



February 27, 2017

**VIA ELECTRONIC MAIL**

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

**Re: Rule Filing SR-OCC-2017-002 Rule Certification**

Dear Secretary Kirkpatrick:

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

OCC has requested confidential treatment for Exhibits 5C and 5D to SR-OCC-2017-002, OCC’s “Dividend Policy” and “Refund Policy,” contained in pages 78-86 of the enclosed filing.

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

**Explanation and Analysis**

This proposed rule change by The Options Clearing Corporation (“OCC”) would amend OCC’s By-Laws, Rules, Board of Directors Charter (“Board Charter”), Compensation and Performance Committee Charter (“CPC Charter”), Dividend Policy, and Refund Policy to address organizational changes within OCC’s management structure. Specifically, OCC is proposing the following changes: (1) amendment of OCC’s By-Laws to provide that the Executive Chairman would also serve as Chief Executive Officer (“CEO”); (2) amendment of OCC’s By-Laws and Rules to reflect that the President would no longer be a recognized officer of OCC; (3) amendment of OCC’s By-Laws to provide that the Board would appoint the Chief Operating Officer (“COO”) and a newly recognized Chief Administrative Officer (“CAO”); (4) amendment of OCC’s By-Laws and Rules to provide that the COO and CAO would each have authority to take certain actions or grant exceptions where that authority was previously granted

to the President; (5) conforming changes to OCC's Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendment of OCC's By-Laws to separate the positions of Treasurer and Chief Financial Officer ("CFO"); and (7) a number of administrative and clean-up edits to the By-Laws and Rules. These changes are proposed as a result of the Board's continual evaluation of OCC's governance arrangements, and OCC believes that they represent leadership enhancements that promote OCC's efficient management and operation and would therefore improve OCC's ability to serve Clearing Members and the markets for which it clears.

All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>1</sup>

## **Overview of OCC's Management Structure**

### *Officers Appointed by the Board*

The organizational structure of OCC's management is primarily addressed in Article IV of the By-Laws (Officers). Under Article IV, Section 1, the Board is required to elect an Executive Chairman from among OCC's full-time employees and is also required to elect a President, Secretary, and a Treasurer, who are not required to be members of the Board at the time of their election.<sup>2</sup> The Board also has discretion to elect other officers or one or more Vice Presidents, as it may determine to be appropriate from time to time, to promote the efficient management and operation of OCC. In addition, under Article IV, Section 11 of the By-Laws, the Treasurer also serves as the CFO unless another person is designated by the Board of Directors to serve in that capacity.

### *Responsibilities and Authority of the Executive Chairman and the President*

Pursuant to OCC's By-Laws, the Executive Chairman is responsible for OCC's control functions, including, but not limited to, enterprise risk management, internal audit and compliance, and external affairs.<sup>3</sup> The President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman, administers OCC's day-to-day affairs in accordance with directions from the Executive Chairman, generally fulfills the duties and powers of the Executive Chairman if the Executive Chairman is ever absent or disabled and also serves

---

<sup>1</sup> OCC's By-Laws and Rules can be found on OCC's public website:  
<http://optionsclearing.com/about/publications/bylaws.jsp>.

<sup>2</sup> Under Article IV, Section 1 of the By-Laws, the Board is also required to elect the Vice Chairman of the Board from among the Member Directors.

<sup>3</sup> See Article IV, Section 6 of the By-Laws.

as OCC's COO.<sup>4</sup> The Executive Chairman and President also have those duties and powers that usually pertain to their offices and as may be further prescribed by the By-Laws and Rules, the Board, or a Board committee.<sup>5</sup>

In addition to officers who are elected by the Board, the Executive Chairman and President may, to the extent that they deem it necessary and appropriate, appoint officers and agents to carry out the functions that are assigned to them.<sup>6</sup> The Executive Chairman and President are responsible for the supervision of any such officers and agents they appoint.<sup>7</sup>

### **Proposed Changes to OCC's Management Structure**

OCC proposes a number of management structure changes in its By-Laws and Rules that are primarily related to the elimination of the office of President. Accordingly, the President's powers and duties would be allocated among other officers in OCC's management, and in many cases, the proposed changes are designed to vest the powers and duties of the President in the COO and CAO, without otherwise modifying OCC's management structure. In addition, OCC is proposing an amendment to its By-Laws to separate the positions of Treasurer and CFO. The proposed changes are described in detail below.

#### *(1) The Executive Chairman Also Serves as a Newly Recognized CEO*

Under the proposed rule change, the Executive Chairman would continue to be appointed by the Board and be responsible for OCC's control functions. However, OCC proposes to amend Article IV, Section 6 of the By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman and CEO would be responsible for all aspects of OCC's business and the day-to-day administration of its affairs that are not otherwise assigned to the COO or CAO. OCC notes that, under its current By-Laws, the

---

<sup>4</sup> See Article IV, Section 8 of the By-Laws.

<sup>5</sup> See Article IV, Section 5 of the By-Laws. For example, OCC's Rules provide the Executive Chairman and President with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the Corporation, other Clearing Members, or the general public (Rule 1104).

<sup>6</sup> See Article IV, Section 2 of the By-Laws.

<sup>7</sup> See Article IV, Sections 6 and 8 of the By-Laws.

President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman and is responsible for the day-to-day administration of OCC's affairs in accordance with the directions of the Executive Chairman. The proposed rule change would provide the Executive Chairman/CEO with explicit responsibility for overseeing all aspects of OCC's business and the day-to-day administration of its affairs, with the COO and CAO each being responsible for aspects of the business of OCC that do not report directly to the Executive Chairman and CEO and administering the day to day affairs and business of OCC in accordance with the directions of the Executive Chairman and CEO. In connection with this change, OCC's senior management would be reorganized within an Office of the Executive Chairman that would be comprised of the Executive Chairman (who would also serve as CEO), the COO and the CAO. OCC believes that this new management structure will combine the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(2) The President is No Longer a Recognized Officer of OCC*

OCC proposes a number of amendments throughout its By-Laws and Rules to remove references to the office of President to reflect the fact that the President would no longer be a recognized officer within OCC's management. As described in more detail below, all references to the authority and responsibilities of the President would generally be replaced with references to the COO and newly appointed CAO. OCC believes that eliminating the role of President and distributing the wide range of authority and responsibilities associated therewith to two senior officers (the CAO and COO) would provide for an even broader range of knowledge, skills, and experience within OCC's senior management team, promote more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(3) Election of the COO and CAO*

OCC proposes to amend Article IV, Sections 1, 8 and 13 of the By-Laws to provide that the Board would elect a COO and a CAO and would set the salaries for such officers. Accordingly, OCC would continue to have a COO within its management structure because, as noted above, the President also serves as COO under OCC's existing By-Laws. The CAO, however, is a newly recognized officer within OCC's management structure. As is currently the case regarding the President, neither the COO nor the CAO would be required to be a member of the Board upon election. Also, consistent with the existing prohibition against the same person holding any two of the offices of Executive Chairman, President and Member Vice Chairman,<sup>8</sup>

---

<sup>8</sup> See Article IV, Section 1 of the By-Laws.

the restriction would continue to apply but would reference the COO and CAO rather than the President. As noted above, OCC believes that eliminating the role of President and distributing the wide range of responsibilities associated therewith to the COO and a newly appointed CAO would provide for more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(4) Assignment of Certain Responsibilities to the COO and CAO*

The responsibility of management to carry out OCC's affairs is frequently assigned to groups of officers, including the Executive Chairman, President, and other officers of appropriate seniority. This approach provides important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled. To preserve the benefits of this structure given the elimination of the office of President, OCC proposes that the COO and CAO would instead assume certain responsibilities in the By-Laws and Rules where they are currently assigned, at least in part, to the President.

Under the proposed changes to Article IV, Section 8 of the By-Laws, the COO and CAO would be responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, as determined by the Board to promote the efficient and effective management and operation of OCC, and they would administer their responsibilities in accordance with directions from the Executive Chairman. Under the proposed management structure changes, the COO initially would be responsible for the oversight of OCC's technology and operations functions while the CAO would be responsible for the oversight of the finance, human resources, financial risk management, corporate planning, product and business development, and project management aspects of OCC's business. In addition, in the event of any absence or disability of the Executive Chairman, the COO and CAO would each have the authority and responsibility to fulfill the duties and have the powers of the Executive Chairman. However, in the absence or disability of the Executive Chairman, neither the COO nor the CAO would be permitted to preside at meetings of the Board or stockholders. This same restriction currently applies to the President.

Under the proposed amendments to Article IV, Sections 2, 3, 9, and 13 of the By-Laws, the COO and CAO each would have authority, consistent with the authority previously granted to the President, to appoint officers and agents as they deem necessary or appropriate to carry out the functions assigned to them. This includes, but is not limited to, the authority to appoint certain Vice Presidents within management. Any officers or agents who are appointed by the COO or CAO would be subject to their supervision and would be able to be removed by the COO and CAO, respectively, at any time, with or without cause. Such officers or agents would exercise powers and perform duties as determined by the COO or the CAO and the term and

salary<sup>9</sup> of any such positions would also be determined by the COO or CAO, respectively. The Executive Chairman and CEO would also have the authority to set the terms, powers, duties, and salaries of any officer or agent appointed by the COO or CAO and to remove officers or agents appointed by the COO and CAO.

Other examples of the responsibilities of the President being reallocated to the COO and CAO in the By-Laws and Rules include, but are not limited to, that the COO and CAO would, under certain conditions, have shared authority with the Executive Chairman and other officers to: (1) approve banks or trust companies as Approved Custodians; (2) declare the existence of an emergency and take related actions; (3) approve clearing membership applications and grant related extensions; (4) impose restrictions on options exercises; (5) determine reasonable means through which to borrow or otherwise obtain funds using Clearing Fund contributions; (6) sign certificates representing shares in OCC; (7) waive or suspend OCC's By-Laws, Rules, policies, procedures or any other of OCC's rules in emergency circumstances to protect OCC or the public interest; (8) impose restrictions on certain Clearing Member transactions, positions and activities; (9) extend settlement times in emergency conditions; (10) waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets;<sup>10</sup> and (11) authorize late filing of an exercise notice by a Clearing Member.<sup>11</sup>

OCC believes the proposed changes described above will result in an appropriate and effective management structure that combines the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears. Moreover, the proposed changes to OCC's management structure would provide important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue

---

<sup>9</sup> Any salary fixed by the COO or CAO would be subject to any contrary action taken by the Board, as is the case today regarding any officers or agents appointed by the Executive Chairman or the President. *See* Article IV, Section 13 of the By-Laws.

<sup>10</sup> *See* Rule 609A. OCC also proposes to make a ministerial change to this rule to clarify a reference to the Securities and Exchange Commission.

<sup>11</sup> *See* Proposed changes in (1) OCC By-Laws Article I, Section 1; (2) Article III, Section 15; (3) Article V, Sections 1 – 3, I&P .01; (4) Article VI, Section 17; (5) Article VIII, Section 5; (6) Article IX, Section 12; (7) Article IX, Section 14; (8) OCC Rule 305; (9) Rule 505; (10) Rule 609A; and (11) Rule 801.

carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled.

OCC also proposes to amend Article IV, Section 12 of the By-Laws to provide that, in the event of a vacancy of the office of Controller, the Executive Chairman (in addition to the Board) would have the authority to designate a person to serve as chief accounting officer of OCC until the office of Controller is filled. OCC believes it would be appropriate for the Executive Chairman to replace the President in this role given the Executive Chairman's capacity as Management Director.

*(5) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC also proposes to change certain references to the President that appear in its Board Charter, CPC Charter, Dividend Policy and Refund Policy. These changes are described below and would not otherwise modify OCC's management structure.

OCC proposes to amend the Board Charter to reflect that the Board has responsibility for selecting, overseeing and, where appropriate, replacing the COO and CAO, and that the Board evaluates and sets the compensation of these officers. The proposed amendments would also state that the Board provides counsel and advice to the COO and CAO and oversees those officers as part of the Board's evaluation of whether OCC's business is being appropriately managed. OCC notes that the proposed amendments are consistent with the Board's existing obligations with respect to the election and oversight of the President.

Additionally, OCC proposes to amend the CPC Charter to reflect that the CPC would generally oversee the compensation, benefits and perquisites of the COO and CAO, including responsibility for making associated recommendations to the Board, and to identify that the CPC is responsible for reviewing and approving the annual goals and objectives of the COO and CAO. OCC also proposes to amend the CPC Charter to reflect that the CPC will now meet at least annually with the COO and CAO (instead of the President) to discuss and review compensation and performance levels of senior management and other key officers. In addition, the CPC Charter would be amended to reflect that the CPC reviews OCC's employment contracts with the COO and CAO (in place of the President) and makes recommendations to the Board regarding related approvals.

