



April 10, 2012

**VIA ELECTRONIC MAIL**

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

**Re: Rule Filing SR-OCC-2012-06 Rule Certification**

Dear Secretary Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Commission Regulation 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation ("OCC"). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the Commission or May 1, 2012. 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"). The text of the rule is set forth at Item 1 of the enclosed filing.

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

**Explanation and Analysis**

The purpose of the proposed changes to OCC's By-Laws and Rules is to ensure technical compliance with final regulations of the Commodity Futures Trading Commission ("CFTC") applicable to derivatives clearing organizations ("DCOs") that become effective on May 7, 2012. The CFTC's final regulations implement many of the core principles applicable to DCOs under the Commodity Exchange Act.

**The Final DCO Regulations**

On October 18, 2011, the CFTC held an open meeting at which it issued final regulations implementing many of the new statutory core principles for DCOs enacted under the Dodd-Frank Act. On December 20, 2011, OCC filed a rule change implementing changes designed to bring it into compliance with certain of these final regulations that went into effect on January 9, 2012. This rule filing was approved by the Securities and Exchange Commission ("SEC") on an accelerated basis on January 3, 2012.<sup>1</sup> The majority of the remaining regulations go into effect on May 7, 2012. While OCC is already in compliance with most of the final regulations that go into effect on May 7, 2012, OCC believes it appropriate to amend and clarify certain of its rules to ensure compliance with the CFTC's rules as described herein.

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<sup>1</sup> See Exchange Act Release No. 34-66081, 77 FR 1116 (January 9, 2012).

### **Clearing Members' Ability to Meet Clearing Fund Assessments**

Final CFTC Rule 39.11(d)(2)(i) states that a DCO must have rules "requiring that its clearing members have *the ability* to meet an assessment *within the time frame of a normal end-of-day variation settlement cycle.*" [Emphasis added.] While OCC By-Laws Article VIII, Section 6 provides that "whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member . . . such Clearing Member shall be liable *promptly* to make good the deficiency in its contribution resulting from such payment," it does not require that clearing members have the ability to meet an assessment within any particular time period. [Emphasis added.] OCC is therefore proposing that Article VIII, Section 6 of OCC's By-Laws be amended to require that each clearing member must have, and at all times maintain, the ability to meet any clearing fund assessment by 9:00 A.M. Central Time on the first business day following the day on which OCC notifies the clearing member of such assessment. Additionally, OCC is proposing to amend Article VIII, Section 7 of OCC's By-Laws to clarify when a withdrawing clearing member is definitively deemed to no longer be a clearing member and hence will no longer be subject to charges against its clearing fund contribution or be obligated to make further contributions.

### **Clearing Member Financial Resources Requirements**

CFTC Rule 39.12(a)(2)(i) states that a DCO must have participation requirements that "require clearing members to have access to *sufficient financial resources* to meet obligations arising from participation in the [DCO] in *extreme but plausible market conditions.*" [Emphasis added.] In order to avoid any doubt about OCC's compliance with this rule, OCC is proposing to amend Interpretation and Policy .01 of Article V, Section 1 of its By-Laws, add a new Rule 301(d), add an Interpretation and Policy .11 to Rule 305 and add an Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule.

### **Clearing Member Operational Capacity Requirements**

CFTC Rule 39.12(a)(3) requires a DCO to have participation requirements that "require clearing members to have *adequate operational capacity* to meet obligations arising from participation in the [DCO] . . . [that] include . . . the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the [DCO]; and the ability to participate in default management activities under the rules of the [DCO] and in accordance with [CFTC Rule 39.16]." [Emphasis added.] OCC is proposing to amend Article V, Section 1, Interpretation .02, add a new Rule 214(d), add a new Interpretation and Policy .12 to Rule 305, and add new Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule. OCC is also proposing to add a new Rule 214(c) to require clearing members to have adequate personnel arrangement to ensure their ability to meet the requirements of clearing membership, and to provide OCC with a list of such personnel.

### **Clearing Member Reporting Requirements**

CFTC Rule 39.12(a)(5)(i) states that a DCO must “require all clearing members, including non-futures commission merchants, to provide to the [DCO] periodic financial reports that contain any financial information that the [DCO] determines is necessary to assess whether participation requirements are being met on an ongoing basis.” Further, under Rule 39.12(a)(5)(i)(B), a DCO must require non-FCM clearing members to make these periodic financial reports available to the CFTC upon request or, alternatively, a DCO may provide such financial reports directly to the CFTC upon CFTC request. All of OCC’s non-FCM clearing members are either registered U.S. broker-dealers or “non-U.S. Clearing Members” subject to comparable regulation in their home jurisdictions.

OCC Rule 306 generally requires that financial reports required to be filed pursuant to regulations applicable to such clearing members also be filed with OCC, and Rule 306(b) requires non-U.S. Clearing Members to file such financial reports with OCC at such times as OCC may specify. OCC therefore believes that the financial reports it currently receives from non-FCM clearing members fulfill the requirement of Rule 39.12(a)(5)(i). However, in order to avoid any doubt about OCC’s compliance with this rule, OCC is proposing to add language to Rule 306(a) to expressly provide that OCC may require clearing members to make financial reports for the purpose of assessing whether the clearing member is meeting OCC’s participation requirements on an ongoing basis. With respect to the requirement of Rule 39.12(a)(5)(i)(B), OCC has determined that, for the convenience of its non-FCM clearing members, it will provide the financial reports filed by them to the CFTC (upon the CFTC’s request). OCC is proposing to state this policy in a new Interpretation and Policy .03 to OCC Rule 306. OCC is also proposing to amend Interpretation and Policy .02 to OCC Rule 306 to parallel the changes being proposed to Rule 306(a) discussed above.

CFTC Rule 39.12(a)(5)(ii) requires a DCO to adopt rules that “require clearing members to provide to the [DCO], in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members’ ability to continue to comply with participation requirements.” While OCC Rule 215 already requires a clearing member to give OCC prompt written notice of any change of organization or ownership structure, and certain other OCC Rules have notice requirements that address portions of this new requirement, OCC is proposing to amend OCC Rule 215 to more closely address the technical requirements of the referenced CFTC Rule, as well as to expand the notice requirement in Rule 215(a)(4) to include changes in clearing member’s jurisdiction of organization or incorporation, in addition to changes in name or form of business organization.

OCC is also proposing to adopt a specific schedule of fines for violation of OCC Rule 215 and to amend Rule 209 to allow OCC to withdraw the amounts of any fines payable in connection with a minor rule violation (as well as any fine levied in connection with a disciplinary proceeding pursuant to Chapter XII of the Rules), including a violation of Rule 215, from a clearing member’s bank account, provided that the Clearing Member has not timely contested such fines. The proposed schedule of fines is based on a fine schedule that has been adopted by operating subsidiaries of the Depository Trust & Clearing Corporation. As proposed, fines for violation of amended Rule 215 would be between \$300 and \$1,500, depending on the number of violations within any rolling 24-month period and the first, second and third violations of Rule 215 would constitute “minor rule violations” (see below). The fourth such violation would result in disciplinary action under Chapter XII of OCC’s Rules and would not constitute a

minor rule violation. OCC believes that adopting a specific schedule of fines will provide OCC with greater ability to ensure compliance by clearing members.

OCC is also proposing to amend Rule 202 to require its clearing members to notify OCC of any changes to the representatives who are authorized to act on behalf of the clearing member and to update their certified lists of signatures.

### **Clearing Member Customer Initial Margin**

CFTC Rule 39.13(g)(8)(ii) states that a DCO *must “require its clearing members to collect customer initial margin . . . from their customers, for non-hedge positions, at a level that is greater than 100 percent of the [DCO’s] initial margin requirements with respect to each product and swap portfolio. The [DCO] shall have reasonable discretion in determining the percentage by which customer initial margins must exceed the [DCO’s] initial margin requirements with respect to particular products or swap portfolios.”* [Emphasis added.] Additionally, CFTC Rule 39.13(g)(8)(iii) requires each DCO to “require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer’s account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer’s account which are cleared by the [DCO].” OCC is proposing to adopt a new Rule 602 (which had previously been reserved) in order to implement the requirements of CFTC Rule 39.13(g)(8)(ii) and (iii).

### **Initial Margin – Pledged Assets**

CFTC Rule 39.13(g)(14) states that “if a [DCO] permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the [DCO] shall ensure that such assets are unencumbered and that such pledge has been validly created and validly perfected in the relevant jurisdiction.” While OCC Rule 604(b)(4)(ii) allow pledged assets to be provided as margin under certain circumstances, OCC is proposing to add a new Interpretation and Policy .07 to Rule 604 to explicitly state that all assets pledged to OCC, for whatever purpose, must be free of any lien or other encumbrance senior to OCC’s lien. OCC does not believe that this is a substantive amendment to its Rules, as OCC already takes measures to ensure that its lien over assets provided as initial margin is senior to all other liens or other encumbrances over such assets. OCC is proposing this amendment in order to avoid any doubt as to its compliance with the referenced CFTC Rule.

