is consistent with the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures and systems be subject to periodic review and annual approval by the Board⁴⁰ and the Rule 17Ad-22(e)(2)(v) requirement that governance arrangement "specify clear and direct lines of responsibility."⁴¹

The CPC Charter would continue to provide that the committee oversees the corporate plan and corporate budget and makes recommendations to the Board regarding their approval. However, the proposed changes would clarify that the corporate plan and budget are annual arrangements and that the committee oversees their alignment with OCC's business strategy. In addition, a new provision would require management to provide a quarterly report to the committee that contains information on OCC's performance against the corporate plan and the budget.⁴²

The CPC Charter would continue to provide that the committee oversees OCC's capital plan and would be revised to clarify that this oversight includes the written policies adopted thereunder, which include OCC's fee, dividend and refund policies (which are existing responsibilities of the CPC). Revisions also would clarify that the

⁴⁰ 17 CFR 240.17Ad-22(e)(3)(i).

⁴¹ 17 CFR 240.17Ad-22(e)(2)(v).

⁴² OCC believes that quarterly reporting by management to the CPC, as described in this discussion of the CPC Charter, helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the CPC apprised of OCC's ongoing performance on these matters, which in turn will allow the CPC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

committee must review the capital plan at least once every twelve months and that the committee makes recommendations to the Board concerning capital requirements, refund payments, and dividend payments. In addition, a provision would be added to require management to provide a quarterly performance report to the committee against the capital plan.

OCC proposes to revise the CPC Charter to provide that the Committee would oversee and monitor the activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto and of the members of the Administrative Committee. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee and overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

In addition, OCC proposes changes to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee. A new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months.

Regarding the committee's review of Public Director compensation and the recommendations that it provides to the Board related thereto, a requirement would be added to the CPC Charter for the committee to engage in these activities not less than once every two years. OCC believes that a two year period is appropriate for such a review because the overall trends in industry compensation generally do not change dramatically from year to year. The CPC would continue to look at overall Public

Director compensation each year for informational purposes, but it would not be required to perform a full review of each of the components of Public Director compensation packages and recommend adjustments to the Board on a yearly basis.

The CPC Charter would also be amended to clarify that that committee is not authorized to adopt or amend compensation, retirement and welfare benefit plans that require Board approval and to add a new requirement that the committee must review OCC's insurance program at least once every twelve months.

Certain specific responsibilities stated in the CPC Charter would be removed in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, furthering the purposes of the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.⁴³ For example, an existing provision would be removed that states that the committee reviews special financial matters as requested by the Board. Provisions would also be removed that specifically address the committee's review and approval of policies and programs regarding salary compensation and incentive compensation and its review of material changes to executive management benefits.

GNC Charter

OCC also proposes changes to its GNC Charter. The key aspects of the proposed changes regarding the GNC Charter include:

- New responsibility for review and approval of related party transactions; and

⁴³ 17 CFR 240.17Ad-22(e)(2)(v).

- New responsibility for advising on matters pertaining to director leadership development and succession planning.

OCC proposes to amend the GNC Charter to establish new responsibilities for the GNC to approve all material changes to written policies concerning related party transactions and recommend such changes to the Board for approval. The GNC Charter would also be amended to provide that the GNC shall review and, if appropriate, approve or ratify any related party transactions involving OCC in accordance with the written policy governing such transactions. Because the GNC is already responsible for the review of conflicts of interests of directors and the manner in which such conflicts will be monitored and resolved, OCC believes that it is appropriate for the GNC to assume the additional responsibility of reviewing related party transactions. OCC also believes that it would be appropriate for the GNC to advise the Board on matters pertaining to director leadership and development to promote compliance with the Rule 17Ad-22(e)(2)(iv)⁴⁴ requirement that OCC's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities.⁴⁵

OCC also proposes a number of other changes to the GNC charter, which include:

- (i) reframing the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,⁴⁶ (ii) removing the ability for a designee of the chair of the GNC

⁴⁴ 17 CFR 240.17Ad-22(e)(2)(iv).

⁴⁵ OCC also proposes to reframe the introductory paragraph of the GNC charter to explicitly reference relevant provisions of Rule 17Ad-22(e)(2) and specify that the GNC is responsible for assessing the clarity and transparency of OCC's governance arrangements, consistent with Rule 17Ad-22(e)(2)(i). See 17 CFR 240.17Ad-22(e)(2)(i).

⁴⁶ For example, rather than providing that the GNC would work toward developing a Board with a broad spectrum of experience and expertise, OCC proposes to

to call an additional meeting beyond the four times per year that the GNC will meet,⁴⁷ (iii) specifying that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically,⁴⁸ (iv) expanding the GNC's yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees,⁴⁹ (v) specifying that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and (vi) providing that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. In addition, OCC proposes to revise the GNC charter to no longer provide that the GNC is responsible for

provide that the GNC shall identify, for purposes of making recommendations to the Board, the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, the "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. In this same vein, OCC proposes to delete language providing that the GNC is responsible for 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. OCC believes that this deletion is appropriate because it is adequately covered by the other provisions in the GNC charter regarding directors' qualifications, as revised, and contemplates that the Standards are approved by the Board. These changes are designed to be consistent with Rule 17Ad-22(e)(2)(iv) (regarding the establishment of governance arrangements that ensure "board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities"). See 17 CFR 240.17Ad-22(e)(2)(iv).

⁴⁷ OCC believes this change would help ensure that the committee's time and resources would be utilized appropriately, furthering the purpose of Rule 17Ad-22(e)(2)(ii) requiring that a covered clearing agency's governance arrangements prioritize the "efficiency" of the covered clearing agency. See 17 CFR 240.17Ad-22(e)(2)(ii).

⁴⁸ This is intended to be consistent with 17 CFR 17Ad-22(e)(2)(iii) (requiring governance arrangements that support the "public interest requirements" in 17 U.S.C. 78q-1).

⁴⁹ Id.

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. The requirement that the GNC nominate candidates is provided explicitly in the By-Laws, and OCC further believes that this responsibility is adequately captured in OCC's revised description of the GNC's role to identify, screen, and review individuals qualified to be elected or appointed to serve as Member Directors or Public Directors.⁵⁰

RC Charter

OCC also proposes a number of changes to its RC Charter. The key aspects of the proposed changes regarding the RC Charter include:

- Transition of responsibilities regarding Enterprise Risk Management ("ERM") to the Board;
- Increased responsibilities with respect to OCC's risk management related to credit, collateral, liquidity and third party risks;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC; and
- Introduction of mandatory periodic reporting on the effectiveness of OCC's management of risks.

OCC proposes to amend the RC Charter's statement of the committee's responsibilities. First, the RC Charter currently provides that the RC assists the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational and financial (e.g., credit, market, liquidity and systemic) risks. This would

⁵⁰ See OCC By-Law Article III, Sections 5 and 6A. OCC proposes to specify in the GNC Charter that the GNC's role in this context applies specifically to Public Directors and Member Directors to promote consistency with the By-Laws.

be replaced by a narrower and more specific statement that the RC would have responsibility for assisting the Board in its oversight of financial, collateral, risk model and third party risk management processes.⁵¹ In addition, the oversight of responsibility for Clearing Member investigations and enforcement outcomes of disciplinary actions would be transferred from the AC to the RC as the RC has the required expertise to properly oversee the process given its current responsibility for overseeing 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 determinations in respect of the foregoing.

The committee would also continue to be responsible for functions delegated to it under the By-Laws and Rules and as may be delegated to it by the Board. A removal of continued responsibility for strategic and operational risks would be consistent with additional changes to the RC Charter that provide that the RC would no longer have

⁵¹ The RC Charter currently provides that the committee is responsible for overseeing OCC's overall ERM framework, 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, (v) default management planning, and (vi) risks related to new initiatives." As described in greater detail below, the revised descriptions in the RC Charter regarding its oversight of these areas would continue to involve responsibilities related to credit, market, liquidity and systemic risk but would no longer include responsibility for overseeing those aspects related to the ERM program. The committee would also continue to be responsible for identifying risks associated with its responsibilities that should be escalated to the Board for its review and consideration.

responsibilities related to the ERM program and such responsibilities would be transitioned to the Board (which is discussed in further detail below). OCC believes that these changes are appropriate because issues regarding enterprise risk management are central to OCC's comprehensive management of risk and would therefore benefit from the experience and attention of the full Board.

Corresponding changes would also be made to clarify that the committee has an oversight role regarding its responsibilities and that it remains OCC management's responsibility to identify, manage, monitor and report risks in these areas.

A clarifying statement would also be added to the RC Charter to state that the RC is required to perform its responsibilities in accordance with the provisions of the RC Charter and applicable regulatory requirements. A new provision would provide that, from time to time, the committee may receive reports and guidance relating to financial risk issues from, among others, OCC's Financial Risk Advisory Council ("FRAC"). The committee would consider and discuss such reports in respect of financial risk issues that may impact the options and futures industries. The committee would take such guidance into account in the exercise of its fiduciary judgment and the performance of its functions and responsibilities.

Regarding meetings of the RC, a change would be made to the RC Charter to specify that joint meetings with other Board committees count toward the requirement to meet at least six times a year. A change would also clarify that in-person attendance of meetings is preferred.

In connection with the RC no longer having responsibilities regarding the ERM program, several related provisions would be removed from the RC Charter. For

example, the committee would no longer have responsibility to oversee the structure, staffing and resources of the ERM program or approve its goals and objectives on an annual basis. Additionally, it would no longer be responsible for reviewing OCC's risk appetite statements and risk tolerances because the Board would assume responsibility for approval of these matters.

As noted, the proposed changes to the RC Charter would clarify the RC's broad responsibilities for overseeing credit, collateral, liquidity and third party risks in a manner consistent with the Rule 17Ad-22(e)(3)(iii) and (iv) requirements that risk management personnel be provided with sufficient authority, resources, independence, and access to the board of directors, as well as a direct reporting line to and oversight by the RC, and with the Rule 17 Ad-22(e)(2)(v) requirement that OCC's governance arrangements specify clear and direct lines of responsibility.⁵² The RC Charter currently contains provisions that address the responsibility that the committee has for these areas, but they would be removed in favor of the more specific provisions described below. At least once every twelve months the committee would be required to review the adequacy of OCC's management of credit, collateral, liquidity, and third party risks. In connection with these responsibilities, the RC would receive monthly reports from OCC management regarding the effectiveness of OCC's management of credit exposures⁵³ and

⁵² 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(iii) and (iv).

⁵³ For example, the report regarding the effectiveness of the management of credit exposures would include the results of: (i) a comprehensive analysis of OCC's existing stress testing scenarios, models and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin models and a review of the associated parameters and assumptions for back testing.

liquidity risks.⁵⁴ Management would also provide the committee with quarterly reports regarding the effectiveness of OCC's management of collateral and third party risks.⁵⁵ And, the RC would also be responsible for approval of all material changes to written policies regarding risk management in these areas and recommending such changes to the Board, consistent with the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board.⁵⁶

The RC Charter would continue to provide that the committee has responsibility regarding OCC's risk models, including margin models, but it would be revised to more specifically identify the committee's oversight role regarding model validations,⁵⁷ its responsibility for approving any material changes to written policies regarding model risk management, and for recommending any such change to the Board, consistent with the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management

⁵⁴ The committee would also be required to review the adequacy of OCC's secured committed liquidity facilities at least once every twelve months and recommend the size and composition of such facilities to the Board for approval.

