



December 6, 2019

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-2019-011 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 rule filing would provide for the execution of an Agreement for Clearing and Settlement Services (“Clearing Agreement”) between OCC and Small Exchange, Inc. (“Small”) in connection with Small’s application to operate as a designated contract market (“DCM”) regulated by the CFTC. There are no proposed changes to OCC’s By-Laws or Rules. OCC intends to implement this rule change no sooner than 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, or is concurrently being, 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

OCC is proposing to provide clearance and settlement services to Small pursuant to the terms set forth in the Clearing Agreement. Small has applied for designation as a DCM by the CFTC.¹ The purpose of this proposed rule change is to adopt a new Clearing Agreement so that OCC may begin providing clearing and settlement services for Small after Small has received the requisite regulatory approvals.

¹ See <https://www.cftc.gov/filings/documents/2018/orgsmfecoverletter181212.pdf>.

Clearing Agreement Proposal

On December 4, 2018, Small applied for designation as a DCM by the CFTC.² Contingent on the CFTC approving Small's application, OCC is now proposing to provide the clearance and settlement services as described in the Clearing Agreement.

The terms of the Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Futures, Inc. ("NFX Clearing Agreement"), which has been certified with the CFTC.³ The Clearing Agreement is substantially similar to the NFX Clearing Agreement with several differences discussed in more detail below.

The Clearing Agreement includes new provisions that are designed to protect OCC and the holders of outstanding contracts listed on Small. These new provisions would enable OCC to better manage the risks associated with a clearing relationship with a DCM such as the one OCC proposes to enter into with Small. More specifically, the following provisions would be added:

- Section 12 of the Clearing Agreement, "Information Sharing by Market," would be revised to require Small to provide OCC with audited financial statements (i) on an annual basis and (ii) upon request by OCC. OCC believes this reporting will enable OCC to better monitor the financial resources of Small.⁴
- Section 18(d) of the Clearing Agreement, "Financial Resources or Agreement with Another Exchange," would be added to require that Small either (i) maintain at all times at least one year of projected operating expenses, as updated on an annual basis⁵ or (ii) maintain an arrangement with another DCM to provide a listing and trading venue for contracts that would be listed by Small and cleared by OCC in the event Small becomes unavailable to

² See supra note 1.

³ See <https://www.cftc.gov/sites/default/files/filings/orgrules/15/01/rule012315occdco002.pdf>. See also Securities Exchange Act Release No. 74747 (April 16, 2015), 80 FR 22591 (April 22, 2015) (SR-OCC-2015-03).

⁴ Section 12 of the NFX Clearing Agreement provided that the rights and obligations of purchasers and sellers of contracts subject to that agreement are as set forth in the By-Laws and Rules of OCC. This is a reiteration of provisions that already exist in OCC's By-Laws and OCC therefore determined to replace it with the provision noted above in the proposed Clearing Agreement. See, e.g., Article XII, Section 2(a).

⁵ OCC notes that 17 CFR 38.1101(a) requires a DCM to maintain minimum financial resources "equal to a total amount that would enable the designated contract market, or applicant for designation as such, to cover its operating costs for a period of at least one year, calculated on a rolling basis."

provide a trading venue for its contracts.⁶ OCC believes this will better enable it to manage the potential risk of Small not being available to provide a trading venue for contracts listed on the exchange.

In addition to the above, the Clearing Agreement would include several other differences from the NFX Clearing Agreement, which include:

- Section 3 “Selection of Underlying Interests; Classes and Series of Commodity Contracts” would be revised to clearly reflect that security futures would not be cleared by OCC pursuant to the Clearing Agreement, as Small is not planning to list such contracts.
- Section 3 would also be revised to: (i) add the condition that OCC be satisfied that it is able to appropriately process contracts proposed for clearing by Small using commercially reasonable efforts, (ii) describe the manner in which Small initially would notify OCC of proposed new products, (iii) require Small to submit a certificate to OCC detailing certain information on a new product as specified in Section 3(c) no later than ten trading days before Small plans to commence trading the product, and (iv) specify expectations around the clearance and settlement of a contract with a new maturity or expiration date not set forth in the certificate described in Section 3(c).
- Section 5(a) of the Clearing Agreement, “Confirmed Trade Reports,” would be amended to eliminate the reference to exchange-for-physical transactions, as the exchange is not planning to provide for such transactions in its rules. Section 26 from NFX Clearing Agreement also would be deleted for this reason as well as the fact that Article XII, Section VII of OCC’s By-Laws already contains provisions regarding block trades that mirror what was in Section 26.
- Section 10 of the Clearing Agreement, “Margin Requirements of Corporation,” would be revised to clarify that OCC maintains the exclusive right to enforce its margin requirements with respect to its Clearing Members, but will maintain good faith communications with Small concerning OCC’s establishment and communication of margin requirements. Section 10 also would be revised to remove a provision that would have required the exchange’s consent prior to a listed product being made fungible with other products.
- Section 11 of the Clearing Agreement, “Financial Requirements for Clearing Members,” would be revised to provide that OCC would have the exclusive authority to establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply.

⁶ It is anticipated that any such DCM would be cleared by OCC.

- Section 13 of the Clearing Agreement, “Fees for Clearing Services and Changes Related to Commodity Contracts,” would be revised to clarify that in the future, OCC would have the ability to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, with the condition that prior to imposing any such fee, OCC would provide Small with advance written notice of the fee.⁷
- Section 15(c) of the Clearing Agreement, “Indemnification in Respect of Intellectual Property,” would be amended to provide that only Small would indemnify OCC if Small were alleged to have violated the patent or other intellectual property rights of others.
- Section 18(b) of the Clearing Agreement, “Other Grounds for Termination,” would be amended to provide that there would be a 365-day period in which to transfer contracts to another DCO if either party to the Clearing Agreement voluntarily terminated it. Under this amended provision, OCC also would have the right to terminate the agreement earlier if such a transfer were accomplished prior to this 365-day period.

In addition to the foregoing, various minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties and clean-up of outdated terms.

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 Principle as potentially being impacted:

Participant and product eligibility. OCC believes that implementing the proposed rule change will be consistent with Core Principle C governing participant and product eligibility in DCOs. CFTC Regulation 39.12(b)(1) provides that, “[a] derivatives clearing organization shall establish appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization’s ability to manage the risks associated with such agreements, contracts, or transactions.” OCC and Small have engaged in lengthy negotiations regarding the Clearing Agreement. As a result of those discussion and negotiations, OCC has established appropriate requirements for determining the eligibility of contracts submitted to OCC for clearing, taking into account OCC’s ability to manage the risk associated with such contracts. The proposed Clearing Agreement between OCC and Small provides certain protections for OCC while also allowing participants to trade Small products and have those products cleared through OCC.

⁷ If OCC ever made a decision to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, OCC would provide Small ample prior written notice (e.g., 30 days) of any such fees. It is also anticipated that OCC would make a determination as to whether a proposed rule change would be needed in connection with any such fee.

In this regard, the proposed changes would further OCC's compliance with Core Principle C.

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.

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,



Joseph P. Corcoran
Vice President, Legal

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="48"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="011"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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 checked="" type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<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 Concerning an Agreement for Clearing and Settlement Services Between The Options Clearing Corporation and Small Exchange, Inc.

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 * <input type="text" value="Joseph"/>	Last Name * <input type="text" value="Corcoran"/>
Title * <input type="text" value="Vice President, Legal, Government Relations"/>	
E-mail * <input type="text" value="jcorcoran@theocc.com"/>	
Telephone * <input type="text" value="(202) 971-7231"/>	Fax <input type="text" value="(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 <input type="text" value="12/06/2019"/>	Vice President, Regulatory Filings
By <input type="text" value="Justin W. Byrne"/>	<input type="text"/>
(Name *)	

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Add Remove View

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

Add Remove View

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

The Options Clearing Corporation (“OCC”) is proposing to execute an Agreement for Clearing and Settlement Services (“Clearing Agreement”) between OCC and Small Exchange, Inc. (“Small”) in connection with Small’s intention to operate as a designated contract market (“DCM”) regulated by the Commodity Futures Trading Commission (“CFTC”). There are no proposed changes to OCC’s By-Laws or Rules.

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by the Board of Directors of OCC at a meeting held on August 2, 2019.

Questions should be addressed to Joseph Corcoran, Vice President, Legal, Government Relations, at (202) 971-7231.

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

OCC is proposing to provide clearance and settlement services to Small pursuant to the terms set forth in the Clearing Agreement. Small has applied for designation as a DCM by the CFTC.¹ The purpose of this proposed rule change is to adopt a new Clearing Agreement so that OCC may begin providing clearing and settlement services for Small after Small has received the requisite regulatory approvals.

¹ See <https://www.cftc.gov/filings/documents/2018/orgsmfecoverletter181212.pdf>.

Clearing Agreement Proposal

On December 4, 2018, Small applied for designation as a DCM by the CFTC.² Contingent on the CFTC approving Small's application, OCC is now proposing to provide the clearance and settlement services as described in the Clearing Agreement.

