



May 13, 2014

VIA ELECTRONIC MAIL

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

Re: Rule Filing SR-OCC-2014-09 Rule Certification

Dear Secretary Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission Regulation (“CFTC”) 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC 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

OCC is proposing to amend its By-Laws and Governance Committee Charter to combine the current Nominating Committee (“NC”) and Governance Committee (“GC”) to establish a single Governance and Nominating Committee (“GNC”), make changes concerning OCC’s nomination process for Directors and to increase the number of Public Directors on OCC’s Board of Directors (“Board”). The proposed modifications are based on recommendations from the GC in the course of carrying out its mandate of reviewing the overall corporate governance of OCC and recommending improvements to the structure of OCC’s Board. In part, the GC’s recommendations stem from suggestions of an outside consultant that was retained to review and report on OCC’s governance structure in relationship to industry governance practices. To conform to these proposed changes OCC is also proposing to make certain edits to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors.

THE FOUNDATION FOR SECURE MARKETS

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Currently, the GC operates pursuant to its own Charter.¹ The NC is not a Board level Committee and does not operate pursuant to a charter, however, provisions in Article III of OCC's By-Laws prescribe certain aspects of the NC's structure and operation. OCC is proposing to apply to the GNC many of the existing provisions of the relevant By-Laws and GC Charter that apply to the NC and GC. Where OCC is proposing amendments to the existing By-Laws and GC Charter, they are discussed below.

Certain provisions of Article III govern the role the NC plays in nominating persons as Member Directors² on OCC's Board as well as the composition and structure of the NC itself. The NC is required to endeavor to achieve balanced representation in its Member Director and Non-Director Member nominees, giving due consideration to business activities and geographic distribution.

Presently, the NC is composed of seven total members: one Public Director and six Non-Director Members.³ The Public Director member, who is nominated by the Executive Chairman with the approval of a majority of the Board, generally serves a three year term, unless he or she ceases to be a Public Director. The six Non-Director Members nominated by the NC and selected by OCC's stockholders are divided into two equal classes of three members, and the classes serve staggered two year terms.⁴ By comparison, the GC Charter requires the current GC to have not fewer than five directors and to include at least one Public Director, at least one Exchange Director, and at least one Member Director. It also provides that no Management Directors may serve on the Committee.

OCC's Board currently has 19 members consisting of nine Member Directors, five Exchange Directors, three Public Directors, who under Article III, Section 6A of OCC's By-Laws, may not be affiliated with any national securities exchange or national securities association or any broker or dealer in securities, and OCC's Executive Chairman and President, who are Management Directors. Based on recommendations from the GC in the course of review of OCC's overall corporate governance, OCC is proposing certain amendments detailed below to merge OCC's NC, GC and their related responsibilities into a single GNC and increase the number of Public Directors from three to five.

¹ Securities Exchange Act Release Nos. 71030 (Dec. 11, 2013), 78 FR 7612 (Dec. 16, 2013) (SR-OCC-2013-18); 71083 (Dec. 16, 2013), 78 FR 77182 (Dec. 20, 2013) (SR-OCC-2013-807).

² Under Article III, Section 2 every Member Director must be either a Clearing Member or a representative of a Clearing Member Organization.

³ Under Sections 4 and 5 of Article III, a Non-Director Member of the NC must be a representative of a Clearing Member and no person associated with the same Clearing Member Organization as a member of the NC may be nominated by the NC for a position as a Member Director on the Board of Directors or a Non-Director Member of the NC for the ensuing year.

⁴ This tiered structure eliminated the complete turnover of the members of the NC each year and fostered greater continuity among its elected members. Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319 (July 19, 1991) (SR-OCC-91-11).

Proposed Amendments Common to the By-Laws and Other OCC Governance Documents

Certain of the proposed changes would amend the existing By-Laws as well as other governance documents of OCC. For example, conforming edits would be made throughout the By-Laws and GC Charter to delete NC and GC references and in many cases those references would be replaced with references to the GNC.

1. GNC Composition

The new GNC would be composed of a minimum of three total members: at least one Public Director, at least one Exchange Director and at least one Member Director. To reflect this change, OCC would eliminate in Section 4 of Article III the requirement for six Non-Director Members, add requirements for at least one Member Director and one Exchange Director, and modify the current requirement for one Public Director to instead require that there must be *at least* one Public Director. The proposed composition for the GNC already mirrors the existing composition specified in the GC Charter. Therefore, no changes are proposed to the current GC Charter in that respect, other than the elimination of the requirements that the GNC have no fewer than five directors. That limitation would be eliminated with the goal of providing the Board with greater flexibility to determine the optimal size and composition of the GNC, so long as the composition also facilitates diverse representation by satisfying the proposed requirement for at least one GNC representative from each of the Member Director, Exchange Director and Public Director categories.

2. GNC Member Appointment Process and Term Limits

The members of the GNC would be appointed annually by the Board from among certain Board members recommended by the GNC after consultation with OCC's Executive Chairman, and GNC Members would serve at the pleasure of the Board. The GNC's Chairman ("GNC Chair"), would be designated from among the GNC's Public Directors. Provisions implementing these changes would be added to Section 4 of Article III to entirely supplant the class and term limit structure and nominations process that currently applies to the NC and its Non-Director Members and Public Director, and references to Non-Director Members would be removed from the By-Laws. Section II.A. of the GC Charter would also be amended to reflect this structure for GNC nominations and appointments.

3. Number of Public Directors and Member Directors

OCC is proposing to amend its By-Laws to increase the number of Public Directors on its Board from three to five and to make certain other changes related to the overall composition of the Board and the classification and term of office of Public Directors. The proposed change in the number of Public Directors from three to five would reconstitute OCC's Board with a total of 21 directors. OCC continues to believe that, as indicated in OCC's initial 1992 proposal to add

Public Directors to its Board,⁵ Public Directors broaden the mix of viewpoints and business expertise that is represented on the Board. Accordingly, OCC believes that the input and expertise of two more Public Directors will further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the discharge of its obligations as a systemically important financial market utility. In addition, the decision to add two more Public Directors is consistent with the principles discussed in the SEC's recent release on standards for covered clearing agencies.⁶ In particular, the additional Public Directors would facilitate OCC's compliance with the public interest requirements of Section 17A of the Exchange Act and allow OCC to balance potentially competing viewpoints of various stakeholders in its decision making.

The proposed changes would remove a provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. Article III, Section 1 requires that if the aggregate number of Exchange Directors and Public Directors equals at least nine, the total number of Member Directors must be automatically increased to always exceed that number by one. This provision would be removed to provide the Board with greater flexibility to be able to determine its optimal composition. OCC also proposes to make corresponding changes to Article III, Section 3 under which it would remove provisions that provide for the classification and term of office of Member Directors where the number of Member Directors increases based on the provision in Article III, Section 1 that OCC proposes to delete. The proposed changes also remove a provision that reduces the number of Member Directors if the number is above nine and exceeds the sum of the number of Exchange Directors and the number of Public Directors by more than one, because as a result of the deletion of the above provision in Article III, Section 1, the number of Member Directors would be fixed at nine.

OCC is also proposing certain amendments to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes would be made to recognize the merger of the Nominating Committee and Governance Committee into the GNC as a standing Committee of the Board and reflect the role it would play in OCC's director nomination process. The proposed modifications to the Board Charter and Fitness Standards would reflect the increase in the number of Public Directors serving on the Board from three to five and the removal of the provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. The criteria specified in the Fitness Standards for Directors, Clearing Members and Others for use in considering Member Director nominees would also be revised for consistency with the criteria proposed to be added to Article III, Section 5 designed to achieve balanced Board representation.

The Stockholders Agreement also contains proposed amendments to replace the term Chairman with Executive Chairman. This parallels a separate proposed amendment by OCC to

⁵ Securities Exchange Act Release No. 30328 (January 31, 1992), 57 FR 4784 (February 7, 1992) (SR-OCC-1992-02).

⁶ Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 16866 (March 26, 2014).

implement this change in its By-Laws and Rules, but a consolidated amendment to the Stockholders Agreement is proposed for ease of administration.

Proposed Amendments to By-Laws Only

As explained in more detail below, certain of the proposed changes would require amendments only to OCC's existing By-Laws. One such example is that Sections 2 and 5 of Article III would be amended to remove prohibitions against representation of the same Clearing Member Organization on the Board and the NC.⁷ This barrier would be eliminated since GNC members will be selected from among the members of the Board under the new approach.

1. Balanced Representation

The NC's responsibility to endeavor to achieve balanced representation among Clearing Members on the Board would be carried over to the GNC. The proposed amendments would also add more detailed guidance for the GNC concerning how to achieve balanced Board representation. Specifically, the GNC would be required to assure that not all of the Member Directors represent the Clearing Member Organizations having the largest volume of business with OCC during the prior year and that the mix of Member Directors includes Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors.

2. Nomination and Election Process

In place of the existing structure under which the NC nominates candidates to be Non-Director Members, who are not also required to be Board members, the Board would appoint members to the GNC from among the Board's members who are recommended by the GNC. This change requires certain proposed modifications to the nomination and election process currently reflected in Article III, Section 5. Changes are also proposed that would change the deadlines for nominations of Member Directors by both the GNC and Clearing Members, and OCC would preserve the petition process by which Clearing Members may nominate additional candidates for Member Director positions on the Board. In recognition of the elimination of the concept of Non-Director Members, several provisions in Section 5 of Article III addressing the ability of stockholders to elect or nominate Non-Director Members of the NC would be deleted. In relevant part, however, these provisions would be retained to the extent they apply to the ability of stockholders under certain conditions to nominate and elect Member Directors of the Board.

⁷ A Clearing Member Organization is a Clearing Member that is a legal entity rather than a natural person.

3. Public Directors

Proposed changes to Section 6A of Article III would require the GNC to nominate Public Directors for election by OCC's stockholders and to use OCC's fitness standards in making such nominations. Presently, OCC's Executive Chairman makes Public Director nominations with Board approval. Changes are also proposed to help clarify the class structure and term limits of Public Directors that are independent of changes proposed to facilitate the formation of the GNC. These changes would specify that, aside from the Class II Public Director who was elected to the Board at the 2011 annual meeting, two other Public Directors were appointed to the Board prior to its 2013 annual meeting, one designated as a Class I Public Director and the other designated as a Class III Public Director. Generally, the three year terms for Public Directors with staggered expiration for each class would be preserved, however, an exception would be added for the initial Class I and III Public Directors.

The proposed changes to Article III, Section 6A would also provide for the classification of the two new Public Directors, who will be first appointed or elected after the 2014 annual meeting. One of the new Public Directors will be designated as a Class I Public Director, and the other will be designated as a Class III Public Director. The proposed changes also establish the times at which the successors of the two new Public Directors will be elected. The successor of the new Public Director that is a Class III Public Director will be elected at the 2015 annual meeting of stockholders, and the successor of the new Public Director that is a Class I Public Director will be elected at the 2016 annual meeting.

4. Disqualifications and Filling Vacancies and Newly Created Directorships

The disqualification provisions in Article III, Section 11 would be revised to reflect that any determination to disqualify a director would be effective and result in a vacancy only if the GNC makes a recommendation for disqualification in addition to an affirmative vote for disqualification by a majority of the whole Board. The By-Laws currently provide that if a Member Director vacancy is filled by the Board, the person filling the vacancy will serve until the next scheduled election for the relevant class of Member Director and a successor is elected. However, if the term for that class of Member Director extends beyond the Board's next annual meeting the vacancy must be filled by a person who is recommended by the Nominating Committee. Proposed changes to these terms in respect of the GNC would require the Board in all cases to appoint a person who is recommended by the GNC. Similarly, Public Director vacancies would be required to be filled by the Board as generally provided for in Section 6A of Article III, including with regard to candidates being nominated by the GNC using OCC's fitness standards for directors. Provisions concerning filling vacancies with respect to the NC would be deleted, consistent with its elimination in favor of the GNC.

5. Ministerial Changes

The proposed changes to Article III also include certain ministerial changes. A reference to stockholder exchanges in the interpretation and policy to Section 6 would be replaced by the defined term Equity Exchanges, and a reference in Section 14 to notice by telegram would be changed to facsimile to reflect current means of communication.

Proposed Amendments to the GC Charter Only

Certain of the proposed amendments relating to the creation of the GNC would apply only to OCC's existing GC Charter. These amendments are discussed below.

1. GNC Purpose

The statement of purpose in the GC Charter would be revised to reflect the GNC's larger scope of responsibilities. The existing GC purpose of reviewing the overall corporate governance of OCC would be maintained, along with language clarifying that this review would be performed on a regular basis and that recommendations concerning Board improvements should be made when necessary. The GNC Charter would also provide that the GNC assists the Board in identifying, screening and reviewing individuals qualified to serve as directors and by recommending candidates to the Board for nomination for election at the annual meeting of stockholders or to fill vacancies. The GNC Charter would also specify that the GNC would develop and recommend to the Board, and oversee the implementation of, a Board Code of Conduct.

2. GNC Membership and Organization

The requirement in the GC Charter that the GC hold four meetings annually would be modified to also permit the GNC to call additional meetings as it deems appropriate.⁸ The GC Charter requirement for regular reporting to the Board on Committee activities by the GC chair or a designee would be revised in favor of placing the reporting responsibility solely on the GNC Chair and requiring the GNC Chair to make timely reports to the Board on important issues discussed at GNC meetings. Taking into consideration certain pre-established guidelines in the GNC Charter, the GNC Chair would also be given responsibility for determining whether minutes should be recorded at any executive session. Aside from this exception for executive sessions, GNC meeting minutes would be required to be recorded. The GNC Charter would also create a position to be filled by an OCC officer who would assist the GNC and liaise between it and OCC's staff.