### **Clearing Member Risk Management Requirements**

CFTC Rule 39.13(h)(5)(i) requires a DCO to adopt rules that: “(A) require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the [DCO]; (B) ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (C) require its clearing members to make information and documents regarding their risk

management policies, procedures, and practices available to the [CFTC] upon [CFTC] request.” OCC is proposing to adopt a new Rule 311 entitled “Clearing Member Risk Management” requiring clearing members to maintain risk management policies and procedures meeting the requirements of CFTC Rule 39.13(h)(5)(i)(A), granting OCC the authority to request and obtain information and documents from clearing members regarding their risk management policies, procedures and practices, and requiring clearing members to make information and documents regarding their risk management policies, procedures and practices available to the CFTC upon its request.

### **Daily Settlements**

CFTC Rule 39.14(b) requires that a DCO “effect a settlement with each clearing member at least once each business day” and that it “have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the DCO are breached, or in times of extreme market volatility.” OCC Rule 1301(c) provides OCC with the authority to effect intraday settlements and Interpretation and Policy .01 of Rule 1301 states OCC’s policy of not requiring intraday variation payments while reserving OCC’s right to require such payments from time to time as appropriate. However, for purposes of conforming OCC’s Rules more closely to the regulatory language, OCC is proposing to revise Interpretation and Policy .01 of Rule 1301 to clarify that intraday variation payments will not be required “in the ordinary course” and to state that circumstances under which OCC may assert its right to require intraday variation payments may include, but are not limited to, breach of any threshold set by OCC or during times of extreme market volatility.

### **Implementation of the MRV Plan**

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>2</sup> that allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>3</sup>

OCC’s rules currently give OCC the ability to censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of OCC’s By-Laws or Rules. OCC may also impose fines on clearing members for such violations.<sup>4</sup> OCC’s Rules have not historically distinguished between those violations of the Rules and By-Laws that are minor and do not call for the full procedural regime applicable to other violations and those that are not minor. With the amendments being proposed to Rule 215, and the inclusion of a specific fine schedule for violations of Rule 215, OCC now believes it is appropriate to put in place an MRV Plan in Rule 1201(b) that will meet the definition of a “minor rule violation plan” in Exchange Act Rule 19d-1(c)(2).<sup>5</sup> OCC will specify which violations of the By-Laws or Rules will constitute minor rule violations. OCC currently proposes to designate only a violation of Rule 215 as a minor rule violation. A Clearing Member that wishes to contest a minor rule violation may do so by providing written notice to OCC. Upon contesting a minor rule violation,

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<sup>2</sup> 17 CFR 240.19d-1(c).

<sup>3</sup> See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

<sup>4</sup> See OCC Rule 1201.

<sup>5</sup> 17 CFR 240.19d-1(c)(2).

the violation will be deemed to no longer be a minor rule violation and will be subject to the full provisions of OCC's Chapter XII rules with respect to disciplinary proceedings, including the procedures provided therein for answering charges levied against a Clearing Member, which give Clearing Members the right to a hearing and to be represented by counsel at such hearing. Verbatim transcripts of any such hearing are prepared by OCC.

Section 17A(b)(3)(G) of the Exchange Act<sup>6</sup> requires that the rules of a clearing agency provide that its members be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction. Section 17A(b)(3)(H) of the Exchange Act<sup>7</sup> requires, among other things, that the rules of a clearing agency, in general, provide a fair procedure with respect to the disciplining of members. OCC believes that adopting an MRV Plan furthers the statutory objective of providing a fair procedure for disciplining Clearing Members, and will provide OCC with the ability to impose a meaningful sanction for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding under Chapter XII of the Rules. Accordingly, the proposed changes promote the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Exchange Act and the rules and regulations promulgated thereunder applicable to OCC.

#### **Other Amendments**

Several of OCC's By-Laws and Rules include now-dated references to the National Association of Securities Dealers, which OCC has corrected to refer instead to the Financial Industry Regulatory Authority. In addition, OCC Rule 307 includes references to a paragraph of Exchange Act Rule 15c3-1<sup>8</sup> that, while correct when Rule 307 was adopted, have since become incorrect due to the reorganization of that rule. OCC is amending its By-Laws and Rules to correct the foregoing references.

#### Opposing Views

No opposing views were expressed related to the rule amendments.

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<sup>6</sup> 15 USC 78q-1(b)(3)(G).

<sup>7</sup> 15 USC 78q-1(b)(3)(H).

<sup>8</sup> 17 CFR 240.15c3-1.

David Stawick  
April 10, 2012  
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Notice of Pending Rule Certification

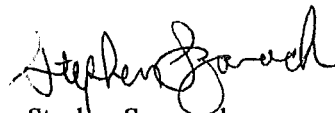
OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC's website concurrently with the filing of this submission.

Certification

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

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

Sincerely,

  
Stephen Szarmack

Enclosure

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

**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 in order to ensure OCC’s compliance with certain final regulations recently promulgated by the Commodity Futures Trading Commission (“CFTC”) that become effective on May 7, 2012.<sup>1</sup> The CFTC’s final regulations implement statutory “core principles” applicable to derivatives clearing organizations (“DCOs”) as those core principles were amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

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. Double underlining and double bold brackets indicate material proposed to be added or deleted in a separate pending rule filing.<sup>2</sup>

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

\* \* \*

**ARTICLE V**

**CLEARING MEMBERS**

\* \* \*

**Qualifications**

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<sup>1</sup> See Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (November 8, 2011).

<sup>2</sup> See SR-OCC-2012-03.

**SECTION 1. (a) – (d) [no change]**

*...Interpretations and Policies:*

*.01 Financial Responsibility*

The Membership/Risk Committee will not recommend the approval of any application for clearing membership if:

a. [no change]

b. the applicant has sustained net pre-tax losses, after giving effect to realized and unrealized gains and losses in trading, investment or other proprietary accounts, (I) during the three calendar months preceding the month in which the application is considered, in a net amount equal to 30% or more of the excess of its net capital at the end of such three-month period over the initial net capital required by the Rules; (ii) during the two calendar months preceding the month in which the application is considered, in a net amount equal to 25% or more of such excess net capital, or (iii) during the calendar month preceding the month in which the application is considered, in a net amount equal to 15% or more of such excess net capital; [or]

c. the applicant was listed in the special surveillance list (SIPC Form 5A) most recently filed with the Securities Investor Protection Corporation by the applicant's designated Examining Authority or is subject to similar special financial surveillance procedures imposed by a regulatory or self-regulatory authority under the Commodity Exchange Act[.] ;or

d. the applicant lacks access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule.

*.02 Operational Capability*

The Membership/Risk Committee will not recommend the approval of any application for clearing membership unless:

a. – b. [no changes]

c. the applicant employs personnel and utilizes procedures which, in the opinion of the Membership/Risk Committee, are operationally sufficient to enable the applicant to discharge its functions as a Clearing Member in a timely and efficient manner, [at current and anticipated volume levels] including the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable default management activities, including

auctions, as may be required by the Corporation and in accordance with applicable laws and regulations;

d. [no change].

*.03 Experience and Competence*

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

a. – c. [no change]

In respect of clause (c) above, an applicant for clearing membership or at least one associated person of applicant:

a. in the case of a broker-dealer registered under Section 15(b)(1) or (2) of the Securities Exchange Act of 1934), must be registered as a “Limited Principal - Financial and Operations” with the [National Association of Securities Dealers] Financial Industry Regulatory Authority or must have passed the appropriate qualification examination for registration as such;

b. – d. [no change]

If an applicant elects to use an associated person to satisfy the requirements of the foregoing clauses applicable to such applicant, that associated person shall be a full-time employee of the applicant. The Membership/Risk Committee may exempt from the applicable requirements of the foregoing clauses any applicant for clearing membership which entered into a facilities management agreement in accordance with Interpretation and Policy [.04].05 below. Upon the written request of an applicant, the Membership/Risk Committee may, in exceptional cases and where good cause is shown, waive the foregoing requirements and accept other standards as evidence of an applicant's experience in clearing securities, futures options, commodity options or futures transactions.

