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THE OPTIONS CLEARING  
CORPORATION

March 25, 2009

**VIA E-MAIL**

Mr. David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2009-06 Rule Certification**

Dear Mr. Stawick:

Attached is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commission Regulation 40.6. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act").

In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is when the proposed rule has been approved by the SEC. No substantive opposing views were expressed to OCC by governing board or committee members, clearing members of OCC, or market participants, that were not incorporated into the rule.

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

JEAN M. CAWLEY

SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

ONE N. WACKER DRIVE, SUITE 500 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280

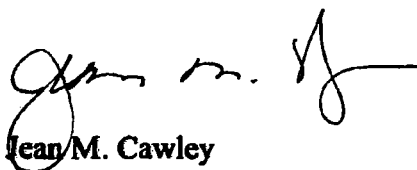
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**Mr. David A. Stawick**  
**Page Two**  
**March 25, 2009**

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-6269.

Sincerely,



Jean M. Cawley

**Attachments**

cc: CFTC Central Region (w/ enclosure)  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661  
Attn: Frank Zimmerle

OCC-2009-06 cftc.ltr

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

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Form 19b-4

Proposed Rule Change  
by

**THE OPTIONS CLEARING CORPORATION**

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

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

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend its By-Laws and Rules as set forth below to accommodate the clearing and settlement of physically-settled commodity futures contracts and options on such futures traded by NYSE Liffe Futures Exchange (“NYSE Liffe”), including the following contracts: 100 oz. gold futures, 5,000 oz. silver futures, “mini” gold futures, and “mini” silver futures (collectively, “Metals Futures”), and options on 100 oz. gold futures and 5,000 oz. silver futures (collectively, “Options on Metals Futures”). The Metals Futures and Options on Metals Futures are collectively referred to as “Metals Contracts.”

In its capacity as a derivatives clearing organization (“DCO”), registered as such under the Commodity Exchange Act (the “CEA”), OCC is assuming the clearing function for the Metals Contracts from the Chicago Mercantile Exchange clearing division (“CME Clearing”), which currently clears them. Exhibit 5A to this rule filing is a copy of the Clearing and Settlement Services Agreement (“Clearing Agreement”) between OCC and NYSE Liffe and Exhibit 5B is an Information Memo (the “Memo”), which has been furnished to all OCC clearing members, setting forth OCC’s policy regarding the transfer of clearing services for the Metals Contracts to OCC.<sup>1</sup>

The text of the proposed amendments to OCC’s By-Laws and Rules is set forth below. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets.

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<sup>1</sup> These documents are incorporated by reference in this filing as a part of the rules of OCC.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

\* \* \*

**ARTICLE I**

**Definitions**

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

**A - B.**

[No change]

**C.**

(1) – (12) [No change]

**Clearing Member**

(13) The term “Clearing Member” means a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. References in the By-Laws or Rules to the term “Clearing Member” preceded by a capitalized reference to an underlying interest or a cleared contract, e.g., a “Stock Clearing Member,” or a “Security Futures Clearing Member,” shall be deemed to be to a Clearing Member approved in accordance with Article V of the By-Laws to clear transactions in options on the specified underlying interest, or in the cleared contract, as applicable, provided that the term “Stock Clearing Member” shall be deemed to include a Clearing Member approved to clear transactions in BOUNDS as well as stock options, the term “Treasury Securities Clearing Member” shall mean a Clearing Member approved to clear transactions in Treasury Securities options excluding yield-based Treasury options and the term “Index Clearing Member” shall mean a Clearing Member approved to clear transactions in cash-settled options. [The term “Stock Clearing Member” shall mean those Clearing Members approved in accordance with Article V of the By-Laws to clear transactions in stock options and BOUNDS. The terms “Treasury Securities Clearing Member,” “Foreign Currency Clearing Member,” “Cross-Rate Foreign Currency Clearing Member,” and “Cash-Settled Foreign Currency Clearing Member,” shall mean those Clearing Members approved in accordance with Article V of the By-Laws to clear transactions in Treasury securities options (excluding yield-based Treasury options), foreign currency options, cross-rate foreign currency options, and cash-settled foreign currency options, respectively. The term “Security Futures Clearing Member” shall mean a Clearing Member approved in

accordance with Article V of the By-Laws to clear transactions in security futures. The term “Commodity Futures Clearing Member” shall mean a Clearing Member approved in accordance with Article V of the By-Laws to clear transactions in commodity futures and futures options. The term “Index Clearing Member” shall mean a Clearing Member approved to clear transactions in cash-settled options. The term “Flexibly Structured Option Clearing Member” shall mean a Clearing Member approved to clear transactions in Flexibly Structured Options. The term “Non-Equity Securities Clearing Member” shall mean a Clearing Member that is one or more of the following: a Treasury Securities Clearing Member, a Foreign Currency Clearing Member, a Cross-Rate Foreign Currency Clearing Member, a Cash-Settled Foreign Currency Clearing Member, an Index Clearing Member. The term “Domestic Clearing Member” means any Clearing Member other than a “Non-U.S. Clearing Member” as defined in this Article I. The term “FX Index Option Clearing Member” shall mean a Clearing Member approved to clear transactions in Flexibly Structured Index Options Denominated in a Foreign Currency (“FX Index Options”). The term “Execution-Only Clearing Member” shall mean a Clearing Member approved only to act as a Clearing Member that transfers Exchange transactions or allocates positions to other Clearing Members, and not to carry positions in its accounts with the Corporation on a routine basis.]

(14) – (34) [No change]

#### D.

(1) [No change]

#### **Delivering Clearing Member**

[(1)](2) The term “Delivering Clearing Member,” when used (i) with respect to a call option contract, shall mean the Assigned Clearing Member; (ii) with respect to a put option contract, shall mean the Exercising Clearing Member; (iii) with respect to a BOUND, shall mean a Clearing Member obligated to deliver the underlying securities; and (iv) with respect to a physically-settled [stock] future, shall mean [the] a Clearing Member [carrying a short position in the future] that has become obligated to make delivery of the interest underlying such future.

#### **Delivery Date**

[(2)](3) The term “delivery date” means: (i) as used in respect of a physically-settled [stock] future, [means] the date on which, subject to the specific terms of the futures contract and the By-Laws and Rules, delivery is to be made, and (ii) as used in respect of a stock option, [means] the exercise settlement date.

#### **Delivery Intent**

(4) The term “delivery intent” as used in respect of a physically-settled commodity future means a notice submitted (or deemed to be submitted pursuant to the By-Laws or Rules or Exchange Rules) by a Clearing Member that is, or represents, the seller in respect of such physically-settled commodity future, pursuant to the Rules or the Exchange Rules, as applicable, that such Clearing Member intends to make delivery of the underlying interest.

**Delivery Month**

(5) The term “delivery month” as used in respect of a physically-settled commodity future means the calendar month in which delivery is permitted or required to be made under the terms of the particular futures contract.

**Delivery Payment Amount**

(6) The term “delivery payment amount” as used in respect of a physically-settled commodity future means the amount due from the buyer and payable to the seller pursuant to the Exchange Rules in respect of the delivery covered by a delivery intent.

(3) – (4) [Renumbered as (7) – (8); otherwise no change]

**Domestic Clearing Member**

(9) The term “Domestic Clearing Member” means any Clearing Member other than a “Non-U.S. Clearing Member” as defined in this Article I.

E.

(1) – (13) [No change]

**Execution-Only Clearing Member**

(14) The term “Execution-Only Clearing Member” shall mean a Clearing Member approved to act only as a Clearing Member that transfers Exchange transactions or allocates positions to other Clearing Members, and not to carry positions in its accounts with the Corporation on a routine basis.

(14) – (22) [Renumbered as (15) – (23); otherwise no change]

F – L.

M.

(1) – (13) [No change]

**Multiplier**

(14) The term “multiplier” as used in reference to an index option contract or index futures of any series means an index multiplier and as used in reference to other cash-settled futures contracts for which there is no unit of trading means the amount (as specified by the futures market on which a futures contract is traded) by which a contract price, settlement price or final settlement price in respect of such futures contract is to be multiplied in determining a variation payment or final variation payment.

O.

[No change]

**P.**

(1) – (3) [No change]

**Physically-Settled Commodity Future**

(4) The term "physically-settled commodity future" means a commodity future that is settled through physical delivery of the underlying interest.

**Physically-Settled Metals Future**

(5) The term "physically-settled metals future" means a physically-settled commodity future for which the underlying interest is a metal.

(4) – (13) [Renumbered as (6) – (15); otherwise no change]

**Q.**

[No change]

**R.**

(1) [No change]

**Receiving Clearing Member**

(2) The term "Receiving Clearing Member," when used (i) with respect to a call option contract shall mean the Exercising Clearing Member; (ii) with respect to a put option contract, shall mean the Assigned Clearing Member; and (iii) with respect to a BOUND or a physically-settled [stock] future, shall mean a Clearing Member entitled to receive the [securities] underlying interest [the BOUND or physically-settled stock future] and obligated to make payment therefor.

(3) – (10) [No change]

**S.**

[No change]

**T.**

**Trade Date**

(1) The term "trade date" in respect of any Exchange transaction means the day on which such transaction occurred except that: (i) in the case of classes of options that are cleared through ICS, the trade date in respect of transactions in such options that are effected in trading sessions conducted after 3:00 P.M. Central Time (4:00 P.M. Eastern Time) shall be deemed to be the business day following, and (ii) the trade date in respect of Exchange transactions in cleared



contracts that are effected in trading sessions beginning on one calendar day and ending on the next calendar day shall be deemed to be the calendar day on which such trading ends.

U – Z.

[No change]

\* \* \*

## ARTICLE V

### Clearing Members

#### Qualifications

SECTION 1: (a) – (b) [No change]

(c) The procedures of the Corporation may provide that a Clearing Member shall not clear transactions in a particular type of product unless, in addition to satisfying any specific requirements applicable to such type of product set forth in the By-Laws and Rules, the Corporation has specifically approved the Clearing Member to clear such type of product.

(d) Any Clearing Member who holds positions in physically-settled metals futures or options on such futures is required to be a member of the Exchange on which the products are traded.

\* \* \*

## ARTICLE VI

### Clearance of Exchange Transactions

#### General Clearance Rule

SECTION 1. [No change]

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

**.01** (a) Subject to paragraph (c) below, it is the policy of the Corporation to permit a Clearing Member to submit adjustments to its positions with the Corporation to (1) effect a transfer of accounts between Clearing Members; (2) effect a Return, (3) effect a CMTA Retransfer; [and] (4) correct a bona fide error or omission regarding an Exchange transaction previously submitted to the Corporation by the Exchange, security futures market, futures market, futures market or international market on which such Exchange transaction occurred; (5) grant a request for offset pursuant to Rule 1306; and (6) effect a retender in connection with the settlement of a physically-settled commodity future pursuant to Rule 1307. Such data shall be submitted in such form and within such times as the Corporation shall prescribe. Such adjustments shall be treated as

Exchange transactions for the purposes of Sections 15 and 16 of Article VI of the By-Laws and for the purposes of other sections of Article VI except where the context otherwise requires.

(b) – (c) [No change]

.02 [No change]

\* \* \*

### Maintenance of Accounts

SECTION 3. [No change]

**...Interpretations and Policies:**

.01 - .04 [No change]

.05 In connection with its clearing agreement with the Corporation, a futures market may require that cleared contracts traded on such futures market be carried by Clearing Members separately from cleared contracts traded on other Exchanges. A Clearing Member may elect to hold such cleared contracts in accounts under more than one Clearing Member number, subject to the provisions of Interpretations and Policies .03 above and .06 below, or in one or more separate sub-accounts. The futures market may require that any such sub-account be margin enabled, but Clearing Members may elect whether or not such sub-accounts will also be collateral enabled or collateral and settlement enabled within the meaning of Interpretation and Policy .04 above.