⁸ This would bring the Governance and Nominating Committee Charter in line with the Charters of OCC's other Board Committees.

3. GNC Authority

As in the case of the existing GC, the GNC would have authority to inquire into any matter relevant to its purpose and responsibilities in the course of carrying out its duties. The GNC Charter would further specify that in connection with any such inquiry the GNC would have access to all books, records, facilities and personnel of OCC. Unlike the existing GC Charter, the GNC Charter would not provide express authority for the GNC to rely on members of OCC's management for assistance. Instead, this relationship between the GNC and OCC's management would be more specifically addressed through the role of the newly created staff liaison position. Additional revisions to the GC Charter would also establish that the GNC Chair would not have discretion to take unilateral action on behalf of the Committee, even in special circumstances.

4. Board Composition

Without limiting the GNC to particular activities, the GNC Charter would specify certain responsibilities meant to guide the GNC in achieving its purposes, including with respect to its role in the development of the Board's composition. As an overarching goal, the GNC's Charter would require it to pursue development of a Board comprised of individuals who have a reputation for integrity and represent diverse professional backgrounds as well as a broad spectrum of experience and expertise. The GNC Charter would also prescribe more detailed responsibilities designed to further this goal. For example, the GNC would be required to conduct periodic reviews of the composition of the Board against the goal, including whether the Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity and other qualities.⁹ The GNC would be required to recommend policies and procedures to the Board for identifying and reviewing Board nominee candidates, and it would implement and oversee the effectiveness of those policies, including with regard to criteria for Board nominees. Using criteria approved by the Board, the GNC would identify, screen and review persons who it determines are qualified to serve as directors. This process would also extend to incumbent directors concerning any potential re-nomination. In all cases, the GNC would only recommend candidates to the Board for nomination for election after consulting with OCC's Executive Chairman. In the event that a sitting director offers to resign because of a change in occupation or business association, the GNC would be responsible for reviewing whether continued service is appropriate and making a recommendation of any action, consistent with OCC's By-Laws and Rules, that should be taken by the Board. The GNC would also undertake periodic reviews of term limits for certain directors and recommend changes to these limits where appropriate.

⁹ The GNC would also review director conflicts of interest and the manner in which any such conflicts are to be monitored and resolved.

5. Governance Practices

The GNC would have responsibility for reviewing the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices. Currently, this is a GC function, and certain GC Charter amendments are proposed to help further detail the GNC's review responsibilities. These include a general responsibility to recommend changes, as the GNC deems appropriate, to the Board concerning Committee Charters. This would include the GNC Charter, which the GNC would be required to review annually.¹⁰ In connection with a periodic review of Board Committee structure, the GNC would advise the Board regarding related matters of structure, operations and charters. Furthermore, and in each case after consultation with OCC's Executive Chairman, the GNC would recommend to the Board for its approval certain directors for Committee service as well as for assignment as Committee chair persons.

The GNC would develop and recommend to the Board the annual process used by the Board and Board Committees for self-evaluation of their role and performance in the governance of OCC. The GNC would also be responsible for coordinating and providing oversight of that process. Corporate governance principles applicable to OCC would be developed by the GNC for recommendation to the Board, and the GNC would review them at least once a year.

6. Other Proposed GC Charter Amendments

The GNC Charter would require the Committee to regularly evaluate its performance and the performance of its individual members and provide results of such assessments to the Board. It would also require an annual report to be prepared by the GNC and delivered to the Board regarding the GNC's activities for the preceding year, and the GNC would be required to include a statement that it carried out all of its GNC Charter responsibilities. In addition to such responsibilities, the GNC would generally be empowered to perform any other duties that it deems necessary or appropriate and consistent with the GNC Charter or as may otherwise be further delegated to it by the Board.

Fair Representation Requirement for Clearing Agencies

Section 17A(b)(3)(C) of the Exchange Act requires the rules of a clearing agency to assure fair representation of its shareholders (or members) and participants¹¹ in the selection of its directors and administration of its affairs.¹² The Exchange Act does not define fair

¹⁰ As part of the annual review, the GNC would also submit the GNC Charter to the Board for re-approval, including any changes the GNC deems advisable.

¹¹ In relevant part, a clearing agency participant is defined in Section 3(a)(24) of the Exchange Act as "any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities..."

¹² 15 U.S.C. 78q-1(b)(3)(C). The statute further provides that one way of establishing that the representation of participants is fair is by affording them a reasonable opportunity to acquire voting stock of the clearing

representation but instead reserves to the SEC the authority to determine whether a clearing agency's rules give fair voice to participants and shareholders or members in the selection of directors and administration of affairs. On this subject, the Division of Market Regulation's Announcement of Standards for the Registration of Clearing Agencies provides that a clearing agency's procedures concerning fair representation are evaluated on a case-by-case basis but that a clearing agency could comply with the standard, including with respect to board nominations, through the use of a nominating committee composed of and selected by participants or their representatives.¹³ Subsequent SEC guidance in this area also provides that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.¹⁴

OCC believes for several reasons that the proposed amendments to the By-Laws and GC Charter would continue to assure fair representation of OCC's shareholders and participants in the selection of its directors and the administration of its affairs. First, as the body responsible for nominating Member Director and Public Director candidates to OCC's Board, the GNC would be composed of and selected by OCC's participants and shareholders or their representatives because, along with at least one Public Director, the GNC would be composed of Board members who represent OCC's Clearing Members and equity exchanges. Furthermore, the GNC would be obligated by OCC's By-Laws and the GNC Charter to make nominations that serve the interests of shareholders and a cross-section of participants because it would be required to nominate candidates with a view toward: assuring that the Board consists of, among other things, individuals who have a reputation for integrity and represent diverse professional backgrounds and a broad spectrum of experience and expertise; that not all Member Directors of the Board would represent the largest Clearing Member Organizations; and that the mix of Member Directors on the Board should include representatives of Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors. Finally, rather than prescribing pre-set term limits, OCC believes that having GNC members serve at the pleasure of the Board would help foster continuity on the GNC and thereby strengthen the quality of the representation of OCC's participants and shareholders in the administration of its affairs.

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

agency in reasonable proportion to their use.

¹³ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41 (June 23, 1980) (citing in relevant part Securities Exchange Act Release 14531 (March 6, 1978), 43 FR 10288, 10291 (March 10, 1978) regarding proposed SEC-level standards for clearing agency registration). The Division of Market Regulation is now known as the Division of Trading and Markets.

¹⁴ Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45172 (October 3, 1983) (Depository Trust Co., et. al.; Order).

Risk Management. OCC believes that by implementing the proposed rule change it will be better able to manage the risks associated with discharging its responsibilities as set forth in the DCO Core Principles because it will institute a more clear and transparent governance structure as well as better identify individuals to serve on the Board. OCC will provide the public with information about its governance structure so that parties may more accurately identify the risks of using OCC's services.

Public Information. OCC believes that by implementing the proposed rule change it will be better able to provide market participants with information to identify and evaluate OCC's governance structure. OCC will post the amended GNC Charter on its public website thereby providing the public with relevant information regarding OCC's governance arrangements.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

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

Certification

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

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

Sincerely,



Stephen Szarmack
Vice President & Associate General Counsel

Enclosure

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

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

Item 1. Text of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (“OCC”) would amend OCC’s By-Laws regarding its Nominating Committee and the Charter for OCC’s Governance Committee to consolidate the two Committees into a single Governance and Nominating Committee, make changes to OCC’s nomination process for Directors and increase the number of Public Directors on OCC’s Board of Directors. Conforming amendments to these changes are also proposed to OCC’s Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors.

Material proposed to be added to OCC’s By-Laws as currently in effect is marked by underlining and material proposed to be deleted is enclosed in bold brackets. The Governance Committee Charter, Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, with changes marked where relevant, are attached hereto as Exhibits 5A through 5D.

THE OPTIONS CLEARING CORPORATION**BY-LAWS**

* * *

ARTICLE III**Board of Directors****Number of Directors**

SECTION 1. The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, [three] five Public Directors and two Management Directors[]; provided, however, that if the sum of the number of Exchange Directors to be elected at any annual meeting of stockholders and the total number of Public Directors shall equal or exceed nine, the number of Member Directors shall automatically increase, effective as of the date of such meeting, to a number exceeding the aggregate number of Exchange Directors and Public Directors by one. If the aggregate number of Exchange Directors and Public Directors shall thereafter decrease, the number of Member Directors shall decrease in accordance with the provisions of the last

sentence of Section 3 of this Article III].

Qualifications of Member Directors

SECTION 2. Every Member Director shall be either a Clearing Member or a representative of a Clearing Member Organization. No person shall be eligible to serve as a Member Director (a) for more than two consecutive three-year terms; (b) if the election or appointment of such person would result in the simultaneous service as a director of more than one person associated with affiliated Clearing Member Organizations; or (c) if the election or appointment of such person would result in the simultaneous service as Member Directors of more than two persons who are sole members, or are associated with Clearing Member Organizations which are sole members, of any one Exchange. [No person shall be elected as a Member Director at an annual meeting if such person has served as a member of the Nominating Committee for such annual meeting.]

... Interpretations and Policies:

.01 Fitness Standards

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

Classification and Term of Office of Member Directors

SECTION 3. The Member Directors shall be divided into three classes, designated as Class I, Class II and Class III, respectively, each composed of not less than three members. The Member Directors of each Class as of January 3, 1975 shall be those persons serving on such date as directors in the Class bearing such designation. The successors of the Class I Member Directors shall be elected at the 1975 annual meeting of stockholders, the successors of the Class II Member Directors at the 1976 annual meeting, and the successors of the Class III Member Directors at the 1977 annual meeting. [Except as hereinafter provided,]Member Directors shall be elected for a term expiring at the third succeeding annual meeting of stockholders or when their respective successors are thereafter elected and qualified, and shall be identified as being of the same Class as the directors they succeed. [If the number of Member Directors shall be increased at any annual meeting pursuant to the provisions of Section 1 of this Article III, the first new directorship resulting therefrom shall be added to the Class whose term expires at such annual meeting, the next new directorship shall be added to the Class whose term expires at the next annual meeting, and so on. Any person elected to fill a directorship resulting from such an increase shall be elected for a term expiring at the same time as the term of the Class to which such directorship shall have been added. If the number of Member Directors immediately before any annual meeting shall be greater than nine and shall exceed the sum of the number of Exchange Directors to be elected at such meeting and the total number of Public Directors by more than one, and the Class of Member Directors whose term expires at such annual meeting shall be composed of more than three members, such Class shall be reduced by one, effective as of the expiration of the term of office of its members.]

Governance and Nominating Committee

SECTION 4. [There shall be constituted for each meeting of stockholders a Nominating Committee, which shall be composed of seven members, consisting of (i) one Public Director nominated by the Chairman with the approval of a majority of the Board of Directors, and (ii) six other members (the “Non-Director Members”) selected in accordance with the provisions of Section 5 of this Article III. The Non-Director Members of the Nominating Committee shall be divided into two equal classes of three members, designated as Class I and Class II, respectively. The term of office of the Class I Non-Director Members of the Nominating Committee shall expire at the annual meeting of stockholders in odd numbered years and the term of office of the Class II Non-Director Members of the Nominating Committee shall expire at the annual meeting of stockholders in even numbered years. The term of office on the Nominating Committee of the Public Director member shall expire at the earlier of the third annual meeting of stockholders following such Public Director member’s election to the Nominating Committee or such Public Director member’s ceasing to be a Public Director. No Non-Director Member shall be eligible for election to the Nominating Committee after having served a full two-year term until after a lapse of one year. A term of less than two years may, however, immediately precede the full two-year term. No director of the Corporation and no person who is not a representative of a Clearing Member shall be eligible to serve as a Non-Director Member of the Nominating Committee.] On an annual basis, the Board of Directors shall appoint a Governance and Nominating Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The Governance and Nominating Committee shall consist of at least one Public Director, at least one Exchange Director and at least one Member Director. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The chairman of the Governance and Nominating Committee shall be designated by the Board from among the Public Director members of the Committee.

