



October 29, 2013

**VIA ELECTRONIC MAIL**

Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2013-19 Rule Certification**

Dear Ms. Jurgens:

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 (the “CFTC” or “Commission”) Regulation 40.6. The date of implementation of the rule is the later of 10 business days following receipt of the rule filing by the CFTC hereof or the date the proposed rule is approved by the Securities and Exchange Commission (the “SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

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

**Explanation and Analysis**

The Options Clearing Corporation (“OCC”) is proposing to execute an amendment (“Amendment”) to the Amended and Restated Clearing and Services Agreement (“Clearing Agreement”) between OCC and NYSE Liffe US LLC (“NYSE Liffe US”) to make changes to the Clearing Agreement in connection with NYSE Liffe US’ transition to electronic vault receipts, from physical vault receipts, to represent metals underlying physically-settled precious metal futures contracts (“Precious Metals Futures”). The Amendment makes certain clarifying and non-material technical changes to the Clearing Agreement.

OCC provides clearance and settlement services to NYSE Liffe US pursuant to the Clearing Agreement. OCC and NYSE Liffe US have been working together on an initiative that

will transition the vault receipts that represent metals underlying Precious Metals Futures to electronic vault receipts, instead of physical vault receipts (“Initiative”).<sup>1</sup> The purpose of this rule filing is to amend the Clearing Agreement so that OCC and NYSE Liffe US may complete the Initiative and begin using electronic vault receipts.

In connection with the Initiative, NYSE Liffe US has entered into bailment agreements with five vaults that will provide depository and transfer services (each such agreement is hereinafter referred to as a “Bailment Agreement”) for the electronic vault receipts of NYSE Liffe US members that trade Precious Metals Futures (who are also OCC clearing members). Each Bailment Agreement began as a “form” agreement, which was drafted collectively by NYSE Liffe US and OCC. NYSE Liffe US subsequently negotiated various terms of the form agreement with the five vaults and entered into executed Bailment Agreements with each vault. OCC has reviewed each Bailment Agreement and has determined that certain terms of the Bailment Agreement between NYSE Liffe US and Brink’s, Incorporated and Brink’s Global Services U.S.A., Inc. (collectively, “Brinks”) differ from the form agreement (i.e., Default Cures, Transfer of Metals and Audits) more than the other Bailment Agreements and, therefore, the parties have agreed to limit the amount of electronic vault receipts held at Brinks to no more than \$5 million at this time. Accordingly, OCC proposes to amend Section 6(c)(iv)(F) of the Clearing Agreement to reflect such limitation.

The Amendment will also make several other non-material technical changes to the Clearing Agreement, which include:

- An amendment to Section 6(c)(ii) of the Clearing Agreement that will clarify NYSE Liffe US’ right to pursue disciplinary action against sellers of Precious Metals Futures that do not adhere to time frames set forth by NYSE Liffe US regarding the issuance of vault receipts;
- An amendment to Section 6(c)(v) of the Clearing Agreement to clarify that vault receipts with a registration date of the first day of the Transition period or later must be in electronic form, and vault receipts with a registration date before the first day of the Transaction Period must be in paper form;

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<sup>1</sup> See Securities Exchange Act Release No. 34-69595 (May 16, 2013), 78 FR 30364 (May 22, 2013) (SR-OCC-2013-06).

- A technical amendment to replace the reference to “Bailment Arrangement” in Section 26(a)(ii) of the Clearing Agreement with “Bailment Agreement;”
- Technical amendments to Schedules D and F of the Clearing Agreement to reflect an updated and current checklist and list of executed bailment arrangements; and
- A technical amendment to add a Schedule G to the Clearing Agreement, titled “Form of Declaration of Regularity (referred to as “Bailment Agreements” in the Clearing Agreement).”

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

**Settlement Procedures.** OCC believes that the proposed rule change to permit the use of electronic vault receipts to represent metals underlying Precious Metals Futures will aid OCC in managing and reducing settlement risks related to physically settled Precious Metals Futures for both OCC and its clearing members. The use of electronic vault receipts, as opposed to physical vault receipts, provides for a more efficient and consistent settlement process. Moreover, the Chicago Mercantile Exchange began using electronic vault receipts in 2008, and use thereof is consistent with evolving industry practices.

**Risk Management.** OCC believes that the proposed rule change to permit the use of electronic vault receipts to represent metals underlying Precious Metals Futures will enhance its risk management. Use of electronic vault receipts, along with OCC’s perfected security interest in such receipts, will allow OCC to more quickly and easily manage instances when a clearing member does not timely deliver a vault receipt to discharge a Precious Metals Futures delivery obligation. In addition, the costs associated with managing such delivery using electronic vault receipts, as opposed to physical vault receipts, will be reduced for both OCC and its clearing members.

#### Opposing Views

No opposing views were expressed related to the rule amendments.

#### Notice of Pending Rule Certification

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

Melissa Jurgens  
October 29, 2013  
Page 4

Certification

OCC hereby certifies that the attached rule filing complies with the Act and the CFTC's regulations thereunder.

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

Sincerely,



Stephen Szarnack  
Vice President and Associate General Counsel

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 112

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2013 - \* 19

Amendment No. (req. for Amendments \*)

Filing by Options Clearing Corporation  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*  Amendment \*  Withdrawal  Section 19(b)(2) \*  Section 19(b)(3)(A) \*  Section 19(b)(3)(B) \*

Rule

Pilot  Extension of Time Period for Commission Action \*  Date Expires \*

19b-4(f)(1)  19b-4(f)(4)  
 19b-4(f)(2)  19b-4(f)(5)  
 19b-4(f)(3)  19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 306(e)(1)

Section 306(e)(2)

Section 3C(b)(2)

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

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

This rule change concerns an amendment to the Amended and Restated Clearing and Services Agreement between OCC and NYSE Liffe US LLC in connection with NYSE Liffe US LCC's transition to electronic vault receipts.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Stephen Last Name \* Szarmack  
 Title \* Vice President and Associate General Counsel  
 E-mail \* sszarmack@theocc.com  
 Telephone \* (312) 322-4802 Fax (312) 322-6280

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 10/29/2013

Assistant Secretary

By Scott Kalish  
 (Name \*)

Persona Not Validated - 1374606209118,

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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

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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”) is proposing to execute an amendment (“Amendment”) to the Amended and Restated Clearing and Services Agreement (“Clearing Agreement”) between OCC and NYSE Liffe US LLC (“NYSE Liffe US”) to make changes to the Clearing Agreement in connection with NYSE Liffe US’ transition to electronic vault receipts, from physical vault receipts, to represent metals underlying physically-settled precious metal futures contracts (“Precious Metals Futures”). The Amendment, which is attached hereto as Exhibit 3, makes certain clarifying and non-material technical changes to the Clearing Agreement.

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

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on February 8, 2011.

Questions should be addressed to Stephen M. 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**

OCC provides clearance and settlement services to NYSE Liffe US pursuant to the Clearing Agreement. OCC and NYSE Liffe US have been working together on an initiative that will transition the vault receipts that represent metals underlying Precious Metals Futures to electronic vault receipts, instead of physical vault receipts (“Initiative”).<sup>1</sup> The purpose of this

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<sup>1</sup> See Securities Exchange Act Release No. 34-69595 (May 16, 2013), 78 FR 30364 (May 22, 2013) (SR-OCC-2013-06).



rule filing is to amend the Clearing Agreement so that OCC and NYSE Liffe US may complete the Initiative and begin using electronic vault receipts.

In connection with the Initiative, NYSE Liffe US has entered into bailment agreements with five vaults that will provide depository and transfer services (each such agreement is hereinafter referred to as a “Bailment Agreement”) for the electronic vault receipts of NYSE Liffe US members that trade Precious Metals Futures (who are also OCC clearing members). Each Bailment Agreement began as a “form” agreement, which was drafted collectively by NYSE Liffe US and OCC. NYSE Liffe US subsequently negotiated various terms of the form agreement with the five vaults and entered into executed Bailment Agreements with each vault. OCC has reviewed each Bailment Agreement and has determined that certain terms of the Bailment Agreement between NYSE Liffe US and Brink’s, Incorporated and Brink’s Global Services U.S.A., Inc. (collectively, “Brinks”) differ from the form agreement (i.e., Default Cures, Transfer of Metals and Audits) more than the other Bailment Agreements and, therefore, the parties have agreed to limit the amount of electronic vault receipts held at Brinks to no more than \$5 million at this time. Accordingly, OCC proposes to amend Section 6(c)(iv)(F) of the Clearing Agreement to reflect such limitation.

The Amendment will also make several other non-material technical changes to the Clearing Agreement, which include:

- An amendment to Section 6(c)(ii) of the Clearing Agreement that will clarify NYSE Liffe US’ right to pursue disciplinary action against sellers of Precious Metals Futures that do not adhere to time frames set forth by NYSE Liffe US regarding the issuance of vault receipts;
- An amendment to Section 6(c)(v) of the Clearing Agreement to clarify that vault

receipts with a registration date of the first day of the Transition period or later must be in electronic form, and vault receipts with a registration date before the first day of the Transaction Period must be in paper form;

- A technical amendment to replace the reference to “Bailment Arrangement” in Section 26(a)(ii) of the Clearing Agreement with “Bailment Agreement;”
- Technical amendments to Schedules D and F of the Clearing Agreement to reflect an updated and current checklist and list of executed bailment arrangements; and
- A technical amendment to add a Schedule G to the Clearing Agreement, titled “Form of Declaration of Regularity (referred to as “Bailment Agreements” in the Clearing Agreement).”

\* \* \*

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”),<sup>2</sup> and the rules and regulations thereunder, including Rule 17Ad-22,<sup>3</sup> because it is designed to permit OCC to perform clearance and settlement services for derivative products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the “CFTC”) without adversely affecting OCC’s obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change will permit OCC to make certain clarifying and technical amendments to its Clearing Agreement with NYSE Liffe US, a futures market. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

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<sup>2</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>3</sup> 17 CFR 240.17Ad-22.

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the CFTC and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Exchange Act.

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

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

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

Not applicable.

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

This proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(4)(ii)<sup>5</sup> thereunder. Pursuant to Rule 19b-4(f)(4)(ii),<sup>6</sup> a rule change may take effect upon filing if it primarily affects the clearing operations of the clearing agency with respect to products that are not securities and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing

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<sup>4</sup> 15 U.S.C. 78s(b)(3).

<sup>5</sup> 17 CFR 240.19b-4(f)(4)(ii)

<sup>6</sup> *Id.*

service. As described above, this rule proposed rule change concerns futures products that are subject to the exclusive jurisdiction of the CFTC and does not 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. Notwithstanding the foregoing, OCC will delay its implementation of this rule change until it is deemed certified under Regulation § 40.6 of the CFTC.<sup>7</sup>

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

Not applicable.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 3. Amendment No. 1 to the Clearing Agreement.

**(Confidential treatment is requested for the executed Transition Period Vault Receipt Agreements, which are attached to Exhibit 3 as Exhibit D).**

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<sup>7</sup> 17 CFR Part 40.6.

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

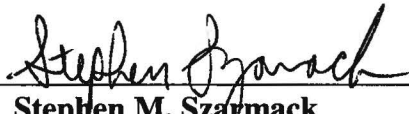
By:  \_\_\_\_\_  
**Stephen M. Szarmack**  
**Vice President and Associate General Counsel**

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[                    ]; File No. SR-OCC-2013-19

October 29, 2013

Clearing Agency; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning an Amendment to the Amended and Restated Clearing and Services Agreement Between The Options Clearing Corporation and NYSE Liffe US LLC in Connection With NYSE Liffe US LLC's Transition to Electronic Vault Receipts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on October 29, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>4</sup> thereunder.

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

OCC is proposing to execute an amendment ("Amendment") to the Amended and Restated Clearing and Services Agreement ("Clearing Agreement") between OCC and NYSE Liffe US LLC ("NYSE Liffe US") to make changes to the Clearing Agreement in connection with NYSE Liffe US' transition to electronic vault receipts, from physical vault receipts, to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

represent metals underlying physically-settled precious metal futures contracts (“Precious Metals Futures”). The Amendment makes certain clarifying and non-material technical changes to the Clearing Agreement.

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

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

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

OCC provides clearance and settlement services to NYSE Liffe US pursuant to the Clearing Agreement. OCC and NYSE Liffe US have been working together on an initiative that will transition the vault receipts that represent metals underlying Precious Metals Futures to electronic vault receipts, instead of physical vault receipts (“Initiative”).<sup>5</sup> The purpose of this rule filing is to amend the Clearing Agreement so that OCC and NYSE Liffe US may complete the Initiative and begin using electronic vault receipts.

In connection with the Initiative, NYSE Liffe US has entered into bailment agreements with five vaults that will provide depository and transfer services (each such agreement is hereinafter referred to as a “Bailment Agreement”) for the electronic vault receipts of NYSE Liffe US members that trade Precious Metals Futures (who are also OCC clearing

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<sup>5</sup> See Securities Exchange Act Release No. 34-69595 (May 16, 2013), 78 FR 30364 (May 22, 2013) (SR-OCC-2013-06).

members). Each Bailment Agreement began as a “form” agreement, which was drafted collectively by NYSE Liffe US and OCC. NYSE Liffe US subsequently negotiated various terms of the form agreement with the five vaults and entered into executed Bailment Agreements with each vault. OCC has reviewed each Bailment Agreement and has determined that certain terms of the Bailment Agreement between NYSE Liffe US and Brink’s, Incorporated and Brink’s Global Services U.S.A., Inc. (collectively, “Brinks”) differ from the form agreement (i.e., Default Cures, Transfer of Metals and Audits) more than the other Bailment Agreements and, therefore, the parties have agreed to limit the amount of electronic vault receipts held at Brinks to no more than \$5 million at this time. Accordingly, OCC proposes to amend Section 6(c)(iv)(F) of the Clearing Agreement to reflect such limitation.

The Amendment will also make several other non-material technical changes to the Clearing Agreement, which include:

- An amendment to Section 6(c)(ii) of the Clearing Agreement that will clarify NYSE Liffe US’ right to pursue disciplinary action against sellers of Precious Metals Futures that do not adhere to time frames set forth by NYSE Liffe US regarding the issuance of vault receipts;
- An amendment to Section 6(c)(v) of the Clearing Agreement to clarify that vault receipts with a registration date of the first day of the Transition period or later must be in electronic form, and vault receipts with a registration date before the first day of the Transaction Period must be in paper form;
- A technical amendment to replace the reference to “Bailment Arrangement” in Section 26(a)(ii) of the Clearing Agreement with “Bailment Agreement;”



- Technical amendments to Schedules D and F of the Clearing Agreement to reflect an updated and current checklist and list of executed bailment arrangements; and
- A technical amendment to add a Schedule G to the Clearing Agreement, titled “Form of Declaration of Regularity (referred to as “Bailment Agreements” in the Clearing Agreement).”

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> and the rules and regulations thereunder, including Rule 17Ad-22,<sup>7</sup> because it is designed to permit OCC to perform clearance and settlement services for derivative products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the “CFTC”) without adversely affecting OCC’s obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change will permit OCC to make certain clarifying and technical amendments to its Clearing Agreement with NYSE Liffe US, a futures market. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the CFTC and therefore

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad-22.

will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

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

This proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(4)(ii)<sup>9</sup> thereunder. Pursuant to Rule 19b-4(f)(4)(ii),<sup>10</sup> a rule change may take effect upon filing if it primarily affects the clearing operations of the clearing agency with respect to products that are not securities and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. As described above, this rule proposed rule change concerns futures products that are subject to the exclusive jurisdiction of the CFTC and does not 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. Notwithstanding the

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<sup>8</sup> 15 U.S.C. § 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>10</sup> *Id.*

foregoing, OCC will delay its implementation of this rule change until it is deemed certified under Regulation §40.6 of the CFTC.<sup>11</sup>

#### 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 Commissions 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-2013-19 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-OCC-2013-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

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<sup>11</sup> 17 CFR Part 40.6.

website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <http://www.theocc.com/about/publications/bylaws.jsp>

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-2013-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.<sup>12</sup>

**Kevin M. O'Neill**  
Deputy Secretary

Action as set forth recommended herein  
APPROVED pursuant to authority delegated by  
the Commission under Public Law 87-592.  
For: Division of Trading and Markets

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 3****AMENDMENT NO. 1 TO AMENDED AND RESTATED  
AGREEMENT FOR CLEARING AND SETTLEMENT SERVICES**

This AMENDMENT NO. 1 TO AMENDED AND RESTATED AGREEMENT FOR CLEARING AND SETTLEMENT SERVICES (this "Amendment"), dated as of October 29, 2013, is made by and between The Options Clearing Corporation (the "Corporation") and NYSE Liffe US LLC (the "Market"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Clearing Agreement (as defined below).

**WITNESSETH:**

WHEREAS, the Corporation and the Market are parties to that certain Amended and Restated Agreement for Clearing and Settlement Services, dated as of April 20, 2012 and effective as of the Amendment Effective Date (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Clearing Agreement"); and

WHEREAS, the Corporation and the Market, subject to the terms and conditions set forth herein, have agreed to amend certain provisions of the Clearing Agreement.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions stated herein, the receipt and sufficiency of which are hereby acknowledged by the Corporation and the Market, the parties hereto hereby agrees as follows:

Section 1. Amendments to Clearing Agreement. Subject to the satisfaction of each of the conditions set forth in Section 3 of this Amendment, the Clearing Agreement is hereby amended as follows:

(a) The last sentence of Section 6(c)(ii) of the Clearing Agreement is hereby amended and restated in its entirety as follows:

*If no Paper Vault Receipt shall have been issued and designated in the NYSE Liffe Guardian Delivery System prior to the first day of the Transition Period, or no Electronic Vault Receipt or WDR shall have been issued by 11:00 a.m. New York time on the second business day prior to the last business day of the delivery month, the Seller shall be deemed to be in violation of the Market Rules and subject to possible disciplinary proceedings under the Market Rules.*

(b) Section 6(c)(iv)(F) of the Clearing Agreement is hereby amended and restated in its entirety as follows:

*(F) The Market represents and warrants that each of the contracts and agreements set forth on Schedule F (the "Bailment*

Agreements”) is in full force and effect and agrees to comply with and maintain the effectiveness of each of the Bailment Agreements; provided that each Bailment Agreement set forth on Schedule F between the Market, and Brink’s, Incorporated and Brink’s Global Services U.S.A., Inc. (collectively, “Brinks”), shall constitute a Bailment Agreement hereunder so long as Brinks maintains gold and silver contracts for future delivery or other transfer under vault receipts in an aggregate amount less than or equal to \$5,000,000. The Market further agrees that it will not materially amend or terminate any of the Bailment Agreements without the prior written consent of the Corporation, except in the event of the Market’s revocation of regularity of a vault pursuant to the Market Rules and the Bailment Agreements, a material breach by a vault of a Bailment Agreement, or an Emergency (as such term is defined in the Market Rules) that affects the vault as determined by the Market pursuant to Market Rule 425, in which case no prior written consent of the Corporation shall be required. The Market may enter into additional bailment agreements, which agreements shall be substantially in the form of the applicable Bailment Agreement attached hereto as Schedule G, with licensed depositories for gold or silver contracts listed in the Market Rules, each such agreement shall constitute a “Bailment Agreement” for purposes of this provision, and the Market shall (a) provide the Corporation, as third-party beneficiary to each such Bailment Agreement, with notice and a copy thereof and (b) unless otherwise agreed to with the Corporation, file a UCC financing statement against such depository identifying that such depository holds the gold or silver related to such contracts as a warehouseman. The representations and obligations of the Market set forth in this subsection (F) shall immediately apply with respect to such Bailment Agreement upon execution thereof.