In addition, the Membership/Risk Committee will not recommend the approval of any application for clearing membership unless:

d. – e. [no change]

.04 [no change]

*.05 Facilities Management*

In determining whether the requirements of Sections .02, .03c, .03d, and .03e of this Interpretation have been satisfied by an applicant, the Membership/Risk Committee will consider the provisions of a written agreement (“facilities management agreement”) between the applicant and another Clearing Member (“Managing Clearing Member”), [which is in a form acceptable

to] approved by the Corporation, pursuant to which the Managing Clearing Member agrees to perform certain of the applicant's obligations as a Clearing Member for (i) the transaction of business with the Corporation and other Clearing Members and (ii) the maintenance of required books and records. The Corporation shall not approve a facilities management agreement in which a Clearing Member acts as Managing Clearing Member, and such facilities management agreement shall be of no force or effect, unless:

a. – c. [no change]

.06 – .10 [no change]

\* \* \*

### Conditions to Admission

#### SECTION 3.

No applicant shall be admitted as a Clearing Member until the applicant has deposited with the Corporation its initial contribution to the Clearing Fund in the amount required by Article VIII of the By-Laws and has signed and delivered to the Corporation an agreement in such form as the Board of Directors shall require, including applicant's agreements (a) to clear through the Corporation, either directly or through another Clearing Member, all of its Exchange transactions and all other transactions which the By-Laws or the Rules may require to be cleared through the Corporation, (b) to abide by all provisions of the By-Laws and the Rules and by all procedures adopted pursuant thereto, (c) that the By-Laws and the Rules shall be a part of the terms and conditions of every Exchange transaction or other contract or transaction which the applicant, while a Clearing Member, may make or have with the Corporation, or with other Clearing Members in respect of cleared contracts, or which may be cleared or required to be cleared through the Corporation, (d) to grant the Corporation all liens, rights and remedies set forth in the By-Laws and the Rules, (e) to pay to the Corporation all fees and other compensation provided by or pursuant to the By-Laws and the Rules for clearance and for all other services rendered by the Corporation to the applicant while a Clearing Member, (f) to pay such fines as may be imposed on it in accordance with the By-Laws and the Rules, (g) to permit inspection of its books and records at all times by the representatives of the Corporation and to furnish the Corporation with all information in respect of the applicant's business and transactions as the Corporation or its officers may require, (h) to make such payments to or in respect of the Clearing Fund as may be required from time to time, (i) to comply, in the case of Non-U.S. Securities Firms, with the guidelines and restrictions imposed on domestic broker-dealers regarding the extension of credit, as provided by Section 7 of the Securities Exchange Act of 1934 and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, with respect to any customer account that includes cleared contracts issued by the Corporation, (j) to comply, in the case of Non-U.S. Securities Firms, with the Rules of the [National Association of Securities Dealers] Financial Industry Regulatory Authority governing maintenance margin and cut-off times for the submission of exercise notices by customers, and (k) to consent, in the case of Non-U.S. Securities Firms, to the jurisdiction of Illinois courts and

to the application of United States law in connection with any dispute with the Corporation arising from membership.

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## ARTICLE VIII

### CLEARING FUND

\* \* \*

#### Making Good of Charges to Clearing Fund

##### SECTION 6.

Whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member, whether by proportionate charge or otherwise, such Clearing Member shall be liable promptly to make good the deficiency in its contribution resulting from such payment. Notwithstanding the foregoing and except as provided for below, if the payment is made as a result of a proportionate charge, a Clearing Member will not be liable to make good more than an additional 100% of the amount of its then required contribution if (i) within five business days following such proportionate charge the Clearing Member notifies the Corporation in writing that it is terminating its status as a Clearing Member, (ii) no opening purchase transaction or opening writing transaction is submitted for clearance through any of the Clearing Member's accounts and (if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member) no Stock Loan is initiated through any of the Clearing Member's accounts after the giving of such notice, and (iii) the Clearing Member closes out or transfers all of its open positions with the Corporation, in each case as promptly as practicable after the giving of such notice; provided that a Clearing Member which so terminates its status as a Clearing Member shall be ineligible to be readmitted to such membership unless the Clearing Member agrees to such reimbursement of the persons who were Clearing Members at the time of such termination as the Board of Directors deems fair and equitable in the circumstances. In the event a Clearing Member notifies the Corporation of its intent to terminate its status as a Clearing Member in accordance with the preceding sentence, and such Clearing Member's computed contribution is less than its minimum required contribution, then the Clearing Member shall also make good 100% of the amount equal to its minimum required contribution less its computed contribution to the Clearing Fund. Each Clearing Member shall have and shall at all times maintain the ability to make good any deficiency described in this Section 6 by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the first business day following the day on which the Corporation notifies the Clearing Member of such deficiency.

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## Contribution Refund

### SECTION 7.

Whenever a Clearing Member definitively ceases to be such, the amount of its contribution to the Clearing Fund shall be returned to it, but not until all Exchange transactions and open positions of the Clearing Member from which losses or payments chargeable to the Clearing Fund might result have been fulfilled or closed, or, with the approval of the Corporation, another Clearing Member has been substituted thereon. All amounts chargeable against a Clearing Member's contribution to the Clearing Fund on account of transactions [had] that occurred while it was a Clearing Member, including proportionate charges and unpaid fees, shall be deducted from the amount returned. For purposes of this Section 7, a Clearing Member will be deemed to have definitively ceased to be a Clearing Member at such time as it has fulfilled all requirements of Sub-Sections (i) through (iii) of Section 6 of this Article and has met all outstanding obligations to the Corporation.

\* \* \*

## RULES

\* \* \*

## CHAPTER II

### MISCELLANEOUS REQUIREMENTS

\* \* \*

#### Evidence of Authority

##### RULE 202.

Every Clearing Member shall file with the Corporation a certified list of the signatures of the representatives of such Clearing Member (including partners and officers) who are authorized to sign certificates, checks, agreements, receipts, orders, and other papers necessary for conducting business with the Corporation, together with an executed copy of the powers of attorney, resolutions or other instruments giving such authority. The Clearing Member shall promptly notify the Corporation of any changes to the representatives who are authorized to act on behalf of the Clearing Member and the certified list of signatures shall be updated accordingly.

Any Clearing Member who has given a person a power of attorney or other authorization to transact business with the Corporation shall, immediately upon the withdrawal,

retirement, resignation or discharge of such person or upon the revocation of his power to act, give written notice to the Corporation.

\* \* \*

### Payment of Fees and Charges

#### RULE 209.

(a) [no change]

(b) The Corporation shall be authorized to withdraw from each Clearing Member's bank account established with respect to its firm account, on or after the fifth business day following the end of each calendar month, (i) an amount equal to the amount of any fees and charges owing to the Corporation, (ii) an amount equal to the amount of any fees due to an Exchange for whom the Corporation has agreed to collect such fees, [and] (iii) if the Clearing Member is a Market Loan Clearing Member, an amount equal to the amount of any fees and charges owing to any Loan Market for which the Corporation has agreed to collect such fees and charges, (iv) the amount of any fine levied by the Corporation for a minor rule violation that the Clearing Member has not timely contested, as described in Rule 1201(b), and (v) the amount of any other fine levied by the Corporation pursuant to Chapter XII.

\* \* \*

### Financial and Operations Personnel

#### RULE 214.

(a) Except as otherwise provided in this Rule 214, every Domestic Clearing Member shall employ at least one associated person who is registered as a "Limited Principal Financial and Operations" with the [National Association of Securities Dealers] Financial Industry Regulatory Authority or has passed the appropriate qualification examination for registration as such. Every Canadian Clearing Member that is an exempt Non-U.S. Clearing Member shall employ at least one associated person who is registered as both a Principal/Director/Officer and a Designated Registered Options Principal with the Investment Dealers Association of Canada. Every Non-U.S. Clearing Member that is not an exempt Non-U.S. Clearing Member shall employ at least one associated person who has taken and successfully completed any applicable OCC financial and operational examination for an employee who is responsible for supervising the preparation of such Clearing Member's financial reports. If a Clearing Member elects to use an associated person to satisfy those of the foregoing requirements applicable to such Clearing Member, that associated person shall be a full-time employee of the Clearing Member.

(b) [no change]

(c) Each Clearing Member shall ensure that it has an appropriate number of clearing operations personnel with the requisite capability, experience, and competency to reasonably

ensure that the Clearing Member is able to clear and settle Exchange transactions in Cleared Contracts, Stock Loans, and Market Loans, as applicable, and account types for which it is approved, and to meet all other requirements of membership in the Corporation. Each Clearing Member shall submit to the Corporation a list of such personnel in such form as is acceptable to the Corporation, including, without limitation, the names, titles, primary offices, email addresses, and business phone numbers for all such personnel.

(d) Every Clearing Member shall maintain the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.

\* \* \*

### **Notice of Material Changes and Information Requests**

#### **RULE 215.**

(a) Each Clearing Member shall give the Corporation prompt prior written notice of any material change in its form of organization or ownership structure, including:

(1) – (3) [no change]

(4) a change in the name, [or] form of business organization, or jurisdiction of organization or incorporation of the Clearing Member; and

(5) [no change]

(b) Each Clearing Member shall give the Corporation [such documents with respect to any of the foregoing events as the Corporation may from time to time require] no less than 30 days prior written notice of material operational changes, including:

(1) a planned change in location of clearing operations;

(2) a planned change in location of its offices maintained pursuant to Rule 201; and

(3) a planned change in the personnel of the Clearing Member responsible for ensuring that the Clearing Member is able to fulfill its obligations as a Clearing Member pursuant to Rule 214(c).