Nomination and Election of Member Directors [and Members of Nominating Committee]

SECTION 5. Prior to each annual meeting of stockholders, the Governance and Nominating Committee [then in office] shall nominate one person for each directorship among the Member Directors [and each position of Non-Director Member on the Nominating Committee] to be filled at such annual meeting, designating the Class for which each such person is nominated. In selecting such nominees, the Governance and Nominating Committee shall endeavor to achieve balanced representation among Clearing Members on the Board of Directors [and the next year's Nominating Committee, giving due consideration to the various business activities of different categories of Clearing Members and to their geographical distribution. No person who is associated with the same Clearing Member Organization as a member of the Nominating Committee may be nominated by the Nominating Committee for a position as a Member Director or a Non-Director Member of the Nominating Committee for the ensuing year. The] to assure that (i) not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year’s volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. The Governance and Nominating Committee shall submit a list of its nominations in writing to the Secretary of the Corporation

not later than [sixty] thirty days prior to each annual meeting, and the Secretary shall transmit such list to all Clearing Members within five days thereafter. Clearing Members shall have the right to nominate additional persons by filing with the Secretary, not less than [thirty] fifteen days prior to the date of the annual meeting, a petition signed by not less than the lesser of (a) representatives of 20% of the Clearing Members or (b) representatives of 25 Clearing Members; provided that in no case shall such a petition be signed by representatives of less than 10% of the Clearing Members. Each such petition may include nominations for all or less than all of the Member Director [and Non-Director Member of the Nominating Committee] positions to be filled on the Board of Directors at the annual meeting; provided, however, that no Clearing Member shall nominate by one or more petitions more than one candidate for each such position to be filled at such annual meeting. No petition shall be valid unless it specifies the respective position (e.g., Class I Member Director) for which each candidate named therein is nominated and unless each candidate named therein is eligible for the position for which he is nominated. In the event any question is raised as to the validity of any petition or as to the eligibility of any candidate so named for the position specified therein, such matter shall be determined by the Board of Directors. In the event no such petition is filed, the stockholders shall elect the Member Directors [and the Non-Director Members of the next year's Nominating Committee] from the persons nominated by the Governance and Nominating Committee. In the event one or more such petitions are filed, the Secretary shall, not less than [twenty] ten days prior to the date of the annual meeting, transmit to each Clearing Member not under suspension, a ballot setting forth the names of the persons nominated by the Governance and Nominating Committee and by such petitions in respect of every position for which such a petition has been filed, and the stockholders shall elect the Member Directors [and Non-Director Members of the next year's Nominating Committee] from the persons receiving the highest number of votes on the ballots which are returned by Clearing Members to the Secretary prior to the time the stockholders vote thereon at the annual meeting; provided, however, that no person shall be elected to a position if such election would render the composition of the Member Directors inconsistent with the provisions of [Sections 2 or 3 of this Article III or render the composition of the Non-Director Members of the Nominating Committee inconsistent with the provisions of Section 4] Section 2 of this Article III. In the event any nominee receiving the highest number of votes is ineligible for election because of the preceding sentence, the person receiving the next highest number of votes who is eligible for election shall be elected by the stockholders. In the case of a tie, the names of the nominees involved shall be referred to the Board of Directors, and the stockholders shall elect the person selected from among such nominees by the Board of Directors upon the vote of a majority of the directors then in office. In the event that the number of persons who are nominated in accordance with this Section 5 and who are willing and able to serve should be less than the number of Member Directors [or Non-Director Members of the Nominating Committee] to be elected at the annual meeting, the stockholders may nominate and elect any qualified person to fill those positions for which there are no other nominations. If the stockholders shall fail to elect a Member Director [or a Non-Director Member of the Nominating Committee] in accordance with the preceding sentence, the office shall be deemed to be vacant and the vacancy shall be filled in accordance with Section 12 of this Article III.

Exchange Directors

SECTION 6. [No change]

... Interpretations and Policies:

.01 Fitness Standards

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

Public Directors

SECTION 6A. At each annual meeting of stockholders at which one or more Public Directors are to be elected, the stockholders entitled to vote thereon shall elect as Public Director(s) such person(s), not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, as the [Chairman, with the approval of the Board of Directors,] Governance and Nominating Committee shall have nominated. [Beginning with the 2012 annual meeting, the] The Public Directors shall be divided into three classes, designated as Class I, Class II and Class III, respectively[, each composed of one member]. The Public Director elected at the 2011 annual meeting will be designated as a Class II Public Director [, and the initial]. One of the two Public Directors appointed prior to the 2013 annual meeting will be designated as a Class I Public Director and the [initial] other will be designated as a Class III Public Director [will be elected at the 2012 annual meeting.] The successor of the initial Class I Public Director shall be elected at the 2013 annual meeting of stockholders, the successor of the initial Class II Public Director at the 2014 annual meeting and the successor of the initial Class III Public Director at the 2015 annual meeting. One of the two Public Directors first appointed or elected after the 2014 annual meeting as a result of the increase of the number of Public Directors from three to five will be designated as a Class I Public Director and the other will be designated as a Class III Public Director so that, following such appointment or election, there shall be two Class I Public Directors, one Class II Public Director and two Class III Public Directors. The successor of the Class III Public Director appointed or elected as described in the preceding sentence shall be elected at the 2015 annual meeting of stockholders and the successor of the Class I Public Director appointed or elected as described in the preceding sentence shall be elected at the 2016 annual meeting. Except as provided [in the preceding sentence of this Section 6A for] above in the case of the initial Class I Public Director and the initial Class III Public Director, and in the preceding sentence of this Section 6A for the Class I Public Director and the Class III Public Director referred to therein, each Public Director shall serve until the third annual meeting of stockholders following such Director's election and until a successor is elected and qualified, or until the earlier death, disqualification, resignation, or removal of such Director. No person shall be eligible to serve as a Public Director for more than two consecutive three-year terms.

... Interpretations and Policies:

.01 Fitness Standards

The [Chairman and the Board of Directors] Governance and Nominating Committee shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted

or amended by the Board of Directors from time to time, in considering Public Director nominees for election to the Board.

* * *

Resignations

SECTION 10. A director [or a member of the Nominating Committee] may resign at any time by giving written notice of resignation to the Executive Chairman or to the Secretary; provided, however, that in the event a Management Director resigns, he must simultaneously resign as the Executive Chairman or President of the Corporation, as applicable. A resignation, unless specifically contingent upon its acceptance, will be effective as of its date or as of the effective date specified therein.

Disqualification

SECTION 11. A vacancy shall occur in the office of any director [or any member of the Nominating Committee] if the Board of Directors shall determine, by the affirmative vote of a majority of the whole Board of Directors and upon the recommendation of the Governance and Nominating Committee, that the holder of such office is no longer qualified therefor under the provisions of these By-Laws or that there has been such a change in his affiliations or Exchange memberships (or those of the Clearing Member Organization of which he is a Designee) as would make him ineligible for election or appointment to such office on the date the Board makes such determination.

Filling of Vacancies and Newly Created Directorships

SECTION 12. A vacancy occurring for any reason among the Member Directors of any Class shall be filled by a majority of the directors then in office, even though they may be less than a quorum, and the person appointed to fill such vacancy shall serve until the next election of such Class and until a successor shall be elected and qualified; provided that [in the case of a Class whose term extends beyond the next annual meeting,] the vacancy shall be filled only by the appointment of a person recommended by the Governance and Nominating Committee. A vacancy or newly created directorship occurring for any reason among the Exchange Directors shall be filled by the Exchange entitled to elect such Exchange Director. A vacancy occurring for any reason among the Public Directors shall be filled by a majority of the directors then in office, even though they may be less than a quorum, with a person, not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, selected as provided in Section 6A of this Article III (including the recommendation of the Governance and Nominating Committee), and the person appointed to fill such vacancy shall serve for the remainder of the predecessor's term of office and until a successor shall be elected and qualified. A vacancy occurring for any reason in either position of Management Director shall be filled by a majority of the directors then in office, even though they may be less than a quorum, only with the person elected or appointed to fill the office of Executive Chairman or President of the Corporation, whichever was held by the person whose position was vacated. [A vacancy occurring for any reason among the Non-Director Members of the Nominating Committee shall be filled by a majority of the directors then in office, even though they may be

less than a quorum, with a person who is qualified under Section 4 of this Article III to serve as a Non-Director Member of the Nominating Committee. A vacancy occurring for any reason in the position of a Public Director member of the Nominating Committee shall be filled by a majority of the directors then in office, even though they may be less than a quorum, with a person selected as provided in Section 4 of this Article III.]

* * *

Meetings

SECTION 14. Regular meetings of the Board of Directors shall be held at such times and at such places as shall from time to time be provided by resolution of the Board of Directors, without notice other than such resolution. Special meetings of the Board of Directors to be held on a business day may be called by the Executive Chairman at any time and shall be called by the Secretary upon the written request of not less than three directors. At least one hour's notice of any special meeting shall be given to each director either in writing, in person, by telephone or by [telegram] facsimile; provided that the Secretary shall use reasonable efforts to give notices in person or by telephone if less than two days' notice is given. Any action taken at such special meeting called on less than two days' notice shall not remain in effect after the next regular meeting of the Board of Directors unless ratified by the Board of Directors at such regular meeting; provided, however, that nothing herein shall invalidate any acts of the Corporation taken in reliance upon the action of the Board of Directors at such special meeting, nor shall the rights of any person which arise out of action taken by the Board of Directors at such special meeting be affected as a result of the failure of the Board of Directors subsequently to ratify such action at a regular meeting. Neither the business to be transacted nor the purpose of any meeting of the Board of Directors need be specified in any notice of such meeting.

* * *

Article VIIA Equity Exchanges

* * *

SECTION 3. Prior to becoming a participant Exchange, each Equity Exchange entered into a Stockholders Agreement with the Corporation and each of the other Equity Exchanges, which agreement provides, among other things, that the shares of Common Stock acquired by that Exchange (i) shall be voted in favor of the Member Directors [and members of the Nominating Committee] as provided in Section 5 of Article III, one or more Public Directors as provided in Section 6A of Article III, and the Management Directors as provided in Section 7 of Article III and that the Exchange shall give its irrevocable proxy to the members of the Governance and Nominating Committee to vote its shares in such manner in the election of Member Directors, Public Directors, and the Management Directors; (ii) shall not be pledged, hypothecated or otherwise encumbered in any manner whatsoever; and (iii) shall not, except as otherwise provided therein, be sold, assigned, transferred or otherwise disposed of except after first offering all such shares to the Corporation for an aggregate price determined and payable as therein set forth.

* * *

Item 2. Procedures of the Self-Regulatory Organization

Under Article XI, Section 1 of OCC's By-Laws, certain By-Laws, including Article III, may not be amended by the Board without the approval of the holders of all of the outstanding Common Stock of OCC. The proposed rule change was unanimously approved for filing with the Commission by the stockholders and the Board of Directors of OCC at a meeting held on March 6, 2014.

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

A. Purpose

OCC is proposing to amend its By-Laws and Governance Committee Charter to combine the current Nominating Committee ("NC") and Governance Committee ("GC") to establish a single Governance and Nominating Committee ("GNC"), make changes concerning OCC's nomination process for Directors and to increase the number of Public Directors on OCC's Board of Directors ("Board"). The proposed modifications are based on recommendations from the GC in the course of carrying out its mandate of reviewing the overall corporate governance of OCC and recommending improvements to the structure of OCC's Board. In part, the GC's recommendations stem from suggestions of an outside consultant that was retained to review and report on OCC's governance structure in relationship to industry governance practices. To conform to these proposed changes OCC is also proposing to make certain edits to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors.

Currently, the GC operates pursuant to its own Charter.¹ The NC is not a Board level Committee and does not operate pursuant to a charter, however, provisions in Article III of OCC's By-Laws prescribe certain aspects of the NC's structure and operation. OCC is proposing to apply to the GNC many of the existing provisions of the relevant By-Laws and GC Charter that apply to the NC and GC. Where OCC is proposing amendments to the existing By-Laws and GC Charter, they are discussed below.

Certain provisions of Article III govern the role the NC plays in nominating persons as Member Directors² on OCC's Board as well as the composition and structure of the NC itself. The NC is required to endeavor to achieve balanced representation in its Member Director and Non-Director Member nominees, giving due consideration to business activities and geographic distribution.

Presently, the NC is composed of seven total members: one Public Director and six Non-Director Members.³ The Public Director member, who is nominated by the Executive Chairman with the approval of a majority of the Board, generally serves a three year term, unless he or she ceases to be a Public Director. The six Non-Director Members nominated by the NC and selected by OCC's stockholders are divided into two equal classes of three members, and the

¹ Securities Exchange Act Release Nos. 71030 (Dec. 11, 2013), 78 FR 7612 (Dec. 16, 2013) (SR-OCC-2013-18); 71083 (Dec. 16, 2013), 78 FR 77182 (Dec. 20, 2013) (SR-OCC-2013-807).

² Under Article III, Section 2 every Member Director must be either a Clearing Member or a representative of a Clearing Member Organization.

³ Under Sections 4 and 5 of Article III, a Non-Director Member of the NC must be a representative of a Clearing Member and no person associated with the same Clearing Member Organization as a member of the NC may be nominated by the NC for a position as a Member Director on the Board of Directors or a Non-Director Member of the NC for the ensuing year.

classes serve staggered two year terms.⁴ By comparison, the GC Charter requires the current GC to have not fewer than five directors and to include at least one Public Director, at least one Exchange Director, and at least one Member Director. It also provides that no Management Directors may serve on the Committee.

OCC's Board currently has 19 members consisting of nine Member Directors, five Exchange Directors, three Public Directors, who under Article III, Section 6A of OCC's By-Laws, may not be affiliated with any national securities exchange or national securities association or any broker or dealer in securities, and OCC's Executive Chairman and President, who are Management Directors. Based on recommendations from the GC in the course of review of OCC's overall corporate governance, OCC is proposing certain amendments detailed below to merge OCC's NC, GC and their related responsibilities into a single GNC and increase the number of Public Directors from three to five.

Proposed Amendments Common to the By-Laws and Other OCC Governance Documents

Certain of the proposed changes would amend the existing By-Laws as well as other governance documents of OCC. For example, conforming edits would be made throughout the By-Laws and GC Charter to delete NC and GC references and in many cases those references would be replaced with references to the GNC.

1. GNC Composition

The new GNC would be composed of a minimum of three total members: at least one Public Director, at least one Exchange Director and at least one Member Director. To reflect this change, OCC would eliminate in Section 4 of Article III the requirement for six Non-

⁴ This tiered structure eliminated the complete turnover of the members of the NC each year and fostered greater continuity among its elected members. Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319 (July 19, 1991) (SR-OCC-91-11).