OCC's Refund Policy would be amended to reflect that, in addition to the Executive Chairman, the COO or CAO would have authority under certain conditions to determine the payment date of refunds. This authority is currently reserved to the Executive Chairman and the President. OCC would also amend the Dividend Policy to reflect that, in addition to the Executive Chairman, the COO or CAO (rather than the President) would have authority under certain conditions to determine the payment date of dividends if for any reason OCC's Refund Policy is not in effect. As a housekeeping matter that is unrelated to the COO and CAO assuming

certain responsibilities of the President, OCC is also updating its Dividend Policy and Refund Policy to reflect that the SEC recently adopted its Standards for Covered Clearing Agencies.<sup>12</sup>

*(6) Separation of Treasurer and Chief Financial Officer Positions*

OCC proposes to amend Article IV, Section 11 of the By-Laws to eliminate a sentence that provides that OCC's Treasurer shall also serve as CFO absent another person being designated by the Board to serve in that capacity. Under the proposed rule change, the Board would continue to appoint OCC's Treasurer as currently required under Article IV, Section 1 of the By-Laws; however, the Treasurer would no longer automatically serve as CFO, and the Board would not be responsible for appointing OCC's CFO. OCC believes that separating these positions and eliminating this provision of the By-Laws will allow for greater flexibility relative to the structure, management and operation of OCC's corporate finance group.

*(7) Administrative and Clean-Up Changes*

OCC is proposing a number of administrative and clean-up changes to its By-Laws and Rules. Specifically, OCC proposes to add a definition of "Designated Officer" in Article I, Section 1 of the By-Laws. The term is already used elsewhere in OCC's By-Laws and Rules (e.g., Article III, Section 15 of the By-Laws and Rule 1102). OCC believes that locating this definition in Article, I, Section 1 of the By-Laws with the majority of the other definitions that are used in OCC's By-Laws and Rules promotes organizational consistency and clarity in OCC's legal framework. OCC also proposes to amend Interpretation and Policy .01 of Rule 309 to change a reference to "OCC" to "the Corporation" to conform to existing convention in OCC's By-Laws and Rules.

Additionally, OCC proposes to amend Interpretation and Policy .01 of Article III, Section 7 of the By-Laws, which concerns the use of the criteria of OCC's Fitness Standards for Directors, Clearing Members and Others in the election of Management Directors, to remove a reference to the President. OCC notes that, in addition to the proposed elimination of the office of President in this proposed rule change, in 2014, OCC adopted a proposed rule change providing that OCC's President would no longer be considered a Management Director.<sup>13</sup> OCC also proposes to amend Interpretation and Policy .02 of Rule 1104 to remove references to the Management Vice Chairman. In 2016, OCC adopted a proposed rule change to eliminate the

---

<sup>12</sup> Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).

<sup>13</sup> See Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).



role of Management Vice Chairman.<sup>14</sup> OCC is proposing to remove remaining references to this position that were intended to be removed as part of SR-OCC-2016-002.

Finally, OCC proposes a number of non-substantive amendments to correct typographical errors in the By-Laws and Rules (e.g., correction of typographical error in Rule 305(c) to refer to the “Executive” Chairman and in Rule 309A to state “an” Appointed Clearing Member).

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:

**Compliance with Core Principles Generally.** OCC believes that the proposed rule change will assist OCC in its requirement to comply with the Core Principles because it would implement leadership enhancements designed to promote the efficient and effective management and operation of OCC and would therefore improve OCC’s ability to focus on and comply with each of the Core Principles. OCC believes that having the Executive Chairman also serve as OCC’s CEO, reallocating the President’s duties and powers among the Executive Chairman, COO and CAO, authorizing the COO and CAO to take action or grant exceptions under certain conditions, and separating the positions of Treasurer and CFO, as described in detail above, would: (i) provide for a broad range of knowledge, skills, and experience within OCC’s management team, (ii) improve the alignment of officers’ responsibilities with their skills and experience and thereby enhance efficiency and effectiveness within OCC’s management, and (iii) ensure that there continues to be an appropriate allocation of duties and powers among officers such that management has the capacity to continue carrying out OCC’s affairs even if a particular officer is absent or disabled. Moreover, OCC believes the proposed management structure changes would provide clear and transparent governance arrangements designed to improve OCC’s ability to comply with the Core Principles and to serve Clearing Members and the markets for which it clears.

**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 management structure. OCC will post the amended By-Laws, Rules, and Board and Committee Charters 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.

---

<sup>14</sup> See Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

Christopher J. Kirkpatrick  
February 27, 2017  
Page 10

**Notice of Pending Rule Certification**

OCC hereby certifies that notice of this rule filing has been be 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,



Justin W. Byrne  
Vice President, Regulatory Filings

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, Rules, Board of Directors Charter (“Board Charter”), Compensation and Performance Committee Charter (“CPC Charter”), Dividend Policy, and Refund Policy to address organizational changes within OCC’s management structure. Specifically, OCC is proposing the following changes: (1) amendment of OCC’s By-Laws to provide that the Executive Chairman would also serve as Chief Executive Officer (“CEO”); (2) amendment of OCC’s By-Laws and Rules to reflect that the President would no longer be a recognized officer of OCC; (3) amendment of OCC’s By-Laws to provide that the Board would appoint the Chief Operating Officer (“COO”) and a newly recognized Chief Administrative Officer (“CAO”); (4) amendment of OCC’s By-Laws and Rules to provide that the COO and CAO would each have authority to take certain actions or grant exceptions where that authority was previously granted to the President; (5) conforming changes to OCC’s Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendment of OCC’s By-Laws to separate the positions of Treasurer and Chief Financial Officer (“CFO”); and (7) a number of administrative and clean-up edits to the By-Laws and Rules.

Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is marked by underlining and material proposed to be deleted is enclosed in bold brackets. The proposed changes to the Board Charter, CPC Charter, Dividend Policy, and Refund Policy can be found in Exhibit 5. All terms with initial capitalization that are not otherwise defined herein

have the same meaning as set forth in the OCC By-Laws and Rules.<sup>1</sup>

## THE OPTIONS CLEARING CORPORATION

### BY-LAWS

\* \* \*

### ARTICLE I

#### Definitions

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

#### A.

(1) – (12) [No change]

Approved Custodian

(13) The term “approved custodian” means a bank or trust company approved by the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [or the President].

B. – C. [No change]

#### D.

(1) – (7) [No change]

Designated Officer

(8) The term “Designated Officer” shall mean the Executive Chairman, Chief Operating Officer and Chief Administrative Officer and an officer of the Corporation of the rank of Senior Vice President or higher to whom the Executive Chairman, Chief Operating Officer or Chief

---

<sup>1</sup> OCC’s By-Laws and Rules can be found on OCC’s public website:  
<http://optionsclearing.com/about/publications/bylaws.jsp>.

Administrative Officer has delegated authority to perform a duty or exercise a power under these By-Laws and Rules.

(8) [Renumbered as (9); otherwise no change].

\* \* \*

### ARTICLE III

#### Board of Directors

\* \* \*

#### Management Directors

SECTION 7. [No change]

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

.01 Fitness Standards

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

\* \* \*

#### Emergency Powers

SECTION 15. (a) During any emergency which results, directly or indirectly, from an attack (including a terrorist attack) on the United States or on a locality in which the Corporation maintains an office or customarily holds meetings of the Board of Directors, or from a war, armed hostilities, insurrection or other calamity involving the United States or any such locality, or from any nuclear or atomic disaster, or from any other catastrophe, disaster, (including any environmental or natural disaster), communications systems failure, or other similar condition, in which a quorum (as specified in Article III of the By-Laws) of the Board of Directors or a standing committee thereof cannot readily be convened for action (an "Emergency"), the following provisions of this Section 15 shall be operative notwithstanding any other provision in any of the sections (other than Section 110) of the Delaware Corporation Law or in the Certificate of Incorporation, By-Laws or Rules of the Corporation. The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [or the President] or, if it is not feasible for the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [or the President] to take such

action, then a Designated Officer is authorized to declare the existence of such Emergency and to declare this By-Law to be in effect. The Executive Chairman, Chief Operating Officer, Chief Administrative Officer [the President,] or such Designated Officer, shall use his best efforts to attempt to consult with officials of the Securities and Exchange Commission (“SEC”) prior to declaring the existence of such Emergency; provided, however, that the authority contained herein shall not be conditioned by such consultation. The Corporation shall advise the SEC as soon as practicable by telephone, and confirmed in writing, of the declaration of an Emergency and the reasons therefor, and a record of such declaration shall be prepared and maintained in the records of the Corporation.

(b) During an Emergency, special meetings of the Board of Directors or a committee thereof may be called by the Executive Chairman, [the President,] Chief Operating Officer, Chief Administrative Officer or by a Designated Officer of the Corporation at any time. At least thirty minutes notice of any such special meeting shall be given to such of the directors as it may be feasible to reach at the time by such means as may be deemed feasible at the time by the Executive Chairman, [the President,] Chief Operating Officer, Chief Administrative Officer or the Designated Officer calling such meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.

(c) – (d) [No change]

(e) In the event the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [or the President] is authorized or directed by the By-Laws, the Rules, any resolution of the Board of Directors or a committee thereof, or any agreement to which the Corporation is a party to take any action, and it is not feasible for such officer to take such action, then such action may be taken by one of the others, and if it is not feasible for any of them to take such action, then such action may be taken by a Designated Officer in the order of priority provided in the resolution of the Board of Directors approving such list.

\* \* \*

## ARTICLE IV

### Officers

#### Selection by Board of Directors

SECTION 1. Upon the nomination of the Governance and Nominating Committee, an Executive Chairman of the Board, who shall by virtue of his office be a Management Director of the Corporation, shall be elected by the Board of Directors from among the full-time employees of the Corporation. Also upon the nomination of the Governance and Nominating Committee, a Vice Chairman of the Board shall be elected by the Board of Directors from among the Member

Directors. Such Vice Chairman shall be referred to as the Member Vice Chairman. The Board of Directors shall also elect a [President,] Chief Operating Officer, Chief Administrative Officer, Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election. The Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation. An officer shall hold his office for one year and until his successor is elected and qualified or until his earlier death, resignation or removal. Two or more offices may be held by the same person except the offices of Executive Chairman of the Board, [President] Chief Operating Officer, Chief Administrative Officer and Member Vice Chairman.

**Appointments by the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer [or President]**

SECTION 2. The Executive Chairman and Chief Executive Officer, Chief Operating Officer, and Chief Administrative Officer each may appoint such officers, in addition to those elected by the Board of Directors, and such agents as [he] they each shall deem necessary or appropriate to carry out the functions assigned to [him] them, [and the President may appoint such officers, in addition to those elected by the Board of Directors, and such agents as he shall deem necessary or appropriate to carry out the functions assigned to him, in each case] who shall hold their respective positions for such terms and shall exercise such powers and perform such duties as determined from time to time by the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer [or President], [as applicable]respectively; provided that the Executive Chairman and Chief Executive Officer also shall have the authority to set such terms, powers, and duties of any officer or agent appointed by the Chief Operating Officer or Chief Administrative Officer. Notwithstanding the foregoing, only the Board of Directors may elect an Executive Chairman, [President,] Chief Operating Officer, Chief Administrative Officer, Secretary or Treasurer of the Corporation.

**Removal**

SECTION 3. Any officer may be removed by the Board of Directors at any time with or without cause. Any officer or agent appointed by the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer may be removed by the Executive Chairman and Chief Executive Officer, Chief Operating Officer, or Chief Administrative Officer, respectively, [and any officer or agent appointed by the President may be removed by the President, in either case] at any time with or without cause; provided that the Executive Chairman and Chief Executive Officer also shall have the authority to remove any officer or agent appointed by the Chief Operating Officer or Chief Administrative Officer. Such removal shall be without prejudice to the contract rights, if any, of the person removed.

\* \* \*



### **Executive Chairman of the Board**

SECTION 6. (a) The Executive Chairman of the Board shall be an Executive Chairman responsible for the control functions of the Corporation including enterprise risk management, internal audit and compliance, and external affairs, and shall have supervision of the officers and agents appointed by him. The Executive Chairman shall also serve as the Corporation's Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation's business and the administration of its day to day affairs. Subject to the provisions of these By-Laws and the Rules, the Executive Chairman shall have the authority to suspend Clearing Members. The Executive Chairman shall preside at all meetings of the Board of Directors and the stockholders.

(b) [No change]

\* \* \*

### **[President] Chief Operating Officer and Chief Administrative Officer**

SECTION 8. The Board of Directors shall elect a Chief Operating Officer and a Chief Administrative Officer [President of the Corporation who shall be its Chief Operating Officer. The President] who shall be responsible for all aspects of the business of the Corporation that do not report directly to the Executive Chairman, as determined by the Board of Directors to promote the efficient and effective management and operation of the Corporation, shall administer the day to day affairs and business of the Corporation in accordance with the directions of the Executive Chairman and shall have supervision of the officers and agents appointed by [him] them. In the absence or disability of the Executive Chairman, the [President]Chief Operating Officer and Chief Administrative Officer each shall fulfill the duties and have the powers of the Executive Chairman[, except that the President shall not] provided, however, that neither the Chief Operating Officer nor the Chief Administrative Officer shall preside at meetings of the Board of Directors or the stockholders.