The terms of the Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Futures, Inc. ("NFX Clearing Agreement"), which has been approved by the Commission.³ The Clearing Agreement is substantially similar to the NFX Clearing Agreement with several differences discussed in more detail below.

The Clearing Agreement includes new provisions that are designed to protect OCC and the holders of outstanding contracts listed on Small. These new provisions would enable OCC to better manage the risks associated with a clearing relationship with a DCM such as the one OCC proposes to enter into with Small. More specifically, the following provisions would be added:

- Section 12 of the Clearing Agreement, "Information Sharing by Market," would be revised to require Small to provide OCC with audited financial statements (i) on an annual basis and (ii) upon request by OCC. OCC believes this reporting will enable OCC to better monitor the financial resources of Small.⁴

² See supra note 1.

³ See Securities Exchange Act Release No. 74747 (April 16, 2015), 80 FR 22591 (April 22, 2015) (SR-OCC-2015-03).

⁴ Section 12 of the NFX Clearing Agreement provided that the rights and obligations of purchasers and sellers of contracts subject to that agreement are as set forth in the By-Laws and Rules of OCC. This is a reiteration of provisions that already exist in OCC's

- Section 18(d) of the Clearing Agreement, “Financial Resources or Agreement with Another Exchange,” would be added to require that Small either (i) maintain at all times at least one year of projected operating expenses, as updated on an annual basis⁵ or (ii) maintain an arrangement with another DCM to provide a listing and trading venue for contracts that would be listed by Small and cleared by OCC in the event Small becomes unavailable to provide a trading venue for its contracts.⁶ OCC believes this will better enable it to manage the potential risk of Small not being available to provide a trading venue for contracts listed on the exchange.

In addition to the above, the Clearing Agreement would include several other differences from the NFX Clearing Agreement, which include:

- Section 3 “Selection of Underlying Interests; Classes and Series of Commodity Contracts” would be revised to clearly reflect that security futures would not be cleared by OCC pursuant to the Clearing Agreement, as Small is not planning to list such contracts.
- Section 3 would also be revised to: (i) add the condition that OCC be satisfied that it is able to appropriately process contracts proposed for clearing by Small using commercially reasonable efforts, (ii) describe the manner in which Small initially would

By-Laws and OCC therefore determined to replace it with the provision noted above in the proposed Clearing Agreement. See, e.g., Article XII, Section 2(a).

⁵ OCC notes that 17 CFR 38.1101(a) requires a DCM to maintain minimum financial resources “equal to a total amount that would enable the designated contract market, or applicant for designation as such, to cover its operating costs for a period of at least one year, calculated on a rolling basis.”

⁶ It is anticipated that any such DCM would be cleared by OCC.

notify OCC of proposed new products, (iii) require Small to submit a certificate to OCC detailing certain information on a new product as specified in Section 3(c) no later than ten trading days before Small plans to commence trading the product, and (iv) specify expectations around the clearance and settlement of a contract with a new maturity or expiration date not set forth in the certificate described in Section 3(c).

- Section 5(a) of the Clearing Agreement, “Confirmed Trade Reports,” would be amended to eliminate the reference to exchange-for-physical transactions, as the exchange is not planning to provide for such transactions in its rules. Section 26 from NFX Clearing Agreement also would be deleted for this reason as well as the fact that Article XII, Section VII of OCC’s By-Laws already contains provisions regarding block trades that mirror what was in Section 26.
- Section 10 of the Clearing Agreement, “Margin Requirements of Corporation,” would be revised to clarify that OCC maintains the exclusive right to enforce its margin requirements with respect to its Clearing Members, but will maintain good faith communications with Small concerning OCC’s establishment and communication of margin requirements. Section 10 also would be revised to remove a provision that would have required the exchange’s consent prior to a listed product being made fungible with other products.
- Section 11 of the Clearing Agreement, “Financial Requirements for Clearing Members,” would be revised to provide that OCC would have the exclusive authority to establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply.

- Section 13 of the Clearing Agreement, “Fees for Clearing Services and Changes Related to Commodity Contracts,” would be revised to clarify that in the future, OCC would have the ability to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, with the condition that prior to imposing any such fee, OCC would provide Small with advance written notice of the fee.⁷
- Section 15(c) of the Clearing Agreement, “Indemnification in Respect of Intellectual Property,” would be amended to provide that only Small would indemnify OCC if Small were alleged to have violated the patent or other intellectual property rights of others.
- Section 18(b) of the Clearing Agreement, “Other Grounds for Termination,” would be amended to provide that there would be a 365-day period in which to transfer contracts to another DCO if either party to the Clearing Agreement voluntarily terminated it. Under this amended provision, OCC also would have the right to terminate the agreement earlier if such a transfer were accomplished prior to this 365-day period.

In addition to the foregoing, various minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties and clean-up of outdated terms.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act⁸ and

⁷ If OCC ever made a decision to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, OCC would provide Small ample prior written notice (e.g., 30 days) of any such fees. It is also anticipated that OCC would make a determination as to whether a proposed rule change would be needed in connection with any such fee.

⁸ 15 U.S.C. 78q-1.

the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of derivatives contracts traded on Small by providing that such contracts will be cleared through OCC's existing clearance and settlement processes for futures contracts, which have functioned efficiently for many years with regard to other futures markets for which OCC provides clearance and settlement services. Similarly, OCC believes that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency by bringing contracts traded on Small and funds associated with those contracts within the scope of OCC's existing custody and control arrangements, which have effectively served OCC's Clearing Members and their customers for many years. Finally, OCC believes the proposed rule change is designed to protect investors and the public interest. By providing that futures contracts traded on Small and cleared by OCC are risk managed under OCC's risk management framework, which is designed to provide protections to customers and other market participants in the event of a Clearing Member default, OCC believes the proposed rule change contributes to the protection of investors and the public interest.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17Ad-22(e)(20)¹⁰ requires that a covered clearing agency “establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [i]dentify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.” OCC believes that the proposed rule change is also consistent with Rule 17Ad-22(e)(20)¹¹ because the proposed Clearing Agreement is designed to help OCC identify, monitor, and manage the risks associated with providing clearance and settlement services for Small, which is a trading market. For example, the Clearing Agreement would require Small to report financial information to OCC, which would enable OCC to monitor for changes in Small’s financial condition. It also would require Small to maintain sufficient financial resources or arrangements with another DCM to mitigate the impact to the marketplace should Small become unavailable as a trading venue for its contracts.

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

Section 17A(b)(3)(I) of the Act¹² 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 the proposed rule change would impose any burden on competition. The purpose of the proposed rule change is to adopt a Clearing Agreement between OCC and Small. The adoption of such an agreement would not affect Clearing Members’ access to OCC’s services, nor would it disadvantage or favor any particular user in relationship to another user.

¹⁰ 17 CFR 240.17Ad-22(e)(20).

¹¹ Id.

¹² 15 U.S.C. 78q-1(b)(3)(I).

As such, OCC believes that the proposed rule change would not impose any burden on competition.

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

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

Item 6. Extension of Time Period for Commission Action

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)

Pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(4)(ii)¹⁴ thereunder, the proposed rule change is filed for immediate effectiveness because it effects a change in an existing service of OCC that (i) primarily affects the clearing operations of OCC with respect to products that are not securities, and (ii) does not significantly affect any securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.

As described above, the proposed rule change would facilitate OCC’s ability to provide clearing and settlement services for Small pursuant to the Clearing Agreement after Small has received the requisite regulatory approval from the CFTC to operate as a DCM. Assuming Small receives the requisite regulatory approval, the products listed on the exchange that OCC would clear are all futures products subject to the exclusive jurisdiction of the CFTC. Thus, the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(4)(ii).

proposed rule change would affect the clearing operations of OCC with respect to products that are not securities. Moreover, given that the products proposed to be cleared are futures products subject to the CFTC's jurisdiction and that futures account for a small part of OCC's overall clearing activity,¹⁵ it is anticipated that the proposed rule change would not significantly affect the operation of OCC's Clearing Fund, which is designed to support all of OCC's clearing activities in securities and futures products. Thus, it is anticipated that the proposed rule change would not significantly affect the securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

Not applicable.

¹⁵ In 2018, futures contract volume was approximately 104 million contracts for the year, whereas listed options contract volume was approximately 5.1 billion contracts for the year.

¹⁶ OCC previously updated a prior version of the NFX Clearing Agreement pursuant to Rule 19b-4(f)(4)(ii). See Securities Exchange Act Release No. 66340 (February 7, 2012), 77 FR 7621 (February 13, 2012) (SR-OCC-2012-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit OCC To Clear and Settle Spot Gold Futures, Which Are Proposed To Be Traded by NASDAQ OMX Futures Exchange, Inc.).

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 5. OCC-Small Agreement for Clearing and Settlement Services.

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: _____
Joseph Corcoran
Vice President, Legal, Government Relations

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2019-011)

December __, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning an Agreement for Clearing and Settlement Services Between The Options Clearing Corporation and Small Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2019, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder so that the proposal was effective upon filing with the Commission. 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

OCC is proposing to execute an Agreement for Clearing and Settlement Services (“Clearing Agreement”) between OCC and Small Exchange, Inc. (“Small”) in connection with Small’s intention to operate as a designated contract market (“DCM”) regulated by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

the Commodity Futures Trading Commission (“CFTC”). There are no proposed changes to OCC’s By-Laws or Rules.