Director Members, add requirements for at least one Member Director and one Exchange Director, and modify the current requirement for one Public Director to instead require that there must be *at least* one Public Director. The proposed composition for the GNC already mirrors the existing composition specified in the GC Charter. Therefore, no changes are proposed to the current GC Charter in that respect, other than the elimination of the requirements that the GNC have no fewer than five directors. That limitation would be eliminated with the goal of providing the Board with greater flexibility to determine the optimal size and composition of the GNC, so long as the composition also facilitates diverse representation by satisfying the proposed requirement for at least one GNC representative from each of the Member Director, Exchange Director and Public Director categories.

2. GNC Member Appointment Process and Term Limits

The members of the GNC would be appointed annually by the Board from among certain Board members recommended by the GNC after consultation with OCC's Executive Chairman, and GNC Members would serve at the pleasure of the Board. The GNC's Chairman ("GNC Chair"), would be designated from among the GNC's Public Directors. Provisions implementing these changes would be added to Section 4 of Article III to entirely supplant the class and term limit structure and nominations process that currently applies to the NC and its Non-Director Members and Public Director, and references to Non-Director Members would be removed from the By-Laws. Section II.A. of the GC Charter would also be amended to reflect this structure for GNC nominations and appointments.

3. Number of Public Directors and Member Directors

OCC is proposing to amend its By-Laws to increase the number of Public Directors on its Board from three to five and to make certain other changes related to the overall composition of the Board and the classification and term of office of Public Directors. The

proposed change in the number of Public Directors from three to five would reconstitute OCC's Board with a total of 21 directors. OCC continues to believe that, as indicated in OCC's initial 1992 proposal to add Public Directors to its Board,⁵ Public Directors broaden the mix of viewpoints and business expertise that is represented on the Board. Accordingly, OCC believes that the input and expertise of two more Public Directors will further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the discharge of its obligations as a systemically important financial market utility. In addition, the decision to add two more Public Directors is consistent with the principles discussed in the Commission's recent release on standards for covered clearing agencies.⁶ In particular, the additional Public Directors would facilitate OCC's compliance with the public interest requirements of Section 17A of the Securities Exchange Act of 1934, as amended ("Act") and allow OCC to balance potentially competing viewpoints of various stakeholders in its decision making.

The proposed changes would remove a provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. Article III, Section 1 requires that if the aggregate number of Exchange Directors and Public Directors equals at least nine, the total number of Member Directors must be automatically increased to always exceed that number by one. This provision would be removed to provide the Board with greater flexibility to be able to determine its optimal composition. OCC also proposes to make corresponding changes to Article III, Section 3 under which it would remove provisions that provide for the classification and term of office of Member Directors where the

⁵ Securities Exchange Act Release No. 30328 (January 31, 1992), 57 FR 4784 (February 7, 1992) (SR-OCC-1992-02).

⁶ Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 16866 (March 26, 2014).

number of Member Directors increases based on the provision in Article III, Section 1 that OCC proposes to delete. The proposed changes also remove a provision that reduces the number of Member Directors if the number is above nine and exceeds the sum of the number of Exchange Directors and the number of Public Directors by more than one, because as a result of the deletion of the above provision in Article III, Section 1, the number of Member Directors would be fixed at nine.

OCC is also proposing certain amendments to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes would be made to recognize the merger of the Nominating Committee and Governance Committee into the GNC as a standing Committee of the Board and reflect the role it would play in OCC's director nomination process. The proposed modifications to the Board Charter and Fitness Standards would reflect the increase in the number of Public Directors serving on the Board from three to five and the removal of the provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. The criteria specified in the Fitness Standards for Directors, Clearing Members and Others for use in considering Member Director nominees would also be revised for consistency with the criteria proposed to be added to Article III, Section 5 designed to achieve balanced Board representation.

The Stockholders Agreement also contains proposed amendments to replace the term Chairman with Executive Chairman. This parallels a separate proposed amendment by OCC to implement this change in its By-Laws and Rules, but a consolidated amendment to the Stockholders Agreement is proposed for ease of administration.

Proposed Amendments to By-Laws Only

As explained in more detail below, certain of the proposed changes would require amendments only to OCC's existing By-Laws. One such example is that Sections 2 and 5 of Article III would be amended to remove prohibitions against representation of the same Clearing Member Organization on the Board and the NC.⁷ This barrier would be eliminated since GNC members will be selected from among the members of the Board under the new approach.

1. Balanced Representation

The NC's responsibility to endeavor to achieve balanced representation among Clearing Members on the Board would be carried over to the GNC. The proposed amendments would also add more detailed guidance for the GNC concerning how to achieve balanced Board representation. Specifically, the GNC would be required to assure that not all of the Member Directors represent the Clearing Member Organizations having the largest volume of business with OCC during the prior year and that the mix of Member Directors includes Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors.

2. Nomination and Election Process

In place of the existing structure under which the NC nominates candidates to be Non-Director Members, who are not also required to be Board members, the Board would appoint members to the GNC from among the Board's members who are recommended by the GNC. This change requires certain proposed modifications to the nomination and election process currently reflected in Article III, Section 5. Changes are also proposed that would

⁷ A Clearing Member Organization is a Clearing Member that is a legal entity rather than a natural person.

change the deadlines for nominations of Member Directors by both the GNC and Clearing Members, and OCC would preserve the petition process by which Clearing Members may nominate additional candidates for Member Director positions on the Board. In recognition of the elimination of the concept of Non-Director Members, several provisions in Section 5 of Article III addressing the ability of stockholders to elect or nominate Non-Director Members of the NC would be deleted. In relevant part, however, these provisions would be retained to the extent they apply to the ability of stockholders under certain conditions to nominate and elect Member Directors of the Board.

3. Public Directors

Proposed changes to Section 6A of Article III would require the GNC to nominate Public Directors for election by OCC's stockholders and to use OCC's fitness standards in making such nominations. Presently, OCC's Executive Chairman makes Public Director nominations with Board approval. Changes are also proposed to help clarify the class structure and term limits of Public Directors that are independent of changes proposed to facilitate the formation of the GNC. These changes would specify that, aside from the Class II Public Director who was elected to the Board at the 2011 annual meeting, two other Public Directors were appointed to the Board prior to its 2013 annual meeting, one designated as a Class I Public Director and the other designated as a Class III Public Director. Generally, the three year terms for Public Directors with staggered expiration for each class would be preserved, however, an exception would be added for the initial Class I and III Public Directors.

The proposed changes to Article III, Section 6A would also provide for the classification of the two new Public Directors, who will be first appointed or elected after the 2014 annual meeting. One of the new Public Directors will be designated as a Class I Public Director, and the other will be designated as a Class III Public Director. The proposed changes

also establish the times at which the successors of the two new Public Directors will be elected. The successor of the new Public Director that is a Class III Public Director will be elected at the 2015 annual meeting of stockholders, and the successor of the new Public Director that is a Class I Public Director will be elected at the 2016 annual meeting.

4. Disqualifications and Filling Vacancies and Newly Created Directorships

The disqualification provisions in Article III, Section 11 would be revised to reflect that any determination to disqualify a director would be effective and result in a vacancy only if the GNC makes a recommendation for disqualification in addition to an affirmative vote for disqualification by a majority of the whole Board. The By-Laws currently provide that if a Member Director vacancy is filled by the Board, the person filling the vacancy will serve until the next scheduled election for the relevant class of Member Director and a successor is elected. However, if the term for that class of Member Director extends beyond the Board's next annual meeting the vacancy must be filled by a person who is recommended by the Nominating Committee. Proposed changes to these terms in respect of the GNC would require the Board in all cases to appoint a person who is recommended by the GNC. Similarly, Public Director vacancies would be required to be filled by the Board as generally provided for in Section 6A of Article III, including with regard to candidates being nominated by the GNC using OCC's fitness standards for directors. Provisions concerning filling vacancies with respect to the NC would be deleted, consistent with its elimination in favor of the GNC.

5. Ministerial Changes

The proposed changes to Article III also include certain ministerial changes. A reference to stockholder exchanges in the interpretation and policy to Section 6 would be replaced by the defined term Equity Exchanges, and a reference in Section 14 to notice by telegram would be changed to facsimile to reflect current means of communication.

Proposed Amendments to the GC Charter Only

Certain of the proposed amendments relating to the creation of the GNC would apply only to OCC's existing GC Charter. These amendments are discussed below.

1. GNC Purpose

The statement of purpose in the GC Charter would be revised to reflect the GNC's larger scope of responsibilities. The existing GC purpose of reviewing the overall corporate governance of OCC would be maintained, along with language clarifying that this review would be performed on a regular basis and that recommendations concerning Board improvements should be made when necessary. The GNC Charter would also provide that the GNC assists the Board in identifying, screening and reviewing individuals qualified to serve as directors and by recommending candidates to the Board for nomination for election at the annual meeting of stockholders or to fill vacancies. The GNC Charter would also specify that the GNC would develop and recommend to the Board, and oversee the implementation of, a Board Code of Conduct.

2. GNC Membership and Organization

The requirement in the GC Charter that the GC hold four meetings annually would be modified to also permit the GNC to call additional meetings as it deems appropriate.⁸ The GC Charter requirement for regular reporting to the Board on Committee activities by the GC chair or a designee would be revised in favor of placing the reporting responsibility solely on the GNC Chair and requiring the GNC Chair to make timely reports to the Board on important issues discussed at GNC meetings. Taking into consideration certain pre-established guidelines in the GNC Charter, the GNC Chair would also be given responsibility for determining whether

⁸ This would bring the Governance and Nominating Committee Charter in line with the Charters of OCC's other Board Committees.

minutes should be recorded at any executive session. Aside from this exception for executive sessions, GNC meeting minutes would be required to be recorded. The GNC Charter would also create a position to be filled by an OCC officer who would assist the GNC and liaise between it and OCC's staff.

3. GNC Authority

As in the case of the existing GC, the GNC would have authority to inquire into any matter relevant to its purpose and responsibilities in the course of carrying out its duties. The GNC Charter would further specify that in connection with any such inquiry the GNC would have access to all books, records, facilities and personnel of OCC. Unlike the existing GC Charter, the GNC Charter would not provide express authority for the GNC to rely on members of OCC's management for assistance. Instead, this relationship between the GNC and OCC's management would be more specifically addressed through the role of the newly created staff liaison position. Additional revisions to the GC Charter would also establish that the GNC Chair would not have discretion to take unilateral action on behalf of the Committee, even in special circumstances.

4. Board Composition

Without limiting the GNC to particular activities, the GNC Charter would specify certain responsibilities meant to guide the GNC in achieving its purposes, including with respect to its role in the development of the Board's composition. As an overarching goal, the GNC's Charter would require it to pursue development of a Board comprised of individuals who have a reputation for integrity and represent diverse professional backgrounds as well as a broad spectrum of experience and expertise. The GNC Charter would also prescribe more detailed responsibilities designed to further this goal. For example, the GNC would be required to conduct periodic reviews of the composition of the Board against the goal, including whether the

Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity and other qualities.⁹ The GNC would be required to recommend policies and procedures to the Board for identifying and reviewing Board nominee candidates, and it would implement and oversee the effectiveness of those policies, including with regard to criteria for Board nominees. Using criteria approved by the Board, the GNC would identify, screen and review persons who it determines are qualified to serve as directors. This process would also extend to incumbent directors concerning any potential re-nomination. In all cases, the GNC would only recommend candidates to the Board for nomination for election after consulting with OCC's Executive Chairman. In the event that a sitting director offers to resign because of a change in occupation or business association, the GNC would be responsible for reviewing whether continued service is appropriate and making a recommendation of any action, consistent with OCC's By-Laws and Rules, that should be taken by the Board. The GNC would also undertake periodic reviews of term limits for certain directors and recommend changes to these limits where appropriate.

5. Governance Practices

The GNC would have responsibility for reviewing the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices. Currently, this is a GC function, and certain GC Charter amendments are proposed to help further detail the GNC's review responsibilities. These include a general responsibility to recommend changes, as the GNC deems appropriate, to the Board concerning Committee Charters. This would include the GNC Charter, which the GNC

⁹ The GNC would also review director conflicts of interest and the manner in which any such conflicts are to be monitored and resolved.

would be required to review annually.¹⁰ In connection with a periodic review of Board Committee structure, the GNC would advise the Board regarding related matters of structure, operations and charters. Furthermore, and in each case after consultation with OCC's Executive Chairman, the GNC would recommend to the Board for its approval certain directors for Committee service as well as for assignment as Committee chair persons.

The GNC would develop and recommend to the Board the annual process used by the Board and Board Committees for self-evaluation of their role and performance in the governance of OCC. The GNC would also be responsible for coordinating and providing oversight of that process. Corporate governance principles applicable to OCC would be developed by the GNC for recommendation to the Board, and the GNC would review them at least once a year.

6. Other Proposed GC Charter Amendments

The GNC Charter would require the Committee to regularly evaluate its performance and the performance of its individual members and provide results of such assessments to the Board. It would also require an annual report to be prepared by the GNC and delivered to the Board regarding the GNC's activities for the preceding year, and the GNC would be required to include a statement that it carried out all of its GNC Charter responsibilities. In addition to such responsibilities, the GNC would generally be empowered to perform any other duties that it deems necessary or appropriate and consistent with the GNC Charter or as may otherwise be further delegated to it by the Board.

¹⁰ As part of the annual review, the GNC would also submit the GNC Charter to the Board for re-approval, including any changes the GNC deems advisable.