### **Vice Presidents**

SECTION 9. To the extent such offices are filled by the Board of Directors, the Executive Chairman, [or the President] the Chief Operating Officer or the Chief Administrative Officer, the Vice Presidents shall perform the respective duties and exercise the respective powers assigned to them by the Board of Directors or the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [or President], as applicable. In the absence or disability of the Executive Chairman, Chief Operating Officer and Chief Administrative Officer [the President], the Vice Presidents shall, in the order of their seniority or such order as may have been specified by the Board of Directors, the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President] at the time of their election, perform the duties and exercise the powers of the Executive Chairman, Chief Operating Officer and Chief Administrative Officer [the President],

except that no Vice President shall preside at meetings of the Board of Directors or the stockholders.

\* \* \*

### **Treasurer**

SECTION 11. Subject to the provisions of Article IX of the By-Laws, the Treasurer shall have the custody of the Corporation's funds and property and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other property of the Corporation in such depositories as may be designated from time to time by the Board of Directors.[ The Treasurer shall serve as the chief financial officer of the Corporation unless another person is designated by the Board of Directors to serve in that capacity.]

\* \* \*

### **Controller**

SECTION 12. The Controller shall serve as the chief accounting officer of the Corporation. In the event the office of Controller shall be vacant at any time, the Board of Directors or the Executive Chairman [President] shall designate the person who will serve as chief accounting officer until the office of Controller is filled.

### **Salaries**

SECTION 13. The salary, if any, of those officers elected by the Board of Directors shall be fixed by the Board of Directors, and (subject to any contrary action taken by the Board of Directors) the salary, if any, of all other officers, agents and employees appointed by the Executive Chairman and Chief Executive Officer, Chief Operating Officer or Chief Administrative Officer shall be fixed by the Executive Chairman and Chief Executive Officer, Chief Operating Officer or Chief Administrative Officer, respectively; [and all other officers, agents and employees appointed by the President shall be fixed by the President] provided that the Executive Chairman and Chief Executive Officer also shall have the authority to fix the salary, if any, of any officer or agent appointed by the Chief Operating Officer or Chief Administrative Officer. Members of the Board of Directors other than full-time employees of the Corporation shall be entitled to compensation for their services as directors at such rates as the Board of Directors may from time to time determine. Members of the Board of Directors may be reimbursed for their reasonable expenses in attending meetings of the Board of Directors or any Committee thereof.

**ARTICLE V**  
**Clearing Members**  
**Qualifications**

SECTION 1. (a) – (d) [No change]

*. . . Interpretations and Policies*

.01 - .02 [No change]

.03 Experience and Competence

\* \* \*

In the event that expedited treatment is requested for an application submitted pursuant to clause (e) above, the Executive Chairman, Chief Operating Officer, Chief Administrative Officer [the President], or any delegate of such officer, shall have the authority to approve or disapprove such application on a temporary basis. Any delegate shall be an officer of the rank of Senior Vice President or higher. Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the submitted application and shall determine de novo whether to approve or disapprove such application. Should the Risk Committee's determination result in the modification or reversal of the action taken by the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President], or any delegate of such officer, any acts taken by the Corporation prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. Notwithstanding the foregoing, in the event a Hedge Clearing Member submits an application to become a Market Loan Clearing Member pursuant to clause (e) above, the Executive Chairman, Chief Operating Officer, Chief Administrative Officer [the President] or any delegate of such officer shall have the authority to approve or disapprove such application without further review by the Risk Committee. Any delegate shall be an officer of the rank of Senior Vice President or higher.

\* \* \*

**Admission Procedure**

SECTION 2. (a) [No change]

(b) Authority to approve applications for clearing membership shall be delegated to the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President], provided that: (i) the Risk Committee's designated delegates or agents do not recommend that the

Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of this Article V, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period.

(c) [No change]

### **Conditions to Admission**

SECTION 3. [No change]

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

.01 Each applicant that has been approved for clearing membership subject to satisfaction of specified conditions shall meet all conditions applicable to its admission within six months from the date on which its application was approved, unless the Risk Committee prescribed an earlier date at the time the applicant was approved for clearing membership. In the event that an applicant fails to meet such conditions within the applicable time period, the approval of the application shall be deemed withdrawn and the application shall be deemed to have lapsed, unless the Corporation shall determine to extend the deadline for fulfilling such conditions. Any applicant seeking an extension under this paragraph shall submit a written request to the Secretary, specifying in detail any material changes that have occurred in applicant's financial condition, operational capability and experience and competence in clearing securities transactions from the date on which its application for clearing membership was approved by the Risk Committee. The Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] shall have the authority to approve or disapprove the applicant's request for an extension, which shall be communicated in writing to the applicant. In no event may that deadline be extended beyond one year from the date the application originally was approved.

\* \* \*

**ARTICLE VI**

**Clearance of Confirmed Trades**

\* \* \*

**Exercise Restrictions**

SECTION 17. (a) – (b) [No change]

*... Interpretations and Policies*

.01 The Executive Chairman, Chief Operating Officer, Chief Administrative Officer [the President,] or the delegatee of any of the foregoing shall have the authority to act on behalf of the Corporation in imposing exercise restrictions pursuant to this Section 17(b).

\* \* \*

**ARTICLE VIII**

**Clearing Fund**

\* \* \*

**Application of Clearing Fund**

SECTION 5. (a) – (d) [No change]

(e) If (i) the Corporation deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (b) but elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund; and in either case the Corporation determines that it will be unable to borrow or otherwise obtain such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation and use such assets to borrow or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions);

provided, in the case of any transaction effected under the circumstances specified in clause (i) above, that the funds obtained through such transaction will be used solely for the purposes described in clause (i). The funds obtained by the Corporation pursuant to this paragraph (e), irrespective of how such funds are applied, shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Section. If all or a part of any transaction effected by the Corporation pursuant to this paragraph (e) remains outstanding after thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount of Clearing Fund assets used to support the Corporation's obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Section.

\* \* \*

## ARTICLE IX

### GENERAL PROVISIONS

\* \* \*

#### Certificates of Shares

SECTION 12. Certificates representing shares of the Corporation shall be in such form and shall bear such legends as may be determined by the Board of Directors. Such certificates shall be signed by the Executive Chairman, Chief Operating Officer, Chief Administrative Officer [President] or a Vice-President and by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and the date of issue, shall be entered on the books of the Corporation. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

\* \* \*

#### Suspension of Rules in Emergency Circumstances

SECTION 14. (a) The Corporation's By-Laws, Rules, policies and procedures, or any other rules issued by the Corporation may be waived or suspended, or any time fixed thereby for the doing of any act or acts may be extended, by the Board of Directors, the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] whenever, in

his, her, or their judgment (i) an emergency exists and (ii) such suspension, waiver or extension is necessary or advisable for the protection of the Corporation or otherwise in the public interest in order for the Corporation to continue to facilitate the prompt and accurate clearance and settlement of confirmed trades or other transactions and to provide its services in a safe and sound manner. If such determination is made other than by the Board of Directors, then notice must be given to the Board of Directors as soon as practicable.

(b) – (c) [No change]

\* \* \*

## RULES

\* \* \*

## CHAPTER III

### Financial Requirements

\* \* \*

#### Restrictions on Certain Transactions, Positions and Activities

RULE 305. (a) If the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation shall at any time determine that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose restrictions on such Clearing Member's positions and stock loan and borrow positions with the Corporation, such officer shall have the authority (i) to prohibit or to impose limitations on the clearance of opening purchase transactions or opening writing transactions by such Clearing Member, (ii) to require such Clearing Member to reduce or eliminate existing unsegregated long positions or short positions in such Clearing Member's accounts with the Corporation, (iii) to require such Clearing Member to hedge existing unsegregated long positions or existing short positions for which a deposit in lieu of margin has not been made in accordance with the Rules in such Clearing Member's accounts with the Corporation, (iv) to prohibit or to impose limitations on the acceptance by the Corporation of Stock Loans entered into by such Clearing Member, (v) to require such Clearing Member to reduce or eliminate existing stock loan positions or stock borrow positions in such Clearing Member's accounts with the Corporation, (vi) to require such Clearing Member to hedge existing stock loan positions or stock borrow positions, and/or (vii) to require such Clearing Member to transfer any account maintained by such Clearing Member with the Corporation, any

position or stock loan or borrow position maintained in any such account, or any account carried by such Clearing Member, to another Clearing Member.

(b) If the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation shall at any time determine that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose restrictions on such Clearing Member's facilities management activities or activities as an Appointed Clearing Member, such officer shall have the authority to prohibit such Clearing Member from engaging in such activities or to impose such limitations on such activities as such officer deems necessary or appropriate in the circumstances.

(c) Any action taken by the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] with respect to a Clearing Member pursuant to paragraph (a) or (b) shall be subject to review by the Risk Committee of the Corporation upon submission by the Clearing Member of a request for review to the Secretary of the Corporation within five business days of the date such action is taken. The Risk Committee shall schedule an early hearing. The Clearing Member shall be given not less than one day's notice of the place and time of such hearing. At the hearing, the Clearing Member shall be afforded an opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A verbatim record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Risk Committee, be charged in whole or in part to the Clearing Member if the Risk Committee does not modify the action of the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President]. The Clearing Member shall be notified in writing of the outcome of the Risk Committee's review.

(d) [No change]

*... Interpretations and Policies:*

.01 - .06 [No change]

.07 The Clearing Member is experiencing such operational difficulties that the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] determines that action under Rule 305 is necessary or advisable in the circumstances.

.08 - .09 [No change]

.10 The Clearing Member, the Appointed Clearing Member of the Clearing Member or CDS (if the Clearing Member is a Canadian Clearing Member described in Rule 901) is experiencing such difficulty in meeting its obligations to the correspondent clearing corporation that the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] determines that action under Rule 305 is necessary or advisable in the circumstances.



\* \* \*

### **Managing Clearing Members and Managed Clearing Members**

RULE 309. (a) – (c) [No change]

(d) At any time when the net capital of a Managing Clearing Member shall be less than the minimum amount prescribed by paragraph (b) of this Rule 309, the Managing Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President of the Corporation] shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Managing Clearing Member and every Managed Clearing Member for which the Managing Clearing Member provides facilities management services.

(e) – (f) [No change]

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

.01 A Clearing Member that proposes to become a Managed Clearing Member may request an expedited review of its proposed facilities management agreement. If the Corporation in its sole discretion consents to perform such a review, then the Executive Chairman, Chief Operating Officer, Chief Administrative Officer, [President], or any delegate of such officer shall have the authority to determine whether the submitted agreement meets the requirements of paragraph (f) of this Rule and to approve or disapprove the agreement. Any delegate shall be an officer of the rank of Senior Vice President or higher. Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the agreement and determine de novo whether such requirements have been met and approve or disapprove the agreement. Should the Risk Committee's determination result in the modification or reversal of the action taken by the Executive Chairman, Chief Operating Officer, Chief Administrative Officer, [President,] or any delegate of such officer, any acts taken by the Corporation or the Clearing Member prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. If the Risk Committee disapproves a facilities management agreement that was previously approved by [OCC] the Corporation's management, the Clearing Member shall be given a reasonable period of time in which to enter into an appropriately revised agreement or cease to be a Managed Clearing Member.

.02 A Managed Clearing Member that proposes to operate without a facilities management agreement may request an expedited review of its proposal. If the Corporation in its sole discretion consents to perform such a review, then the Executive Chairman, Chief Operating Officer, Chief Administrative Officer [President,] or any delegate of such officer who is a Designated Officer

shall have the authority to determine whether the Managed Clearing Member has the operational capability, experience and competency to perform the managed services as specified in paragraph (e) of this Rule and to approve or disapprove termination of its facilities management agreement. [Any delegate shall be an officer of the rank of Senior Vice President or higher.] Thereafter, at the next scheduled meeting of the Risk Committee, the Risk Committee shall independently review the Managed Clearing Member's operational capability, experience and competency to determine de novo whether the requirements of paragraph (e) have been met and approve or disapprove such termination. Should the Risk Committee's determination result in the modification or reversal of the action taken by the Executive Chairman, Chief Operating Officer, Chief Administrative Officer [President], or any delegate of such officer who is a Designated Officer, any acts taken by the Corporation or the Clearing Member prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected. If the Risk Committee disapproves the termination of a facilities management agreement that was previously approved by the Corporation's management, the Clearing Member shall be given a reasonable period of time in which to enter into a new facilities management arrangement or terminate its clearing membership.

### **Appointed Clearing Members and Appointing Clearing Members**

RULE 309A. (a) – (b) [No change]

(c) At any time when the net capital of an Appointed Clearing Member shall be less than the minimum amount prescribed by paragraph (a) of this Rule 309A, the Appointed Clearing Member shall be subject to the restrictions on distributions set forth in Rules 304(a) and 304(b), and the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation shall have the authority to impose any or all of the limitations or restrictions set forth in Rule 305(a) on the positions, stock loan and borrow positions and transactions of the Appointed Clearing Member and each of its Appointing Clearing Members.