.05 - .07 [Renumbered as .06 - .08; otherwise no change]

\* \* \*

## ARTICLE XII

### Futures and Futures Options

\* \* \*

#### General Rights and Obligations of Buyers and Sellers of Futures and Futures Options

SECTION 2. (a) Each buyer and seller of a future shall have the rights and obligations provided in the By-Laws and Rules. Such rights and obligations include, but are not limited to, the right to receive variation payments from the Corporation and the obligation to make variation payments to the Corporation as provided in Rule 1301. The seller of a physically-settled stock or commodity future is obligated to deliver to the buyer thereof, and the buyer is obligated to accept delivery of and make payment to the seller for, a number of shares or units of the underlying instrument equal to the unit of trading applicable to such future, such delivery and payment to take place on the delivery date in accordance with the By-Laws and Rules.

(b) – (c) [No change]

\* \* \*

### **Inability to Deliver**

**SECTION 8. If the Corporation shall in its discretion determine that (i) an event affecting the supply of an interest underlying a physically-settled commodity future threatens to reduce the available supply of the underlying interest to a level insufficient to permit performance of the delivery obligations in respect of a series of physically-settled commodity futures contracts, or (ii) such delivery obligations cannot be performed as the result of an emergency, the Corporation may take such action as it deems necessary under the circumstances, and its decision shall be binding upon all buyers and sellers of such futures. Such action by the Corporation may include, without limitation, fixing cash final settlement prices to be paid in settlement of such futures contracts, in which case buyers and sellers of such futures will be deemed to have discharged their obligations, and received full performance, in respect thereof when settlement of the final variation payment has been completed.**

### **Expiration Date and Time for Futures Options and Commodity Options**

#### **SECTION 9.**

**(a) The expiration date for futures options and commodity options shall be the date fixed by the Exchange on which such options are traded.**

**(b) The expiration time for futures options and commodity options shall be 10:59 P.M. Central Time (11:59 P.M. Eastern Time), except that the expiration time for futures options and commodity options traded on NYSE Liffe, LLC shall be 7:00 P.M. Central Time (8:00 P.M. Eastern Time).**

\* \* \*

### **RULES**

\* \* \*

## **Chapter VIII**

### **Exercise of Options**

#### **Exercise and Assignment**

**RULE 801. Issued and unexpired option contracts may, subject to Exchange Rules and the By-Laws, be exercised as follows:**

**(a) [No change]**

**(b) Any expiring American option contract may be exercised on its expiration date in accordance with Rule 805. Any capped or European option contract may be exercised**

(other than automatically exercised in the case of a capped option) only on its expiration date in accordance with Rule 805. Any binary options that meet the exercise parameters set forth in Rule 1501 will be automatically exercised in accordance with that rule. Notwithstanding the foregoing, any expiring flexibly structured index option contract, quarterly index option contract, or short term index option contract that meets the exercise parameters set forth in Rule 1804(c) will be automatically exercised on its expiration date in accordance with that rule. No expiring option contract other than an American style flexibly structured option contract, a foreign currency option contract, a short term option contract, a quarterly option contract, [or] a cross-rate foreign currency option contract or a futures option contract may be exercised on the business day immediately preceding its expiration date.

(c) [No change]

(d) Notwithstanding the foregoing provisions of this Rule, and except as otherwise provided in this paragraph (d), the Chairman, the Management Vice Chairman, or the President of the Corporation, or any delegate of such officer, may in the sole discretion of such person permit a Clearing Member to file, revoke, or modify any exercise notice [other than any exercise notice with respect to an option contract cleared through ICS or any exercise notice that the Board of Directors has determined not to be eligible for late processing,] after an applicable deadline prescribed pursuant to paragraph (a) of this Rule, solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer, subject to the following conditions:

(1) – (6) [No change]

Filing, revocation or modification of exercise notices after the applicable deadline specified by the Corporation shall not be permitted under any circumstances in respect of (i) futures options of such classes, or traded on such futures market(s), as may be designated by the Corporation and specified in its procedures; (ii) options contracts cleared through ICS, or (iii) any exercise notice that the Board of Directors has determined not to be eligible for late processing.

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

\* \* \*

### **Expiration Date Exercise Procedure**

Rule 805.

(a) – (b) [No change]

(c) If, after the deadline prescribed pursuant to subparagraph (b) for the submission of exercise instructions in response to Expiration Exercise Reports, but prior to the expiration time for such option contracts on the expiration date, a Clearing Member desires to exercise option contracts expiring on such expiration date in addition to those which the Clearing Member has previously instructed the Corporation to exercise, the Clearing Member may do so by tendering to the Corporation, prior to such expiration time, a written exercise notice on such

form as the Corporation shall prescribe, provided that the Corporation may designate in its procedures classes of futures options with respect to which no late exercise notices will be accepted.

(d) – (m) [No change]

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

\* \* \*

## Chapter XI

### Suspension of a Clearing Member

\* \* \*

#### Exercised or Matured Contracts

RULE 1107. (a) Unless the Corporation stipulates otherwise in a particular case, exercised option contracts to which a suspended Clearing Member is party (either as the exercising Clearing Member or as the assigned Clearing Member) and matured, physically-settled [stock] futures to which such Clearing Member is a party shall be disposed of as follows:

(1) – (5) [No change]

(6) All other exercised option contracts and matured, physically-settled [stock] futures to which the suspended Clearing Member was a party shall be closed through the buy-in and sell-out or other procedures provided in the Rules. All losses (including damages chargeable to the suspended Clearing Member in the absence of a buy-in or sell-out) and gains [on such buy-ins or sell-outs] resulting from the application of such procedures shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Member, provided, however, that (i) all such losses [on such buy-ins and sell-outs] in a Market-Maker's account or a customers' lien account shall first be paid from such account to the extent there are funds available in such account and only the amount of any deficit therein shall be paid from the Liquidating Settlement Account; (ii) all such losses [on such buy-ins and sell-outs] in a segregated futures account shall first be paid from the Segregated Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account; and (iii) all such losses [on such buy-ins or sell-outs] in an internal non-proprietary cross-margining account shall first be paid from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account.

(b) – (c) [No change]

\* \* \*

## Chapter XIII

### Futures and Futures Options

#### Variation Payments

RULE 1301. (a) At each settlement time for variation payments as set forth below, the Corporation shall determine the amount of the variation payment to be paid or received by buyers and sellers in respect of each outstanding contract in each series of futures. The amount of the variation payment for each such contract shall be equal to the relevant unit of trading (in the case of stock futures, physically-settled commodity futures, [and] cash-settled foreign currency futures, and other cash-settled futures for which there is a unit of trading) or multiplier (in the case of index futures, variance futures, [or] interest rate futures, or other cash-settled futures for which there is no unit of trading) multiplied by: (i) in the case of a contract that was opened since the most recent variation settlement, the current interim settlement price less the contract price at which such contract was opened, (ii) in the case of a contract that was closed since the most recent settlement of variation payments was effected, the contract price at which such contract was closed less the previous interim settlement price, (iii) in the case of a contract that was neither opened nor closed since the most recent variation settlement, the current interim settlement price less the previous interim settlement price, and (iv) in the case of a contract that was both opened and closed since the most recent variation settlement, the contract price at which such contract was closed less the contract price at which it was opened. If the result of the foregoing calculation is positive, the variation payment shall be owed by the Clearing Member that is, or represents, the seller to the Corporation and by the Corporation to the Clearing Member that is, or represents, the buyer. If the result is negative, the variation payment shall be owed by the Clearing Member that is, or represents, the buyer to the Corporation and by the Corporation to the Clearing Member that is, or represents, the seller.

(b) – (d) [No change]

#### Delivery of Underlying Securities

RULE 1302. At maturity of a physically-settled stock future, in addition to the final variation payment (if any) required by Rule [1301(e)] 1301(d), the Clearing Member that is, or that represents, the seller shall be obligated to deliver, and the Clearing Member that is, or that represents, the buyer shall be obligated to receive and pay for, a quantity of the underlying security equal to the unit of trading at the aggregate purchase price. Settlement of the obligations to deliver and pay for such underlying securities shall be effected in accordance with the provisions of Chapter IX of the Rules. The delivery date shall be the third business day following the maturity date of the applicable series of stock futures.

#### Delivery of Underlying Metals

RULE 1302A. (a) A Clearing Member that is, or represents, the seller in respect of a physically-settled metals future may make delivery of the underlying interest at such times prior to maturity of the futures contract as may be specified in the Exchange Rules of the

Exchange on which such futures contracts are traded, provided that such Clearing Member must make delivery no later than the last business day of the delivery month for such future. The delivery process shall be initiated through the submission (or deemed submission) by such Clearing Member of a delivery intent in accordance with the Exchange Rules. A Clearing Member that is, or that represents, the buyer in respect of a physically-settled metals future shall become obligated to receive the underlying metal and pay the delivery payment amount when a delivery intent is assigned to such buyer by the Exchange. On the business day following its receipt of one or more delivery intents, the Exchange will inform the Corporation of such receipt, the identity of each Delivering Clearing Member and each Receiving Clearing Member, and the total amount payable to each Delivering Clearing Member and payable by each Receiving Clearing Member in respect of the delivery(ies) covered by such delivery intent(s). The delivery date for each physically-settled metals future in respect of which such a notice has been provided shall be the business day following receipt by the Corporation of such notice. Delivery of the underlying interest shall be effected through delivery of a vault receipt or warehouse depository receipt by the Delivering Clearing Member to the Corporation and by the Corporation to the Receiving Clearing Member through the facilities of the Exchange in accordance with Exchange Rules; provided, however, that the Corporation shall not become an endorser of any vault receipt or warehouse depository receipt or assume the responsibilities of an endorser under Exchange Rules.

(b) In connection with any delivery in settlement of a physically-settled metals future, the Delivering Clearing Member shall be deemed to have represented that all vault receipts or warehouse depository receipts (and all metals represented thereby) are owned legally and beneficially by the Delivering Clearing Member (or the seller represented by such Delivering Clearing Member), and that all vault receipts or warehouse depository receipts (and all metals represented thereby) are free and clear of all liens and encumbrances (other than for storage costs associated with the metals). The Delivering Clearing Member hereby grants to the Corporation, from the time the delivery intent is submitted, a lien on all vault receipts or warehouse depository receipts covered by the delivery intent as security for the Delivering Clearing Member's obligations to the Corporation. Without regard to any other provision of the By-Laws or Rules or of the Exchange Rules, the Corporation shall have no liability for any defect in, or alteration or forgery of, or encumbrance on, any vault receipt or warehouse depository receipt (whether held in physical or electronic form), or for any deficiency in the quantity or quality of, or encumbrance on, the metals represented by any such document or electronic entry; and in any such event, the buyer shall have such remedies as are provided in the Exchange Rules.

(c) On the delivery date in respect of a physically-settled metals future, the Corporation shall effect settlement of the delivery payment amount by withdrawing such delivery payment amount from the Receiving Clearing Member's bank account established in respect of the Receiving Clearing Member's account at the Corporation in which the related long futures position is carried, and shall cause such delivery payment amount to be credited to the Delivering Clearing Member's bank account established in respect of the Delivering Clearing Member's account in which the related short futures position is carried. The Receiving Clearing Member hereby grants to the Corporation a security interest in whatever rights it may have in

any vault receipt or warehouse receipt to be delivered to it pursuant to the Exchange Rules and the By-laws and Rules as security for the Receiving Clearing Member's obligation to pay the delivery payment amount, and in the event that Receiving Clearing Member fails to make such payment, the Corporation shall have the rights set forth in the By-Laws and Rules including, without limitation, Rule 1308.