⁵⁵ OCC believes that this quarterly reporting helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the RC apprised of OCC's ongoing performance on these matters, which in turn will allow the RC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

⁵⁶ 17 CFR 240.17Ad-22(e)(3)(i).

⁵⁷ This would include the review and approval of OCC's risk model validation plan, plan deviations, and related reports and recommendations by OCC's Chief Risk Officer ("CRO").

policies, procedures and systems be subject to periodic review and annual approval by the Board.⁵⁸

Responsibilities would also be made explicit in connection with the review and approval of any new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks. The RC would refer any such new products that it approves to the Board for its potential approval.

The RC Charter would also be amended to codify the committee's existing responsibility to oversee OCC's Recovery and Orderly Wind-down Plan, consistent with the requirement in Rule 17Ad-22(e)(3)(ii).⁵⁹ At least once every twelve months, this would include reviewing the adequacy of the plan. If the committee approves the plan, it would next recommend the plan to the Board for potential Board approval. The committee would also have responsibility for reviewing and approving any material changes to the plan; however, in the event the committee approves any such changes, it would in turn recommend the changes to the Board for its potential approval.⁶⁰

The committee would continue to have responsibility regarding the structure and staffing of OCC's financial risk management group; however, detail would be added to the RC Charter to clarify the same responsibility for OCC's corporate risk management functions and that the RC must review structure and staffing in these areas at least once

⁵⁸ 17 CFR 240.17Ad-22(e)(3)(i).

⁵⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

⁶⁰ In relevant part, the RC Charter states the following. "The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board.

The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board."

every twelve months. A provision would also be added to provide that the committee would review and approve the CRO's goals and objectives, and any material changes thereto, at least once every twelve months. OCC believes these changes are consistent with the Rule 17Ad-22(e)(3)(iv) requirement that the RC provide oversight of risk management personnel,⁶¹ as well as the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements provide for clear and direct lines of responsibility.⁶²

As noted above, OCC also proposes to amend the RC Charter to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given the committee's broader role in overseeing OCC's management of third party risks, which includes OCC counterparties such as Clearing Members. Finally, the RC Charter would continue to provide that the RC reviews the results of internal and external audits and regulatory examinations. However, a statement would be added to clarify that the committee is responsible for reviewing third party assessment reports as to financial, collateral, risk model and third party risk management processes and for reviewing OCC management's remediation efforts pertaining to any such examination and reports.

TC Charter

⁶¹ 17 CFR 240.17Ad-22(e)(3)(iv).

⁶² 17 CFR 240.17Ad-22(e)(2)(v).

In addition, OCC proposes a number of changes to its TC Charter. Key aspects of the proposed changes regarding the TC Charter include:

- New responsibility for oversight of material changes to the operational execution and delivery of core clearing and settlement services with the authority to recommend approval thereof to the Board;
- New responsibility for OCC's operational initiatives, including approving major information technology ("IT") and operational initiatives, recommending any major capital expenditures to implement to the Board, and approving the information technology and operational budget for each calendar year;
- New responsibility to review at least every twelve months the adequacy of OCC's management of information security risks, approve all material changes to written policies related to the managing information security risks and recommend such changes to the Board;
- Introduction of mandatory periodic reporting from management on major IT initiatives,⁶³ and

⁶³ OCC proposes that the TC would oversee and receive quarterly reports from management that provide information on: (i) executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance; (ii) the effectiveness of the management of information security risks; (iii) OCC's Business Continuity and Disaster Recovery Programs, including the progress on executing the annual test plan and achieving recovery time objectives; and (iv) major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators. OCC believes that such reports would provide the TC with the necessary information to discharge its oversight duties and responsibilities appropriately and will facilitate dialogue between the TC and OCC's senior IT management team. OCC believes that this reporting also helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the TC

- New responsibility to oversee and receive a quarterly report from management on OCC's Business Continuity and Disaster Recovery Programs.

OCC proposes to amend the TC Charter to specify clear and direct lines of responsibility that provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities, consistent with Rule 17Ad-22(e)(2)(v).⁶⁴ In addition, OCC proposes to amend the TC Charter so that it would no longer require that the TC work with or report to the AC and RC to monitor the quality and effectiveness of IT systems and processes that relate to or affect OCC's internal control systems and risk management systems. As noted above in the discussion of common changes to the charters, however, the TC and any other committee or the Board would have certain authority to refer risks under their oversight to promote the smooth functioning of OCC's governance arrangements. OCC also proposes to revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and instead more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines).

apprised of OCC's ongoing performance on these matters, which in turn will allow the TC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

⁶⁴ 17 CFR 240.17Ad-22(e)(2)(v).

The TC Charter would continue to provide that the TC is responsible for assisting the Board in overseeing OCC's IT strategy and other company-wide operational capabilities. OCC proposes, however, to delete certain general statements regarding the TC's duty to make recommendations to the Board with respect to IT-related projects and investments and critically review the progress of such projects and/or technology architecture decisions. OCC proposes to replace these general statements with more specific duties of the TC to, for example, receive a report on management's progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priority, and review material changes to the operational execution and delivery of core clearing and settlement services as well as material changes to written policies concerning information security risk and to recommend such changes to the Board for approval.⁶⁵

⁶⁵ OCC proposes similar changes to the TC Charter with respect to certain responsibilities of the TC. For example, OCC proposes to reframe the TC's responsibility to monitor and assess OCC's management of IT-related compliance risks as a responsibility to monitor and oversee the overall adequacy of OCC's IT and operational control environment, including the implementation of key controls in response to regulatory requirements.

OCC also proposes to remove the language stating that the TC will “periodically review and appraise . . . OCC’s crisis management plans,” and, instead, add language that the TC will oversee and receive a quarterly report on “OCC’s Business Continuity and Disaster Recovery Programs” as the crisis management plans are incorporated within its Business Continuity and Disaster Recovery Programs. As such, the proposed revision will better clarify the full oversight responsibility of the committee and better align with the internal practices at OCC.

In addition, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. OCC believes that this change promotes compliance with the Rule 17Ad-22(e)(3) requirement to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC by charging the TC with the task of identifying emerging risks that may arise over time.⁶⁶

Board Charter

As discussed above, OCC would amend its Board Charter by incorporating its existing CGP and retiring the separate CGP document. The title of the consolidated document would be changed to reflect that it represents OCC’s “Board of Directors Charter and Corporate Governance Principles.” Both the Board Charter and CGP are publicly available on OCC’s website today.⁶⁷ OCC believes this step is appropriate to eliminate significant overlap between the contents of the two existing documents and

⁶⁶ 17 CFR 240.17Ad-22(e)(3).

⁶⁷ OCC’s CGP and Board Charter are available at <http://www.theocc.com/about/corporate-information/what-is-occ.jsp>.

thereby make the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand, and thereby further the purposes of Rule 17Ad-22(e)(2)(i) by improving the clarity and transparency of OCC's governance arrangements.⁶⁸ For example, the existing CGP and Board Charter each address aspects of the Board such as its size and composition. In addition, the Board Charter and CGP also cross-reference one another, such as regarding qualification standards for directors, term limitations, the number of meetings per year and the Board's authority to hire specialists and advisors, which reduces clarity because it requires a reader to turn between the two documents to understand the Board's operation. In incorporating the CGP within the proposed Board Charter, OCC would make changes to the contents of the CGP, as appropriate, to conform the existing provisions to the structure and organization of the Board Charter and related requirements in the By-Laws and Rules.⁶⁹ However, the majority of the provisions in the CGP would be incorporated in their existing form and these provisions would address in the Board Charter, for example, the size of the Board and its composition, membership criteria, appointment of the GNC, the selection of Member, Public, Exchange and Management Directors, conduct matters, ethics and conflicts of interest, compensation, access to senior management, and Board and Board committee evaluations.

⁶⁸ 17 CFR 240.17Ad-22(e)(2)(i).

⁶⁹ For example, the CGP provides in one instance that all materials for Board meetings are made available online by the office of the secretary. This particular provision in the CGP would not be imported and the Board Charter would be amended to provide that OCC operates a portal for the general dissemination of meeting and other written materials to directors to reflect how OCC actually operates. In addition, OCC proposes to make clear that Public Directors do not have term limits, consistent with the requirements in Article III, Section 6 of the OCC By-Laws.

As a result of these incorporated provisions, OCC proposes to remove certain existing provisions in the Board Charter that specifically reference or are duplicative of more comprehensive descriptions from the CGP or where the imported text from the CGP otherwise covers the more truncated discussions of these items in the Board Charter. Specifically, OCC's discussions in the Board Charter would be supplanted by more detailed explanations drawn from the CGP with respect to: (i) Board composition; (ii) qualification standards for directors; (iii) election of directors, resignation and disqualification; (iv) tenure, term and age limitations; and (v) calling of Board meetings, selection of agenda items, and attendance.

OCC also proposes to amend the Board Charter to set forth certain key considerations and responsibilities in the Board Charter consistent with Rule 17Ad-22 that include and expand upon those described above in connection with the discussion of proposed changes that are common to the charters.⁷⁰ These include providing that the Board shall exercise its authority to provide for governance arrangements that, among other things, "support [applicable] public interest requirements . . . and the objectives of owners and participants,"⁷¹ establish that the Board and senior management "have appropriate experience and skills to discharge their duties and responsibilities,"⁷² specify "clear and direct lines of responsibility"⁷³ and consider the interests of Clearing

⁷⁰ See supra notes 16-18 and accompanying text.

⁷¹ 17 CFR 240.17Ad-22(e)(2)(iii).

⁷² 17 CFR 240.17Ad-22(e)(2)(iv).

⁷³ 17 CFR 240.17Ad-22(e)(2)(v).

Members' customers.⁷⁴ OCC also proposes changes designed to provide for "clear and direct lines of responsibility"⁷⁵ by noting that the Board has explicitly delegated management of specific risks to the Board committees and to the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the RC.⁷⁶

Currently, the Board Charter sets forth a number of functions and responsibilities of the Board. OCC proposes to reorganize this list of functions and responsibilities in a new section regarding the mission of the Board and proposes non-substantive changes to some of the descriptions of the Board's responsibilities. For example, the Board Charter currently provides that the Board is responsible for advising, approving, and 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. OCC proposes to amend the Board Charter to provide that the Board is responsible for overseeing OCC's business strategies, including expansions of clearance and settlement services to new business lines and product types, to ensure they

⁷⁴ OCC would also provide as a guiding principle that the Board is, among other things, mindful of the public interest as it fulfills its duties by complying with the obligations imposed on it under relevant law and that it discloses major decisions to relevant stakeholders and the public. 17 CFR 240.17Ad-22(e)(2)(iii).

⁷⁵ 17 CFR 240.17Ad-22(e)(2)(v).