\* \* \*

## **CHAPTER V**

### **Daily Cash Settlement**

\* \* \*

### **Extension of Settlements**

RULE 505. The Board of Directors, Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] of the Corporation shall be authorized to extend, to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, any or all times at which

the Corporation is obligated to pay a settlement amount to Clearing Members as set forth in the By-Laws, Rules or procedures of the Corporation upon a determination that an emergency or force majeure condition exists which would make such extension necessary or advisable for the protection of the Corporation or is otherwise in the public interest. Such determination and the reasons therefor shall be promptly reported to the SEC, the CFTC and any other regulatory or supervisory agencies having jurisdiction over the Corporation, but the effectiveness of the settlement extension shall not be conditioned upon such report. As soon as practicable after such determination has been made, the Corporation shall notify Clearing Members thereof and, in general terms, what procedures shall be taken by the Corporation in connection therewith. Any determination made under this Rule shall be in the sole discretion of the Board of Directors, Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] of the Corporation, as applicable, and not subject to review. In the event a determination is made by [either] the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. A report detailing any extension of time for settlement shall be prepared and maintained with the records of the Corporation.

\* \* \*

## CHAPTER VI

### Margins

\* \* \*

### Waiver of Margin

RULE 609A. The Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation shall be authorized to waive, in whole or in part, conditionally or unconditionally, any deposit of margin that would otherwise be required to be made by any Clearing Member in any account at any time during any business day upon a determination that such waiver (i) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest and for the protection of investors, and (ii) is consistent with maintaining the financial integrity of the Corporation. Such officer shall use his best efforts to attempt to consult with officials of the Securities and Exchange Commission prior to granting any such waiver; provided, however, that the authority contained herein shall not be conditioned by such consultation. The Corporation shall advise its Board of Directors and the Securities and Exchange Commission as soon as practicable in writing of the granting of any such waiver and the reasons therefor, and a record of any such waiver shall be prepared and maintained with the records of the Corporation.

\* \* \*

## CHAPTER VIII

### Exercise and Assignment

\* \* \*

### Exercise of Options

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

(a) – (c) [No change]

(d) Notwithstanding the foregoing provisions of this Rule, and except as otherwise provided in this paragraph (d), the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President of the Corporation], or any delegate of such officer, may in the sole discretion of such person permit a Clearing Member to file any exercise notice after an applicable deadline prescribed pursuant to paragraph (a) of this Rule, solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer, subject to the following conditions:

(1) – (2) [No change]

(3) The Clearing Member shall deliver to the Corporation, within two business days after submitting a filing pursuant to this paragraph (d), a memorandum describing in reasonable detail the error that gave rise to such action. Every memorandum shall be reviewed by the Chief Operating Officer, Chief Administrative Officer, [President] or any other officer of the Corporation designated by the Chief Operating Officer or Chief Administrative Officer, as applicable [President], and, in his or her sole discretion such officer shall make a submission for remission of any late filing fee pursuant to subparagraph (d)(5).

(4) [No change]

(5) The Corporation may remit, in whole or in part, any late filing fee imposed pursuant to subparagraph (d)(2), if the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] finds that the filing giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member and its customer, or that remission is otherwise equitable in the circumstances.

\* \* \*

### **Allocation of Exercises**

RULE 804. Except as provided in the last sentence of this Rule 804, each Clearing Member shall establish fixed procedures for the allocation of exercises assigned in respect of short positions in the Clearing Member's accounts to specific option contracts included in such short positions. The allocation shall be made in accordance with the requirements set forth in Exchange Rules and any applicable rules of any self-regulatory organization of which the Clearing Member is a member. During the term of any restriction imposed on a Clearing Member pursuant to Rule 305, the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] may require the Clearing Member to report to the Corporation, not later than 8:00 A.M. Central Time (9:00 A.M. Eastern Time) on each business day, the name and address of each writer to whom the Clearing Member allocated an exercise assigned to the Clearing Member on the preceding business day. Such reports shall indicate, for each writer, the series of options for which an exercise was allocated and the number of contracts included in the allocation, and shall state whether any specific deposit or escrow deposit has been made in respect of such writer's short position in such series of options. The foregoing provisions of this Rule 804 shall not apply to the allocation of exercises of OTC options; and in the case of short positions in OTC options in respect of which the Corporation has assigned exercises to a particular customer ID, the Clearing Member shall allocate the exercise only to the customer associated with such customer ID.

### **Expiration Exercise Procedure**

RULE 805. (a) – (h) [No change]

(i) The Corporation may remit, in whole or in part, any filing fee imposed pursuant to subparagraph (g), if the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] finds that the tendering of the supplementary exercise notice giving rise to the fee was necessitated by circumstances beyond the reasonable control of the Clearing Member or its customer, or that remission is otherwise equitable under the circumstances.

\* \* \*

## **CHAPTER IX**

### **Delivery of Underlying Securities and Payment**

#### **Settlement Through Correspondent Clearing Corporations**

RULE 901. (a) – (c) [No change]

(d) A specification in any Delivery Advice that settlement is to be made through the facilities of the correspondent clearing corporation may be revoked by the Corporation at any time

prior to the opening of business on the delivery date by an appropriate notice to the Receiving and Delivering Clearing Members. In the event of such revocation, delivery and payment shall be made in accordance with Rules 903 through 912; provided, however, that the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation may, upon the application of the Receiving or the Delivering Clearing Member, extend or postpone the time for delivery to a date not more than three business days after the date of such revocation.

(e) – (h) [No change]

\* \* \*

### **Obligation to Deliver**

RULE 903. When a Delivery Advice or the Corporation directs that settlement be made on a broker-to-broker basis, the Delivering Clearing Member shall deliver each underlying security specified in the Delivery Advice against payment of the aggregate purchase price therefor on the delivery date specified therein, which, in the case of options, shall be the third business day following the day on which the exercise notice was, or is deemed to have been, properly tendered to the Corporation pursuant to Chapter VIII of the Rules, and, in the case of security futures, shall be the third business day following the maturity date, except for series that are designated by the Exchange on which such series are traded for settlement on the first business day following the maturity date of the applicable series, provided that:

(a) [No change]

(b) the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] or delegate of such officer may extend or postpone the time for delivery whenever, in such person's opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \*

## **CHAPTER XI**

### **Suspension of a Clearing Member**

\* \* \*

#### **Suspension**

RULE 1102. The Board of Directors or a Designated Officer of the Corporation may summarily suspend any Clearing Member which: (i) has been and is expelled or suspended from any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act of 1934,

as amended, but not including the Municipal Securities Rulemaking Board, or as defined in the rules of the Commodity Futures Trading Commission); (ii) fails to make any delivery of cash, securities or other property to the Corporation in a timely manner as required by the By-Laws or Rules; (iii) fails to make any delivery of funds or securities to another Clearing Member required pursuant to the By-Laws or Rules; (iv) fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner, has appointed an Appointed Clearing Member to act on its behalf and such Appointed Clearing Member fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner or effects settlement at the correspondent clearing corporation through an identifiable subaccount in an account of CDS at the correspondent clearing corporation and CDS fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner; (v) is in such financial or operating difficulty that the Board of Directors or a Designated Officer of the Corporation determines and so notifies the appropriate regulatory agency for such Clearing Member (or, in the case of a Non-U.S. Clearing Member, the appropriate Non-U.S. Regulatory Agency) and the Securities and Exchange Commission or the Commodity Futures Trading Commission that suspension is necessary for the protection of the Corporation, other Clearing Members, or the general public; or (vi) in the case of a Non-U.S. Clearing Member, has been and is expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange or clearing organization of which it is a member. In addition, the Board of Directors or a Designated Officer of the Corporation may summarily suspend any Clearing Member in accordance with Rule 707 or Article VI, Section 25 of the By-Laws. In the event that any Clearing Member is suspended, the Corporation shall cease to act for it except as hereinafter specified. [For purposes of this Rule 1102 as well as Rule 707 and Article VI, Section 25 of the By-Laws, a Designated Officer shall mean the Executive Chairman, the President or any delegate of such officer of the rank of Senior Vice President or higher.] If the determination to summarily suspend a Clearing Member is made other than by the Board of Directors, then notice of the suspension must be given to the Board of Directors as soon as practicable.

\* \* \*

### **Creation of Liquidating Settlement Account**

RULE 1104. (a) [No change]

(b) Notwithstanding the provisions of Rule 1104(a), if the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] shall determine in his discretion, taking into account the size and nature of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as such officer deems relevant, that the immediate liquidation of some or all of the suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the Corporation, other Clearing Members, or the general public, such

assets need not be immediately liquidated. In such case, pending the ultimate disposition of the suspended Clearing Member's margin deposits and contributions to the Clearing Fund, the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer [President] of the Corporation may, for purposes of satisfying such Clearing Member's obligations under the By-Laws and Rules, cause the Corporation to use such Clearing Member's margin deposits and/or contributions to the Clearing Fund to borrow or otherwise obtain funds from third parties through any means determined to be reasonable by such officer in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions). Any determination made pursuant to this paragraph shall be reported to the Board of Directors within 24 hours.

(c) – (f) [No change]

*. . . Interpretations and Policies*

.01 [No change]

.02 (a) For purposes of this Rule 1104 and Rules 1106, 1107, 2210 and 2210A, in order to minimize the execution and liquidity risks associated with (i) liquidating a suspended Clearing Member's margins deposited with the Corporation and Clearing Fund contributions (collectively referred to in this Interpretation and Policy as "Collateral"), (ii) closing out such Clearing Member's open positions in cleared contracts and stock loans (collectively referred to in this Interpretation and Policy as "Open Positions") and (iii) closing out exercised or matured cleared contracts to which such Clearing Member was a party either as the exercising Clearing Member or as the assigned Clearing Member (collectively referred to in this Interpretation and Policy as "Exercised/Matured Contracts"), the Corporation may elect to use one or more private auctions to liquidate all or any part of such Collateral, Open Positions and/or Exercised/Matured Contracts, as determined by the Board of Directors, the Executive Chairman, [the Management Vice-Chairman, or the President] Chief Operating Officer or Chief Administrative Officer of the Corporation. As used in this interpretation, the term "private auction" means an auction open to bidders invited by the Corporation pursuant to this interpretation and with respect to which bidders submit confidential bids. If such determination is made by the Executive Chairman, [the Management Vice-Chairman or the] Chief Operating Officer or Chief Administrative Officer [President] of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. The option to elect a private auction process is discretionary; the Corporation may use other procedures as provided for or permitted in the By-Laws and Rules to liquidate a suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts if the Corporation decides that circumstances warrant. The Corporation shall provide prompt notice to the Risk Committee (or other committee of the Board of Directors to which the auction oversight function is delegated) whenever a private auction is expected to be conducted.

\* \* \*



## Open Positions

RULE 1106. (a) – (d) [No change]

(e) Exceptions. (1) Notwithstanding the preceding provisions of this Rule, if the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President] shall determine in his discretion, taking into account the size and nature of a suspended Clearing Member's positions, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as such officer deems relevant, that the closing out of some or all of the suspended Clearing Member's unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, would not be in the best interests of the Corporation, other Clearing Members, or the general public, such positions need not be closed out, provided that any determination made pursuant to this paragraph shall be reported to the Board of Directors within 24 hours. This paragraph shall not apply to positions of any suspended Clearing Member as to which an application for a protective decree may be filed under Section 5(a)(3) of the Securities Investor Protection Act of 1970, as amended, except upon a determination by the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President] in his discretion, taking into account the circumstances enumerated in the preceding sentence, that the closing out of the suspended Clearing Member's open positions in accordance with the other provisions of this Rule would likely result in a loss to the Corporation (after application of such Clearing Member's margin and Clearing Fund deposits but before any proportionate charge to the Clearing Fund deposits of other Clearing Members).

(2) [No change]

(f) *Protective Action.*

If the Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President of the Corporation] shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to liquidate any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to liquidate any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours,

and any such transactions that are executed shall be reported to the Risk Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account, and (iii) costs, expenses and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

\* \* \*

### **CHAPTER XIII**

#### **Futures, Futures Options and Commodity Options**

\* \* \*

#### **Disciplinary Action for Failure to Deliver or Receive**

RULE 1309. If, without good cause, a Delivering Clearing Member fails to discharge its delivery obligations under Rule 1308A or 1308B, or a Receiving Clearing Member refuses to accept or fails to pay the settlement amount for an underlying interest tendered to it pursuant to Rule 1308A or 1308B, such failure or refusal may be deemed to constitute a delay embarrassing the operations of the Corporation, and may be subject to discipline under Chapter XII of the Rules. The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President] of the Corporation shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or receive.

\* \* \*

**CHAPTER XIV**

**Treasury Securities Options**

\* \* \*

**Exercise Settlement Date for Treasury Securities Options**

RULE 1402. (a) [No change]

(b) The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [the President of the Corporation], or the delegate of any such officer, may extend or postpone any exercise settlement date for Treasury securities options whenever, in its opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \*

**Disciplinary Action for Failure to Match**

RULE 1405. If a Delivering Clearing Member or a Receiving Clearing Member fails, without good cause, to timely submit accurate trade information to the real time trade matching system of FICC under Rule 1403, and the Corporation receives notice pursuant to Rule 1404(a) that the failure has not been resolved and the trade has not been successfully matched, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall be subject to discipline under Chapter XII of the Rules. The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President of the Corporation] shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or receive.