(d) In the event that the Exchange has not received a delivery intent with respect to one or more physically-settled metals futures carried in a short position in any account of a Clearing Member prior to such final deadline for submission of delivery intents as may be specified by the Exchange, the Clearing Member shall be deemed to have submitted a delivery intent in respect of each such future (and shall be deemed to be a Delivering Clearing Member), the Exchange shall simultaneously be deemed to have informed the Corporation of the submission of such delivery intent and, in the event that the Clearing Member fails to make the underlying vault receipt or warehouse depository receipt available to the Exchange for delivery, the provisions of Rule 1308 shall apply.

\* \* \*

#### Exercise Procedures for Options on Futures

RULE 1305. (a) Exercise notices and assignments thereof in respect of options on futures contracts that are submitted on any day other than the expiration date for such options shall be governed by the provisions of Rules 801 through 803.

(b) The expiration date exercise procedures set forth in Rule 805 shall apply to options on futures contracts except for paragraphs (d) and (j) thereof. The provisions of Rule 805 shall be supplemented by paragraphs (b) and (c) of this Rule.

(c) Any Clearing Member holding an option on a futures contract shall be deemed to have properly and irrevocably tendered to the Corporation, immediately prior to the expiration time on each expiration date, an exercise notice with respect to every expiring commodity futures option contract listed in the Clearing Member's Expiration Exercise Report that is in the money by such threshold amount as the Corporation may from time to time establish with respect to particular classes of options, unless the Clearing Member shall have duly instructed the Corporation, in accordance with Rule 805(b), to exercise none, or fewer than all, of such contracts. If a Clearing Member desires that any such option contract not be exercised, it shall be the responsibility of the Clearing Member to give appropriate instructions to the Corporation in accordance with Rule 805(b).

#### Requests for Offset of Futures Contracts

RULE 1306. A Clearing Member may submit a request for offset in respect of futures contracts with the same underlying interest but a different unit of trading, where Exchange Rules permit such offsets, in such ratios as determined by the Exchange. Requests for offsets shall be submitted and offset positions shall be adjusted according to the procedures of the Corporation as specified from time to time.



### **Retendering**

**RULE 1307. In the event that a Clearing Member that holds a long position in a series of physically-settled metals futures effects a closing sale transaction in the same series of futures contracts in the same account and is assigned a delivery intent in respect of such long position, whether or not such Clearing Member has received notice of such assignment, such sale shall be treated as an opening sale, and such Clearing Member may retender the underlying interest purchased by the Clearing Member under the assigned delivery intent by submitting a delivery intent with respect to the short position created by the opening sale in accordance with Exchange Rules.**

### **Failure by Clearing Member to Deliver or Receive Underlying Metals**

**Rule 1308. (a) If a Delivering Clearing Member in respect of a physically-settled metals future has failed to make a deliverable vault receipt or warehouse depository receipt available to the Exchange for delivery in the manner prescribed by Exchange Rules and Rule 1302A, the Exchange shall notify the Corporation of such failure prior to the close of business on the business day prior to the settlement date and the Corporation may withhold payment to the Delivering Clearing Member. In addition, the Corporation shall determine and assess the damages incurred by the Receiving Clearing Member as a result of such failure, taking into account the delivery payment amount, the market price of the underlying interest, market conditions generally and reasonable and customary transaction costs applicable to transactions in the underlying interest, and such damages shall be paid by the Corporation to the Receiving Clearing Member and the Corporation is authorized to withdraw the amount of such damages from the applicable bank account of the defaulting Delivering Clearing Member.**

**(b) If a Receiving Clearing Member shall refuse or fail to pay the Corporation the delivery payment amount due from such Receiving Clearing Member on the delivery date, the Corporation shall notify the Exchange of such failure by 10:00 a.m. Central Time (11:00 a.m. Eastern Time) on the delivery date and the Exchange shall withhold delivery of the vault receipts or warehouse depository receipts representing the underlying interest. In addition, the Corporation shall determine and assess the damages incurred by the Delivering Clearing Member as a result of such failure, taking into account the delivery payment amount, the market price of the underlying interest, market conditions generally and reasonable and customary transaction costs applicable to transactions in the underlying interest, and such damages shall be paid by the Corporation to the Delivering Clearing Member and the Corporation is authorized to withdraw the amount of such damages from the applicable bank account of the defaulting Receiving Clearing Member.**

**(c) Every determination of damages by the Corporation in respect of a failure of a Delivering Clearing Member or Receiving Clearing Member pursuant to this Rule 1308 shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review.**

\* \* \*

**Item 2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by OCC's Board of Directors at a meeting held on December 2, 2008.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, Senior Vice President and Deputy General Counsel, at (312) 322-6269.

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

The primary purpose of this proposed rule change is to revise OCC's By-Laws and Rules (collectively, the "Rules") to accommodate the clearance and settlement of Metals Futures and Options on Metals Futures traded by NYSE Liffe.<sup>2</sup> Delivery of the metals underlying the Metals Futures will be made through the facilities of NYSE Liffe by delivery of "vault receipts" (or, in the case of the "mini" futures contracts, through delivery of electronic "warehouse depository receipts") representing the underlying metals. Delivery is required upon maturity of any Metals Future that has not been closed out in an exchange transaction prior to the close of trading on the last trading day for the contract. In addition, delivery may be made, at the election of the seller of a Metals Future, on any business day during the delivery month. Delivery will be initiated by the submission to NYSE Liffe by the Clearing Member with a short position in the Metals Future of a notice of intent to deliver ("delivery intent"). Obligations to take delivery of the underlying metal which is the subject of a delivery intent will be assigned by NYSE Liffe to Clearing Members with long positions in the same Metals Future, and NYSE Liffe will notify OCC of the delivery and payment obligations of Clearing Members resulting

from delivery intents. Delivery of the vault receipts will be made through NYSE Liffe's facilities on the second day after submission of the delivery intent or maturity date, as applicable. Payment will be made through OCC's systems on this same date. Although delivery of the vault receipts is not made through OCC's systems, the Clearing Agreement provides that NYSE Liffe is deemed to represent to OCC in connection with its notification to OCC of a delivery intent that it holds vault receipts sufficient to satisfy the delivery obligation of the Clearing Member submitting the delivery intent. This provision is intended ensure that delivery has been made by the delivering Clearing Member before OCC credits the purchase price to this Clearing Member. In addition, OCC will have a lien on the vault receipts from the time the delivery intent has been submitted until physical delivery against payment has been made. OCC will collect initial margin and pay and collect variation margin for Metals Futures as in the case of any other futures contract.

The last trading day for Metals Futures is the third to last business day of the maturity month. The trading day for Metals Futures is 22 hours long, and spans two calendar days. As a result, a Clearing Member may sell a Metals Future to offset a long position before an assignment is made, or after an assignment has been made but before the Clearing Member learns of it. In this situation, the sale will be deemed to have created a new short position rather than closing out the long position. However, Clearing Members in this situation will be able to "retender" the underlying metals in satisfaction of their delivery obligations in respect of the short position.

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<sup>2</sup> The proposed amendments are also designed to accommodate cash-settled futures that NYSE Liffe intends to introduce shortly after the transition of clearing services to OCC.

OCC proposes to expand Chapter 13 of the Rules to accommodate: the settlement of Metals Futures by physical delivery; the granting of requests for offsets between full-sized and mini-sized Metals Futures in the same contract month and year; the re-rendering of a delivery in the event a Clearing Member is assigned a delivery intent with respect to a long position that the Clearing Member has closed out; and the procedures to be followed in the event a Clearing Member fails to make physical delivery or payment at delivery settlement. Rule 1308 provides that, in the event of such a failure, OCC will make payment to the non-defaulting Clearing Member in an amount equal to the damages incurred by the non-defaulting Clearing Member from such failure, as determined by OCC. Such damages would, of course, be charged by OCC to the defaulting Clearing Member.

Options on Metals Futures are American style. The last trading day for Options on Metals Futures is normally the fifth business day prior to the first calendar day of the delivery month for the underlying future. Submission of exercise notices at expiration and at other than expiration will be governed by existing OCC Rules, as supplemented by proposed Rule 1305. At expiration, OCC will apply exercise-by-exception ("ex-by-ex) processing procedures to expiring Options on Metals Futures. Under ex-by-ex processing procedures, a clearing member is deemed to have submitted exercise notices for options that are in the money by a specified amount (i.e., exercise threshold amount) unless the clearing member instructs OCC otherwise. The exercise threshold amount for Options on Metal Futures will be set at \$.001. Article XII, Section 9 of the By-Laws would be amended to provide that the expiration time for futures and commodity options traded on NYSE Liffe will be 7:00 p.m. Central Time, which is different from the expiration time for other such options. OCC is also proposing to amend Rule 801 to permit Clearing Members to submit exercise notices for Options on Metals Futures on the

business day prior to expiration. In light of the 22-hour trading day for the Metals Contracts, the filing, revocation or modification of exercise notices, or contrary exercise instructions in connection with ex-by-ex processing, for Options on Metal Futures and certain other classes of contracts identified by OCC, after applicable deadlines therefor, would be prohibited.

NYSE Liffe will require that Metals Contracts be held separately from contracts traded on other exchanges, which OCC understands is intended to prevent the offset, for margin purposes, of Metals Contracts against contracts traded on other exchanges. OCC is proposing to add an interpretation and policy to its Rules stating that futures markets may impose such a requirement and explaining how Clearing Members may satisfy this requirement. OCC will provide notice to Clearing Members that NYSE Liffe has such a requirement. Additional changes are proposed to introduce the terminology necessary to support clearing and settlement of Metals Contracts, allow for the use of cash settlement in the event of a shortage of an underlying interest, and require that Clearing Members holding positions in Metals Contracts be members of the relevant exchange. The latter point is necessary because delivery is effected through the facilities of the exchange.

NYSE Liffe currently clears the Metals Contracts at CME Clearing. However, OCC is scheduled to assume the clearing function for Metals Contracts traded on NYSE Liffe from CME Clearing during the last weekend of March, 2009. In connection therewith, OCC and NYSE Liffe have entered into the Clearing Agreement, which is generally similar to corresponding agreements between OCC and other futures exchanges but contains specific provisions concerning the delivery settlement since vault or warehouse depository receipts, as applicable, will be delivered through the facilities of NYSE Liffe. It further contains additional commercial terms relative to the treatment of trade data, among others. The Clearing Agreement

is attached as Exhibit 5A. OCC has prepared an information memorandum specifying the obligations of Clearing Members in connection with the transition. The memorandum, which is attached as Exhibit 5B, will be distributed to all Clearing Members and will be considered a rule of OCC.

\* \* \*

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the "CFTC") without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. They accomplish this purpose by applying substantially the same rules and procedures to transactions in Metals Futures and Metals Options as OCC applies to transactions in security futures and securities options. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

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

OCC does not believe that the proposed rule change would have any material adverse impact 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 has been received.

**Item 6. Extension of Time Period for Commission Action**

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

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

OCC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3) of the Exchange Act and Rule 19b-4(f)(4) thereunder. Pursuant to Rule 19b-4(f)(4), a rule change may take effect upon filing with the Commission if it effects a change in an existing service of OCC that does not (i) adversely affect the safeguarding of securities or funds in OCC's custody or control or for which OCC is responsible or (ii) significantly affect the respective rights or obligations of OCC or persons using the service. The products proposed to be listed by NYSE Liffe are commodity futures and options on futures within the exclusive jurisdiction of the CFTC, and OCC will therefore clear such contracts in its capacity as a registered derivatives clearing organization under the CFTC's regulatory jurisdiction. Accordingly, although this rule change represents a change in OCC's existing service of clearing commodity futures contracts and options on commodity futures, that service is not within the jurisdiction of the Commission. This rule change will not affect the safeguarding of funds or securities in OCC's possession because OCC will apply the same procedures and safeguards to

the clearing of these contracts that it does to the clearing of securities options and security futures over which the Commission has direct regulatory authority. The respective rights and obligations of OCC and Clearing Members with respect to matters within the Commission's jurisdiction will be unaffected.