⁷⁶ The amended Board Charter would further specify that the Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC but would note that the Board would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. Specifying this delegation in the Board Charter is consistent with the requirement in Rule 17Ad-22(e)(2)(v) that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility. See 17 CFR 240.17Ad-22(e)(2)(v).

reflect the legitimate interests of relevant stakeholders and are consistent with the public interest.⁷⁷ These changes are designed to improve the readability of the document as well as to specify additional, specific considerations of the Board with respect to particular responsibilities.⁷⁸ OCC notes that the Board Charter would provide that the Board is responsible for the business and affairs of OCC and that the Board would continue to be responsible for performing such other functions as the Board believes appropriate or necessary or as otherwise prescribed by rules or regulations, including OCC's By-Laws and Rules.⁷⁹

In addition to the changes described above, OCC proposes to modify the description of the Board's functions and responsibilities as part of the description of the mission of the Board to include: (i) overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively

⁷⁷ As a further example, OCC proposes to revise the Board's responsibility to oversee "OCC's information technology strategy, infrastructure, resources and risks" to provide that the Board's responsibility is to oversee "OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services." OCC also proposes to remove oversight of human resources programs from the Board Charter because that responsibility has been delegated to the CPC.

⁷⁸ For example, OCC also proposes to specify that the Board's authority extends to performing such functions as it believes are appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, "or other policies." This change is intended to clarify that the scope of the Board's authority extends to all of OCC's policies.

⁷⁹ Pursuant to this broad responsibility, OCC believes that the functions and responsibilities of the Board would remain consistent notwithstanding certain proposed deletions or rephrasing regarding the existing list of responsibilities. For example, the Board Charter would no longer specify that the Board would review committee charters and reports of committee activities; however, it would nevertheless provide that the Board is responsible for establishing a written charter for each committee and that each committee would be responsible for providing an annual report to the Board regarding its activities.

and efficiently consistent with applicable requirements and through performance assessments, consistent with the requirements of Rule 17Ad-22(e)(3)(i);⁸⁰ (ii) ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, access to the Board, and a direct reporting line to, and oversight by, certain committees, consistent with the requirements of Rules 17Ad-22(e)(3)(iii) and (iv);⁸¹ (iii) ensuring that the audit committee of the Board is independent, consistent with the requirements of Rule 17Ad-22(e)(3)(v);⁸² (iv) transitioning the overall oversight of ERM to the Board; and (v) assigning responsibility for risk decisions and policies to address decision-making during a crisis. The Board Charter would also be amended to codify the Board's existing responsibility for overseeing and approving OCC's Recovery and Orderly Wind-Down Plan.⁸³

As noted above, OCC proposes to transfer responsibility for the oversight of ERM from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even further engagement by and attention from the Board regarding OCC's risk universe and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings.

⁸⁰ 17 CFR 240.17Ad-22(e)(3)(i).

⁸¹ 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

⁸² 17 CFR 240.17Ad-22(e)(3)(v).

⁸³ See supra note 60 and accompanying text.

Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees.

Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe.

OCC also proposes a number of other changes to the Board Charter, such as deletion of the provision noting that the Member Vice Chairman of the Board has the responsibilities set forth in the By-Laws. OCC believes this is appropriate because the responsibilities of the Member Vice Chairman are already set forth in OCC's By-Laws. OCC also proposes to amend the Board Charter to no longer specify that the Board is responsible for an annual self-evaluation of its performance and the performance of its committees and individual directors.⁸⁴ Because the Board has delegated responsibility to the GNC for the annual self-evaluation of the Board and its committees, which is described in text that OCC proposes to import from the CGP, OCC believes that it is no longer necessary to specify that the Board would have this annual self-evaluation obligation.⁸⁵ Similarly, OCC proposes to amend the Board Charter to no longer provide that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and certain other officers because the Board has delegated this responsibility to

⁸⁴ The Board Charter would provide more generally that the Board is responsible for overseeing OCC's activities through regular assessments of Board and individual director performance.

⁸⁵ OCC also proposes to amend the Board Charter to provide that the annual self-evaluations shall no longer include a focus on individual directors' performances but will instead focus primarily on the performance of the Board and each committee as a whole. OCC has found that because not every director has the opportunity to work with each other director, focusing the annual self-evaluation on individual director performance is less effective than focusing on the performance of each committee as a whole.

the CPC.⁸⁶ Finally, OCC proposes to delete the current footnote one (1) from the Board Charter, which provides an example of an instance in which certain provisions of the By-Laws provide that the Board should not take action. The amended Board Charter would continue to provide that the Board's responsibilities and duties are subject to any exceptions provided in OCC's Amended and Restated Certificate of Incorporation or the By-Laws and Rules, but OCC believes that the footnote providing an example of such an instance is unnecessary and its deletion would improve readability of the Board Charter.

OCC also proposes to amend the Board Charter to provide that a number of different activities related to the conduct and functioning of the Board would involve participation by or input from certain other officers of OCC that serve functions relevant to the topic being discussed. For example, with respect to setting the agenda for Board meetings, the Board Charter currently provides that the Executive Chairman, in consultation with other directors or officers of OCC, as well as the Corporate Secretary, will establish an agenda for Board meetings. OCC proposes to amend this provision to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings.⁸⁷ These changes are designed to help specify clear and direct lines

⁸⁶ However, the amended Board Charter would specify that the Board is responsible for approving the compensation of such officers.

⁸⁷ Similarly, OCC proposes to amend the Board Charter to provide that the CEO, COO and CAO would have the authority to invite employees to Board meetings, that such officers encourage members of senior management to respond to questions posed by directors relating to their areas of expertise, and that directors shall coordinate access to members of senior management and outside advisors through such officers. The criteria for Board member eligibility would also be expanded to ensure that candidates' experience and expertise are not only adequate to offer advice and guidance to the Executive Chairman, but also to the CEO, COO, and CAO.

of responsibility and promote clear and transparent governance arrangements in the public interest pursuant to Rule 17Ad-22(e)(2) by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act⁸⁸ and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act⁸⁹ requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. When considered together, the proposed changes described herein are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services. OCC therefore believes that the proposed rule change would provide for governance arrangements that are designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F)

⁸⁸ 15 U.S.C. 78q-1.

⁸⁹ 15 U.S.C. 78q-1(b)(3)(F).

of the Act⁹⁰ and that are consistent with the rules thereunder, as discussed in further detail below.⁹¹

Common Changes

As described in Item II.(A)(1) above, OCC believes that all of the proposed common changes to the charters are designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in Section 17A of the Act⁹² and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of OCC. First, the proposed rule change would require the Board and the committees to prioritize the safety and efficiency of OCC in carrying out their responsibilities.⁹³ Second, the charters, as revised, would require the Board and the committees to carry out their responsibilities to generally support the stability of the broader financial system, which OCC believes requires them to act in a manner that would, in part, also promote the prompt and accurate clearance and settlement of securities transactions for the protection of investors and persons facilitating transactions by and acting on behalf of investors, which is one of the public interest findings in Section 17A of the Act.⁹⁴ Third, the revised charters would require the Board and the

⁹⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁹¹ See supra notes 18, 20, 22, 23, 27, 29, 31, 33, 38, 41-48, 52, 55, 62-64, 71-76 and accompanying text for changes related to Rules 17Ad-22(e)(2). 17 CFR 240.17Ad-22(e)(2). See supra notes 21, 26, 30, 33-35, 38, 40, 42, 52, 55-56, 58-59, 60, 63, 66, 80-83 and accompanying text for changes related to Rules 17Ad-22(e)(3). 17 CFR 240.17Ad-22(e)(3).

⁹² 15 U.S.C. 78q-1.

⁹³ See supra notes 18, 23, and 47 and accompanying text.

⁹⁴ See supra notes 18, 48-49, 71, and 74 and accompanying text.

committees to consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, which is consistent with providing for governance arrangements that consider the interests of Clearing Member's customers and other relevant stakeholders of OCC.⁹⁵ Moreover, OCC would amend the committee charters to provide that in the event of a committee vacancy, the applicable committee would continue to undertake its responsibilities (including those enumerated above), so long as the remaining committee members are capable of satisfying the quorum requirement, to ensure that the committee can continue to effectively carry out its responsibilities in such a scenario.⁹⁶ OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.⁹⁷ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in

⁹⁵ See supra note 18 and accompanying text.

⁹⁶ This same change would not be added to the Board Charter. It would also not be added to the GNC Charter because it is already addressed.

⁹⁷ 15 U.S.C. 78q-1(b)(3)(F).

Section 17A of the Act applicable to clearing agencies and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of a covered clearing agency consistent with Rules 17Ad-22(e)(2)(ii), (iii) and (vi).⁹⁸

OCC believes the proposed common changes also would help to provide governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. For example, all charters would be revised to clearly state that a role of the Board or the committee, as applicable, is to advise management. In addition, all of the charters would be amended to provide that the Board and the committees may delegate authority to one or more designated officers of OCC but that in any such instance the Board or the committee retains responsibility to oversee the activity and assure itself that the reliance on the work of any delegate is reasonable.⁹⁹ As a further example, OCC also proposes amendments to acknowledge, where relevant, that its EC also serves as the CEO and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. The charters would also be amended to specify clear and direct lines of responsibility by providing that, in cases where the Board or a committee has authority to approve reports or other matters that are provided to it, the Board or the committee is not obligated to approve and has clear means of recourse if it does not.¹⁰⁰ In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board. OCC believes the proposed changes would enhance the clarity of OCC's Board

⁹⁸ 17 CFR 240.17Ad-22(e)(2)(ii), (iii), and (vi).

⁹⁹ See supra notes 20, 43, and 75-76 and accompanying text.

¹⁰⁰ See supra notes 22-23 and accompanying text.

and committee governance arrangements and help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁰¹ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility consistent with the requirements in Rules 17Ad-22(e)(2)(i)¹⁰² and (v).¹⁰³

OCC also proposes to make a number of changes to the charters to clarify that, where certain actions were required to be performed “annually” under the charters, those actions would now be required to occur “each calendar year.”¹⁰⁴ OCC believes that adding more specificity in its charters regarding the frequency of these activities would provide for governance arrangements that are clear and transparent by eliminating ambiguity as to when the Board or a committee is responsible for taking certain actions. OCC believes the proposed changes would enhance the clarity of OCC’s Board and committee governance arrangements and the effectiveness of the Board and Board committees’ oversight and are therefore designed, in general, to protect investors and the

¹⁰¹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰² 17 CFR 240.17Ad-22(e)(2)(i).

¹⁰³ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁰⁴ See supra note 27 and accompanying text.

public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁰⁵ OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent consistent with the requirements in Rule 17Ad-22(e)(2)(i).¹⁰⁶

AC Charter Changes

As described in Item II.(A)(1) above, OCC believes certain of the proposed changes applicable to the AC Charter are generally designed to achieve a risk management framework that provides: (i) risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to OCC's Board;¹⁰⁷ (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board;¹⁰⁸ and (iii) an independent audit committee.¹⁰⁹ For example, the AC Charter would be amended to clarify that the AC shall oversee the independence and objectivity along with the budget and resources of OCC's internal audit department so that OCC's risk framework provides internal audit personnel with sufficient authority, resources, independence from management, and access to the Board and a direct reporting line to, and oversight by, an independent audit committee of the Board. OCC

¹⁰⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰⁶ 17 CFR 240.17Ad-22(e)(2)(i).

¹⁰⁷ See supra notes 35, 38, and accompanying text. See also supra notes 52 and 81 and accompanying text for similar changes to other charters.

¹⁰⁸ See supra note 35 and accompanying text. See also supra notes 52, 62, and 81 and accompanying text for similar changes to other charters.