Fair Representation Requirement for Clearing Agencies

Section 17A(b)(3)(C) of the Act requires the rules of a clearing agency to assure fair representation of its shareholders (or members) and participants¹¹ in the selection of its directors and administration of its affairs.¹² The Act does not define fair representation but instead reserves to the Commission the authority to determine whether a clearing agency's rules give fair voice to participants and shareholders or members in the selection of directors and administration of affairs. On this subject, the Division of Market Regulation's Announcement of Standards for the Registration of Clearing Agencies provides that a clearing agency's procedures concerning fair representation are evaluated on a case-by-case basis but that a clearing agency could comply with the standard, including with respect to board nominations, through the use of a nominating committee composed of and selected by participants or their representatives.¹³ Subsequent Commission guidance in this area also provides that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.¹⁴

¹¹ In relevant part, a clearing agency participant is defined in Section 3(a)(24) of the Act as "any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities..."

¹² 15 U.S.C. 78q-1(b)(3)(C). The statute further provides that one way of establishing that the representation of participants is fair is by affording them a reasonable opportunity to acquire voting stock of the clearing agency in reasonable proportion to their use.

¹³ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41 (June 23, 1980) (citing in relevant part Securities Exchange Act Release 14531 (March 6, 1978), 43 FR 10288, 10291 (March 10, 1978) regarding proposed Commission-level standards for clearing agency registration). The Division of Market Regulation is now known as the Division of Trading and Markets.

¹⁴ Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45172 (October 3, 1983) (Depository Trust Co., et. al.; Order).

OCC believes for several reasons that the proposed amendments to the By-Laws and GC Charter would continue to assure fair representation of OCC's shareholders and participants in the selection of its directors and the administration of its affairs. First, as the body responsible for nominating Member Director and Public Director candidates to OCC's Board, the GNC would be composed of and selected by OCC's participants and shareholders or their representatives because, along with at least one Public Director, the GNC would be composed of Board members who represent OCC's Clearing Members and equity exchanges. Furthermore, the GNC would be obligated by OCC's By-Laws and the GNC Charter to make nominations that serve the interests of shareholders and a cross-section of participants because it would be required to nominate candidates with a view toward: assuring that the Board consists of, among other things, individuals who have a reputation for integrity and represent diverse professional backgrounds and a broad spectrum of experience and expertise; that not all Member Directors of the Board would represent the largest Clearing Member Organizations; and that the mix of Member Directors on the Board should include representatives of Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors. Finally, rather than prescribing pre-set term limits, OCC believes that having GNC members serve at the pleasure of the Board would help foster continuity on the GNC and thereby strengthen the quality of the representation of OCC's participants and shareholders in the administration of its affairs.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,¹⁵ and the rules and regulations thereunder because by creating the GNC and requiring

¹⁵ 15 U.S.C. 78q-1(b)(3)(C).

it to in part be composed of and selected by representatives of OCC's participants and also requiring it to nominate candidates to the Board with a view toward, among other things, assuring diverse professional backgrounds and a broad spectrum of experience and expertise, the proposed changes would help assure fair representation of OCC's shareholders and participants in the selection of OCC's directors and the administration of its affairs. OCC also believes the proposed rule change is consistent with Rule 17Ad-22(d)(8)¹⁶ because by, among other things, creating a framework that requires the GNC to be composed of representatives of at least one Member Director, Exchange Director and Public Director, requiring the GNC to endeavor to develop a Board that represents a broad range of skills and experience and increasing the number of Public Directors the proposed changes would help ensure that OCC continues to have clear and transparent governance arrangements that fulfill the public interest requirements of Section 17A of the Act, support the objectives of OCC's owners and participants and promote the effectiveness of OCC's risk management procedures. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.¹⁷ Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency, their customers, and the markets that the clearing agency serves. This proposed rule change primarily affects certain Clearing Members and participant exchanges, through their respective representative directors, in terms of how they would participate in OCC's governance process on the Board and Board Committees. For example, OCC believes

¹⁶ 17 CFR 240.17Ad-22(d)(8).

¹⁷ 15 U.S.C. 78q-1(b)(3)(I).

that the proposed formation of the GNC would help to consolidate and improve the efficiency of Board level action regarding roles and responsibilities that are related but are currently performed separately by the NC and GC and that adding two Public Directors to the Board would broaden the mix of viewpoints and business expertise that informs the administration of OCC's affairs with respect to the markets that it serves. These proposed modifications would not disadvantage or favor any particular user in relationship to another user because they relate to the overarching governance structure of OCC that affects all users and does not relate directly to any particular service or particular use of OCC's facilities.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

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

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

Item 6. Extension of Time Period for Commission Action

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

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

Not applicable.

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 5A. Governance and Nominating Committee Charter.

Exhibit 5B. Amendment No. 11 to Stockholders Agreement.


Exhibit 5C. Board of Directors Charter.

Exhibit 5D. Fitness Standards for Directors, Clearing Members and Others.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has 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-2014-09)

May 13, 2014

Clearing Agency; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Consolidation of the Governance Committee and Nominating Committee into a Single Committee, Changes to the Nominating Process for Directors and Increasing the Number of Public Directors on The Options Clearing Corporation's Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on May 13, 2014, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change) would amend OCC's By-Laws regarding its Nominating Committee and the Charter for OCC's Governance Committee to consolidate the two Committees into a single Governance and Nominating Committee, make changes to OCC's nomination process for Directors and increase the number of Public Directors on OCC's Board of Directors. Conforming amendments to these changes are also proposed to OCC's Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

OCC is proposing to amend its By-Laws and Governance Committee Charter to combine the current Nominating Committee ("NC") and Governance Committee ("GC") to establish a single Governance and Nominating Committee ("GNC"), make changes concerning OCC's nomination process for Directors and to increase the number of Public Directors on OCC's Board of Directors ("Board"). The proposed modifications are based on recommendations from the GC in the course of carrying out its mandate of reviewing the overall corporate governance of OCC and recommending improvements to the structure of OCC's Board. In part, the GC's recommendations stem from suggestions of an outside consultant that was retained to review and report on OCC's governance structure in relationship to industry governance practices. To conform to these proposed changes OCC is also proposing to make certain edits to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors.

Currently, the GC operates pursuant to its own Charter.³ The NC is not a Board level Committee and does not operate pursuant to a charter, however, provisions in Article III of OCC's By-Laws prescribe certain aspects of the NC's structure and operation. OCC is proposing to apply to the GNC many of the existing provisions of the relevant By-Laws and GC Charter that apply to the NC and GC. Where OCC is proposing amendments to the existing By-Laws and GC Charter, they are discussed below.

Certain provisions of Article III govern the role the NC plays in nominating persons as Member Directors⁴ on OCC's Board as well as the composition and structure of the NC itself. The NC is required to endeavor to achieve balanced representation in its Member Director and Non-Director Member nominees, giving due consideration to business activities and geographic distribution.

Presently, the NC is composed of seven total members: one Public Director and six Non-Director Members.⁵ The Public Director member, who is nominated by the Executive Chairman with the approval of a majority of the Board, generally serves a three year term, unless he or she ceases to be a Public Director. The six Non-Director Members nominated by the NC and selected by OCC's stockholders are divided into two equal classes of three members, and the

³ Securities Exchange Act Release Nos. 71030 (Dec. 11, 2013), 78 FR 7612 (Dec. 16, 2013) (SR-OCC-2013-18); 71083 (Dec. 16, 2013), 78 FR 77182 (Dec. 20, 2013) (SR-OCC-2013-807).

⁴ Under Article III, Section 2 every Member Director must be either a Clearing Member or a representative of a Clearing Member Organization.

⁵ Under Sections 4 and 5 of Article III, a Non-Director Member of the NC must be a representative of a Clearing Member and no person associated with the same Clearing Member Organization as a member of the NC may be nominated by the NC for a position as a Member Director on the Board of Directors or a Non-Director Member of the NC for the ensuing year.

classes serve staggered two year terms.⁶ By comparison, the GC Charter requires the current GC to have not fewer than five directors and to include at least one Public Director, at least one Exchange Director, and at least one Member Director. It also provides that no Management Directors may serve on the Committee.

OCC's Board currently has 19 members consisting of nine Member Directors, five Exchange Directors, three Public Directors, who under Article III, Section 6A of OCC's By-Laws, may not be affiliated with any national securities exchange or national securities association or any broker or dealer in securities, and OCC's Executive Chairman and President, who are Management Directors. Based on recommendations from the GC in the course of review of OCC's overall corporate governance, OCC is proposing certain amendments detailed below to merge OCC's NC, GC and their related responsibilities into a single GNC and increase the number of Public Directors from three to five.

Proposed Amendments Common to the By-Laws and Other OCC Governance Documents

Certain of the proposed changes would amend the existing By-Laws as well as other governance documents of OCC. For example, conforming edits would be made throughout the By-Laws and GC Charter to delete NC and GC references and in many cases those references would be replaced with references to the GNC.

a. GNC Composition

The new GNC would be composed of a minimum of three total members: at least one Public Director, at least one Exchange Director and at least one Member Director. To reflect

⁶ This tiered structure eliminated the complete turnover of the members of the NC each year and fostered greater continuity among its elected members. Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319 (July 19, 1991) (SR-OCC-91-11).

this change, OCC would eliminate in Section 4 of Article III the requirement for six Non-Director Members, add requirements for at least one Member Director and one Exchange Director, and modify the current requirement for one Public Director to instead require that there must be *at least* one Public Director. The proposed composition for the GNC already mirrors the existing composition specified in the GC Charter. Therefore, no changes are proposed to the current GC Charter in that respect, other than the elimination of the requirements that the GNC have no fewer than five directors. That limitation would be eliminated with the goal of providing the Board with greater flexibility to determine the optimal size and composition of the GNC, so long as the composition also facilitates diverse representation by satisfying the proposed requirement for at least one GNC representative from each of the Member Director, Exchange Director and Public Director categories.

b. GNC Member Appointment Process and Term Limits

The members of the GNC would be appointed annually by the Board from among certain Board members recommended by the GNC after consultation with OCC's Executive Chairman, and GNC Members would serve at the pleasure of the Board. The GNC's Chairman ("GNC Chair"), would be designated from among the GNC's Public Directors. Provisions implementing these changes would be added to Section 4 of Article III to entirely supplant the class and term limit structure and nominations process that currently applies to the NC and its Non-Director Members and Public Director, and references to Non-Director Members would be removed from the By-Laws. Section II.A. of the GC Charter would also be amended to reflect this structure for GNC nominations and appointments.

c. Number of Public Directors and Member Directors

OCC is proposing to amend its By-Laws to increase the number of Public Directors on its Board from three to five and to make certain other changes related to the overall composition of the Board and the classification and term of office of Public Directors. The proposed change in the number of Public Directors from three to five would reconstitute OCC's Board with a total of 21 directors. OCC continues to believe that, as indicated in OCC's initial 1992 proposal to add Public Directors to its Board,⁷ Public Directors broaden the mix of viewpoints and business expertise that is represented on the Board. Accordingly, OCC believes that the input and expertise of two more Public Directors will further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the discharge of its obligations as a systemically important financial market utility. In addition, the decision to add two more Public Directors is consistent with the principles discussed in the Commission's recent release on standards for covered clearing agencies.⁸ In particular, the additional Public Directors would facilitate OCC's compliance with the public interest requirements of Section 17A of the Act and allow OCC to balance potentially competing viewpoints of various stakeholders in its decision making.

The proposed changes would remove a provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. Article III, Section 1 requires that if the aggregate number of Exchange Directors and Public

⁷ Securities Exchange Act Release No. 30328 (January 31, 1992), 57 FR 4784 (February 7, 1992) (SR-OCC-1992-02).

⁸ Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 16866 (March 26, 2014).

Directors equals at least nine, the total number of Member Directors must be automatically increased to always exceed that number by one. This provision would be removed to provide the Board with greater flexibility to be able to determine its optimal composition. OCC also proposes to make corresponding changes to Article III, Section 3 under which it would remove provisions that provide for the classification and term of office of Member Directors where the number of Member Directors increases based on the provision in Article III, Section 1 that OCC proposes to delete. The proposed changes also remove a provision that reduces the number of Member Directors if the number is above nine and exceeds the sum of the number of Exchange Directors and the number of Public Directors by more than one, because as a result of the deletion of the above provision in Article III, Section 1, the number of Member Directors would be fixed at nine.

OCC is also proposing certain amendments to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes would be made to recognize the merger of the Nominating Committee and Governance Committee into the GNC as a standing Committee of the Board and reflect the role it would play in OCC's director nomination process. The proposed modifications to the Board Charter and Fitness Standards would reflect the increase in the number of Public Directors serving on the Board from three to five and the removal of the provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. The criteria specified in the Fitness Standards for Directors, Clearing Members and Others for use in considering Member Director nominees would also be revised for consistency with the criteria proposed to be added to Article III, Section 5 designed to achieve balanced Board representation.

The Stockholders Agreement also contains proposed amendments to replace the term Chairman with Executive Chairman. This parallels a separate proposed amendment by OCC to implement this change in its By-Laws and Rules, but a consolidated amendment to the Stockholders Agreement is proposed for ease of administration.