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

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

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

(1) Purpose

OCC is proposing to provide clearance and settlement services to Small pursuant to the terms set forth in the Clearing Agreement. Small has applied for designation as a DCM by the CFTC.⁵ The purpose of this proposed rule change is to adopt a new Clearing Agreement so that OCC may begin providing clearing and settlement services for Small after Small has received the requisite regulatory approvals.

Clearing Agreement Proposal

On December 4, 2018, Small applied for designation as a DCM by the CFTC.⁶ Contingent on the CFTC approving Small’s application, OCC is now proposing to provide the clearance and settlement services as described in the Clearing Agreement.

⁵ See <https://www.cftc.gov/filings/documents/2018/orgsmfcoverletter181212.pdf>.

⁶ Id.

The terms of the Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Futures, Inc. (“NFX Clearing Agreement”), which has been approved by the Commission.⁷ The Clearing Agreement is substantially similar to the NFX Clearing Agreement with several differences discussed in more detail below.

The Clearing Agreement includes new provisions that are designed to protect OCC and the holders of outstanding contracts listed on Small. These new provisions would enable OCC to better manage the risks associated with a clearing relationship with a DCM such as the one OCC proposes to enter into with Small. More specifically, the following provisions would be added:

- Section 12 of the Clearing Agreement, “Information Sharing by Market,” would be revised to require Small to provide OCC with audited financial statements (i) on an annual basis and (ii) upon request by OCC. OCC believes this reporting will enable OCC to better monitor the financial resources of Small.⁸
- Section 18(d) of the Clearing Agreement, “Financial Resources or Agreement with Another Exchange,” would be added to require that Small either (i) maintain at all times at least one year of projected operating expenses, as updated on an

⁷ See Securities Exchange Act Release No. 74747 (April 16, 2015), 80 FR 22591 (April 22, 2015) (SR-OCC-2015-03).

⁸ Section 12 of the NFX Clearing Agreement provided that the rights and obligations of purchasers and sellers of contracts subject to that agreement are as set forth in the By-Laws and Rules of OCC. This is a reiteration of provisions that already exist in OCC’s By-Laws and OCC therefore determined to replace it with the provision noted above in the proposed Clearing Agreement. See, e.g., Article XII, Section 2(a).

annual basis⁹ or (ii) maintain an arrangement with another DCM to provide a listing and trading venue for contracts that would be listed by Small and cleared by OCC in the event Small becomes unavailable to provide a trading venue for its contracts.¹⁰ OCC believes this will better enable it to manage the potential risk of Small not being available to provide a trading venue for contracts listed on the exchange.

In addition to the above, the Clearing Agreement would include several other differences from the NFX Clearing Agreement, which include:

- Section 3 “Selection of Underlying Interests; Classes and Series of Commodity Contracts” would be revised to clearly reflect that security futures would not be cleared by OCC pursuant to the Clearing Agreement, as Small is not planning to list such contracts.
- Section 3 would also be revised to: (i) add the condition that OCC be satisfied that it is able to appropriately process contracts proposed for clearing by Small using commercially reasonable efforts, (ii) describe the manner in which Small initially would notify OCC of proposed new products, (iii) require Small to submit a certificate to OCC detailing certain information on a new product as specified in Section 3(c) no later than ten trading days before Small plans to commence trading the product, and (iv) specify expectations around the clearance and

⁹ OCC notes that 17 CFR 38.1101(a) requires a DCM to maintain minimum financial resources “equal to a total amount that would enable the designated contract market, or applicant for designation as such, to cover its operating costs for a period of at least one year, calculated on a rolling basis.”

¹⁰ It is anticipated that any such DCM would be cleared by OCC.

settlement of a contract with a new maturity or expiration date not set forth in the certificate described in Section 3(c).

- Section 5(a) of the Clearing Agreement, “Confirmed Trade Reports,” would be amended to eliminate the reference to exchange-for-physical transactions, as the exchange is not planning to provide for such transactions in its rules. Section 26 from NFX Clearing Agreement also would be deleted for this reason as well as the fact that Article XII, Section VII of OCC’s By-Laws already contains provisions regarding block trades that mirror what was in Section 26.
- Section 10 of the Clearing Agreement, “Margin Requirements of Corporation,” would be revised to clarify that OCC maintains the exclusive right to enforce its margin requirements with respect to its Clearing Members, but will maintain good faith communications with Small concerning OCC’s establishment and communication of margin requirements. Section 10 also would be revised to remove a provision that would have required the exchange’s consent prior to a listed product being made fungible with other products.
- Section 11 of the Clearing Agreement, “Financial Requirements for Clearing Members,” would be revised to provide that OCC would have the exclusive authority to establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply.
- Section 13 of the Clearing Agreement, “Fees for Clearing Services and Changes Related to Commodity Contracts,” would be revised to clarify that in the future, OCC would have the ability to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, with the

condition that prior to imposing any such fee, OCC would provide Small with advance written notice of the fee.¹¹

- Section 15(c) of the Clearing Agreement, “Indemnification in Respect of Intellectual Property,” would be amended to provide that only Small would indemnify OCC if Small were alleged to have violated the patent or other intellectual property rights of others.
- Section 18(b) of the Clearing Agreement, “Other Grounds for Termination,” would be amended to provide that there would be a 365-day period in which to transfer contracts to another DCO if either party to the Clearing Agreement voluntarily terminated it. Under this amended provision, OCC also would have the right to terminate the agreement earlier if such a transfer were accomplished prior to this 365-day period.

In addition to the foregoing, various minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties and clean-up of outdated terms.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act¹² and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act¹³ requires, among other things, that the rules of a clearing agency be designed to promote

¹¹ If OCC ever made a decision to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, OCC would provide Small ample prior written notice (e.g., 30 days) of any such fees. It is also anticipated that OCC would make a determination as to whether a proposed rule change would be needed in connection with any such fee.

¹² 15 U.S.C. 78q-1.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of derivatives contracts traded on Small by providing that such contracts will be cleared through OCC's existing clearance and settlement processes for futures contracts, which have functioned efficiently for many years with regard to other futures markets for which OCC provides clearance and settlement services. Similarly, OCC believes that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency by bringing contracts traded on Small and funds associated with those contracts within the scope of OCC's existing custody and control arrangements, which have effectively served OCC's Clearing Members and their customers for many years. Finally, OCC believes the proposed rule change is designed to the protect investors and the public interest. By providing that futures contracts traded on Small and cleared by OCC are risk managed under OCC's risk management framework, which is designed to provide protections to customers and other market participants in the event of a Clearing Member default, OCC believes the proposed rule change contributes to the protection of investors and the public interest.

Rule 17Ad-22(e)(20)¹⁴ requires that a covered clearing agency "establish, implement, maintain and enforce written policies and procedures reasonably designed to .

¹⁴ 17 CFR 240.17Ad-22(e)(20).

.. [i]dentify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.” OCC believes that the proposed rule change is also consistent with Rule 17Ad-22(e)(20)¹⁵ because the proposed Clearing Agreement is designed to help OCC identify, monitor, and manage the risks associated with providing clearance and settlement services for Small, which is a trading market. For example, the Clearing Agreement would require Small to report financial information to OCC, which would enable OCC to monitor for changes in Small’s financial condition. It also would require Small to maintain sufficient financial resources or arrangements with another DCM to mitigate the impact to the marketplace should Small become unavailable as a trading venue for its contracts.

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

Section 17A(b)(3)(I) of the Act¹⁶ 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 the proposed rule change would impose any burden on competition. The purpose of the proposed rule change is to adopt a Clearing Agreement between OCC and Small. The adoption of such an agreement would not affect Clearing Members’ access to OCC’s services, nor would it disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed rule change would not impose any burden on competition.

¹⁵ Id.

¹⁶ 15 U.S.C. 78q-1(b)(3)(I).

(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

Pursuant to Section 19(b)(3)(A) of the Act,¹⁷ and Rule 19b-4(f)(4)(ii) thereunder,¹⁸ the proposed rule change is filed for immediate effectiveness because it effects a change in an existing service of OCC that (i) primarily affects the clearing operations of OCC with respect to products that are not securities, i.e., options on futures that are not security futures, and (ii) does not significantly affect any securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁹

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:

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(4)(ii).

¹⁹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

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-2019-011 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-2019-011. 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-2019-011 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.²⁰

Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

AGREEMENT FOR CLEARING AND SETTLEMENT SERVICES

This Agreement for Clearing and Settlement Services (this “Agreement”) is entered into as of _____, 2019 by and among The Options Clearing Corporation, a Delaware corporation (the “Corporation”), Small Exchange, Inc., a Delaware corporation (the “Market”).