(c) Each Clearing Member shall give the Corporation no less than 60 days prior written notice of its intention to enter into a facilities management arrangement, as described in



Rule 309. Implementation of such facilities management agreement shall be subject to approval by the Corporation before implementation pursuant to Rule 309(f).

(d) Each Clearing Member shall, within the time period reasonably prescribed by the Corporation, furnish to the Corporation such documents and information as the Corporation may from time to time require pursuant to Article V, Section 3(g) of the Corporation's By-Laws and Chapters II and III of the Corporation's Rules.

(e) Nothing in this Rule 215, including the Interpretations and Policies, shall prohibit the Corporation from instituting disciplinary proceedings against a Clearing Member pursuant to Chapter XII of the Rules for a violation of this Rule.

(f) A violation of this Rule 215 shall constitute a "minor rule violation" for purposes of Chapter XII of the Rules.

*...Interpretations and Policies:*

.01 The Corporation may fine a Clearing Member for its failure to provide any notice, documents, or information as required under paragraphs (a), (b), (c) or (d) of this Rule 215. Fines will follow the schedule below:

<u>First Occasion</u>	<u>Second Occasion</u>	<u>Third Occasion</u>	<u>Fourth Occasion</u>
<u>\$300</u>	<u>\$600</u>	<u>\$1,500</u>	<u>***</u>

\*\*\*Four or more violations within a rolling 24 month period will result in a disciplinary proceeding in accordance with Chapter XII of the Rules.

Fines to be levied for offenses within a rolling twenty-four month period beginning with the first occasion.

For purposes of this Fine Schedule, documents and information shall include, but not be limited to, the financial, regulatory and other information required to be submitted to the Corporation.

.02 A change in the location of a Clearing Member's clearing operations of the offices maintained pursuant to Rule 201 or a change in a Clearing Member's personnel shall not be deemed "planned" if such change is undertaken on an emergency basis, provided that the Clearing Member notice to the Corporation as soon as reasonably possible of such change.

\* \* \*

### CHAPTER III

## FINANCIAL REQUIREMENTS

\* \* \*

### Initial Requirements

#### RULE 301.

(a) – (c) [no change]

(d) Every Clearing Member shall have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule.

\* \* \*

### Restrictions on Certain Transactions, Positions and Activities

#### RULE 305.

(a) – (d) [no change]

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

Situations in which action may be taken under Rule 305 include, but are not limited to, the following:

.01 – .10 [no change]

.11 A Clearing Member lacks access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule.

.12 A Clearing Member lacks the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.

\* \* \*

**Financial Reports****RULE 306.**

(a) Every Clearing Member other than an exempt Non-U.S. Clearing Member shall cause to be filed with the Corporation a true and complete copy of Part I of Securities and Exchange Commission Form X-17A-5 within 10 business days after the end of each month, except for those months which conclude a calendar quarter. Every Clearing Member shall cause to be filed with the Corporation a true and complete copy of Part II (or Part IIA in the case of a Clearing Member who files Part IIA with the Securities and Exchange Commission or its designated Examining Authority in lieu of Part II) of Securities and Exchange Commission Form X-17A-5 within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements when said date is other than the end of a calendar quarter. Notwithstanding the foregoing no Domestic Clearing Member shall be required to file with the Corporation Part I or Part II or IIA of Form X-17A-5 prior to the earlier of (i) the date when such Part is filed with the Clearing Member's designated Examining Authority, or (ii) the date when such Part is required to be filed with such Examining Authority pursuant to the rules and regulations of the Securities and Exchange Commission and the procedures of such Examining Authority and any extensions of time duly granted to the Clearing Member thereunder. In the event the designated Examining Authority of any Domestic Clearing Member shall at any time require such Clearing Member to file any of the foregoing reports with such Examining Authority on a more frequent basis, then such Clearing Member shall file with the Corporation a true and complete copy of each such report at the same time it is filed with the designated Examining Authority. A Domestic Clearing Member's obligation to file any report under the preceding provisions of this Rule shall be deemed to have been met if the Clearing Member's designated Examining Authority files such report with the Corporation within four business days after such report is required to be filed with such designated Examining Authority; or, should the designated Examining Authority fail to do so, if the Clearing Member files such report directly with the Corporation no later than 24 hours after the Corporation requests the Clearing Member to do so. The Corporation may require any Clearing Member at any time to make more frequent net capital computations or to file with the Corporation the above reports on a more frequent basis or such other reports or financial statements in such form or detail as may be prescribed by the Corporation, including for purposes of assessing whether the Clearing Member is meeting the financial requirements for clearing membership on an ongoing basis.

(b) [no change]

*...Interpretations and Policies:*

.01 [no change]

.02 Any Clearing Member that is not fully registered with the Securities and Exchange Commission as a broker-dealer under Section 15(b)(1) or (2) of the Securities Exchange Act of

1934 but that is registered with the Commodity Futures Trading Commission (the "CFTC") as a futures commission merchant may, in lieu of filing reports on Form X-17A-5, cause to be filed with the Corporation a report of its financial condition on CFTC Form 1-FR-FCM within 17 business days after the end of each month (regardless of whether or not such Clearing Member is required to prepare or file such report on a monthly basis with another regulatory or self-regulatory organization). Additionally, a copy of the annual audited report on Form 1-FR-FCM required to be filed with the CFTC pursuant to CFTC Regulation 1.10(b)(ii) must be filed with the Corporation each year within 90 days (or such longer period to which the Corporation may consent) after the close of such Clearing Member's fiscal year. If the Clearing Member's designated self-regulatory organization ("DSRO") requires such Clearing Member to file any report on Form 1-FR-FCM on an earlier date or on a more frequent basis than is required under this Interpretation, then such Clearing Member shall file with the Corporation a true and complete copy of each such report at the same time it is filed with the DSRO. Notwithstanding the foregoing, no such Clearing Member will be required to file any report on Form 1-FR-FCM with the Corporation prior to the date specified in any extension of time duly granted by the CFTC or the DSRO, so long as such extension is not issued on a permanent basis and a copy of such extension is filed with the Corporation in a timely manner. The Corporation may require any Clearing Member at any time to make more frequent net capital computations or to file with the Corporation the above reports on a more frequent basis or to file such other reports or financial statements in such form or detail as may be prescribed by the Corporation, including for purposes of assessing whether the Clearing Member is meeting the financial requirements for clearing membership on an ongoing basis.

.03 The Corporation shall deliver to the CFTC upon request any financial report provided to the Corporation pursuant to Rule 306 by a Clearing Member that is not a futures commission merchant.

\* \* \*

## Definitions

### **RULE 307.**

The terms "net capital," "aggregate indebtedness", and "debt-equity total" shall be computed for a Clearing Member in accordance with Securities and Exchange Commission Rule 15c3-1; provided, however, that a Clearing Member that is registered as a futures commission merchant under Section 4f(a)(1) of the Commodity Exchange Act and is not otherwise required to calculate its net capital in accordance with Rule 15c3-1, may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission. The term "alternative net capital requirements" shall mean the requirements set forth in paragraph [(f)] (a)(1)(ii) of said Rule 15c3-1, and the term "satisfactory subordination agreement" shall mean a subordination agreement meeting the requirements of Appendix D to said Rule 15c3-1 and any additional requirements, not inconsistent therewith, imposed by a Clearing Member's Examining Authority. Except as otherwise limited by paragraph [(f)] (a)(1)(ii) of said Rule 15c3-1, the term "aggregate

debit items” shall be computed for a Clearing Member in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Securities and Exchange Commission Rule 15c3-3). The term “Examining Authority” of a Clearing Member shall have the meaning set forth in the General Instructions to Part II of Securities and Exchange Commission Form X-17A-5 or shall mean the Clearing Member’s “designated self-regulatory organization”, as defined in the Rules of the Commodity Futures Trading Commission, as applicable. For the purpose of this Chapter III only, the term “customer” shall have the meaning set forth in paragraph (c)(6) of said Rule 15c3-1.

\* \* \*

### **Clearing Member Risk Management**

#### **RULE 311.**

(a) Each Clearing Member must maintain current written risk management policies and procedures that address the risks the Clearing Member may pose to the Corporation.

(b) Each Clearing Member must provide to the Corporation such information and documentation as may be requested by the Corporation from time to time regarding such Clearing Member’s risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of its financial resources and its settlement procedures.

(c) Each Clearing Member must provide to the Commodity Futures Trading Commission such information and documentation as requested by the Commodity Futures Trading Commission regarding such Clearing Member’s risk management policies, procedures, and practices.

