



THE OPTIONS CLEARING  
CORPORATION

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August 31, 2011

VIA E-MAIL

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

**Re: Rule Filing SR-OCC-2011-12 Rule Certification**

Dear Secretary Stawick:

Enclosed is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.6. Notice has been or promptly will be given to Clearing Members of OCC in compliance with Section 5c(c) of the Commodity Exchange Act. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act").

In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is the later of: 10 business days following receipt by the Commission, the date the proposed rule is approved by the SEC or otherwise becomes effective under the Exchange Act or the date specified in the enclosed rule filing as its effective date. Item 5 of the enclosed filing sets forth a description of any written comments on the rule filing, including any such comments expressing opposing views that were not incorporated into the proposed rule.

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

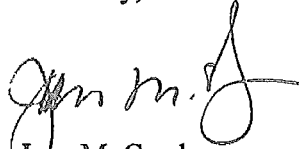
JEAN M. CAWLEY

SENIOR VICE PRESIDENT - DEPUTY GENERAL COUNSEL - CHIEF COMPLIANCE OFFICER  
ONE N. WACKER DRIVE, SUITE 500 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280  
JCAWLEY@THEOCC.COM WWW.OPTIONSCLEARING.COM

Mr. David A. Stawick  
August 31, 2011  
Page 2

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

Sincerely,



Jean M. Cawley

Enclosure

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

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 adopt fitness standards for the Corporation’s directors, clearing members and certain other individuals (“Fitness Standards”) in order to facilitate compliance by OCC with certain provisions of the Commodity Exchange Act (the “CEA”) that were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and that became effective July 16, 2011. OCC is proposing to add new Interpretations and Policies to the By-Laws that establish qualifications for the Corporation’s directors and clearing members in order to incorporate the Fitness Standards by reference therein. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

\* \* \*

ARTICLE III

Board of Directors

\* \* \*

Qualifications of Member Directors

SECTION 2. [no change]

... Interpretations and Policies:

.01 Fitness Standards

The Nominating Committee shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, in considering Member Director nominees for election to the Board.

\* \* \*

### Exchange Directors

SECTION 6. [no change]

... *Interpretations and Policies:*

.01 Fitness Standards

The stockholder exchanges shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, in considering Exchange Director nominees for election to the Board.

### Public Directors

SECTION 6A. [no change]

... *Interpretations and Policies:*

.01 Fitness Standards

The Chairman and the Board of Directors shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, in considering Public Director nominees for election to the Board.

### Management Director

SECTION 7. [no change]

... *Interpretations and Policies:*

.01 Fitness Standards

The Board of Directors shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, in considering nominees for election as Chairman of the Board.

\* \* \*

## ARTICLE V

### Clearing Members

\* \* \*

### Qualifications

SECTION 1. (a) – (d) [no change]

*... Interpretations and Policies:*

0.1–0.3 [no change]

.04 Fitness Standards

In addition to the standards of financial responsibility, operational capability and experience and competence, the Membership/Risk Committee shall consider the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, before recommending the approval of any application for clearing membership.

0.4–0.9 [redesignated as .05–.10, but otherwise 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 June 27, 2011 with the unanimous approval of OCC's stockholders. (Article XI, Section 1 of the By-Laws provides that the approval of the holders of all of OCC's outstanding Common Stock is required to amend Article III of the By-Laws.)

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

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

The purpose of this proposed rule change is to facilitate compliance by OCC with new core principles ("Core Principles") applicable to derivatives clearing organizations ("DCOs") that are set forth in the CEA, as amended by the Dodd-Frank Act. In particular, new DCO Core Principle O requires DCOs to establish fitness standards for directors, clearing members and certain other individuals.