(c) The last sentence of Section 6(c)(v) of the Clearing Agreement is hereby amended and restated in its entirety as follows:

*During the Transition Period, if the registration date of a Receipt is before the first day of the Transition Period, only delivery using a Paper Vault Receipt shall be permitted; alternatively, if the registration date of a Receipt is on or after the first day of the Transition Period, delivery using a Paper Vault Receipt will not be permitted.*

(d) The reference to “*Bailment Arrangement*” appearing in Section 26(a)(ii) of the Clearing Agreement shall be replaced with a reference to “*Bailment Agreement*”.

(e) Schedule D to the Clearing Agreement is hereby amended and restated in its entirety as set forth in Exhibit A-1 attached hereto. Schedule F to the Clearing Agreement is hereby amended and restated in its entirety as set forth in Exhibit A-2 attached hereto.

(f) The Clearing Agreement is hereby amended to add Exhibit B attached hereto as Schedule G to the Clearing Agreement.

Section 2. Transition Period Vault Agreements. The Market hereby represents and warrants that (i) each of the depositories listed on Exhibit C attached hereto is an Originating Vault under and as defined in the Market Rules, (ii) the Market has entered into a vault agreement in the form of Exhibit D attached hereto with each such Originating Vault (each, a “Transition Period Vault Agreement”) and (iii) each such Transition Period Vault Agreement is in full force and effect. The Market hereby agrees (x) to comply with, and maintain the effectiveness of, each Transition Period Vault Agreement throughout the Transition Period and (y) that it will not materially amend or terminate any Transition Period Vault Agreement during the Transition Period without the prior written consent of the Corporation.

Section 3. Effectiveness of this Amendment. This Amendment shall become effective as of the date (the “Effective Date”) that the Market and the Corporation confirm in writing the satisfaction of the following conditions precedent:

(a) Receipt by each of the Market and the Corporation of counterparts of this Amendment duly executed by the Market and the Corporation;

(b) Receipt by the Corporation of duly executed copies of the Transition Period Vault Agreements entered into with each Originating Vault (as defined in the Market Rules) set forth on Exhibit B attached hereto;

(c) Receipt by the Corporation and the Market of evidence of the effectiveness of the amendment to the Rules of the Corporation implementing this Amendment; and

(d) The Amendment Effective Date under and as defined in the Clearing Agreement has occurred.

Section 4. Representations and Warranties of the Market. The Market hereby represents and warrants to the Corporation, as of the Effective Date, that:

(a) This Amendment and the Clearing Agreement, as amended hereby, constitute the legal, valid and binding obligations of the Market, enforceable against the Market in accordance with their respective terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or limiting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) Each representation and warranty of the Market set forth in Section 1 of the Clearing Agreement (other than any representation and warranty relating to the clearing or settling of Commodity Options, which are not being made hereunder), as amended, is true and correct as of the Effective Date.

Section 5. Representations and Warranties of the Corporation. The Corporation hereby represents and warrants to the Market, as of the Effective Date, that:



(a) This Amendment and the Clearing Agreement, as amended hereby, constitute the legal, valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their respective terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or limiting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) Each representation and warranty of the Corporation set forth in Section 2 of the Clearing Agreement (other than any representation and warranty relating to the clearing or settling of Commodity Options, which are not being made hereunder), as amended, is true and correct as of the Effective Date.

**Section 6. References to and Effect on Clearing Agreement.**

(a) Upon the effectiveness of Section 1 hereof, each reference in the Clearing Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import shall mean and be a reference to the Clearing Agreement as amended hereby.

(b) Except as specifically amended or otherwise modified above, the Clearing Agreement, and all other documents, instruments and agreements executed and/or delivered in connection therewith, shall remain in full force and effect, and the Clearing Agreement and such documents, instruments and agreements are hereby ratified and confirmed.

(c) Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Market or the Corporation, nor constitute a waiver of any provision of the Clearing Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

**Section 7. Execution in Counterparts.** This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by telecopier or other electronic imaging system shall be effective as delivery of a manually executed counterpart of this Amendment.

**Section 8. GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

**Section 9. Headings.** Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

Section 10. Successors and Assigns. This Amendment shall be binding upon each party hereto and their respective successors and assigns, and shall inure to the benefit of each party hereto and their successors and assigns.

Section 11. Entire Agreement. This Amendment, taken together with the Clearing Agreement, embodies the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings, written and oral, relating to the subject matter hereof.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, this agreement has been duly executed as of the day and year first above written.

THE OPTIONS CLEARING CORPORATION

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

NYSE LIFFE US LLC

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

Exhibit A-1

**Schedule D to Clearing Agreement**

(See Attached)

## NYSE Liffe Checklist

### Single Authoritative Copy of Electronic Vault Receipts

In connection with NYSE Liffe US LLC's (the "Exchange") plans to transition from vault receipts that are issued in paper form ("Paper Vault Receipts") to vault receipts issued in electronic form ("Electronic Vault Receipts"), The Options Clearing Corporation ("OCC") has asked for assurance that there will be a single authoritative copy of the Electronic Vault Receipts for purposes of establishing 'control' under Section 7-106 of the Illinois UCC (the "Illinois UCC"). It is intended that OCC's interests in the Electronic Vault Receipts will be denoted by a notation in the Electronic Vault Receipt of "Pledged, Transferred and Held for OCC"<sup>1</sup> during the period between the time at which a notice of intent is delivered by a seller to the Exchange and, if a default notice is not delivered, the trade settlement date, as provided in the Amended and Restated Agreement for Clearing and Settlement Services, dated as of April 20, 2012, by and between OCC and NYSE Liffe US LLC (as amended, restated, supplemented or otherwise modified from time to time, the "Clearing Agreement"). The following checklist has been created to document how the Exchange's system may provide OCC with "control." It has been prepared by reference to Article 7 of the Illinois UCC, including its official comments, and reference materials regarding "control" for electronic chattel paper under Sections 9-105 and 9-314 of the Illinois UCC, which use a similar "control" concept.

Control of an electronic document of title under Section 7-106 of the Illinois UCC may be established in two ways. First, one could establish under the general test in subsection (a) of Section 7-106 that "a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." Alternatively, one could satisfy the specific requirements of the safe harbor set out in subsection (b) of Section 7-106, which are as follows:

- (1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the person asserting control as:
  - (A) the person to which the document was issued; or
  - (B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
- (3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- (4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

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<sup>1</sup>The notation will include a cross reference to the phrase "Pledged to, Transferred to and Held for OCC."

The requirements set out in the attached chart for the Exchange to satisfy were prepared based on the safe harbor’s requirements. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Rules of the Exchange (the “Rules”).

Requirement	Please describe how the Exchange’s system for electronic receipts fulfills/addresses
<p>(1) A single authoritative copy exists that is “unique”, “identifiable” and “unalterable”</p>	<ul style="list-style-type: none"> <li>● <b>A single authoritative copy exists:</b> Transition from Paper Vault Receipts to Electronic Vault Receipts                             <ul style="list-style-type: none"> <li>○ Paper Vault Receipts will be converted into Electronic Vault Receipts over a period of 60 days (the “Transition Period<sup>2</sup>”).</li> <li>○ During the Transition Period, Clearing Members (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs) will be responsible for withdrawing the Paper Vault Receipt from the NYSE Liffe Guardian Delivery System (“Guardian”) and the Exchange will instruct HSBC Bank USA, NA, (the “Central Depository”) to send the Paper Vault Receipts of the Clearing Member, or of the holder on whose behalf the Clearing Member is acting, (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs), back to the Regular<sup>3</sup> Vault that originally issued the Paper Vault Receipt (each, an “Originating Regular Vault”).</li> <li>○ Clearing Members (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs) will be responsible for instructing Originating Regular Vaults to convert Paper Vault Receipts surrendered to such vault to electronic form and must warrant to all subsequent persons entitled under the Electronic Vault Receipt created to replace</li> </ul> </li> </ul>

<sup>2</sup> The Transition Period will run from November 15, 2013 through, and including, January 13, 2014.

<sup>3</sup> A Regular Vault is one of the Exchange’s Licensed Depositories that stores precious metals on behalf of its customers and that has executed a Vault Regularity Agreement with the Exchange thereby agreeing to abide by Exchange rules.

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<p>such Paper Vault Receipt that the customer on whose behalf the Clearing Member acted (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs) was a person entitled under the Paper Vault Receipt when the Clearing Member (or the Exchange) surrendered possession.<sup>4</sup></p> <p>○ Following receipt of instructions from the Clearing Member (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs) and after the Central Depository returns the Paper Vault Receipt to the Originating Regular Vault, the Originating Regular Vault will then create an Electronic Vault Receipt in Guardian that will have a unique identifying number identical to that of the Paper Vault Receipt. Note that many Paper Vault Receipts registered in Guardian, in addition to the unique number assigned to it by the Originating Vault, have a prefix of either "CBT," "CMX" or other prefix appended to that number that is only displayed on Guardian and does not appear on the actual Paper Vault Receipt. A Paper Vault Receipt will be distinguished from an Electronic Vault Receipt on Guardian on the basis of the registration date being earlier than November 15, 2013, since no Paper Vault Receipts can be registered once the Transition Period begins. An Originating Regular Vault will not be able to enter a duplicate receipt number to one already in Guardian (except in the case of an Electronic Receipt being issued in substitution of a Paper Receipt, in which case it will have the same receipt number). To prevent errors in the entry of information related to Electronic</p>

<sup>4</sup> See IL UCC § 7-105(d) states: "Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c): (2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer."

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<p>Vault Receipts, Guardian will not let the Originating Regular Vault enter clearly erroneous terms in the Electronic Vault Receipts. Each Originating Regular Vault will be required to verify the accuracy of each data entry made by its personnel before uploading such information into Guardian and will represent and warrant to the Exchange that all information on each Receipt is true and correct.</p> <p>○ Each Electronic Vault Receipt will contain one of two statements. For electronic receipts that are issued in substitution of a paper receipt in Guardian, the electronic receipt should include the following statement on the face of the receipt: "This electronic form of Vault Receipt has been issued as a substitute for the original document in paper form. The Vault Receipt is represented solely as an electronic record." For electronic receipts being registered for gold or silver bars that are not being issued in substitution for a paper receipt, then the following language should be included on the face of the electronic receipt: "This electronic Vault Receipt is the original document. The Vault Receipt is represented solely as an electronic record."</p> <p>○ After creating an Electronic Vault Receipt in substitution for a paper vault receipt, the Originating Regular Vault will mark such Paper Vault Receipt as follows: "<u>An Electronic Receipt has been issued as a substitute for this Paper Receipt. This Paper Receipt is no longer valid for delivery.</u>" The Originating Regular Vault will maintain such substituted Paper Vault Receipt on file for at least 5 years for recordkeeping purposes and to satisfy CFTC requirements. The Originating Regular Vault will certify to the Exchange that such Paper Vault Receipts have been marked as required in this paragraph at the end of the Transition Period.</p>



Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<p>o During the Transition Period, Clearing Members will be able to effect delivery on precious metals contracts using either (a) Paper Vault Receipts, prior to the conversion to electronic form of such receipt, or (b) Electronic Vault Receipts. If a receipt was loaded into Guardian before November 15, 2013, only delivery using a Paper Vault Receipt will be permitted. Alternatively, if a vault receipt was loaded into Guardian on or after November 15, 2013, delivery using a Paper Vault Receipt will not be permitted.</p> <p>o After the Transition Period:</p> <ul style="list-style-type: none"> <li>▪ Paper Vault Receipts will not be valid for delivery through Guardian.</li> <li>▪ A Clearing Member, for itself or on behalf of a holder, (or the Exchange for the benefit of Clearing Members, in the case of Paper Vault Receipts relating to WDRs) may request the Originating Regular Vault to convert its Paper Vault Receipt to an Electronic Vault Receipt at any time. Such a conversion will be made in accordance with the Rules and such other procedures as the Exchange may adopt from time to time.</li> </ul> <p>●The authoritative copy is “unique”, “identifiable” and “unalterable.”</p> <p>o Guardian is the only system used by the Exchange for these purposes. Guardian is run on secure servers owned and controlled by NYSE Liffe, which provides this service to the Exchange pursuant to a validly executed Service Level Agreement. The operation and use of Guardian is limited to those who have</p>

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<p>been granted security access, which includes authorized personnel of the Exchange, NYSE Liffe, Clearing Members, Originating Regular Vaults, and OCC. NYSE Liffe employs industry-standard security measures to prevent unauthorized access to Guardian.</p> <ul style="list-style-type: none"> <li>○ Each Electronic Vault Receipt will have a unique identifying number and Paper Vault Receipts will be distinguished by their registration date being earlier than November 15, 2013.</li> <li>○ Once an Electronic Vault Receipt is entered into Guardian, it will be locked. Unless and until an Electronic Vault Receipt has been tendered for delivery (i.e., nominated in connection with a notice of intent to deliver), it will only be accessible by a limited number of authorized system administration personnel and authorized personnel of the Clearing Member controlling the receipt (but, in the case of the Clearing Member, access is limited to tendering the receipt for delivery, transferring the receipt to another Clearing Member, or withdrawing the receipt from Guardian). A supervisor must approve any changes made by such authorized system administration personnel.</li> <li>○ Only one authorized user at a Clearing Member will be able to make changes to an Electronic Vault Receipt at any given time.</li> <li>○ After an Electronic Vault Receipt is issued in Guardian, upon discovery of an error, the person discovering such error will promptly notify the Exchange in writing and the Exchange will make arrangements such that corrections can be made as soon as practical unless the Electronic Vault Receipt has been tendered for delivery on a Futures in which case the Exchange will not be able to make the corrections until after delivery is effected in</li> </ul>

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<p>accordance with the Rules or with OCC's consent. The Exchange will be under no liability to warrant the accuracy or authenticity of the changes to the Electronic Vault Receipt.</p> <ul style="list-style-type: none"> <li>○ Once a Clearing Member tenders a particular Electronic Vault Receipt for delivery, no changes may be made to that Electronic Vault Receipt until settlement has occurred, except as directed by OCC-authorized personnel after receipt by the Exchange of a default notice or as provided above with respect to errors.</li> </ul>
<p>(2) The authoritative copy identifies the person asserting control as (a) the person to which the document was issued, or (b) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred.</p>	<ul style="list-style-type: none"> <li>● <b>Prior to the settlement date assuming no default notice:</b> The Exchange maintains its books and records to reflect the most recent transferee of each Electronic Vault Receipt. Prior to the settlement date, if a default notice has not been previously delivered, the Exchange will indicate that the most recent transferee of the Electronic Vault Receipt is the selling Clearing Member.</li> <li>● <b>During the period between the delivery of a notice of intent<sup>5</sup> and the settlement date:</b> The Exchange will include a notation on the Electronic Vault Receipt that it is "Pledged, Transferred and Held for OCC".<sup>6</sup></li> <li>● <b>At the settlement date:</b> As long as a default notice has not been delivered in accordance with the Rules of the Exchange, the Exchange will make a notation on its books and records that the most recent transferee of the Electronic Vault Receipt is the buying Clearing Member. In addition, the Exchange will remove the notation that the Electronic Vault Receipt is being held for OCC.</li> </ul>

<sup>5</sup> All references herein to deliveries of notices of intent also include any deemed notices of intent.

<sup>6</sup> This notation is being made to reflect that the Exchange holds the Electronic Vault Receipt on behalf of OCC under NY bailment law.

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
	<ul style="list-style-type: none"> <li>● <b>Upon the delivery of a default notice, if such delivery occurs prior to the settlement date:</b> Upon receipt of a notice from OCC of a default by a seller or buyer with respect to such seller's or buyer's obligations to OCC in connection with a cleared contract prior to the cut-off time on the applicable settlement date, the Exchange will continue to maintain such Electronic Vault Receipt for the benefit of OCC as secured party until notified otherwise by OCC and, subject to applicable law, will deliver the Electronic Vault Receipt to OCC or its agent upon the instructions of OCC and otherwise in accordance with the Rules of the Exchange by making appropriate entries on its books and records to show that OCC or its agent, as the case may be, is the most recent transferee of such Electronic Vault Receipt.</li> </ul>
(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian.	<ul style="list-style-type: none"> <li>● Once an Electronic Receipt has been tendered for delivery, OCC will have control of the Electronic Vault Receipt but it will be maintained by the Exchange pursuant to the Rules of the Exchange and the Clearing Agreement. The Exchange's maintenance on behalf of OCC is designated by a "Y" in the line entitled "Pledged, Transferred and Held for OCC" that will be included on each Electronic Vault Receipt.<sup>7</sup> The authoritative copy of the Electronic Vault Receipt will remain in the possession of the Exchange for the benefit of OCC until delivery is complete, at which point control will transfer to the buyer and/or its Clearing Member, or until the Exchange receives instructions from OCC in the event of a default notice delivered prior to the cut-off time.</li> </ul>
(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with	<ul style="list-style-type: none"> <li>● Under the Rules of the Exchange, the Exchange will hold the Electronic Vault Receipt on behalf of OCC during the period in which OCC has an interest in the Electronic Vault</li> </ul>

<sup>7</sup> For sake of reference, those receipts that are not held for OCC will be designated by a "N" in that same line.

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
<p>the consent of the person asserting control.</p>	<p>Receipt. During such period, the Exchange will have no obligation to any Clearing Member or any other person other than OCC to comply with instructions with respect to such Electronic Vault Receipt from such Clearing Member or person, except that if no default notice is delivered prior to the cut-off time the Exchange will effect delivery of such Electronic Vault Receipt in accordance with the Rules of the Exchange. No party will be able to make any changes to the Electronic Vault Receipt from the time at which a notice of intent is delivered by a seller to the Exchange until settlement has occurred, except as directed by OCC-authorized personnel after receipt by the Exchange of a default notice or as provided above with respect to errors.<sup>8</sup></p> <ul style="list-style-type: none"> <li>● Upon the receipt of a default notice from OCC prior to the cut-off time, the Exchange will not comply with instructions with respect to the relevant Electronic Vault Receipt from any person other than OCC.</li> </ul>
<p>(5) Each copy of the authoritative copy, (whether in electronic or paper form) and any copy of a copy, is readily identifiable as a copy that is not the authoritative copy.</p> <ul style="list-style-type: none"> <li>● Electronic copy: code or language in copy identifies as copy, or copy is not deployed nor functional unless activated in situations in which the server that holds the authoritative copy fails. Must be true for (i) any back-up copies made on remote server by NYSE Liffe or (ii) any pdf or other electronic copies parties could download for their records</li> <li>● Printed copies: must be clear that any printed copy is a copy and not</li> </ul>	<ul style="list-style-type: none"> <li>● The authoritative copy is the data on the server.</li> <li>● Any electronic screenshot is a manifestation of the data on the server. Each manifestation of the server data, regardless of whether it is existing on the primary or any backup server, will indicate (as set forth above) the unique identifier of the Electronic Vault Receipt as well as that it has been issued as a substitute for the Paper Vault Receipt and that the Electronic Vault Receipt is represented solely as an electronic record.</li> <li>● The primary and backup servers are both under the complete control of the Exchange. Any backup server backs up data in real-time but will only deploy and be functional when activated by Exchange personnel in situations where the primary server fails or is otherwise disabled.</li> </ul>

<sup>8</sup> With the exception of the Exchange or an Originating Regular Vault, which could make a change to the "storage paid through date," no party can make changes during this period without OCC's consent.