\* \* \*

**CHAPTER XVI**

**Foreign Currency Options**

\* \* \*

**Exercise Settlement Date for Foreign Currency Options**

RULE 1604. (a) [No change]

(b) The Executive Chairman, Chief Operating Officer, Chief Administrative Officer [or President] or delegate of such officer may advance or postpone any exercise settlement date for foreign currency options whenever, in its opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \*

#### **Disciplinary Action for Failure to Deliver or Pay**

RULE 1610. If, without good cause, a Delivering Clearing Member fails to discharge its guarantee or delivery obligations under Rule 1606, or a Paying Clearing Member fails to pay the settlement amount due pursuant to Rule 1606, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President of the Corporation] shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or pay.

\* \* \*

### **CHAPTER XXI**

#### **Cross-Rate Foreign Currency Options**

\* \* \*

#### **Exercise Settlement Date for Cross-Rate Foreign Currency Options**

RULE 2104. (a) [No change]

(b) The Executive Chairman, Chief Operating Officer, Chief Administrative Officer [or President] or delegate of such officer may advance or postpone any exercise settlement date for cross-rate foreign currency options whenever, in his or her opinion, such action is required in the public interest or to meet unusual conditions.

\* \* \*

#### **Disciplinary Action for Failure to Deliver or Pay**

RULE 2110. If, without good cause, a Paying Clearing Member fails to pay the Payment Amount pursuant to Rule 2106, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman, Chief Operating Officer or Chief

Administrative Officer [President of the Corporation] shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to deliver or pay.

\* \* \*

## CHAPTER XXIV

### **Flexibly Structured Index Options Denominated in a Foreign Currency**

\* \* \*

#### **Disciplinary Action for Failure to Pay**

RULE 2408. If, without good cause, a FX Index Option Clearing Member fails to pay the settlement amount due pursuant to Rule 2405, such failure shall be deemed to constitute a delay embarrassing the operations of the Corporation, and shall subject the Clearing Member to discipline under Chapter XII of the Rules. The Executive Chairman, Chief Operating Officer or Chief Administrative Officer [President of the Corporation] shall have the authority to determine, subject to review as provided in Chapter XII of the Rules, whether good cause existed for any such failure to pay.

\* \* \*

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

The proposed rule change was approved for filing with the Commission by the Board of Directors of OCC at meetings held on October 6, 2016, and December 15, 2016. On October 6, 2016, the holders of all the outstanding common stock of OCC also unanimously consented to the proposed amendments to Article III of the By-Laws, the Dividend Policy, and the Refund Policy.

Questions should be addressed to Justin Byrne, Vice President, Regulatory Filings at  
(202) 971-7238.

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

A. Purpose

The purpose of this proposed rule change is to implement organizational changes to OCC's management structure in OCC's By-Laws and Rules. Specifically, OCC is proposing the following changes: (1) amendment of OCC's By-Laws to provide that the Executive Chairman would also serve as CEO; (2) amendment of OCC's By-Laws and Rules to reflect that the President would no longer be a recognized officer of OCC; (3) amendment of OCC's By-Laws to provide that the Board would appoint the COO and a newly recognized CAO; (4) amendment of OCC's By-Laws and Rules to provide that the COO and CAO would each have authority to take certain actions or grant exceptions where that authority was previously granted to the President; (5) conforming changes to OCC's Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendment of OCC's By-Laws to separate the positions of Treasurer and CFO; and (7) a number of administrative and clean-up edits to the By-Laws and Rules. These changes are proposed as a result of the Board's continual evaluation of OCC's governance arrangements, and OCC believes that they represent leadership enhancements that promote OCC's efficient management and operation and would therefore improve OCC's ability to serve Clearing Members and the markets for which it clears.

**Overview of OCC's Management Structure**

*Officers Appointed by the Board*

The organizational structure of OCC's management is primarily addressed in Article IV of the By-Laws (Officers). Under Article IV, Section 1, the Board is required to elect an

Executive Chairman from among OCC's full-time employees and is also required to elect a President, Secretary, and a Treasurer, who are not required to be members of the Board at the time of their election.<sup>2</sup> The Board also has discretion to elect other officers or one or more Vice Presidents, as it may determine to be appropriate from time to time, to promote the efficient management and operation of OCC. In addition, under Article IV, Section 11 of the By-Laws, the Treasurer also serves as the CFO unless another person is designated by the Board of Directors to serve in that capacity.

*Responsibilities and Authority of the Executive Chairman and the President*

Pursuant to OCC's By-Laws, the Executive Chairman is responsible for OCC's control functions, including, but not limited to, enterprise risk management, internal audit and compliance, and external affairs.<sup>3</sup> The President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman, administers OCC's day-to-day affairs in accordance with directions from the Executive Chairman, generally fulfills the duties and powers of the Executive Chairman if the Executive Chairman is ever absent or disabled and also serves as OCC's COO.<sup>4</sup> The Executive Chairman and President also have those duties and powers that usually pertain to their offices and as may be further prescribed by the By-Laws and Rules, the

---

<sup>2</sup> Under Article IV, Section 1 of the By-Laws, the Board is also required to elect the Vice Chairman of the Board from among the Member Directors.

<sup>3</sup> See Article IV, Section 6 of the By-Laws.

<sup>4</sup> See Article IV, Section 8 of the By-Laws.

Board, or a Board committee.<sup>5</sup>

In addition to officers who are elected by the Board, the Executive Chairman and President may, to the extent that they deem it necessary and appropriate, appoint officers and agents to carry out the functions that are assigned to them.<sup>6</sup> The Executive Chairman and President are responsible for the supervision of any such officers and agents they appoint.<sup>7</sup>

### **Proposed Changes to OCC's Management Structure**

OCC proposes a number of management structure changes in its By-Laws and Rules that are primarily related to the elimination of the office of President. Accordingly, the President's powers and duties would be allocated among other officers in OCC's management, and in many cases, the proposed changes are designed to vest the powers and duties of the President in the COO and CAO, without otherwise modifying OCC's management structure. In addition, OCC is proposing an amendment to its By-Laws to separate the positions of Treasurer and CFO. The

---

<sup>5</sup> See Article IV, Section 5 of the By-Laws. For example, OCC's Rules provide the Executive Chairman and President with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the Corporation, other Clearing Members, or the general public (Rule 1104).

<sup>6</sup> See Article IV, Section 2 of the By-Laws.

<sup>7</sup> See Article IV, Sections 6 and 8 of the By-Laws.



proposed changes are described in detail below.

*(1) The Executive Chairman Also Serves as a Newly Recognized CEO*

Under the proposed rule change, the Executive Chairman would continue to be appointed by the Board and be responsible for OCC's control functions. However, OCC proposes to amend Article IV, Section 6 of the By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman and CEO would be responsible for all aspects of OCC's business and the day-to-day administration of its affairs that are not otherwise assigned to the COO or CAO. OCC notes that, under its current By-Laws, the President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman and is responsible for the day-to-day administration of OCC's affairs in accordance with the directions of the Executive Chairman. The proposed rule change would provide the Executive Chairman/CEO with explicit responsibility for overseeing all aspects of OCC's business and the day-to-day administration of its affairs, with the COO and CAO each being responsible for aspects of the business of OCC that do not report directly to the Executive Chairman and CEO and administering the day to day affairs and business of OCC in accordance with the directions of the Executive Chairman and CEO. In connection with this change, OCC's senior management would be reorganized within an Office of the Executive Chairman that would be comprised of the Executive Chairman (who would also serve as CEO), the COO and the CAO. OCC believes that this new management structure will combine the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve

Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(2) The President is No Longer a Recognized Officer of OCC*

OCC proposes a number of amendments throughout its By-Laws and Rules to remove references to the office of President to reflect the fact that the President would no longer be a recognized officer within OCC's management. As described in more detail below, all references to the authority and responsibilities of the President would generally be replaced with references to the COO and newly appointed CAO. OCC believes that eliminating the role of President and distributing the wide range of authority and responsibilities associated therewith to two senior officers (the CAO and COO) would provide for an even broader range of knowledge, skills, and experience within OCC's senior management team, promote more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(3) Election of the COO and CAO*

OCC proposes to amend Article IV, Sections 1, 8 and 13 of the By-Laws to provide that the Board would elect a COO and a CAO and would set the salaries for such officers. Accordingly, OCC would continue to have a COO within its management structure because, as noted above, the President also serves as COO under OCC's existing By-Laws. The CAO, however, is a newly recognized officer within OCC's management structure. As is currently the

case regarding the President, neither the COO nor the CAO would be required to be a member of the Board upon election. Also, consistent with the existing prohibition against the same person holding any two of the offices of Executive Chairman, President and Member Vice Chairman,<sup>8</sup> the restriction would continue to apply but would reference the COO and CAO rather than the President. As noted above, OCC believes that eliminating the role of President and distributing the wide range of responsibilities associated therewith to the COO and a newly appointed CAO would provide for more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(4) Assignment of Certain Responsibilities to the COO and CAO*

The responsibility of management to carry out OCC's affairs is frequently assigned to groups of officers, including the Executive Chairman, President, and other officers of appropriate seniority. This approach provides important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled. To preserve the benefits of this structure given the elimination of the office of President, OCC proposes that the COO and CAO would instead assume certain responsibilities in the By-Laws and Rules where they are currently

---

<sup>8</sup> See Article IV, Section 1 of the By-Laws.

assigned, at least in part, to the President.

Under the proposed changes to Article IV, Section 8 of the By-Laws, the COO and CAO would be responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, as determined by the Board to promote the efficient and effective management and operation of OCC, and they would administer their responsibilities in accordance with directions from the Executive Chairman. Under the proposed management structure changes, the COO initially would be responsible for the oversight of OCC's technology and operations functions while the CAO would be responsible for the oversight of the finance, human resources, financial risk management, corporate planning, product and business development, and project management aspects of OCC's business. In addition, in the event of any absence or disability of the Executive Chairman, the COO and CAO would each have the authority and responsibility to fulfill the duties and have the powers of the Executive Chairman. However, in the absence or disability of the Executive Chairman, neither the COO nor the CAO would be permitted to preside at meetings of the Board or stockholders. This same restriction currently applies to the President.

Under the proposed amendments to Article IV, Sections 2, 3, 9, and 13 of the By-Laws, the COO and CAO each would have authority, consistent with the authority previously granted to the President, to appoint officers and agents as they deem necessary or appropriate to carry out the functions assigned to them. This includes, but is not limited to, the authority to appoint certain Vice Presidents within management. Any officers or agents who are appointed by the COO or CAO would be subject to their supervision and would be able to be removed by the

COO and CAO, respectively, at any time, with or without cause. Such officers or agents would exercise powers and perform duties as determined by the COO or the CAO and the term and salary<sup>9</sup> of any such positions would also be determined by the COO or CAO, respectively. The Executive Chairman and CEO would also have the authority to set the terms, powers, duties, and salaries of any officer or agent appointed by the COO or CAO and to remove officers or agents appointed by the COO and CAO.

Other examples of the responsibilities of the President being reallocated to the COO and CAO in the By-Laws and Rules include, but are not limited to, that the COO and CAO would, under certain conditions, have shared authority with the Executive Chairman and other officers to: (1) approve banks or trust companies as Approved Custodians; (2) declare the existence of an emergency and take related actions; (3) approve clearing membership applications and grant related extensions; (4) impose restrictions on options exercises; (5) determine reasonable means through which to borrow or otherwise obtain funds using Clearing Fund contributions; (6) sign certificates representing shares in OCC; (7) waive or suspend OCC's By-Laws, Rules, policies, procedures or any other of OCC's rules in emergency circumstances to protect OCC or the public interest; (8) impose restrictions on certain Clearing Member transactions, positions and activities; (9) extend settlement times in emergency conditions; (10) waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets;<sup>10</sup> and (11)

---

<sup>9</sup> Any salary fixed by the COO or CAO would be subject to any contrary action taken by the Board, as is the case today regarding any officers or agents appointed by the Executive Chairman or the President. *See* Article IV, Section 13 of the By-Laws.

<sup>10</sup> *See* Rule 609A. OCC also proposes to make a ministerial change to this rule to clarify a reference to the Securities and Exchange Commission.

authorize late filing of an exercise notice by a Clearing Member.<sup>11</sup>

OCC believes the proposed changes described above will result in an appropriate and effective management structure that combines the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

Moreover, the proposed changes to OCC's management structure would provide important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled.