WHEREAS, the Corporation is registered with the Commodity Futures Trading Commission (the “CFTC”) as a derivatives clearing organization and, as part of its business, provides clearing and settlement services in respect of commodity futures and options thereon;

WHEREAS, the Market, as of the Effective Date, is a board of trade that has been designated as a contract market by the CFTC;

WHEREAS, the Market is not an exchange that clears security option transactions through the Corporation (an “Options Exchange”) or an “affiliate” of such an exchange as defined in Article I, Section 1 of the Corporation's By-Laws;

WHEREAS, the Market wishes to engage the Corporation to provide clearing and settlement services in respect of commodity futures and options thereon, in each case on underlying interests that are selected in accordance with Section 3(a) (collectively, the “Cleared Contracts”) of this Agreement; and

WHEREAS, the Corporation is prepared to provide such services to the Market, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, terms and conditions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Market Representations.

The Market represents that, as of the Effective Date (as defined in Section 24), (a) it is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, (b) it is a board of trade that has been designated by the CFTC as a contract market pursuant to Section 5 of the Commodity Exchange Act (the “CEA”), (c) it has rules that comply with the provisions of the CEA and regulations of the CFTC thereunder for the trading of any commodity futures and options thereon (“Commodity Contracts”) that are to be cleared by the Corporation (as amended from time to time, the “Market Rules”), (d) it has all governmental and other approvals and consents that are required to have been obtained by it with respect to the Market Rules, (e) the Market Rules are in full force and effect, (f) it has all requisite power and authority to enter into and perform its obligations hereunder and to conduct its business as currently conducted, (g) this Agreement is the legal, valid and binding obligation of the Market, enforceable against the Market in accordance with its terms, subject to applicable bankruptcy,

reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally, and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law, (h) its entry into this Agreement and performance of its obligations hereunder do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any other agreement binding on or affecting it or any of its assets, (i) it is in compliance with all regulations of the CFTC applicable to a designated contract market, and (j) all governmental and other approvals and consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such approvals and consents have been complied with.

Section 2. Corporation Representations.

The Corporation represents that, as of the Effective Date, (a) it is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, (b) it is a derivatives clearing organization registered under Section 5b(c) of the CEA and is permitted to provide facilities for the clearance and settlement of Commodity Contracts, subject to applicable regulations of the CFTC, (c) it has all requisite power and authority to enter into and perform its obligations hereunder and to conduct its business as currently conducted, (d) the Agreement is the legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally, and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law, (e) its entry into this Agreement and performance of its obligations hereunder do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets, (f) it is in compliance with all regulations of the CFTC applicable to the clearing of Commodity Contracts, (g) the CFTC has approved or permitted to become effective all By-Laws and Rules of the Corporation relating to Commodity Contracts, (h) all governmental and other approvals and consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such approvals and consents have been complied with, and (i) it is prepared to provide clearing and settlement services for Commodity Contracts.

Section 3. Selection of Underlying Interests; Classes and Series of Commodity Contracts.

(a) General Criteria for Underlying Interests

(i) Underlying Interests for Commodity Futures. The Market may select the underlying interests that are the subject of commodity futures to be traded on the Market and cleared by the Corporation (other than security futures), subject to the following conditions: (A) delivery of the underlying interests shall not be required, (B) counsel to the Corporation is satisfied that the clearance and settlement by the Corporation of commodity futures on the underlying interest would not be (I) unlawful or (II) likely to subject the Corporation to liability

based upon claims that clearing and settling of commodity futures on such interest infringes the intellectual property rights of third parties or otherwise, and (C) the Corporation is satisfied that it is able to appropriately process and risk manage the commodity futures using commercially reasonable efforts. The parties may agree on types of underlying interests selected by the Market to be the subject of commodity futures to be traded on the Market and cleared by the Corporation by completing and executing a Schedule C in the form attached hereto. The Schedules C created pursuant to this Section 3(a)(ii) and pursuant to Section 3(a)(iii) shall be numbered in a single sequence as Schedule C-1, Schedule C-2, etc.

(ii) Underlying Interests for Futures Options. The Market may select the underlying futures contracts that are the subject of futures options to be traded on the Market and cleared by the Corporation, subject to the following conditions: (A) each underlying futures contract shall consist solely of a commodity futures contract (and not a security future); (B) such underlying futures contract shall be traded on the Market and cleared by the Corporation; (C) each underlying futures contract shall be open for trading at the time of selection or no later than the date and time that the overlying futures option is opened for trading; (D) counsel to the Corporation is satisfied that the clearance and settlement by the Corporation of futures options on the underlying futures contract would not be (I) unlawful or (II) likely to subject the Corporation to liability based upon claims that clearing and settling of futures options on such futures contract infringes the intellectual property rights of third parties or otherwise; and (E) the Corporation is satisfied that it is able to appropriately process and risk manage the futures options using commercially reasonable efforts. The parties may agree on types of futures options selected by the Market to be traded on the Market and cleared by the Corporation by completing and executing a Schedule C in the form attached hereto.

(b) Nomenclature. Cleared Contracts with respect to which the underlying interest is a broad-based security index are herein referred to as “broad-based index futures.” Broad-based index futures and commodity futures are herein referred collectively as “futures.” Cleared Contracts that are options on futures are herein referred to as “futures options.” The underlying interests in respect of futures (including broad-based security indexes) are herein referred to as “types” of underlying interests.

(c) Procedures for Selection of Underlying Interests.

(i) If the Market wishes to list and trade Commodity Contracts of a class not theretofore listed or traded on the Market, the Market shall notify the Corporation by submitting a new product proposal in the form and manner specified by the Corporation from time to time as soon as practicable before the trading day on which the Market wishes to commence trading such futures or futures options. The Corporation will use commercially reasonable efforts to authorize the clearance and settlement of such Commodity Contracts as soon as practicable. When the Market submits a filing to the CFTC to list the contract, the

Market shall submit to the Corporation a certificate as described below (a “Certificate”) as soon as practicable, but no later than ten trading days before the trading day on which the Market wishes to commence trading such Commodity Contracts.

(ii) The Certificate shall set forth: (A) the type of contract (future or futures option); (B) the complete name of the underlying interest; (C) in the case of a futures option, whether it is cash-settled or physically-settled; (D) the expiration or maturity cycle of the class; (E) the series marker, if any; (F) the manner in which the opening and closing settlement price is to be determined; (G) the date on which the Market intends to commence listing and trading contracts in the class; and (H) any other material information requested by the Corporation from time-to-time that will assist the Corporation in identifying the product (for example, including, but not limited to, settle on open/close, American/European style).

(iii) If the type of underlying interest for a futures contract is a security index, the Certificate shall also: (A) identify the index, state that it is a broad-based security index and explain the basis for such statement; (B) identify the securities composing the index by complete name, trading symbol and CUSIP number; (C) identify the reporting authority for the index; (D) set out in detail the method and frequency of calculation of the index; (E) identify the owner or owners of the index and, if other than the Market, explain the basis for the right of the Market to list and trade futures on the index; and (F) in the case of a futures option on a broad-based security index future, the series by contract price and maturity date.

(iv) If the type of underlying interest for a futures contract is an index other than a security index, the Certificate shall also (A) identify the index and state that it is not a group or index of securities (including any interest therein or based on the value thereof), (B) identify the constituents of the index, (C) identify the reporting authority for the index, (D) set out in detail the method and frequency of calculation of the index and (E) identify the owner or owners of the index and, if other than the Market, explain the basis for the right of the market to list and trade options on the index.

(v) For each other type of underlying interest, the Certificate shall contain the information required for an underlying index to the extent applicable to the underlying interest and/or such other information as may be specified by the Corporation.

(vi) The Certificate shall also state that the Market certifies that the specified underlying interest meets the requirements of Section 3(a)(i) or 3 (a)(ii) of this Agreement, whichever is applicable, and the Market has approved the listing and trading of Commodity Contracts to be cleared by the Corporation on such underlying interest.

(d) Notice of Additional Maturity or Expiration Dates. The Market may introduce an additional maturity or expiration date for Commodity Contracts of any class previously certified pursuant to Section 3(c) above, as follows:

For a maturity or expiration date in the cycle set forth in the Certificate, by providing notice to the Corporation through electronic means specified by the Corporation from time to time. Such notice shall specify the underlying interest, the maturity or expiration date, the last trading date, a contract month date and the series marker (if any), and the exercise price in the case of a series of futures options. Such notice shall be provided on or before the trading day immediately preceding the trading day on which trading in the new series is to commence.

For a maturity or expiration date not in the cycle set forth in the Certificate, by providing notice to the Corporation. The Corporation will use commercially reasonable efforts to authorize the clearance and settlement of such new maturity or expiration date as soon as practicable. Once the Corporation has approved the new maturity cycle, notice of such new maturity or expiration date will be submitted through electronic means specified by the Corporation from time to time. Such notice shall specify the underlying interest, the maturity or expiration date, the last trading date, a contract month date and the series marker (if any), and the exercise price in the case of a series of futures options.