Proposed Amendments to By-Laws Only

As explained in more detail below, certain of the proposed changes would require amendments only to OCC's existing By-Laws. One such example is that Sections 2 and 5 of Article III would be amended to remove prohibitions against representation of the same Clearing Member Organization on the Board and the NC.⁹ This barrier would be eliminated since GNC members will be selected from among the members of the Board under the new approach.

a. Balanced Representation

The NC's responsibility to endeavor to achieve balanced representation among Clearing Members on the Board would be carried over to the GNC. The proposed amendments would also add more detailed guidance for the GNC concerning how to achieve balanced Board representation. Specifically, the GNC would be required to assure that not all of the Member Directors represent the Clearing Member Organizations having the largest volume of business with OCC during the prior year and that the mix of Member Directors includes Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors.

b. Nomination and Election Process

⁹ A Clearing Member Organization is a Clearing Member that is a legal entity rather than a natural person.

In place of the existing structure under which the NC nominates candidates to be Non-Director Members, who are not also required to be Board members, the Board would appoint members to the GNC from among the Board's members who are recommended by the GNC. This change requires certain proposed modifications to the nomination and election process currently reflected in Article III, Section 5. Changes are also proposed that would change the deadlines for nominations of Member Directors by both the GNC and Clearing Members, and OCC would preserve the petition process by which Clearing Members may nominate additional candidates for Member Director positions on the Board. In recognition of the elimination of the concept of Non-Director Members, several provisions in Section 5 of Article III addressing the ability of stockholders to elect or nominate Non-Director Members of the NC would be deleted. In relevant part, however, these provisions would be retained to the extent they apply to the ability of stockholders under certain conditions to nominate and elect Member Directors of the Board.

c. Public Directors

Proposed changes to Section 6A of Article III would require the GNC to nominate Public Directors for election by OCC's stockholders and to use OCC's fitness standards in making such nominations. Presently, OCC's Executive Chairman makes Public Director nominations with Board approval. Changes are also proposed to help clarify the class structure and term limits of Public Directors that are independent of changes proposed to facilitate the formation of the GNC. These changes would specify that, aside from the Class II Public Director who was elected to the Board at the 2011 annual meeting, two other Public Directors were appointed to the Board prior to its 2013 annual meeting, one designated as a Class I Public Director and the other designated as a Class III Public Director. Generally, the three year terms

for Public Directors with staggered expiration for each class would be preserved, however, an exception would be added for the initial Class I and III Public Directors.

The proposed changes to Article III, Section 6A would also provide for the classification of the two new Public Directors, who will be first appointed or elected after the 2014 annual meeting. One of the new Public Directors will be designated as a Class I Public Director, and the other will be designated as a Class III Public Director. The proposed changes also establish the times at which the successors of the two new Public Directors will be elected. The successor of the new Public Director that is a Class III Public Director will be elected at the 2015 annual meeting of stockholders, and the successor of the new Public Director that is a Class I Public Director will be elected at the 2016 annual meeting.

d. Disqualifications and Filling Vacancies and Newly Created Directorships

The disqualification provisions in Article III, Section 11 would be revised to reflect that any determination to disqualify a director would be effective and result in a vacancy only if the GNC makes a recommendation for disqualification in addition to an affirmative vote for disqualification by a majority of the whole Board. The By-Laws currently provide that if a Member Director vacancy is filled by the Board, the person filling the vacancy will serve until the next scheduled election for the relevant class of Member Director and a successor is elected. However, if the term for that class of Member Director extends beyond the Board's next annual meeting the vacancy must be filled by a person who is recommended by the Nominating Committee. Proposed changes to these terms in respect of the GNC would require the Board in all cases to appoint a person who is recommended by the GNC. Similarly, Public Director vacancies would be required to be filled by the Board as generally provided for in Section 6A of Article III, including with regard to candidates being nominated by the GNC using OCC's fitness

standards for directors. Provisions concerning filling vacancies with respect to the NC would be deleted, consistent with its elimination in favor of the GNC.

e. Ministerial Changes

The proposed changes to Article III also include certain ministerial changes. A reference to stockholder exchanges in the interpretation and policy to Section 6 would be replaced by the defined term Equity Exchanges, and a reference in Section 14 to notice by telegram would be changed to facsimile to reflect current means of communication.

Proposed Amendments to the GC Charter Only

Certain of the proposed amendments relating to the creation of the GNC would apply only to OCC's existing GC Charter. These amendments are discussed below.

a. GNC Purpose

The statement of purpose in the GC Charter would be revised to reflect the GNC's larger scope of responsibilities. The existing GC purpose of reviewing the overall corporate governance of OCC would be maintained, along with language clarifying that this review would be performed on a regular basis and that recommendations concerning Board improvements should be made when necessary. The GNC Charter would also provide that the GNC assists the Board in identifying, screening and reviewing individuals qualified to serve as directors and by recommending candidates to the Board for nomination for election at the annual meeting of stockholders or to fill vacancies. The GNC Charter would also specify that the GNC would develop and recommend to the Board, and oversee the implementation of, a Board Code of Conduct.

b. GNC Membership and Organization

The requirement in the GC Charter that the GC hold four meetings annually would be modified to also permit the GNC to call additional meetings as it deems appropriate.¹⁰ The GC Charter requirement for regular reporting to the Board on Committee activities by the GC chair or a designee would be revised in favor of placing the reporting responsibility solely on the GNC Chair and requiring the GNC Chair to make timely reports to the Board on important issues discussed at GNC meetings. Taking into consideration certain pre-established guidelines in the GNC Charter, the GNC Chair would also be given responsibility for determining whether minutes should be recorded at any executive session. Aside from this exception for executive sessions, GNC meeting minutes would be required to be recorded. The GNC Charter would also create a position to be filled by an OCC officer who would assist the GNC and liaise between it and OCC's staff.

c. GNC Authority

As in the case of the existing GC, the GNC would have authority to inquire into any matter relevant to its purpose and responsibilities in the course of carrying out its duties. The GNC Charter would further specify that in connection with any such inquiry the GNC would have access to all books, records, facilities and personnel of OCC. Unlike the existing GC Charter, the GNC Charter would not provide express authority for the GNC to rely on members of OCC's management for assistance. Instead, this relationship between the GNC and OCC's management would be more specifically addressed through the role of the newly created staff liaison position. Additional revisions to the GC Charter would also establish that the GNC Chair

¹⁰ This would bring the Governance and Nominating Committee Charter in line with the Charters of OCC's other Board Committees.

would not have discretion to take unilateral action on behalf of the Committee, even in special circumstances.

d. Board Composition

Without limiting the GNC to particular activities, the GNC Charter would specify certain responsibilities meant to guide the GNC in achieving its purposes, including with respect to its role in the development of the Board's composition. As an overarching goal, the GNC's Charter would require it to pursue development of a Board comprised of individuals who have a reputation for integrity and represent diverse professional backgrounds as well as a broad spectrum of experience and expertise. The GNC Charter would also prescribe more detailed responsibilities designed to further this goal. For example, the GNC would be required to conduct periodic reviews of the composition of the Board against the goal, including whether the Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity and other qualities.¹¹ The GNC would be required to recommend policies and procedures to the Board for identifying and reviewing Board nominee candidates, and it would implement and oversee the effectiveness of those policies, including with regard to criteria for Board nominees. Using criteria approved by the Board, the GNC would identify, screen and review persons who it determines are qualified to serve as directors. This process would also extend to incumbent directors concerning any potential re-nomination. In all cases, the GNC would only recommend candidates to the Board for nomination for election after consulting with OCC's Executive Chairman. In the event that a sitting director offers to resign because of a change in occupation or business association, the GNC would be responsible for reviewing

¹¹ The GNC would also review director conflicts of interest and the manner in which any such conflicts are to be monitored and resolved.

whether continued service is appropriate and making a recommendation of any action, consistent with OCC's By-Laws and Rules, that should be taken by the Board. The GNC would also undertake periodic reviews of term limits for certain directors and recommend changes to these limits where appropriate.

e. Governance Practices

The GNC would have responsibility for reviewing the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices. Currently, this is a GC function, and certain GC Charter amendments are proposed to help further detail the GNC's review responsibilities. These include a general responsibility to recommend changes, as the GNC deems appropriate, to the Board concerning Committee Charters. This would include the GNC Charter, which the GNC would be required to review annually.¹² In connection with a periodic review of Board Committee structure, the GNC would advise the Board regarding related matters of structure, operations and charters. Furthermore, and in each case after consultation with OCC's Executive Chairman, the GNC would recommend to the Board for its approval certain directors for Committee service as well as for assignment as Committee chair persons.

The GNC would develop and recommend to the Board the annual process used by the Board and Board Committees for self-evaluation of their role and performance in the governance of OCC. The GNC would also be responsible for coordinating and providing oversight of that process. Corporate governance principles applicable to OCC would be

¹² As part of the annual review, the GNC would also submit the GNC Charter to the Board for re-approval, including any changes the GNC deems advisable.

developed by the GNC for recommendation to the Board, and the GNC would review them at least once a year.

f. Other Proposed GC Charter Amendments

The GNC Charter would require the Committee to regularly evaluate its performance and the performance of its individual members and provide results of such assessments to the Board. It would also require an annual report to be prepared by the GNC and delivered to the Board regarding the GNC's activities for the preceding year, and the GNC would be required to include a statement that it carried out all of its GNC Charter responsibilities. In addition to such responsibilities, the GNC would generally be empowered to perform any other duties that it deems necessary or appropriate and consistent with the GNC Charter or as may otherwise be further delegated to it by the Board.

Fair Representation Requirement for Clearing Agencies

Section 17A(b)(3)(C) of the Act requires the rules of a clearing agency to assure fair representation of its shareholders (or members) and participants¹³ in the selection of its directors and administration of its affairs.¹⁴ The Act does not define fair representation but instead reserves to the Commission the authority to determine whether a clearing agency's rules give fair voice to participants and shareholders or members in the selection of directors and administration of affairs. On this subject, the Division of Market Regulation's Announcement of

¹³ In relevant part, a clearing agency participant is defined in Section 3(a)(24) of the Act as "any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities..."

¹⁴ 15 U.S.C. 78q-1(b)(3)(C). The statute further provides that one way of establishing that the representation of participants is fair is by affording them a reasonable opportunity to acquire voting stock of the clearing agency in reasonable proportion to their use.

Standards for the Registration of Clearing Agencies provides that a clearing agency's procedures concerning fair representation are evaluated on a case-by-case basis but that a clearing agency could comply with the standard, including with respect to board nominations, through the use of a nominating committee composed of and selected by participants or their representatives.¹⁵

Subsequent Commission guidance in this area also provides that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.¹⁶

OCC believes for several reasons that the proposed amendments to the By-Laws and GC Charter would continue to assure fair representation of OCC's shareholders and participants in the selection of its directors and the administration of its affairs. First, as the body responsible for nominating Member Director and Public Director candidates to OCC's Board, the GNC would be composed of and selected by OCC's participants and shareholders or their representatives because, along with at least one Public Director, the GNC would be composed of Board members who represent OCC's Clearing Members and equity exchanges. Furthermore, the GNC would be obligated by OCC's By-Laws and the GNC Charter to make nominations that serve the interests of shareholders and a cross-section of participants because it would be required to nominate candidates with a view toward: assuring that the Board consists of, among

¹⁵ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41 (June 23, 1980) (citing in relevant part Securities Exchange Act Release 14531 (March 6, 1978), 43 FR 10288, 10291 (March 10, 1978) regarding proposed Commission-level standards for clearing agency registration). The Division of Market Regulation is now known as the Division of Trading and Markets.

¹⁶ Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45172 (October 3, 1983) (Depositary Trust Co., et. al.; Order).

other things, individuals who have a reputation for integrity and represent diverse professional backgrounds and a broad spectrum of experience and expertise; that not all Member Directors of the Board would represent the largest Clearing Member Organizations; and that the mix of Member Directors on the Board should include representatives of Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors. Finally, rather than prescribing pre-set term limits, OCC believes that having GNC members serve at the pleasure of the Board would help foster continuity on the GNC and thereby strengthen the quality of the representation of OCC's participants and shareholders in the administration of its affairs.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,¹⁷ and the rules and regulations thereunder because by creating the GNC and requiring it to in part be composed of and selected by representatives of OCC's participants and also requiring it to nominate candidates to the Board with a view toward, among other things, assuring diverse professional backgrounds and a broad spectrum of experience and expertise, the proposed changes would help assure fair representation of OCC's shareholders and participants in the selection of OCC's directors and the administration of its affairs. OCC also believes the proposed rule change is consistent with Rule 17Ad-22(d)(8)¹⁸ because by, among other things, creating a framework that requires the GNC to be composed of representatives of at least one Member Director, Exchange Director and Public Director, requiring the GNC to endeavor to

¹⁷ 15 U.S.C. 78q-1(b)(3)(C).

¹⁸ 17 CFR 240.17Ad-22(d)(8).

develop a Board that represents a broad range of skills and experience and increasing the number of Public Directors the proposed changes would help ensure that OCC continues to have clear and transparent governance arrangements that fulfill the public interest requirements of Section 17A of the Act, support the objectives of OCC's owners and participants and promote the effectiveness of OCC's risk management procedures. The proposed rule change is not inconsistent with the existing rules of OCC, including any other 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.¹⁹ Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency, their customers, and the markets that the clearing agency serves. This proposed rule change primarily affects certain Clearing Members and participant exchanges, through their respective representative directors, in terms of how they would participate in OCC's governance process on the Board and Board Committees. For example, OCC believes that the proposed formation of the GNC would help to consolidate and improve the efficiency of Board level action regarding roles and responsibilities that are related but are currently performed separately by the NC and GC and that adding two Public Directors to the Board would broaden the mix of viewpoints and business expertise that informs the administration of OCC's affairs with respect to the markets that it serves. These proposed modifications would not disadvantage or favor any particular user in relationship to another user because they relate to the overarching governance structure of OCC that affects all users and does not relate directly to any particular service or particular use of OCC's facilities.