Requirement	Please describe how the Exchange's system for electronic receipts fulfills/addresses
the authoritative copy	<ul style="list-style-type: none"> <li>• Users cannot download pdf versions of the receipts from Guardian system. If the screenshot is printed out, it is clear that it would not be mistaken for an actual Paper Vault Receipt, which is an official bearer instrument issued by a depository vault. The Rules of the Exchange and its processes also indicate that any print-out of a screenshot of an Electronic Vault Receipt is not an authoritative copy.</li> </ul>
<p>(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized</p> <ul style="list-style-type: none"> <li>• Should have a log of who logs into system, as well as who makes changes to any receipt</li> <li>• Monitoring system should be in place to ensure only authorized persons are able to amend/transfer/assign an electronic receipt. Procedures should be in place to shut down an account if it seems unauthorized changes are being made</li> </ul>	<ul style="list-style-type: none"> <li>• Guardian maintains a detailed transaction log of users logging into and out of its system and all changes made to Electronic Vault Receipts or WDRs.</li> <li>• As outlined above, access will be limited to the authorized personnel of the Clearing Member, the Exchange, NYSE Liffe and the Originating Regular Vaults, as further detailed herein.</li> <li>• The Exchange, as administrator of Guardian, will have the ability to shut-down or lock the account of a user who is discovered to make unauthorized changes.</li> </ul>
<b>Security Procedures</b>	
(1) Audit Procedures: there should be an analysis of audit/log trail to spot irregularities (manual or electronic audits)	<ul style="list-style-type: none"> <li>• The Exchange maintains standard (for similarly situated designated contract markets (“DCMs”)) and comprehensive audit procedures with respect to Guardian to spot irregularities.</li> </ul>
(2) Risk Assessment: Analysis of system vulnerabilities. What procedures are in place to identify vulnerabilities and how does the system address identified vulnerabilities?	<ul style="list-style-type: none"> <li>• The Exchange maintains standard (for similarly situated DCMs) and comprehensive risk assessment procedures.</li> </ul>
(3) If the single authoritative copy is lost/destroyed, there should be a process to determine the correct back-up to reference	<ul style="list-style-type: none"> <li>• The Exchange maintains standard (for similarly situated DCMs) and comprehensive disaster-recovery and back-up policies and</li> </ul>

<b>Requirement</b>	<b>Please describe how the Exchange's system for electronic receipts fulfills/addresses</b>
to re-create the single authoritative copy. In addition, in the event of a break-down of the electronic transfer system, there should be a back-up manual system in place with appropriate authentication and verification checks	procedures, which policies and procedures shall comply with applicable regulatory requirements.

Exhibit A-2

**Schedule F to Clearing Agreement**

BAILMENT AGREEMENTS WITH VAULTS

Vault	Agreement	Date of Execution
HSBC Bank USA, National Association	<p>Application and Agreement for Declaration of Regularity 100 Oz. Gold Futures</p> <p>Application and Agreement for Declaration of Regularity 5,000 Oz. Silver Futures</p> <p>Application and Agreement for Declaration of Regularity Mini-Sized Gold Futures</p> <p>Application and Agreement for Declaration of Regularity Mini-Sized Silver Futures</p>	February 24, 2012
Manfra, Tordella & Brookes, Inc.	<p>Application and Agreement for Declaration of Regularity 100 Oz. Gold Futures</p> <p>Application and Agreement for Declaration of Regularity Mini-Sized Gold Futures</p>	February 8, 2012
Delaware Depository Service Company, LLC	Application and Agreement for Declaration of Regularity 5,000 Oz. Silver Futures	January 6, 2012



Vault	Agreement	Date of Execution
	Application and Agreement for Declaration of Regularity Mini-Sized Silver Futures	
The Bank of Nova Scotia	<p>Application and Agreement for Declaration of Regularity 100 Oz. Gold Futures</p> <p>Application and Agreement for Declaration of Regularity 5,000 Oz. Silver Futures</p>	September 26, 2013
Brink's, Incorporated and Brinks Global Services U.S.A., Inc.	<p>Application and Agreement for Declaration of Regularity 100 Oz. Gold Futures</p> <p>Application and Agreement for Declaration of Regularity 5,000 Oz. Silver Futures</p> <p>Application and Agreement for Declaration of Regularity Mini-Sized Gold Futures</p> <p>Application and Agreement for Declaration of Regularity Mini-Sized Silver Futures</p>	July 2, 2012

Exhibit B

**Schedule G to Clearing Agreement**

Form of Declaration of Regularity

(Referred to as “Bailment Agreements” in the Clearing Agreement)

(See Attached)

**Application and Agreement for Declaration of Regularity  
100 Oz. Gold Futures**

NYSE Liffe US, LLC  
New York NY 10005

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, (hereinafter called the  
“Vault”), located at \_\_\_\_\_,  
and incorporated under the laws of \_\_\_\_\_ having allocated  
storage capacity of \_\_\_\_\_ troy ounces hereby submits its application to  
NYSE Liffe US, LLC (the “Exchange” or “NYSE Liffe”) for a Declaration of Regularity (as defined  
below) for the purpose of facilitating delivery of Gold under contracts for future delivery or other transfer  
under vault receipts pursuant to the Rules of NYSE Liffe US, LLC (as the same may be amended,  
modified or supplemented from time to time)(the “Agreement”).

**DEFINITIONS**

For purposes of this Agreement:

- “Clearing Service Provider” shall mean the clearing house or clearing organization designated by the Exchange from time to time, which, until the Vault is instructed by the Exchange in writing otherwise, shall be The Options Clearing Corporation (“OCC”).
- An “Electronic Receipt” shall mean a Receipt that exists in book-entry form on the NYSE Liffe Guardian Delivery System and is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Gold Futures or transfers.
- “Gold” shall mean a bar or bars of gold held by the Vault pursuant to the terms of this Agreement.
- A “Paper Receipt” shall mean a Receipt that is in physical form and that is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Gold Futures or transfers and as to which a book-entry record has been made in the NYSE Liffe Guardian Delivery System, it being agreed and understood that no Paper Receipt shall be eligible for delivery where an Electronic Receipt has been issued in substitution for such Paper Receipt and no Paper Receipt shall be eligible for delivery after the end of the Transition Period.

- “Receipt” shall mean a receipt for Gold held by the Vault that is issued by the Vault, as bailee, to a Clearing Member or other person, as bailor, entitling such Clearing Member or other person to receive such Gold upon tender of the receipt.
- “Registered Gold” shall mean Stored Available Gold for which a Receipt has been issued.
- “Stored Available Gold” shall mean Gold which is in the possession of the Vault that meets all the specifications for Gold as stated in the Rules, including without limitation the specifications set forth in Rules 1202, 1205 and 1206, but for which a Receipt has not been issued.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Rules of the Exchange (as amended from time to time, the “Rules”).

### **AGREEMENTS OF VAULT**

In consideration of the Exchange approving the application of the Vault for a declaration of regularity for delivery of Gold under contracts for future delivery or other transfer under vault receipts pursuant to the Rules (a “Declaration of Regularity”) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vault expressly agrees for the benefit of the Exchange as follows:

### **REGULARITY PROVISIONS**

1. The Vault shall accept Gold for delivery or transfer in connection with the Exchange’s Gold Futures Contracts or otherwise, provided such Gold is ordered into the Vault by a Clearing Member, and all space in such Vault is not already filled or contracted for. The Vault shall immediately notify the Exchange in writing if all of the space in the Vault becomes filled or contracted for.
2. The Vault shall neither withdraw as a regular vault nor withdraw any regular capacity during the life of this Declaration of Regularity except after sixty (60) days notice to the Exchange or having obtained the consent of the Exchange.
3. The signing of this Agreement constitutes a representation that the representations made herein are true and accurate as of the date hereof and will be true during the life of the Declaration of Regularity and that the conditions of this Agreement are complied with and will be observed during the life of the Declaration of Regularity.
4. The signing of this Agreement constitutes a representation that the exact legal name, type of organization and sole jurisdiction of organization of the Vault at the date of this Agreement and for its entire existence to date are as set forth in Annex A. The Vault shall provide its organizational documents as part of Annex A. The Vault shall maintain its existence as a \_\_\_\_\_ organized in good standing under

\_\_\_\_\_ law and shall not dissolve, liquidate, merge with or into any other entity or otherwise change its structure, name or identity or be formed in any other jurisdiction unless the Vault shall have notified the Exchange in writing at least 30 days prior to any intent not to so maintain its existence or any such dissolution, liquidation, merger or change, as the case may be.

5. The Vault consents to disciplinary jurisdiction of the Exchange for five years after regularity lapses for conduct that occurred while the Vault was regular.
6. For the sake of clarity, the Exchange's disciplinary jurisdiction with respect to the Vault is limited to issues in connection with this Agreement and the storage and delivery of Gold pursuant to the terms and conditions of the Exchange's Gold Futures or other transfer of Gold pursuant to a Receipt.
7. The Vault shall be outfitted with standard equipment and appliances for the convenient and safe storage of Gold and provide for proper security.
8. The Vault shall notify the Exchange promptly of any material change in ownership or the location or capacity of its premises, to the extent not prohibited by applicable law.
9. The Vault shall be adequately capitalized as determined by the Exchange and maintain a tangible net worth, either itself or through a guarantor acceptable to the Exchange, in an amount of either at least \$100 million or such other amount as the Exchange shall determine. In the event that the Vault becomes insolvent, bankrupt or has a reduction in tangible net worth of greater than 20%, the Vault shall notify the Exchange immediately. In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of the Vault, the Exchange may require the Vault to obtain a letter of credit issued by a bank or insurance company, acceptable to the Exchange, for such sums and on such terms and conditions as the Exchange may determine in its sole discretion. The Exchange shall notify the Vault of any terms and conditions it determines in accordance with this Section.
10. The Vault agrees to maintain reasonable and customary insurance against loss of Gold. Throughout the term of this Agreement, the Vault shall provide the Exchange with evidence of its current insurance in the form of a Memorandum of Insurance. The Vault agrees to notify the Exchange, in writing with proof of delivery, in the event of cancellation of its insurance required under this Section. In addition, at the time of issuance or the next renewal of its insurance policy, the Vault shall use commercially reasonable efforts to cause its insurer to immediately notify the Exchange directly of any event that would lead to the cancellation of any insurance coverage required by this Section. Reasonable and customary insurance is agreed to mean insurance against loss or damage of property in a form and amount maintained by global financial institutions similar to the Vault.

11. In the event that Vault fails to comply with the terms of this Agreement or the Rules, or it has breached one of its representations, the Vault shall give such guaranties, bonds, or other financial instruments to the Exchange as it may require to ensure performance of the Vault's obligations as a regular vault.
12. The Vault shall provide the Exchange with a list of its personnel authorized to access the NYSE Liffe Guardian Delivery System. The Vault agrees that it will promptly notify the Exchange of any changes to such list.
13. The Vault shall permit such vault inspections as the Exchange or the Commodity Futures Trading Commission (the "CFTC") may require. In addition, the Vault shall provide the Exchange access to every facility containing Gold subject to this Agreement and the records related thereto for the examination of the Vault's books or records for the purpose of ascertaining the stocks of Gold. The Exchange shall have the authority to employ experts to determine the quantity and quality of Gold in the Vault.
14. The Vault shall submit within ninety (90) days of its fiscal year-end either instructions as to how to access its financial statements filed with the U.S. Securities and Exchange Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system or a certified copy of the financial statements accompanied by a letter of attestation by the chief financial officer of the Vault, or if there is none, a general partner or executive officer.
15. The Vault shall provide the Exchange, on a daily basis, in a format approved by the Exchange, (i) the total ounces of Registered Gold stored at the Vault and (ii) the total ounces of Stored Available Gold stored at the Vault. Such daily reports shall indicate the quantity of Registered Gold and Stored Available Gold shipped to and from the Vault each day.
16. The Vault annually shall have an audit (the "Annual Audit") performed by an independent auditor (the "Auditor"). The Auditor must be (1) a recognized certified public accountant (a) suitably qualified to the satisfaction of the Exchange to perform the Annual Audit or (b) listed on Annex B hereto or otherwise registered as a member of the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board or (2) a firm with expertise in inventory audits satisfactory to the Exchange or listed on Annex B hereto. A period of no more than fifteen (15) months may elapse from the date of the last Annual Audit without a new Annual Audit being performed. The Vault agrees as follows with respect to the Annual Audit:
  - a. The Auditor shall conduct an audit of Gold inventory held by the Vault and certify in a report that the records of the Vault accurately reflect the Gold inventory held by such Vault and the Receipts issued by such Vault.
  - b. The Auditor shall perform an audit of the internal controls of the Vault. This audit shall include an evaluation of the internal controls for the accountability for and custody of all

Gold held by the Vault and shall disclose any conditions the Auditor believes to be significant deficiencies or material weaknesses in internal controls.

- i. The Auditor shall perform all such tests and checks, review all such information, communicate with all such persons and take all such other actions that, in its judgment, are necessary under the circumstances to allow the Auditor to make the certifications and reports required in paragraphs (a) and (b) above. Such actions shall include, without limitation: accounting for all Receipts issued by the Vault since the date of the last annual audit; counting of Registered Gold held by the Vault and reconciliation of the count of such Registered Gold to both the Vault's records and the corresponding Receipts in the NYSE Liffe Guardian Delivery System issued by the Vault;
- ii. for a random sample of a percentage of lots of Registered Gold, the Auditor shall reconcile the information about such Gold as set forth in the Receipt in the NYSE Liffe Guardian Delivery System to the Registered Gold in the Vault, including, without limitation, as imprinted on each bar of Gold the weight, fineness, serial number, and brand of such Registered Gold; and
- iii. for a random sample of lots of Registered Gold, the Auditor shall confirm that each bar of Registered Gold is accompanied by a certificate, if such a certificate is required, issued by an approved refiner, assayer, or other certifying authority, stating the serial number of the bar(s), the weight, and the fineness, such certificate only being required if such Registered Gold is not marked with the fineness and stamp of an approved refiner, assayer, or other certifying authority.

For any actions outlined above that reference "a percentage," the Auditor shall determine, and the Exchange shall approve, the appropriate percentage required.

- c. The Vault and the Exchange shall cooperate with the Auditor to allow it to perform its Annual Audit as specified in this Section and shall provide all reasonable information or assistance, including access to necessary books and records and personnel, as requested by the Auditor during the performance of its Annual Audit.
  - d. The Vault shall provide a copy of all reports set forth in this Section signed by the party preparing such report, to the Exchange and the Clearing Service Provider promptly upon each report's completion, but in no case later than five days after the Vault has received such report.
17. The Vault shall schedule all shipments into or out of the facility on a first come, first serve, non-discriminatory basis. The Vault agrees that it shall not unreasonably constrain or promote movement of Gold into or out of the Vault by (i) giving exceptional inducements or imposing unreasonable charges for depositing, storage or removal of Gold into or out of the Vault, (ii)

taking or failing to take any action that affects a customer's ability to schedule the delivery or removal of Gold from the Vault, or (iii) failing to report stocks as required by this Agreement. For the sake of clarity, constraints on movement outside the control of the Vault, such as in emergency or unusual circumstances, will not be deemed to be a violation of this provision.

18. The Vault acknowledges that, pursuant to Rule 1214, the Exchange may, in its sole discretion, determine not to approve the Vault for regularity or increases in regular capacity of the Vault even if the Vault has been approved as a regular vault and regardless of whether the Vault meets the conditions of regularity specified in Rule 1214. Some factors the Exchange may, but is not required to, consider in exercising its discretion may include, among others, whether Receipts issued by the Vault, tendered in satisfaction of Gold Futures, might be expected to adversely affect the price discovery function of Gold Futures or impair the efficacy of Futures trading in Gold, or whether the currently approved regular capacity provides for an adequate deliverable supply.
19. The Vault agrees that a Declaration of Regularity, if granted, may be revoked immediately by the Exchange upon the Vault's violation of any of the terms of this Agreement, any conditions or duties specified in Rule 1214 or any other relevant Rules. If any of the representations or statements made in this Agreement, pursuant to the Rules or any other document furnished to the Exchange in connection herewith are found to be untrue, the Exchange shall have the right to revoke the Declaration of Regularity immediately. By accepting a Declaration of Regularity the Vault agrees, in the event of revocation of regularity or notice of termination of the Agreement by the Vault pursuant to Section 51 herein, to bear the expenses of the transfer of Gold under bond to another regular vault capable of receiving such a transfer as approved by the Exchange.

#### **BOUND BY RULES**

20. The Vault agrees to be subject to, and bound by, the Rules of the Exchange, including but not limited to Chapter 12, the disciplinary procedures set forth in Chapter 7, and the arbitration procedures set forth in Chapter 8 (with respect to the matters referred to therein), and to abide by and comply with the terms of any disciplinary decision imposed upon the operator of the Vault or any arbitration award issued against it pursuant to the Rules, to the same extent as if the Vault were a Member of the Exchange.
21. The Vault issuing a Receipt shall be responsible for verifying that the Gold related thereto meets all the specifications for Gold as stated in the Rules, including without limitation the specifications set forth in Rules 1202, 1205 and 1206, and shall be responsible for entering all applicable information into the NYSE Liffe Guardian Delivery System, including the information as required under Rules 1211 and 1212.



22. The Vault shall comply with all applicable rules of the CFTC. The Vault shall make such reports and keep such records as the CFTC may require, including maintaining all such reports, books and records for a period of five years.

#### **TRANSITION PERIOD**

23. During the Transition Period, the Vault shall accept all paper receipts eligible for delivery in the NYSE Liffe Guardian Delivery System previously issued by such Vault ("Eligible Paper Receipts"), and, upon the instructions of the Clearing Members or the Exchange, shall convert such Eligible Paper Receipts to electronic form in accordance with the Rules and such other procedures as the Exchange may adopt by notice from time to time, thereby creating Electronic Receipts in the NYSE Liffe Guardian Delivery System. After creating an Electronic Receipt in the NYSE Liffe Guardian Delivery System in substitution for an Eligible Paper Receipt, the Vault shall mark the Eligible Paper Receipt with the statement "An Electronic Receipt has been issued as a substitute for this Paper Receipt. This Paper Receipt is no longer valid for delivery." The Vault shall keep such Eligible Paper Receipts on file for at least five years for recordkeeping purposes and to satisfy CFTC requirements. The Vault shall certify to the Exchange, at the end of the Transition Period and annually thereafter until all Paper Receipts issued by the Vault have been substituted for Electronic Receipts, that such Eligible Paper Receipts have been marked as required in this Section to the extent any Eligible Paper Receipts has been delivered in the past twelve (12) months.

#### **POST-TRANSITION**

24. After the expiration of the Transition Period, at the request of a Clearing Member, the Vault shall convert outstanding Eligible Paper Receipts to Electronic Receipts in accordance with the Rules and such other procedures as the Exchange may adopt from time to time. Both during the Transition Period and after its expiration, upon the delivery of Gold to the Vault and the instructions of a Clearing Member or the Exchange, the Vault shall create an Electronic Receipt in the NYSE Liffe Guardian Delivery System containing all information required under the Rules on behalf of such Clearing Member.
25. The Vault acknowledges and agrees that after expiration of the Transition Period, Paper Receipts will no longer be valid for delivery on Gold Futures. For the avoidance of doubt, Paper Receipts will no longer be valid for delivery after 7:00 p.m. New York time on the last day set forth in the Rules for a seller to issue a notice of intent prior to the expiration of the Transition Period in accordance with the Rules.