**Item 8. Proposed Rule Change Based on Rules of Another Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule change of another self-regulatory organization.

**Item 9. Exhibits**

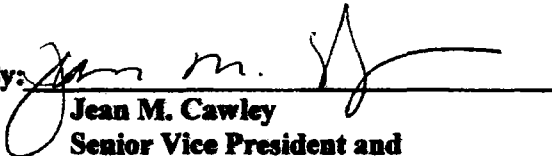
Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.



**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

By:   
**Jean M. Cawley**  
**Senior Vice President and**  
**Deputy General Counsel**

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 34-\_\_\_\_\_ ; File No. SR-OCC-2009-06**

**SELF-REGULATORY ORGANIZATION**

Proposed Rule Change By  
The Options Clearing Corporation

Relating to NYSE Liffe Metals Contracts

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The proposed rule change would revise OCC's By-Laws and Rules to accommodate the clearance and settlement of Metals Futures and Options on Metals Futures traded on NYSE Liffe.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

The primary purpose of this proposed rule change is to revise OCC's By-Laws and Rules (collectively, the "Rules") to accommodate the clearance and settlement of Metals Futures and Options on Metals Futures traded by NYSE Liffe.<sup>1</sup> Delivery of the metals underlying the Metals Futures will be made through the facilities of NYSE Liffe by delivery of "vault receipts" (or, in the case of the "mini" futures contracts, through delivery of electronic "warehouse depository receipts") representing the underlying metals. Delivery is required upon maturity of any Metals Future that has not been closed out in an exchange transaction prior to the close of trading on the last trading day for the contract. In addition, delivery may be made, at the election of the seller of a Metals Future, on any business day during the delivery month. Delivery will be initiated by the submission to NYSE Liffe by the Clearing Member with a short position in the Metals Future of a notice of intent to deliver ("delivery intent"). Obligations to take delivery of the underlying metal which is the subject of a delivery intent will be assigned by NYSE Liffe to Clearing Members with long positions in the same Metals Future, and NYSE Liffe will notify OCC of the delivery and payment obligations of Clearing Members resulting

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<sup>1</sup> The proposed amendments are also designed to accommodate cash-settled futures that NYSE Liffe intends to introduce shortly after the transition of clearing services to OCC.

from delivery intents. Delivery of the vault receipts will be made through NYSE Liffe's facilities on the second day after submission of the delivery intent or maturity date, as applicable. Payment will be made through OCC's systems on this same date. Although delivery of the vault receipts is not made through OCC's systems, the Clearing Agreement provides that NYSE Liffe is deemed to represent to OCC in connection with its notification to OCC of a delivery intent that it holds vault receipts sufficient to satisfy the delivery obligation of the Clearing Member submitting the delivery intent. This provision is intended ensure that delivery has been made by the delivering Clearing Member before OCC credits the purchase price to this Clearing Member. In addition, OCC will have a lien on the vault receipts from the time the delivery intent has been submitted until physical delivery against payment has been made. OCC will collect initial margin and pay and collect variation margin for Metals Futures as in the case of any other futures contract.

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OCC proposes to expand Chapter 13 of the Rules to accommodate: the settlement of Metals Futures by physical delivery; the granting of requests for offsets between full-sized and mini-sized Metals Futures in the same contract month and year; the retendering of a delivery in

the event a Clearing Member is assigned a delivery intent with respect to a long position that the Clearing Member has closed out; and the procedures to be followed in the event a Clearing Member fails to make physical delivery or payment at delivery settlement. Rule 1308 provides that, in the event of such a failure, OCC will make payment to the non-defaulting Clearing Member in an amount equal to the damages incurred by the non-defaulting Clearing Member from such failure, as determined by OCC. Such damages would, of course, be charged by OCC to the defaulting Clearing Member.

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attached as Exhibit 5B, will be distributed to all Clearing Members and will be considered a rule of OCC.

\* \* \*

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the "CFTC") without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. They accomplish this purpose by applying substantially the same rules and procedures to transactions in Metals Futures and Metals Options as OCC applies to transactions in security futures and securities options. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

OCC does not believe that the proposed rule change would impose any burden on competition.

**C. 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.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-06 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-2009-06. 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 Web site (<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 inspection and copying in the Commission's Public Reference Section, 100F Fifth Street, N.E., Washington, D.C. 20549-1090. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-06 in the caption above and should be submitted on or before [insert date 21 days from publication in the Federal Register.] \_\_\_\_\_.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

Dated: \_\_\_\_\_

## **AGREEMENT FOR CLEARING AND SETTLEMENT SERVICES**

This Agreement for Clearing and Settlement Services (this "Agreement") is entered into as of March 9, 2009 between The Options Clearing Corporation, a Delaware corporation (the "Corporation"), and NYSE Liffe, LLC, a Delaware limited liability company (the "Market").

WHEREAS, the Corporation is registered with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization and, as part of its business, provides clearing and settlement services in respect of commodity futures ("futures") and options thereon ("futures options"), and commodity options (commodity futures, futures options, and commodity options are referred to herein collectively as "Commodity Contracts");

WHEREAS, the Market is a board of trade that has been designated as a contract market under the Commodity Exchange Act, as amended (the "CEA") by the CFTC;

WHEREAS, the Market is an "affiliated futures market" (as defined in Article I, Section I of the Corporation's By-Laws) of NYSE Arca, Inc., which is an exchange that clears security option transactions through the Corporation (an "Options Exchange");

WHEREAS, the Market wishes to engage the Corporation to provide clearing and settlement services in respect of Commodity Contracts on underlying interests that are selected in accordance with Section 3(c) (collectively, the "Cleared Contracts"); 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 26), (a) it is a limited liability company 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 CEA, (c) it has rules that comply with the provisions of the CEA and regulations of the CFTC thereunder for the trading of Commodity Contracts (as amended from time to time, the "Market Rules") that are to be cleared by the Corporation in accordance with its By-Laws and 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 Commodity Contracts and Underlying Interests; Classes and Series of Commodity Contracts.**

(a) **Types of Contracts Subject to this Agreement.** The Corporation agrees, subject to the provisions of the Agreement relating to selection of underlying interests, to provide clearing services to the Market for commodity futures, futures options and commodity options (as those terms are defined in the Corporation's By-Laws) having terms generally similar to those of other futures, futures options and commodity options that are presently or hereafter cleared by the Corporation. The clearance and settlement of all such commodity contracts shall be subject to the By-Laws and Rules of the Corporation as in effect from time to time. Provisions of clearing services for other types of contracts that are proposed to be traded on the Market shall be subject to the consent of the Corporation, which shall not be unreasonably withheld.

(b) General Criteria for Underlying Interests.

(i) Metals. The Corporation agrees to provide clearing services, commencing on the Effective Date, for: (A) futures contracts on metals that are settled through the delivery of "vault receipts;" and (B) options on such futures contracts.

(ii) Other Underlying Interests for Commodity Futures and Commodity Options. The Market may select additional underlying interests for commodity futures and commodity options subject to agreement of the Corporation, which shall not be unreasonably withheld. The Corporation may, in its sole discretion acting reasonably, agree to clear commodity futures and commodity options on additional underlying interests (including types of underlying interests) that are proposed to be traded on the Market, subject to such additional terms as may be agreed between the parties whereupon the clearing services shall be provided in accordance with the terms of this Agreement subject to Sections 3(e) and (f) below. As used in this Agreement, unless otherwise agreed in writing, the term "commodity option" shall be limited to an American-style or European-style option on a commodity. In the event that the Corporation withholds its consent to such commodity futures and commodity options it shall provide the Market with its reasons for so doing in writing and agrees, upon request, to consult with the Market to address the Corporation's stated concerns.

(iii) Other Underlying Futures for Futures Options. The Market may select additional commodity futures contracts to be the underlying futures for futures options to be traded on the Market and cleared by the Corporation pursuant to this Agreement, subject to the following conditions: (A) such commodity future shall be traded on the Market and cleared by the Corporation; (B) 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. As used in this Agreement, unless otherwise agreed in writing, the term "futures option" shall be limited to an American-style or European-style option on a futures contract.

(c) Procedures for Selection of Additional Underlying Interests. The Market may select additional categories of underlying interests for futures, futures options and commodity options to be cleared by the Corporation by completing and executing a Schedule C in the form attached hereto. A Schedule C shall be submitted when the Market proposes to trade any Commodity Contract on any type of underlying interest other than those referred to Section 3(b)(i) above. The Schedules C created pursuant to this Section 3(c) shall be numbered in a single sequence as Schedule C-1, Schedule C-2, etc. For purposes of this Section 3, a "category" of underlying interest refers to a general category such as broad-based stock indexes, foreign currencies, metals, etc. An underlying interest for a Commodity Contract that is physically settled shall be deemed to be in a different category than the underlying interest for any Commodity Contract that is not physically settled. The Corporation shall have discretion to determine when a Schedule C is needed. In addition, whenever the Market wishes to introduce a new "class" of Commodity Contracts ("class" is defined in the By-Laws of the Corporation to mean all futures on the same underlying interest and, in the case of options, all options of the same type and style and having the same underlying interest), the following procedures shall be followed:

(i) The Market shall notify the Corporation by submitting a certificate as described below (a "Certificate"): in the case of a class of any Commodity Contracts, as far in advance of the proposed trading day on which the Market proposes to commence trading as may be specified in the procedures of the Corporation from time to time. (A "trading day" means a day on which the Corporation is open for business for the purpose of conducting money settlement, not including the expiration date of any option contract that expires on a Saturday.)

(ii) The Certificate shall set forth: (A) the type of contract (future, futures option, commodity option or other); (B) the complete name of the underlying interest; (C) if an option, whether it is American or European style; (D) the expiration or maturity cycle of the class and, if a futures option, the applicable rules which determine the delivery of the underlying futures contract upon exercise of the option; (E) the series marker, if any; (F) the manner in which the opening and closing settlement price is to be determined; and (G) the date on which the Market proposes to commence listing and trading contracts in the class.

(iii) If the underlying interest for a futures contract is a securities index, the Certificate shall (A) identify the index; and (B) 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. If the index is not an underlying index for other contracts that are cleared by the Corporation, the Certificate shall also: (A) identify the securities composing the index by complete name, trading symbol and CUSIP number (if applicable); (B) identify the reporting authority for the index; (C) set out in detail the method and frequency of calculation of the index; and (D) in the case of a futures option on a securities index future, identify the proposed maturity date of the initial series.

(iv) If the underlying interest for a futures contract or a commodity option is an index other than a securities 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) In the case of an underlying interest that is neither an index nor a security, the Certificate shall contain the information required for an underlying index to the extent applicable to the underlying interest and such other information as the Market deems relevant or that may be required by the Corporation.

(vi) In the case of futures options, the Certificate shall also state that the Market certifies that the specified underlying interest meets the requirements of 3(a)(iii) of this Agreement and the Market has approved the listing and trading of futures options to be cleared by the Corporation on such underlying interest.

(vii) Subject to Section 3(f) below, the Market may begin listing and trading Cleared Contracts in accordance with the following schedule:

(A) for a class of index futures, on the tenth trading day after the relevant Certificate has been properly submitted to, and accepted by, the Corporation; and

(B) for a class of other futures and a class of other futures options or commodity options, on a date mutually agreed by the parties (agreement not to be unreasonably withheld or delayed) to be the first trading day after the Corporation has authorized the clearance and settlement of such futures, futures options, or commodity options and so notified the Market.