\* \* \*

## **CHAPTER VI**

### **MARGINS**

\* \* \*

#### **[Reserved.]Customer-Level Margin Requirement**

#### **RULE 602.**

(a) Each Clearing Member shall collect initial margin from its futures customers in such amount as is communicated by the Corporation from time to time.

(b) Each Clearing Member shall ensure that no futures customer of such Clearing Member withdraws funds from its customer account with such Clearing Member unless the net liquidating value plus margin deposits remaining in such account after giving effect to the withdrawal are sufficient to meet the customer initial margin requirement with respect to all Exchange transactions cleared for such account.

*...Interpretations and Policies:*

.01 For purposes of Rule 602, "hedge positions" shall be excluded from a Clearing Member's margin calculations for the customer's account holding such positions. Clearing Members shall determine which positions are "hedge positions" in a manner consistent with applicable regulations of the Commodity Futures Trading Commission and will identify such positions to the Corporation.

\* \* \*

#### **Form of Margin Assets**

##### **RULE 604.**

(a) – (f) [no changes]

*...Interpretations and Policies:*

.01 – .06 [no changes]

.07 All assets pledged to the Corporation for whatever purpose shall be free of any lien or other encumbrance senior to that of the Corporation.

\* \* \*

#### **CHAPTER XI**

##### **SUSPENSION OF A CLEARING MEMBER**

\* \* \*

##### **Suspension**

##### **RULE 1102.**

(a) – (b) [no changes]

*...Interpretations and Policies:*

.01 [no change]

.02 The circumstances in which the Board of Directors or the Chairman of the Corporation may make a determination pursuant to Rule 1102(a)(v) may include a determination that the Clearing Member lacks (a) access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule, or (b) the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.

\* \* \*

## CHAPTER XII

### DISCIPLINARY PROCEEDINGS

\* \* \*

#### Sanctions

##### **RULE 1201.**

(a) The Corporation may censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules or its agreements with the Corporation. The Corporation may, in addition to or in lieu of such sanctions, impose a fine on any Clearing Member for any violation of the By-Laws or Rules or procedures of or its agreements with the Corporation or the correspondent clearing corporation, or for any neglect or refusal by such person to comply with any applicable order or direction of the Corporation or the correspondent clearing corporation, or for any error, delay or other conduct embarrassing the operations of the Corporation, or for not providing adequate personnel or facilities for its transactions with the Corporation or the correspondent clearing corporation.

(b) Minor Rule Violation Plan. In lieu of commencing a disciplinary proceeding pursuant to Rule 1201(a), the Corporation may, subject to the requirements set forth herein, impose a fine not to exceed \$2,500, on any Clearing Member with respect to any violation of the By-Laws and Rules of the Corporation that is designated in the By-Laws or Rules as a "minor rule violation." Any such minor rule violation shall be deemed a "minor rule violation" and this Rule 1201(b) shall be deemed a "plan" within the meaning of Rule 19d-1(c)(2) under the Securities Exchange Act of 1934, as amended. Any fine imposed by the Corporation for a minor rule violation that is not contested as described below shall be reported by the Corporation to the Securities and Exchange Commission on a quarterly basis, except as otherwise required by the Securities and Exchange Commission or by any other regulatory authority. Any Clearing Member against whom a fine for a minor rule violation is imposed shall be served with a written

statement, prepared by the Corporation, setting forth: (i) the provision of the By-Laws or Rules the violation of which constitutes such minor rule violation, (ii) the act or omission constituting such minor rule violation, and (iii) the fine imposed for such minor rule violation. Any Clearing Member that receives the written statement described above with respect to a minor rule violation may provide written notice to the Corporation, not later than 10 business days from the date of the written statement that the Clearing Member wishes to appeal the minor rule violation. The failure of a Clearing Member to provide timely notice that it wishes to appeal a minor rule violation shall constitute a waiver of the Clearing Member's right to an appeal. Upon receipt of a notice that a Clearing Member wishes to appeal the violation, the Corporation shall begin a disciplinary proceeding in accordance with Rule 1202. The issuance of a fine for a minor rule violation for which a Clearing Member does not contest the fine shall not be deemed to be an admission by the Clearing Member of the facts set forth in the written statement describing the minor rule violation.

\* \* \*

## Procedures

### RULE 1202.

(a) Before any sanction (other than a sanction for a minor rule violation) is imposed, the Corporation shall furnish the person against whom the sanction is sought to be imposed ("Respondent") with a concise written statement of the charges against the Respondent. The Respondent shall have fifteen days after the service of such statement to file with the Secretary of the Corporation a written answer thereto. The answer shall admit or deny each allegation contained in the statement of charges and may also contain any defense which the Respondent wishes to submit. Allegations contained in the statement of charges which are not denied in the answer shall be deemed to have been admitted. Any defense not raised in the answer shall be deemed to have been waived. If an answer is not filed within the time prescribed above or any extension thereof granted pursuant to paragraph (c) of this Rule 1202, the Corporation shall furnish to the Respondent a final request for an answer, specifying a time prior to which an answer must be filed and a sanction which will be imposed if an answer is not filed within that time. If an answer is not filed prior to the time so specified, the charges against the Respondent shall be deemed to have been admitted, and the sanction specified in the final request shall be imposed without further proceedings and the Respondent shall be notified thereof in writing. If an answer is timely filed, the Secretary of the Corporation shall (unless the Respondent and the Corporation shall have stipulated to the imposition of an agreed sanction) schedule an early hearing before a Disciplinary Committee composed of the Vice Chairman of the Board of Directors (or such other director as the Board of Directors shall designate in his place), who will act as Chairman of the Committee, and two other directors appointed by the Chairman of the Committee. The Respondent shall be given not less than three days advance notice of the place and time of such hearing. At the hearing, the Respondent shall be afforded the opportunity to be heard and to present evidence in his behalf and may be represented by counsel. A verbatim record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Disciplinary Committee, be charged in whole or in part to the Respondent in the event any



sanction is imposed on the Respondent. As soon as practicable after the conclusion of the hearing, the Disciplinary Committee shall furnish the Respondent and the Board of Directors with a written statement of its decision. If the decision shall have been to impose a disciplinary sanction, the written statement shall set forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the specific provisions of the statutory rules of the Corporation which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.

(b) – (e) [no changes]

\* \* \*

### CHAPTER XIII

#### FUTURES, FUTURES OPTIONS AND COMMODITY OPTIONS

\* \* \*

#### Variation and Other Settlements Payments

##### RULE 1301.

(a) – (f) [no change]

*... Interpretations and Policies:*

.01 The Corporation has determined that it will not require intra-day variation payments on futures on a daily basis in the ordinary course. The Corporation reserves the right, however, to require such payments from time to time when in the discretion of the Corporation there are circumstances making such payments appropriate, including without limitation breach of any threshold set by the Corporation or during times of extreme market volatility.

.02 [no change]

\* \* \*

#### 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 March 2, 2012. Questions regarding the proposed rule change should be

addressed to Stephen Szarmack, Vice President and Associate General Counsel, at (312) 322-4802.

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

The purposes of the proposed changes to OCC's By-Laws and Rules are (a) to ensure compliance with certain regulations recently promulgated by the CFTC that become effective on May 7, 2012 and (b) to put in place a minor rule violation plan ("MRV Plan"), within the meaning of Exchange Act Rule 19d-1(c)(2).<sup>3</sup> The CFTC's final regulations implement statutory "core principles" applicable to DCOs as those core principles were amended by the Dodd-Frank Act.

**The Final DCO Regulations**

On October 18, 2011, the CFTC held an open meeting at which it issued final regulations implementing many of the new statutory core principles for DCOs enacted under the Dodd-Frank Act. On December 20, 2011, OCC filed a rule change implementing changes designed to bring it into compliance with certain of these final regulations that went into effect on January 9, 2012. This rule filing was approved by the Securities and Exchange Commission ("SEC") on an accelerated basis on January 3, 2012.<sup>4</sup> The majority of the remaining regulations go into effect on May 7, 2012. While OCC is already in compliance with most of the final regulations that go into effect on May 7, 2012, OCC believes it appropriate to amend and clarify certain of its rules to ensure compliance with the CFTC's rules as described herein.

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<sup>3</sup> 17 CFR 240.19d-1(c)(2).

<sup>4</sup> See Exchange Act Release No. 34-66081, 77 FR 1116 (January 9, 2012).

### **Clearing Members' Ability to Meet Clearing Fund Assessments**

Final CFTC Rule 39.11(d)(2)(i) states that a DCO must have rules “requiring that its clearing members have *the ability* to meet an assessment *within the time frame of a normal end-of-day variation settlement cycle*.” [Emphasis added.] While OCC By-Laws Article VIII, Section 6 provides that “whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member . . . such Clearing Member shall be liable *promptly* to make good the deficiency in its contribution resulting from such payment,” it does not require that clearing members have the ability to meet an assessment within any particular time period. [Emphasis added.] OCC is therefore proposing that Article VIII, Section 6 of OCC’s By-Laws be amended to require that each clearing member must have, and at all times maintain, the ability to meet any clearing fund assessment by 9:00 A.M. Central Time on the first business day following the day on which OCC notifies the clearing member of such assessment. Additionally, OCC is proposing to amend Article VIII, Section 7 of OCC’s By-Laws to clarify when a withdrawing clearing member is definitively deemed to no longer be a clearing member and hence will no longer be subject to charges against its clearing fund contribution or be obligated to make further contributions.