#### **RECEIPTS GENERALLY**

26. The Vault agrees that the issuance of Receipts shall be exclusively governed by this Agreement, the Rules and any notices adopted by the Exchange from time to time and the handling and transfer of Receipts and delivery and transfer of Gold shall be exclusively governed by this Agreement, the Rules, any notices adopted by the Exchange from time to time, the Rules of the Clearing Service Provider and any agreement among the Exchange and the Clearing Service Provider.
27. The Vault shall maintain appropriate and clearly defined back office procedures to ensure correct data entry into the NYSE Liffe Guardian Delivery System when issuing an Electronic Receipt on behalf of the requesting Clearing Member, shall use the same receipt number as used for associated Paper Receipts (if converting to an Electronic Receipt), and shall verify the accuracy of each data entry made by the Vault's personnel before uploading such information into the NYSE Liffe Guardian Delivery System.
28. The Vault shall ensure that no duplicate Electronic Receipts are issued by it.
29. The Vault shall, upon notice to the Exchange that a Clearing Member or the Clearing Service Provider plans to effect an Outside Transfer of an Electronic Receipt or a Paper Receipt, take such steps as required by the Exchange and in the Rules such that the Electronic Receipt is cancelled in or the Paper Receipt is removed from the NYSE Liffe Guardian Delivery System. If the Vault at any time issues a tangible document in replacement of an Electronic Receipt, such tangible document when issued shall contain a statement that it is issued in substitution for the Electronic Receipt.
30. The Exchange is authorized to file a precautionary Uniform Commercial Code financing statement specifying the Vault as debtor and the Exchange as secured party, on behalf of itself and its Clearing Members, which financing statement shall identify that the Vault holds Gold as warehouseman, the right to which Gold is evidenced by Paper Receipts or Electronic Receipts issued by the Vault and which financing statement shall specify the "bailor/bailee" designation in the appropriate box on such financing statement.

#### **BAILEE RELATED PROVISIONS / STANDARD OF CARE**

31. The Vault shall be responsible for ensuring, and hereby represents and warrants to the Exchange that, all information on each Receipt issued by it is true and correct. For the sake of clarity, this obligation will not be construed as a warranty of the quality or contents of Gold. The Exchange shall have the right to revoke the Declaration of Regularity immediately in the event that the Exchange determines, in its discretion, that best efforts have not been used in ensuring that all information on each Receipt issued by it is true and correct. In no event shall the Exchange bear any responsibility to any person for any error or incorrect information in any Receipt, and the

- Vault shall bear full responsibility for such error or incorrect information and indemnify the Exchange in accordance with Section 41 hereof, whether or not the Vault utilized best efforts.
32. The Vault shall properly safeguard all Gold deposited with it in accordance with customary industry standards. The Vault shall keep any Gold for which it has issued one or more Receipts segregated from its own property, shall not pledge such Gold as security for a loan or other obligation, and shall not take any other actions that might cause such Gold to become part of the Vault's estate in the event of the Vault's bankruptcy, insolvency or liquidation.
  33. In the event that a Clearing Member claims a breach of warranty relating to the quantity or quality of Gold in accordance with the Rules, upon instructions from a Clearing Member, the Vault shall submit Gold, under bond, for sampling and assaying to an assayer approved by the Exchange. The claimant shall be responsible for all expenses incurred in connection with this Section, including the required bond, pursuant to the terms set forth in the Rules.
  34. The Vault agrees to release or transfer Gold held by it against a valid Receipt only upon receipt of consent from the Exchange and in accordance with any instructions from the Exchange and only to such person or entity that is a representative of, in the case of Electronic Receipts, the Clearing Member specified in the relevant Electronic Receipt or such other person or entity as such specified Clearing Member may designate and, in the case of a Paper Receipt, the Clearing Member identified as the owner in a book-entry record in the NYSE Liffe Guardian Delivery System or such other person or entity as such specified Clearing Member may designate; provided, however, that the Vault agrees that for so long as an Electronic Receipt is marked with the notation that it is "Pledged, Transferred and Held for OCC" or any other Clearing Service Provider, the Vault shall release Gold only as instructed by the designated Clearing Service Provider (or the Exchange on the Clearing Service Provider's behalf) and not release Gold for delivery to any person or entity other than as instructed by the Clearing Service Provider. Furthermore, the Vault agrees that the Exchange shall have no liability relating to any designation by the Clearing Member of another person or entity to which Gold should be transferred or released.
  35. If a person seeks to withdraw or transfer the Gold underlying an Eligible Paper Receipt from the Vault or to convert an Eligible Paper Receipt to electronic form but advises the Vault that neither such person nor the Central Depository is in possession of the relevant Eligible Paper Receipt and cannot therefor tender it to the Vault, the Vault shall be entitled to require such person to provide the Vault with a bond of indemnity in a form and for an amount acceptable to the Vault in its reasonable discretion in order for the Vault to convert such Eligible Paper Receipt to electronic form.
  36. The Vault acknowledges that it will not have access to and will not be authorized to make any changes to Electronic Receipts once such receipts are issued in the NYSE Liffe Guardian

Delivery System, except that the Vault shall be authorized to change the 'storage paid through date' with respect to the Gold stored by the Vault through the NYSE Liffe Guardian Delivery System. After a Receipt is issued in the NYSE Liffe Guardian Delivery System, upon discovery of an error, the Vault shall notify the Exchange in writing and the Exchange shall make such corrections as soon as practical unless the Receipt has been tendered for delivery on a Futures Contract in which case the Exchange will not be able to make the corrections until after delivery is effected in accordance with the Rules or with OCC's consent; provided that the Exchange shall be under no liability to warrant the accuracy or authenticity of the changes to the Electronic Receipt.

37. Subject to Section 38 below, upon the Vault's receipt of Gold and issuance of a Receipt in respect thereof, the Vault shall hold the Gold as bailee for, in the case of an Electronic Receipt, the person or entity specified as the Clearing Member in such Electronic Receipt and, in the case of a Paper Receipt, the person identified by the Exchange as the owner or owner's representative thereof.
38. During the period in which an Electronic Receipt in the NYSE Liffe Guardian Delivery System is designated as "Pledged, Transferred and Held for OCC", the Vault shall hold the related Gold as bailee for the Clearing Service Provider.
39. In the event of a conflict between the records of the Vault and the records of the Exchange in the in the NYSE Liffe Guardian Delivery System, the records of the Exchange shall control. The Exchange shall give the Vault access on a reasonable basis, from time to time, to its records for purposes of coordinating and reconciling complementary record entries.
40. The Vault shall not engage in unethical or inequitable practices, or fail to comply with any laws, Federal or State, or rules or regulations promulgated under those laws.

#### **INDEMNITY**

41. The Vault agrees to indemnify and hold harmless each of the Exchange and the Clearing Service Provider and each of their respective directors, officers, committee members, agents and employees from and against any and all loss, damage and expense arising out of or based on any breach by the Vault of any of the terms of this Agreement or of the Rules or the Vault's gross negligence or willful misconduct in carrying out its obligations hereunder or under the Rules. This indemnity agreement shall be in addition to any liability the Vault may otherwise have. In no event shall the Vault be liable for special, indirect or consequential damages or loss of any kind whatsoever regardless of whether it has notice of the likelihood of such damages or loss and regardless of the form of action.

#### **THIRD PARTY BENEFICIARY**

42. The Vault agrees that the Clearing Service Provider shall be intended as a third party beneficiary to this Agreement and is entitled to rely upon all representations, warranties and covenants made by the Vault herein to the same extent as if the Clearing Service Provider were the Exchange. The Exchange may furnish a copy of this Agreement to the Clearing Service Provider.

#### CONFIDENTIALITY

43. All parties acting on behalf of the Vault, including but not limited to its employees and agents, shall be prohibited from disclosing any information that relates to the storage, transfer or withdrawal of Gold, or the ownership of Gold stored at the Vault pursuant to this Agreement.
44. This Agreement and its contents are considered proprietary by all parties to this Agreement. To this end, the parties including their respective principals, officers, employees, agents and attorneys, understand and agree: (a) originals and copies of this Agreement, and any amendments thereto, and all documents provided in accordance with, or pursuant to, the terms of this Agreement shall be treated in such a manner that it may be reasonably expected that unauthorized persons shall not have access to them; (b) in the event that disclosure of this Agreement or any documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement is sought in conjunction with any proceeding before a court or regulatory body with proper jurisdiction, the party from which the disclosure is sought shall promptly notify the other party that disclosure is sought, and, if either party determines to resist disclosure, the party will cooperate with those efforts to resist formally any legal compulsion to produce, disclose or reveal such documents and negotiation, such resistance including a request that any such production or disclosure be made subject to a protective order, it being understood and agreed that the party resisting disclosure shall be responsible for all costs, fees and expenses of any party required to respond or take action that are associated with any such defense or effort to prevent disclosure; and (c) the terms and conditions of this Agreement or documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement shall not be disclosed or revealed in any way to any person or organization except for the following authorized disclosures:
- a. By any order of a court with proper jurisdiction;
  - b. By prior written approval of the non-disclosing party;
  - c. By either party to the CFTC or any other local, state or federal governmental agency or regulatory body with proper jurisdiction;
  - d. If disclosure, in the sole reasonable judgment of the disclosing party, is legally required without notice first being made to the non-disclosing party; or
  - e. To employees or agents, including any principal, officer, agent or employee of the Clearing Service Provider, attorneys, accountants, auditors, consultants, advisory clients

and other professionals, of any party in connection with the negotiation, maintenance, management or enforcement of this Agreement or the Rules or the Exchange.

#### **STORAGE COSTS AND WITHDRAWAL FEES PROVISIONS**

45. The Vault shall notify the Exchange at least sixty (60) days in advance of any changes in its maximum storage rates, penalties for late storage payments, withdrawal fees, and handling charges.
46. The Vault shall provide the Exchange with an invoice for monthly storage charges and withdrawal fees by the fifth business day of the month based on the inventory held on the last business day of the previous month.
47. With respect to storage charges and withdrawal fees owed to the Vault by the Clearing Member, the Exchange will (a) invoice each applicable Clearing Member on a monthly basis for amounts specified by the Vault as owed by such Clearing Member as compensation for storage and withdrawal in respect of Gold for which the Vault has issued one or more Electronic Receipts or, until expiration of the Transition Period, Paper Receipts and (b) facilitate payments from such Clearing Member in respect of such invoice.

#### **EMERGENCIES**

48. Upon the occurrence of events which prevent or threaten to prevent the Vault from performing its obligations under this Agreement, and such threat or occurrence continuing despite the exercise of reasonably expected due diligence and reasonable effort to avoid such events by the Vault, the Vault shall immediately notify the Exchange, pursuant to the terms of this Agreement, by the fastest means possible.
49. Whether a circumstance exists constituting an Emergency that affects the Vault (as such term is defined in Exchange Rules) shall be determined by the Exchange pursuant to Rule 425 ("Emergencies"). The Exchange shall immediately notify the Vault of the imposition and the lifting of a declaration of an Emergency, pursuant to the terms of this Agreement, by the fastest method possible.

#### **MISCELLANEOUS**

50. The Agreement shall commence on the date hereof and shall terminate twelve (12) months after the date the receiving party shall have received notice of termination pursuant to Section 51 herein from the terminating party.
51. All notices, requests, demands, consents and other communications given or required to be given under this Agreement shall be in writing and delivered to the applicable party at the address indicated below:

If to the Vault:

If to the Exchange:

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

Attn: Chief Regulatory Officer

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

If to the Clearing Service Provider:

The Options Clearing Corporation  
One North Wacker Drive, Suite 600  
Chicago, IL 60606

Attn: General Counsel

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

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All notices may be sent by overnight courier service, registered or certified mail, return receipt requested, postage prepaid, facsimile, or electronic mail.

52. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
53. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party hereto without the prior written consent of the other party, but a merger, consolidation, reorganization or reincorporation by, or sale of all or substantially all of the assets of either party shall not require the consent of the other party so long as the successor entity or transferee is qualified to carry on the business contemplated herein.

- 54. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- 55. The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof.
- 56. This Agreement and the Rules constitutes the entire agreement between the parties, supersedes any prior agreement on the subject matter between the parties, and may only be changed in writing. Such changes are to be signed by all signatories to this Agreement.
- 57. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument.

**GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. ANY ACTIONS, SUITS OR PROCEEDINGS MUST BE BROUGHT IN A FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS, OR IF THE REQUIREMENTS FOR FEDERAL SUBJECT MATTER JURISDICTION ARE NOT MET, IN A STATE COURT LOCATED IN COOK COUNTY, ILLINOIS.

By:  
(Name)

Title: \_\_\_\_\_

By:

Phone Number:



**Annex A**

**[Organizational Documents of the Vault]**

Please provide the information below for the Vault at the date of this Agreement and for the entire existence of the Vault. Please indicate following each entry whether it relates to the date of this Agreement or, if the entry relates to prior dates, please provide the dates for which it applies. Please also attach current organizational documents for the Vault to this Annex A.

**Legal Name of Vault:**

**Type of Organization of Vault:**

**Jurisdiction of Organization of Vault:**

**Annex B**

[List Auditor pursuant to Section 16]

**Application and Agreement for Declaration of Regularity  
Mini-Sized Gold Futures**

NYSE Liffe US, LLC  
New York NY 10005

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, (hereinafter called the  
“Vault”), located at \_\_\_\_\_,  
and incorporated under the laws of \_\_\_\_\_ having allocated  
storage capacity of \_\_\_\_\_ troy ounces hereby submits its application to  
NYSE Liffe US, LLC (the “Exchange” or “NYSE Liffe”) for a Declaration of Regularity (as defined  
below) for the purpose of facilitating delivery of Gold under contracts for future delivery or other transfer  
under vault receipts pursuant to the Rules of NYSE Liffe US, LLC (as the same may be amended,  
modified or supplemented from time to time)(the “Agreement”).

**DEFINITIONS**

For purposes of this Agreement:

- “Clearing Service Provider” shall mean the clearing house or clearing organization designated by the Exchange from time to time, which, until the Vault is instructed by the Exchange in writing otherwise, shall be The Options Clearing Corporation (“OCC”).
- An “Electronic Receipt” shall mean a Receipt that exists in book-entry form on the NYSE Liffe Guardian Delivery System and is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Gold Futures or transfers.
- “Gold” shall mean a bar or bars of gold held by the Vault pursuant to the terms of this Agreement.
- A “Paper Receipt” shall mean a Receipt that is in physical form and that is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Gold Futures or transfers and as to which a book-entry record has been made in the NYSE Liffe Guardian Delivery System, it being agreed and understood that no Paper Receipt shall be eligible for delivery where an Electronic Receipt has been issued in substitution for such Paper Receipt and no Paper Receipt shall be eligible for delivery after the end of the Transition Period.

- “Receipt” shall mean a receipt for Gold held by the Vault that is issued by the Vault, as bailee, to a Clearing Member or other person, as bailor, entitling such Clearing Member or other person to receive such Gold upon tender of the receipt.
- “Registered Gold” shall mean Stored Available Gold for which a Receipt has been issued.
- “Stored Available Gold” shall mean Gold which is in the possession of the Vault that meets all the specifications for Gold as stated in the Rules, including without limitation the specifications set forth in Rules 1402, 1405 and 1406, but for which a Receipt has not been issued.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Rules of the Exchange (as amended from time to time, the “Rules”).

### **AGREEMENTS OF VAULT**

In consideration of the Exchange approving the application of the Vault for a declaration of regularity for delivery of Gold under contracts for future delivery or other transfer under vault receipts pursuant to the Rules (a “Declaration of Regularity”) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vault expressly agrees for the benefit of the Exchange as follows:

### **REGULARITY PROVISIONS**

1. The Vault shall accept Gold for delivery or transfer in connection with the Exchange’s Gold Futures Contracts or otherwise, provided such Gold is ordered into the Vault by a Clearing Member, and all space in such Vault is not already filled or contracted for. The Vault shall immediately notify the Exchange in writing if all of the space in the Vault becomes filled or contracted for.
2. The Vault shall neither withdraw as a regular vault nor withdraw any regular capacity during the life of this Declaration of Regularity except after sixty (60) days notice to the Exchange or having obtained the consent of the Exchange.
3. The signing of this Agreement constitutes a representation that the representations made herein are true and accurate as of the date hereof and will be true during the life of the Declaration of Regularity and that the conditions of this Agreement are complied with and will be observed during the life of the Declaration of Regularity.
4. The signing of this Agreement constitutes a representation that the exact legal name, type of organization and sole jurisdiction of organization of the Vault at the date of this Agreement and for its entire existence to date are as set forth in Annex A. The Vault shall provide its organizational documents as part of Annex A. The Vault shall maintain its existence as a \_\_\_\_\_ organized in good standing under

\_\_\_\_\_ law and shall not dissolve, liquidate, merge with or into any other entity or otherwise change its structure, name or identity or be formed in any other jurisdiction unless the Vault shall have notified the Exchange in writing at least 30 days prior to any intent not to so maintain its existence or any such dissolution, liquidation, merger or change, as the case may be.

5. The Vault consents to disciplinary jurisdiction of the Exchange for five years after regularity lapses for conduct that occurred while the Vault was regular.
6. For the sake of clarity, the Exchange's disciplinary jurisdiction with respect to the Vault is limited to issues in connection with this Agreement and the storage and delivery of Gold pursuant to the terms and conditions of the Exchange's Gold Futures or other transfer of Gold pursuant to a Receipt.
7. The Vault shall be outfitted with standard equipment and appliances for the convenient and safe storage of Gold and provide for proper security.
8. The Vault shall notify the Exchange promptly of any material change in ownership or the location or capacity of its premises, to the extent not prohibited by applicable law.
9. The Vault shall be adequately capitalized as determined by the Exchange and maintain a tangible net worth, either itself or through a guarantor acceptable to the Exchange, in an amount of either at least \$100 million or such other amount as the Exchange shall determine. In the event that the Vault becomes insolvent, bankrupt or has a reduction in tangible net worth of greater than 20%, the Vault shall notify the Exchange immediately. In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of the Vault, the Exchange may require the Vault to obtain a letter of credit issued by a bank or insurance company, acceptable to the Exchange, for such sums and on such terms and conditions as the Exchange may determine in its sole discretion. The Exchange shall notify the Vault of any terms and conditions it determines in accordance with this Section.
10. The Vault agrees to maintain reasonable and customary insurance against loss of Gold. Throughout the term of this Agreement, the Vault shall provide the Exchange with evidence of its current insurance in the form of a Memorandum of Insurance. The Vault agrees to notify the Exchange, in writing with proof of delivery, in the event of cancellation of its insurance required under this Section. In addition, at the time of issuance or the next renewal of its insurance policy, the Vault shall use commercially reasonable efforts to cause its insurer to immediately notify the Exchange directly of any event that would lead to the cancellation of any insurance coverage required by this Section. Reasonable and customary insurance is agreed to mean insurance against loss or damage of property in a form and amount maintained by global financial institutions similar to the Vault.