¹⁹ 15 U.S.C. 78q-1(b)(3)(I).

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

(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

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

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2014-09 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-2014-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference 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-2014-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.²⁰

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: _____

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5A

Material proposed to be added is marked by double underlining and material proposed to be deleted is reflected with a strikethrough.

* * *

**THE OPTIONS CLEARING CORPORATION
GOVERNANCE AND NOMINATING COMMITTEE CHARTER**

I. Purpose

The Board of Directors (“Board”) of ~~the~~The Options Clearing Corporation (“OCC”) has established a Governance and Nominating Committee (“Committee”) to ~~review~~assist the Board in: (a) identifying, screening and reviewing individuals qualified to serve as Directors and recommending to the Board candidates for nomination for election at the annual meeting of stockholders or to fill Board vacancies; (b) developing, recommending to the Board and overseeing implementation of OCC’s Board Code of Conduct; and (c) reviewing on a regular basis the overall corporate governance of OCC and ~~recommend~~recommending improvements to the Board when necessary.

II. Membership and Organization

- A. Composition. The Committee will be composed of ~~not fewer than five Directors. At~~at least one Public Director, one Exchange Director, and one Member Director. ~~will be a member of the Committee.~~ No Management Director will be a member of the Committee. All of the ~~Directors~~Committee members will be selected by, ~~and~~the Board from among the Directors recommended by the Committee after consultation with the Executive Chairman, and shall serve at the pleasure of, the Board. The Committee Chair will be designated by the Board from among the Public Director Committee members. In the absence of the Chair at any meeting of the Committee, those members of the Committee present will designate a Committee member to serve as the Acting Chair.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

- B. Meetings. The Committee shall meet at least four times a year. ~~with~~additional meetings called as the Committee deems appropriate. Meetings of the Committee shall be called by the Chair or the Chair’s designee. The Chair or the Chair’s designee shall, in consultation with management, as appropriate, prepare an agenda in advance of each meeting. ~~The Chair or the Chair’s designee shall report regularly to the Board on Committee activities.~~ The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The

- Committee may call executive sessions from which guests of the Committee may be excluded. The Chair shall determine whether minutes of executive sessions are to be recorded, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are recorded. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other.
- C. Quorum. A majority of the Committee members will constitute a quorum for the transaction of business.
- D. Minutes and Reports. ~~The~~Except as otherwise noted above, the Committee shall maintain minutes of all Committee meetings and shall make such reports to the Board as deemed necessary or advisable. Copies of Committee minutes shall be circulated to the Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year. In addition, the Chair shall be responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the Board.
- E. Staff Liaison. A designated officer of management shall serve to assist the Committee and to perform liaison functions between staff and the Committee.

III. Authority

- A. Scope. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of ~~the Corporation~~OCC to the extent it may deem necessary or appropriate to fulfill its duties.

Subject to the approval of the Board, the Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee. ~~In addition, the Committee may rely on members of OCC management to assist it in the undertaking of its responsibilities.~~

~~C. Authority of the Chair. The Chair of the Committee may act on behalf of the Committee in such circumstances when immediate action is required and it is impractical to convene the Committee. In such instances, the Chair shall report on any actions taken as soon as practicable to the Committee for its ratification.~~

IV. Functions and Responsibilities

The following responsibilities are set forth to guide the Committee in fulfilling its purpose: ~~The.~~ In addition, the Committee may undertake other and different activities as appropriate for that purpose, or as may be delegated to it by the Board of Directors. The Committee shall:

Board Composition

1. Seek to develop a Board that consists of individuals from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity by:
 - Recommending to the Board for approval and overseeing the implementation and effectiveness of OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees (including experience, qualifications, attributes or skills in light of OCC's business and structure);
 - Identifying, screening and reviewing individuals qualified to serve as Directors of OCC, consistent with criteria approved by the Board (including evaluation of incumbent Directors for potential renomination, taking into consideration, among other things, an incumbent Director's past performance, including attendance at meetings and participation and contributions to the activities of the Board);
 - Recommending to the Board candidates for nomination for election or re-election by the stockholders and any Board vacancies that are to be filled by the Board, after consultation with the Executive Chairman;
 - Assessing the appropriateness of a Director continuing to serve on the Board where such Director submits his or her offer to resign upon the Director ceasing to hold the principal occupation or business association that such Director held when originally invited to join the Board, and recommending to the Board any action to be taken thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Director;
 - ~~Review~~Reviewing periodically the composition of the Board as a whole, including whether the Board reflects the appropriate balance of ~~participant and non-participant directors~~Member Directors, Exchange Directors, Public

Directors and Management Directors, business specialization, technical skills, diversity (including diverse professional backgrounds) and other desired qualities such as sound judgment; ~~and a reputation for integrity; and~~

- Reviewing periodically the continued appropriateness of the term limits applicable to Member Directors and Public Directors set forth in the By-Laws and recommend to the Board, where appropriate, changes to such provisions.

Governance Practices

2. ~~□□~~ Review the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices ~~and recommend to the Board, where appropriate, changes to the Board's Charter;~~ including:

- Recommending to the Board, where appropriate, changes to the Board's Charter;
 - ~~Review the committee structure of the Board and recommend~~ Recommending to the Board, where appropriate, changes to Committee charters ~~or composition, including this Governance Committee;~~ Charter;
- ~~□~~ ~~Review OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees;~~
- ~~Develop~~ Developing and ~~recommend~~ recommending to the Board ~~a periodic, and coordinating and providing oversight of, the annual~~ process of self-evaluation of the role and performance of the Board, and its committees ~~and management~~ in the governance of OCC;
 - ~~Review~~ Reviewing and ~~consider~~ considering whether changes are appropriate to OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct; ~~and~~
 - Developing and recommending to the Board corporate governance principles applicable to OCC, and reviewing those principles at least once a year;
 - ~~Review~~ Reviewing and ~~consider~~ considering whether changes are needed to and provide oversight of, the orientation program for new ~~Board members~~ Directors and continuing ~~director~~ Director training and education opportunities; and
 - Advising the Board with respect to Committee structure, operations and charters, including:
 - Reviewing periodically the committee structure of the Board; and

- Recommending to the Board for its approval the appointment of Directors to Board committees and assignment of committee Chairs, in each case after consultation with the Executive Chairman.

Conflicts of Interest

3. Review conflicts of interest of Directors and the manner in which any such conflicts are to be monitored and resolved.

Evaluation and Reporting

4. Evaluate the Committee's and individual members' performance on a regular basis and provide results of such assessment to the Board for review.
5. Prepare and deliver an annual report to the Board of the activities undertaken by the Committee during the preceding year, which report includes a statement that all responsibilities outlined in this Charter have been carried out.

General

6. Perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee shall review this Charter annually. The Committee shall submit this Charter to the Board for reapproval, with such changes, if any, as the Committee deems advisable.

EXHIBIT 5B

Amendments that would add material to OCC's Stockholders Agreement as currently in effect are marked by underlining and deletions are enclosed in bold brackets. The amendments will become effective upon the latter of execution by all parties named below or receipt of all necessary approvals of the Commission.

* * *

AMENDMENT NO. 11

TO

STOCKHOLDERS AGREEMENT

AGREEMENT, dated as of this _____ day of March, 2014, among THE OPTIONS CLEARING CORPORATION, a Delaware corporation (the "Clearing Corporation"), CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED, a Delaware corporation ("CBOE"), INTERNATIONAL SECURITIES EXCHANGE, LLC, a Delaware limited liability company ("ISE"), NASDAQ OMX PHLX LLC, a Delaware limited liability company ("PHLX"), NYSE MKT LLC, a Delaware limited liability company ("NYSE MKT"), NYSE ARCA, INC., a Delaware corporation ("NYSE ARCA"), and such other stockholders of the Clearing Corporation as shall hereafter become parties to the Stockholders Agreement (as hereinafter defined) in the manner provided therein.

W I T N E S S E T H:

WHEREAS, the Clearing Corporation, CBOE, ISE, PHLX, NYSE MKT and NYSE ARCA are parties to a Stockholders Agreement dated January 3, 1975, as amended (the "Stockholders Agreement");

WHEREAS, the parties hereto desire to amend the Stockholders Agreement to reflect the combination of the Nominating Committee and Governance Committee into a single Governance and Nominating Committee that was approved by the Board of Directors and the Stockholders of the Clearing Corporation on March 6, 2014;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Provisions for Governance and Nominating Committee.

(a) Section 1 of the Stockholders Agreement is hereby amended to read as follows:

Section 1. Definitions.

The terms Clearing Members, Exchange, Member Directors, Public Directors, Management Directors, Governance and Nominating Committee, Members of the Governance and Nominating Committee, Certificate of Incorporation and By-Laws, as used herein, shall have the same respective meanings as in the Certificate of Incorporation and the By-Laws of the Clearing Corporation.

(b) Section 2 of the Stockholders Agreement is hereby amended to read as follows:

Section 2. Voting of Shares of Stock.

Each Stockholder agrees to vote, at each annual meeting of stockholders of the Clearing Corporation (or any other meeting of stockholders of the Clearing Corporation at which any of the matters specified in clauses (i)[, (ii) or (iii)] or (ii) of this Section 2 is submitted to a vote of stockholders), or any adjournments thereof, duly called and held during the term of this Stockholders Agreement, (i) all the shares of Class A Stock which such Stockholder is entitled to vote at such meeting in favor of the election of the individuals duly nominated by the Governance and Nominating Committee, or otherwise duly selected by the Clearing Members, as Member Directors in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation; and (ii) all the shares of Class B Stock which such Stockholder is entitled to vote at such meeting as part of the class in favor of (a) the election of the Executive Chairman of the Clearing Corporation

and the President of the Clearing Corporation as Management Directors, and (b) if one or more Public Directors are to be elected at such meeting, the election of such person(s), not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, as the [Chairman of the Clearing Corporation, with the approval of the Board of Directors,] Governance and Nominating Committee shall have nominated, as Public Director(s); and (iii) all the shares of Class A Stock and Class B Stock which such Stockholder is entitled to vote at such meeting in favor of the election of those individuals duly nominated by the Nominating Committee, or otherwise duly selected by the Clearing Members, as Members of the following year's Nominating Committee in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation.]

(c) Section 3 of the Stockholders Agreement is hereby amended to read as follows:

Section 3. Proxy to Vote Shares of Stock

Each Stockholder agrees to, and does hereby, irrevocably appoint the Members of the Governance and Nominating Committee of the Clearing Corporation, or any one or more of them, as its attorney with the full power such Stockholder would have to represent such Stockholder at each annual meeting of stockholders of the Clearing Corporation (or any other meeting of stockholders of the Clearing Corporation at which any of the matters specified in clauses [(i), (ii) or (iii)] (i) or (ii) of this Section 3 is submitted to a vote of stockholders), or any adjournments thereof, duly called and held, for the purpose of voting on the following specified matters, and to vote on such matters as follows, and for no other purpose:

(i) To vote all of the shares of Class A Stock which such Stockholder is entitled to vote at such meeting in favor of the election of the individuals duly

nominated by the Governance and Nominating Committee, or otherwise duly selected by the Clearing Members, as Member Directors in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation; and

(ii) To vote all of the shares of Class B Stock which such Stockholder is entitled to vote at such meeting as part of the class in favor of (a) the election of the Executive Chairman of the Clearing Corporation and the President of the Clearing Corporation as Management Directors and (b) if one or more Public Directors are to be elected at such meeting, the election of such person(s), not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities, as the [Chairman of the Clearing Corporation, with the approval of the Board of Directors,] Governance and Nominating Committee shall have nominated, as Public Director(s).]; and

(iii) To vote all of the shares of Class A Stock and Class B Stock which such Stockholder is entitled to vote at such meeting in favor of the election of those individuals duly nominated by the Nominating Committee, or otherwise duly selected by the Clearing Members, as Members of the following year's Nominating Committee in accordance with Section 5 of Article III of the By-Laws of the Clearing Corporation.]

The power vested hereby is given in furtherance of the interest of each Stockholder and the Clearing Members to assure that the management of the Clearing Corporation is elected in accordance with the provisions of the By-Laws and to assure the effectuation of the purposes of the Plan, and this power shall remain outstanding for the term of this Stockholders Agreement.

2. **Counterpart Execution.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3. Effectiveness.

This Agreement shall be effective upon the latter of:

- (i) execution by all of the parties named below, or
- (ii) receipt of all necessary approvals of the Securities and Exchange Commission

with respect to the changes to the By-Laws of the Clearing Corporation providing for, among other things, the formation of the Governance and Nominating Committee.

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

THE OPTIONS CLEARING CORPORATION

By:

Name:

Title:

CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED

By:

Name:

Title:

INTERNATIONAL SECURITIES EXCHANGE, LLC

By:

Name:

Title:

NASDAQ OMX PHLX LLC

By:

Name:

Title:

NYSE MKT LLC

By:

Name:

Title:

NYSE ARCA, INC.