(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:

(i) For a maturity or expiration date in the cycle set forth in the Certificate, by providing notice to the Corporation by e-mail to [nog@theocc.com](mailto:nog@theocc.com) or such other electronic means as may be mutually agreed upon by the Corporation and the Market, or if e-mail (or such other electronic means, if applicable) is unavailable for any reason, by facsimile, specifying the underlying interest, the maturity or expiration date, the series marker (if any), and the exercise price in the case of a series of futures options or commodity options. Such notice shall be provided in accordance with the procedures of the Corporation as specified by the Corporation from time to time.

(ii) For a maturity or expiration date not in the cycle set forth in the Certificate, by providing advance notice to the Corporation by e-mail or such other electronic means as may be mutually agreed upon by the Corporation and the market, or if e-mail (or such other electronic means, if applicable) is unavailable for any reason, by facsimile, as far in advance of the proposed trading day on which the Market proposes to commence trading as may be specified in the procedures of the Corporation from time to time, specifying the underlying interest, the maturity or expiration date, the series marker (if any), the mode of settlement in the case of a series of commodity futures that are not cash-settled, and the exercise price in the case of a series of futures options or commodity options. Such notice shall be provided in accordance with the Corporation's procedures, as specified from time to time.

(e) Illegality and Risk of Liability. Notwithstanding any other provisions of this Agreement, the Corporation shall have no obligation to clear any Commodity Contract proposed to be traded by the Market unless counsel to the Corporation is satisfied that the clearance and settlement by the Corporation of such Commodity Contracts would not be (A) unlawful or (B) likely to subject the Corporation to liability based upon claims that clearing and settling of such Commodity Contracts on such interest infringes the intellectual property rights of third parties or otherwise.

(f) 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 such contracts cleared by the Corporation on such underlying interest or, in the alternative, to restrict transactions in such 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. As part of any such notice, the Corporation shall identify the reason(s) for the determination giving rise to the notice. 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(f), 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.

(g) Monitoring of Underlying Security Indexes. The Market shall monitor the status of each underlying security index that it has selected 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 applicable definition. If the index ceases to meet the applicable definition, 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(f) above shall apply.

(h) Breach by Market of Section 3. If the Market, by reason of its actions or its failure to act, shall have breached in any material respect the provisions of this Section 3, 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 in all material respects. 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 matched 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; Physical Delivery.**

(a) **Matched Trade Reports.** The Market agrees that on each business day it will compile a matched trade report of all transactions in Cleared Contracts and all "exchange-for-physical" transactions effected by its members on that business day, and will furnish such report to the Corporation by such time or times, or on a real-time basis upon the implementation of a real-time reporting facility between the Market and the Corporation, 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. The time by which the Market must furnish such reports shall be as mutually agreed upon between the Market and the Corporation.

(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 resulting from 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 16 hereof shall apply to such indemnity (including without limitation as regards rights and duties as set out at Section 16(f) even if settlement occurs prior to an action's being commenced) as if such indemnity were provided under Section 16(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 traded on one or more organized markets, if the Corporation determines that the primary market(s) (as determined by the Corporation) for the underlying interest did not open or remain open for trading at or before the time when the settlement price for such futures would ordinarily be



determined, or that the price or other value used as or to determine the final settlement price (a "required value") in respect of a series of futures is otherwise 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.

(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(c)(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.

(d) Physical Delivery. The Market agrees that on each business day following a business day on which Notices of Intent (as defined in Section 6(c)) have been submitted by one or more Clearing Members in respect of Cleared Contracts that are futures physically settled through the Market's Liffe Guardian system, it will furnish a report to the Corporation, in such form as may be mutually agreed upon by the Corporation and the Market, sufficient for the Corporation to determine the Clearing Member short and long positions in such futures that should be converted to delivery positions and the amount of each cash payment due to or from each Clearing Member to be effected by the Corporation in payment for the related deliveries. The Market shall separately provide a notice to the Corporation by e-mail to tops@theocc.com or such other electronic means as may be mutually agreed upon by the Corporation and the Market identifying the Clearing Members that are obligated to make or receive such deliveries and the payment obligations of each such Clearing Member in respect of such deliveries.

#### Section 6. Clearance of Transactions in Cleared Contracts.

(a) Provision of Clearing Services. The Corporation will provide at its own expense, 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 matched 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 matched 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 matched 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 16 hereof shall apply to such indemnity (including without limitation as regards rights and duties as set out at Section 16(e) even if settlement occurs prior to an action's being commenced) as if such indemnity were provided under Section 16(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.

(c) **Market's Duties as the Corporation's Agent for Deliveries.**

(i) The Market agrees to maintain as agent on behalf of the Corporation in accordance with this Section 6(c) any physical vault receipt or any electronic warehouse depository receipt ("WDR") with respect to which a selling Clearing Member (the "Seller") has delivered to the Market a notice of intent (a "Notice of Intent") to deliver either the electronic vault receipt corresponding to such physical vault receipt or such WDR to the Corporation in order for the Corporation to deliver such electronic vault receipt or WDR to the purchasing Clearing Member (the "Buyer") in settlement of a Cleared Contract that is a gold or silver future (each such vault receipt or WDR, a "Pledged Vault Receipt" or "Pledged WDR," as the case may be). The Market shall maintain each Pledged Vault Receipt or Pledged WDR as agent on behalf of the Corporation, and shall maintain the electronic entry corresponding to such Pledged Vault Receipt or Pledged WDR in the name of the applicable Seller until 10:00 a.m., Chicago time, on the date of settlement of such Pledged Vault Receipt or Pledged WDR (the "Cut-Off Time"); provided that after the Market's receipt of the Notice of Intent and prior to the Cut-off Time, such electronic entry shall be in the name of the applicable Seller to evidence its ownership in such Pledged Vault Receipt or Pledged WDR but shall not confer possession of or control over such Pledged Vault Receipt or Pledged WDR to such Seller. Upon the Market's receipt of a notice by the Corporation of a default by the Seller or Buyer with respect to such Seller's or Buyer's obligations to the Corporation in connection with a Cleared Contract (a "Default Notice") prior to the Cut-Off Time with respect to a Pledged Vault Receipt or Pledged WDR, the Market shall continue to maintain such Pledged Vault Receipt or Pledged WDR for the benefit of the Corporation until notified otherwise by the Corporation and, subject to applicable law, shall deliver such Pledged Vault Receipt or Pledged WDR to the Corporation or its agent promptly on the instructions of the Corporation either by making appropriate entries on its books and records or, in the case of a Pledged Vault Receipt, by physical delivery. As long as the Market is maintaining a Pledged Vault Receipt or Pledged WDR on behalf of the Corporation, the Market shall not comply with instructions with respect to such Pledged Vault Receipt or Pledged WDR from any person other than the Corporation. The Market further agrees to enter into such agreements with the Corporation and to take such other actions from time to time (including amendments to the provisions of this Agreement) as the Corporation and the Market determine are reasonable to assist the Corporation in perfecting its security interest in the Pledged Vault Receipts or Pledged WDRs under the Uniform Commercial Code. If no Default Notice is received by the Market prior to the Cut-Off Time with respect to any Pledged Vault Receipt or Pledged WDR, (x) the Market shall proceed in accordance with the then applicable Market Rules, and the Corporation shall proceed in accordance with the then applicable By-Laws and Rules of the Corporation, in processing the delivery and payment for such Pledged Vault Receipt or Pledged WDR and (y) the Corporation shall have no further security interest in, and the Market shall have no further obligations to the Corporation with respect to, such Pledged Vault Receipt or Pledged WDR upon the occurrence of settlement on the settlement date applicable to the related Cleared Contract (the "Settlement Date").

(ii) When any notice to the Corporation in respect of a Notice of Intent received from any Seller with respect to any Cleared Contract is submitted, or deemed under the By-Laws and Rules of the Corporation to have been submitted, by the Market to the Corporation on the last trading day for such Cleared Contract, the Market shall be deemed to represent and warrant to the Corporation on such date (the "Notice of Intent Date") and continuing through the date that the Corporation releases or is deemed to release its interest in the related Pledged Vault Receipt or Pledged WDR, that the Market holds Pledged Vault Receipts or Pledged WDRs, as the case may be, sufficient to satisfy the Seller's delivery obligation under the relevant Notice of Intent; provided, however, that no such representation or warranty shall be deemed to have been made with respect to a Notice of Intent that is deemed, pursuant to the By-Laws and Rules of the Corporation, to have been submitted to the Corporation on the last trading day for such Cleared Contract if the Market notifies the Corporation at or immediately after the close of trading in the Cleared Contract on such last trading day that the Seller has failed to make available to the Market a vault receipt or WDR sufficient to satisfy such Seller's delivery obligations under such Cleared Contract. In the case of any such failure, the remedies provided in the By-Laws and Rules of the Corporation shall apply.

(iii) Any representation and warranty deemed made by the Market pursuant to the preceding clause (ii) of this paragraph (c) shall be deemed to include a representation and warranty that the following statements are true with regard to each Pledged Vault Receipt and Pledged WDR related to such Cleared Contracts: the Chief Regulatory Officer of the Market (a "Responsible Officer") has no Knowledge during the period from the Notice of Intent Date to the Settlement Date of any liens or encumbrances on or defense to any Pledged Vault Receipt or Pledged WDR other than those of the Corporation and other than its own lien for the storage costs of warehousing the metals associated with such Pledged Vault Receipt(s) or Pledged WDRs ("Storage Costs") and any other vault receipts or WDRs owned by the relevant Buyer or Seller (the "Market Lien"). For purposes of this Section 6(c)(iii), "Knowledge" shall mean that a Responsible Officer shall have received written notice of a lien, encumbrance on or defense to the applicable Pledged Vault Receipt or Pledged WDR, shall have actual knowledge of the contents of such notice and shall have had a reasonable opportunity to take appropriate action with respect to such notice. The Market agrees that, with respect to the Seller, the Market Lien relating to the Pledged Vault Receipt(s) or Pledged WDR(s) is waived as of the Notice of Intent Date through and including the Settlement Date, whether or not settlement occurs on such date. The Market further represents and warrants to the Corporation that the Market's Rules shall constitute an agreement by each Seller submitting a Notice of Intent and each Buyer to which the obligation to receive delivery of a Pledged Vault Receipt or Pledged WDR has been assigned by the Market that the Market will maintain the relevant Pledged Vault Receipts or Pledged WDRs as agent on behalf of the Corporation in case of a default by the Seller or Buyer prior to settlement. For the avoidance of doubt, in no event shall the Market maintain any Pledged Vault Receipt or Pledged WDR for or on behalf of the Buyer or subject to the Buyer's control prior to the Market's making of an electronic entry on its books and records showing such Pledged Vault Receipt or Pledged WDR as owned by the Buyer, which entry the Market shall not make, and shall not be obligated under its Rules to make, until the Cut-off Time and only so long as no Default Notice has been delivered with respect to such Pledged Vault Receipt or Pledged WDR prior to the Cut-off Time. The Corporation represents and warrants to the Market on each Notice of Intent Date and Settlement Date that a security interest has been granted by both Buyer and

Seller to the Corporation under the Corporation's By-Laws and Rules in any Pledged Vault Receipt or Pledged WDR and that the Market's maintaining any Pledged Vault Receipt or Pledged WDR on behalf of the Corporation is authorized under the Corporation's By-Laws and Rules. The Corporation further represents and warrants to the Market that the Corporation's security interest in any Pledged Vault Receipt is released immediately upon the occurrence of settlement on the Settlement Date, provided that the Market has not received a Notice of Default from the Corporation prior to the Cut-Off Time.