11. In the event that Vault fails to comply with the terms of this Agreement or the Rules, or it has breached one of its representations, the Vault shall give such guaranties, bonds, or other financial instruments to the Exchange as it may require to ensure performance of the Vault's obligations as a regular vault.
12. The Vault shall provide the Exchange with a list of its personnel authorized to access the NYSE Liffe Guardian Delivery System. The Vault agrees that it will promptly notify the Exchange of any changes to such list.
13. The Vault shall permit such vault inspections as the Exchange or the Commodity Futures Trading Commission (the "CFTC") may require. In addition, the Vault shall provide the Exchange access to every facility containing Gold subject to this Agreement and the records related thereto for the examination of the Vault's books or records for the purpose of ascertaining the stocks of Gold. The Exchange shall have the authority to employ experts to determine the quantity and quality of Gold in the Vault.
14. The Vault shall submit within ninety (90) days of its fiscal year-end either instructions as to how to access its financial statements filed with the U.S. Securities and Exchange Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system or a certified copy of the financial statements accompanied by a letter of attestation by the chief financial officer of the Vault, or if there is none, a general partner or executive officer.
15. The Vault shall provide the Exchange, on a daily basis, in a format approved by the Exchange, (i) the total ounces of Registered Gold stored at the Vault and (ii) the total ounces of Stored Available Gold stored at the Vault. Such daily reports shall indicate the quantity of Registered Gold and Stored Available Gold shipped to and from the Vault each day.
16. The Vault annually shall have an audit (the "Annual Audit") performed by an independent auditor (the "Auditor"). The Auditor must be (1) a recognized certified public accountant (a) suitably qualified to the satisfaction of the Exchange to perform the Annual Audit or (b) listed on Annex B hereto or otherwise registered as a member of the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board or (2) a firm with expertise in inventory audits satisfactory to the Exchange or listed on Annex B hereto. A period of no more than fifteen (15) months may elapse from the date of the last Annual Audit without a new Annual Audit being performed. The Vault agrees as follows with respect to the Annual Audit:
  - a. The Auditor shall conduct an audit of Gold inventory held by the Vault and certify in a report that the records of the Vault accurately reflect the Gold inventory held by such Vault and the Receipts issued by such Vault.
  - b. The Auditor shall perform an audit of the internal controls of the Vault. This audit shall include an evaluation of the internal controls for the accountability for and custody of all

Gold held by the Vault and shall disclose any conditions the Auditor believes to be significant deficiencies or material weaknesses in internal controls.

- i. The Auditor shall perform all such tests and checks, review all such information, communicate with all such persons and take all such other actions that, in its judgment, are necessary under the circumstances to allow the Auditor to make the certifications and reports required in paragraphs (a) and (b) above. Such actions shall include, without limitation: accounting for all Receipts issued by the Vault since the date of the last annual audit; counting of Registered Gold held by the Vault and reconciliation of the count of such Registered Gold to both the Vault's records and the corresponding Receipts in the NYSE Liffe Guardian Delivery System issued by the Vault;
- ii. for a random sample of a percentage of lots of Registered Gold, the Auditor shall reconcile the information about such Gold as set forth in the Receipt in the NYSE Liffe Guardian Delivery System to the Registered Gold in the Vault, including, without limitation, as imprinted on each bar of Gold the weight, fineness, serial number, and brand of such Registered Gold; and
- iii. for a random sample of lots of Registered Gold, the Auditor shall confirm that each bar of Registered Gold is accompanied by a certificate, if such a certificate is required, issued by an approved refiner, assayer, or other certifying authority, stating the serial number of the bar(s), the weight, and the fineness, such certificate only being required if such Registered Gold is not marked with the fineness and stamp of an approved refiner, assayer, or other certifying authority.

For any actions outlined above that reference "a percentage," the Auditor shall determine, and the Exchange shall approve, the appropriate percentage required.

- c. The Vault and the Exchange shall cooperate with the Auditor to allow it to perform its Annual Audit as specified in this Section and shall provide all reasonable information or assistance, including access to necessary books and records and personnel, as requested by the Auditor during the performance of its Annual Audit.
  - d. The Vault shall provide a copy of all reports set forth in this Section signed by the party preparing such report, to the Exchange and the Clearing Service Provider promptly upon each report's completion, but in no case later than five days after the Vault has received such report.
17. The Vault shall schedule all shipments into or out of the facility on a first come, first serve, non-discriminatory basis. The Vault agrees that it shall not unreasonably constrain or promote movement of Gold into or out of the Vault by (i) giving exceptional inducements or imposing unreasonable charges for depositing, storage or removal of Gold into or out of the Vault, (ii)

taking or failing to take any action that affects a customer's ability to schedule the delivery or removal of Gold from the Vault, or (iii) failing to report stocks as required by this Agreement. For the sake of clarity, constraints on movement outside the control of the Vault, such as in emergency or unusual circumstances, will not be deemed to be a violation of this provision.

18. The Vault acknowledges that, pursuant to Rule 1414, the Exchange may, in its sole discretion, determine not to approve the Vault for regularity or increases in regular capacity of the Vault even if the Vault has been approved as a regular vault and regardless of whether the Vault meets the conditions of regularity specified in Rule 1414. Some factors the Exchange may, but is not required to, consider in exercising its discretion may include, among others, whether Receipts issued by the Vault, tendered in satisfaction of Gold Futures, might be expected to adversely affect the price discovery function of Gold Futures or impair the efficacy of Futures trading in Gold, or whether the currently approved regular capacity provides for an adequate deliverable supply.
19. The Vault agrees that a Declaration of Regularity, if granted, may be revoked immediately by the Exchange upon the Vault's violation of any of the terms of this Agreement, any conditions or duties specified in Rule 1414 or any other relevant Rules. If any of the representations or statements made in this Agreement, pursuant to the Rules or any other document furnished to the Exchange in connection herewith are found to be untrue, the Exchange shall have the right to revoke the Declaration of Regularity immediately. By accepting a Declaration of Regularity the Vault agrees, in the event of revocation of regularity or notice of termination of the Agreement by the Vault pursuant to Section 51 herein, to bear the expenses of the transfer of Gold under bond to another regular vault capable of receiving such a transfer as approved by the Exchange.

#### **BOUND BY RULES**

20. The Vault agrees to be subject to, and bound by, the Rules of the Exchange, including but not limited to Chapter 14, the disciplinary procedures set forth in Chapter 7, and the arbitration procedures set forth in Chapter 8 (with respect to the matters referred to therein), and to abide by and comply with the terms of any disciplinary decision imposed upon the operator of the Vault or any arbitration award issued against it pursuant to the Rules, to the same extent as if the Vault were a Member of the Exchange.
21. The Vault issuing a Receipt shall be responsible for verifying that the Gold related thereto meets all the specifications for Gold as stated in the Rules, including without limitation the specifications set forth in Rules 1402, 1405 and 1406, and shall be responsible for entering all applicable information into the NYSE Liffe Guardian Delivery System, including the information as required under Rules 1411 and 1412.



22. The Vault shall comply with all applicable rules of the CFTC. The Vault shall make such reports and keep such records as the CFTC may require, including maintaining all such reports, books and records for a period of five years.

#### **TRANSITION PERIOD**

23. During the Transition Period, the Vault shall accept all paper receipts eligible for delivery in the NYSE Liffe Guardian Delivery System previously issued by such Vault ("Eligible Paper Receipts"), and, upon the instructions of the Clearing Members or the Exchange, shall convert such Eligible Paper Receipts to electronic form in accordance with the Rules and such other procedures as the Exchange may adopt by notice from time to time, thereby creating Electronic Receipts in the NYSE Liffe Guardian Delivery System. After creating an Electronic Receipt in the NYSE Liffe Guardian Delivery System in substitution for an Eligible Paper Receipt, the Vault shall mark the Eligible Paper Receipt with the statement "An Electronic Receipt has been issued as a substitute for this Paper Receipt. This Paper Receipt is no longer valid for delivery." The Vault shall keep such Eligible Paper Receipts on file for at least five years for recordkeeping purposes and to satisfy CFTC requirements. The Vault shall certify to the Exchange, at the end of the Transition Period and annually thereafter until all Paper Receipts issued by the Vault have been substituted for Electronic Receipts, that such Eligible Paper Receipts have been marked as required in this Section to the extent any Eligible Paper Receipts has been delivered in the past twelve (12) months.

#### **POST-TRANSITION**

24. After the expiration of the Transition Period, at the request of a Clearing Member, the Vault shall convert outstanding Eligible Paper Receipts to Electronic Receipts in accordance with the Rules and such other procedures as the Exchange may adopt from time to time. Both during the Transition Period and after its expiration, upon the delivery of Gold to the Vault and the instructions of a Clearing Member or the Exchange, the Vault shall create an Electronic Receipt in the NYSE Liffe Guardian Delivery System containing all information required under the Rules on behalf of such Clearing Member.
25. The Vault acknowledges and agrees that after expiration of the Transition Period, Paper Receipts will no longer be valid for delivery on Gold Futures. For the avoidance of doubt, Paper Receipts will no longer be valid for delivery after 7:00 p.m. New York time on the last day set forth in the Rules for a seller to issue a notice of intent prior to the expiration of the Transition Period in accordance with the Rules.

**RECEIPTS GENERALLY**

26. The Vault agrees that the issuance of Receipts shall be exclusively governed by this Agreement, the Rules and any notices adopted by the Exchange from time to time and the handling and transfer of Receipts and delivery and transfer of Gold shall be exclusively governed by this Agreement, the Rules, any notices adopted by the Exchange from time to time, the Rules of the Clearing Service Provider and any agreement among the Exchange and the Clearing Service Provider.
27. The Vault shall maintain appropriate and clearly defined back office procedures to ensure correct data entry into the NYSE Liffe Guardian Delivery System when issuing an Electronic Receipt on behalf of the requesting Clearing Member, shall use the same receipt number as used for associated Paper Receipts (if converting to an Electronic Receipt), and shall verify the accuracy of each data entry made by the Vault's personnel before uploading such information into the NYSE Liffe Guardian Delivery System.
28. The Vault shall ensure that no duplicate Electronic Receipts are issued by it.
29. The Vault shall, upon notice to the Exchange that a Clearing Member or the Clearing Service Provider plans to effect an Outside Transfer of an Electronic Receipt or a Paper Receipt, take such steps as required by the Exchange and in the Rules such that the Electronic Receipt is cancelled in or the Paper Receipt is removed from the NYSE Liffe Guardian Delivery System. If the Vault at any time issues a tangible document in replacement of an Electronic Receipt, such tangible document when issued shall contain a statement that it is issued in substitution for the Electronic Receipt.
30. The Exchange is authorized to file a precautionary Uniform Commercial Code financing statement specifying the Vault as debtor and the Exchange as secured party, on behalf of itself and its Clearing Members, which financing statement shall identify that the Vault holds Gold as warehouseman, the right to which Gold is evidenced by Paper Receipts or Electronic Receipts issued by the Vault and which financing statement shall specify the "bailor/bailee" designation in the appropriate box on such financing statement.

**BAILEE RELATED PROVISIONS / STANDARD OF CARE**

31. The Vault shall be responsible for ensuring, and hereby represents and warrants to the Exchange that, all information on each Receipt issued by it is true and correct. For the sake of clarity, this obligation will not be construed as a warranty of the quality or contents of Gold. The Exchange shall have the right to revoke the Declaration of Regularity immediately in the event that the Exchange determines, in its discretion, that best efforts have not been used in ensuring that all information on each Receipt issued by it is true and correct. In no event shall the Exchange bear

- any responsibility to any person for any error or incorrect information in any Receipt, and the Vault shall bear full responsibility for such error or incorrect information and indemnify the Exchange in accordance with Section 41 hereof, whether or not the Vault utilized best efforts.
32. The Vault shall properly safeguard all Gold deposited with it in accordance with customary industry standards. The Vault shall keep any Gold for which it has issued one or more Receipts segregated from its own property, shall not pledge such Gold as security for a loan or other obligation, and shall not take any other actions that might cause such Gold to become part of the Vault's estate in the event of the Vault's bankruptcy, insolvency or liquidation.
33. In the event that a Clearing Member claims a breach of warranty relating to the quantity or quality of Gold in accordance with the Rules, upon instructions from a Clearing Member, the Vault shall submit Gold, under bond, for sampling and assaying to an assayer approved by the Exchange. The claimant shall be responsible for all expenses incurred in connection with this Section, including the required bond, pursuant to the terms set forth in the Rules.
34. The Vault agrees to release or transfer Gold held by it against a valid Receipt only upon receipt of consent from the Exchange and in accordance with any instructions from the Exchange and only to such person or entity that is a representative of, in the case of Electronic Receipts, the Clearing Member specified in the relevant Electronic Receipt or such other person or entity as such specified Clearing Member may designate and, in the case of a Paper Receipt, the Clearing Member identified as the owner in a book-entry record in the NYSE Liffe Guardian Delivery System or such other person or entity as such specified Clearing Member may designate; provided, however, that the Vault agrees that for so long as an Electronic Receipt is marked with the notation that it is "Pledged, Transferred and Held for OCC" or any other Clearing Service Provider, the Vault shall release Gold only as instructed by the designated Clearing Service Provider (or the Exchange on the Clearing Service Provider's behalf) and not release Gold for delivery to any person or entity other than as instructed by the Clearing Service Provider. Furthermore, the Vault agrees that the Exchange shall have no liability relating to any designation by the Clearing Member of another person or entity to which Gold should be transferred or released.
35. If a person seeks to withdraw or transfer the Gold underlying an Eligible Paper Receipt from the Vault or to convert an Eligible Paper Receipt to electronic form but advises the Vault that neither such person nor the Central Depository is in possession of the relevant Eligible Paper Receipt and cannot therefor tender it to the Vault, the Vault shall be entitled to require such person to provide the Vault with a bond of indemnity in a form and for an amount acceptable to the Vault in its reasonable discretion in order for the Vault to convert such Eligible Paper Receipt to electronic form.

36. The Vault acknowledges that it will not have access to and will not be authorized to make any changes to Electronic Receipts once such receipts are issued in the NYSE Liffe Guardian Delivery System, except that the Vault shall be authorized to change the 'storage paid through date' with respect to the Gold stored by the Vault through the NYSE Liffe Guardian Delivery System. After a Receipt is issued in the NYSE Liffe Guardian Delivery System, upon discovery of an error, the Vault shall notify the Exchange in writing and the Exchange shall make such corrections as soon as practical unless the Receipt has been tendered for delivery on a Futures Contract in which case the Exchange will not be able to make the corrections until after delivery is effected in accordance with the Rules or with OCC's consent; provided that the Exchange shall be under no liability to warrant the accuracy or authenticity of the changes to the Electronic Receipt.
37. Subject to Section 38 below, upon the Vault's receipt of Gold and issuance of a Receipt in respect thereof, the Vault shall hold the Gold as bailee for, in the case of an Electronic Receipt, the person or entity specified as the Clearing Member in such Electronic Receipt and, in the case of a Paper Receipt, the person identified by the Exchange as the owner or owner's representative thereof.
38. During the period in which an Electronic Receipt in the NYSE Liffe Guardian Delivery System is designated as "Pledged, Transferred and Held for OCC", the Vault shall hold the related Gold as bailee for the Clearing Service Provider.
39. In the event of a conflict between the records of the Vault and the records of the Exchange in the NYSE Liffe Guardian Delivery System, the records of the Exchange shall control. The Exchange shall give the Vault access on a reasonable basis, from time to time, to its records for purposes of coordinating and reconciling complementary record entries.
40. The Vault shall not engage in unethical or inequitable practices, or fail to comply with any laws, Federal or State, or rules or regulations promulgated under those laws.

#### **INDEMNITY**

41. The Vault agrees to indemnify and hold harmless each of the Exchange and the Clearing Service Provider and each of their respective directors, officers, committee members, agents and employees from and against any and all loss, damage and expense arising out of or based on any breach by the Vault of any of the terms of this Agreement or of the Rules or the Vault's gross negligence or willful misconduct in carrying out its obligations hereunder or under the Rules. This indemnity agreement shall be in addition to any liability the Vault may otherwise have. In no event shall the Vault be liable for special, indirect or consequential damages or loss of any kind whatsoever regardless of whether it has notice of the likelihood of such damages or loss and regardless of the form of action.

### THIRD PARTY BENEFICIARY

42. The Vault agrees that the Clearing Service Provider shall be intended as a third party beneficiary to this Agreement and is entitled to rely upon all representations, warranties and covenants made by the Vault herein to the same extent as if the Clearing Service Provider were the Exchange. The Exchange may furnish a copy of this Agreement to the Clearing Service Provider.

### CONFIDENTIALITY

43. All parties acting on behalf of the Vault, including but not limited to its employees and agents, shall be prohibited from disclosing any information that relates to the storage, transfer or withdrawal of Gold, or the ownership of Gold stored at the Vault pursuant to this Agreement.
44. This Agreement and its contents are considered proprietary by all parties to this Agreement. To this end, the parties including their respective principals, officers, employees, agents and attorneys, understand and agree: (a) originals and copies of this Agreement, and any amendments thereto, and all documents provided in accordance with, or pursuant to, the terms of this Agreement shall be treated in such a manner that it may be reasonably expected that unauthorized persons shall not have access to them; (b) in the event that disclosure of this Agreement or any documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement is sought in conjunction with any proceeding before a court or regulatory body with proper jurisdiction, the party from which the disclosure is sought shall promptly notify the other party that disclosure is sought, and, if either party determines to resist disclosure, the party will cooperate with those efforts to resist formally any legal compulsion to produce, disclose or reveal such documents and negotiation, such resistance including a request that any such production or disclosure be made subject to a protective order, it being understood and agreed that the party resisting disclosure shall be responsible for all costs, fees and expenses of any party required to respond or take action that are associated with any such defense or effort to prevent disclosure; and (c) the terms and conditions of this Agreement or documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement shall not be disclosed or revealed in any way to any person or organization except for the following authorized disclosures:
- a. By any order of a court with proper jurisdiction;
  - b. By prior written approval of the non-disclosing party;
  - c. By either party to the CFTC or any other local, state or federal governmental agency or regulatory body with proper jurisdiction;
  - d. If disclosure, in the sole reasonable judgment of the disclosing party, is legally required without notice first being made to the non-disclosing party; or

- e. To employees or agents, including any principal, officer, agent or employee of the Clearing Service Provider, attorneys, accountants, auditors, consultants, advisory clients and other professionals, of any party in connection with the negotiation, maintenance, management or enforcement of this Agreement or the Rules or the Exchange.

#### **STORAGE COSTS AND WITHDRAWAL FEES PROVISIONS**

- 45. The Vault shall notify the Exchange at least sixty (60) days in advance of any changes in its maximum storage rates, penalties for late storage payments, withdrawal fees, and handling charges.
- 46. The Vault shall provide the Exchange with an invoice for monthly storage charges and withdrawal fees by the fifth business day of the month based on the inventory held on the last business day of the previous month.
- 47. With respect to storage charges and withdrawal fees owed to the Vault by the Clearing Member, the Exchange will (a) invoice each applicable Clearing Member on a monthly basis for amounts specified by the Vault as owed by such Clearing Member as compensation for storage and withdrawal in respect of Gold for which the Vault has issued one or more Electronic Receipts or, until expiration of the Transition Period, Paper Receipts and (b) facilitate payments from such Clearing Member in respect of such invoice.

#### **EMERGENCIES**

- 48. Upon the occurrence of events which prevent or threaten to prevent the Vault from performing its obligations under this Agreement, and such threat or occurrence continuing despite the exercise of reasonably expected due diligence and reasonable effort to avoid such events by the Vault, the Vault shall immediately notify the Exchange, pursuant to the terms of this Agreement, by the fastest means possible.
- 49. Whether a circumstance exists constituting an Emergency that affects the Vault (as such term is defined in Exchange Rules) shall be determined by the Exchange pursuant to Rule 425 ("Emergencies"). The Exchange shall immediately notify the Vault of the imposition and the lifting of a declaration of an Emergency, pursuant to the terms of this Agreement, by the fastest method possible.

#### **MISCELLANEOUS**

- 50. The Agreement shall commence on the date hereof and shall terminate twelve (12) months after the date the receiving party shall have received notice of termination pursuant to Section 51 herein from the terminating party.