### **Clearing Member Financial Resources Requirements**

CFTC Rule 39.12(a)(2)(i) states that a DCO must have participation requirements that “require clearing members to have access to *sufficient financial resources* to meet obligations arising from participation in the [DCO] in *extreme but plausible market conditions*.” [Emphasis added.] In order to avoid any doubt about OCC’s compliance with this rule, OCC is proposing to amend Interpretation and Policy .01 of Article V, Section 1 of its By-Laws, add a new Rule

301(d), add an Interpretation and Policy .11 to Rule 305 and add an Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule.

#### **Clearing Member Operational Capacity Requirements**

CFTC Rule 39.12(a)(3) requires a DCO to have participation requirements that “require clearing members to have *adequate operational capacity* to meet obligations arising from participation in the [DCO] . . . [that] include . . . the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the [DCO]; and the ability to participate in default management activities under the rules of the [DCO] and in accordance with [CFTC Rule 39.16].” [Emphasis added.] OCC is proposing to amend Article V, Section 1, Interpretation .02, add a new Rule 214(d), add a new Interpretation and Policy .12 to Rule 305, and add new Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule. OCC is also proposing to add a new Rule 214(c) to require clearing members to have adequate personnel arrangement to ensure their ability to meet the requirements of clearing membership, and to provide OCC with a list of such personnel.

#### **Clearing Member Reporting Requirements**

CFTC Rule 39.12(a)(5)(i) states that a DCO must “require all clearing members, including non-futures commission merchants, to provide to the [DCO] periodic financial reports that contain any financial information that the [DCO] determines is necessary to assess whether participation requirements are being met on an ongoing basis.” Further, under Rule 39.12(a)(5)(i)(B), a DCO must require non-FCM clearing members to make these periodic

financial reports available to the CFTC upon request or, alternatively, a DCO may provide such financial reports directly to the CFTC upon CFTC request. All of OCC's non-FCM clearing members are either registered U.S. broker-dealers or "non-U.S. Clearing Members" subject to comparable regulation in their home jurisdictions. OCC Rule 306 generally requires that financial reports required to be filed pursuant to regulations applicable to such clearing members also be filed with OCC, and Rule 306(b) requires non-U.S. Clearing Members to file such financial reports with OCC at such times as OCC may specify. OCC therefore believes that the financial reports it currently receives from non-FCM clearing members fulfill the requirement of Rule 39.12(a)(5)(i). However, in order to avoid any doubt about OCC's compliance with this rule, OCC is proposing to add language to Rule 306(a) to expressly provide that OCC may require clearing members to make financial reports for the purpose of assessing whether the clearing member is meeting OCC's participation requirements on an ongoing basis. With respect to the requirement of Rule 39.12(a)(5)(i)(B), OCC has determined that, for the convenience of its non-FCM clearing members, it will provide the financial reports filed by them to the CFTC (upon the CFTC's request). OCC is proposing to state this policy in a new Interpretation and Policy .03 to OCC Rule 306. OCC is also proposing to amend Interpretation and Policy .02 to OCC Rule 306 to parallel the changes being proposed to Rule 306(a) discussed above.

CFTC Rule 39.12(a)(5)(ii) requires a DCO to adopt rules that "require clearing members to provide to the [DCO], in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements." While OCC Rule 215 already requires a clearing member to give OCC prompt written notice of any change of organization or ownership

structure, and certain other OCC Rules have notice requirements that address portions of this new requirement, OCC is proposing to amend OCC Rule 215 to more closely address the technical requirements of the referenced CFTC Rule, as well as to expand the notice requirement in Rule 215(a)(4) to include changes in clearing member's jurisdiction of organization or incorporation, in addition to changes in name or form of business organization. OCC is also proposing to adopt a specific schedule of fines for violation of OCC Rule 215 and to amend Rule 209 to allow OCC to withdraw the amounts of any fines payable in connection with a minor rule violation (as well as any fine levied in connection with a disciplinary proceeding pursuant to Chapter XII of the Rules), including a violation of Rule 215, from a clearing member's bank account, provided that the Clearing Member has not timely contested such fines. The proposed schedule of fines is based on a fine schedule that has been adopted by operating subsidiaries of the Depository Trust & Clearing Corporation. As proposed, fines for violation of amended Rule 215 would be between \$300 and \$1,500, depending on the number of violations within any rolling 24-month period and the first, second and third violations of Rule 215 would constitute "minor rule violations" (see below). The fourth such violation would result in disciplinary action under Chapter XII of OCC's Rules and would not constitute a minor rule violation. OCC believes that adopting a specific schedule of fines will provide OCC with greater ability to ensure compliance by clearing members.

OCC is also proposing to amend Rule 202 to require its clearing members to notify OCC of any changes to the representatives who are authorized to act on behalf of the clearing member and to update their certified lists of signatures.

**Clearing Member Customer Initial Margin**

CFTC Rule 39.13(g)(8)(ii) states that a DCO *must “require its clearing members to collect customer initial margin . . . from their customers, for nonhedge positions, at a level that is greater than 100 percent of the [DCO’s] initial margin requirements with respect to each product and swap portfolio.* The [DCO] shall have reasonable discretion in determining the percentage by which customer initial margins must exceed the [DCO’s] initial margin requirements with respect to particular products or swap portfolios.” [Emphasis added.] Additionally, CFTC Rule 39.13(g)(8)(iii) requires each DCO to “require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer’s account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer’s account which are cleared by the [DCO].” OCC is proposing to adopt a new Rule 602 (which had previously been reserved) in order to implement the requirements of CFTC Rule 39.13(g)(8)(ii) and (iii).

**Initial Margin – Pledged Assets**

CFTC Rule 39.13(g)(14) states that “if a [DCO] permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the [DCO] shall ensure that such assets are unencumbered and that such pledge has been validly created and validly perfected in the relevant jurisdiction.” While OCC Rule 604(b)(4)(ii) allow pledged assets to be provided as margin under certain circumstances, OCC is proposing to add a new Interpretation and Policy .07 to Rule 604 to explicitly state that all assets pledged to OCC, for whatever purpose, must be free of any lien or other encumbrance

senior to OCC's lien. OCC does not believe that this is a substantive amendment to its Rules, as OCC already takes measures to ensure that its lien over assets provided as initial margin is senior to all other liens or other encumbrances over such assets. OCC is proposing this amendment in order to avoid any doubt as to its compliance with the referenced CFTC Rule.

#### **Clearing Member Risk Management Requirements**

CFTC Rule 39.13(h)(5)(i) requires a DCO to adopt rules that: "(A) require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the [DCO]; (B) ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (C) require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the [CFTC] upon [CFTC] request." OCC is proposing to adopt a new Rule 311 entitled "Clearing Member Risk Management" requiring clearing members to maintain risk management policies and procedures meeting the requirements of CFTC Rule 39.13(h)(5)(i)(A), granting OCC the authority to request and obtain information and documents from clearing members regarding their risk management policies, procedures and practices, and requiring clearing members to make information and documents regarding their risk management policies, procedures and practices available to the CFTC upon its request.



### **Daily Settlements**

CFTC Rule 39.14(b) requires that a DCO “effect a settlement with each clearing member at least once each business day” and that it “have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the DCO are breached, or in times of extreme market volatility.” OCC Rule 1301(c) provides OCC with the authority to effect intraday settlements and Interpretation and Policy .01 of Rule 1301 states OCC’s policy of not requiring intraday variation payments while reserving OCC’s right to require such payments from time to time as appropriate. However, for purposes of conforming OCC’s Rules more closely to the regulatory language, OCC is proposing to revise Interpretation and Policy .01 of Rule 1301 to clarify that intraday variation payments will not be required “in the ordinary course” and to state that circumstances under which OCC may assert its right to require intraday variation payments may include, but are not limited to, breach of any threshold set by OCC or during times of extreme market volatility.

### **Implementation of the MRV Plan**

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>5</sup> that allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>6</sup>

OCC’s rules currently give OCC the ability to censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of OCC’s By-Laws

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<sup>5</sup> 17 CFR 240.19d-1(c).