(iv) In the case of a Pledged Vault Receipt, the representation and warranty deemed made by the Market pursuant to clause (ii) of this Section 6(c) shall be deemed to include the following statements: each such Pledged Vault Receipt (I) has been issued by a person engaged in the business of storing metals, (II) by its terms provides that the metals covered by it are to be delivered to bearer, (III) provides the address of the warehouse or other place where the metals are stored, the date of issue of the receipt, a description of the metals or of the packages containing them, the original signature of the storer or the storer's authorized agent, and (IV) is in physical form and not in electronic form (although entitlement thereto is recorded by the market electronically) and is being held by the Market as agent on behalf of the Corporation pending the Settlement Date. In the case of a Pledged WDR, the representation and warranty deemed made by the Market pursuant to clause (ii) of this Section 6(c) shall be deemed to include the representation and warranty that the Pledged WDR represents a proportional interest in a vault receipt or pool of vault receipts held by the Market ("Underlying Vault Receipts"), that such proportional interest is sufficient to cover the quantity of metal represented by the WDR, and that the statements made pursuant to the preceding sentence with respect to a Pledged Vault Receipt are true with respect to each such Underlying Vault Receipt.

#### Section 7. Acceptance of Transactions in Cleared Contracts.

The Corporation agrees to accept, in accordance with and subject to its By-Laws and Rules, all matched 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 matched trade to, and acceptance of such matched 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 matched trade. For purposes of the preceding sentence, a Clearing Member to which a trade is given up in accordance with the Corporation's 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.

#### Section 8. Non-Discrimination and Consultation.

(a) Certain Agreements. 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 amend its By-Laws or Rules in any manner so as to limit its obligations hereunder to clear and settle transactions in Cleared Contracts effected on the Market, and further agrees that it will not 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. If the

Corporation makes a change to its standard form futures agreement for clearing and settlement services (the prototype of this Agreement), the Corporation shall offer to amend this Agreement to conform it to the revised standard form.

(b) **Product Design Features.** The Corporation agrees that it will consult with the Market and use reasonable efforts to incorporate in its By-Laws, Rules and procedures product design features specified by the Market for Cleared Contracts traded or proposed to be traded on the Market and cleared by the Corporation.

(c) **Proposed Rule Changes.** Each party shall furnish copies to the other party of all proposed rule changes that would have any material impact on the other party, its Clearing Members or members, or the Cleared Contracts traded on the Market and cleared by the Corporation. Such copies shall be furnished to the other party no later than the time that they are filed with the SEC or the CFTC; and if no such filing is made, then no later than the time that the change is made available to members of the party or is otherwise made public or placed into effect. The party proposing changes to its rules shall use reasonable efforts to consult with the other party before filing the change or placing it into effect if the party proposing the change believes that the change is one with respect to which the other party would want to have advance notice and opportunity to comment. This Section 8(c) does not require disclosure to the other party of any information contained in a rule filing for which the filing party has sought confidential treatment from the agency with which it is filed or which is otherwise non-public information.

(d) **Personnel, Assistance, and Other Resources.** Each party shall provide the personnel, assistance, and other resources necessary to receive or provide, as applicable, services under this Clearing Agreement, including without limitation: (i) senior management and oversight; (ii) competent technical and support staff; (iii) outside experts or consultants, as needed; (iv) creation, maintenance and enforcement of all necessary By-Laws and Rules of the Corporation (in the case of the Corporation) and Market Rules (in the case of the Market); (v) new product development cooperation; and (vi) timely review, testing (where necessary) and approvals for system and technical requirements. The type and extent of review and testing that the Corporation is required to perform or participate in performing shall be determined by the Corporation exercising reasonable discretion being mindful of good industry practice.

(e) **Corporation Technology.** The parties shall bear their own costs and expenses in respect of the development, upkeep, licensing and the running of their respective technology as used to provide or receive the clearing services hereunder. Each party agrees to provide reasonable advance notice to the other with regard to changes to its technology which may give rise to a need for the other party to effect a change in its technology for purposes of providing or receiving the clearing services hereunder (as the case may be).

#### **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 as specifically provided in the By-Laws and Rules of the Corporation. 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 or regulators.

#### **Section 10. Margin Requirements of Corporation**

The Corporation shall establish in its By-Laws and Rules, and shall have the 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 the event that the Market at any time believes that margin levels established for Cleared Contracts by the Corporation are inappropriate, the Market may so inform the Corporation, and representatives of the Corporation will promptly make themselves available to discuss the matter with representatives of the Market, and the Corporation shall give due consideration to any facts or analysis presented by the Market. Unless required by law, the Corporation shall not without the prior written approval of the Market: (i) make Cleared Contracts listed for trading by the Market fungible with Cleared Contracts listed for trading by any other market, exchange, electronic trading platform or other entity; or (ii) enter into or otherwise give effect to any form of cross-margining or risk offset involving a contract listed by the Market. At the request of the Market, the Corporation shall cooperate with the clearing operations of the Market's affiliates in Europe to implement cross-margining, subject to legal and technical feasibility and necessary regulatory approvals.

#### **Section 11. Financial Requirements for Clearing Members.**

The Corporation shall establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply. The Corporation shall conduct regular and continuous monitoring of the positions, transactions, capital and margin of Clearing Members, based upon the information reported to it in accordance with the By-Laws and Rules of the Corporation and other information made available to the Corporation.

#### **Section 12. Rights and Obligations of Purchasers and Sellers.**

(a) The Market Rules shall specifically provide that the rights and obligations of purchasers and sellers of Cleared Contracts, including but not limited to rights and obligations in respect of clearing and settlement, variation payments and performance at maturity, and in the case of futures options and commodity options, upon exercise thereof, shall be as set forth in the By-Laws and Rules of the Corporation.

(b) The Market Rules shall specifically provide that any member of the Market whose membership is revoked or terminated will remain bound by the Market Rules, the Corporation's By-Laws and Rules and applicable law, in each case to the extent applicable, and subject to the jurisdiction of the Market with respect to any and all matters arising from, related to, or in connection with the status, actions or omissions of such member prior to such revocation or termination.

### **Section 13. Fees for Clearing Services.**

(a) 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. Such fee structures shall provide, *inter alia*, that fees for services charged to members of the Market shall not be greater than the fees charged by the Corporation in respect of substantially similar products offered by the Options Exchanges or other futures markets as set forth in the Corporation's published Schedule of Fees. Notwithstanding the foregoing, the Corporation may offer alternative fee structures or fees to such exchanges or markets so long as it offers the same alternatives to the Market on substantially the same terms and so long as the alternative fee structure provides for the equitable allocation of reasonable dues, fees, and other charges among its Clearing Members including Clearing Members that are members of the Market. Actual clearing fees paid (net of any rebates) may therefore differ among exchanges or markets that select different fee structures.

(b) The Market reserves the right to charge additional exchange fees that may include clearing and post trade and ancillary services thereto even where the Corporation does not charge such a fee. If applicable, the Market agrees to calculate and send to the Corporation a file of exchange fee amounts by Clearing Members, and the Corporation agrees to bill and collect, on behalf of the Market, a single consolidated exchange fee for each member of the Market.

(c) For so long as the Market qualifies as an "affiliated futures market" under the Corporation's By-Laws, the Corporation shall provide clearing services to the Market at no cost to the Market and shall not levy against the market any charges for technology provided by 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. Without limiting the generality of the foregoing, the Corporation agrees that, if it proposes to clear any Commodity Contract for any Options Exchange or other futures market, it will offer to clear such Commodity Contract for the Market on terms that are no less favorable in any material respect.

### **Section 15. Information Sharing.**

The Corporation agrees that it will furnish to the Market all information within its possession relating to Clearing Members that are members of the Market or that clear trades made on the Market (whether or not members), and information regarding Cleared Contracts traded on the Market, to the extent reasonably necessary for the Market to perform its regulatory responsibilities under the CEA and CFTC regulations or to the extent that the Corporation believes that such information could have a material impact on the Market, including without limitation reporting requirements pursuant to CFTC Regulations 16.00 and 16.01 (as may be amended from time to time). In addition, each of the Corporation and the Market agrees to provide the other with information as specified in Schedule B attached hereto and incorporated herein.

**Section 16. 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. In the event that a Default Notice is delivered by the Corporation and the Corporation takes delivery of a Pledged Vault Receipt or Pledged WDR pursuant to Section 6(c), the Corporation agrees promptly to indemnify and hold harmless each Market Indemnified Party for any Storage Costs that are due during or attributable to the period from the time that the Corporation takes delivery of or gives instructions with respect to the transfer of such Pledged Vault Receipt or Pledged WDR until the date of disposition of such Pledged Vault Receipt or Pledged WDR to a third-party buyer. 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) to the extent arising out of or based on (A) any violation or alleged violation by the Market of any of the terms of this Agreement; (B) any violation or alleged violation by the Market of any law or governmental regulation; (C) the Market's assignment of delivery obligations in respect of futures contracts; (D) the Market's processing of physical deliveries in respect of Cleared Contracts, including without limitation performing the vault receipt administration function and operating the supporting technology for transfer of receipts between Clearing Members; or (E) the Market's creation and transmission to the Corporation of data setting forth the financial obligations of each Clearing Member upon settlement of any Cleared Contract. 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 (A) any violation or alleged violation by the Market of any of the terms of this Agreement; (B) any violation or alleged violation by the Market of any law or governmental regulation; (C) the Market's assignment of delivery obligations in respect of futures contracts; (D) the Market's processing of physical deliveries in respect of Cleared Contracts, including without limitation performing the vault receipt administration function and operating the supporting technology for transfer of receipts between Clearing Members; or (E) the Market's creation and transmission to the Corporation of data setting forth the financial obligations of each Clearing Member upon settlement of any Cleared Contract. 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 Section 6(c). Without limiting the generality of subsections (a) and (b) above, the Market specifically agrees to indemnify and hold harmless the Corporation from and against any or all losses suffered by the Corporation as a result of the Market's failure to comply with its obligations to the Corporation set forth in Section 6(c); provided that the Market shall not be obligated to so indemnify the Corporation in respect of losses caused by the Corporation's own negligence or misconduct or resulting from the representation and warranty made by the Market in Section 6(c)(iii) (regardless of its truth or accuracy). Further, the Market shall have no liability whatsoever to the Corporation in respect of any losses or damages of any kind incurred or asserted by the Corporation relating to such representation and warranty (regardless of its truth or accuracy).

(d) Indemnification in Respect of Intellectual Property. Without limiting the generality of subsections (a), (b) and (c) above: (i) the Corporation specifically agrees to indemnify and hold harmless each Market Indemnified Party, and the Market specifically agrees to indemnify and hold harmless each Corporation Indemnified Party, from and against any and all Losses (whether or not in the case of the Corporation such Losses are reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) 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, provided that for purposes of this provision the Corporation shall not be deemed to have used any such intellectual property developed or used by the Market solely by virtue of clearing trades executed on the Market; 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, to the extent arising out of or based on (A) any allegation that the Market does not have the right for any reason to list and

trade any contract traded or proposed to be traded on the Market, or (B) any allegation that the listing and trading of a contract by the Market, the issuance by the Corporation of the 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.

(e) Limitation on Rights Conferred. The provisions of this Section 16 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.