OCC also proposes to amend Article IV, Section 12 of the By-Laws to provide that, in the event of a vacancy of the office of Controller, the Executive Chairman (in addition to the Board) would have the authority to designate a person to serve as chief accounting officer of OCC until the office of Controller is filled. OCC believes it would be appropriate for the Executive Chairman to replace the President in this role given the Executive Chairman's

---

<sup>11</sup> See Proposed changes in (1) OCC By-Laws Article I, Section 1; (2) Article III, Section 15; (3) Article V, Sections 1 – 3, I&P .01; (4) Article VI, Section 17; (5) Article VIII, Section 5; (6) Article IX, Section 12; (7) Article IX, Section 14; (8) OCC Rule 305; (9) Rule 505; (10) Rule 609A; and (11) Rule 801.

capacity as Management Director.

*(5) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC also proposes to change certain references to the President that appear in its Board Charter, CPC Charter, Dividend Policy and Refund Policy. These changes are described below and would not otherwise modify OCC's management structure.

OCC proposes to amend the Board Charter to reflect that the Board has responsibility for selecting, overseeing and, where appropriate, replacing the COO and CAO, and that the Board evaluates and sets the compensation of these officers. The proposed amendments would also state that the Board provides counsel and advice to the COO and CAO and oversees those officers as part of the Board's evaluation of whether OCC's business is being appropriately managed. OCC notes that the proposed amendments are consistent with the Board's existing obligations with respect to the election and oversight of the President.

Additionally, OCC proposes to amend the CPC Charter to reflect that the CPC would generally oversee the compensation, benefits and perquisites of the COO and CAO, including responsibility for making associated recommendations to the Board, and to identify that the CPC is responsible for reviewing and approving the annual goals and objectives of the COO and CAO. OCC also proposes to amend the CPC Charter to reflect that the CPC will now meet at least annually with the COO and CAO (instead of the President) to discuss and review compensation and performance levels of senior management and other key officers. In addition, the CPC Charter would be amended to reflect that the CPC reviews OCC's employment

contracts with the COO and CAO (in place of the President) and makes recommendations to the Board regarding related approvals.

OCC's Refund Policy would be amended to reflect that, in addition to the Executive Chairman, the COO or CAO would have authority under certain conditions to determine the payment date of refunds. This authority is currently reserved to the Executive Chairman and the President. OCC would also amend the Dividend Policy to reflect that, in addition to the Executive Chairman, the COO or CAO (rather than the President) would have authority under certain conditions to determine the payment date of dividends if for any reason OCC's Refund Policy is not in effect. As a housekeeping matter that is unrelated to the COO and CAO assuming certain responsibilities of the President, OCC is also updating its Dividend Policy and Refund Policy to reflect that the Commission recently adopted its Standards for Covered Clearing Agencies.<sup>12</sup>

*(6) Separation of Treasurer and Chief Financial Officer Positions*

OCC proposes to amend Article IV, Section 11 of the By-Laws to eliminate a sentence that provides that OCC's Treasurer shall also serve as CFO absent another person being designated by the Board to serve in that capacity. Under the proposed rule change, the Board would continue to appoint OCC's Treasurer as currently required under Article IV, Section 1 of the By-Laws; however, the Treasurer would no longer automatically serve as CFO, and the Board would not be responsible for appointing OCC's CFO. OCC believes that separating these

---

<sup>12</sup> Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).



positions and eliminating this provision of the By-Laws will allow for greater flexibility relative to the structure, management and operation of OCC's corporate finance group.

*(7) Administrative and Clean-Up Changes*

OCC is proposing a number of administrative and clean-up changes to its By-Laws and Rules. Specifically, OCC proposes to add a definition of "Designated Officer" in Article I, Section 1 of the By-Laws. The term is already used elsewhere in OCC's By-Laws and Rules (e.g., Article III, Section 15 of the By-Laws and Rule 1102). OCC believes that locating this definition in Article, I, Section 1 of the By-Laws with the majority of the other definitions that are used in OCC's By-Laws and Rules promotes organizational consistency and clarity in OCC's legal framework. OCC also proposes to amend Interpretation and Policy .01 of Rule 309 to change a reference to "OCC" to "the Corporation" to conform to existing convention in OCC's By-Laws and Rules.

Additionally, OCC proposes to amend Interpretation and Policy .01 of Article III, Section 7 of the By-Laws, which concerns the use of the criteria of OCC's Fitness Standards for Directors, Clearing Members and Others in the election of Management Directors, to remove a reference to the President. OCC notes that, in addition to the proposed elimination of the office of President in this proposed rule change, in 2014, the Commission approved a proposed rule change providing that OCC's President would no longer be considered a Management Director.<sup>13</sup> OCC also proposes to amend Interpretation and Policy .02 of Rule 1104 to remove

---

<sup>13</sup> See Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

references to the Management Vice Chairman. Earlier this year, the Commission approved a proposed rule change by OCC to eliminate the role of Management Vice Chairman.<sup>14</sup> OCC is proposing to remove remaining references to this position that were intended to be removed as part of SR-OCC-2016-002.

Finally, OCC proposes a number of non-substantive amendments to correct typographical errors in the By-Laws and Rules (e.g., correction of typographical error in Rule 305(c) to refer to the “Executive” Chairman and in Rule 309A to state “an” Appointed Clearing Member).

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>15</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act<sup>16</sup> requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. Rule 17Ad-22(d)(1)<sup>17</sup> requires each registered clearing agency to provide for a well-founded transparent, and enforceable legal framework for each aspect of its operations in all relevant jurisdictions. Rule 17Ad-22(d)(8)<sup>18</sup> further requires each registered clearing agency to have clear and transparent

---

<sup>14</sup> See Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

<sup>15</sup> 15 U.S.C. 78q-1.

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>17</sup> 17 CFR 240.17Ad-22(d)(1).

<sup>18</sup> 17 CFR 240.17Ad-22(d)(8).

governance arrangements to, in part, fulfill the public interest requirements in Section 17A of the Act<sup>19</sup> and support the objectives of owners and participants.

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act<sup>20</sup> and the rules thereunder because it is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible by implementing certain leadership enhancements intended to promote OCC's efficient management and operation. Specifically, OCC believes that having the Executive Chairman also serve as OCC's CEO, reallocating the President's duties and powers among the Executive Chairman, COO and CAO, authorizing the COO and CAO to take action or grant exceptions under certain conditions, and separating the positions of Treasurer and CFO, as described in detail above, would: (i) provide for a broad range of knowledge, skills, and experience within OCC's management team, (ii) improve the alignment of officers' responsibilities with their skills and experience and thereby enhance efficiency and effectiveness within OCC's management, and (iii) ensure that there continues to be an appropriate allocation of duties and powers among officers such that management has the capacity to continue carrying out OCC's affairs even if a particular officer is absent or disabled. Moreover, OCC believes the proposed management structure changes would provide clear and transparent governance arrangements designed to improve OCC's ability to serve Clearing Members and the markets for

---

<sup>19</sup> 15 U.S.C. 78q-1.

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(A).

which it clears and thereby fulfill the public interest requirements in Section 17A of the Act<sup>21</sup> and support the objectives of owners and participants consistent with Rule 17Ad-2(d)(8).<sup>22</sup>

In addition, centralizing the definition of “Designated Officer” in Article I, Section 1 and making other clarifying, conforming and clean-up changes to OCC’s governing documents would promote organizational consistency and clarity in OCC’s legal framework to ensure that it remains well-founded, transparent and enforceable in all relevant jurisdictions in accordance with Rule 17Ad-22(d)(1).<sup>23</sup>

Finally, recently adopted Rule 17Ad-22(e)(2)<sup>24</sup> requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. OCC believes that the proposed amendments to its By-Laws, Rules, charters and policies would provide explicit, clear, and transparent statements of the responsibilities of its Executive Chairman/CEO, COO and CAO within the overall management structure of OCC in accordance with Rule 17Ad-22(e)(2).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

---

<sup>21</sup> 15 U.S.C. 78q-1.

<sup>22</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>23</sup> 17 CFR 240.17Ad-22(d)(1). For the same reasons, OCC believes that the proposed change also is consistent with recently adopted Rule 17Ad-22(e)(1), which requires covered clearing agencies to maintain written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. 17 CFR 240.17Ad-22(e)(1).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(2).

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

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>25</sup> OCC does not believe that the proposed rule change would impose any burden or have any impact on competition. The proposed rule change would implement certain leadership changes within OCC's management to have the Executive Chairman also serve as OCC's CEO, reallocate the President's duties and powers among the Executive Chairman, COO and CAO, authorize the COO and CAO to take action or grant exceptions under certain conditions, and decouple the positions of Treasurer and CFO. This proposed rule change would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. As a result, OCC believes the proposed rule change would not impact or 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.

---

<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(I).

**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. Board of Directors Charter.

Exhibit 5B. Compensation and Performance Committee Charter.

Exhibit 5C. Dividend Policy [REDACTED].

Exhibit 5D. Refund Policy [REDACTED].

**Confidential Treatment is Requested for Exhibits 5C and 5D Pursuant to SEC Rule 24b-2**

**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:** \_\_\_\_\_  
**Justin Byrne**  
**Vice President, Regulatory Filings**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2017-002)

February 22, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2017, 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 by OCC would amend OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and Performance Committee Charter ("CPC Charter"), Dividend Policy, and Refund Policy to address organizational changes within OCC's management structure. Specifically, OCC is proposing the following changes: (1) amendment of OCC's By-Laws to provide that the Executive Chairman would also serve as Chief Executive Officer ("CEO"); (2) amendment of OCC's By-Laws and Rules to reflect that the President would no longer be a recognized officer of OCC; (3) amendment of OCC's By-Laws to provide that the Board would appoint the Chief Operating Officer ("COO") and a newly recognized

---

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

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



Chief Administrative Officer (“CAO”); (4) amendment of OCC’s By-Laws and Rules to provide that the COO and CAO would each have authority to take certain actions or grant exceptions where that authority was previously granted to the President; (5) conforming changes to OCC’s Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendment of OCC’s By-Laws to separate the positions of Treasurer and Chief Financial Officer (“CFO”); and (7) a number of administrative and clean-up edits to the By-Laws and Rules.

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

The purpose of this proposed rule change is to implement organizational changes to OCC’s management structure in OCC’s By-Laws and Rules. Specifically, OCC is proposing the following changes: (1) amendment of OCC’s By-Laws to provide that the Executive Chairman would also serve as CEO; (2) amendment of OCC’s By-Laws and Rules to reflect that the President would no longer be a recognized officer of OCC; (3) amendment of OCC’s By-Laws to provide that the Board would appoint the COO and a newly recognized CAO; (4) amendment of OCC’s By-Laws and Rules to provide that the COO and CAO would each have authority to

take certain actions or grant exceptions where that authority was previously granted to the President; (5) conforming changes to OCC's Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendment of OCC's By-Laws to separate the positions of Treasurer and CFO; and (7) a number of administrative and clean-up edits to the By-Laws and Rules. These changes are proposed as a result of the Board's continual evaluation of OCC's governance arrangements, and OCC believes that they represent leadership enhancements that promote OCC's efficient management and operation and would therefore improve OCC's ability to serve Clearing Members and the markets for which it clears.

### **Overview of OCC's Management Structure**

#### *Officers Appointed by the Board*

The organizational structure of OCC's management is primarily addressed in Article IV of the By-Laws (Officers). Under Article IV, Section 1, the Board is required to elect an Executive Chairman from among OCC's full-time employees and is also required to elect a President, Secretary, and a Treasurer, who are not required to be members of the Board at the time of their election.<sup>3</sup> The Board also has discretion to elect other officers or one or more Vice Presidents, as it may determine to be appropriate from time to time, to promote the efficient management and operation of OCC. In addition, under Article IV, Section 11 of the By-Laws,

---

<sup>3</sup> Under Article IV, Section 1 of the By-Laws, the Board is also required to elect the Vice Chairman of the Board from among the Member Directors.

the Treasurer also serves as the CFO unless another person is designated by the Board of Directors to serve in that capacity.

*Responsibilities and Authority of the Executive Chairman and the President*

Pursuant to OCC's By-Laws, the Executive Chairman is responsible for OCC's control functions, including, but not limited to, enterprise risk management, internal audit and compliance, and external affairs.<sup>4</sup> The President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman, administers OCC's day-to-day affairs in accordance with directions from the Executive Chairman, generally fulfills the duties and powers of the Executive Chairman if the Executive Chairman is ever absent or disabled and also serves as OCC's COO.<sup>5</sup> The Executive Chairman and President also have those duties and powers that usually pertain to their offices and as may be further prescribed by the By-Laws and Rules, the Board, or a Board committee.<sup>6</sup>

In addition to officers who are elected by the Board, the Executive Chairman and President may, to the extent that they deem it necessary and appropriate, appoint officers and

---

<sup>4</sup> See Article IV, Section 6 of the By-Laws.

<sup>5</sup> See Article IV, Section 8 of the By-Laws.

<sup>6</sup> See Article IV, Section 5 of the By-Laws. For example, OCC's Rules provide the Executive Chairman and President with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the Corporation, other Clearing Members, or the general public (Rule 1104).

agents to carry out the functions that are assigned to them.<sup>7</sup> The Executive Chairman and President are responsible for the supervision of any such officers and agents they appoint.<sup>8</sup>

### **Proposed Changes to OCC's Management Structure**

OCC proposes a number of management structure changes in its By-Laws and Rules that are primarily related to the elimination of the office of President. Accordingly, the President's powers and duties would be allocated among other officers in OCC's management, and in many cases, the proposed changes are designed to vest the powers and duties of the President in the COO and CAO, without otherwise modifying OCC's management structure. In addition, OCC is proposing an amendment to its By-Laws to separate the positions of Treasurer and CFO. The proposed changes are described in detail below.