¹⁰⁹ See supra note 82 and accompanying text (describing a change to the Board Charter to ensure an independent audit committee).

also proposes to amend the AC charter to provide that the AC is authorized to review and approve OCC's audited financial statements, oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and discuss certain significant issues with the external auditor. OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities with respect to OCC's internal audit function. OCC believes the proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹⁰ OCC believes the proposed changes are also consistent with the requirements of Rules 17Ad-22(e)(3)(iii), (iv) and (v)¹¹¹ that OCC's risk management framework provide: (i) risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors; (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the board of directors; and (iii) an independent audit committee.

OCC also believes that certain of the proposed amendments to the AC Charter are designed to provide for governance arrangements that specify clear and direct lines of responsibility. For example, OCC proposes to amend the AC Charter to establish the

¹¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹¹ 17 CFR 240.17Ad-22(e)(3)(iii), (iv), and (v).

AC's responsibility for reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the staffing, resources, and budget of OCC's compliance and audit departments.¹¹² As an additional example, OCC proposes to amend the AC Charter to provide that certain mandatory reports must be sent to the AC for review, which OCC believes would help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that the AC remains apprised of OCC's ongoing performance in respect of matters covered by the reports. OCC believes these proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹³ OCC believes the proposed changes are also consistent with Rule 17Ad-22(e)(2)(v),¹¹⁴ which requires OCC to provide for governance arrangements that specify clear and direct lines of responsibility.

CPC Charter Changes

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the CPC Charter are designed to provide for governance arrangement that specify clear and direct lines of responsibility. For example, OCC proposes to amend the CPC Charter to clarify that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments,

¹¹² See supra note 29 and accompanying text.

¹¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹¹⁴ 17 CFR 240.17Ad-22(e)(2)(v).

corporate planning, compensation, and human capital in addition to assisting the Board in executive management succession planning and performance assessments. While the CPC Charter already addresses these aspects of the committee's responsibilities generally, the proposed revisions are designed to emphasize the committee's responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management's responsibility to identify, manage, monitor and report the associated risks.

OCC also proposes to remove certain specific responsibilities stated in the CPC Charter in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, which OCC believes further specifies clear and direct lines of responsibility. Changes would be made to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee, and a new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months. Changes would also be made to clarify the CPC's role with respect to the oversight of OCC's Administrative Committee, including the CPC's authority to approve the Administrative Committee charter. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

OCC believes these proposed changes to the CPC Charter would provide clarity regarding the responsibilities of the CPC and allow the CPC to more effectively carry out its oversight functions concerning those risks for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹⁵ Moreover, OCC believes the proposed changes to the CPC Charter are consistent with, among other provisions, the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures, and systems be subject to periodic review and annual approval by the Board¹¹⁶ and the Rule 17Ad-22(e)(2)(v) requirement that governance arrangement specify clear and direct lines of responsibility.¹¹⁷

GNC Charter Changes

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the GNC Charter are designed to ensure that Board directors have appropriate experience and skills to discharge their duties and responsibilities and to ensure that OCC's governance arrangements specify clear and direct lines of responsibility. For example, OCC proposes to amend the GNC Charter to reframe the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,¹¹⁸ and to specify that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically. OCC also proposes to expand the GNC's yearly review of the

¹¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹¹⁶ 17 CFR 240.17Ad-22(e)(3)(i).

¹¹⁷ 17 CFR 240.17Ad-22(e)(2)(v).

¹¹⁸ See supra note 46 and accompanying text.

Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees, to specify that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and to provide that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. Under the proposed rule change, the GNC Charter would also be amended to assign new responsibility for advising on matters pertaining to director leadership development and succession planning. OCC believes that these proposed changes to the GNC Charter would enhance OCC's governance arrangements by helping to ensure that OCC's directors are appropriately qualified and would help promote clear and direct lines of responsibility and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹¹⁹ OCC also believes the proposed changes are consistent with the requirement of Rule 17Ad-22(e)(2)(iv)¹²⁰ that a covered clearing agency's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities and the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.¹²¹

RC Charter Changes

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the RC Charter are designed to provide for a sound risk management framework for managing legal, credit, liquidity, operational, general

¹¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹²⁰ 17 CFR 240.17Ad-22(e)(2)(iv).

¹²¹ 17 CFR 240.17Ad-22(e)(2)(v).

business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board.¹²² The RC Charter currently contains provisions that address certain narrow responsibilities that the committee has for the oversight of credit, collateral, liquidity and third party risks. These provisions would be removed in favor of new provisions that more accurately reflect the RC's broader responsibility to oversee these particular risks. For example, changes to the RC Charter, including those related to the committee's general function and responsibilities, would be made to better align the RC's responsibilities with OCC's regulatory requirements and would provide that, among other things, the RC would be required to review OCC's management of credit, collateral, liquidity, and third party risks at least once every twelve months and that management would be required to provide the RC with monthly reports regarding the effectiveness of OCC's management of credit exposures and liquidity risks and quarterly reports regarding the effectiveness of OCC's management of collateral and third party risks.¹²³ OCC believes the proposed changes to the RC Charter would provide additional clarity regarding OCC's governance arrangements and improve the effectiveness of the RC's oversight, particularly with respect to OCC's credit, collateral, liquidity and third party risks, and are therefore designed, in general, to protect investors and the public

¹²² See supra notes 54-55, and 58, and accompanying text. See also supra notes 21, 33, 38, 40, 42, 63, and 80 and accompanying text for similar changes with respect to other committee charters.

¹²³ See supra note 55 and accompanying text.

interest in accordance with Section 17A(b)(3)(F) of the Act.¹²⁴ OCC also believes that the proposed changes to the RC Charter are generally consistent with, among other provisions, the requirements of Rule 17Ad-22(e)(3)(i)¹²⁵ to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board.

OCC also proposes changes to the RC Charter to specify the RC's responsibilities concerning plans for OCC's recovery and orderly wind-down ("Recovery and Orderly Wind-down Plan").¹²⁶ OCC believes the proposed changes would provide additional clarity regarding OCC's governance arrangements concerning matters of critical importance and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹²⁷ OCC also believes these proposed changes to the RC Charter are consistent with the requirements in Rule 17Ad-22(e)(3)(ii) that OCC maintain a sound risk management framework that includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹²⁸

¹²⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹²⁵ 17 CFR 240.17Ad-22(e)(3)(i).

¹²⁶ See supra note 59 and accompanying text.

¹²⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹²⁸ 17 CFR 240.17Ad-22(e)(3)(ii).

Finally, OCC proposes to reassign the oversight of the investigations and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members to the RC because OCC believes that the RC is more appropriately situated to review investigations and enforcement outcomes of disciplinary actions given its oversight of OCC's Clearing Membership framework. OCC believes the proposed changes to the RC Charter would establish clear and direct responsibility for the oversight of investigations and enforcement outcomes of disciplinary actions taken by OCC by an appropriate committee of OCC's Board and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act¹²⁹ and are consistent with the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.¹³⁰

TC Charter Changes

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the TC Charter are designed to provide for governance arrangements that specify clear and direct lines of responsibility and to ensure that OCC maintains a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC. For example, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. As a further example, OCC also proposes to amend the TC Charter to provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage,

¹²⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹³⁰ 17 CFR 240.17Ad-22(e)(2)(v).

monitor and report on IT and other operational risks arising from OCC's business activities while the Committee will oversee the progress in executing on major IT initiatives, technology architecture decisions and IT priorities. Other language was also revised to more clearly describe the TC's responsibilities related to the oversight of internal controls, and review of the crisis management plans as these topics often fall within other areas (such as Business Continuity and Disaster Recovery). OCC believes these revisions will strengthen the transparency and clarity of its governance structure. Finally, OCC would revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and to more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines). OCC believes that these changes will promote a sound risk management framework and add greater clarity to the responsibilities of the TC.

For the reasons set forth above, OCC believes that the proposed changes to the TC Charter would provide additional clarity to OCC's governance arrangements and improve the effectiveness of the TC's oversight of OCC's IT and other operational risks and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.¹³¹ Moreover, OCC believes the proposed changes are reasonably designed to meet the requirements of Rule 17Ad-

¹³¹ 15 U.S.C. 78q-1(b)(3)(F).

22(e)(2)(v)¹³² to provide for governance arrangements that specify clear and direct lines of responsibility and Rule 17Ad-22(e)(3)¹³³ to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC.

Board Charter Changes

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the Board Charter are designed to improve the clarity and transparency of OCC's governance arrangements and provide for governance structures and processes that are designed to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments. For example, as noted above, incorporating the CGP within the Board Charter would promote clarity and transparency by eliminating significant overlap between the two existing documents and thereby making the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand.¹³⁴ As a further example, OCC proposes to amend the Board Charter to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings, which is designed to help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate. As a further example, OCC believes the proposed changes to the Board Charter would make clear that

¹³² 17 CFR 240.17Ad-22(e)(2)(v).

¹³³ 17 CFR 240.17Ad-22(e)(3).

¹³⁴ See supra note 68 and accompanying text.

the Board is responsible for ensuring that the AC of the Board is independent.¹³⁵ OCC believes that the proposed changes to the Board Charter would enhance the clarity of OCC's governance arrangements and improve the effectiveness of the Board's oversight and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹³⁶ Moreover, OCC believes the proposed changes are generally consistent with, among other things, the Rule 17Ad-22(e)(2)(i)¹³⁷ requirement to provide for governance arrangements that are clear and transparent, the Rule 17Ad-22(e)(3)¹³⁸ requirement to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, and the Rule 17Ad-22(e)(3)(iii)¹³⁹ requirement to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors.

In addition, OCC proposes to transfer responsibility for the oversight of the ERM function from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board

¹³⁵ See supra note 82 and accompanying text.

¹³⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹³⁷ 17 CFR 240.17Ad-22(e)(2)(i).

¹³⁸ 17 CFR 240.17Ad-22(e)(3).

¹³⁹ 17 CFR 240.17Ad-22(e)(3)(iii).

would promote even greater director engagement and attention regarding OCC's risk universe (i.e., the range of risks to which OCC is exposed) and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe. OCC believes that the proposed changes to the Board Charter would enhance the effectiveness of the Board's oversight, particularly with respect to OCC's ERM functions, and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁴⁰ In addition, OCC believes the proposed change is reasonably designed to provide for a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC consistent with Rule 17Ad-22(e)(3).¹⁴¹

Finally, OCC notes that the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act¹⁴² requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact

¹⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴¹ 17 CFR 240.17Ad-22(e)(3).

¹⁴² 15 U.S.C. 78q-1(b)(3)(I).

or impose any burden on competition. The proposed rule change addresses the charters used in OCC's governance structure, and all Clearing Members would be equally subject to these governance arrangements. Consequently, the amended charters would not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

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 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. Please include File Number SR-OCC-2018-012 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2018-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

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

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

All submissions should refer to File Number SR-OCC-2018-012 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.¹⁴³

Secretary

¹⁴³ 17 CFR 200.30-3(a)(12).

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

* * *

THE OPTIONS CLEARING CORPORATION AUDIT COMMITTEE CHARTER

I. Purpose

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

- ~~OCC’s financial reporting process, including the integrity of its financial statements;~~
- ~~OCC’s system of internal control;~~
- ~~The audit efforts of OCC’s external auditors and the Internal Audit Department;~~
- ~~OCC’s compliance environment and processes; and~~
- ~~The facilitation of open communication among the external auditors, financial and senior management, the Internal Audit Department, the Compliance Department, and the Board.~~

In fulfilling theirits responsibilities, it is recognized that the members of the Committee are not full-time employees of OCC and are not, and do not represent themselves to be, accountants or auditors of OCC. It is not the duty or responsibility of the Committee or its members to conduct ~~field work~~ or other types of auditing, accounting, or compliance reviews or procedures. ~~Management of 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 external auditors and the Internal Audit Department of OCC are responsible for ~~planning and carrying out a proper audit.~~ shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

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

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

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

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

The Committee will meet ~~regularly, but no less than~~ at least once ~~annually, each calendar year~~ with management, the Chief Audit Executive, the Chief Compliance Officer, the Chief Financial Officer, and the external auditors in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Audit Executive ~~and~~ the Chief Compliance Officer and the Chief Financial Officer are authorized to communicate directly with the Chair with respect to any of the responsibilities of the Audit Committee.

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

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

III. Authority

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

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

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

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

IV. Functions and Responsibilities

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

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

- The facilitation of open communication among the external auditors, the Corporate Finance Department, the Compliance Department, and the Board.

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

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

- The Committee shall review, as appropriate, with management and the external auditor the audited and unaudited financial statements. The Committee is authorized to resolve any disagreements between management and the external auditor regarding financial reporting.

Financial Statements and Financial Reporting

- ~~Discuss with management and the external auditors (as appropriate) the audited and unaudited financial statements.~~
- ~~Upon management's recommendation,~~ The Committee is authorized to approve OCC's annual audited financial statements and issuance of the annual financial statements after reviewing such statements with management and the external ~~auditors~~ auditor prior to issuance and receiving management's recommendations with regard to such issuance.
- ~~Review~~ The Committee is authorized to review with management, the external ~~auditors~~ auditor and Internal Audit (as appropriate) significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting principles and financial statement presentation and the effect of regulatory and accounting initiatives.
- The Committee is authorized to approve ~~Approve~~ material changes in accounting principles and practices.

- The Committee shall receive a report each quarter from the General Counsel on existing, pending or threatened litigation and discuss any legal matters that may have a material impact on OCC's financial statements. Each calendar year, the General Counsel shall report on OCC's use of external counsel services, including costs thereof.
- ~~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~~The Committee is authorized to ensure that there is a clear understanding with management and the external ~~auditors~~auditor that the external ~~auditors~~auditor ~~are~~auditor is ultimately accountable to the Board and the Committee. The Committee is authorized to review and discuss with the external auditor any audit problems or difficulties and management's response thereto.
- ~~Monitor and evaluate the external auditors' and engagement partner's qualifications, performance and independence and based upon such evaluations recommend the appointment or dismissal of the 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~~The Committee is authorized to: pre-approve all audit and other services provided by the external auditor each calendar year; approve the fees related to such services, including any adjustments thereto; and review and approve the scope and approach of the ~~annual audit plan and the annual internal control attestation engagement with the external auditors.~~
- external auditor's annual service plan and any adjustments thereto. The Committee shall review ~~Review~~ reports of the external ~~auditors~~auditor issued in connection with ~~the~~its annual ~~audit and the annual internal control attestation engagement~~service plan, as well as any other special reports, and inquire of management regarding steps taken to deal with items raised.

- ~~• Discuss with the 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.~~
- The Committee shall at least once every calendar year monitor and evaluate the external auditor's qualifications, performance and independence and, based upon such evaluations, recommend to the Board the appointment or dismissal of the external auditor.
- ~~Obtain~~ The Committee shall at least once in a calendar year obtain and review ~~annually~~ reports prepared by the external ~~auditors~~ auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review or peer review, or by any inquiry or investigation conducted by governmental or professional authorities during the preceding five years with respect to independent audits carried out by the firm, and any steps taken to deal with any such issues; and all relationships between the external auditors and OCC that could be thought to bear on its independence, as well as its independence status within the meaning of the Securities Acts administered by the Securities and Exchange Commission. These reports ~~should~~ are to be used to evaluate the external auditor's qualifications, performance, and independence.
- The Committee is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor as well as any other active audit engagement team partner and consider whether there should be a regular rotation of the audit firm itself.
- The Committee is authorized to discuss with the external auditor any significant issues that may be required in accordance with generally accepted auditing standards relating to the conduct of the financial statement audit.
- ~~• Pre-approve all services provided by the external auditors.~~
- ~~• Review fees paid to the external auditors.~~

Internal Audit

- ~~• Review and approve annually the Internal Audit Policy. Ensure there are no unjustified scope restrictions or limitations placed on the Internal Audit Department.~~
- ~~Approve~~ The Committee is authorized to approve management's recommendation to appoint or replace the Chief Audit Executive. The Chief Audit Executive shall report functionally to the Committee and administratively to the Executive Chairman and Chief Executive Officer.

- The Committee shall review at least once every twelve months the Internal Audit Policy. The Committee is authorized to approve the Internal Audit Policy and ensure there are no unjustified scope restrictions or limitations placed on the Internal Audit Department.
- ~~Review~~The Committee shall review the Internal Audit Department process for establishing the risk-based annual internal audit plan, is authorized to approve the annual internal audit plan and deviations to the plan, shall monitor progress against the annual internal audit plan, ~~and~~ through the receipt of reports on at least a quarterly basis, and is authorized to approve any Chief Audit Executive recommendations for removing or deferring any audits from a previously approved annual internal audit plan.
- ~~The Committee shall monitor~~ ~~Monitor~~ ongoing internal audit activities by reviewing reports and other communications prepared by the Internal Audit Department and inquire of management regarding steps taken to deal with items raised.
- ~~Oversee~~The Committee shall oversee the structure, independence and objectivity, staffing ~~and~~, resources and budget of the Internal Audit Department.
- ~~The Committee is authorized~~ ~~Have the ability~~ to delegate to the Chief Audit Executive the authority to approve, within the ~~external~~co-sourced audit hour limits of the approved annual internal audit plan, the following:
 - Hiring of the internal audit co-sourcing service providers whenever it is determined a specialist is needed to review particular areas of the OCC, to augment the resources available internally within OCC's Internal Audit Department or for any other practical purpose.
 - Reviewing the performance of the internal audit co-sourcing service providers and exercising final approval on the appointment, retention or discharge of ~~the audit firms~~such providers.
 - Approving the scope of services to be performed by the internal audit co-sourcing service provider.
- The Committee shall review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing.
- The Committee shall review at least once every twelve months the Reporting Concerns and Whistleblower Policy, the Code of Conduct and the Compliance Policy. The Committee is authorized to approve each of these policies. The Committee shall discuss with relevant parties, management staff or advisors any

material issues, including those relating to questionable accounting or auditing matters, reported under these policies.

Compliance

- ~~● Review and approve annually the Code of Conduct and Compliance Policy.~~
- ~~Approve~~The Committee is authorized to approve management's recommendation to appoint or replace the Chief Compliance Officer. The Chief Compliance Officer shall report functionally to the Committee and administratively to the Executive Chairman and Chief Executive Officer.
- Each calendar year, the Committee shall receive a report from the Chief Compliance Officer concerning OCC's system to communicate and monitor compliance with and enforcement of its Code of Conduct and Reporting Concerns and Whistleblower Policy.
- ~~Review~~The Committee shall 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.
- ~~● Monitor~~ ongoing compliance monitoring 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~~ OCC's system to communicate and monitor compliance with and enforcement of its Code of Conduct.
- The Committee shall oversee the structure, staffing, resources and budget of the Compliance Department.
- ~~Review~~The Committee shall review periodic regulatory inspection reports, management's responses thereto, and the Compliance Department's tracking of remediation by ~~the~~ OCC of noted items.
- ~~● Review the investigation and enforcement outcomes of disciplinary actions taken by the OCC against clearing members through its established processes.~~
- ~~Review~~The Committee is authorized to review and evaluate any Annual Compliance Report certified by the Chief Compliance Officer as required by regulation.

Other

- ~~Regularly~~The Committee shall regularly review with management OCC's system of internal controls. ~~Review~~The Committee shall review any (i) significant deficiencies and material weaknesses in the design or operation of internal control, and (ii) any fraud, whether or not material, that involves management or other employees.
- In consultation with the Executive Chairman, and Chief Executive Officer, the Committee shall review the performance of the Internal Audit function and the Chief Audit Executive, and the Compliance function and the Chief Compliance Officer, and determine whether to accept or modify the ~~Executive Chairman's~~ recommendations of the Executive Chairman and Chief Executive Officer with respect to the performance assessment and annual compensation for each.
- ~~Approve~~The Committee is authorized to approve management's decision to hire employees or former employees of the external ~~auditors~~auditor who were engaged on OCC's account.
- ~~Have the ability~~The Committee is authorized to delegate authority to one of its members to approve non-audit services performed by the external auditors, with such decisions communicated regularly to the Committee.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- ~~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~~Each calendar year, the Committee shall confirm ~~annually~~ to the Board that all responsibilities outlined in this Charter have been carried out.
- ~~Evaluate~~Each calendar year, the Committee shall ~~annually~~ ~~the Committee's~~ ~~and~~review its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board.

- The Committee ~~shall also have the authority~~ is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

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

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

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THE OPTIONS CLEARING CORPORATION COMPENSATION AND PERFORMANCE COMMITTEE CHARTER

I. Purpose

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

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

II. Membership and Organization

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

members of the Committee present shall designate a Committee member to serve as Acting Chair.

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

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

The Committee shall meet at least ~~annually~~ once each calendar year with the Executive Chairman, and Chief ~~Operating~~ Executive Officer, ~~Chief Administrative Officer~~ and any other ~~corporate~~ OCC officers the Committee deems appropriate, to discuss and review the performance and compensation ~~levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC)~~ awards 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, as appropriate.~~ Except as otherwise requested by the other members of the Committee, the Executive Chairman and Chief Executive Officer shall recuse himself from any discussion of his individual compensation, benefits, or perquisites.

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

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

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

III. Authority

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

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

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

IV. Functions and Responsibilities

The Committee's role is one of oversight. ~~Management is responsible for identifying, organizing, and managing the operational, systems, technology, financial, human, and other resources necessary to support the OCC's clearance, settlement and other~~ It remains the responsibility of OCC management to identify, manage, monitor and report on general business risks, including as they relate to OCC's Corporate Plan and Corporate Budget, capital requirements, human capital, compensation and benefit programs, management succession planning and management performance assessment processes, arising from OCC's business activities in light of ~~its~~ OCC's role as a systemically important financial market utility.

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

- The Committee shall oversee the annual Corporate Plan and Corporate Budget, including their alignment with OCC's business strategy. The Committee shall review the annual Corporate Plan and Budget and recommend approval thereof to the Board. The Committee shall receive a quarterly report from management that provides information on performance against the Corporate Plan and Corporate Budget.
- The Committee shall review and have the authority to approve the annual goals and objectives of the Executive Chairman and Chief Executive Officer, Chief Administrative Officer and Chief Operating Officer.
- The Committee shall oversee and review at least once every twelve months OCC's Capital Plan, including written policies adopted thereunder, and make recommendations to the Board regarding any changes to the Capital Plan or associated policies. The Committee shall make recommendations to the Board concerning capital requirements, refund payments, and dividend payments, if any. The Committee shall receive a quarterly report from management that provides information on performance against the Capital Plan. The Committee is authorized to review and approve changes in OCC's fees pursuant to the Capital Plan, including authorizing the filing of regulatory submissions relating thereto.

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 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 thereof.~~
- ~~To~~The Committee is authorized to review and approve significant unanticipated capital expenditures or, where ~~appropriate~~required, make recommendations with respect thereto to the Board.
- ~~To~~The Committee is authorized to review and recommend to the Board changes to OCC's fee structure.
- The Committee shall oversee Management Committee succession planning and performance assessment processes. At least once every twelve months the Committee shall review the results of Management Committee succession planning activities.
- For each calendar year, the Committee shall review the performance of the members of the Management Committee and have the authority to approve their compensation awards. For each calendar year, the Committee shall assess the performance and make recommendations to the Board regarding the compensation awards of the Executive Chairman and Chief Executive Officer, Chief Administrative Officer and the Chief Operating Officer.
- The Committee shall meet at least once each calendar year with the Executive Chairman and Chief Executive Officer, the Chief Administrative Officer, the Chief Operating Officer, and any other corporate officers the Committee deems appropriate to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of

members of the Management Committee and certain other key officers, as appropriate.

- ~~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~~ The Committee shall oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, performance management, training and development, benefits and succession planning for key roles.
- ~~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, Chief Operating Officer, and Chief Administrative Officer.~~
- ~~To approve on an annual basis funding, if any, of OCC's incentive compensation programs.~~
- ~~To review performance and approve compensation of 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, Chief Operating Officer, and Chief Administrative Officer.~~
- ~~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, Chief Operating Officer, and Chief Administrative Officer 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 periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.~~
 - Employee Benefit Programs

- ~~To~~The Committee shall oversee OCC's employee benefit, retiree benefit, and welfare benefit programs and plans, as well as the operation and administration thereof, including funding obligations (if any).
- ~~To appoint (and remove) members of the Administrative Committee and oversee and monitor the activities of the Administrative Committee with respect to 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.~~
 - Other
- ~~To review employment contracts and approve the same, or, in the case of contracts with the Executive Chairman, Chief Operating Officer, or Chief Administrative Officer, to make recommendations to the Board with respect to the approval thereof.~~
- ~~To provide periodic updates as may be~~At least once every twelve months, the Committee shall provide a report to the Board (with more frequent reporting as the Committee deems necessary or advisable under the circumstances ~~(but not less frequently than annually) to the Board regarding~~) relating to: (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.
- The Committee shall oversee the Administrative Committee. The Committee shall be authorized to: approve the charter of the Administrative Committee and any changes thereto, appoint and remove members of the Administrative Committee, and oversee and monitor the activities of the Administrative Committee with regard to the matters set forth in the Administrative Committee's charter.
- ~~To~~The Committee shall be authorized to adopt new compensation, retirement and welfare benefit plans and to amend or terminate existing plans other than such plans that require Board action to approve, amend or terminate.
- No less frequently than every two years, the Committee shall review the compensation of Public Directors and recommend to the Board any changes thereto.
- ~~To periodically~~At least once every twelve months, the Committee shall review OCC's insurance program.
- ~~To~~The Committee shall perform such other ~~activities consistent with the Charter, as the Committee or the Board may deem necessary or appropriate~~ responsibilities and

functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board.

- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- ~~To~~Each calendar year, the Committee shall confirm ~~annually~~ that all responsibilities outlined in this Charter have been carried out.
- ~~To~~Each calendar year, the Committee shall ~~annually evaluate the Committee's~~ ~~and~~assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

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

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

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THE OPTIONS CLEARING CORPORATION GOVERNANCE AND NOMINATING COMMITTEE CHARTER

I. Purpose

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Governance and Nominating Committee (the “Committee”) to assist the Board in: ~~(i) identifying, screening and reviewing individuals qualified to serve as Directors overseeing OCC’s corporate governance processes, including assessing that OCC’s governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying~~ and recommending to the Board candidates ~~for nomination for election at the annual meeting of stockholders or to fill Board vacancies;~~ ~~(ii) developing, recommending to the Board and overseeing implementation of OCC’s Board Code of Conduct; and (iii) reviewing on a regular basis the overall corporate governance of OCC and recommending improvements to the Board when necessary.~~ eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

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

II. Membership and Organization

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

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

- B. Meetings. The Committee shall meet at least four times a year, ~~with additional. Other~~ meetings ~~called as the Committee deems appropriate. Meetings of the Committee shall~~ may be called by the Chair ~~or the Chair's designee~~ as circumstances dictate. The Chair or ~~the Chair's~~ designee shall, in consultation with management, as well as the Corporate Secretary, prepare an agenda in advance of each meeting. The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for an executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.
- C. Quorum. A majority of the Committee members will constitute a quorum for the transaction of business.
- D. Minutes and Reports. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

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

III. Authority

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

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including fees and expenses associated therewith. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

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

IV. Functions and Responsibilities

~~The 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:~~

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

- The Committee shall identify for purposes of making recommendations to the Board the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities.

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 The Committee shall identify, screen and review individuals qualified to be elected or appointed, as the case may be, to serve as Member Directors of OCC and Public Directors, consistent with criteria the Standards approved by the Board (including evaluation of incumbent Directors directors for potential renomination re-nomination, taking into consideration, among other things, an incumbent Director's director's past performance, including attendance at meetings and participation and contributions to the activities of the Board); after consultation with the Executive Chairman and Chief Executive Officer.
 - ~~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 Committee shall assess the appropriateness of a Director director continuing to serve on the Board where such Director director submits his or her offer to resign upon the Director director ceasing to hold the principal occupation or business association that such Director director held when originally invited to join the Board, and recommending to the Board any action to be taken related thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Director; director.
 - ~~Reviewing periodically~~ The Committee shall review at least every three years the composition of the Board as a whole for consistency with public interest and regulatory requirements, including whether the Board reflects the appropriate balance ~~of~~ across the categories of directors (i.e., 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 Director).
 - ~~Reviewing periodically~~ The Committee shall review at least every three years the continued appropriateness of the term limits applicable to Member Directors set forth

in the By-Laws and recommend to the Board, where appropriate, changes to such provisions.

Governance Practices

- The Committee shall review at least once every twelve months the Board's Charter and Corporate Governance Principles and the charters of the Board's committees for consistency with the public interest and other regulatory requirements, transparency of the governance process, and other sound governance practices.
- The Committee shall recommend to the Board, where appropriate, changes to the charters of the Board and its committees, including this Charter.
- Each calendar year, the Committee shall review and advise the Board with regard to whether directors are independent as defined by the Board.

~~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 Committee shall advise the Board with respect to ~~Committee~~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~~directors to Board committees and assignment of committee Chairs, in each case after consultation with the Executive Chairman ~~of the Board~~and Chief Executive Officer.

Conflicts of Interest

- The Committee shall consider and advise the Board on matters pertaining to director leadership development and Board succession planning.
- ~~3. Review conflicts of interest of Directors and the manner in which any such conflicts are to be monitored and resolved.~~
- For each calendar year, the Committee shall develop and recommend to the Board, and coordinate and provide oversight of, the annual process of self-evaluation of the role and performance of the Board's committees and directors in the governance of OCC.

Evaluation and Reporting

- The Committee shall oversee, review and consider changes to the orientation program for new directors and continuing director training and education opportunities.
- The Committee shall review and consider changes to OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct, and recommend such changes to the Board. The Committee shall review any director conflicts of interest and the manner in which they are to be monitored and resolved.
- The Committee shall have the authority to approve all material changes to written policies related to related party transactions and recommend such changes to the Board for approval. The Committee shall review and, if appropriate, approve or ratify any related party transactions involving OCC, in accordance with the written policy governing such transactions.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- ~~4. Evaluate~~ Each calendar year, the Committee shall annually the Committee's and assess its and its individual members' performance 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.~~
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.

General

- ~~6. Perform~~ The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

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

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

* * *

THE OPTIONS CLEARING CORPORATION RISK COMMITTEE CHARTER

I. Purpose

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

II. Membership and Organization

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

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

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

The Committee shall meet regularly, and ~~no less than~~at least once ~~annually~~each calendar year, with members of management and the Chief Risk Officer in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Risk Officer is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

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

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

III. Authority

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

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

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

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

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

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

IV. Functions and Responsibilities

The Committee's role is one of oversight. ~~Management is responsible for identifying, addressing and reporting on strategic, operational and financial~~ It remains the responsibility of OCC management to identify, manage, monitor and report on financial, collateral, risk model and third party risks arising from OCC's clearance, settlement and other business activities in light of OCC's role as a systemically important financial market utility.

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

- The Committee shall review at least once every twelve months the adequacy of OCC's management of risks related to credit exposures, including its margin and clearing fund methodologies. The Committee shall have the authority to approve all material changes to written policies with respect to the management of risks related to credit exposures and recommend such changes to the Board for approval. The Committee shall receive a monthly report from management that provides information on the effectiveness of the management of risks related to credit exposures, including the results of (i) a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin model and a review of the margin model's parameters and assumptions for back testing.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of collateral risks. The Committee shall have the authority to approve all material changes to written policies related to the management of collateral risks and recommend such changes to the Board for approval. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of collateral risks.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of liquidity risks. The Committee shall have the authority to approve all material changes to written policies with respect to the management of liquidity risks and recommend such changes to the Board for approval. The Committee shall receive a monthly report from management that provides information on the effectiveness of OCC's management of liquidity risks.

- including the results of a comprehensive analysis of existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources.
- The Committee shall review at least once every twelve months the adequacy of OCC's secured committed liquidity facilities, including an analysis of the size and composition of such facilities, and recommend approval thereof to the Board.
 - ~~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.~~
 - The Committee shall oversee OCC's risk models and risk model validation process. The Committee shall have the authority to approve all material changes to written policies with respect to risk model management and recommend such changes to the Board for approval. The Committee shall review and have the authority to approve all new risk models and material changes to existing risk models, except that the Committee shall refer material changes to OCC's margin and clearing fund methodologies to the Board, which the Board shall have the authority to approve. Additionally, the Committee shall review and have the authority to approve the annual risk model validation plan and plan deviations, and any Chief Risk Officer recommendations for removing or deferring any risk model validation from a previously approved risk model validation plan. The Committee shall receive a quarterly report from the Chief Risk Officer that provides information on progress against the annual risk model validation plan and measures being taken by management regarding findings made. The Committee also shall review the results of any third party validations of OCC's risk models and, if any, recommended actions and remediation plans.
 - The Committee shall review and have the authority to approve new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks and shall refer such products to the Board for approval.
 - ~~Approving applications for clearing membership and initial contributions to the clearing fund of newly admitted clearing members, subject to the By-Laws and Rules.~~
 - The Committee shall oversee OCC's Recovery and Orderly Wind-Down Plan. The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board.
 - The Committee shall consider and discuss reports and guidance from the Financial Risk Advisory Council relating to financial risk issues that may impact

the options and futures industries, including the potential impact on the businesses of OCC, linked relationships and participants.

- The Committee shall ~~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 of the foregoing. At least once each calendar year, the Committee shall review the investigation and enforcement outcomes of disciplinary actions taken by the OCC against Clearing Members through its established processes.
- The Committee shall at least once every twelve months review the adequacy of OCC's management of third party risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third party risks, including key linked and vendor relationships.
- ~~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 actions taken by OCC officers having delegated authority to consider such requests.~~
- ~~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 oversee the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including (i) reviewing and modifying the OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof, (ii) evaluating (including, increasing) the amount of margin required in respect of any contract or position, (iii) establishing and reviewing guidelines for requiring the deposit of additional margin, and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules.~~
- ~~To oversee the processes established for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, financial market utilities, and trade sources, including performing such reviews as may be required under OCC's exchange pre-trade risk control program.~~

- ~~To 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 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 oversee OCC's Enterprise Risk Management ("ERM") program, including (i) overseeing the structure, staffing and resources of the ERM program, (ii) annually approving the ERM program's goals and objectives, (iii) reviewing periodic reports from the ERM program, (iii) regularly discussing with management and reviewing the systems and procedures that management has developed to identify, monitor, mitigate and otherwise manage the risks to OCC's business and operations, (iv) reviewing with management the interrelated nature of risks facing OCC, and (v) annually reviewing and assessing the ERM program.~~
- ~~To review 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 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 review, approve and reassess periodically reporting metrics reflecting the OCC's risks for which the Committee has oversight.~~
- ~~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 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 identify issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action.~~
- ~~To~~ The Committee shall have the authority to approve management's recommendation to appoint or replace the Chief Risk Officer. The Chief Risk

Officer shall report functionally to the Committee and administratively to the Executive Chairman:

- and Chief Executive Officer. The Committee shall at least once every twelve months review and have the authority to approve the Chief Risk Officer's goals and objectives and any material changes thereto. The Committee, in consultation with the Executive Chairman, ~~to~~ and Chief Executive Officer and upon consideration of input from the other committees, as appropriate, shall at least once every twelve months review the performance of ~~the ERM and Model Validation programs and~~ the Chief Risk Officer, and ~~to~~ determine whether to accept or modify the ~~Executive Chairman's~~ recommendations of the Executive Chairman and Chief Executive Officer with respect to performance assessment and annual compensation for the Chief Risk Officer.
- The Committee shall at least once every twelve months review the structure and staffing of OCC's financial risk management and corporate risk management functions.
- The Committee shall review the results of any audits (internal and external), regulatory examinations and third party assessment reports as to financial, collateral, risk model and third party risk management processes or any other matter relating to the areas that the Committee oversees, as well as management's responses and remediation efforts pertaining to such examinations and reports.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- ~~To confirm~~ Each calendar year, the Committee shall annually confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- ~~To~~ Each calendar year, the Committee shall annually evaluate the Committee's and assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

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

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

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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:~~ and other company-wide operational capabilities. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

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

II. Membership and Organization

~~A.~~ **Composition.** The Committee shall be comprised of three or more directors as appointed ~~annually~~ each calendar year 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. 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.

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.

- A. **B.-Meetings.** The Committee will meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or 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 shall meet regularly, and no less than once ~~annually~~each calendar year, 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~~each calendar year, in separate executive sessions with the Chief Security Officer (“CSO”) in order to 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.

- B. **C.-Quorum.** A majority of the Committee members shall constitute a quorum for the transaction of business.
- C. **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 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~~ Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

III. Authority

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

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

Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

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

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

- The Committee shall review at least once every twelve months OCC's IT and operational strategies, costs and planning, including the financial, tactical and strategic benefits of proposed major IT and operational related initiatives. The Committee shall have the authority to approve major IT and operational initiatives, recommend any major capital expenditures to implement to the Board and the IT and operational budget for each calendar year.
- The Committee shall receive a quarterly report from management that provides information on management's progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance, including metrics concerning technology investments, talent management, and system availability, integrity, capacity and performance.
- ~~IT Strategy and Projects~~
- ~~Evaluate 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 with respect to IT related projects and investments that require Board approval.~~
- ~~IT and Physical Security~~
- ~~Monitor the quality and effectiveness of OCC's IT and physical security.~~
- ~~Periodically review and appraise OCC's IT disaster recovery capabilities and related crisis management plans.~~

- The Committee shall review material changes to the operational execution and delivery of core clearing and settlement services and has the authority to recommend approval thereof to the Board.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of information security risks. The Committee shall have the authority to approve all material changes to written policies related to the management of information security risks and recommend such changes to the Board for approval. The Committee shall receive a quarterly report from management that provides information on the effectiveness of the management of information security risks, including metrics concerning security incidents, systems intrusions and vulnerability management.
- The Committee shall oversee and receive a quarterly report from management on OCC's Business Continuity and Disaster Recovery Programs. The report shall include the progress on executing the annual test plan and achieving recovery time objectives.
- The Committee shall oversee and receive a quarterly report on OCC's major operational initiatives. The report shall provide information on any major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators.
- The Committee shall monitor and oversee the overall adequacy of OCC's IT and operational control environment, including the implementation of key controls in response to regulatory requirements.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- ~~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 OCC's internal control systems.~~
- ~~Monitor and assess OCC's management of IT-related compliance risks.~~
- ~~As necessary report to and consult with the Board and other Board committees (including the Audit Committee and the Risk Committee) regarding IT systems and processes that relate to or affect OCC's internal control and risk management systems.~~
- ~~Advisory Role~~
- ~~As necessary, consult with OCC's senior IT management team.~~
- ~~Stay informed of, assess and confer with OCC's senior IT management team with respect to new technologies, applications and systems that relate to or affect OCC's IT strategy or programs.~~

- ~~Inform and make recommendations to the Board and its committees with respect to IT-related matters.~~
- ~~Other~~
- ~~Confirm~~Each calendar year, the Committee shall confirm annually to the Board that all responsibilities outlined in this Charter have been carried out.
- ~~Evaluate~~Each calendar year, the Committee shall annually the Committee's and review its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board.
- The Committee ~~shall also have the authority~~ is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

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

Material proposed to be added to the charter as currently in effect is marked by double underlining and material proposed to be deleted is marked by strikethroughs.

* * *

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

I. PURPOSE

CORPORATE GOVERNANCE PRINCIPLES

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

The Board is responsible for ~~providing direction to~~ advising management and overseeing the ~~conduct~~ management of the business and affairs of ~~the Corporation~~ OCC (except as may otherwise be provided in OCC’s Amended and Restated Certificate of Incorporation or its By-Laws and Rules). ⁴~~The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of OCC’s all relevant stakeholders of OCC. In doing so, the Board exercises its authority to provide for governance arrangements that: are clear and transparent; clearly prioritize the safety and efficiency of OCC; support applicable public interest requirements and the objectives of owners and participants; establish that the Board and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of clearing members’ customers, securities issuers and holders, and other relevant stakeholders. The Board additionally seeks to:~~ promote the safe, ~~sound~~ and efficient operation of OCC ~~and the development of safe, sound and prudent principles for risk assessment, monitoring and~~ maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC in light of OCC’s role as a systemically important financial market utility. ~~(“SIFMU”); and pursue objectives that are consistent with the interests of its stakeholders and support the public interest. In consideration of its responsibility to~~

⁴~~For example, Article III, Section 8 of OCC’s 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 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.~~

maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC, the Board has explicitly delegated the management of specific risks to the Board committees. To the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the Risk Committee. Accordingly, the Board is mindful of the public interest as it fulfills its duties by complying with the obligations imposed upon the Board by federal and state laws and regulations applicable to OCC and ensures that major decisions of OCC are appropriately disclosed to relevant stakeholders and to the public. Where the Board is authorized to approve reports or proposals provided to it by management or a committee, the Board may or may not approve such matters in its business judgment. If the Board does not approve such a report or proposal, it shall report to management or the relevant committee(s) that it has not approved such matter and may provide direction as to the revisions or alternative courses of action as appropriate.

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

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

THE MISSION OF THE BOARD

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

The Board fulfills its oversight role by:

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

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

II. ~~MEMBERSHIP AND ORGANIZATION~~

- Periodically reviewing and approving the amount of compensation for Public Directors;

~~A. Composition. The Board is comprised of one Management Director; five Public Directors; five Exchange Directors representing each of OCC's Equity Exchanges; and nine Member Directors representing OCC clearing members.~~

- Setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC;
- Overseeing management's activities in managing and operating OCC and evaluating senior management's performance in executing its responsibilities;
- Selecting and overseeing and, where appropriate, replacing the Executive Chairman and Chief Executive Officer, the Chief Operating Officer, and the Chief Administrative Officer, as well as counseling and advising such officers in the management of OCC's business and affairs;
- Overseeing the development and design of employee compensation, incentive, and benefit programs and evaluating the performance of the Executive Chairman and Chief Executive Officer, the Chief Operating Officer, and the Chief Administrative Officer and approving the compensation of each such officer;

- Overseeing management succession planning and talent management processes;
- Overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest;
- Monitoring OCC's performance in delivering clearance and settlement services;
- Reviewing and approving major corporate plans and actions, including capital expenditures, the annual budget and corporate plan, financial objectives, operating capital and capital structure, and fee structure, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearance and settlement services;
- Overseeing OCC's processes and framework for comprehensively managing the range of risks that arise in or are borne by OCC, including the risk management policies, procedures, and systems designed to identify, measure, monitor, and manage such risks consistent within the risk appetite and risk tolerances approved by the Board;
- Assigning responsibility and accountability for risk decisions and overseeing the establishment of policies addressing decision-making in crises and emergencies;
- Overseeing and approving OCC's Recovery and Orderly Wind-Down Plan;
- Overseeing OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of major changes in auditing and accounting principles and practices;
- Overseeing OCC's processes designed to ensure compliance with applicable laws and regulations, including banking, securities, and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;
- Overseeing OCC's system of internal controls, including review of the annual study and evaluation of OCC's system of internal accounting controls;
- Overseeing OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing,

settlement, and risk management services; and

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

BOARD

ISSUES

Membership

1. Size of Board; Composition. OCC's By-Laws currently provide that the size of the

Board shall be twenty members and shall be comprised of:

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

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

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

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

- 2. Board Membership Criteria.** The Board seeks directors from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity. In making their nominations, the Governance and Nominating Committee and the Board shall take into consideration applicable board of directors composition requirements of the Securities and Exchange Commission (as well as the Commodity Futures Trading Commission, to the extent applicable to OCC). As provided in OCC's By-Laws, the Governance and Nominating Committee and the Board also shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards") in considering nominees for election to the Board. In addition, Board members should have the highest professional and personal ethics and values, the relevant expertise and experience required to offer advice and guidance to the Executive Chairman and Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, and other members of senior management, the ability to make independent analytical inquiries, a commitment to discharging effectively OCC's regulatory responsibilities and an understanding of OCC's business, and should be willing to devote adequate time and effort to Board responsibilities. Each Board member is expected to ensure that his or her other commitments do not materially interfere with his or her service overall as a director. The Governance and Nominating Committee shall take the foregoing criteria into account in connection with its recommendations for nomination of the Member Directors and Public Directors, as well as other considerations discussed in Section 4 below. In addition, in determining whether to recommend a Member Director or a Public Director for re-election, the Governance and Nominating Committee shall also consider the director's past performance, including attendance at meetings and participation and contributions to the activities of the Board.