(f) Rights and Duties When Action Commenced. Promptly after receipt by an indemnified party under Section 16(a)(ii), 16(b)(ii), 16(c) or 16(d) 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 16, 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 17. 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(f), 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  
One North Wacker Drive, Suite 600  
Chicago, IL 60606

Attn: General Counsel

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

(ii) If to the Market:

NYSE Liffe, LLC  
20 Broad Street, 10<sup>th</sup> Floor  
New York, NY 10005

Attn: Chief Regulatory Officer

Facsimile Number: 212-656-2025  
Telephone Number: 212-482-3000

**Section 18. 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 19. 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, (C) either party becomes insolvent, or (D) any of the representations of the Market in clause (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. Either party may terminate this Agreement for any reason on twelve months notice; provided, however, in the event of termination pursuant to the preceding sentence, 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, and the Corporation shall to the best of its ability continue to provide clearing services with regard to such transactions.

(c) **Transition of Clearing Services.** If this Agreement is terminated and the Market makes alternative clearing arrangements for transactions in Cleared Contracts executed on the Market thereafter, the Corporation shall provide relevant data regarding positions in Cleared Contracts (in a format reasonably acceptable to the Corporation) and enter into an assignment and assumption agreement as reasonably necessary in form and substance to transfer open positions in Cleared Contracts wherein (i) the Corporation assigns to the Market's successor clearing organization (the "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, (ii) the Successor assumes all of the Corporation's obligations in respect of such open positions, and (iii) the Successor and/or the Market 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. The Market shall reimburse the Corporation's reasonably incurred expenses in connection with the services provided by the Corporation pursuant to this Section 19(c) on an "at cost" basis. The Corporation shall upon request provide reasonable assistance to the Market in connection with any transition of clearing services in respect of Cleared Contracts, and the Market shall reimburse the Corporation's reasonable costs in respect of providing such assistance. Furthermore, the parties shall cooperate to agree to a service transition plan, which shall provide for, among other things, the Corporation's providing the Market with all data and other information maintained by the

Corporation in relation to the clearing services which is reasonably necessary to transition said services. For the avoidance of doubt, "at cost" means on a time and materials basis.

**Section 20. Survival of Obligations.**

Notwithstanding the termination of this Agreement, (a) the Corporation shall continue to be obligated with respect to any matched 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 Sections 16(b) and 16(c) hereof, and the obligation of the Corporation to indemnify the Market pursuant to Sections 16(a) and 16(c) hereof shall survive such termination.

**Section 21. 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 22. Notice of Regulatory Action.**

The Corporation shall notify the Market of any action taken by a regulatory body or agency that, in the judgment of the Corporation, has or will have a material adverse effect on the Corporation's performance of its obligations under this Agreement.

**Section 23. System Redundancy, Disaster Recovery.**

The Corporation maintains, and will continue to maintain, appropriate facilities for system redundancy, business continuity and disaster recovery, subject to the general oversight of the SEC, and any other applicable regulatory requirements. Upon request, the Corporation shall provide the Market with an overview of its system redundancy, business continuity and disaster recovery plans as may be reasonably necessary for the Market to conduct its own planning in

such regards and the parties shall cooperate generally with regard to contingency planning in this regard.

**Section 24. Quality Standards.**

All services provided by the Corporation to the Market shall be performed substantially in accordance with the By-Laws and Rules of the Corporation and applicable legal and regulatory requirements, and with the same level of care and quality that the Corporation provides to the Options Exchanges and futures markets that clear transactions through the Corporation. The Corporation and the Market have developed agreed upon operational service guidelines and escalation procedures to address any concerns regarding the exchange of data necessary to the receipt or provision of the clearing services hereunder. The Corporation shall use commercially reasonable efforts to maintain its counterparty credit rating of "AAA" by Standard & Poor's or a comparable rating by another nationally recognized statistical rating organization.

**Section 25. 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 25 is not intended to limit the indemnification provisions of Section 16 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 26. Effectiveness of Agreement.**

On the Effective Date, and as conditions to the effectiveness of this Agreement, the CFTC and 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 the later of March 27, 2009 or the date when all conditions exist such that the

representations to be made under Sections 1 and 2 would be true. If the Effective Date has not occurred on or before September 30, 2009, either party may terminate this Agreement, and each party shall bear its own costs in respect of such termination. If the Corporation's provision of clearing services under this Agreement is unavailable on March 27, 2009 or is otherwise deficient on such date to an extent that it prevents the Market from operating in an orderly fashion (and such non-performance by the Corporation does not result from the non-performance by the Market of its obligations hereunder), such unavailability or deficiency shall be a breach of the Agreement by the Corporation which entitles the Market to terminate the Agreement pursuant to Section 19.

#### **Section 27. Ownership of Trade Data.**

The Corporation acknowledges and agrees that it shall not assert any ownership interest in data regarding transactions in Commodity Contracts furnished to it by the Market (the "Trade Data") and that it will assign to the Market any and all right and title and interest that the Corporation may possess or come to possess in such Trade Data. For the avoidance of doubt, the term "Trade Data" does not include data regarding positions in Cleared Contracts. The Market hereby grants to the Corporation, to the extent of its ownership interest, a non-exclusive license to the Trade Data for the purposes of providing the services and performing its obligations hereunder and otherwise as set out in this Section 27. Such license shall permit the Corporation to make use of the non-proprietary portions of the Trade Data for purposes of distributing such data and information to, as the case may be, the general public, appropriate regulatory authorities, Clearing Members, market participants, investors, Clearing Member service bureaus, and data subscribers ("Recipients") on such terms as the Corporation from time to time deems appropriate as necessary to fulfill its responsibilities as a clearing organization. The Corporation shall also be authorized to provide the non-proprietary portions of Trade Data to Recipients to meet requests for services in addition to those described in the preceding sentence to the same extent it distributes equivalent trade data of other exchanges for which it clears as of the date of this Agreement. The Corporation shall provide advance notice to the Market of further commercial distribution of the non-proprietary portions of Trade Data, including a reasonable description of the proposed distribution, and shall give due regard to any stated concerns of the Market with respect thereto. If the Market objects to such further distribution as proposed by the Corporation and further agrees to pay the Corporation's actual additional costs for developing, testing and implementing the necessary system changes to preclude such distribution, the Corporation shall within a reasonable time frame following the Market's objection initiate a project to complete such system changes, provided that the Corporation shall continue to have a license to commercially distribute the non-proprietary portions of such Trade Data to Recipients in accordance with this Section 27 until the system changes are installed (whereupon such license to distribute shall cease with regard to the data which is the subject of the objection). In determining the reasonableness of the time frame required to install such system changes, the Corporation shall be permitted to take into account its existing development efforts and new product requirements of all exchanges for which it provides clearing services. If requested by the Market, the Corporation shall provide, in reasonable detail, evidence showing its actual costs for implementing the above-described system changes. For purposes of the preceding sentences and the following sentence, examples of "non-proprietary portions" of Trade Data include, but are not limited to, generic information regarding contract months and strikes listed for trading,

contract settlement prices, and generic volume in individual contract months and strikes; and examples of "proprietary portions" of Trade Data include, but are not limited to, information about a particular transaction such as the buying and selling Clearing Members and the trade price of the transaction and volumes associated with particular Clearing Members. To the extent it holds Trade Data, the Corporation will take those measures to protect the proprietary portion of such Trade Data that it takes to protect the proprietary portion of trade data of other exchanges for which it clears, but not less than reasonable measures: (i) to preserve the security of the Trade Data; (ii) to prevent unauthorized access to or modification of any Trade Data; and (iii) to establish and maintain environmental, safety, facility and data security procedures against destruction, loss, alteration or theft of, or unauthorized access to, any Trade Data.

**Section 28. Exclusivity.**

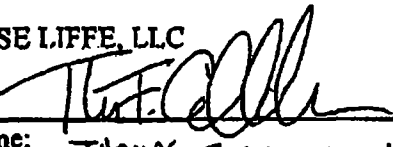
The Corporation shall be the sole provider of the clearing services to the Market with regard to its gold and silver futures contracts and options on such futures contracts which are executed pursuant to the Market's registration as a designated contract market save to the extent that the Corporation has declined or is otherwise unable to provide clearing services therefor; provided, however, that the Market may direct to other clearing organizations those transactions that are effected between its Members or Members' customers in over-the-counter transactions and submitted to the Market for routing to a clearing organization. Furthermore, such sole appointment of the Corporation shall cease upon the termination of this Agreement even if the Corporation continues to provide services which are comparable to the clearing services hereunder. The Market may list and trade additional Commodity Contracts, subject to the requirements of Section 3, without being subject to the condition that the Corporation be the sole provider of clearing services with respect to such additional Commodity Contracts.

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

THE OPTIONS CLEARING CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

NYSE LIFFE, LLC

By:   
Name: THOMAS F. CALLAHAN  
Title: CEO NYSE LIFFE US.



contract settlement prices, and generic volume in individual contract months and strikes; and examples of "proprietary portions" of Trade Data include, but are not limited to, information about a particular transaction such as the buying and selling Clearing Members and the trade price of the transaction and volumes associated with particular Clearing Members. To the extent it holds Trade Data, the Corporation will take those measures to protect the proprietary portion of such Trade Data that it takes to protect the proprietary portion of trade data of other exchanges for which it clears, but not less than reasonable measures: (i) to preserve the security of the Trade Data; (ii) to prevent unauthorized access to or modification of any Trade Data; and (iii) to establish and maintain environmental, safety, facility and data security procedures against destruction, loss, alteration or theft of, or unauthorized access to, any Trade Data.

**Section 28. Exclusivity.**

The Corporation shall be the sole provider of the clearing services to the Market with regard to its gold and silver futures contracts and options on such futures contracts which are executed pursuant to the Market's registration as a designated contract market save to the extent that the Corporation has declined or is otherwise unable to provide clearing services therefor; provided, however, that the Market may direct to other clearing organizations those transactions that are effected between its Members or Members' customers in over-the-counter transactions and submitted to the Market for routing to a clearing organization. Furthermore, such sole appointment of the Corporation shall cease upon the termination of this Agreement even if the Corporation continues to provide services which are comparable to the clearing services hereunder. The Market may list and trade additional Commodity Contracts, subject to the requirements of Section 3, without being subject to the condition that the Corporation be the sole provider of clearing services with respect to such additional Commodity Contracts.

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

THE OPTIONS CLEARING CORPORATION

By: William H. Davis  
Name: WILLIAM H. DAVIS  
Title: EXECUTIVE V.P.

NYSE LIFFE, LLC

By: \_\_\_\_\_  
Name:  
Title:

**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 matched trade submissions from the Market in accordance with the By-Laws, Rules, and procedures of the Corporation as in effect from time to time.
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. **Exercise and Assignment.** The Corporation shall assign exercises in respect of options in accordance with the By-Laws, Rules and Procedures of the Corporation as in effect from time to time.
4. **Position Maintenance and Settlement.** On a daily basis the Corporation shall calculate and collect original margin, premium and variation margin on Cleared Contract trades and positions, in the accounts of Clearing Members. The Corporation may make intraday margin calls when necessary.
5. **Physical Delivery.** The Corporation shall provide an interface for the Liffe Guardian system, through which all physical deliveries of underlying interests for Cleared Contracts, as applicable, shall be effected, to accommodate the processing of payments of settlement amounts upon physical delivery of the underlying commodity. The Market will perform the vault receipt administration function, process and assign Notices of Intent, and operate the supporting technology for the transfer of receipts between members.
6. **Directed Fungibility.** The Corporation shall provide facilities for submissions of requests for offsets by Clearing Members.
7. **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 the following information:
  - a. transactions in Cleared Contracts accepted by the Corporation for each account of the Clearing Member;
  - b. give-up processing, position transfers, and other transactions that are effected in accordance with the Corporation's allocation procedures;
  - c. EFP transactions in futures contracts, which will be identified as such by the Corporation using an available "data field" when such transactions are identified as such to the Corporation by the Market;

d. block trades, which will be identified as such by the Corporation using an available "data field" when such transactions are identified as such to the Corporation by the Market;

e. the daily mark-to-market of each open futures position;

f. amounts of money due to and from the Corporation from and to the Clearing Member; and

g. options that the Clearing Member has exercised or been assigned the exercise, with the settlement date and, if applicable, amount receivable or payable by the Clearing Member in respect of each.