By:

Name:

Title:

EXHIBIT 5C**THE OPTIONS CLEARING CORPORATION
BOARD OF DIRECTORS
CHARTER****I. INTRODUCTION**

Oversight of the management of the business and affairs of The Options Clearing Corporation (“OCC” or the “Corporation”) is vested in its Board of Directors (the “Board”) except as may otherwise be provided in OCC’s Certificate of Incorporation or its by-laws and rules.¹ The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of OCC’s stakeholders (i.e., stockholders, clearing members, cleared markets, market participants, and regulatory authorities). In doing so, the Board exercises its authority to promote the safe, sound and efficient operation of OCC and the development of safe, sound and prudent principles for risk assessment, monitoring and management in light of OCC’s role as a systemically important financial market utility. Capitalized terms used in this Charter shall have the meanings set forth in OCC’s by-laws and rules unless otherwise indicated.

II. MEMBERSHIP AND ORGANIZATION

- A. Size and Composition. As provided for in the by-laws, the Board presently is comprised of two (2) Management Directors one of whom is the Executive Chairman of the Board and the other of whom is the President; five (5) Exchange Directors representing each of OCC’s Equity Exchanges (i.e., stockholders); nine (9) Member Directors representing OCC clearing members; and ~~three (3)~~ five (5) Public Directors. ~~[Board size may be increased or decreased as specified in the by-laws.]~~ⁱ
- B. Qualification Standards. As provided for in the by-laws, the Board has adopted certain criteria to be used by ~~[designated persons]~~ the Governance and Nominating Committee in considering nominees for service as a Director (i.e., a member of OCC’s Board). The Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”), as adopted and amended by the Board, set forth such criteria and is attached hereto. Such Fitness Standards are periodically reviewed by the Board. In addition, the by-

¹ For example, Article III, Section 8 of OCC’s by-laws states that the Board shall not take action in respect of matters as to which the Corporation has agreed to limit its authority under the provisions of its agreements with its Equity Exchanges. Such provisions include the requirement that amendment of certain by-law provisions requires the unanimous consent of OCC’s stockholders.

laws set forth other considerations to be taken into account in the nomination of Member Directors for purposes of achieving balanced representation on the Board among Member Directors. Those considerations include the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors [various business activities of clearing members and their geographical distribution].ⁱⁱ

- C. Election of Directors, Resignation and Disqualification. Election of the categories of Directors shall occur as provided in the by-laws. Resignations and disqualifications from the Board as well as the filling of any vacancy shall be addressed as provided in the by-laws.ⁱⁱⁱ
- D. Tenure, Term and Age Limitations. The tenure of service of each category of Director is specified in OCC's by-laws. The Management Directors and the Exchange Directors are elected at each annual stockholder meeting. There are no term limitations with respect to such categories of Directors. Each class of Member Director and Public Director is elected to a term of three years subject to the term limitations set forth in the by-laws. No age limitations are imposed with respect to any category of Director.^{iv}
- E. Vice Chairmen of the Board. If elected by the Board and serving, the Management Vice Chairman of the Board shall have the responsibilities and duties set forth in the by-laws in the event of the absence or disability of the Executive Chairman. The Member Vice Chairman, who is elected by the Board from the Member Directors, shall have the responsibilities and duties set forth in the by-laws, including those in the event of the absence or disability of the Executive Chairman and the Management Vice Chairman, if elected and serving.^v
- F. Meetings. Generally, the Board regularly meets a minimum of five times per year. Directors are expected to attend all meetings of the Board, review all materials in advance and be prepared to participate fully in the meeting. Special meetings may be called as provided for in the by-laws. Briefing materials are generally distributed in advance of each Board meeting.^{vi}

The Executive Chairman of the Board, in consultation with the President as well as the Secretary, shall establish the agenda for each Board meeting. A Director may request that an item be included on any meeting agenda. The Executive Chairman may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Board may call executive sessions from which guests of the Board may be excluded. Directors may participate in meetings by means of a conference telephone call

or other means of communication that allows all participants in the meeting to hear each other.

- G. Quorum. Except as may otherwise be provided in the by-laws, a majority of the Directors then in office, but not less than six (6) Directors, shall constitute a quorum of the Board for the conduct of business.^{vii}
- H. Minutes. The Secretary or such other person appointed by the Board will prepare the minutes of each meeting of the Board, which shall be furnished to the Directors for review.^{viii}

III. AUTHORITY

- A. Scope. Except as otherwise provided in the Certificate of Incorporation and the by-laws, the Board oversees the management of the business and affairs of OCC. As required by the by-laws, the Board annually elects certain corporate officers including the Executive Chairman of the Board and the President (who are also the Management Directors), the Secretary, and the Treasurer. Each of these officers has the authorities, responsibilities and duties set forth in the by-laws and rules and such other duties as may be delegated to them in accordance with the by-laws.^{ix}

In discharging its oversight role, the Board may inquire into any matter it considers appropriate to carry out its duties and responsibilities. The Board shall confer with management and other employees of the Corporation to the extent it may deem necessary or appropriate to fulfill its duties.

The Board shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Board also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists.

- B. Board Committees and Delegation. The Board shall establish any standing and other committees that it deems necessary or appropriate to discharge its responsibilities. The Board presently has established [~~three~~] four standing committees: the Audit Committee, the Risk Committee, [~~and the~~] Performance Committee, and the Governance and Nominating Committee.^x

For each standing Committee the Board shall establish a written charter which shall set forth the responsibilities of that Committee, as well as Committee structure and operations, and any required reporting to the full Board. The Chairs of such Committees shall be determined in accordance with the terms of the applicable Committee Charter and, if applicable, the by-laws. Subject to and as provided in the by-laws, the Board shall approve and annually review Committee assignments. Directors are expected to attend all meetings of

Committees to which they are appointed, review all materials in advance and be prepared to participate fully in the Committee's meetings.

The Board may form such other committees, including subcommittees, as it from time to time deems appropriate, and may delegate authority to one or more designated members of such committees.

- C. Review of Charter. This Charter shall be periodically reviewed by the Board of Directors.

IV. FUNCTIONS AND RESPONSIBILITIES

The Board performs an oversight role to ensure that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities in connection with its provision of clearance and settlement services as an industry utility. The Board is responsible for acting as a steward of OCC to make certain OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe, sound, efficient and prudential manner.

Either directly or indirectly through delegating certain responsibilities to its Committees, the Board has the following functions to discharge its management oversight responsibilities:

- To oversee governance processes in a manner consistent with this Charter, including reviewing Committee charters and reports of Committee activities, effecting Committee appointments, and periodically evaluating the Fitness Standards;
- To approve and oversee OCC's business strategies, including expansions of clearing and settlement services to new business lines;
- To monitor OCC's performance in delivering clearance and settlement services;
- To oversee OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk;
- To oversee OCC's financial reporting, auditing, accounting and compliance processes;
- To foster OCC's processes designed to ensure compliance with applicable laws and regulations and to conduct business in a legal and ethical manner;
- To oversee OCC's system of internal controls;
- To oversee major capital expenditures and to approve the annual budget and corporate plan;

- To assure management succession; and
- To oversee the development and design of employee compensation, incentive and benefit programs and to regularly evaluate senior management performance and approve the compensation of the Executive Chairman and President.

In addition, the Board shall perform such functions and responsibilities as set forth in OCC's by-laws and rules, including, but not limited to:

- Determining disqualifications from Board service and making appointments to fill vacancies among the Management Directors, Member Directors and Public Directors as specified in the by-laws^{xi};
- Electing designated corporate officers^{xii};
- Approving applications for clearing membership and initial contributions to the clearing fund of newly admitted clearing members, subject to the by-laws and rules^{xiii};
- Approving OCC's fee structure consistent with the by-law requirements as well as rebates, discounts and refunds of clearing fees^{xiv};
- Approving additions to, amendments of, and deletions from OCC's by-laws and rules subject to the provisions of the by-laws^{xv};
- Conducting convened hearings in connection with a denial of membership or a suspension determination^{xvi};
- Suspending a clearing member^{xvii}; and
- Performing such other functions reserved to the Board under the by-laws and rules.

V. DUTIES AND RESPONSIBILITIES OF DIRECTORS

Each Director is required to act in good faith in the best interests of OCC and with due regard to the fiduciary responsibilities owed to OCC as a business and systemically important financial market utility. In addition, each Director is required to comply with the provisions of the Code of Conduct for OCC Directors, including, without limitation, the provisions relating to conflicts of interest and confidentiality.

ⁱ Article III, Section 1.

ⁱⁱ Article III, Sections 2, 5, 6, 6A and 7.

ⁱⁱⁱ Article III, Sections 5, 6, 6A, 7, 10, 11 and 12.

^{iv} Article III, Sections 2, 6, 6A and 7; Article IV, Section 1.

^v Article IV, Sections 1 and 7.

vi	Article III, Section 14.
vii	Article III, Section 13.
viii	Article IV, Section 10.
ix	Article III, Section 8; Article IV Sections 1, 2 and 5.
x	Article III, Section 9.
xi	See end note iii.
xii	See end note ix.
xiii	Article V, Section 2; Article VIII, Section 2.
xiv	Article III, Section 8; Article IX, Section 9.
xv	Article XI, Sections 1 and 2.
xvi	Article V, Section 2; Rule 1110.
xvii	Article III, Section 8; Rule 1102.

EXHIBIT 5D

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

The Options Clearing Corporation Fitness Standards

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

Fitness Standards for Directors

The Corporation's By-Laws contain governance standards designed to provide fair representation to stockholders and Clearing Members. The Board currently has ~~[19]~~ 21 members consisting of nine Clearing Member directors ("Member Directors"), five directors nominated by the stockholder exchanges ("Exchange Directors"), ~~[three]~~ five directors who are not affiliated with any national securities exchange, national securities association or broker or dealer in securities (the "Public Directors"), and the Corporation's Executive Chairman and President (the "Management Directors"). ~~[Member Directors are divided into three equal classes elected for staggered three-year terms.]~~ The Governance and Nominating Committee consists of at least one Public Director, at least one Exchange Director and at least one Member Director. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The chairman of the Governance and Nominating Committee shall be designated by the Board from among the Public Director members of the Committee. [one Public Director nominated by the Executive Chairman with the approval of the Board of Directors and elected for a three-year term and six other non-director members which are divided into two equal classes elected for staggered two-year terms.] Prior to each annual meeting of stockholders, the Governance and Nominating Committee nominates a slate of nominees for election to the class of Member Directors and the class of non-director members of the Nominating Committee whose terms expire at that meeting. Each Exchange Director serves a one-year term and is nominated by one of the five stockholder exchanges, although a single Exchange Director may represent more than one exchange. The Public Directors are divided into three classes, with two Class I Public Directors, one Class II Public Director, and two Class III Public Directors. [each composed of one member] Each Public Director is elected for staggered three-year terms (with the exception of: (i) the initial Class I Public Director who serves a one-year term ending in 2013 after which the Class I Public Director will be elected for a three-year term; (ii) the Class I Public Director first appointed or elected after the 2014 annual meeting who serves a term ending in 2016, after which the successor to such Class I Public Director will be elected for a three-year term at the 2016 annual meeting, and (iii) the Class III Public Director first appointed or elected after the 2014 annual meeting who serves a term ending in 2015, after which the successor to such Class III Public Director will be elected for a three year term at the 2015 annual meeting [the initial Class I Public Director who serves a one-year term ending in 2013 after which the Class I Public Director will be elected for a three-year term]) and are

nominated by the Executive Chairman, with the approval of the Board of Directors. The Management Directors, who are the Corporation's Executive Chairman and President, serve one-year terms. This governance structure was carefully designed to meet the statutory requirements of "fair representation" and facilitates the performance of the Corporation's role as a market utility.

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

Criteria Applicable to all Directors

- Characteristics essential for effectiveness as a member of the Board, including, but not limited to, integrity, objectivity, sound judgment, and leadership;
- Expertise and experience in an area relevant to governance of the Corporation, including, but not limited to: (i) strategic planning, such as new business development, expansion of markets, products and customers, and joint venture development; (ii) risk management relevant to risks such as credit, market, liquidity, operational, legal and regulatory compliance, payment systems, clearance and settlement, new products, risk modeling, risk valuation, and systemic risk management; (iii) technology, such as infrastructure, applications development and maintenance, information security, and disaster recovery; (iv) operations; (v) trading; (vi) business management; (vii) finance; (viii) audit; (ix) governmental and legislative relationship management; (x) compensation and human resources; and (xi) legal, regulatory, and compliance expertise.
- Substantial seniority in own firm;
- Knowledge of securities and/or futures industries;
- Appropriate educational credentials or other certifications;
- For current directors eligible for re-election, length of service on the Board and attendance, and participation, and contribution at Board and committee meetings; and
- Appropriate weight given to diversity factors.

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

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

Additional Criteria for Member Directors

- Balanced representation among all Clearing Members;
- Balanced representation of all business activities of Clearing Members;
- Nature of the firm with which each prospective director is associated [with];
- Industry affiliations; [and

- Geographical distribution of Clearing Members.]
- Assure that not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume; and
- Develop a mix of Member Directors that includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors.

Additional Criteria for Exchange Directors

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

Additional Criteria for the Public Directors

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

Fitness Standards for Clearing Members

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

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

The Risk Committee may refuse to admit any person as a Clearing Member if the person is subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act. No person shall be qualified to be admitted as a Clearing Member if the person is subject to statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act.

Fitness Standards for Affiliates and Access Persons

No person affiliated, within the meaning of Section 5b(c)(2)(O) of the CEA, with a director of the Corporation or a Clearing Member ("Affiliates") shall:

- meet criteria for refusal to register a person under Section 8a(2) of the CEA; unless
- the Risk Committee finds that there are special circumstances warranting the waiver of such disqualification with respect to the Affiliate.

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

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