(e) Underlying Interest Ceases to Meet Requirements. In the event that the Corporation shall determine that an underlying interest has ceased to meet any of the requirements set forth in this Section 3 or that it has otherwise become unlawful or likely to subject the Corporation to liability for the Corporation to clear transactions in Commodity Contracts on such underlying interest, the Corporation may give notice to the Market that it is to cease all trading of Commodity Contracts cleared by the Corporation on such underlying interest or, in the alternative, to restrict transactions in such Commodity Contracts on the Market (i) to closing transactions or (ii) to closing transactions for all accounts other than the accounts of (A) market-makers and/or (B) members of the Market to the extent such members execute opening transactions to facilitate the closing transactions of public customers pursuant to the crossing rules of the Market. The Corporation shall not be required to accept for clearance any transaction effected in violation of such notice after the Market has had a reasonable time to halt trading. In the event that the Corporation gives any notice pursuant to this Section 3(e), the Market and the Corporation shall promptly consult with one another to determine an appropriate course of action to restore the underlying interest to compliance with the requirements of this Section 3 or to permit the orderly and lawful liquidation of open interest. Any action taken by the Corporation under the foregoing provisions shall be consistent with its By-Laws and Rules and will be substantially similar to action taken in respect of similar products traded on any other futures market or Options Exchange.

(f) Monitoring of Underlying Security Indexes. The Market shall monitor the status of each underlying security index that it has selected for futures contracts in order to

confirm that the index remains a broad-based index, and shall promptly notify the Corporation if it determines that the index has ceased, or is likely to cease, to meet the definition of broad-based index. If the index ceases to meet the definition of broad-based index, and in the opinion of counsel to the Corporation there is a significant risk that the clearance of futures contracts on such index or futures options on index futures on such index by the Corporation would be unlawful or likely to subject the Corporation to liability, then the provisions of Section 3(e) above shall apply.

(g) Breach by Market of Section 3(c) or 3(d). If the Market, by reason of its actions or its failure to act, shall have breached in any material respect the provisions of Section 3(c) or 3(d) hereof, then the Corporation shall not be obligated to clear transactions in Commodity Contracts deriving from or related to the breach (the “Affected Transactions”) unless and until the Market has corrected such breach or fulfilled such conditions as the Corporation may set. The Corporation shall, promptly upon determining not to clear Affected Transactions effected on the Market, notify the Market of such determination; provided, however, that the Corporation will continue to accept Affected Transactions for clearance until the Market has had a reasonable opportunity to halt trading, unless acceptance of such transactions for clearance would be unlawful or likely to subject the Corporation to liability. Such determination shall not affect the validity of any previously outstanding Cleared Contracts or any confirmed trade that the Corporation has previously accepted for clearance, nor relieve the Corporation of its obligations with respect thereto, nor shall such determination affect any other obligation of either party under this Agreement or any remedy which such party may have or any right or obligation of any third party under the By-Laws and Rules of the Corporation.

Section 4. Multiplier; Units of Trading.

Subject to any applicable limitations prescribed by the Market Rules or the By-Laws and Rules of the Corporation, the multiplier or unit of trading, as the case may be, of each series shall be designated by the Market prior to the time such series is first opened for trading on the Market. Unless the Market specifies otherwise, the unit of trading for futures options shall be one contract in the series of futures underlying such option.

Section 5. Comparison of Transactions in Cleared Contracts; Settlement Prices.

(a) Confirmed Trade Reports. The Market agrees that on each business day it will compile a confirmed trade report of all transactions in Cleared Contracts, and will furnish such report to the Corporation by such time or times as the Corporation may reasonably prescribe, taking into consideration the ability of the Market to provide such information within such time frames on a cost-effective basis.

(b) Daily Settlement Prices. The Market shall each business day, at such time and in such manner as the parties may agree, notify the Corporation of the settlement price of each futures contract. The Corporation shall adopt such settlement price as the basis for determining the official settlement price for the business day, except in the case of manifest error or inconsistency with its By-Laws and Rules or in any other case in which the Corporation reasonably believes that such settlement price does not reasonably reflect

the value or price of the contract, in which case the Corporation, using its best efforts to consult with the Market, shall determine the official settlement price for such day; provided, however, that in the case of fungible contracts traded on more than one exchange or market, the daily settlement price will be determined by a method mutually agreed among the Corporation and all such exchanges, and in the absence of such agreement, as specified by the Corporation. In any case in which the Corporation fixes a daily settlement price other than (i) a price supplied by the Market or (ii) a price determined by a method mutually agreed among the Corporation and all exchanges trading a fungible contract, the Corporation will promptly notify the Market. The Market shall indemnify the Corporation and each of its directors, officers, committee members, agents, and employees from and against any and all liabilities, judgments, claims, damages, expenses and amounts incurred and/or paid in settlement based on the Corporation's use of a settlement price supplied by the Market in determining the official settlement price; provided, however, that no such indemnification obligation shall exist if the Corporation has not used the settlement price supplied by the Market; and provided further that, where the settlement price is with respect to a fungible contract traded on more than one exchange or market, the Market indemnification shall extend only to the price supplied by it and only to the extent that such price is used to determine the daily settlement price in accordance with an agreed upon formula. The provisions of Section 15 hereof shall apply to such indemnity as if such indemnity were provided under Section 15(b)(ii) hereof.

(c) Final Settlement Price. The Corporation shall determine the final settlement price in respect of a series of futures in accordance with its By-Laws and Rules.

(i) With respect to a futures contract that has an underlying interest (A) traded on one or more organized markets or (B) that is an index derived from constituents traded on one or more organized markets, if the Corporation determines that the primary market(s) (as determined by the Corporation) (I) for the underlying interest in respect of a cash-settled foreign currency future, or (II) for one or more constituents of an underlying index in respect of a maturing broad-based index future, did not open or remain open for trading (or that any such foreign currency or constituents did not open or remain open for trading on such market(s)) at or before the time when the settlement price for such futures would ordinarily be determined, or that a price, variance or other value used as, or to determine, the final settlement price (a "required value") is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for such use, then the Corporation, using its best efforts to consult with the Market, shall determine the final settlement price in conformity with the By-Laws and Rules of the Corporation and shall promptly notify the Market of its action.

(ii) With respect to a futures contract that has an underlying interest that is not (A) traded on one or more organized markets or (B) an index derived from constituents traded on one or more organized markets, if the Corporation shall determine that a required value (as defined in Section 5(b)(i)) for an underlying interest or a constituent of an underlying index for a futures contract is

unreported, inaccurate, unreliable, unavailable or inappropriate for such use, the Corporation, using its best efforts to consult with the Market, shall determine the final settlement price in conformity with the By-Laws and Rules of the Corporation and shall promptly notify the Market of its action.

Section 6. Clearance of Transactions in Cleared Contracts.

(a) Provision of Clearing Services. The Corporation will provide, pursuant to and in accordance with the By-Laws and Rules of the Corporation and applicable regulatory requirements, all services reasonably necessary to perform its obligations under this Agreement, including without limitation the clearing and settlement services identified in Schedule A attached hereto and incorporated herein. The Corporation will have no obligation to any purchaser or seller of a Cleared Contract arising out of any delay or error in the filing by the Market of any report of confirmed trades; provided, however, that nothing in this Section 6(a) will be construed to relieve the Corporation of its obligation to accept and clear such confirmed trades once received. The Market agrees to indemnify and hold harmless the Corporation and each of its directors, officers, committee members, agents, and employees for any loss or damage incurred resulting from any delay in the filing by the Market of any report of confirmed trades or from any error in the information so filed, other than an error in information submitted to the Market by a member of the Market or delays or errors in the filing of information caused by the Corporation or systems under the control of the Corporation. The provisions of Section 15 hereof shall apply to such indemnity as if such indemnity were provided under Section 15(b)(ii) hereof.

(b) Clearing Members. For purposes of this Agreement “Clearing Member” means a Commodity Futures Clearing Member as defined in the By-Laws of the Corporation. Any Commodity Futures Clearing Member that is a member of the Market may clear transactions in Commodity Contracts listed on the Market through the Corporation. Notwithstanding the foregoing, any Commodity Futures Clearing Member (whether or not it is a member of the Market) may clear transactions in Commodity Contracts listed on the Market through the Corporation through the Corporation’s “CMTA” and/or allocation procedures.

Section 7. Acceptance and Rejection of Transactions in Cleared Contracts.

The Corporation agrees to accept, in accordance with and subject to its By-Laws and Rules, all confirmed trades in Cleared Contracts that are properly submitted to it by the Market in accordance with procedures and practices of which the Market is informed with reasonable advance notice. Upon submission of a confirmed trade to, and acceptance of such confirmed trade by, the Corporation, the Corporation shall be substituted through contractual novation, as provided in its By-Laws and Rules, as the counterparty to each of the Clearing Members that were parties to the confirmed trade. For purposes of the preceding sentence, a Clearing Member to which a trade is given up in accordance with the Corporation’s “CMTA” and/or allocation procedures shall be deemed to have been a party to such trade, and the party giving up such trade shall be deemed not to have been a party to such trade. In accordance with its By-Laws, the

Corporation may reject transactions due to validation errors, including, but not limited to, an incorrect clearing member, account product or format.

Section 8. Non-Discrimination.

So long as all conditions on the obligations of the Corporation to clear Cleared Contracts for the Market, as set forth in Article XII of the Corporation's By-Laws, continue to be satisfied, the Corporation agrees not to unfairly discriminate among markets for Cleared Contracts with regard to the nature or quality of the services that it provides or the priority that it assigns to providing such services.