<sup>6</sup> See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

or Rules. OCC may also impose fines on Clearing members for such violations.<sup>7</sup> OCC's Rules have not historically distinguished between those violations of the Rules and By-Laws that are minor and do not call for the full procedural regime applicable to other violations and those that are not minor. With the amendments being proposed to Rule 215, and the inclusion of a specific fine schedule for violations of Rule 215, OCC now believes it is appropriate to put in place an MRV Plan in Rule 1201(b) that will meet the definition of a "minor rule violation plan" in Exchange Act Rule 19d-1(c)(2).<sup>8</sup> OCC will specify which violations of the By-Laws or Rules will constitute minor rule violations. OCC currently proposes to designate only a violation of Rule 215 as a minor rule violation. A Clearing Member that wishes to contest a minor rule violation may do so by providing written notice to OCC. Upon contesting a minor rule violation, the violation will be deemed to no longer be a minor rule violation and will be subject to the full provisions of OCC's Chapter XII rules with respect to disciplinary proceedings, including the procedures provided therein for answering charges levied against a Clearing Member, which give Clearing Members the right to a hearing and to be represented by counsel at such hearing. Verbatim transcripts of any such hearing are prepared by OCC.

Section 17A(b)(3)(G) of the Exchange Act<sup>9</sup> requires that the rules of a clearing agency provide that its members be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction. Section 17A(b)(3)(H) of the Exchange Act<sup>10</sup> requires, among other things, that the rules of a clearing agency, in general, provide a fair

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<sup>7</sup> See OCC Rule 1201.

<sup>8</sup> 17 CFR 240.19d-1(c)(2).

<sup>9</sup> 15 USC 78q-1(b)(3)(G).

<sup>10</sup> 15 USC 78q-1(b)(3)(H).

procedure with respect to the disciplining of members. OCC believes that adopting an MRV Plan furthers the statutory objective of providing a fair procedure for disciplining Clearing Members, and will provide OCC with the ability to impose a meaningful sanction for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding under Chapter XII of the Rules. Accordingly, the proposed changes promote the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Exchange Act and the rules and regulations promulgated thereunder applicable to OCC.

#### **Other Amendments**

Several of OCC's By-Laws and Rules include now-dated references to the National Association of Securities Dealers, which OCC has corrected to refer instead to the Financial Industry Regulatory Authority. In addition, OCC Rule 307 includes references to a paragraph of Exchange Act Rule 15c3-1<sup>11</sup> that, while correct when Rule 307 was adopted, have since become incorrect due to the reorganization of that rule. OCC is amending its By-Laws and Rules to correct the foregoing references.

\* \* \*

The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and

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<sup>11</sup> 17 CFR 240.15c3-1.

settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

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

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

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

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

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

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

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

Pursuant to Section 19(b)(2), OCC hereby requests that the Commission accelerate the effectiveness of the proposed rule change because the rule change is designed to ensure technical compliance with final regulations of the CFTC applicable to DCOs that become effective on May 7, 2012. The CFTC's final regulations implement many of the core principles

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

Proposed Rule 215 is based in part on Section (5) of Addendum P of the Rules of the National Securities Clearing Corporation.

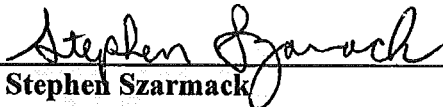
**Item 9. Exhibits**

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:   
\_\_\_\_\_  
**Stephen Szarmack**  
**Vice President and**  
**Associate General Counsel**

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-\_\_\_\_\_ ; File No. SR-OCC-2012-xx

**SELF-REGULATORY ORGANIZATION**

Proposed Rule Change By  
The Options Clearing Corporation

Relating to Revised DCO  
May 7, 2012 Rules

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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 \_\_\_\_\_, 2012, 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 Substance of the Proposed Rule Change**

The proposed rule change would ensure technical compliance with final regulations of the Commodity Futures Trading Commission ("CFTC") applicable to derivatives clearing organizations ("DCOs") that become effective on May 7, 2012.

## **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 purposes of the proposed changes to OCC's By-Laws and Rules are (a) to ensure compliance with certain regulations recently promulgated by the CFTC that become effective on May 7, 2012 and (b) to put in place a minor rule violation plan ("MRV Plan"), within the meaning of Exchange Act Rule 19d-1(c)(2).<sup>1</sup> The CFTC's final regulations implement statutory "core principles" applicable to DCOs as those core principles were amended by the Dodd-Frank Act.

#### **The Final DCO Regulations**

On October 18, 2011, the CFTC held an open meeting at which it issued final regulations implementing many of the new statutory core principles for DCOs enacted under the Dodd-Frank Act. On December 20, 2011, OCC filed a rule change implementing changes designed to bring it into compliance with certain of these final regulations that went into effect on January 9, 2012. This rule filing was approved by the Securities and Exchange Commission

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<sup>1</sup> 17 CFR 240.19d-1(c)(2).



(“SEC”) on an accelerated basis on January 3, 2012.<sup>2</sup> The majority of the remaining regulations go into effect on May 7, 2012. While OCC is already in compliance with most of the final regulations that go into effect on May 7, 2012, OCC believes it appropriate to amend and clarify certain of its rules to ensure compliance with the CFTC’s rules as described herein.

#### **Clearing Members’ Ability to Meet Clearing Fund Assessments**

Final CFTC Rule 39.11(d)(2)(i) states that a DCO must have rules “requiring that its clearing members have *the ability* to meet an assessment *within the time frame of a normal end-of-day variation settlement cycle*.” [Emphasis added.] While OCC By-Laws Article VIII, Section 6 provides that “whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member . . . such Clearing Member shall be liable *promptly* to make good the deficiency in its contribution resulting from such payment,” it does not require that clearing members have the ability to meet an assessment within any particular time period. [Emphasis added.] OCC is therefore proposing that Article VIII, Section 6 of OCC’s By-Laws be amended to require that each clearing member must have, and at all times maintain, the ability to meet any clearing fund assessment by 9:00 A.M. Central Time on the first business day following the day on which OCC notifies the clearing member of such assessment. Additionally, OCC is proposing to amend Article VIII, Section 7 of OCC’s By-Laws to clarify when a withdrawing clearing member is definitively deemed to no longer be a clearing member and hence will no longer be subject to charges against its clearing fund contribution or be obligated to make further contributions.

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<sup>2</sup> See Exchange Act Release No. 34-66081, 77 FR 1116 (January 9, 2012).

### **Clearing Member Financial Resources Requirements**

CFTC Rule 39.12(a)(2)(i) states that a DCO must have participation requirements that “require clearing members to have access to *sufficient financial resources* to meet obligations arising from participation in the [DCO] in *extreme but plausible market conditions*.” [Emphasis added.] In order to avoid any doubt about OCC’s compliance with this rule, OCC is proposing to amend Interpretation and Policy .01 of Article V, Section 1 of its By-Laws, add a new Rule 301(d), add an Interpretation and Policy .11 to Rule 305 and add an Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule.

### **Clearing Member Operational Capacity Requirements**

CFTC Rule 39.12(a)(3) requires a DCO to have participation requirements that “require clearing members to have *adequate operational capacity* to meet obligations arising from participation in the [DCO] . . . [that] include . . . the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the [DCO]; and the ability to participate in default management activities under the rules of the [DCO] and in accordance with [CFTC Rule 39.16].” [Emphasis added.] OCC is proposing to amend Article V, Section 1, Interpretation .02, add a new Rule 214(d), add a new Interpretation and Policy .12 to Rule 305, and add new Interpretation and Policy .02 to Rule 1102 to more closely address the technical requirements of the referenced CFTC Rule. OCC is also proposing to add a new Rule 214(c) to require clearing members to have adequate personnel

arrangement to ensure their ability to meet the requirements of clearing membership, and to provide OCC with a list of such personnel.

### **Clearing Member Reporting Requirements**

CFTC Rule 39.12(a)(5)(i) states that a DCO must “require all clearing members, including non-futures commission merchants, to provide to the [DCO] periodic financial reports that contain any financial information that the [DCO] determines is necessary to assess whether participation requirements are being met on an ongoing basis.” Further, under Rule 39.12(a)(5)(i)(B), a DCO must require non-FCM clearing members to make these periodic financial reports available to the CFTC upon request or, alternatively, a DCO may provide such financial reports directly to the CFTC upon CFTC request. All of OCC’s non-FCM clearing members are either registered U.S. broker-dealers or “non-U.S. Clearing Members” subject to comparable regulation in their home jurisdictions. OCC Rule 306 generally requires that financial reports required to be filed pursuant to regulations applicable to such clearing members also be filed with OCC, and Rule 306(b) requires non-U.S. Clearing Members to file such financial reports with OCC at such times as OCC may specify. OCC therefore believes that the financial reports it currently receives from non-FCM clearing members fulfill the requirement of Rule 39.12(a)(5)(i). However, in order to avoid any doubt about OCC’s compliance with this rule, OCC is proposing to add language to Rule 306(a) to expressly provide that OCC may require clearing members to make financial reports for the purpose of assessing whether the clearing member is meeting OCC’s participation requirements on an ongoing basis. With respect to the requirement of Rule 39.12(a)(5)(i)(B), OCC has determined that, for the convenience of its non-FCM clearing members, it will provide the financial reports filed by them to the CFTC

(upon the CFTC's request). OCC is proposing to state this policy in a new Interpretation and Policy .03 to OCC Rule 306. OCC is also proposing to amend Interpretation and Policy .02 to OCC Rule 306 to parallel the changes being proposed to Rule 306(a) discussed above.