**Background**

The Core Principles for DCOs are set forth in the CEA and consist of a number of governing principles to which a DCO is required to adhere. OCC is registered as a DCO with the Commodity Futures Trading Commission (the "CFTC") under Section 5b of the CEA, and clears commodity futures and commodity options traded on five futures exchanges subject to the CFTC's jurisdiction. Title VII of the Dodd-Frank Act amended the CEA to expand existing Core Principles and to add certain new Core Principles. The applicable Dodd-Frank amendments to the CEA become effective July 16, 2011. In January 2011, the CFTC published proposed rules (the "Proposed Rules") to implement the Core Principles, as amended and expanded by the Dodd Frank Act. The Proposed Rules propose certain minimum criteria for complying with the Core Principles, and propose certain clarifications of the more ambiguous provisions of the Core Principles. The Proposed Rules have not been adopted and will not be effective until 60 days following the date on which the CFTC publishes final rules implementing the Core Principles.

Core Principle O provides that each DCO must: (i) establish governance arrangements that are transparent (I) to fulfill public interest requirements and (II) to permit the consideration of the views of both owners and participants, and (ii) establish and enforce appropriate fitness standards for (I) directors, (II) members of any disciplinary committee, (III) members of the DCO, (IV) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (V) any party affiliated with any of the above. OCC's existing governance arrangements satisfy the transparency requirements of subparagraph (i) of Core Principle O. OCC is proposing to adopt the Fitness Standards in order to assure compliance with subparagraph (ii) of Core Principle O.

#### **Description of Proposed Fitness Standards**

The proposed Fitness Standards, which are attached as Exhibit 5 to this rule filing, comply with Core Principle O by establishing minimum standards for directors and clearing members, as well as affiliates of such directors and clearing members.<sup>1</sup> The proposed Fitness Standards are generally similar to fitness standards adopted by the Depository Trust and Clearing Corporation.

The Fitness Standards incorporate the Proposed Rule's minimum fitness standards for directors and clearing members, including the bases for refusal to register a person under Section 8a(2) of the CEA and, for directors only, the absence of a significant history of serious disciplinary offences, such as those that would be disqualifying under Section 1.63 of the CFTC's regulations. The Fitness Standards do not establish criteria for members of the disciplinary committee or for persons "with direct access to the settlement or clearing activities"

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<sup>1</sup> Pursuant to a conversation among OCC, the Commission and the CFTC, the CFTC has indicated that the proposed rule change may become effective after July 16, 2011 without impacting OCC's status as a DCO.



of OCC (“Access Persons”). In OCC’s case, all members of disciplinary committees<sup>2</sup> are directors of the Corporation and will be subject to the Fitness Standards as such. With respect to Access Persons, neither the CEA nor the Proposed Rules provide any explicit guidance as to the persons intended to be included in the phrase “any other individual or entity with direct access to the settlement or clearing activities of the [DCO].” Similarly, the term “direct access” is not defined in the CEA or the Proposed Rules. However, Core Principle O is closely modeled on existing designated contract market (“DCM”) Core Principle 14, which also requires that fitness standards be established for directors, members and “any other persons with direct access to the facility.” The CFTC has previously issued guidance on DCM Core Principle 14 and interpreted “persons with direct access to the facility” to include “non-member market participants who are not intermediated and do not have [member] privileges, obligations, responsibilities or disciplinary authority.” This interpretation suggests that “access” is intended to mean the type of access that a member would have. OCC believes that by analogy “persons with direct access to the settlement or clearing activities” of a DCO, as used in Core Principle O, is intended to refer to persons with access to submit transactions for clearing or to give instructions to OCC regarding accounts or transactions or otherwise have access to the clearing system in a manner similar to the access that a Clearing Member would have. OCC also does not read “any other individual or entity with direct access to the settlement or clearing activities of the [DCO]” to include OCC employees or service providers such as settlement banks. Accordingly, OCC believes that there are presently no persons with “direct access” to the settlement and clearing activities of OCC other than clearing members.

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<sup>2</sup> OCC has no standing disciplinary committee. Disciplinary committees are formed on an ad hoc basis. See OCC Rule 1202(a).

**Proposed By-Law Changes**

Article III (Board of Directors) and Article V (Clearing Members) set forth qualifications for directors and clearing members, respectively. The Interpretations and Policies under the appropriate sections of both Articles are being amended to incorporate the applicable Fitness Standards by reference.

A copy of the Corporation's proposed Fitness Standards is attached hereto as Exhibit 5.

\* \* \*

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (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.

**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 specified in Section 19(b)(2) of the Act.

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

Not applicable.

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

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

**Item 9. Exhibits**

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

Exhibit 5 The Options Clearing Corporation: Fitness Standards for Directors, Clearing Members and Others

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

By: 

Jean M. Cawley  
Senior Vice President, Deputy General  
Counsel and Chief Compliance Officer

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-OCC-2011-11

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By  
The Options Clearing Corporation

Relating to Fitness Standards for  
Directors, Clearing Members and Others

Comments requested within \_\_\_\_\_ days  
after the date of this publication.

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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 \_\_\_\_\_, 2011, 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

As discussed in Item 3, the proposed rule change would establish fitness standards for directors, clearing members and others.

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 purpose of this proposed rule change is to facilitate compliance by OCC with new core principles ("Core Principles") applicable to derivatives clearing organizations ("DCOs") that are set forth in the CEA, as amended by the Dodd-Frank Act. In particular, new DCO Core Principle O requires DCOs to establish fitness standards for directors, clearing members and certain other individuals.

**Background**

The Core Principles for DCOs are set forth in the CEA and consist of a number of governing principles to which a DCO is required to adhere. OCC is registered as a DCO with the Commodity Futures Trading Commission (the "CFTC") under Section 5b of the CEA, and clears commodity futures and commodity options traded on five futures exchanges subject to the CFTC's jurisdiction. Title VII of the Dodd-Frank Act amended the CEA to expand existing Core Principles and to add certain new Core Principles. The applicable Dodd-Frank amendments to the CEA become effective July 16, 2011. In January 2011, the CFTC published proposed rules (the "Proposed Rules") to implement the Core Principles, as amended and

expanded by the Dodd Frank Act. The Proposed Rules propose certain minimum criteria for complying with the Core Principles, and propose certain clarifications of the more ambiguous provisions of the Core Principles. The Proposed Rules have not been adopted and will not be effective until 60 days following the date on which the CFTC publishes final rules implementing the Core Principles.

Core Principle O provides that each DCO must: (i) establish governance arrangements that are transparent (I) to fulfill public interest requirements and (II) to permit the consideration of the views of both owners and participants, and (ii) establish and enforce appropriate fitness standards for (I) directors, (II) members of any disciplinary committee, (III) members of the DCO, (IV) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (V) any party affiliated with any of the above. OCC's existing governance arrangements satisfy the transparency requirements of subparagraph (i) of Core Principle O. OCC is proposing to adopt the Fitness Standards in order to assure compliance with subparagraph (ii) of Core Principle O.

#### **Description of Proposed Fitness Standards**

The proposed Fitness Standards, which are attached as Exhibit 5 to this rule filing, comply with Core Principle O by establishing minimum standards for directors and clearing members, as well as affiliates of such directors and clearing members.<sup>1</sup> The proposed Fitness Standards are generally similar to fitness standards adopted by the Depository Trust and Clearing Corporation.

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<sup>1</sup> Pursuant to a conversation among OCC, the Commission and the CFTC, the CFTC has indicated that the proposed rule change may become effective after July 16, 2011 without impacting OCC's status as a DCO.

The Fitness Standards incorporate the Proposed Rule's minimum fitness standards for directors and clearing members, including the bases for refusal to register a person under Section 8a(2) of the CEA and, for directors only, the absence of a significant history of serious disciplinary offences, such as those that would be disqualifying under Section 1.63 of the CFTC's regulations. The Fitness Standards do not establish criteria for members of the disciplinary committee or for persons "with direct access to the settlement or clearing activities" of OCC ("Access Persons"). In OCC's case, all members of disciplinary committees<sup>2</sup> are directors of the Corporation and will be subject to the Fitness Standards as such. With respect to Access Persons, neither the CEA nor the Proposed Rules provide any explicit guidance as to the persons intended to be included in the phrase "any other individual or entity with direct access to the settlement or clearing activities of the [DCO]." Similarly, the term "direct access" is not defined in the CEA or the Proposed Rules. However, Core Principle O is closely modeled on existing designated contract market ("DCM") Core Principle 14, which also requires that fitness standards be established for directors, members and "any other persons with direct access to the facility." The CFTC has previously issued guidance on DCM Core Principle 14 and interpreted "persons with direct access to the facility" to include "non-member market participants who are not intermediated and do not have [member] privileges, obligations, responsibilities or disciplinary authority." This interpretation suggests that "access" is intended to mean the type of access that a member would have. OCC believes that by analogy "persons with direct access to the settlement or clearing activities" of a DCO, as used in Core Principle O, is intended to refer

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<sup>2</sup> OCC has no standing disciplinary committee. Disciplinary committees are formed on an ad hoc basis. See OCC Rule 1202(a).



to persons with access to submit transactions for clearing or to give instructions to OCC regarding accounts or transactions or otherwise have access to the clearing system in a manner similar to the access that a Clearing Member would have. OCC also does not read “any other individual or entity with direct access to the settlement or clearing activities of the [DCO]” to include OCC employees or service providers such as settlement banks. Accordingly, OCC believes that there are presently no persons with “direct access” to the settlement and clearing activities of OCC other than clearing members.

#### **Proposed By-Law Changes**

Article III (Board of Directors) and Article V (Clearing Members) set forth qualifications for directors and clearing members, respectively. The Interpretations and Policies under the appropriate sections of both Articles are being amended to incorporate the applicable Fitness Standards by reference.

A copy of the Corporation’s proposed Fitness Standards is attached hereto as Exhibit 5.

\* \* \*

The proposed changes to OCC’s By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (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**

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2011-11 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-2011-11. 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, 100 F 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-2011-11 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: \_\_\_\_\_

# The Options Clearing Corporation: Fitness Standards for Directors, Clearing Members and Others

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## The Options Clearing Corporation Fitness Standards

The Board of Directors and the stockholders of The Options Clearing Corporation (the "Corporation") have established qualification and fitness standards (the "Fitness Standards") for (i) directors, (ii) Clearing Members, and (iii) any person affiliated with a director or a Clearing Member. The criteria of the applicable Fitness Standards shall be used in nominating directors and in admitting Clearing Members or otherwise granting direct access to the settlement or clearing activities of the Corporation.

### Fitness Standards for Directors

The Corporation's By-Laws contain governance standards designed to provide fair representation to stockholders and Clearing Members. The Board currently has 16 members consisting of nine Clearing Member directors ("Member Directors"), five directors nominated by the stockholder exchanges ("Exchange Directors"), one director who is not affiliated with any national securities exchange, national securities association or broker or dealer in securities (the "Public Director"), and the Corporation's Chairman (the "Management Director"). Member Directors are divided into three equal classes elected for staggered three-year terms. Nominating Committee members are divided into two equal classes elected for staggered two-year terms. Prior to each annual meeting of stockholders, the Nominating Committee nominates a slate of nominees for election to the class of Member Directors and the class of Nominating Committee members whose terms expire at that meeting. Each Exchange Director serves a one-year term and is nominated by one of the five stockholder exchanges, although a single Exchange Director may represent more than one exchange. The Public Director serves a three-year term and is nominated by the Chairman, with the approval of the Board of Directors. The Management Director, who is the Corporation's Chairman, serves a one-year term. This governance structure was carefully designed to meet the statutory requirements of "fair representation" and facilitates the performance of the Corporation's role as a market utility.

The criteria below shall be used by the Nominating Committee, the stockholder exchanges, and the Board of Directors in considering nominees for election to the Board and service on the Disciplinary Committee.

#### *Criteria Applicable to all Directors*

- Characteristics essential for effectiveness as a member of the Board, including, but not limited to, integrity, objectivity, sound judgment, and leadership;
- Expertise and experience in an area relevant to governance of the Corporation, including, but not limited to: (i) strategic planning, such as new business development, expansion of markets, products and customers, and joint venture development; (ii) risk management relevant to risks such as credit, market, liquidity, operational, legal and regulatory compliance, payment systems, clearance and settlement, new products, risk modeling, risk valuation, and systemic risk management; (iii) technology, such as infrastructure, applications development and maintenance, information security, and disaster recovery; (iv) operations; (v) trading; (vi) business management; (vii) finance; (viii) audit; (ix) governmental and legislative relationship management; (x) compensation and human resources; and (xi) legal, regulatory, and compliance expertise.
- Substantial seniority in own firm;

- Knowledge of securities and/or futures industries;
- Appropriate educational credentials or other certifications;
- For current directors eligible for re-election, length of service on the Board and attendance, and participation, and contribution at Board and committee meetings; and
- Appropriate weight given to diversity factors.

In addition, no person shall be qualified to serve on the Board if such person:

- is subject to a "statutory disqualification" under Section 3(a)(39) of the Securities Exchange Act of 1934, as amended (the "Exchange Act");
- may be refused registration under the Commodity Exchange Act ("CEA") pursuant to Section 8a(2) of the CEA; or
- has a history of serious disciplinary offenses, including, but not limited to, those that would be disqualifying under Commodity Futures Trading Commission ("CFTC") Regulation § 1.63.

*Additional Criteria for Member Directors*

- Balanced representation among all Clearing Members;
- Balanced representation of all business activities of Clearing Members;
- Nature of the firm each prospective director is associated with;
- Industry affiliations; and
- Geographical distribution of Clearing Members.

*Additional Criteria for Exchange Directors*

- Ownership of common stock of the Corporation by the exchange nominating an Exchange Director.

*Additional Criteria for the Public Director*

- No affiliation with any national securities exchange or national securities association or with any broker or dealer in securities, as stated in the Corporation's By-Laws.

**Fitness Standards for Clearing Members**

Clearing Members of the Corporation are subject to extensive regulation by either or both of the SEC and the CFTC, or, in the case of Non-U.S. Securities Firms, the regulatory authority of the country or countries in which the firm conducts business. Clearing Member applicants must be:

- Registered as a broker or dealer under the Exchange Act;
- A futures commission merchant registered under Section 4f(a)(1) of the CEA; or
- A Non-U.S. Securities Firm, as defined in the By-Laws.

Unless the Membership/Risk Committee finds there are special circumstances warranting the waiver of such disqualification<sup>1</sup>, no person shall be qualified to be admitted as a Clearing Member if it:

- is subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act; or
- may be refused registration under the CEA pursuant to Section 8a(2) of the CEA.

**Fitness Standards for Affiliates and Access Persons**

Unless the Membership/Risk Committee finds that there are special circumstances warranting the waiver of such disqualification, no person affiliated, within the meaning of Section 5b(c)(2)(O) of the CEA, with a director of the Corporation or a Clearing Member ("Affiliates") shall:

- be subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act; or
- meet criteria for refusal to register a person under Section 8a(2) of the CEA.

With respect to Affiliates, the Board shall be entitled to rely on a certification from the relevant director or Clearing Member that, to the best of such person's knowledge, none of its affiliates is subject to disqualification pursuant to the Corporation's Fitness Standards and that such person will notify the Corporation if at any time such director or Clearing Member becomes aware that any such affiliate fails to meet the Fitness Standards.

Section 5b(c)(2)(O)(ii)(IV) of the CEA requires each derivative clearing organization ("DCO") to establish Fitness Standards for persons with direct access to the settlement or clearing activities of the DCO ("Access Persons"). The Corporation believes that there are presently no persons with such access other than the Clearing Members.

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<sup>1</sup> See Article V, Section 1, Interpretation and Policy .03(a) of OCC's by-laws.