Section 9. Limitations of Authority and Responsibility.

The Corporation shall have no authority or responsibility to establish or enforce standards relating to the conduct of trading on the Market by its members or the supervision of any aspect of the conduct of such members with their customers, except (a) as specifically provided in the By-Laws and Rules of the Corporation, or (b) as otherwise reasonably necessary for the Corporation to appropriately risk manage the products being traded on the Market. The Corporation shall have no responsibility for making disclosure to customers of members of the Market or other customers regarding Cleared Contracts or trading therein on the Market except that the Corporation shall furnish to the Market such information regarding the Corporation and the clearance by it of Cleared Contracts as may reasonably be requested by the Market for purposes of disclosure to customers.

Section 10. Margin Requirements of Corporation

The Corporation shall establish in its By-Laws and Rules, and shall have the exclusive responsibility to enforce, requirements as to variation (mark-to-market) payments to be made between the Corporation and its Clearing Members, and the amount and form of margin assets to be deposited or maintained with the Corporation by its Clearing Members, in respect of positions in Cleared Contracts. In establishing such requirements, the Corporation shall not discriminate as to the amount of margin assets to be deposited or maintained: (a) on the basis of the market on which transactions in Cleared Contracts are effected, (b) among markets listing Cleared Contracts on the same underlying interest, or (c) between Cleared Contracts and other products posing substantially equivalent risk to the Corporation that effectively may substitute for Cleared Contracts, but the Corporation may establish higher margin requirements in respect of (A) Cleared Contracts relating to specific underlying interests or types of underlying interests in cases where the distribution or market liquidity of, or other factors relating to, such Cleared Contracts or underlying interests would, in the judgment of the Corporation, increase the risk of the Corporation, its Clearing Members or the public, or (B) particular Clearing Members based on the positions or financial or operational condition of such Clearing Members or otherwise to protect the Corporation, Clearing Members or the public. Subject to any applicable regulatory constraints, the Corporation shall provide for appropriate reductions in margin obligations to reflect the reduced risk of offsetting or partially offsetting positions in Cleared Contracts traded on the Market and contracts traded on Options Exchanges or other futures markets or security futures markets cleared by the Corporation that are carried by a Clearing Member in the same account at the Corporation.

While the Market acknowledges the Corporation's responsibility in connection with this Section, the Corporation also acknowledges the Market's interest in maintaining good faith communications with the Corporation concerning the process by which margin requirements are established and communicated.

Section 11. Financial Requirements for Clearing Members.

The Corporation shall have the exclusive authority to establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply.

Section 12. Information Sharing by Market

The Market agrees to provide to the Corporation (i) annual audited financial statements of the Market each year at the time such audit is complete, and (ii) such other financial information regarding the Market as the Corporation may from time to time request.

Section 13. Fees for Clearing Services and Changes Related to Commodity Contracts.

The Corporation shall establish fee structures for the services it performs for Commodity Futures Clearing Members consistent with the provisions of the By-Laws of the Corporation. After the Effective Date of this Agreement, the Corporation shall have the ability to charge the Market one or more fees reasonably related to the Corporation's costs to make systems, model, legal or other changes, or to receive market data, that are necessary to allow the Corporation to clear a Commodity Contract subject to this Agreement. Such reasonable fees are intended to defray the Corporation's costs associated with making such changes or receiving such market data and could include, among other things, the costs associated with updates to the Corporation's computer systems, risk models (including the creation of a new risk model), and/or By-Laws and Rules. Prior to imposing any such fee, the Corporation will provide the Market with advance written notice of the amount of such fee and the date by which such fee is due to the Corporation.

Section 14. Programs and Projects.

The Corporation agrees that any program or project designed to assist one or more futures markets which it develops at its own expense or which it originates will be made available promptly for the benefit of the Market.

Section 15. Indemnification.

(a) By the Corporation.

(i) The Corporation agrees to indemnify and hold harmless the Market and each of its directors, officers, committee members, agents and employees (each a "Market Indemnified Party" and collectively referred to as the "Market Indemnified Parties") from and against any and all loss, damage and expense arising out of or based on any violation or alleged violation by the Corporation of any of the terms of this Agreement. This indemnity agreement shall be in addition to any liability which the Corporation may otherwise have.

(ii) The Corporation agrees to indemnify and hold harmless each Market Indemnified Party from and against any and all liabilities, judgments, claims, damages, expenses and amounts incurred and/or paid in settlement (collectively referred to as “Losses”) in connection with any action, suit, litigation, claim or proceeding commenced by any person to which any such Market Indemnified Party is made a party defendant, or is threatened to be made such a party, arising out of or based upon any violation or alleged violation by the Corporation of any terms of this Agreement, any alleged default by the Corporation in performing its obligations in accordance with its By-Laws and Rules in respect of any transaction in Cleared Contracts it accepts for clearing, and any violation or alleged violation by the Corporation of any law or governmental regulation. This indemnity agreement shall be in addition to any liability to any Market Indemnified Party which the Corporation may otherwise have.

(b) By the Market.

(i) The Market agrees to indemnify and hold harmless the Corporation and each of its directors, officers, committee members, agents and employees (each a “Corporation Indemnified Party” and collectively referred to as the “Corporation Indemnified Parties”) from and against any and all loss, damage and expense (whether or not such loss, damage or expense is reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) arising out of or based on any violation or alleged violation by the Market of any of the terms of this Agreement. This indemnity agreement shall be in addition to any liability which the Market may otherwise have.

(ii) The Market agrees to indemnify and hold harmless each Corporation Indemnified Party from and against any and all Losses (whether or not such Losses are reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) in connection with any action, suit, litigation, claim or proceeding commenced by any person, to which any such Corporation Indemnified Party is made a party defendant or is threatened to be made such a party, arising out of or based on any violation or alleged violation by the Market of any of the terms of this Agreement or any violation or alleged violation by the Market of any law or governmental regulation. This indemnity agreement shall be in addition to any liability to any Corporation Indemnified Party which the Market may otherwise have.

(c) Indemnification in Respect of Intellectual Property. Without limiting the generality of subsection (b) above: (i) the Market specifically agrees to indemnify and hold harmless each Corporation Indemnified Party, from and against any and all Losses in connection with any claim or cause of action for patent infringement or other intellectual property law violation, where such claim or cause of action relates to intellectual property that is developed or used by the indemnifying party in connection with the activities to be engaged in hereunder; and (ii) without limiting the generality of clause (i) above, the Market specifically agrees to indemnify and hold harmless each

Corporation Indemnified Party from and against any and all Losses (whether or not such Losses are reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) in connection with any action, suit, litigation, claim or proceeding commenced by any person, asserted against a Corporation Indemnified Party or to which a Corporation Indemnified Party is made a party defendant or is threatened to be made such a party, or is subjected to discovery or testimonial obligations, arising out of or based on (A) any allegation that the Market does not have the right for any reason to list and trade a Commodity Contract traded or proposed to be traded on the Market, or (B) any allegation that the listing and trading of a Commodity Contract by the Market, the issuance by the Corporation of the Commodity Contract so listed and traded, or the clearance and settlement of such trades by the Corporation constitutes unfair competition or unjust enrichment or infringes, interferes with or misappropriates the intellectual property, contract, common law or other rights of a third party, including without limitation the owner of any proprietary index or any licensee of such index or derivative products based thereon. For the avoidance of doubt, the indemnification obligations of the Market under this Section 15 shall include Losses in connection with any claim or cause of action that may be asserted against the Corporation Indemnified Parties related to or arising out of any legal theory that the Market does not have the right to trade any commodity contract for which the final settlement price is based on the final settlement price for a commodity contract listed on another Designated Contract Market, or that the trading in such contracts (and not in contracts generally) or the clearing of any such contracts (and not of contracts generally) by the Corporation, infringes on the intellectual property, contract or other rights of a third party.

(d) Limitation on Rights Conferred. The provisions of this Section 15 are not intended to confer any rights upon any person other than Corporation Indemnified Parties, the Market Indemnified Parties and each person, if any, who controls the Market within the meaning of Section 13(b) of the CEA.

(e) Rights and Duties When Action Commenced. Promptly after receipt by an indemnified party under Section 15(a)(ii), 15(b)(ii) or 15(c) hereof of notice of commencement of any action, suit, litigation, claim or proceeding in which such indemnified party is made a party defendant, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under such Section, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under such Section. In case any such action is brought against any indemnified party, and it promptly notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume and control the defense thereof, with counsel chosen by it, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under such Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, but the indemnified party may, at its own expense, participate in such

defense by counsel chosen by it, without, however, impairing the indemnifying party's control of the defense. The indemnifying party may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified party or have a material adverse impact on the business of the indemnified party. As used in this Section 15, the words "party defendant" shall include a counter-defendant, cross-defendant, respondent, and any other capacity in which a claim is asserted against an indemnified party.

Section 16. Notices.