CFTC Rule 39.12(a)(5)(ii) requires a DCO to adopt rules that "require clearing members to provide to the [DCO], in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements." While OCC Rule 215 already requires a clearing member to give OCC prompt written notice of any change of organization or ownership structure, and certain other OCC Rules have notice requirements that address portions of this new requirement, OCC is proposing to amend OCC Rule 215 to more closely address the technical requirements of the referenced CFTC Rule, as well as to expand the notice requirement in Rule 215(a)(4) to include changes in clearing member's jurisdiction of organization or incorporation, in addition to changes in name or form of business organization. OCC is also proposing to adopt a specific schedule of fines for violation of OCC Rule 215 and to amend Rule 209 to allow OCC to withdraw the amounts of any fines payable in connection with a minor rule violation (as well as any fine levied in connection with a disciplinary proceeding pursuant to Chapter XII of the Rules), including a violation of Rule 215, from a clearing member's bank account, provided that the Clearing Member has not timely contested such fines. The proposed schedule of fines is based on a fine schedule that has been adopted by operating subsidiaries of the Depository Trust & Clearing Corporation. As proposed, fines for violation of amended Rule 215 would be between \$300 and \$1,500, depending on the number of violations within any rolling 24-month period and the first, second and third violations of Rule 215 would constitute

“minor rule violations” (see below). The fourth such violation would result in disciplinary action under Chapter XII of OCC’s Rules and would not constitute a minor rule violation. OCC believes that adopting a specific schedule of fines will provide OCC with greater ability to ensure compliance by clearing members.

OCC is also proposing to amend Rule 202 to require its clearing members to notify OCC of any changes to the representatives who are authorized to act on behalf of the clearing member and to update their certified lists of signatures.

#### **Clearing Member Customer Initial Margin**

CFTC Rule 39.13(g)(8)(ii) states that a DCO *must “require its clearing members to collect customer initial margin . . . from their customers, for nonhedge positions, at a level that is greater than 100 percent of the [DCO’s] initial margin requirements with respect to each product and swap portfolio.* The [DCO] shall have reasonable discretion in determining the percentage by which customer initial margins must exceed the [DCO’s] initial margin requirements with respect to particular products or swap portfolios.” [Emphasis added.] Additionally, CFTC Rule 39.13(g)(8)(iii) requires each DCO to “require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer’s account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer’s account which are cleared by the [DCO].” OCC is proposing to adopt a new Rule 602 (which had previously been reserved) in order to implement the requirements of CFTC Rule 39.13(g)(8)(ii) and (iii).

### **Initial Margin – Pledged Assets**

CFTC Rule 39.13(g)(14) states that “if a [DCO] permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the [DCO] shall ensure that such assets are unencumbered and that such pledge has been validly created and validly perfected in the relevant jurisdiction.” While OCC Rule 604(b)(4)(ii) allow pledged assets to be provided as margin under certain circumstances, OCC is proposing to add a new Interpretation and Policy .07 to Rule 604 to explicitly state that all assets pledged to OCC, for whatever purpose, must be free of any lien or other encumbrance senior to OCC’s lien. OCC does not believe that this is a substantive amendment to its Rules, as OCC already takes measures to ensure that its lien over assets provided as initial margin is senior to all other liens or other encumbrances over such assets. OCC is proposing this amendment in order to avoid any doubt as to its compliance with the referenced CFTC Rule.

### **Clearing Member Risk Management Requirements**

CFTC Rule 39.13(h)(5)(i) requires a DCO to adopt rules that: “(A) require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the [DCO]; (B) ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (C) require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the [CFTC] upon [CFTC] request.” OCC is proposing to adopt a new Rule 311 entitled “Clearing Member

Risk Management” requiring clearing members to maintain risk management policies and procedures meeting the requirements of CFTC Rule 39.13(h)(5)(i)(A), granting OCC the authority to request and obtain information and documents from clearing members regarding their risk management policies, procedures and practices, and requiring clearing members to make information and documents regarding their risk management policies, procedures and practices available to the CFTC upon its request.

#### **Daily Settlements**

CFTC Rule 39.14(b) requires that a DCO “effect a settlement with each clearing member at least once each business day” and that it “have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the DCO are breached, or in times of extreme market volatility.” OCC Rule 1301(c) provides OCC with the authority to effect intraday settlements and Interpretation and Policy .01 of Rule 1301 states OCC’s policy of not requiring intraday variation payments while reserving OCC’s right to require such payments from time to time as appropriate. However, for purposes of conforming OCC’s Rules more closely to the regulatory language, OCC is proposing to revise Interpretation and Policy .01 of Rule 1301 to clarify that intraday variation payments will not be required “in the ordinary course” and to state that circumstances under which OCC may assert its right to require intraday variation payments may include, but are not limited to, breach of any threshold set by OCC or during times of extreme market volatility.

### Implementation of the MRV Plan

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act of 1934 (the "Exchange Act")<sup>3</sup> that allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>4</sup>

OCC's rules currently give OCC the ability to censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of OCC's By-Laws or Rules. OCC may also impose fines on Clearing members for such violations.<sup>5</sup> OCC's Rules have not historically distinguished between those violations of the Rules and By-Laws that are minor and do not call for the full procedural regime applicable to other violations and those that are not minor. With the amendments being proposed to Rule 215, and the inclusion of a specific fine schedule for violations of Rule 215, OCC now believes it is appropriate to put in place an MRV Plan in Rule 1201(b) that will meet the definition of a "minor rule violation plan" in Exchange Act Rule 19d-1(c)(2).<sup>6</sup> OCC will specify which violations of the By-Laws or Rules will constitute minor rule violations. OCC currently proposes to designate only a violation of Rule 215 as a minor rule violation. A Clearing Member that wishes to contest a minor rule violation may do so by providing written notice to OCC. Upon contesting a minor rule violation, the violation will be deemed to no longer be a minor rule violation and will be subject to the full provisions of OCC's Chapter XII rules with respect to disciplinary proceedings, including the procedures provided therein for answering charges levied against a Clearing Member, which

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<sup>3</sup> 17 CFR 240.19d-1(c).

<sup>4</sup> See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

<sup>5</sup> See OCC Rule 1201.

<sup>6</sup> 17 CFR 240.19d-1(c)(2).



give Clearing Members the right to a hearing and to be represented by counsel at such hearing. Verbatim transcripts of any such hearing are prepared by OCC.

Section 17A(b)(3)(G) of the Exchange Act<sup>7</sup> requires that the rules of a clearing agency provide that its members be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction. Section 17A(b)(3)(H) of the Exchange Act<sup>8</sup> requires, among other things, that the rules of a clearing agency, in general, provide a fair procedure with respect to the disciplining of members. OCC believes that adopting an MRV Plan furthers the statutory objective of providing a fair procedure for disciplining Clearing Members, and will provide OCC with the ability to impose a meaningful sanction for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding under Chapter XII of the Rules. Accordingly, the proposed changes promote the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Exchange Act and the rules and regulations promulgated thereunder applicable to OCC.

#### **Other Amendments**

Several of OCC's By-Laws and Rules include now-dated references to the National Association of Securities Dealers, which OCC has corrected to refer instead to the Financial Industry Regulatory Authority. In addition, OCC Rule 307 includes references to a paragraph of Exchange Act Rule 15c3-1<sup>9</sup> that, while correct when Rule 307 was adopted, have

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<sup>7</sup> 15 USC 78q-1(b)(3)(G).

<sup>8</sup> 15 USC 78q-1(b)(3)(H).

<sup>9</sup> 17 CFR 240.15c3-1.

since become incorrect due to the reorganization of that rule. OCC is amending its By-Laws and Rules to correct the foregoing references.

\* \* \*

The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of 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. The proposed rule change is not inconsistent with any rules of OCC.

**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**

Pursuant to Section 19(b)(2) of the Exchange Act, OCC has requested the Commission to accelerate the effectiveness of the proposed rule change. The Commission finds good cause for approving the rule change on an accelerated basis because the rule change is designed to ensure technical compliance with final regulations of the CFTC applicable to DCOs that become

effective on May 7, 2012. The CFTC's final regulations implement many of the core principles applicable to DCOs under the Commodity Exchange Act that were enacted under the Dodd Frank Act. As a CFTC registered DCO, OCC is required to comply with CFTC core principles.

**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-2012-06 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-2012-06. 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-2012-06 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: \_\_\_\_\_