#### *(1) The Executive Chairman Also Serves as a Newly Recognized CEO*

Under the proposed rule change, the Executive Chairman would continue to be appointed by the Board and be responsible for OCC's control functions. However, OCC proposes to amend Article IV, Section 6 of the By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman and CEO would be responsible for all aspects of OCC's business and the day-to-day administration of its affairs that are not otherwise assigned to the COO or CAO. OCC notes that, under its current By-Laws, the President is responsible for all aspects of OCC's business that do not report directly to the Executive Chairman and is responsible for the day-to-day administration of OCC's affairs in accordance with the directions of the Executive Chairman. The proposed rule change would provide the Executive Chairman/CEO with explicit responsibility for overseeing all aspects of

---

<sup>7</sup> See Article IV, Section 2 of the By-Laws.

<sup>8</sup> See Article IV, Sections 6 and 8 of the By-Laws.

OCC's business and the day-to-day administration of its affairs, with the COO and CAO each being responsible for aspects of the business of OCC that do not report directly to the Executive Chairman and CEO and administering the day to day affairs and business of OCC in accordance with the directions of the Executive Chairman and CEO. In connection with this change, OCC's senior management would be reorganized within an Office of the Executive Chairman that would be comprised of the Executive Chairman (who would also serve as CEO), the COO and the CAO. OCC believes that this new management structure will combine the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(2) The President is No Longer a Recognized Officer of OCC*

OCC proposes a number of amendments throughout its By-Laws and Rules to remove references to the office of President to reflect the fact that the President would no longer be a recognized officer within OCC's management. As described in more detail below, all references to the authority and responsibilities of the President would generally be replaced with references to the COO and newly appointed CAO. OCC believes that eliminating the role of President and distributing the wide range of authority and responsibilities associated therewith to two senior officers (the CAO and COO) would provide for an even broader range of knowledge, skills, and experience within OCC's senior management team, promote more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the

markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(3) Election of the COO and CAO*

OCC proposes to amend Article IV, Sections 1, 8 and 13 of the By-Laws to provide that the Board would elect a COO and a CAO and would set the salaries for such officers. Accordingly, OCC would continue to have a COO within its management structure because, as noted above, the President also serves as COO under OCC's existing By-Laws. The CAO, however, is a newly recognized officer within OCC's management structure. As is currently the case regarding the President, neither the COO nor the CAO would be required to be a member of the Board upon election. Also, consistent with the existing prohibition against the same person holding any two of the offices of Executive Chairman, President and Member Vice Chairman,<sup>9</sup> the restriction would continue to apply but would reference the COO and CAO rather than the President. As noted above, OCC believes that eliminating the role of President and distributing the wide range of responsibilities associated therewith to the COO and a newly appointed CAO would provide for more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

*(4) Assignment of Certain Responsibilities to the COO and CAO*

The responsibility of management to carry out OCC's affairs is frequently assigned to groups of officers, including the Executive Chairman, President, and other officers of appropriate seniority. This approach provides important flexibility to help ensure that responsibility is not

---

<sup>9</sup> See Article IV, Section 1 of the By-Laws.

unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled. To preserve the benefits of this structure given the elimination of the office of President, OCC proposes that the COO and CAO would instead assume certain responsibilities in the By-Laws and Rules where they are currently assigned, at least in part, to the President.

Under the proposed changes to Article IV, Section 8 of the By-Laws, the COO and CAO would be responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, as determined by the Board to promote the efficient and effective management and operation of OCC, and they would administer their responsibilities in accordance with directions from the Executive Chairman. Under the proposed management structure changes, the COO initially would be responsible for the oversight of OCC's technology and operations functions while the CAO would be responsible for the oversight of the finance, human resources, financial risk management, corporate planning, product and business development, and project management aspects of OCC's business. In addition, in the event of any absence or disability of the Executive Chairman, the COO and CAO would each have the authority and responsibility to fulfill the duties and have the powers of the Executive Chairman. However, in the absence or disability of the Executive Chairman, neither the COO nor the CAO would be permitted to preside at meetings of the Board or stockholders. This same restriction currently applies to the President.

Under the proposed amendments to Article IV, Sections 2, 3, 9, and 13 of the By-Laws, the COO and CAO each would have authority, consistent with the authority previously granted to the President, to appoint officers and agents as they deem necessary or appropriate to carry out

the functions assigned to them. This includes, but is not limited to, the authority to appoint certain Vice Presidents within management. Any officers or agents who are appointed by the COO or CAO would be subject to their supervision and would be able to be removed by the COO and CAO, respectively, at any time, with or without cause. Such officers or agents would exercise powers and perform duties as determined by the COO or the CAO and the term and salary<sup>10</sup> of any such positions would also be determined by the COO or CAO, respectively. The Executive Chairman and CEO would also have the authority to set the terms, powers, duties, and salaries of any officer or agent appointed by the COO or CAO and to remove officers or agents appointed by the COO and CAO.

Other examples of the responsibilities of the President being reallocated to the COO and CAO in the By-Laws and Rules include, but are not limited to, that the COO and CAO would, under certain conditions, have shared authority with the Executive Chairman and other officers to: (1) approve banks or trust companies as Approved Custodians; (2) declare the existence of an emergency and take related actions; (3) approve clearing membership applications and grant related extensions; (4) impose restrictions on options exercises; (5) determine reasonable means through which to borrow or otherwise obtain funds using Clearing Fund contributions; (6) sign certificates representing shares in OCC; (7) waive or suspend OCC's By-Laws, Rules, policies, procedures or any other of OCC's rules in emergency circumstances to protect OCC or the public interest; (8) impose restrictions on certain Clearing Member transactions, positions and activities; (9) extend settlement times in emergency conditions; (10) waive the required margin

---

<sup>10</sup> Any salary fixed by the COO or CAO would be subject to any contrary action taken by the Board, as is the case today regarding any officers or agents appointed by the Executive Chairman or the President. *See* Article IV, Section 13 of the By-Laws.



deposit of a Clearing Member in the interest of maintaining fair and orderly markets;<sup>11</sup> and (11) authorize late filing of an exercise notice by a Clearing Member.<sup>12</sup>

OCC believes the proposed changes described above will result in an appropriate and effective management structure that combines the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

Moreover, the proposed changes to OCC's management structure would provide important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled.

OCC also proposes to amend Article IV, Section 12 of the By-Laws to provide that, in the event of a vacancy of the office of Controller, the Executive Chairman (in addition to the Board) would have the authority to designate a person to serve as chief accounting officer of OCC until the office of Controller is filled. OCC believes it would be appropriate for the

---

<sup>11</sup> See Rule 609A. OCC also proposes to make a ministerial change to this rule to clarify a reference to the Securities and Exchange Commission.

<sup>12</sup> See Proposed changes in (1) OCC By-Laws Article I, Section 1; (2) Article III, Section 15; (3) Article V, Sections 1 – 3, I&P .01; (4) Article VI, Section 17; (5) Article VIII, Section 5; (6) Article IX, Section 12; (7) Article IX, Section 14; (8) OCC Rule 305; (9) Rule 505; (10) Rule 609A; and (11) Rule 801.

Executive Chairman to replace the President in this role given the Executive Chairman's capacity as Management Director.

*(5) Conforming Changes to Certain OCC Charters and Policies*

In connection with the proposed changes described above, OCC also proposes to change certain references to the President that appear in its Board Charter, CPC Charter, Dividend Policy and Refund Policy. These changes are described below and would not otherwise modify OCC's management structure.

OCC proposes to amend the Board Charter to reflect that the Board has responsibility for selecting, overseeing and, where appropriate, replacing the COO and CAO, and that the Board evaluates and sets the compensation of these officers. The proposed amendments would also state that the Board provides counsel and advice to the COO and CAO and oversees those officers as part of the Board's evaluation of whether OCC's business is being appropriately managed. OCC notes that the proposed amendments are consistent with the Board's existing obligations with respect to the election and oversight of the President.

Additionally, OCC proposes to amend the CPC Charter to reflect that the CPC would generally oversee the compensation, benefits and perquisites of the COO and CAO, including responsibility for making associated recommendations to the Board, and to identify that the CPC is responsible for reviewing and approving the annual goals and objectives of the COO and CAO. OCC also proposes to amend the CPC Charter to reflect that the CPC will now meet at least annually with the COO and CAO (instead of the President) to discuss and review compensation and performance levels of senior management and other key officers. In addition, the CPC Charter would be amended to reflect that the CPC reviews OCC's employment

contracts with the COO and CAO (in place of the President) and makes recommendations to the Board regarding related approvals.

OCC's Refund Policy would be amended to reflect that, in addition to the Executive Chairman, the COO or CAO would have authority under certain conditions to determine the payment date of refunds. This authority is currently reserved to the Executive Chairman and the President. OCC would also amend the Dividend Policy to reflect that, in addition to the Executive Chairman, the COO or CAO (rather than the President) would have authority under certain conditions to determine the payment date of dividends if for any reason OCC's Refund Policy is not in effect. As a housekeeping matter that is unrelated to the COO and CAO assuming certain responsibilities of the President, OCC is also updating its Dividend Policy and Refund Policy to reflect that the Commission recently adopted its Standards for Covered Clearing Agencies.<sup>13</sup>

*(6) Separation of Treasurer and Chief Financial Officer Positions*

OCC proposes to amend Article IV, Section 11 of the By-Laws to eliminate a sentence that provides that OCC's Treasurer shall also serve as CFO absent another person being designated by the Board to serve in that capacity. Under the proposed rule change, the Board would continue to appoint OCC's Treasurer as currently required under Article IV, Section 1 of the By-Laws; however, the Treasurer would no longer automatically serve as CFO, and the Board would not be responsible for appointing OCC's CFO. OCC believes that separating these

---

<sup>13</sup> See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).

positions and eliminating this provision of the By-Laws will allow for greater flexibility relative to the structure, management and operation of OCC's corporate finance group.

*(7) Administrative and Clean-Up Changes*

OCC is proposing a number of administrative and clean-up changes to its By-Laws and Rules. Specifically, OCC proposes to add a definition of "Designated Officer" in Article I, Section 1 of the By-Laws. The term is already used elsewhere in OCC's By-Laws and Rules (e.g., Article III, Section 15 of the By-Laws and Rule 1102). OCC believes that locating this definition in Article, I, Section 1 of the By-Laws with the majority of the other definitions that are used in OCC's By-Laws and Rules promotes organizational consistency and clarity in OCC's legal framework. OCC also proposes to amend Interpretation and Policy .01 of Rule 309 to change a reference to "OCC" to "the Corporation" to conform to existing convention in OCC's By-Laws and Rules.

Additionally, OCC proposes to amend Interpretation and Policy .01 of Article III, Section 7 of the By-Laws, which concerns the use of the criteria of OCC's Fitness Standards for Directors, Clearing Members and Others in the election of Management Directors, to remove a reference to the President. OCC notes that, in addition to the proposed elimination of the office of President in this proposed rule change, in 2014, the Commission approved a proposed rule change providing that OCC's President would no longer be considered a Management Director.<sup>14</sup> OCC also proposes to amend Interpretation and Policy .02 of Rule 1104 to remove references to the Management Vice Chairman. Earlier this year, the Commission approved a

---

<sup>14</sup> See Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

proposed rule change by OCC to eliminate the role of Management Vice Chairman.<sup>15</sup> OCC is proposing to remove remaining references to this position that were intended to be removed as part of SR-OCC-2016-002.

Finally, OCC proposes a number of non-substantive amendments to correct typographical errors in the By-Laws and Rules (e.g., correction of typographical error in Rule 305(c) to refer to the “Executive” Chairman and in Rule 309A to state “an” Appointed Clearing Member).

## 2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>16</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act<sup>17</sup> requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. Rule 17Ad-22(d)(1)<sup>18</sup> requires each registered clearing agency to provide for a well-founded transparent, and enforceable legal framework for each aspect of its operations in all relevant jurisdictions. Rule 17Ad-22(d)(8)<sup>19</sup> further requires each registered clearing agency to have clear and transparent governance arrangements to, in part, fulfill the public interest requirements in Section 17A of the Act<sup>20</sup> and support the objectives of owners and participants.

---

<sup>15</sup> See Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

<sup>16</sup> 15 U.S.C. 78q-1.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>18</sup> 17 CFR 240.17Ad-22(d)(1).

<sup>19</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>20</sup> 15 U.S.C. 78q-1.