51. All notices, requests, demands, consents and other communications given or required to be given under this Agreement shall be in writing and delivered to the applicable party at the address indicated below:

If to the Vault:

If to the Exchange:

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

Attn: Chief Regulatory Officer

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

If to the Clearing Service Provider:

The Options Clearing Corporation  
One North Wacker Drive, Suite 600  
Chicago, IL 60606

Attn: General Counsel

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

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All notices may be sent by overnight courier service, registered or certified mail, return receipt requested, postage prepaid, facsimile, or electronic mail.

52. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
53. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party hereto without the prior written consent of the other party, but a merger, consolidation, reorganization or reincorporation by, or sale of all

or substantially all of the assets of either party shall not require the consent of the other party so long as the successor entity or transferee is qualified to carry on the business contemplated herein.

- 54. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- 55. The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof.
- 56. This Agreement and the Rules constitutes the entire agreement between the parties, supersedes any prior agreement on the subject matter between the parties, and may only be changed in writing. Such changes are to be signed by all signatories to this Agreement.
- 57. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument.

**GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. ANY ACTIONS, SUITS OR PROCEEDINGS MUST BE BROUGHT IN A FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS, OR IF THE REQUIREMENTS FOR FEDERAL SUBJECT MATTER JURISDICTION ARE NOT MET, IN A STATE COURT LOCATED IN COOK COUNTY, ILLINOIS.

By:  
(Name)

Title: \_\_\_\_\_

By:

Phone Number:



**Annex A**

[Organizational Documents of the Vault]

Please provide the information below for the Vault at the date of this Agreement and for the entire existence of the Vault. Please indicate following each entry whether it relates to the date of this Agreement or, if the entry relates to prior dates, please provide the dates for which it applies. Please also attach current organizational documents for the Vault to this Annex A.

Legal Name of Vault:

Type of Organization of Vault:

Jurisdiction of Organization of Vault:

**Annex B**

[List Auditor pursuant to Section 16]

**Application and Agreement for Declaration of Regularity  
5,000 Oz. Silver Futures**

NYSE Liffe US, LLC  
New York NY 10005

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, (hereinafter called the  
“Vault”), located at \_\_\_\_\_,  
and incorporated under the laws of \_\_\_\_\_ having allocated  
storage capacity of \_\_\_\_\_ troy ounces hereby submits its application to  
NYSE Liffe US, LLC (the “Exchange” or “NYSE Liffe”) for a Declaration of Regularity (as defined  
below) for delivery of Silver under contracts for future delivery or other transfer under vault receipts  
pursuant to the Rules of NYSE Liffe US, LLC (as the same may be amended, modified or supplemented  
from time to time)(the “Agreement”).

**DEFINITIONS**

For purposes of this Agreement:

- “Clearing Service Provider” shall mean the clearing house or clearing organization designated by the Exchange from time to time, which, until the Vault is instructed by the Exchange in writing otherwise, shall be The Options Clearing Corporation (“OCC”).
- An “Electronic Receipt” shall mean a Receipt that exists in book-entry form on the NYSE Liffe Guardian Delivery System and is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Silver Futures or transfers.
- “Silver” shall mean a bar or bars of Silver held by the Vault pursuant to the terms of this Agreement.
- A “Paper Receipt” shall mean a Receipt that is in physical form and that is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Silver Futures or transfers and as to which a book-entry record has been made in the NYSE Liffe Guardian Delivery System, it being agreed and understood that no Paper Receipt shall be eligible for delivery where an Electronic Receipt has been issued in substitution for such Paper Receipt and no Paper Receipt shall be eligible for delivery after the end of the Transition Period.

- “Receipt” shall mean a receipt for Silver held by the Vault that is issued by the Vault, as bailee, to a Clearing Member or other person, as bailor, entitling such Clearing Member or other person to receive such Silver upon tender of the receipt.
- “Registered Silver” shall mean Stored Available Silver for which a Receipt has been issued.
- “Stored Available Silver” shall mean Silver which is in the possession of the Vault that meets all the specifications for Silver as stated in the Rules, including without limitation the specifications set forth in Rules 1502, 1505 and 1506, but for which a Receipt has not been issued.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Rules of the Exchange (as amended from time to time, the “Rules”).

### **AGREEMENTS OF VAULT**

In consideration of the Exchange approving the application of the Vault for a declaration of regularity for delivery of Silver under contracts for future delivery or other transfer under vault receipts pursuant to the Rules (a “Declaration of Regularity”) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vault expressly agrees for the benefit of the Exchange as follows:

### **REGULARITY PROVISIONS**

1. The Vault shall accept Silver for delivery or transfer in connection with the Exchange’s Silver Futures Contracts or otherwise, provided such Silver is ordered into the Vault by a Clearing Member, and all space in such Vault is not already filled or contracted for. The Vault shall immediately notify the Exchange in writing if all of the space in the Vault becomes filled or contracted for.
2. The Vault shall neither withdraw as a regular vault nor withdraw any regular capacity during the life of this Declaration of Regularity except after sixty (60) days notice to the Exchange or having obtained the consent of the Exchange.
3. The signing of this Agreement constitutes a representation that the representations made herein are true and accurate as of the date hereof and will be true during the life of the Declaration of Regularity and that the conditions of this Agreement are complied with and will be observed during the life of the Declaration of Regularity.
4. The signing of this Agreement constitutes a representation that the exact legal name, type of organization and sole jurisdiction of organization of the Vault at the date of this Agreement and for its entire existence to date are as set forth in Annex A. The Vault shall provide its organizational documents as part of Annex A. The Vault shall maintain its existence as a \_\_\_\_\_ organized in good standing under

\_\_\_\_\_ law and shall not dissolve, liquidate, merge with or into any other entity or otherwise change its structure, name or identity or be formed in any other jurisdiction unless the Vault shall have notified the Exchange in writing at least 30 days prior to any intent not to so maintain its existence or any such dissolution, liquidation, merger or change, as the case may be.

5. The Vault consents to disciplinary jurisdiction of the Exchange for five years after regularity lapses for conduct that occurred while the Vault was regular.
6. For the sake of clarity, the Exchange's disciplinary jurisdiction with respect to the Vault is limited to issues in connection with this Agreement and the storage and delivery of Silver pursuant to the terms and conditions of the Exchange's Silver Futures or other transfer of Silver pursuant to a Receipt.
7. The Vault shall be outfitted with standard equipment and appliances for the convenient and safe storage of Silver and provide for proper security.
8. The Vault shall notify the Exchange promptly of any material change in ownership or the location or capacity of its premises, to the extent not prohibited by applicable law.
9. The Vault shall be adequately capitalized as determined by the Exchange and maintain a tangible net worth, either itself or through a guarantor acceptable to the Exchange, in an amount of either at least \$100 million or such other amount as the Exchange shall determine. In the event that the Vault becomes insolvent, bankrupt or has a reduction in tangible net worth of greater than 20%, the Vault shall notify the Exchange immediately. In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of the Vault, the Exchange may require the Vault to obtain a letter of credit issued by a bank or insurance company, acceptable to the Exchange, for such sums and on such terms and conditions as the Exchange may determine in its sole discretion. The Exchange shall notify the Vault of any terms and conditions it determines in accordance with this Section.
10. The Vault agrees to maintain reasonable and customary insurance against loss of Silver. Throughout the term of this Agreement, the Vault shall provide the Exchange with evidence of its current insurance in the form of a Memorandum of Insurance. The Vault agrees to notify the Exchange, in writing with proof of delivery, in the event of cancellation of its insurance required under this Section. In addition, at the time of issuance or the next renewal of its insurance policy, the Vault shall use commercially reasonable efforts to cause its insurer to immediately notify the Exchange directly of any event that would lead to the cancellation of any insurance coverage required by this Section. Reasonable and customary insurance is agreed to mean insurance against loss or damage of property in a form and amount maintained by global financial institutions similar to the Vault.

11. In the event that Vault fails to comply with the terms of this Agreement or the Rules, or it has breached one of its representations, the Vault shall give such guaranties, bonds, or other financial instruments to the Exchange as it may require to ensure performance of the Vault's obligations as a regular vault.
12. The Vault shall provide the Exchange with a list of its personnel authorized to access the NYSE Liffe Guardian Delivery System. The Vault agrees that it will promptly notify the Exchange of any changes to such list.
13. The Vault shall permit such vault inspections as the Exchange or the Commodity Futures Trading Commission (the "CFTC") may require. In addition, the Vault shall provide the Exchange access to every facility containing Silver subject to this Agreement and the records related thereto for the examination of the Vault's books or records for the purpose of ascertaining the stocks of Silver. The Exchange shall have the authority to employ experts to determine the quantity and quality of Silver in the Vault.
14. The Vault shall submit within ninety (90) days of its fiscal year-end either instructions as to how to access its financial statements filed with the U.S. Securities and Exchange Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system or a certified copy of the financial statements accompanied by a letter of attestation by the chief financial officer of the Vault, or if there is none, a general partner or executive officer.
15. The Vault shall provide the Exchange, on a daily basis, in a format approved by the Exchange, (i) the total ounces of Registered Silver stored at the Vault and (ii) the total ounces of Stored Available Silver stored at the Vault. Such daily reports shall indicate the quantity of Registered Silver and Stored Available Silver shipped to and from the Vault each day.
16. The Vault annually shall have an audit (the "Annual Audit") performed by an independent auditor (the "Auditor"). The Auditor must be (1) a recognized certified public accountant (a) suitably qualified to the satisfaction of the Exchange to perform the Annual Audit or (b) listed on Annex B hereto or otherwise registered as a member of the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board or (2) a firm with expertise in inventory audits satisfactory to the Exchange or listed on Annex B hereto. A period of no more than fifteen (15) months may elapse from the date of the last Annual Audit without a new Annual Audit being performed. The Vault agrees as follows with respect to the Annual Audit:
  - a. The Auditor shall conduct an audit of Silver inventory held by the Vault and certify in a report that the records of the Vault accurately reflect the Silver inventory held by such Vault and the Receipts issued by such Vault.
  - b. The Auditor shall perform an audit of the internal controls of the Vault. This audit shall include an evaluation of the internal controls for the accountability for and custody of all

Silver held by the Vault and shall disclose any conditions the Auditor believes to be significant deficiencies or material weaknesses in internal controls.

- i. The Auditor shall perform all such tests and checks, review all such information, communicate with all such persons and take all such other actions that, in its judgment, are necessary under the circumstances to allow the Auditor to make the certifications and reports required in paragraphs (a) and (b) above. Such actions shall include, without limitation: accounting for all Receipts issued by the Vault since the date of the last annual audit; counting of Registered Silver held by the Vault and reconciliation of the count of such Registered Silver to both the Vault's records and the corresponding Receipts in the NYSE Liffe Guardian Delivery System issued by the Vault;
- ii. for a random sample of a percentage of lots of Registered Silver, the Auditor shall reconcile the information about such Silver as set forth in the Receipt in the NYSE Liffe Guardian Delivery System to the Registered Silver in the Vault, including, without limitation, as imprinted on each bar of Silver the weight, fineness, serial number, and brand of such Registered Silver; and
- iii. for a random sample of lots of Registered Silver, the Auditor shall confirm that each bar of Registered Silver is accompanied by a certificate, if such a certificate is required, issued by an approved refiner, assayer, or other certifying authority, stating the serial number of the bar(s), the weight, and the fineness, such certificate only being required if such Registered Silver is not marked with the fineness and stamp of an approved refiner, assayer, or other certifying authority.

For any actions outlined above that reference "a percentage," the Auditor shall determine, and the Exchange shall approve, the appropriate percentage required.

- c. The Vault and the Exchange shall cooperate with the Auditor to allow it to perform its Annual Audit as specified in this Section and shall provide all reasonable information or assistance, including access to necessary books and records and personnel, as requested by the Auditor during the performance of its Annual Audit.
  - d. The Vault shall provide a copy of all reports set forth in this Section signed by the party preparing such report, to the Exchange and the Clearing Service Provider promptly upon each report's completion, but in no case later than five days after the Vault has received such report.
17. The Vault shall schedule all shipments into or out of the facility on a first come, first serve, non-discriminatory basis. The Vault agrees that it shall not unreasonably constrain or promote movement of Silver into or out of the Vault by (i) giving exceptional inducements or imposing unreasonable charges for depositing, storage or removal of Silver into or out of the Vault, (ii)

- taking or failing to take any action that affects a customer's ability to schedule the delivery or removal of Silver from the Vault, or (iii) failing to report stocks as required by this Agreement. For the sake of clarity, constraints on movement outside the control of the Vault, such as in emergency or unusual circumstances, will not be deemed to be a violation of this provision.
18. The Vault acknowledges that, pursuant to Rule 1514, the Exchange may, in its sole discretion, determine not to approve the Vault for regularity or increases in regular capacity of the Vault even if the Vault has been approved as a regular vault and regardless of whether the Vault meets the conditions of regularity specified in Rule 1514. Some factors the Exchange may, but is not required to, consider in exercising its discretion may include, among others, whether Receipts issued by the Vault, tendered in satisfaction of Silver Futures, might be expected to adversely affect the price discovery function of Silver Futures or impair the efficacy of Futures trading in Silver, or whether the currently approved regular capacity provides for an adequate deliverable supply.
19. The Vault agrees that a Declaration of Regularity, if granted, may be revoked immediately by the Exchange upon the Vault's violation of any of the terms of this Agreement, any conditions or duties specified in Rule 1514 or any other relevant Rules. If any of the representations or statements made in this Agreement, pursuant to the Rules or any other document furnished to the Exchange in connection herewith are found to be untrue, the Exchange shall have the right to revoke the Declaration of Regularity immediately. By accepting a Declaration of Regularity the Vault agrees, in the event of revocation of regularity or notice of termination of the Agreement by the Vault pursuant to Section 51 herein, to bear the expenses of the transfer of Silver under bond to another regular vault capable of receiving such a transfer as approved by the Exchange.

#### **BOUND BY RULES**

20. The Vault agrees to be subject to, and bound by, the Rules of the Exchange, including but not limited to Chapter 15, the disciplinary procedures set forth in Chapter 7, and the arbitration procedures set forth in Chapter 8 (with respect to the matters referred to therein), and to abide by and comply with the terms of any disciplinary decision imposed upon the operator of the Vault or any arbitration award issued against it pursuant to the Rules, to the same extent as if the Vault were a Member of the Exchange.
21. The Vault issuing a Receipt shall be responsible for verifying that the Silver related thereto meets all the specifications for Silver as stated in the Rules, including without limitation the specifications set forth in Rules 1502, 1505 and 1506, and shall be responsible for entering all applicable information into the NYSE Liffe Guardian Delivery System, including the information as required under Rules 1511 and 1512.



22. The Vault shall comply with all applicable rules of the CFTC. The Vault shall make such reports and keep such records as the CFTC may require, including maintaining all such reports, books and records for a period of five years.

#### **TRANSITION PERIOD**

23. During the Transition Period, the Vault shall accept all paper receipts eligible for delivery in the NYSE Liffe Guardian Delivery System previously issued by such Vault ("Eligible Paper Receipts"), and, upon the instructions of the Clearing Members or the Exchange, shall convert such Eligible Paper Receipts to electronic form in accordance with the Rules and such other procedures as the Exchange may adopt by notice from time to time, thereby creating Electronic Receipts in the NYSE Liffe Guardian Delivery System. After creating an Electronic Receipt in the NYSE Liffe Guardian Delivery System in substitution for an Eligible Paper Receipt, the Vault shall mark the Eligible Paper Receipt with the statement "An Electronic Receipt has been issued as a substitute for this Paper Receipt. This Paper Receipt is no longer valid for delivery." The Vault shall keep such Eligible Paper Receipts on file for at least five years for recordkeeping purposes and to satisfy CFTC requirements. The Vault shall certify to the Exchange, at the end of the Transition Period and annually thereafter until all Paper Receipts issued by the Vault have been substituted for Electronic Receipts, that such Eligible Paper Receipts have been marked as required in this Section to the extent any Eligible Paper Receipts has been delivered in the past twelve (12) months.

#### **POST-TRANSITION**

24. After the expiration of the Transition Period, at the request of a Clearing Member, the Vault shall convert outstanding Eligible Paper Receipts to Electronic Receipts in accordance with the Rules and such other procedures as the Exchange may adopt from time to time. Both during the Transition Period and after its expiration, upon the delivery of Silver to the Vault and the instructions of a Clearing Member or the Exchange, the Vault shall create an Electronic Receipt in the NYSE Liffe Guardian Delivery System containing all information required under the Rules on behalf of such Clearing Member.
25. The Vault acknowledges and agrees that after expiration of the Transition Period, Paper Receipts will no longer be valid for delivery on Silver Futures. For the avoidance of doubt, Paper Receipts will no longer be valid for delivery after 7:00 p.m. New York time on the last day set forth in the Rules for a seller to issue a notice of intent prior to the expiration of the Transition Period in accordance with the Rules.

**RECEIPTS GENERALLY**

26. The Vault agrees that the issuance of Receipts shall be exclusively governed by this Agreement, the Rules and any notices adopted by the Exchange from time to time and the handling and transfer of Receipts and delivery and transfer of Silver shall be exclusively governed by this Agreement, the Rules, any notices adopted by the Exchange from time to time, the Rules of the Clearing Service Provider and any agreement among the Exchange and the Clearing Service Provider.
27. The Vault shall maintain appropriate and clearly defined back office procedures to ensure correct data entry into the NYSE Liffe Guardian Delivery System when issuing an Electronic Receipt on behalf of the requesting Clearing Member, shall use the same receipt number as used for associated Paper Receipts (if converting to an Electronic Receipt), and shall verify the accuracy of each data entry made by the Vault's personnel before uploading such information into the NYSE Liffe Guardian Delivery System.
28. The Vault shall ensure that no duplicate Electronic Receipts are issued by it.
29. The Vault shall, upon notice to the Exchange that a Clearing Member or the Clearing Service Provider plans to effect an Outside Transfer of an Electronic Receipt or a Paper Receipt, take such steps as required by the Exchange and in the Rules such that the Electronic Receipt is cancelled in or the Paper Receipt is removed from the NYSE Liffe Guardian Delivery System. If the Vault at any time issues a tangible document in replacement of an Electronic Receipt, such tangible document when issued shall contain a statement that it is issued in substitution for the Electronic Receipt.
30. The Exchange is authorized to file a precautionary Uniform Commercial Code financing statement specifying the Vault as debtor and the Exchange as secured party, on behalf of itself and its Clearing Members, which financing statement shall identify that the Vault holds Silver as warehouseman, the right to which Silver is evidenced by Paper Receipts or Electronic Receipts issued by the Vault and which financing statement shall specify the "bailor/bailee" designation in the appropriate box on such financing statement.