8. Pay/Collect. The Corporation will determine every Clearing Member's financial obligations to the Corporation each business day (except with regard to payment obligations in respect of deliveries of the interests underlying Cleared Contracts that are futures physically settled through the Market's Liffe Guardian system, which shall be determined by the Market and furnished to the Corporation), and require or make such payments as are necessary to discharge any balance owing in accordance with the Corporation's By-Laws and Rules.

9. Fee Collection. The Corporation will provide a fee collection service under the same procedures used to collect fees for other exchanges.

10. Allocation Transactions. The Corporation will make the ENCORE clearing system available to Clearing Members that are members of the Market for processing of allocation transactions.

11. Connection of Clearing Members. The Corporation acknowledges that it is a priority to connect the Market's members to the Corporation in order for it to provide the clearing services on the Effective Date. The Corporation agrees to allocate adequate resources to this task in order to meet this priority. After the Effective Date, the Corporation will follow its normal procedures to support the connectivity of the Market's members to the Corporation.

**SCHEDULE B  
INFORMATION SHARING**

**I. Information Provided by the Corporation to the Market**

**A. Information provided each trading day**

The following information in respect of Cleared Contracts will be provided by the Corporation to the Market each trading day for regulatory and financial surveillance purposes and for purposes of reporting under CFTC Regulations 16.00 and 16.01 (as may be amended from time to time):

1. **Cleared Contracts Compliance Data Service, which includes:**
  - **Matched Trades** – reflects cleared matched trades including transfers and adjustments
  - **Allocation Activity** – identifies physically-settled futures.
  - **Open Positions** – reflects all open positions
2. **Open Interest**—contains all open interest information by position by Cleared Contract
3. **Price Data Service**—settlement price data
4. **Contract Master**—product information
5. **Give-ups**—contains all information regarding executing and carrying firms
6. **Exchange-for-physicals, block trades, and other non-competitive trades**—contains all information relating to such transactions.

**B. Information provided as agreed upon by the Corporation and the Market:**

1. **Notice of any material change in the financial condition of a Clearing Member that is a member of the Market if the Corporation becomes aware of such change and believes such change may have a material adverse effect on the ability of the Clearing Member to perform its obligations to the Corporation**
2. **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**
3. **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**

**C. Information provided upon request**

1. Results of margin stress-tests performed on Clearing Members who are members of the Market when requested by the Market on a Clearing Member-by-Clearing Member basis.
2. The Corporation shall respond to reasonable requests by the Market for information about the financial condition of Clearing Members that are members of the Market, including whether higher than normal margins have been applied to such Clearing Members.
3. The Corporation agrees that the Market shall have the right during normal business hours to examine the Corporation's books, accounts, data base, 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 data base; provided, that such examination does not unreasonably interfere with the Corporation's operations and, provided, further, that the Market shall have no such right with regard to transactions on any other futures market or Options Exchange or which is otherwise competitive information of another 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

### A. Information in Connection with Certain Physical Deliveries

The following information on each business day following a business day on which Notices of Intent have been submitted by one or more Clearing Members in respect of Cleared Contracts that are futures physically settled through the Market's Liffe Guardian system:

The report and notice described in Section 5(d) hereof.

### B. Information Regarding Clearing Members

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 CFTC, it shall determine that (A) a Clearing Member is not in compliance with such standards, or (B) a Clearing Member 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 is such that special restrictions should be imposed on such Clearing Member, or (D) the financial condition of a Clearing Member should be reported to 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. Without limiting the generality of the foregoing, the Market agrees that whenever the Market suspends, revokes, limits, conditions, restricts or qualifies a Clearing Member's access to the NYSE Liffe Trading Platform, the Market shall notify the Corporation thereof by telephone immediately following the making of such decision. 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, 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 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 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 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 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 17 of this Agreement, any notice, written materials or telephone communication required to be furnished to the Corporation by this Section II.B. shall be delivered or made to any one of the Chairman, the Management Vice 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.

### III. Information to be provided by either party to the other

If at any time either the Market or the Corporation becomes aware of the development of an excessive position or any other undesirable situation or practice that it believes is likely to have a material adverse impact upon trading in Commodity Contracts, it shall immediately notify the other party of such circumstances.

**SCHEDULE C-[ ]**

**INTRODUCTION OF UNDERLYING INTEREST: [identify underlying interest]**

**[Date]**

1. This is one of the Schedules C referred to in Section 3(b)(ii) and (iii) of the Agreement for Clearing and Settlement Services dated March 4, 2009 (the "Agreement") between NYSE Liffe, LLC (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. [Insert paragraph in form of Section 3(b)(ii) and (iii) of the Agreement, as relevant.]

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

**NYSE LIFFE, LLC**

**THE OPTIONS CLEARING CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**THE OPTIONS CLEARING  
CORPORATION**

March 9, 2009

NYSE Liffe, LLC  
20 Broad Street, 10th Floor  
New York, NY 10005

Re: Agreement for Clearing and Settlement of Services

Gentlemen:

This letter agreement ("Agreement") will confirm the understanding between The Options Clearing Corporation (the "Corporation") and NYSE Liffe, LLC (the "Market") with regard to certain matters under the Agreement for Clearance and Settlement Services between the Corporation and the Market dated as of March 9, 2009 (the "Clearing Agreement"). All terms not defined in this Agreement shall have the meanings ascribed to them in the Clearing Agreement.

1. Inability to Perform Obligations. Without limiting the generality of Section 25(b) of the Clearing Agreement, the parties agree that, in connection with the transfer of the clearing function for the Market's gold and silver futures and options on such futures ("Metals Contracts") from Chicago Mercantile Exchange Clearing ("CME Clearing") to the Corporation (the "Transfer") each of the following would be considered a cause outside the control of either party, within the meaning of Section 25(b), and that such cause would fall within the scope of Section 25(b) if it renders either party unable to perform its Transfer obligations in a way which prevents completion of the Transfer on or before March 29, 2009: (i) a substantial market disruption or Clearing Member failure that is material to the Transfer, (ii) the material failure of CME Clearing to resolve all trades and positions adjustments in the Metals Contracts effected on March 27, 2009; or (iii) the material failure of CME Clearing to properly map the positions to be transferred to the Corporation to the accounts of Clearing Members authorized to effect transactions in Metals Contracts, or to transfer balanced positions.



2. Variation and Delivery Settlement for Monday, March 30, 2009. The parties acknowledge and agree that variation, premium and delivery settlement scheduled for Monday, March 30, 2009 in respect of Metals Contracts shall be conducted by CME Clearing, and that the Corporation shall have no responsibility in respect of such settlements.

3. Final March Deliveries. The parties acknowledge and agree that notices of intent in respect of deliveries in settlement of Metals Contracts that are gold or silver futures submitted on Friday, March 27, 2009 (for a settlement date of March 31, 2009) are to be submitted by Clearing Members to CME Clearing, and transmitted by CME Clearing to the Market on March 27. The Market agrees to inform the Corporation of its receipt of such notices of intent from CME Clearing. The parties agree that any such notices of intent shall be deemed for purposes of the Clearing Agreement to have been delivered to the Market.

4. Effective Date/Assumption of Positions. Notwithstanding the definition of "Effective Date" in Section 26 of the Clearing Agreement, the date on which the Corporation assumes the open interest in the Metals Contracts (the "Assumption Date") shall be the date on which the transfer of the open interest in the Metals Contracts is completed, which shall be not later than March 29, 2009, unless the Transfer fails to be completed for a reason stated in Paragraph 1 above, in which case both the Assumption Date and the Effective Date shall be changed, provided that in such case the parties shall work together in good faith to establish a new Effective Date and a new Assumption Date as soon as practicable.

Very truly yours,

**THE OPTIONS CLEARING CORPORATION**

By: William H. Naman  
Name: WILLIAM H. NAMAN  
Title: EXECUTIVE V.P.

Agreed and Accepted as of the date first above written:

NYSE LIFFE, LLC

By: Thomas F. Cahillan  
Name: THOMAS F. CAHILLAN  
Title: CEO NYSE LIFFE US



# THE OPTIONS CLEARING CORPORATION

#25562

**TO: ALL OCC CLEARING MEMBERS**

**FROM: GERI LOVE – FIRST VICE PRESIDENT  
BUSINESS OPERATION GROUP, MEMBER SERVICES**

**DATE: MARCH 11, 2009**

**SUBJECT: TRANSFER OF THE CLEARING FUNCTION FOR PRECIOUS METALS  
CONTRACTS FROM CME TO OCC**

On March 30, 2009, OCC is scheduled to assume the clearing function for various precious metals contracts traded on NYSE Liffe, LLC (“NYSE Liffe”) from the Chicago Mercantile Exchange clearing house (“CME Clearing”). The precious metals contracts traded by NYSE Liffe for which the clearing function is to be assumed by OCC (the “Metals Contracts”) consist of gold and silver futures and mini-futures (“Metals Futures”) and options on gold and silver futures (“Options on Metals Futures”).

This information memo sets forth OCC’s policy in connection with the transfer of the clearing function for the Metals Contracts from CME Clearing to OCC (the “Transfer”).

## **SUMMARY**

- **Transfer of Positions.** Between the close of trading on Friday, March 27 and the opening of the Monday, March 30 trading day, all open positions in Metals Contracts are scheduled to be transferred from CME Clearing to OCC.
- **Settlement of Trades.** Trades in Metals Contracts through the March 27 trading day are to be settled through CME, and beginning with the March 30 trading day are to be settled through OCC. Accordingly, at its usual settlement time on March 30, CME will conduct variation settlement with respect to Metals Futures and premium settlement with respect to transactions in Metals Options effected on March 27.
- **Margin.** Margin deposited with CME for Metals Contracts will not be transferred to OCC. On Friday, March 27, OCC may require the deposit of additional margin by Clearing Members to whose accounts Metals Contracts are expected to be transferred. These Clearing Members may be required to simultaneously maintain margin at both CME and OCC through CME morning settlement on Monday, March 30, at which time CME is expected to return

margin held in respect of Metals Contracts. OCC will margin all transferred positions, adjusted for Friday's trades, through its usual procedures at its Monday morning settlement.

- ***Deliveries.*** Delivery intents entered prior to or on March 26 will be processed through the facilities of CME Clearing. For ease of transition, Clearing Members are encouraged to issue any delivery intents for expiring Metals Futures by this date. Delivery intents submitted on March 27 must be submitted through CME Clearing's facilities, but will be settled through OCC in accordance with new delivery procedures whereby vault receipts for underlying gold and silver will be transferred through facilities of NYSE Liffe while payment for the delivery is effected through OCC's daily cash settlement system. Beginning on March 30, all delivery intents must be submitted for settlement in accordance with these new procedures.

**Note that by Wednesday, March 25, all CME Clearing Members that are not Clearing Members of OCC must close out of positions in Metals Contracts or transfer the positions to a firm at the CME that will be an OCC Clearing Member on the transfer of the clearing function for the Metals Contracts. In addition, because of the role of NYSE Liffe in the delivery process (described above), any OCC Clearing Member that intends to hold positions in Metals Contracts will be required to be a member of NYSE Liffe.**

If you have any questions regarding this memo, please contact the Member Services Help Desk at the following numbers: 800-544-6091 or 800-621-6072. Within Canada, please call 800-424-7320. Clearing Members may also e-mail us at [memberservices@theocc.com](mailto:memberservices@theocc.com).