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act<sup>21</sup> and the rules thereunder because it is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible by implementing certain leadership enhancements intended to promote OCC's efficient management and operation. Specifically, OCC believes that having the Executive Chairman also serve as OCC's CEO, reallocating the President's duties and powers among the Executive Chairman, COO and CAO, authorizing the COO and CAO to take action or grant exceptions under certain conditions, and separating the positions of Treasurer and CFO, as described in detail above, would: (i) provide for a broad range of knowledge, skills, and experience within OCC's management team, (ii) improve the alignment of officers' responsibilities with their skills and experience and thereby enhance efficiency and effectiveness within OCC's management, and (iii) ensure that there continues to be an appropriate allocation of duties and powers among officers such that management has the capacity to continue carrying out OCC's affairs even if a particular officer is absent or disabled. Moreover, OCC believes the proposed management structure changes would provide clear and transparent governance arrangements designed to improve OCC's ability to serve Clearing Members and the markets for which it clears and thereby fulfill the public interest requirements in Section 17A of the Act<sup>22</sup> and support the objectives of owners and participants consistent with Rule 17Ad-2(d)(8).<sup>23</sup>

---

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>22</sup> 15 U.S.C. 78q-1.

<sup>23</sup> 17 CFR 240.17Ad-22(d)(8).

In addition, centralizing the definition of “Designated Officer” in Article I, Section 1 and making other clarifying, conforming and clean-up changes to OCC’s governing documents would promote organizational consistency and clarity in OCC’s legal framework to ensure that it remains well-founded, transparent and enforceable in all relevant jurisdictions in accordance with Rule 17Ad-22(d)(1).<sup>24</sup>

Finally, recently adopted Rule 17Ad-22(e)(2)<sup>25</sup> requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. OCC believes that the proposed amendments to its By-Laws, Rules, charters and policies would provide explicit, clear, and transparent statements of the responsibilities of its Executive Chairman/CEO, COO and CAO within the overall management structure of OCC in accordance with Rule 17Ad-22(e)(2).

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

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>26</sup> OCC does not believe that the proposed rule change would impose any burden or have

---

<sup>24</sup> 17 CFR 240.17Ad-22(d)(1). For the same reasons, OCC believes that the proposed change also is consistent with recently adopted Rule 17Ad-22(e)(1), which requires covered clearing agencies to maintain written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. 17 CFR 240.17Ad-22(e)(1).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(I).

any impact on competition. The proposed rule change would implement certain leadership changes within OCC's management to have the Executive Chairman also serve as OCC's CEO, reallocate the President's duties and powers among the Executive Chairman, COO and CAO, authorize the COO and CAO to take action or grant exceptions under certain conditions, and decouple the positions of Treasurer and CFO. This proposed rule change would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. As a result, OCC believes the proposed rule change would not impact or 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2017-002 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2017-002. 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 Room, 100 F Street, NE, 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/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_17\\_002.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_002.pdf).

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-2017-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.<sup>27</sup>

Robert W. Errett  
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: \_\_\_\_\_

---

<sup>27</sup> 17 CFR 200.30-3(a)(12).

**THE OPTIONS CLEARING CORPORATION  
BOARD OF DIRECTORS  
CHARTER**

**I. PURPOSE**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC” or the “Corporation”) is responsible for providing direction to and overseeing the conduct of the affairs of the Corporation (except as may otherwise be provided in OCC’s Certificate of Incorporation or its By-Laws and Rules).<sup>1</sup>

The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of OCC’s stakeholders. 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.

**II. MEMBERSHIP AND ORGANIZATION**

- A. Composition. The Board is comprised of one Management Director; five Public Directors; five Exchange Directors representing each of OCC’s Equity Exchanges; and nine Member Directors representing OCC clearing members.
- B. Qualification Standards. As set forth in the Corporate Governance Principles, the Board has adopted certain principles and criteria to be used in considering nominees for service as a Director, including the Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”), which is attached hereto. In addition and in order to achieve a balanced representation on the Board among Member Directors, the Board has determined that other considerations are to be taken into account in the nomination of 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.
- C. Election of Directors, Resignation and Disqualification. Election of the categories of Directors shall occur as discussed in the Corporate Governance

---

<sup>1</sup> 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. Capitalized terms used in this Charter shall have the meanings set forth in OCC’s By-Laws and Rules unless otherwise indicated.

Principles and 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.

- D. Tenure, Term and Age Limitations. The tenure of service of each category of Director is specified in OCC's By-Laws. The Management Director and the Exchange Directors are elected at each annual stockholder meeting and there are no term limitations with respect to such categories of Directors. Each class of Public Director is elected to a term of three years and there are no term limitations with respect to such categories of Directors. Each class of Member Director is elected to a term of three years subject to the term limitations described in the Corporate Governance Principles and By-Laws. No age limitations are imposed with respect to any category of Director.
- E. Vice Chairman of the Board. 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.
- F. Meetings. The Board shall meet a minimum of five times per year, with additional meetings called as the Board deems appropriate. Meetings of the Board shall be called by the Executive Chairman or the Executive Chairman's designee. The Executive Chairman shall, in consultation with other directors or officers of OCC, as well as the Corporate Secretary, establish an agenda in advance of each meeting, provided that 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 members of management and invited guests of the Board may be excluded. It is expected that management will be excluded from executive sessions or portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual Directors also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that Director has an actual or potential conflict of interest. The Board will meet in executive session at each regular Board meeting and will determine who will participate in such session. The Board shall select a Director to chair executive sessions in the absence of the Executive Chairman. The chair of the executive session shall determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. 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. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

- 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 for the transaction of business.
- H. Minutes. The Board shall maintain minutes of all Board meetings, which shall be furnished to the Directors for review.

### 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, the Chief Operating Officer, the Chief Administrative Officer,~~ 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 as provided in the By-Laws or otherwise.

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 the following standing committees: the Audit Committee, the Compensation and Performance Committee, the Governance and Nominating Committee, the Risk Committee and the Technology Committee.

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. 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.

#### 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 and its responsibilities as a designated systemically important financial market 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:

- Overseeing management's activities in managing, operating and developing OCC as a firm and evaluating management's performance in executing its responsibilities;
- Selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board ~~and the President, Chief Operating Officer, and Chief Administrative Officer~~;
- Providing counsel and advice to the Executive Chairman ~~and the President, Chief Operating Officer, and Chief Administrative Officer~~ as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed;
- Advising on, approving and overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines, as well as, monitoring OCC's performance in delivering clearance and settlement services;
- Setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC;
- Reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, annual budget and corporate plan, OCC's fee structure, and major corporate plans and actions, including capital expenditures, as well as, periodic review of the types and amounts of insurance coverage available in light of OCC's clearing operations;

- Providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee;
- Fostering OCC's ability to ensure compliance with applicable laws and regulations, including banking, securities and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;
- Overseeing governance processes in a manner consistent with this Charter, including reviewing Committee charters and reports of Committee activities; effecting Committee appointments; performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual Directors and committee members; and evaluating the Corporate Governance Principles and Fitness Standards;
- Reviewing the amount of compensation for Public Directors;
- Providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices;
- Reviewing the annual study and evaluation of OCC's system of internal accounting controls;
- Evaluating and fixing the compensation of the Executive Chairman ~~and President,~~ Chief Operating Officer, and Chief Administrative Officer, overseeing succession planning, human resource programs, and talent management processes, and overseeing the development and design of employee compensation, incentive and benefit programs;
- Overseeing OCC's information technology strategy, infrastructure, resources and risks; and
- Performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's 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.

## **VI. REVIEW CYCLE**

This Charter, along with the Corporate Governance Principles and the Fitness Standards, shall be annually reviewed by the Board of Directors.



## THE OPTIONS CLEARING CORPORATION COMPENSATION AND PERFORMANCE COMMITTEE CHARTER

### I. Purpose

The Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) has established a Compensation and Performance Committee (the “Committee”) to assist the Board in (i) overseeing the overall performance of OCC in promptly and accurately delivering clearance, settlement and other designated industry services, and the accomplishment of other periodically established corporate goals and objectives in light of OCC’s role as a systemically important financial market utility; (ii) overseeing OCC’s Capital Plan and financial performance; (iii) overseeing OCC’s Human Resources program; (iv) overseeing the structure, design and funding, as applicable, of employee (including management) compensation, incentive and benefit programs; and (v) recommending the compensation of the Executive Chairman ~~and the President, Chief Operating Officer, and Chief Administrative Officer~~ to the Board and approving the compensation of members of the Management Committee and certain other key officers, as appropriate.

### II. Membership and Organization

- A. Composition. The Committee shall consist of the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board. The Board may remove or replace any member of the Committee at any time. The Chair of the Committee shall be a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair.
- B. Meetings. The Committee will meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair of the executive session. 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. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone is discouraged.

The Committee shall meet at least annually with the Executive Chairman, ~~the President, Chief Operating Officer, Chief Administrative Officer~~ and any other corporate officers the Committee deems appropriate to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

The Committee shall meet annually to determine the compensation levels of members of the Management Committee and certain other key officers, as appropriate. Except as otherwise requested by the other members of the Committee, the Executive Chairman shall recuse himself from any discussion of his individual compensation, benefits, or perquisites.

- C. Quorum. A majority of the Committee members shall constitute a quorum for the transaction of business.
- D. Minutes and Reports. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board. On an annual basis, the Committee shall provide a report to the Board summarizing its activities during the previous year.

### 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 OCC to the extent it may deem necessary or appropriate to fulfill its duties.

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. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

- B. Delegation. The Committee may form and delegate authority to subcommittees, may delegate authority to one or more designated members of the Committee, and may delegate authority to the Administrative Committee.

#### IV. Functions and Responsibilities

The Committee's role is one of oversight. Management is responsible for identifying, organizing, and managing the operational, systems, technology, financial, human, and other resources necessary to support the OCC's clearance, settlement and other business activities in light of its role as a systemically important financial market utility.

The Committee shall have the following functions and responsibilities in discharging its oversight role:

##### Capital Structure, Financial Planning, and Corporate Goals and Objectives

- To oversee management's processes for determining, monitoring and evaluating the adequacy of OCC's Capital Plan, including the maintenance of required regulatory capital, and to recommend any Capital Plan changes to the Board.
- To review and approve changes in OCC's fees pursuant to the Capital Plan, including authorizing the filing of regulatory submissions relating thereto.
- To review annually the Fee, Refund and Dividend Policies, make recommendations to the Board regarding changes, if any, to such Policies, and make recommendations to the Board for payments, if any, under the Refund and Dividend Policies.
- To oversee the corporate financial planning process, including reviewing the corporate budget for each fiscal year (including anticipated capital expenditures) and make recommendations to the Board regarding revisions thereto and the adoption thereof.
- To review and approve significant unanticipated capital expenditures or, where appropriate, make recommendations with respect thereto to the Board.

- To review and recommend to the Board changes to OCC's fee structure.
- To review special financial matters as requested by the Board.
- To review the annual corporate goals and objectives and recommend their approval to the Board and routinely receive reports regarding progress in achieving such goals and objectives.

#### Human Resources and Compensation Programs

- To oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, performance management, training and development, benefits and succession planning for key roles.
- To periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation; and seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel.
- To review and approve the annual goals and objectives of the Executive Chairman ~~and the President, Chief Operating Officer, and Chief Administrative Officer.~~
- To approve on an annual basis funding, if any, of OCC's incentive compensation programs.
- To review performance and approve compensation of Management Committee members and other key officers, as appropriate, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman ~~and the President, Chief Operating Officer, and Chief Administrative Officer.~~
- In general, to oversee the compensation, benefits, and perquisites of OCC's executive management personnel, provided that decisions with respect to those of the Executive Chairman ~~and the President, Chief Operating Officer, and Chief Administrative Officer~~ and any special benefits or perquisites for those officers shall be made in the form of recommendations to the Board.
- To review proposed material changes to executive management benefits.
- To periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.

#### Employee Benefit Programs

- To oversee OCC's employee benefit, retiree benefit, and welfare benefit programs and plans, as well as the operation and administration thereof, including funding obligations (if any).
- To appoint (and remove) members of the Administrative Committee and oversee and monitor the activities of the Administrative Committee with respect to retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and perform such other oversight duties as called for in retirement, retirement and savings and welfare plan documents.

#### Other

- To review employment contracts and approve the same, or, in the case of contracts with the Executive Chairman ~~or the President~~, Chief Operating Officer, or Chief Administrative Officer, to make recommendations to the Board with respect to the approval thereof.
- To provide periodic updates as may be necessary or advisable under the circumstances (but not less frequently than annually) to the Board regarding (i) actions taken by the Committee with respect to its review of OCC's compensation, retirement and welfare benefit plans, (ii) the financial position and performance of such plans, and (iii) adherence to investment guidelines, in each case, where applicable.
- To adopt new compensation, retirement and welfare benefit plans and to amend or terminate existing plans other than such plans that require Board action to amend or terminate.
- To periodically review OCC's insurance program.
- To perform such other activities consistent with the Charter, as the Committee or the Board may deem necessary or appropriate.
- To confirm annually that all responsibilities outlined in this Charter have been carried out.
- To annually evaluate the Committee's and individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.

#### **V. Review Cycle**

The Committee will 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 5C**

**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**



**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**

**EXHIBIT 5D**

**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**