All notices, requests, demands and other communications hereunder must be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) three business days after having been mailed by first class registered mail, return receipt requested, postage and registry fees prepaid to the address set forth below, (c) under Section 3(e), when sent by e-mail without notice to the sender from a server that delivery of the e-mail has been delayed or has failed, and if such notice is received, then notice shall not be deemed duly given until the e-mail is sent without such notice, or (d) when sent by facsimile transmission to the facsimile number set forth below, provided that the burden of proving receipt of a facsimile will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine.

- (i) If to the Corporation:

The Options Clearing Corporation
125 S Franklin St, Chicago, IL 60606
Attn: General Counsel

Facsimile Number: 312-322-2593
Telephone Number: 312-322-6200

e-mail address for purposes of notices required
to be sent by e-mail pursuant to Section 3(e):
legalgco@theocc.com and
MarketOperations@theocc.com

- (ii) If to the Market:

Small Exchange, Inc.
19 N. Sangamon St.
Chicago, IL 60607

Attn: Peter D. Santori
Chief Regulatory Officer

Facsimile Number: 800-469-4452
Telephone Number: 312-717-7276

e-mail address for purposes of notices required to be sent by e-mail pursuant to Section 3(e): peter.santori@thesmallexchange.com and support@thesmallexchange.com

Section 17. Miscellaneous.

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Illinois. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party hereto without the prior written consent of the other party, but a merger, consolidation, reorganization or reincorporation by, or sale of all or substantially all of the assets of, either party shall not require the consent of the other party so long as the successor entity or transferee is qualified to carry on the business contemplated herein. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument. Terms used in this Agreement (whether or not initially capitalized) that are defined in the By-Laws and Rules of the Corporation have the meanings given to them in the By-Laws and Rules, unless expressly defined otherwise in this Agreement or unless the context requires a different meaning.

Section 18. Breach of Agreement – Termination.

(a) Breach by Corporation of Section 6 or Section 7. If the Corporation, by reason of its actions or its failure to act, shall have breached in any material respect the provisions of Section 6 or Section 7 hereof, and if as a result of such breach transactions in Cleared Contracts effected on the Market and submitted to the Corporation for clearing are not timely cleared, then the Market may terminate this Agreement upon written notice to the Corporation.

(b) Other Grounds for Termination. The Corporation shall cease clearing Cleared Contracts for the Market and this Agreement shall terminate forthwith if (i)(A) the Market ceases to meet any legal or regulatory requirement necessary to list and trade Commodity Contracts following the Effective Date, (B) the Market terminates the trading of all Cleared Contracts, or (C) the representations of the Market in clause (c), (d) or (e) of Section 1 hereof cease to be accurate, or (ii)(A) the Corporation ceases to be registered as a derivatives clearing organization, or (B) its By-Laws or Rules cease to be in full force and effect in a material respect. The Corporation may cease clearing Cleared

Contracts for the Market and terminate this Agreement upon at least 30 days prior written notice if the Market is in violation of this Agreement in any material respect, the Corporation provides the Market with written notice of the violation, and the Market fails to cure the violation within 30 days of receipt of the written notice describing the violation. The Market may voluntarily terminate this Agreement at any time by giving the Corporation at least 365 days prior written notice; provided, however, that the Market shall to the best of its ability ensure that a secondary market is maintained in each series of Cleared Contracts that it has previously opened for trading until the expiration date of each such series, so that it remains possible for Clearing Members to clear through the Corporation transactions closing out positions in each such series that were open at the time of termination hereof. In addition, the Corporation may voluntarily terminate this Agreement at any time by giving the Market at least 365 days (i.e., one year) prior written notice. In the event of such a voluntary termination by the Market or OCC, OCC in its sole discretion shall have the ability to terminate this Agreement sooner than 365 days from the date on which the termination notice is provided if there is no outstanding open interest on the Market or if such open interest has been transferred to a successor clearing organization (the "Successor") pursuant to Section 18(c) of this Agreement.

(c) Transfer of Open Positions to Successor Clearing Organization. If this Agreement is terminated and the Market makes alternative clearing arrangements for transactions in Cleared Contracts executed on the Market thereafter, the Corporation, at the request of any Clearing Member and upon payment of a per contract clearing fee as determined by OCC, shall enter into an assignment and assumption agreement satisfactory in form and substance to the Corporation wherein (i) the Corporation assigns to the Market's Successor all of the Corporation's right, title and interest in and to such of the Clearing Member's open positions in Cleared Contracts traded on the Market as the Clearing Member may specify, (ii) the Successor assumes all of the Corporation's obligations in respect of such open positions, and (iii) the Successor and such Clearing Member agree to indemnify the Corporation and hold the Corporation harmless against any liability or obligation in respect of such open positions arising from and after the effective time of such assignment and assumption.

(d) Financial Resources or Agreement with Another Exchange. The Market agrees to either (i) maintain at all times financial resources equal to one year's worth of projected operating expenses for the Market as updated on an annual basis, or (ii) establish and maintain at all times an arrangement with another designated contract market registered with the CFTC to provide a listing and trading venue for Commodity Contracts listed and traded on the Market and cleared by the Corporation pursuant to this Agreement should the Market become unavailable or no longer able to provide a trading venue for such contracts.

Section 19. Survival of Obligations.

Notwithstanding the termination of this Agreement, (a) the Corporation shall continue to be obligated with respect to any confirmed trade that it shall have accepted for clearance as a result of transactions effected on the Market before the date of termination, and (b) the obligation of the Market to indemnify the Corporation pursuant to Section 15(b) hereof and the obligation

of the Corporation to indemnify the Market pursuant to Section 15(a) hereof shall survive such termination.

Section 20. Dispute Resolution.

If a dispute arises between employees of the Market and employees of the Corporation relating to the clearing services that are the subject of this Agreement, and the most senior employee actively involved in the dispute on behalf of a party (in either case, the “Senior Disputant”) believes that the Corporation’s timely and unimpeded conduct of clearing services for the Market is threatened by the unresolved dispute, the Senior Disputant may notify the other party that a dispute exists. Such notice having been given, the Senior Disputant of each party shall without delay notify the Chief Executive Officer of such party, or if the Chief Executive Officer is not immediately available, the most senior officer of such party that is immediately available (in either case, the “Responsible Officer”), that a dispute exists between the parties. The Responsible Officers of the two parties shall thereupon endeavor in good faith to resolve the dispute and to mitigate its deleterious effects and shall confer with each other to those ends. For the judicial resolution of disputes the parties consent to the exclusive jurisdiction of the United States District Court in Chicago, Illinois, if such court has subject matter jurisdiction over the dispute; otherwise, the courts of Illinois situated in Chicago shall have exclusive jurisdiction. Each party waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such party.

Section 21. Notice of Regulatory Action.

Each of the Corporation and the Market shall notify the other party of any action taken by a regulatory body or agency that, in the judgment of the party subject to such action, has or will have a material adverse effect on such party’s performance of its obligations under this Agreement.

Section 22. System Redundancy, Disaster Recovery.

The Corporation maintains, and will continue to maintain, appropriate facilities for system redundancy and disaster recovery, subject to the general oversight of the SEC and CFTC, as appropriate.

Section 23. Limitation of Liability.

(a) Neither party shall be liable under any circumstances for incidental, consequential or special damages sustained by the other party under this Agreement, whether or not such damages relate to services covered by this Agreement, even if the party against which an award of damages is sought has been advised of the possibility of such damages; provided, however, that this Section 23 is not intended to limit the indemnification provisions of Section 15 or any other indemnification provisions in this Agreement to the extent that such provisions would otherwise cover incidental, consequential or special damages asserted by third parties against an indemnified party.

(b) Neither party shall be liable for its inability to perform its obligations under this Agreement when such inability arises out of causes beyond its control, including, without limitation, any act of God, act of war or terrorism, accident, labor dispute, or the failure of any third party to provide any electronic, telecommunication or other service used in connection with the services covered by this Agreement. Each party agrees to notify the other promptly upon learning that any such event has occurred and shall cooperate with the other, upon request, in arranging alternative procedures and in otherwise taking reasonable steps to mitigate the effects of any inability to perform or any delay in performing.

Section 24. Effectiveness of Agreement.

On the Effective Date, and as conditions to the effectiveness of this Agreement, the CFTC and, with respect to the Corporation, the SEC shall have approved the rule change filed in respect of this Agreement or allowed such rule change to become effective; the Market shall deliver to the Corporation a certificate of a senior officer, in form and substance satisfactory to the Corporation, to the effect that the representations of the Market set forth in Section 1 hereof are true and accurate on such date, and the Corporation shall deliver to the Market a certificate of a senior officer, in form and substance satisfactory to the Market, to the effect that the representations of the Corporation set forth in Section 2 hereof are true and accurate on such date. The "Effective Date" of this Agreement shall be _____, 2019, or, if later, the date when the Market begins trading Commodity Contracts, but shall in no event be earlier than the first date on which all conditions exist such that the representations to be made under Sections 1 and 2 would be true and the payment pursuant to Article XII, Section 1 of the By-Laws of the Corporation is made.

Section 25. Nonexclusive Agreement.