**BAILEE RELATED PROVISIONS / STANDARD OF CARE**

31. The Vault shall be responsible for ensuring, and hereby represents and warrants to the Exchange that, all information on each Receipt issued by it is true and correct. For the sake of clarity, this obligation will not be construed as a warranty of the quality or contents of Silver. The Exchange shall have the right to revoke the Declaration of Regularity immediately in the event that the Exchange determines, in its discretion, that best efforts have not been used in ensuring that all information on each Receipt issued by it is true and correct. In no event shall the Exchange bear

- any responsibility to any person for any error or incorrect information in any Receipt, and the Vault shall bear full responsibility for such error or incorrect information and indemnify the Exchange in accordance with Section 41 hereof, whether or not the Vault utilized best efforts.
32. The Vault shall properly safeguard all Silver deposited with it in accordance with customary industry standards. The Vault shall keep any Silver for which it has issued one or more Receipts segregated from its own property, shall not pledge such Silver as security for a loan or other obligation, and shall not take any other actions that might cause such Silver to become part of the Vault's estate in the event of the Vault's bankruptcy, insolvency or liquidation.
33. In the event that a Clearing Member claims a breach of warranty relating to the quantity or quality of Silver in accordance with the Rules, upon instructions from a Clearing Member, the Vault shall submit Silver, under bond, for sampling and assaying to an assayer approved by the Exchange. The claimant shall be responsible for all expenses incurred in connection with this Section, including the required bond, pursuant to the terms set forth in the Rules.
34. The Vault agrees to release or transfer Silver held by it against a valid Receipt only upon receipt of consent from the Exchange and in accordance with any instructions from the Exchange and only to such person or entity that is a representative of, in the case of Electronic Receipts, the Clearing Member specified in the relevant Electronic Receipt or such other person or entity as such specified Clearing Member may designate and, in the case of a Paper Receipt, the Clearing Member identified as the owner in a book-entry record in the NYSE Liffe Guardian Delivery System or such other person or entity as such specified Clearing Member may designate; provided, however, that the Vault agrees that for so long as an Electronic Receipt is marked with the notation that it is "Pledged, Transferred and Held for OCC" or any other Clearing Service Provider, the Vault shall release Silver only as instructed by the designated Clearing Service Provider (or the Exchange on the Clearing Service Provider's behalf) and not release Silver for delivery to any person or entity other than as instructed by the Clearing Service Provider. Furthermore, the Vault agrees that the Exchange shall have no liability relating to any designation by the Clearing Member of another person or entity to which Silver should be transferred or released.
35. If a person seeks to withdraw or transfer the Silver underlying an Eligible Paper Receipt from the Vault or to convert an Eligible Paper Receipt to electronic form but advises the Vault that neither such person nor the Central Depository is in possession of the relevant Eligible Paper Receipt and cannot therefor tender it to the Vault, the Vault shall be entitled to require such person to provide the Vault with a bond of indemnity in a form and for an amount acceptable to the Vault in its reasonable discretion in order for the Vault to convert such Eligible Paper Receipt to electronic form.

36. The Vault acknowledges that it will not have access to and will not be authorized to make any changes to Electronic Receipts once such receipts are issued in the NYSE Liffe Guardian Delivery System, except that the Vault shall be authorized to change the 'storage paid through date' with respect to the Silver stored by the Vault through the NYSE Liffe Guardian Delivery System. After a Receipt is issued in the NYSE Liffe Guardian Delivery System, upon discovery of an error, the Vault shall notify the Exchange in writing and the Exchange shall make such corrections as soon as practical unless the Receipt has been tendered for delivery on a Futures Contract in which case the Exchange will not be able to make the corrections until after delivery is effected in accordance with the Rules or with OCC's consent; provided that the Exchange shall be under no liability to warrant the accuracy or authenticity of the changes to the Electronic Receipt.
37. Subject to Section 38 below, upon the Vault's receipt of Silver and issuance of a Receipt in respect thereof, the Vault shall hold the Silver as bailee for, in the case of an Electronic Receipt, the person or entity specified as the Clearing Member in such Electronic Receipt and, in the case of a Paper Receipt, the person identified by the Exchange as the owner or owner's representative thereof.
38. During the period in which an Electronic Receipt in the NYSE Liffe Guardian Delivery System is designated as "Pledged, Transferred and Held for OCC", the Vault shall hold the related Silver as bailee for the Clearing Service Provider.
39. In the event of a conflict between the records of the Vault and the records of the Exchange in the NYSE Liffe Guardian Delivery System, the records of the Exchange shall control. The Exchange shall give the Vault access on a reasonable basis, from time to time, to its records for purposes of coordinating and reconciling complementary record entries.
40. The Vault shall not engage in unethical or inequitable practices, or fail to comply with any laws, Federal or State, or rules or regulations promulgated under those laws.

#### INDEMNITY

41. The Vault agrees to indemnify and hold harmless each of the Exchange and the Clearing Service Provider and each of their respective directors, officers, committee members, agents and employees from and against any and all loss, damage and expense arising out of or based on any breach by the Vault of any of the terms of this Agreement or of the Rules or the Vault's gross negligence or willful misconduct in carrying out its obligations hereunder or under the Rules. This indemnity agreement shall be in addition to any liability the Vault may otherwise have. In no event shall the Vault be liable for special, indirect or consequential damages or loss of any kind whatsoever regardless of whether it has notice of the likelihood of such damages or loss and regardless of the form of action.

**THIRD PARTY BENEFICIARY**

42. The Vault agrees that the Clearing Service Provider shall be intended as a third party beneficiary to this Agreement and is entitled to rely upon all representations, warranties and covenants made by the Vault herein to the same extent as if the Clearing Service Provider were the Exchange. The Exchange may furnish a copy of this Agreement to the Clearing Service Provider.

**CONFIDENTIALITY**

43. All parties acting on behalf of the Vault, including but not limited to its employees and agents, shall be prohibited from disclosing any information that relates to the storage, transfer or withdrawal of Silver, or the ownership of Silver stored at the Vault pursuant to this Agreement.
44. This Agreement and its contents are considered proprietary by all parties to this Agreement. To this end, the parties including their respective principals, officers, employees, agents and attorneys, understand and agree: (a) originals and copies of this Agreement, and any amendments thereto, and all documents provided in accordance with, or pursuant to, the terms of this Agreement shall be treated in such a manner that it may be reasonably expected that unauthorized persons shall not have access to them; (b) in the event that disclosure of this Agreement or any documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement is sought in conjunction with any proceeding before a court or regulatory body with proper jurisdiction, the party from which the disclosure is sought shall promptly notify the other party that disclosure is sought, and, if either party determines to resist disclosure, the party will cooperate with those efforts to resist formally any legal compulsion to produce, disclose or reveal such documents and negotiation, such resistance including a request that any such production or disclosure be made subject to a protective order, it being understood and agreed that the party resisting disclosure shall be responsible for all costs, fees and expenses of any party required to respond or take action that are associated with any such defense or effort to prevent disclosure; and (c) the terms and conditions of this Agreement or documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement shall not be disclosed or revealed in any way to any person or organization except for the following authorized disclosures:
- a. By any order of a court with proper jurisdiction;
  - b. By prior written approval of the non-disclosing party;
  - c. By either party to the CFTC or any other local, state or federal governmental agency or regulatory body with proper jurisdiction;
  - d. If disclosure, in the sole reasonable judgment of the disclosing party, is legally required without notice first being made to the non-disclosing party; or

- e. To employees or agents, including any principal, officer, agent or employee of the Clearing Service Provider, attorneys, accountants, auditors, consultants, advisory clients and other professionals, of any party in connection with the negotiation, maintenance, management or enforcement of this Agreement or the Rules or the Exchange.

#### **STORAGE COSTS AND WITHDRAWAL FEES PROVISIONS**

45. The Vault shall notify the Exchange at least sixty (60) days in advance of any changes in its maximum storage rates, penalties for late storage payments, withdrawal fees, and handling charges.
46. The Vault shall provide the Exchange with an invoice for monthly storage charges and withdrawal fees by the fifth business day of the month based on the inventory held on the last business day of the previous month.
47. With respect to storage charges and withdrawal fees owed to the Vault by the Clearing Member, the Exchange will (a) invoice each applicable Clearing Member on a monthly basis for amounts specified by the Vault as owed by such Clearing Member as compensation for storage and withdrawal in respect of Silver for which the Vault has issued one or more Electronic Receipts or, until expiration of the Transition Period, Paper Receipts and (b) facilitate payments from such Clearing Member in respect of such invoice.

#### **EMERGENCIES**

48. Upon the occurrence of events which prevent or threaten to prevent the Vault from performing its obligations under this Agreement, and such threat or occurrence continuing despite the exercise of reasonably expected due diligence and reasonable effort to avoid such events by the Vault, the Vault shall immediately notify the Exchange, pursuant to the terms of this Agreement, by the fastest means possible.
49. Whether a circumstance exists constituting an Emergency that affects the Vault (as such term is defined in Exchange Rules) shall be determined by the Exchange pursuant to Rule 425 ("Emergencies"). The Exchange shall immediately notify the Vault of the imposition and the lifting of a declaration of an Emergency, pursuant to the terms of this Agreement, by the fastest method possible.

#### **MISCELLANEOUS**

50. The Agreement shall commence on the date hereof and shall terminate twelve (12) months after the date the receiving party shall have received notice of termination pursuant to Section 51 herein from the terminating party.

51. All notices, requests, demands, consents and other communications given or required to be given under this Agreement shall be in writing and delivered to the applicable party at the address indicated below:

If to the Vault:

If to the Exchange:

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

Attn: Chief Regulatory Officer

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

If to the Clearing Service Provider:

The Options Clearing Corporation  
One North Wacker Drive, Suite 600  
Chicago, IL 60606

Attn: General Counsel

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

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All notices may be sent by overnight courier service, registered or certified mail, return receipt requested, postage prepaid, facsimile, or electronic mail.

52. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
53. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party hereto without the prior written consent of the other party, but a merger, consolidation, reorganization or reincorporation by, or sale of all

or substantially all of the assets of either party shall not require the consent of the other party so long as the successor entity or transferee is qualified to carry on the business contemplated herein.

- 54. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- 55. The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof.
- 56. This Agreement and the Rules constitutes the entire agreement between the parties, supersedes any prior agreement on the subject matter between the parties, and may only be changed in writing. Such changes are to be signed by all signatories to this Agreement.
- 57. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument.

**GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. ANY ACTIONS, SUITS OR PROCEEDINGS MUST BE BROUGHT IN A FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS, OR IF THE REQUIREMENTS FOR FEDERAL SUBJECT MATTER JURISDICTION ARE NOT MET, IN A STATE COURT LOCATED IN COOK COUNTY, ILLINOIS.

By:  
(Name)

Title: \_\_\_\_\_

By:

Phone Number:



**Annex A**

[Organizational Documents of the Vault]

Please provide the information below for the Vault at the date of this Agreement and for the entire existence of the Vault. Please indicate following each entry whether it relates to the date of this Agreement or, if the entry relates to prior dates, please provide the dates for which it applies. Please also attach current organizational documents for the Vault to this Annex A.

Legal Name of Vault:

Type of Organization of Vault:

Jurisdiction of Organization of Vault:

**Annex B**

[List Auditor pursuant to Section 16]

**Application and Agreement for Declaration of Regularity  
Mini-Sized Silver Futures**

NYSE Liffe US, LLC  
New York NY 10005

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, (hereinafter called the  
“Vault”), located at \_\_\_\_\_,  
and incorporated under the laws of \_\_\_\_\_ having allocated  
storage capacity of \_\_\_\_\_ troy ounces hereby submits its application to  
NYSE Liffe US, LLC (the “Exchange” or “NYSE Liffe”) for a Declaration of Regularity (as defined  
below) for the purpose of facilitating delivery of Silver under contracts for future delivery or other  
transfer under vault receipts pursuant to the Rules of NYSE Liffe US, LLC (as the same may be amended,  
modified or supplemented from time to time)(the “Agreement”).

**DEFINITIONS**

For purposes of this Agreement:

- “Clearing Service Provider” shall mean the clearing house or clearing organization designated by the Exchange from time to time, which, until the Vault is instructed by the Exchange in writing otherwise, shall be The Options Clearing Corporation (“OCC”).
- An “Electronic Receipt” shall mean a Receipt that exists in book-entry form on the NYSE Liffe Guardian Delivery System and is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Silver Futures or transfers.
- “Silver” shall mean a bar or bars of silver held by the Vault pursuant to the terms of this Agreement.
- A “Paper Receipt” shall mean a Receipt that is in physical form and that is eligible for delivery or transfer in the NYSE Liffe Guardian Delivery System pursuant to the Rules (as defined below) governing Silver Futures or transfers and as to which a book-entry record has been made in the NYSE Liffe Guardian Delivery System, it being agreed and understood that no Paper Receipt shall be eligible for delivery where an Electronic Receipt has been issued in substitution for such Paper Receipt and no Paper Receipt shall be eligible for delivery after the end of the Transition Period.

- “Receipt” shall mean a receipt for Silver held by the Vault that is issued by the Vault, as bailee, to a Clearing Member or other person, as bailor, entitling such Clearing Member or other person to receive such Silver upon tender of the receipt.
- “Registered Silver” shall mean Stored Available Silver for which a Receipt has been issued.
- “Stored Available Silver” shall mean Silver which is in the possession of the Vault that meets all the specifications for Silver as stated in the Rules, including without limitation the specifications set forth in Rules 1702, 1705 and 1706, but for which a Receipt has not been issued.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Rules of the Exchange (as amended from time to time, the “Rules”).

### **AGREEMENTS OF VAULT**

In consideration of the Exchange approving the application of the Vault for a declaration of regularity for delivery of Silver under contracts for future delivery or other transfer under vault receipts pursuant to the Rules (a “Declaration of Regularity”) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vault expressly agrees for the benefit of the Exchange as follows:

### **REGULARITY PROVISIONS**

1. The Vault shall accept Silver for delivery or transfer in connection with the Exchange’s Silver Futures Contracts or otherwise, provided such Silver is ordered into the Vault by a Clearing Member, and all space in such Vault is not already filled or contracted for. The Vault shall immediately notify the Exchange in writing if all of the space in the Vault becomes filled or contracted for.
2. The Vault shall neither withdraw as a regular vault nor withdraw any regular capacity during the life of this Declaration of Regularity except after sixty (60) days notice to the Exchange or having obtained the consent of the Exchange.
3. The signing of this Agreement constitutes a representation that the representations made herein are true and accurate as of the date hereof and will be true during the life of the Declaration of Regularity and that the conditions of this Agreement are complied with and will be observed during the life of the Declaration of Regularity.
4. The signing of this Agreement constitutes a representation that the exact legal name, type of organization and sole jurisdiction of organization of the Vault at the date of this Agreement and for its entire existence to date are as set forth in Annex A. The Vault shall provide its organizational documents as part of Annex A. The Vault shall maintain its existence as a \_\_\_\_\_ organized in good standing under

\_\_\_\_\_ law and shall not dissolve, liquidate, merge with or into any other entity or otherwise change its structure, name or identity or be formed in any other jurisdiction unless the Vault shall have notified the Exchange in writing at least 30 days prior to any intent not to so maintain its existence or any such dissolution, liquidation, merger or change, as the case may be.

5. The Vault consents to disciplinary jurisdiction of the Exchange for five years after regularity lapses for conduct that occurred while the Vault was regular.
6. For the sake of clarity, the Exchange's disciplinary jurisdiction with respect to the Vault is limited to issues in connection with this Agreement and the storage and delivery of Silver pursuant to the terms and conditions of the Exchange's Silver Futures or other transfer of Silver pursuant to a Receipt.
7. The Vault shall be outfitted with standard equipment and appliances for the convenient and safe storage of Silver and provide for proper security.
8. The Vault shall notify the Exchange promptly of any material change in ownership or the location or capacity of its premises, to the extent not prohibited by applicable law.
9. The Vault shall be adequately capitalized as determined by the Exchange and maintain a tangible net worth, either itself or through a guarantor acceptable to the Exchange, in an amount of either at least \$100 million or such other amount as the Exchange shall determine. In the event that the Vault becomes insolvent, bankrupt or has a reduction in tangible net worth of greater than 20%, the Vault shall notify the Exchange immediately. In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of the Vault, the Exchange may require the Vault to obtain a letter of credit issued by a bank or insurance company, acceptable to the Exchange, for such sums and on such terms and conditions as the Exchange may determine in its sole discretion. The Exchange shall notify the Vault of any terms and conditions it determines in accordance with this Section.
10. The Vault agrees to maintain reasonable and customary insurance against loss of Silver. Throughout the term of this Agreement, the Vault shall provide the Exchange with evidence of its current insurance in the form of a Memorandum of Insurance. The Vault agrees to notify the Exchange, in writing with proof of delivery, in the event of cancellation of its insurance required under this Section. In addition, at the time of issuance or the next renewal of its insurance policy, the Vault shall use commercially reasonable efforts to cause its insurer to immediately notify the Exchange directly of any event that would lead to the cancellation of any insurance coverage required by this Section. Reasonable and customary insurance is agreed to mean insurance against loss or damage of property in a form and amount maintained by global financial institutions similar to the Vault.

11. In the event that Vault fails to comply with the terms of this Agreement or the Rules, or it has breached one of its representations, the Vault shall give such guaranties, bonds, or other financial instruments to the Exchange as it may require to ensure performance of the Vault's obligations as a regular vault.
12. The Vault shall provide the Exchange with a list of its personnel authorized to access the NYSE Liffe Guardian Delivery System. The Vault agrees that it will promptly notify the Exchange of any changes to such list.
13. The Vault shall permit such vault inspections as the Exchange or the Commodity Futures Trading Commission (the "CFTC") may require. In addition, the Vault shall provide the Exchange access to every facility containing Silver subject to this Agreement and the records related thereto for the examination of the Vault's books or records for the purpose of ascertaining the stocks of Silver. The Exchange shall have the authority to employ experts to determine the quantity and quality of Silver in the Vault.
14. The Vault shall submit within ninety (90) days of its fiscal year-end either instructions as to how to access its financial statements filed with the U.S. Securities and Exchange Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system or a certified copy of the financial statements accompanied by a letter of attestation by the chief financial officer of the Vault, or if there is none, a general partner or executive officer.
15. The Vault shall provide the Exchange, on a daily basis, in a format approved by the Exchange, (i) the total ounces of Registered Silver stored at the Vault and (ii) the total ounces of Stored Available Silver stored at the Vault. Such daily reports shall indicate the quantity of Registered Silver and Stored Available Silver shipped to and from the Vault each day.
16. The Vault annually shall have an audit (the "Annual Audit") performed by an independent auditor (the "Auditor"). The Auditor must be (1) a recognized certified public accountant (a) suitably qualified to the satisfaction of the Exchange to perform the Annual Audit or (b) listed on Annex B hereto or otherwise registered as a member of the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board or (2) a firm with expertise in inventory audits satisfactory to the Exchange or listed on Annex B hereto. A period of no more than fifteen (15) months may elapse from the date of the last Annual Audit without a new Annual Audit being performed. The Vault agrees as follows with respect to the Annual Audit:
  - a. The Auditor shall conduct an audit of Silver inventory held by the Vault and certify in a report that the records of the Vault accurately reflect the Silver inventory held by such Vault and the Receipts issued by such Vault.
  - b. The Auditor shall perform an audit of the internal controls of the Vault. This audit shall include an evaluation of the internal controls for the accountability for and custody of all

Silver held by the Vault and shall disclose any conditions the Auditor believes to be significant deficiencies or material weaknesses in internal controls.

- i. The Auditor shall perform all such tests and checks, review all such information, communicate with all such persons and take all such other actions that, in its judgment, are necessary under the circumstances to allow the Auditor to make the certifications and reports required in paragraphs (a) and (b) above. Such actions shall include, without limitation: accounting for all Receipts issued by the Vault since the date of the last annual audit; counting of Registered Silver held by the Vault and reconciliation of the count of such Registered Silver to both the Vault's records and the corresponding Receipts in the NYSE Liffe Guardian Delivery System issued by the Vault;
- ii. for a random sample of a percentage of lots of Registered Silver, the Auditor shall reconcile the information about such Silver as set forth in the Receipt in the NYSE Liffe Guardian Delivery System to the Registered Silver in the Vault, including, without limitation, as imprinted on each bar of Silver the weight, fineness, serial number, and brand of such Registered Silver; and
- iii. for a random sample of lots of Registered Silver, the Auditor shall confirm that each bar of Registered Silver is accompanied by a certificate, if such a certificate is required, issued by an approved refiner, assayer, or other certifying authority, stating the serial number of the bar(s), the weight, and the fineness, such certificate only being required if such Registered Silver is not marked with the fineness and stamp of an approved refiner, assayer, or other certifying authority.

For any actions outlined above that reference "a percentage," the Auditor shall determine, and the Exchange shall approve, the appropriate percentage required.

- c. The Vault and the Exchange shall cooperate with the Auditor to allow it to perform its Annual Audit as specified in this Section and shall provide all reasonable information or assistance, including access to necessary books and records and personnel, as requested by the Auditor during the performance of its Annual Audit.
  - d. The Vault shall provide a copy of all reports set forth in this Section signed by the party preparing such report, to the Exchange and the Clearing Service Provider promptly upon each report's completion, but in no case later than five days after the Vault has received such report.
17. The Vault shall schedule all shipments into or out of the facility on a first come, first serve, non-discriminatory basis. The Vault agrees that it shall not unreasonably constrain or promote movement of Silver into or out of the Vault by (i) giving exceptional inducements or imposing unreasonable charges for depositing, storage or removal of Silver into or out of the Vault, (ii)

taking or failing to take any action that affects a customer's ability to schedule the delivery or removal of Silver from the Vault, or (iii) failing to report stocks as required by this Agreement. For the sake of clarity, constraints on movement outside the control of the Vault, such as in emergency or unusual circumstances, will not be deemed to be a violation of this provision.

18. The Vault acknowledges that, pursuant to Rule 1714, the Exchange may, in its sole discretion, determine not to approve the Vault for regularity or increases in regular capacity of the Vault even if the Vault has been approved as a regular vault and regardless of whether the Vault meets the conditions of regularity specified in Rule 1714. Some factors the Exchange may, but is not required to, consider in exercising its discretion may include, among others, whether Receipts issued by the Vault, tendered in satisfaction of Silver Futures, might be expected to adversely affect the price discovery function of Silver Futures or impair the efficacy of Futures trading in Silver, or whether the currently approved regular capacity provides for an adequate deliverable supply.
19. The Vault agrees that a Declaration of Regularity, if granted, may be revoked immediately by the Exchange upon the Vault's violation of any of the terms of this Agreement, any conditions or duties specified in Rule 1714 or any other relevant Rules. If any of the representations or statements made in this Agreement, pursuant to the Rules or any other document furnished to the Exchange in connection herewith are found to be untrue, the Exchange shall have the right to revoke the Declaration of Regularity immediately. By accepting a Declaration of Regularity the Vault agrees, in the event of revocation of regularity or notice of termination of the Agreement by the Vault pursuant to Section 51 herein, to bear the expenses of the transfer of Silver under bond to another regular vault capable of receiving such a transfer as approved by the Exchange.

#### **BOUND BY RULES**

20. The Vault agrees to be subject to, and bound by, the Rules of the Exchange, including but not limited to Chapter 17, the disciplinary procedures set forth in Chapter 7, and the arbitration procedures set forth in Chapter 8 (with respect to the matters referred to therein), and to abide by and comply with the terms of any disciplinary decision imposed upon the operator of the Vault or any arbitration award issued against it pursuant to the Rules, to the same extent as if the Vault were a Member of the Exchange.
21. The Vault issuing a Receipt shall be responsible for verifying that the Silver related thereto meets all the specifications for Silver as stated in the Rules, including without limitation the specifications set forth in Rules 1702, 1705 and 1706, and shall be responsible for entering all applicable information into the NYSE Liffe Guardian Delivery System, including the information as required under Rules 1711 and 1712.



22. The Vault shall comply with all applicable rules of the CFTC. The Vault shall make such reports and keep such records as the CFTC may require, including maintaining all such reports, books and records for a period of five years.

#### **TRANSITION PERIOD**

23. During the Transition Period, the Vault shall accept all paper receipts eligible for delivery in the NYSE Liffe Guardian Delivery System previously issued by such Vault ("Eligible Paper Receipts"), and, upon the instructions of the Clearing Members or the Exchange, shall convert such Eligible Paper Receipts to electronic form in accordance with the Rules and such other procedures as the Exchange may adopt by notice from time to time, thereby creating Electronic Receipts in the NYSE Liffe Guardian Delivery System. After creating an Electronic Receipt in the NYSE Liffe Guardian Delivery System in substitution for an Eligible Paper Receipt, the Vault shall mark the Eligible Paper Receipt with the statement "An Electronic Receipt has been issued as a substitute for this Paper Receipt. This Paper Receipt is no longer valid for delivery." The Vault shall keep such Eligible Paper Receipts on file for at least five years for recordkeeping purposes and to satisfy CFTC requirements. The Vault shall certify to the Exchange, at the end of the Transition Period and annually thereafter until all Paper Receipts issued by the Vault have been substituted for Electronic Receipts, that such Eligible Paper Receipts have been marked as required in this Section to the extent any Eligible Paper Receipts has been delivered in the past twelve (12) months.

#### **POST-TRANSITION**

24. After the expiration of the Transition Period, at the request of a Clearing Member, the Vault shall convert outstanding Eligible Paper Receipts to Electronic Receipts in accordance with the Rules and such other procedures as the Exchange may adopt from time to time. Both during the Transition Period and after its expiration, upon the delivery of Silver to the Vault and the instructions of a Clearing Member or the Exchange, the Vault shall create an Electronic Receipt in the NYSE Liffe Guardian Delivery System containing all information required under the Rules on behalf of such Clearing Member.
25. The Vault acknowledges and agrees that after expiration of the Transition Period, Paper Receipts will no longer be valid for delivery on Silver Futures. For the avoidance of doubt, Paper Receipts will no longer be valid for delivery after 7:00 p.m. New York time on the last day set forth in the Rules for a seller to issue a notice of intent prior to the expiration of the Transition Period in accordance with the Rules.

**RECEIPTS GENERALLY**

26. The Vault agrees that the issuance of Receipts shall be exclusively governed by this Agreement, the Rules and any notices adopted by the Exchange from time to time and the handling and transfer of Receipts and delivery and transfer of Silver shall be exclusively governed by this Agreement, the Rules, any notices adopted by the Exchange from time to time, the Rules of the Clearing Service Provider and any agreement among the Exchange and the Clearing Service Provider.
27. The Vault shall maintain appropriate and clearly defined back office procedures to ensure correct data entry into the NYSE Liffe Guardian Delivery System when issuing an Electronic Receipt on behalf of the requesting Clearing Member, shall use the same receipt number as used for associated Paper Receipts (if converting to an Electronic Receipt), and shall verify the accuracy of each data entry made by the Vault's personnel before uploading such information into the NYSE Liffe Guardian Delivery System.
28. The Vault shall ensure that no duplicate Electronic Receipts are issued by it.
29. The Vault shall, upon notice to the Exchange that a Clearing Member or the Clearing Service Provider plans to effect an Outside Transfer of an Electronic Receipt or a Paper Receipt, take such steps as required by the Exchange and in the Rules such that the Electronic Receipt is cancelled in or the Paper Receipt is removed from the NYSE Liffe Guardian Delivery System. If the Vault at any time issues a tangible document in replacement of an Electronic Receipt, such tangible document when issued shall contain a statement that it is issued in substitution for the Electronic Receipt.
30. The Exchange is authorized to file a precautionary Uniform Commercial Code financing statement specifying the Vault as debtor and the Exchange as secured party, on behalf of itself and its Clearing Members, which financing statement shall identify that the Vault holds Silver as warehouseman, the right to which Silver is evidenced by Paper Receipts or Electronic Receipts issued by the Vault and which financing statement shall specify the "bailor/bailee" designation in the appropriate box on such financing statement.

**BAILEE RELATED PROVISIONS / STANDARD OF CARE**

31. The Vault shall be responsible for ensuring, and hereby represents and warrants to the Exchange that, all information on each Receipt issued by it is true and correct. For the sake of clarity, this obligation will not be construed as a warranty of the quality or contents of Silver. The Exchange shall have the right to revoke the Declaration of Regularity immediately in the event that the Exchange determines, in its discretion, that best efforts have not been used in ensuring that all information on each Receipt issued by it is true and correct. In no event shall the Exchange bear

- any responsibility to any person for any error or incorrect information in any Receipt, and the Vault shall bear full responsibility for such error or incorrect information and indemnify the Exchange in accordance with Section 41 hereof, whether or not the Vault utilized best efforts.
32. The Vault shall properly safeguard all Silver deposited with it in accordance with customary industry standards. The Vault shall keep any Silver for which it has issued one or more Receipts segregated from its own property, shall not pledge such Silver as security for a loan or other obligation, and shall not take any other actions that might cause such Silver to become part of the Vault's estate in the event of the Vault's bankruptcy, insolvency or liquidation.
33. In the event that a Clearing Member claims a breach of warranty relating to the quantity or quality of Silver in accordance with the Rules, upon instructions from a Clearing Member, the Vault shall submit Silver, under bond, for sampling and assaying to an assayer approved by the Exchange. The claimant shall be responsible for all expenses incurred in connection with this Section, including the required bond, pursuant to the terms set forth in the Rules.
34. The Vault agrees to release or transfer Silver held by it against a valid Receipt only upon receipt of consent from the Exchange and in accordance with any instructions from the Exchange and only to such person or entity that is a representative of, in the case of Electronic Receipts, the Clearing Member specified in the relevant Electronic Receipt or such other person or entity as such specified Clearing Member may designate and, in the case of a Paper Receipt, the Clearing Member identified as the owner in a book-entry record in the NYSE Liffe Guardian Delivery System or such other person or entity as such specified Clearing Member may designate; provided, however, that the Vault agrees that for so long as an Electronic Receipt is marked with the notation that it is "Pledged, Transferred and Held for OCC" or any other Clearing Service Provider, the Vault shall release Silver only as instructed by the designated Clearing Service Provider (or the Exchange on the Clearing Service Provider's behalf) and not release Silver for delivery to any person or entity other than as instructed by the Clearing Service Provider. Furthermore, the Vault agrees that the Exchange shall have no liability relating to any designation by the Clearing Member of another person or entity to which Silver should be transferred or released.
35. If a person seeks to withdraw or transfer the Silver underlying an Eligible Paper Receipt from the Vault or to convert an Eligible Paper Receipt to electronic form but advises the Vault that neither such person nor the Central Depository is in possession of the relevant Eligible Paper Receipt and cannot therefor tender it to the Vault, the Vault shall be entitled to require such person to provide the Vault with a bond of indemnity in a form and for an amount acceptable to the Vault in its reasonable discretion in order for the Vault to convert such Eligible Paper Receipt to electronic form.

36. The Vault acknowledges that it will not have access to and will not be authorized to make any changes to Electronic Receipts once such receipts are issued in the NYSE Liffe Guardian Delivery System, except that the Vault shall be authorized to change the 'storage paid through date' with respect to the Silver stored by the Vault through the NYSE Liffe Guardian Delivery System. After a Receipt is issued in the NYSE Liffe Guardian Delivery System, upon discovery of an error, the Vault shall notify the Exchange in writing and the Exchange shall make such corrections as soon as practical unless the Receipt has been tendered for delivery on a Futures Contract in which case the Exchange will not be able to make the corrections until after delivery is effected in accordance with the Rules or with OCC's consent; provided that the Exchange shall be under no liability to warrant the accuracy or authenticity of the changes to the Electronic Receipt.
37. Subject to Section 38 below, upon the Vault's receipt of Silver and issuance of a Receipt in respect thereof, the Vault shall hold the Silver as bailee for, in the case of an Electronic Receipt, the person or entity specified as the Clearing Member in such Electronic Receipt and, in the case of a Paper Receipt, the person identified by the Exchange as the owner or owner's representative thereof.
38. During the period in which an Electronic Receipt in the NYSE Liffe Guardian Delivery System is designated as "Pledged, Transferred and Held for OCC", the Vault shall hold the related Silver as bailee for the Clearing Service Provider.
39. In the event of a conflict between the records of the Vault and the records of the Exchange in the NYSE Liffe Guardian Delivery System, the records of the Exchange shall control. The Exchange shall give the Vault access on a reasonable basis, from time to time, to its records for purposes of coordinating and reconciling complementary record entries.
40. The Vault shall not engage in unethical or inequitable practices, or fail to comply with any laws, Federal or State, or rules or regulations promulgated under those laws.

#### INDEMNITY

41. The Vault agrees to indemnify and hold harmless each of the Exchange and the Clearing Service Provider and each of their respective directors, officers, committee members, agents and employees from and against any and all loss, damage and expense arising out of or based on any breach by the Vault of any of the terms of this Agreement or of the Rules or the Vault's gross negligence or willful misconduct in carrying out its obligations hereunder or under the Rules. This indemnity agreement shall be in addition to any liability the Vault may otherwise have. In no event shall the Vault be liable for special, indirect or consequential damages or loss of any kind whatsoever regardless of whether it has notice of the likelihood of such damages or loss and regardless of the form of action.

### THIRD PARTY BENEFICIARY

42. The Vault agrees that the Clearing Service Provider shall be intended as a third party beneficiary to this Agreement and is entitled to rely upon all representations, warranties and covenants made by the Vault herein to the same extent as if the Clearing Service Provider were the Exchange. The Exchange may furnish a copy of this Agreement to the Clearing Service Provider.

### CONFIDENTIALITY

43. All parties acting on behalf of the Vault, including but not limited to its employees and agents, shall be prohibited from disclosing any information that relates to the storage, transfer or withdrawal of Silver, or the ownership of Silver stored at the Vault pursuant to this Agreement.
44. This Agreement and its contents are considered proprietary by all parties to this Agreement. To this end, the parties including their respective principals, officers, employees, agents and attorneys, understand and agree: (a) originals and copies of this Agreement, and any amendments thereto, and all documents provided in accordance with, or pursuant to, the terms of this Agreement shall be treated in such a manner that it may be reasonably expected that unauthorized persons shall not have access to them; (b) in the event that disclosure of this Agreement or any documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement is sought in conjunction with any proceeding before a court or regulatory body with proper jurisdiction, the party from which the disclosure is sought shall promptly notify the other party that disclosure is sought, and, if either party determines to resist disclosure, the party will cooperate with those efforts to resist formally any legal compulsion to produce, disclose or reveal such documents and negotiation, such resistance including a request that any such production or disclosure be made subject to a protective order, it being understood and agreed that the party resisting disclosure shall be responsible for all costs, fees and expenses of any party required to respond or take action that are associated with any such defense or effort to prevent disclosure; and (c) the terms and conditions of this Agreement or documents provided in accordance with, or pursuant to, the terms and conditions of this Agreement shall not be disclosed or revealed in any way to any person or organization except for the following authorized disclosures:
- a. By any order of a court with proper jurisdiction;
  - b. By prior written approval of the non-disclosing party;
  - c. By either party to the CFTC or any other local, state or federal governmental agency or regulatory body with proper jurisdiction;
  - d. If disclosure, in the sole reasonable judgment of the disclosing party, is legally required without notice first being made to the non-disclosing party; or

- e. To employees or agents, including any principal, officer, agent or employee of the Clearing Service Provider, attorneys, accountants, auditors, consultants, advisory clients and other professionals, of any party in connection with the negotiation, maintenance, management or enforcement of this Agreement or the Rules or the Exchange.

#### **STORAGE COSTS AND WITHDRAWAL FEES PROVISIONS**

- 45. The Vault shall notify the Exchange at least sixty (60) days in advance of any changes in its maximum storage rates, penalties for late storage payments, withdrawal fees, and handling charges.
- 46. The Vault shall provide the Exchange with an invoice for monthly storage charges and withdrawal fees by the fifth business day of the month based on the inventory held on the last business day of the previous month.
- 47. With respect to storage charges and withdrawal fees owed to the Vault by the Clearing Member, the Exchange will (a) invoice each applicable Clearing Member on a monthly basis for amounts specified by the Vault as owed by such Clearing Member as compensation for storage and withdrawal in respect of Silver for which the Vault has issued one or more Electronic Receipts or, until expiration of the Transition Period, Paper Receipts and (b) facilitate payments from such Clearing Member in respect of such invoice.

#### **EMERGENCIES**

- 48. Upon the occurrence of events which prevent or threaten to prevent the Vault from performing its obligations under this Agreement, and such threat or occurrence continuing despite the exercise of reasonably expected due diligence and reasonable effort to avoid such events by the Vault, the Vault shall immediately notify the Exchange, pursuant to the terms of this Agreement, by the fastest means possible.
- 49. Whether a circumstance exists constituting an Emergency that affects the Vault (as such term is defined in Exchange Rules) shall be determined by the Exchange pursuant to Rule 425 ("Emergencies"). The Exchange shall immediately notify the Vault of the imposition and the lifting of a declaration of an Emergency, pursuant to the terms of this Agreement, by the fastest method possible.

#### **MISCELLANEOUS**

- 50. The Agreement shall commence on the date hereof and shall terminate twelve (12) months after the date the receiving party shall have received notice of termination pursuant to Section 51 herein from the terminating party.

51. All notices, requests, demands, consents and other communications given or required to be given under this Agreement shall be in writing and delivered to the applicable party at the address indicated below:

If to the Vault:

If to the Exchange:

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

Attn: Chief Regulatory Officer

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

If to the Clearing Service Provider:

The Options Clearing Corporation  
One North Wacker Drive, Suite 600  
Chicago, IL 60606

Attn: General Counsel

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

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All notices may be sent by overnight courier service, registered or certified mail, return receipt requested, postage prepaid, facsimile, or electronic mail.

52. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
53. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party hereto without the prior written consent of the other party, but a merger, consolidation, reorganization or reincorporation by, or sale of all

- or substantially all of the assets of either party shall not require the consent of the other party so long as the successor entity or transferee is qualified to carry on the business contemplated herein.
54. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
55. The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof.
56. This Agreement and the Rules constitutes the entire agreement between the parties, supersedes any prior agreement on the subject matter between the parties, and may only be changed in writing. Such changes are to be signed by all signatories to this Agreement.
57. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument.

**GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. ANY ACTIONS, SUITS OR PROCEEDINGS MUST BE BROUGHT IN A FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS, OR IF THE REQUIREMENTS FOR FEDERAL SUBJECT MATTER JURISDICTION ARE NOT MET, IN A STATE COURT LOCATED IN COOK COUNTY, ILLINOIS.

By:  
(Name)

Title: \_\_\_\_\_

By:

Phone Number:



**Annex A**

**[Organizational Documents of the Vault]**

Please provide the information below for the Vault at the date of this Agreement and for the entire existence of the Vault. Please indicate following each entry whether it relates to the date of this Agreement or, if the entry relates to prior dates, please provide the dates for which it applies. Please also attach current organizational documents for the Vault to this Annex A.

**Legal Name of Vault:**

**Type of Organization of Vault:**

**Jurisdiction of Organization of Vault:**

**Annex B**

[List Auditor pursuant to Section 16]

Exhibit C

**List of Vaults Subject to Transition Period Vault Receipt Agreement<sup>1</sup>**

1. ScotiaMocatta Depository (The Bank of Nova Scotia)
2. Delaware Depository Service Company, LLC
3. Manfra, Tordella & Brookes, Inc.
4. Brink's Global Services U.S.A., Inc.

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<sup>1</sup> Due to the nature of HSBC Bank USA, National Association's business it does not need to enter into a Transition Period Vault Receipt Agreement.

Exhibit D

**Form of Transition Period Vault Agreement**

(See Attached)