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

- 3. Appointment of Governance and Nominating Committee.** As provided in the By-Laws, on an annual basis, the Board shall appoint a Governance and Nominating Committee consisting of at least one Public Director, at least one Exchange Director and at least one Member Director. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The Chair of the Governance and Nominating

Committee shall be designated by the Board, after consultation with the Executive Chairman and Chief Executive Officer, from among the Public Director members of the Governance and Nominating Committee.

- 4. Selection of Member Directors and Public Directors.** As provided in its Charter, the Governance and Nominating Committee conducts periodic assessments of the overall composition of the Board in light of OCC's current and expected business needs and, as a result of such assessments, the Governance and Nominating Committee shall recommend to the Board specific qualifications that it determines would be desirable to seek in candidates for Member Directors and Public Directors. In light of such assessments, the Governance and Nominating Committee may seek to identify new candidates for the Board who possess the specific qualifications approved by the Board and satisfy the other requirements for Board service, including those set forth in OCC's By-Laws. It is acknowledged that, over time, different skill sets are likely to be determined to be desirable, so that the specific qualifications are likely to change. Moreover, it is acknowledged that it is not expected that the Board will necessarily include all identified skill sets at all times in light of the pool of candidates available to the Governance and Nominating Committee and other considerations such as re-nominating incumbent directors to maintain continuity and particular skills that they may have. In identifying new director candidates, the Governance and Nominating Committee seeks advice and names of candidates from Governance and Nominating Committee members, other members of the Board, members of management, and other public and private sources. The Governance and Nominating Committee may also, but need not, retain a search firm in order to assist it in these efforts.

~~B. Qualification Standards. As set forth in the Corporate Governance Principles, the Board has adopted certain principles and criteria to be used in considering nominees for service as a Director, including the Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"), which is attached hereto. In addition and~~ As provided in the By-Laws, prior to each annual meeting of stockholders, the Governance and Nominating Committee shall nominate for approval by the Board one person for each directorship among the Member Directors and the Public Directors to be filled at such annual meeting. In selecting such nominees, the Governance and Nominating Committee shall follow the Director Nomination Procedure as in effect from time to time. With respect to Public Directors, the Governance and Nominating Committee shall consider whether the candidate lacks material relationships to OCC, OCC's senior management, and other directors such that the Public Director may be considered to be "independent" by the Board. With respect to Member Directors, in order to achieve a balanced representation on the Board among Member Directors, the Board has determined that other considerations are to be taken into account in the nomination of Member Directors. ~~Those considerations include, including~~ the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. As further provided

in the By-Laws, the Board shall be responsible for filling vacancies on the Board among the Member Directors or the Public Directors that may occur between annual meetings of stockholders, in each case with a nominee recommended by the Governance and Nominating Committee.

5. **Selection of Exchange Directors.** As provided in the By-Laws, each Exchange Director shall be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders. An individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange. As further provided in the By-Laws, a vacancy occurring for any reason among the Exchange Directors shall be filled by the Equity Exchange entitled to elect such Exchange Director.

6. **Selection of Management Director.** As provided in the By-Laws, the Executive Chairman, by virtue of holding his or her office of Executive Chairman, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders. If a Management Director shall cease to hold the office by virtue of which he or she was elected as a Management Director, he or she shall simultaneously be disqualified to serve as a Management Director. As further provided in the By-Laws, a vacancy occurring for any reason in the position of Management Director shall be filled by the Board with the person elected or appointed to fill the office of Executive Chairman.

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

8. **Retirement.**

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

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

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

Member Directors Changing Their Employment. If a Member Director ceases

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

Other Board Commitments. It is the policy of the Board that non-employee directors shall disclose to the Executive Chairman information regarding each other board of directors on which a non-employee director serves at the time of his or her election to the Board, and after election shall advise the Executive Chairman and Chief Executive Officer in advance of accepting an invitation to serve on another board, in each case to ensure that such additional board service will not impact such director's ability to serve on OCC's Board and does not create a conflict of interest. The Management Director should not accept an invitation to serve on another board without prior approval of the Governance and Nominating Committee.

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

Conduct

~~C. Election of Directors, Resignation and Disqualification. Election of the categories of Directors shall occur as discussed in the 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.~~

1. Board Meetings.

~~D. Tenure, Term and Age Limitations. The tenure of service of each category of Director is specified in OCC's By-Laws. The Management Director and the Exchange Directors are elected at each annual stockholder meeting 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 is elected to a term of three years subject to the term limitations~~

~~described in the Corporate Governance Principles and By-Laws. No age limitations are imposed with respect to any category of Director.~~

~~E. Vice 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, including those in the event of the absence or disability of the Executive Chairman.~~

~~Meetings. The Board shall meet a minimum of five times per year, 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. Selection of Agenda Items. The Executive Chairman shall and Chief Executive Officer, in consultation with the Chief Operating Officer and Chief Administrative Officer, other directors or officers of OCC, as well as and the Corporate Secretary, shall establish an the agenda in advance of each meeting, provided that a Director for Board meetings. Any 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~~

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

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

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

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

in advance of the meeting. OCC operates a board portal for the general dissemination of meeting and other written material to directors.

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

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

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

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

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

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

- F.2. Executive Sessions.** The Board and each Board committee may call executive sessions from which members of management and invited guests ~~of the Board~~ may be excluded. ~~It~~ While it is up to the Board and each committee to decide when to call an executive session and who will participate in such sessions, it is expected that management will be excluded from executive sessions or portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual ~~Directors~~ members of the Board and of a

committee also may be excluded from executive sessions or portions thereof at which the discussion ~~involves~~concerns a matter as to which that ~~Director~~member 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~~director to chair executive sessions in the absence of the Executive Chairman. The Chair or Acting Chair of each committee shall chair an executive session of the committee. The chair of the executive session shall determine ~~whether~~if separate minutes of ~~the~~an executive ~~sessions~~session are to be recorded as well as determine the level of detail to be included in such minutes, taking into ~~consideration~~account the sensitivity of the matters to be discussed and the possibility that candor ~~might~~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.~~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.~~in executive session.

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

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

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

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

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

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

~~H. Minutes. The Board shall maintain minutes of all Board meetings, which shall be furnished to the Directors for review.~~

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

III. AUTHORITY

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

~~A. Scope. Except as otherwise provided in the Certificate of Incorporation and the By-Laws, the Board oversees the management of the business and affairs of OCC. As required by the By-Laws, the Board annually elects certain corporate officers including the Executive Chairman of the Board, the Chief Operating Officer, the Chief Administrative Officer, the Secretary, and the Treasurer. Each of these officers has the authorities, responsibilities and duties set forth in the By-Laws and Rules and such other duties as may be delegated to them as provided in the By-Laws or otherwise.~~

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

The Board shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Board also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Board shall have the right at any time to retain independent outside financial, legal or other advisors. The Board committees may retain independent outside financial, legal or other advisors, and OCC will provide appropriate funding, as determined by the relevant committee.

for the payment of reasonable compensation to such advisors. When providing the annual report of its activities to the Board, the relevant committee will include information concerning any engagement of outside advisors and the associated fees and expenses.

5. **Board Interaction with Media and Others.** The Code of Conduct for OCC Directors includes provisions related to inquiries made to directors from media and others (including regulators). Directors are expected to comply with these provisions.
6. **Confidentiality of Information.** In order to facilitate open discussion, confidentiality of information and deliberations is an imperative. As provided in the Code of Conduct for OCC Directors, each director has an affirmative duty to safeguard the confidentiality of information provided to the Board as well as the nature of Board room deliberations.
7. **Board Orientation and Continuing Education.** OCC shall provide new directors with a director orientation program to familiarize such directors with, among other things, OCC's business, strategic plans, significant financial, accounting and risk management issues, compliance programs, conflicts policies, the Code of Conduct for OCC Directors, the OCC By-Laws and Rules, the Principles, principal officers, internal auditors, and external auditors. Each director is encouraged to participate in continuing education programs as necessary or appropriate to assist him or her in performing his or her responsibilities as a director. The Corporate Secretary will periodically advise directors of available educational opportunities.
8. **Board and Committee Evaluations.** The Governance and Nominating Committee is responsible for developing and administering an annual self-evaluation of the Board and its committees. The Governance and Nominating Committee shall be responsible for establishing the evaluation criteria, implementing the process for such evaluation, as well as making appropriate recommendations for improving performance. These self-evaluations will focus primarily on the performance of the Board and each committee as a whole and shall concentrate on areas where performance might be improved.

COMMITTEES

1. ~~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~~currently has ~~established~~ the following ~~standing committees: the Audit Committee, the~~ Board-level committees: Audit, Compensation and Performance Committee, the Governance and Nominating ~~Committee, the Risk Committee and the Technology Committee.~~ Risk, and Technology. The Board may form a new committee or disband a current committee depending on circumstances. The Board may form such other committees, including subcommittees, as it from time to time deems

appropriate, and may delegate authority to one or more designated members of such committees. In addition, the Board may determine to form ad hoc committees or groups from time to time, and determine the composition and areas of responsibility of such committees or groups.

2. **Independence Criteria for Audit Committee Service.** The Board has adopted the following independence criteria with respect to the Audit Committee. The Management Director does not qualify as independent for Audit Committee purposes provided that any Non-Executive Chairman of OCC ~~shall not be deemed to be a Management Director for this purpose.~~ Exchange Directors, Member Directors, and Public Directors qualify as independent for Audit Committee purposes, subject to an assessment by the Board (through the Governance and Nominating Committee) of individual directors for other disqualifying material relationships with OCC, OCC's senior management and other directors.

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

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

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

4. **Frequency and Length of Board Committee Meetings.** Committee Chairs should regularly consult with the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer to obtain their insights and to optimize committee performance. The committee Chairs, in consultation with the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer, as necessary, should establish the frequency and length of committee meetings. The Board agendas shall include regular reports from the Chairs of each of the Board committees.

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

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

MANAGEMENT STRUCTURE, EVALUATION AND SUCCESSION

~~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.~~

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

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:

- ~~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, Chief Operating Officer, and Chief Administrative Officer;~~
- 2.
- ~~Providing counsel and advice to~~ **Selection and Evaluation of Management.** As required by the By-Laws, the Board annually elects certain corporate officers including the Executive Chairman, Chief Operating Officer, and Chief Administrative Officer 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; Secretary, and Treasurer. Each of these officers has the authorities, responsibilities and duties allocated to them as set forth in the By-Laws and Rules and such other duties as may be delegated to them as provided in the By-Laws or otherwise.
 - ~~Advising on, approving and 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;~~
 - ~~Setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC;~~
 - ~~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;~~
 - ~~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;~~
 - ~~Fostering OCC's ability to ensure compliance with applicable laws and regulations, including banking, securities and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;~~
 - ~~Overseeing 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;~~

- ~~Reviewing the annual study and evaluation of OCC's system of internal accounting controls;~~

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

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

- ~~Overseeing OCC's information technology strategy, infrastructure, resources and risks; and~~
- ~~Performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules.~~

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

4. ~~This Charter~~ **Review Cycle.** These Principles, along with the Corporate Governance Principles ~~and the~~ Fitness Standards, shall be **annually** reviewed by the Board of Directors at least once every twelve months.