This Agreement is nonexclusive and nothing in this Agreement shall prevent the Market from obtaining clearing arrangements from another party during the term of this Agreement or thereafter for Commodity Contracts (as defined in Section 1) traded on the Market.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

THE OPTIONS CLEARING CORPORATION

By: **[Insert]**_____

Name: **[Insert]**

Title: **[Insert]**

SMALL EXCHANGE, INC.

By: **[Insert]**_____

Name: **[Insert]**

Title: **[Insert]**

SCHEDULE A
DESCRIPTION OF CLEARING AND SETTLEMENT SERVICES

In accordance with the terms of this Agreement, the Corporation shall perform the following clearing functions:

(1) Trade Acceptance. The Corporation shall receive confirmed trade submissions from the Market in accordance with the By-Laws, Rules, and procedures of the Corporation as in effect from time to time. The Market acknowledges that, as of the Effective Date, the procedures of the Corporation require that trade submissions on any business day be received no later than 5:00 pm Central Time, so that receipt of confirmed trade submissions after such time will require the further agreement of the Corporation, which may be withheld by the Corporation for any reason.

(2) Transfers. The Corporation shall effect the transfer of positions between Clearing Members in accordance with the By-Laws, Rules and procedures of the Corporation as in effect from time to time.

(3) Position Maintenance and Settlement. On a daily basis the Corporation shall calculate and collect original margin and variation margin on Cleared Contract trades and positions, and margin on positions in futures options, in the accounts of Clearing Members. The Corporation shall settle the gains and losses associated with Cleared Contract trades and positions in the accounts of members at least once each business day.

(4) Information for Clearing Members. The Corporation will make available to each Clearing Member on every business day with respect to Cleared Contracts in each account of such Clearing Member with the Corporation information in accordance with OCC's By-Laws and Rules as currently in effect.

(5) Pay/Collect. The Corporation will determine every Clearing Member's financial obligations to the Corporation each business day and require or make such payments as are necessary to discharge any balance owing in accordance with the Corporation's By-Laws and Rules.

(6) CMTA and/or Allocation Transactions. The Corporation will make the ENCORE system available to Clearing Members that are members of the Market for processing of CMTA and/or allocation transactions.

SCHEDULE B
INFORMATION SHARING

I. Information Provided by the Corporation to the Market

A. Information provided each trading day

The Corporation will provide the Market with its Data Distribution Service information in respect of Cleared Contracts on each trading day for regulatory and financial surveillance purposes and for purposes of reporting under CFTC Regulations 16.00 and 16.01.

B. Information provided on an occurrence basis

1. Notice of (a) any Clearing Member default or (b) any suspension of, termination of, ceasing to act for, or liquidation of, any Clearing Member by the Corporation, if, in either case, the Clearing Member is a member of the Market
2. Notice of any disciplinary action taken by the Corporation against a Clearing Member that is a member of the Market involving material non-compliance with financial or financial reporting requirements or material violation of the rules of the Corporation that result in a default or suspension of the clearing member.

OCC shall be deemed to have satisfied its notification obligations pursuant to Paragraphs I.B.1 and I.B.2 above by posting the requisite notice on its public website.

C. Information provided upon request

1. To the extent the following information is not already provided to the Market, the Corporation agrees that the Market shall have the right, subject to appropriate security precautions, during normal business hours to examine the Corporation's books, accounts, databases, pay/collect and other records, and at the Market's own expense to copy or make extracts from such documents and records and to utilize such databases; provided, however, that the Market shall have no such right with regard to transactions on any other futures market, security futures market or Options Exchange or which is otherwise competitive information of another futures market, security futures market or Options Exchange except insofar as (a) such transactions are entered into by members of the Market and are relevant to the Market's assessment of the financial condition of such member or (b) is necessary to protect the integrity of the Market.

II. Information to be provided by the Market to the Corporation

The Market agrees that whenever, in the performance of its functions of monitoring compliance by its members with the financial responsibility standards established by the Market or the

financial responsibility standards established by the SEC or the CFTC, it shall determine that (A) a Clearing Member that is a member of the Market is not in compliance with such standards, or (B) a Clearing Member that is a member of the Market is not in compliance with the financial responsibility standards established by the Corporation for its Clearing Members, or (C) the financial condition of a Clearing Member that is a member of the Market is such that special restrictions should be imposed on such Clearing Member, or (D) the financial condition of a Clearing Member that is a member of the Market should be reported to the Securities Investor Protection Corporation, the SEC, the CFTC or any other regulatory body, the Market shall notify the Corporation thereof by telephone immediately following the making of such determination and shall continue to keep the Corporation reasonably informed of the results of the Market's financial surveillance activities in respect of such Clearing Member so long as the Clearing Member is subject to any such special restrictions. The Market further agrees to furnish to the Corporation a copy of all written materials that are furnished to the financial surveillance committee of the Market (the "Committee") respecting a Clearing Member that is a member of the Market, provided that if the Market does not have a Committee, it hereby agrees to furnish the Corporation with a copy of all written materials respecting the financial condition of a Clearing Member that is a member of the Market relating to circumstances described in clauses (A) through (D) of the preceding sentence prepared for the management authority of the Market exercising financial surveillance or similar functions (the "management authority"). Such written materials shall be delivered to the Corporation as promptly as practicable, but in no event later than 2:00 p.m. Central Time on the business day next following the day on which such materials are furnished to the Committee or the management authority; provided that upon the oral or written request of the Corporation, the Market shall make such materials available for pickup by the Corporation at the same time as they are furnished to the Committee or management authority. If the Market has a Committee, it also agrees (i) to notify the Corporation by telephone of each special or emergency meeting of the Committee (or regular meeting of the Committee called on less than 48 hours' notice) concerning a Clearing Member that is a member of the Market prior to the commencement of such meeting, (ii) to advise the Corporation at the time of such notification as to the reasons for and purposes of such meeting, and (iii) to report by telephone to the Corporation immediately following the end of each meeting of the Committee (whether a regular or special or emergency meeting) as to the conclusions (if any) reached at such meeting concerning any Clearing Member that is a member of the Market and the reasons therefor. If the Market does not have a Committee, it also agrees to notify the Corporation of any action or proposed action concerning the financial condition of a Clearing Member that is a member of the Market to be taken by the management authority and the reasons therefor immediately upon making a determination concerning such Clearing Member.

Notwithstanding the provisions of Section 16 of this Agreement, any notice, written materials or telephone communication required to be furnished to the Corporation by this provision shall be delivered or made to any one of the Executive Chairman, or the President of the Corporation, or in case of the absence or unavailability of all of them, then to any Executive Vice President or Senior Vice President of the Corporation.

SCHEDULE C
Form of Schedule C
Schedule C-[insert number]

INTRODUCTION OF UNDERLYING INTEREST: [NEW FUTURES PRODUCT CLASS]

[Insert Date]

1. This is one of the Schedules C referred to in Section 3(a)(i) and (ii) of the Agreement for Clearing and Settlement Services dated as of **[Insert Date]** (the “Agreement”) between the Small Exchange, Inc. (the “Market”) and The Options Clearing Corporation (the “Corporation”). When completed and duly executed by the parties, this Schedule C shall be incorporated into the Agreement and become a part thereof. Terms used herein and defined in the Agreement shall have the meanings they are given in the Agreement.

2. Pursuant to Section 3(a)(i) of the Agreement, the Market may select the underlying interests for futures (other than securities futures) to be traded on the Market and cleared by the Corporation, subject to certain conditions, including the condition that counsel to the Corporation is satisfied that the clearance and settlement by the Corporation of futures on the underlying interest would not be (i) unlawful or (ii) likely to subject the Corporation to liability based upon claims that clearing and settling of futures on such interest infringes the intellectual property rights of third parties or otherwise. The Market has selected and may select certain **[new futures product class]** as underlying interests for futures. For purposes of this Schedule C-[], a **[name of futures product]** is a futures contract on a **[new futures product class]**.

3. Pursuant to Section 3(a)(ii) of the Agreement, the Market may select the underlying futures contracts that are the subject of options to be traded on the Market and cleared by the Corporation, subject to certain conditions, including the condition that counsel to the Corporation is satisfied that the clearance and settlement by the Corporation of options on the underlying futures contracts would not be (i) unlawful or (ii) likely to subject the Corporation to liability based upon claims that clearing and settling of options on such futures contracts infringes the intellectual property rights of third parties or otherwise. The Market may select certain individual **[name of futures product]** that are listed on the Market as underlying interests for options. For purposes of this Schedule C-[], a **[name of option on futures product]** is an option on a **[name of futures product]**.

4. The Market will submit a new product proposal in the form and manner specified by the Corporation from time to time and a Certificate with respect to any class of **[name of futures product]** or **[name of option on futures product]** as soon as practicable before the trading day on which the Market wishes to commence trading such futures or options on such futures. The Market may begin listing and trading futures in such class or options on such futures upon approval by the Corporation. The Corporation will use commercially reasonable efforts to authorize the clearance and settlement of such contracts as soon as practicable.

IN WITNESS WHEREOF, the parties hereto have duly executed this Schedule as of the date first above written.

SMALL EXCHANGE, INC.

THE OPTIONS CLEARING CORPORATION

By: _____

By: _____

Name:

Name:

Title:

Title: