August 30, 2016

VIA CFTC PORTAL

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2016-009 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 (the "SEC") or otherwise becomes effective under the Securities Exchange Act of 1934 (the "Exchange Act"). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act. This rule filing amends and replaces in its entirety filing SR-OCC-2015-011, previously submitted by OCC.

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

Explanation and Analysis

The purpose of this proposed rule change is to improve the resiliency of OCC's escrow deposit program. The changes would: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) provide more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; (3) clarify clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. Upon implementation of the proposed rule change, all securities collateral in OCC's escrow deposit program would be held at the Depository Trust Company ("DTC"), and custodian banks would only be allowed to hold cash collateral.

The narrative below is comprised of four sections. The first section provides a background of OCC's current escrow deposit program as well as an overview of the proposed changes to the rules and agreements that govern the escrow deposit program. The second section discusses the changes associated with: (1) increasing OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) providing more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; and, (3) clarifying clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member as well as providing additional detail concerning the manner in which clearing members may take possession of such collateral. The third section discusses proposed technical and conforming changes to the rules and agreements governing the current escrow deposit program that would allow OCC to consolidate all such terms into a single location in OCC's Rulebook. The second and third sections also discuss changes that improve the readability of the rules governing OCC's escrow deposit program, which is primarily achieved by consolidating all such rules into a single location in OCC's Rulebook. The fourth section discusses the manner in which OCC proposes to transition from the current escrow deposit program to the new escrow deposit program, including the removal of certain rules and contractual provisions that would no longer be applicable to the new escrow deposit program.

SECTION 1: BACKGROUND AND OVERVIEW OF PROPOSED RULE CHANGES

Background/Current Escrow Deposit Program

Each day OCC collects collateral from its clearing members in order to protect OCC and the markets it serves from potential losses stemming from a clearing member default. Approximately half of the collateral deposited by clearing members at OCC is deposited through OCC's escrow deposit program. Users of OCC's escrow deposit program are customers of clearing members who, through the escrow deposit program, are permitted to collateralize eligible positions directly with OCC (instead of with the relevant clearing member who would, in turn, deposit margin at OCC). Currently, collateral deposits made through OCC's escrow deposit program are characterized as either "specific deposits" or "escrow deposits." Specific deposits are deposits of the security underlying a given options position and are made through DTC by a clearing member on behalf of its customer (at the direction of the customer).[1] Escrow deposits are deposits of cash or securities made by a custodian bank on behalf of a customer of an OCC clearing member in support of an eligible options position. OCC's Rules currently contemplate two forms of escrow deposits: "third-party escrow deposits" and "escrow program deposits." Third-party escrow deposits are substantially similar to specific deposits except for the fact that third-party escrow deposits are made by a custodian bank, and not a clearing

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[1] For example, if customer XYZ holds a short position of options on AAPL, customer XYZ could, through its clearing member's DTC account, pledge shares of AAPL to OCC in order to collateralize such options position and not be charged margin by OCC.

member. Third-party escrow deposits consist entirely of securities and, like specific deposits, are made through DTC. In order to effect third-party specific deposits, custodian banks must be DTC members. Escrow program deposits are bank deposits of eligible securities or cash, which are held at the custodian bank (versus third-party escrow deposits and specific deposits, which are held at DTC).

When a customer of a clearing member makes a deposit in lieu of margin through OCC's escrow deposit program, the relevant positions are excluded from the clearing member's margin requirement at OCC. The escrow deposit program therefore provides users of OCC's services with a means to more efficiently use cash or securities they may have available.

Overview of Rule Changes (including terminology changes) and New Agreements

Rule Consolidation and Terminology Changes

Currently, the rules concerning OCC's escrow deposit program are located in OCC Rules 503, 610, 613 and 1801. Additionally, OCC and custodian banks participating in OCC's escrow deposit program enter into an Escrow Deposit Agreement ("EDA"), which also contains substantive provisions governing the program. OCC is proposing to consolidate all of the rules concerning the escrow deposit program, including the provisions of the EDA relevant to the revised escrow deposit program, into proposed Rules 610, 610A, 610B and 610C.[2] OCC believes that consolidating the many rules governing the escrow deposit program into a single location would significantly enhance the understandability and transparency of the rules concerning the escrow deposit program for current users of the program as well as any persons that may be interested in using the program in the future.

In connection with the above described rule consolidation, OCC is also proposing to rename the types of escrow deposits available within the escrow deposit program, as well as rename the term "approved depository" to "approved custodian." Specific deposits would now be called "member specific deposits," which are equity securities deposited by clearing members at DTC at the direction of their customers; third-party escrow deposits would now be called "third-party specific deposits," which are equity securities deposited by custodian banks at DTC at the direction of their customers; and, escrow program deposits would now be called, "escrow deposits," which are either cash deposits held at a custodian bank for the benefit of OCC, or Government securities deposited at DTC by custodian banks at the direction of their customers.

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[2] As described herein, OCC is proposing to eliminate the EDA based on such consolidation. When appropriate, and as described in more detail below, conforming changes were made to certain Rules as a result of OCC proposing to require that all non-cash deposits in the escrow deposit program be made through DTC (and not held at custodian banks).

The term "approved depository" would also be changed to "approved custodian" to eliminate any potential confusion with the term "Depository," which is defined in the Rules, to mean DTC.

New Rule Organization

With respect to the rules governing the escrow deposit program, proposed Rule 610 would set forth general terms and conditions common to all types of deposits permitted under the escrow deposit program. Specifically, proposed Rule 610: (1) sets forth the different types of eligible positions for which a deposit in lieu of margin may be used, (2) sets forth operational aspects of the escrow deposit program such as the days and the times during which a deposit in lieu of margin may be made and where the different types of deposits in lieu of margin must be maintained (either DTC or a custodian bank), (3) provides the conditions under which OCC may take possession of a deposit in lieu of margin (from DTC or a custodian bank), and (4) describes OCC's security interest in deposits in lieu of margin.[3] Proposed Rule 610 is supplemented by: (1) proposed Rule 610A for member specific deposits, (2) proposed Rule 610B for third-party specific deposits, and (3) proposed Rule 610C for escrow deposits. Proposed Rules 610A, 610B and 610C provide further guidance and specificity on the topics initially addressed in proposed Rule 610 (and delineated above) as they relate to member specific deposits, third-party specific deposits and escrow deposits, respectively.

The new rule structure differs from the existing rule structure in that existing Rules 503, 610, 613 and 1801 discuss topics concerning deposits in lieu of margin (such as withdrawal, roll-over[4] and release) in general terms and without regard to the type of deposit in lieu of margin. The existing rule structure also does not provide operational details of the escrow deposit program. The new rule structure discusses each aspect of OCC's escrow deposit program by type of deposit in lieu of margin (member specific deposits, third-party specific deposit or escrow deposits) as well as provides operational details concerning the program. OCC believes that the more detailed presentation of the new rules concerning the escrow deposit program enhances the understandability of the program to all users, and potential users, of the program

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3 OCC would continue to maintain a perfected security interest in deposits in the escrow deposit program under the proposed Rules notwithstanding changes to the location of the rules that perfect such security interest. OCC's security interest in securities deposits in the escrow deposit program, which are held at DTC, is perfected by operation of DTC's rules. OCC's security interest in cash deposits in the escrow deposit program is perfected under proposed Rules 610C(i), 610C(j) and 610C(k), which replace Sections 3.3, 3.4, 4.3, 4.4, 5.3, 5.4 and 21 of the EDA. Proposed Rule 610(g) also concerns OCC's security interest in deposits in escrow deposit program.

4 A "roll-over" occurs when a customer chooses to maintain an existing escrow deposit after the options supported by the escrow deposit expires, or are closed-out, and the customer re-allocates the escrow deposit to a new options position.

because all such persons will be able to better understand how topics apply by type of deposit in lieu of margin and with regard to the operational differences between each type of deposit in lieu of margin.

Agreements Concerning the Escrow Deposit Program

In addition to the above-described Rule changes, many provisions of the EDA would be moved into the Rules. Accordingly, OCC is proposing to eliminate the EDA and replace it with a simplified agreement entitled the "Participating Escrow Bank Agreement."[5] The Participating Escrow Bank Agreement would provide that custodian banks are subject to all terms of the Rules governing the revised escrow deposit program,[6] as they may be amended from time to time.[7] The Participating Escrow Bank Agreement would contain eligibility requirements for custodian banks, including representations regarding the custodian bank's Tier 1 Capital,[8] and provide OCC with express representations concerning the bank's authority to enter into the Participating Escrow Bank Agreement.[9] Moreover, standard contractual provisions concerning topics such as

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5 The Participating Escrow Bank Agreement is attached to this filing as Exhibit 5A, with changes from the EDA marked. Custodian banks participating in the revised escrow deposit program are defined as "Participating Escrow Banks" in the Participating Escrow Bank Agreement, and such banks must also be an Approved Custodian pursuant to proposed Section 1.A(13) of OCC's By-Laws. In addition, and as described above, certain provisions of the EDA are proposed to be incorporated into OCC's Rules; however, no rights or obligations of either OCC or a custodian bank would change solely as a result of such an incorporation.

6 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

7 Under the Participating Escrow Bank Agreement, however, OCC will agree to provide custodian banks with advance notice of material amendments to the Rules relating to deposits in lieu of margin and custodian banks will have the opportunity to withdraw from the escrow deposit program if they object to the amendments. As a general matter, the Participating Escrow Bank Agreement will not be negotiable, although OCC may determine to vary certain non-material terms in limited circumstances.

8 OCC recently enhanced the measurement it uses—Tier 1 Capital instead of shareholders' equity—to establish minimum capital requirements for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset. *See* Securities Exchange Act Release No. 74894 (May 7, 2015), 80 FR 27431 (May 13, 2015) (SR-OCC-2015-007). For the reasons set forth in SR-OCC-2015-007, OCC is proposing to adopt the same standard with respect to custodian bank escrow deposits.

9 These provisions include, but are not limited to, Sections 1.1 and 1.2 of the EDA.

assignment, governing law and limitation of liability have been enhanced in the Participating Escrow Bank Agreement when compared to the EDA.[10] OCC is also proposing to move notification requirements into proposed Rule 610C(l), which is an enhancement of Section 7 of the EDA that requires custodian banks to provide notice to OCC only when there are changes to the "authorized persons" and changes to the address of the bank. Proposed Rule 610C(l) would require escrow banks to provide OCC with notices of material changes to the bank (in additional to items such as changes of authorized persons and the address of bank, as currently required under Section 7 of the EDA).

OCC, under Proposed Rule 610C(b), would also require customers wishing to deposit cash collateral and custodian banks holding escrow deposits comprised of cash to enter into a tri-party agreement involving OCC, the customer and the applicable custodian bank ("Tri-Party Agreement," attached hereto as Exhibit 5B). The Tri-Party Agreement governs the customer's use of cash in the program, confirms the grant of a security interest in the customer's account to OCC and the relevant clearing member, as set forth in proposed Rule 610C(f), and causes customers of clearing members to be subject to all terms of the Rules governing the revised escrow deposit program.[11] Each custodian bank entering into the Tri-Party Agreement ("Tri-Party Custodian Bank"), would agree to follow the directions of OCC with respect to cash escrow deposits without further consent by the customer.[12] As discussed in greater detail below, use of the Tri-Party Agreement significantly enhances OCC's rights concerning cash escrow

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10 Sections 2.1, 2.2, 3.5, 3.6, 3.8, 4.7, and 5.6, 6 and 7 of the EDA would be removed entirely since they are no longer needed under OCC's revised escrow deposit program. These provisions concern a custodian bank's movement of securities escrow collateral; such collateral would be deposited at DTC under the revised escrow deposit program (as described below). Section 2.3 of the EDA would also be removed in its entirety because escrow deposits would not be permitted for equity calls in the revised escrow deposit program. Additionally, the concept of cash settlements concerning escrow deposits would not be included in the revised escrow deposit program and, as a result, Sections 15, 16, 17 and 18(b) to 18(d) would be removed in their entirety.

11 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

12 OCC has determined to use this cash account structure as a result of a series of discussions with certain custodian banks involved in the cash portion of the escrow deposit program, as described in Item 5 below. The intended structure would permit a greater number of customers to participate in the escrow deposit program than, for example, a commingled "omnibus" account structure at each custodian bank, which would preclude the participation of customers subject to restrictions under the Investment Company Act of 1940 requiring segregation of a registered investment company's funds.

deposits, and provides OCC with greater certainty regarding its rights to cash escrow deposits in the event of a customer or clearing member default.

SECTION 2: TRANSPARENCY AND CONTROLS, TAKING POSSESSION OF COLLATERAL, AND CLEARING MEMBER RIGHTS TO COLLATERAL

Transparency and Control over Collateral Included in Escrow Deposits

Currently, securities deposits in the escrow deposit program are held at either DTC or a custodian bank, and cash deposits in the escrow deposit program are held at a custodian bank. In the case of either cash or securities held at a custodian bank, OCC relies on the custodian bank to verify the value and control of collateral since OCC does not have any visibility into relevant accounts. OCC is proposing to require that all securities deposited within the escrow deposit program, regardless of the type of deposit, be held at DTC.[13] Additionally, OCC is proposing to require Tri-Party Custodian Banks to provide OCC with view access into the account in which the deposit is held.

Holding securities escrow deposit program collateral at DTC would provide OCC with increased visibility into the collateral within the escrow deposit program because OCC would be able to use its existing interfaces with DTC to view, validate and value collateral within the escrow deposit program in real time, allowing OCC to perform the controls for which it currently relies on the custodian banks. It would also provide OCC with the ability to obtain possession of deposited securities upon a clearing member default by issuing a demand of collateral instruction through DTC's systems, without the need for custodian bank involvement. Furthermore, a clearing member would have the ability to obtain possession of deposited securities upon a customer default in a similar manner by notifying OCC of such customer default and submitting a request for delivery of such deposited securities (OCC's and clearing members' ability to take possession of a deposit within the escrow deposit program is discussed in greater detail below). OCC does not believe that requiring use of DTC to deposit securities escrow collateral presents a material change for users of OCC's escrow deposit program because such users currently use DTC to effect certain types of deposits in lieu of margin under the current escrow deposit program.[14]

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13 OCC has discussed the proposed rule changes to the escrow deposit program with DTC and, based on feedback from DTC, no concerns were communicated to OCC by DTC regarding the proposed rule changes. DTC has also indicated that the proposed rule changes to the escrow deposit program are consistent with DTC's operations.

14 Specifically, users of OCC's escrow deposit program would use DTC's Collateral Loan Services, which is described at: http://www.dtcc.com/products/training/helpfiles/settlement/settlement_help/help/collateral_loans.htm.

Cash collateral pledged to support an escrow deposit would continue to be facilitated through the existing program interfaces; however, for increased security, any pledges of cash would be required to be made in a customer's account at the Tri-Party Custodian Bank that is used solely for the purpose of making escrow deposits. As described above, under the proposed changes OCC would require Tri-Party Custodian Banks and customers to enter into a Tri-Party Agreement in order to provide legal certainty concerning this arrangement. Further, and as set forth in the Tri-Party Agreement, each Tri-Party Custodian Bank would agree to disburse funds from the pledged account only at OCC's direction. From an operational perspective, each Tri-Party Custodian Bank would provide OCC with online view access to each customer's cash account designated for the escrow deposit program, allowing visibility into transactional activity and account balances. OCC would not process a cash escrow deposit in its systems until it sees the appropriate amount of cash deposited in the designated bank account at the Tri-Party Custodian Bank. This process ensures that OCC does not rely on a third party to value, or warrant the existence of, collateral within the escrow deposit program. The Tri-Party Agreement, in connection with the new cash collateral structure, would provide OCC with additional transparency and control over cash collateral under the revised escrow deposit program.

In order to effect the foregoing, OCC is proposing to adopt proposed Rules 610A(a), 610B(a), 610C(b) and 610C(c). Proposed Rules 610A(a) and 610B(a), Effecting a Member Specific Deposit and Effecting a Third-Party Specific Deposit, respectively, require that member specific deposits and third-party specific deposits must be made through DTC, and are largely based upon existing Rule 610(e), which discusses effecting deposits in lieu or margin generally. Language has been added to each proposed rule to more accurately articulate that member specific deposits and third-party specific deposits must be made through DTC and the party that is required to effect each type of deposit (i.e., a clearing member or a third-party depository). In the case of member specific deposits and third-party specific deposits, which are already made through DTC, OCC believes that proposed Rules 610A(a) and Rule 610B(a) are rules that clarify existing practices and provide additional operational detail to users of the escrow deposit program (i.e., member specific deposits and third-party specific deposits must be made through DTC's EDP Pledge System and clearing members are required to maintain records of such deposits). Proposed Rules 610C(b) and 610C(c), Manner of Holding and Method of Effecting Escrow Deposits, respectively, are largely based upon existing Rules 610(d), 610(g), 1801(d) and 1801(g), as well as Section 8 of the EDA with language added to more accurately articulate that securities escrow deposits must be made through DTC and cash must be deposited through a Tri-Party Custodian Bank, and provide operational detail concerning effecting escrow deposits. Moreover, OCC is proposing to adopt new Rule 610(e) in order to specify that all types of deposits in the escrow deposit program may be made only during the time specified by OCC. The purpose of specifying the time frames in which participants are allowed to effect deposits in

the escrow deposit program is to facilitate OCC daily margin processing and ensure that all of the positions it guarantees are timely collateralized.[15]

In addition to the above, and with respect to escrow deposits only, OCC is proposing enhancements to its process of ensuring that customers meet initial and maintenance minimums.[16] Specifically, under the revised escrow deposit program, in the event a customer falls below the maintenance minimum, the custodian bank, pursuant to the Participating Escrow Bank Agreement, would be required to ensure that the customer deposits additional collateral or escalate the matter to OCC. In addition to such notification requirement, OCC would also implement automated processes to ensure that escrow deposits meet required initial and maintenance minimums. In the event the matter is escalated to OCC or OCC's systems identify a shortfall, OCC would: (1) demand that the relevant clearing member post additional margin to cover the margin requirement on the applicable position, and (2) if the relevant clearing member fails to satisfy such a demand for additional margin, OCC would close-out the applicable position and demand the escrow deposit from DTC or the Tri-Party Custodian Bank, as applicable, under its existing authority pursuant to Rule 1106. This process is much more robust than the current process concerning maintenance minimums in that OCC currently relies entirely on custodian banks holding escrow deposits to ensure the customer deposits additional collateral, as necessary, to meet initial and maintenance minimums. OCC believes that the proposed new process is more streamlined and efficient because OCC would not have to rely entirely on a custodian bank to ensure customers comply with initial and maintenance minimums.

In order to implement the foregoing within the new rules concerning the escrow deposit program, OCC is proposing to adopt Rules 610C(g) and 610C(h) that concern the initial and maintenance minimum escrow deposit values required by OCC as well as actions OCC is permitted to take in the event an escrow deposit falls below a required amount. These proposed rules are based on existing Rules 1801(c) and 1801(e) as well as Sections 3.2, 4.2, 5.2, 3.7, 4.8 and 5.7 of the EDA.[17] With respect to the computation of initial and maintenance minimums, proposed Rules 610C(g) and 610C(h) would explain the formula through which OCC computes the initial and maintenance minimum for a given options position, with the specific percentage applicable to such calculation provided to participants in the escrow deposit program in a

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15 In the event a deposit in the escrow deposit program is not timely made, OCC would collect margin from the relevant clearing member.

16 Initial and maintenance minimums do not apply to member specific deposits and third-party specific deposits since the clearing member or custodian bank, as applicable, is pledging the security that is deliverable upon exercise of the germane options position.

17 OCC is proposing to eliminate the concept of "substitutions" of escrow deposit collateral (located in Sections 4.7 and 5.6 of the EDA)—instead a given escrow deposit must at all times must meet the minimum amount (as set forth in proposed Rules 610(g)(1) and (2)) and OCC would permit any excess amount to be withdrawn.

schedule posted on OCC's website. With respect to the effects of a failure to meet maintenance minimums, proposed Rule 610C(h) sets forth the conditions under which OCC would close out a given escrow deposit should it fall below the requisite maintenance minimum. Proposed Rule 610C(h) would also provide OCC with the authority to use the cash and securities included within the escrow deposit to reimburse itself for costs incurred in connection with the close-out. OCC believes that by virtue of their proposed new location in the rules, as well as the additional detail provided in the proposed rules, all participants, and potential participants, in OCC's escrow deposit program would better understand the rules concerning initial and maintenance minimums, as they relate to escrow deposits, under the enhanced escrow deposit program (versus under the current escrow deposit program).

OCC's Rights to Collateral in the Escrow Deposit Program in the Event of a Clearing Member or Bank Default

The proposed Rules would enhance OCC's default management regime as it relates to the escrow deposit program by more specifically delineating the conditions under, and the process through which, OCC would take possession of collateral within the escrow deposit program should a clearing member or custodian bank default. Specifically, proposed Rules 610A(b), 610B(f), 610C(q) and 610C(r) provide that in the event of a clearing member or custodian bank default OCC would have the right to direct DTC to deliver the securities included in a member specific deposit, third-party specific deposit or escrow deposit to OCC's DTC participant account for the purpose of satisfying the obligations of the clearing member or reimbursing itself for losses incurred as a result of the failure, as applicable. Similarly, pursuant to proposed Rules 610C(q) and 610C(r) OCC would have the right in the event of a Tri-Party Custodian Bank default to take possession of cash included within an escrow deposit for the same purposes. In the event of a custodian bank default, pursuant to proposed Rule 610C(r) OCC would have the right to remove the custodian bank from the escrow deposit program, prohibit the custodian bank from making new escrow deposits, disallow withdrawals with respect to existing deposits, close out short positions covered by escrow deposits at the defaulted custodian bank and use such escrow deposits to reimburse itself for the costs of the close-out, or disregard or require the withdrawal of existing escrow deposits.

Proposed Rules 610A(b), 610B(f) and 610C(q) concern OCC's rights to member specific deposits, third-party specific deposits and escrow deposits, respectively, in the event of a clearing member default. They would provide a more specific description of OCC's rights to a third-party specific deposit during a default than existing Rule 610(k) and Section 18 of the EDA. However, the additional specificity that would be provided in proposed Rules 610A(b), 610B(f) and 610C(q) would not change OCC's nor clearing members' rights or obligations regarding member specific, third-party specific or escrow deposits in the event of a clearing member default. Proposed Rule 610C(r) addresses OCC's rights in the event of a custodian bank default and is based on existing Rules 613(h) and 1801(k). Proposed Rule 610C(r) would clarify OCC's existing operational practices when a custodian defaults (i.e., demand monies, not allow new

deposits, etc., as described immediately above), but does not change any of the rights of OCC, clearing members or custodian banks set forth in existing Rules 613(h) and 1801(k).

In addition to the above-described proposed rule changes, OCC is proposing to amend Rule 1106 to set forth the treatment of deposits in the escrow deposit program in the event of a suspension of a clearing member. Rule 1106(b)(2) would be amended to provide that OCC may close out a short position of a suspended clearing member covered by a member specific, third-party specific or escrow deposit, subject to the ability of the suspended clearing member or its representative to transfer the short position to another clearing member under certain circumstances. Further, current Rule 1106(b)(3) would be combined with Rule 1106(b)(2) and amended to set forth OCC's right to take possession of the cash and/or securities included within an escrow, member specific or third-party specific deposit for the purpose of reimbursing itself for costs incurred in connection with the close-out of a short position covered by the deposit. These proposed amendments to Rule 1106 are consistent with proposed Rules 610B(f), 610C(q) and 610C(r).

Clearing Members' Rights to Collateral in the Escrow Deposit Program

Clearing members' rights to escrow deposits and third-party specific deposits would be clarified under the proposed rules. While clearing members have secondary lien rights to the escrow deposits of their customers under the current escrow deposit program, OCC is proposing to add several rules that would clarify these rights and provide additional guidance to clearing members regarding operational steps that would need to be taken in order to exercise their secondary lien rights. Specifically, OCC is proposing to add Rules 610B(c) and 610C(f) to delineate the rights of a clearing member as they relate to third-party specific deposits and escrow deposits. Proposed Rules 610B(c) and 610C(f) would provide for the grant of a security interest by the customer to the clearing member with respect to any given third-party specific deposit and escrow deposit, as applicable. The Rules would further provide that any such security interest of a clearing member in an escrow deposit would be subordinated to OCC's interest. For purposes of perfecting a clearing member's security interest under the Uniform Commercial Code ("UCC"), OCC would obtain control over the security both on its own behalf and on behalf of the relevant clearing member, with clear subordination of the clearing member's interest to OCC's interest. In the event OCC had to direct delivery of the security to the clearing member, OCC would do so on the clearing member's behalf. Proposed Rules 610B(c) and 610C(f) would better codify clearing members' secondary lien rights to third-party specific deposits and escrow deposit than they are currently codified in Section 21 of the EDA, without changing any clearing member rights or obligations. OCC believes that such a codification would provide more transparency regarding clearing members' secondary lien rights under the enhanced escrow deposit program because all users and potential users of OCC's escrow deposit program would be able to easily identify and understand the rules concerning clearing members' secondary lien rights in a single location within OCC's publicly available Rulebook.

Additionally, OCC is proposing to add several procedural rules that would set forth the process by which clearing members could exercise their secondary lien rights in a given deposit in the escrow deposit program. Proposed Rules 610C(d), 610C(o), 610C(p) and 610C(s), relating to escrow deposits, and proposed Rules 610B(d) and 610B(e), relating to third-party specific deposits, would provide that, in the event of a customer default to a clearing member, the clearing member would have the right to request a "hold" on a deposit. The hold would prevent the withdrawal of deposited securities or cash by a custodian bank or the release of a deposit that would otherwise occur in the ordinary course. Subsequent to placing a hold instruction on a deposit, a clearing member would have the right to request that OCC direct delivery of the deposit to the clearing member through DTC's systems in the case of securities, or an instruction to the Tri-Party Custodian Bank in the case of cash. Providing clearing members with transparent instructions regarding how to place a hold instruction on, and direct delivery of a deposit within the escrow deposit program, would significantly enhance the current escrow deposit program.

OCC is also proposing to adopt Rules 610B(e) and 610C(s), which would protect OCC in the event that it delivers a third-party specific deposit or escrow deposit to a clearing member. Under proposed Rules 610B(e) and 610C(s), a clearing member making a request for delivery would be deemed to have made the appropriate representations to OCC that the clearing member has a right to take possession of the deposited securities or cash and would agree to indemnify OCC against losses resulting from a breach of these representations or the delivery of the deposit. A clearing member would also be required to provide documentation regarding its right to possession of the securities or cash as OCC may reasonably request.

SECTION 3: TECHINCAL AND CONFORMING CHANGES TO OCC'S RULES

OCC also proposes a number of technical, conforming and structural changes in order to move the majority of the terms governing the escrow deposit program into one section in its Rulebook. OCC believes that changes to proposed Rules 610, 610A, 610B and 610C, described in greater detail below, are either non-substantive or conforming changes that do not alter the current rights or obligations of OCC, clearing members or participants in the escrow deposit program.

Proposed Rule 610-Deposits in Lieu of Margin (General Provisions)

Proposed Rule 610 contains general provisions applicable to the escrow deposit program. Specifically, proposed Rule 610(a) replaces existing Rule 610(a) and sets forth general provisions of the escrow deposit program including: (1) who may participate in the escrow deposit program, (2) the types of positions included in the escrow deposit program, (3) the types of deposits in the escrow deposit program, and (4) the collateral that is eligible for the escrow deposit program. Proposed Rule 610(b) replaces existing Rule 610(b) and provides further specificity with respect to the types of options positions included within OCC's escrow deposit

program.[18] This additional specificity clarifies OCC's existing rules and provides more transparency to users and potential users of OCC's escrow deposit program. Proposed Rule 610(c), which is not derived from an existing rule, clarifies OCC's existing practice that OCC will disregard a member specific deposit or a third-party specific deposit if such deposit is no longer eligible to be delivered upon the exercise of the associated stock option contract. Proposed Rule 610(d), which replaces existing Rules 610(c) and 1801(l), requires that deposits within the escrow deposit program be made in accordance with applicable laws and regulations, and be appropriately authorized. Proposed Rule 610(f), which replaces existing Rule 610(l), would clarify OCC's right to use deposits within the escrow deposit program until such deposits are withdrawn. Proposed Rule 610(f) is supplemented by proposed Rules 610A, 610B and 610C with respect to member specific, third-party specific and escrow deposits. Proposed Rule 610(g) codifies OCC's security interest in deposits within the escrow deposit program.

Proposed Rule 610A-Member Specific Deposits

Proposed Rule 610A clarifies many of the current rules concerning the escrow deposit program as they relate to member specific deposits. For example, proposed 610A(c) describes the process by which a clearing member may withdraw a member specific deposit (i.e., effecting a withdrawal or release through DTC's EDP Pledge System and ensuring that its margin requirement at OCC is met). While this issue is addressed in existing Rule 610(j) in general terms, OCC believes that the additional operational details regarding its existing processes in proposed Rule 610A(c), along with its inclusion in proposed Rule 610A, further clarify how those existing processes apply to member specific deposits as opposed to other types of deposits in lieu of margin in existing Rule 610.[19] Proposed Rule 610A(d) also establishes that member specific deposits may be "rolled-over," a concept that is not specifically set forth in existing Rule 610 but has historically applied in connection with member specific deposits (formerly specific deposits).

Proposed Rule 610B-Third-Party Specific Deposits

Proposed Rule 610B clarifies many of the current rules concerning third-party specific deposits. For example, Proposed Rule 610B(b) addresses rollovers of a third-party specific deposit and replaces existing Rules 613(a) and Section 9 of the EDA, and articulates how to rollover third-party specific deposits by its inclusion within Rule 610B. Withdrawals and releases of third-party specific deposits are addressed in proposed Rule 610B(d), which is based on existing Rules 613(b) and 613(f). Specifically, releases and withdrawals of third-party specific deposits would be effected through DTC's EDP Pledge System, subject to the clearing

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18 As described in greater detail below, proposed Rules 610(a) and 610(b) are supplemented by proposed Rules 610A, 610B and 610C.

19 Proposed Rule 610A(c) supplements proposed Rule 610(f).

member's margin requirement being met, the clearing member's approval of the release or withdrawal, and the absence of a "hold" instruction. In addition, proposed Rule 610B(g) seeks to provide a more detailed description of the effect of a release of a third-party specific deposit than the applicable portions of existing Rule 613(i).

Proposed Rule 610C-Escrow Deposits

Proposed Rule 610C, which is based on existing Rule 1801(a), would clarify the current rules concerning escrow deposits. For example, the introductory paragraph of proposed Rule 610C would provide a more detailed overview of a custodian bank's role in the escrow deposit program, specifying such a bank's role in effecting escrow deposits, and would describe eligible positions as they relate to escrow deposits. Proposed Rules 610C(a) through 610C(e) and proposed Rule 610C(t) concern eligible collateral, the manner in which escrow deposits are to be held, and withdrawing an escrow deposit and rolling over an escrow deposit. These operational rules are based on: (1) existing Rules 610(g) and 1801(b) and Sections 3.1, 4.1 and 5.1 of the EDA with respect to eligible collateral (proposed Rule 610C(a)); (2) existing Rules 610(j) and 1801(i), and Sections 10 and 20 of the EDA with respect to withdrawing an escrow deposit (proposed Rule 610C(d)); (3) existing Rule 613(i) with respect to the effect of a release or withdrawal of an escrow deposit (proposed Rule 610C(t)); and (4) existing Rule 613(a) and Section 9 of the EDA with respect to rollovers of an escrow deposit (Proposed Rule 610C(e)).

In order to provide additional transparency concerning representations that custodian banks are deemed to make when effecting an escrow deposit, OCC is proposing to move several contractual provisions of the EDA into proposed Rules 610C(i), 610C(j) and 610C(k). Specifically: (1) proposed Rule 610C(i), which concerns agreements and representations a custodian bank is deemed to have made when effecting an escrow deposit, is based upon Sections 1.6 and 4.6 of the EDA; (2) proposed Rule 610C(j), which concerns representations an warranties a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 of the EDA; and (3) proposed Rule 610C(k), which concerns agreements a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 4, 5 and 21 of the EDA. Moreover, and in addition to locating deemed representations of custodian banks in the Rules, proposed Rules 610C(i), 610C(j) and 610C(k) contain language that perfects OCC's security interest in escrow deposits under Section 9 of the UCC, and replace Sections 3.3, 3.4, 4.3, 4.4, 5.3 and 5.4 of the EDA.[20] OCC believes

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20 The primary UCC-related provisions in the proposed Rules include Rules 610C(j)(1), 610C(j)(9) and 610C(k)(1), which provide for the perfection of OCC's security interest in deposits consisting of securities under UCC Sections 9-106 and 9-314; Rules 610C(j)(1), 610C(j)(10), and 610C(k)(2), which provide for the perfection of OCC's security interest in deposits consisting of cash under UCC Sections 9-104, 9-312 and 9-314; and Rules 610C(i)(1), 610C(i)(2) and 610C(j)(3), which support the first priority of OCC's security interest by preventing competing liens or claims.

that by locating the above-described provisions in the Rules, all users and potential users of OCC's escrow deposit program would better understand the relationship between OCC and custodian banks.

Proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) concern the exercise of options positions collateralized by escrow deposits and the release of escrow deposits upon expiration. As with other parts of proposed Rule 610C, OCC believes that the location of proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) provides all users and potential users of OCC's escrow deposit program with a more transparent understanding of how exercises of options positions affect escrow deposits as well as the manner in which OCC would release an escrow deposit upon the expiration of an options position. Similar to other parts of Rule 610C, proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) are based on existing Rules of OCC as well as the EDA.[21] Proposed Rule 610C(m) concerns reports OCC provides regarding escrow deposits and is based upon existing Rules 613(d) and 613(e) as well as Sections 11, 12 and 13 of the EDA. Proposed Rules 610C(n), 610C(o) and 610C(p), which concern assignments of exercises and releases of escrow deposits upon expiration is based upon existing Rules 613(f) and 1801(j) and Section 14 of the EDA.

SECTION 4: TRANSITION PERIOD

For the administrative convenience of clearing members, custodian banks and customers, the existing Rules governing deposits in lieu of margin would remain in effect, in parallel with the proposed Rules, for a transition ending November 30, 2017. During this transition period, deposits in lieu of margin could be made under either the existing Rules or the proposed Rules. This will eliminate the need of all clearing members to provide new collateral on a single date in the absence of a transition period. After the transition period, proposed Rules 610, 610A, 610B and 610C would provide the sole means of making deposits in lieu of margin and existing Rules 613 and 1801 would be removed from the Rulebook. In connection with the transition, existing Rule 610 would be re-designated as 610T to indicate that it is a temporary rule, and would become ineffective and removed after the transition period. Furthermore, following the transition period, existing Rule 503, which addresses instructions that call for the payment of a premium by or to the clearing member for whose account the deposit is made, would be removed from the Rules because these instructions would no longer be permitted under the revised escrow deposit program since this aspect of the program has not been used for a number of years.[22] In

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21 As discussed in Section 3 above, Rules 610C(n) and 610C(p) contain language that prevents the release of an escrow deposit in the event such deposit is subject to a hold instruction, which is a proposed enhancement to the escrow deposit program.

22 For the purposes of clarity, existing Rules 613(c), 613(g), 613(h), 613(j) address the same topic and would be removed from OCC's Rulebook following the transition period without being migrated into a proposed Rule.

addition, Government securities would be given full market value under the revised escrow deposit program and therefore existing Rule 610(h) would be removed from the Rules after the transition period.

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

Risk Management. OCC believes that by implementing the proposed rule change it will be better able to manage the risks associated with discharging its responsibilities as a DCO as set forth in the DCO Core Principles because it will, through adoption of the above described changes to deposits in lieu of margin, limit its exposure to potential losses from the default of a clearing member because it will be less likely that such clearing member's margin assets, or deposits in lieu of margin, would be unavailable to OCC should OCC need to use such assets or deposits to manage the default.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

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

Scott M. Kalish
Assistant Secretary

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

The purpose of this proposed rule change by The Options Clearing Corporation ("OCC") is to improve the resiliency of OCC's escrow deposit program. OCC is proposing changes that are designed to: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) strengthen clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; (3) provide more specificity concerning the manner in which OCC or clearing members would take possession of collateral in OCC's escrow deposit program; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. In order to implement the enhancements, OCC is proposing to amend its By-Laws and Rules as well as adopt a new Participating Escrow Bank Agreement and Escrow Tri-Party Agreement (such agreements attached hereto as Exhibits 5A and 5B, respectively). 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 OPTIONS CLEARING CORPORATION

BY-LAWS

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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 [Depository] Custodian

(13) The term "approved **[**depository**]** custodian" means a bank or trust company approved by the Chairman, the Management Vice Chairman or the President.

(14) – (16) [no change]

B – D. [no change]

E.

(1) [no change]

EDP Pledge System

(2) The term "EDP Pledge System" shall mean an electronic data processing system through which Clearing Members and approved custodians may pledge securities and/or cash to the Corporation in accordance with the By-Laws and Rules and that is: (i) operated by the Corporation, or (ii) operated by an approved **[**depository**]** custodian and approved by the Corporation.

(3) – (22) [no change]

F. – Z. [no change]

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ARTICLE VIII

Clearing Fund

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Form of Contributions

SECTION 3. (a) Contributions to the Clearing Fund shall be in cash or in Government securities. Government securities shall be valued at (1) 99.5% of the current market value for maturities less than one year; (2) 98% of the current market value for maturities between one and five years; (3) 96.5% of the current market value for maturities between five and ten years; and (4) 95% of the current market value for maturities in excess of ten years. For the purposes of this Section, the current market value of Government securities shall be determined by the Corporation at such intervals as the Risk Committee shall from time to time prescribe, but not less often than monthly, on the basis of the quoted bid price therefor supplied by a source designated by the Corporation. Contributions of Government securities shall be deposited by the Clearing Member in an account of the Corporation in an approved **[**depository**]** custodian in the name of the Corporation or by such other method as the Corporation may from time to time approve. Any interest or gain received or accrued on such securities shall belong to the contributing Clearing Member, and any interest on, or proceeds from the maturity of, such

securities received by the Corporation shall be credited by the Corporation to an account of the Clearing Member on the records of the Corporation.

(b) [no change]

...Interpretations and Policies:

.01 The Corporation will not accept the delivery of a depository receipt from an approved **[**depository**]** custodian if the **[**depository**]** custodian, a parent**[**,**]** or an affiliate has an equity interest in the amount of 20% or more of the contributing Clearing Member's total capital.

.02 Securities deposited in an account of the Corporation in an approved **[**depository**]** custodian in the name of the Corporation shall be credited to the Clearing Member's "clearing fund account," which shall be a securities account maintained on the records of the Corporation in the name of such Clearing Member, and the Corporation shall be the Clearing Member's securities intermediary with respect to such securities for purposes of Articles 8 and 9 of the Uniform Commercial Code. So long as any such securities and any proceeds thereof are so credited to the Clearing Member's clearing fund account, the Corporation shall have a general lien on and perfected security interest in and "control" over such securities and proceeds for purposes of Articles 8 and 9 of the Uniform Commercial Code.

.03 For a transition period specified by the Corporation, contributions of Government securities may be made in an account at an approved **[**depository**]** custodian in the name of the Clearing Member and pledged to the Corporation provided that such a contribution shall not be effective until the Corporation receives confirmation satisfactory to it that the securities have been so pledged through an EDP Pledge System.

Investment of Cash Clearing Fund Contributions

SECTION 4. (a) Subject to the provisions of subsection (b) of this Section, cash contributions to the Clearing Fund may from time to time be partially or wholly invested by the Corporation for its account in Government securities, and to the extent that such contributions are not so invested they shall be deposited by the Corporation in a separate account or accounts in approved **[**depositories**]** custodians. Any interest or gain received or accrued on the investment or deposit of cash contributions to the Clearing Fund in accordance with this subsection (a) shall belong to the Corporation.

(b) [no change]

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RULES

*** * ***

CHAPTER I

Definitions

RULE 101. Unless the context otherwise requires, for all purposes of these rules, the terms herein shall have the meanings given them in Article I of the By-Laws of the Corporation or as set forth below:

A. – D. [no change]

E.

(1) – (2) [no change]

[Escrow Deposit Agreement

(3) The term "escrow deposit agreement" shall mean an agreement between the Corporation and a bank or other depository approved to act as a custodian of escrow deposits for the purposes of Chapter VI of the Rules, providing for the confirmation, rollover, and withdrawal of escrow deposits without the issuance of escrow receipts and establishing procedures whereby premium settlements between such depository and Clearing Members may be made through the facilities of the Corporation. When used with respect to an escrow deposit consisting of securities other than common stocks, such term shall mean an Escrow Deposit Agreement, as defined above, supplemented by such supplementary agreements as the Corporation shall from time to time prescribe.**]**

(4) – (6) [renumbered as (3) – (5); otherwise no change]

F – Z. [no change]

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CHAPTER V

Daily Cash Settlement

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Daily Escrow Settlement

RULE 503 IS EFFECTIVE ONLY THROUGH NOVEMBER 30, 2017[1]

RULE 503. (a) On or before settlement time on each business day, each Clearing Member shall be obligated to pay to the Corporation, as agent, and the Corporation shall be authorized to withdraw from such Clearing Member's bank account, the amount of any net daily premium in an account shown to be due from such Clearing Member to banks or other depositories on any escrow settlement report made available on that day for such account pursuant to Rule 613 (notwithstanding any credit balance which may be due to the Clearing Member in any other account). The Corporation may, if it so elects, net premiums payable by a

[1] Rule 503 will be deleted from the Corporation's Rules on December 1, 2017.

Clearing Member under this Rule 503 against premiums payable to such Clearing Member on the same business day pursuant to Rule 502, and against any cash margin excess reported on such Clearing Member's daily margin report for such business day and not theretofore applied pursuant to Rule 607. Notwithstanding the foregoing, at any settlement time the Corporation may, in its discretion, require any Clearing Member to pay the gross amount of premiums due to banks or other depositories on such business day pursuant to Rule 613 (i.e., without credit for premiums payable to the Member under Rule 502 or this Rule 503), and the Corporation shall be authorized to withdraw funds from the applicable bank account of such Clearing Member up to such gross amount.

(b) Subject to Rule 505, at or before the settlement time on each business day, the Corporation, as agent, shall pay to each Clearing Member (provided the Clearing Member has deposited all margin required to be deposited pursuant to Chapter VI of the Rules) the amount of any net daily premium in an account shown to be due from banks or other depositories to such Clearing Member on any escrow settlement report made available on that day for such account. The Corporation may, if it so elects, net premiums payable to a Clearing Member under this Rule 503(b) against premiums payable by such Clearing Member to the Corporation on the same business day in the same account pursuant to Rule 502, and against any margin deficit in such account on such business day.

(c) Anything else herein to the contrary notwithstanding, in facilitating premium settlements between Clearing Members and banks or other depositories pursuant to Rule 613 and this Rule 503, the Corporation shall act solely as agent for the parties to such settlements, and shall have no obligation to pay or credit to any Clearing Member premiums not theretofore collected from banks or other depositories for such Clearing Member's account. If any bank or other depository shall fail, on any business day, to pay to the Corporation, as agent, premiums taken into account by the Corporation in determining the net amount payable or receivable by a Clearing Member pursuant to this Rule on that business day, such premiums shall be charged back by the Corporation to such Clearing Member.

(d) The term "premiums," as used in this Rule 503, shall include amounts due to or from banks or other depositories as a result of cash-only entries initiated by or directed to such banks or other depositories pursuant to Rule 613.

(e) Anything else herein to the contrary notwithstanding, no premiums shall be payable to or receivable from any bank or other depository under this Rule 503 on any day on which such bank or other depository is not open for business.

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CHAPTER VI

Margins

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Form of Margin Assets

RULE 604.

(a) [no change]

(b) *Securities.* The types of securities specified in subparagraphs (1) - (4) of this paragraph (b) may be deposited with the Corporation in the manner specified for each.

(1) *Government Securities*. Clearing Members may deposit, as hereinafter provided, Government securities which are free from any limitation as to negotiability. Government securities shall be valued for margin purposes at 99.5% of the current market value for maturities of up to one year; 98% of the current market value for maturities in excess of one year through five years; 96.5% of the current market value for maturities in excess of five years through ten years; and 95% of the current market value for maturities in excess of ten years. Government securities deposited pursuant hereto shall be deposited by the Clearing Member in an account of the Corporation in an approved **[**depository**]** custodian in the name of the Corporation or by such other method as the Corporation may from time to time approve. All interest or gain received or accrued on such Government securities prior to any sale or negotiation thereof shall belong to the depositing Clearing Member, and any interest on, or proceeds from the maturity of, such Government securities received by the Corporation shall be credited by the Corporation to the account of the Clearing Member in respect of which the deposit was made. Current market value shall be determined by the Corporation at such intervals as the Risk Committee shall from time to time prescribe, but not less often than daily on the basis of the quoted bid prices therefor supplied by a source designated by the Corporation.

(2) *GSE Debt Securities.* Clearing Members may deposit, as hereinafter provided, GSE debt securities which are free from any limitation as to negotiability. GSE debt securities shall be valued for margin purposes at (1) 99% of the current market value for maturities of up to one year; (2) 97% of the current market value for maturities in excess of one year through five years; (3) 95% of the current market value for maturities in excess of five years through ten years; and (4) 93% of the current market value for maturities in excess of ten years. Such GSE debt securities deposited pursuant hereto shall be deposited by the Clearing Member in an account of the Corporation in an approved **[**depository**]** custodian in the name of the Corporation or by such other method as the Corporation may from time to time approve. All interest or gain received or accrued on such GSE debt securities prior to any sale or negotiation thereof shall belong to the depositing Clearing Member, and any interest on, or proceeds from the maturity of, such Government securities received by the Corporation shall be credited by the Corporation to the account of such Clearing Member in respect of which the deposit was made. Current market value shall be determined by the Corporation at such intervals as the Risk Committee shall from

time to time prescribe, but not less often than daily on the basis of the quoted bid prices therefor supplied by a source designated by the Corporation.

(3) [no change]

(4) *Equity Issues*. (i) Clearing Members may deposit, as hereinafter provided, common stocks which meet the standards prescribed below. Common stocks (including fund shares) must be "covered securities" within the meaning of Section 18(b)(1) of the Securities Act of 1933. Common stocks which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract must have a market value of at least $3 per share, as determined by the Corporation; provided, however, that the Corporation may waive this requirement at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. An issue that is suspended from trading by the market that listed or qualified the issue for trading because of volatility, lack of liquidity or similar characteristics, may not be deposited as margin with the Corporation. If the issue is listed or traded on more than one market and the markets do not take the same action, the Corporation will use its discretion to determine which market's actions will be definitive for purposes of this Rule. Each deposit pursuant to this Rule 604 (b)(4) shall be made with respect to a designated account of the Clearing Member. Deposited stocks shall be valued in accordance with Rule 601. Common stocks deposited pursuant to Rule 610<u>T and Rule 610</u> shall have no value as margin for the purposes of this Rule 604(b)(4).

(5) [no change]

(c) – (f) [no change]

...Interpretations and Policies:

.01 - .14 [no change]

.16 For a transition period specified by the Corporation, deposits of Government securities pursuant to Rule 604(b)(1) or deposits of GSE debt securities pursuant to Rule 604(b)(2) may be made in an account at an approved **[**depository**]** <u>custodian</u> in the name of the Clearing Member and pledged to the Corporation provided that such a deposit shall not be effective until the Corporation receives confirmation satisfactory to it that the securities have been so pledged through an EDP Pledge System.

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Deposits in Lieu of Margin

RULE 610T IS EFFECTIVE ONLY THROUGH NOVEMBER 30, 2017[2]

RULE 610T. (a) A Clearing Member may deposit the underlying security in respect of any call option contract included in a short position of such Clearing Member, or may deposit cash and/or short-term Government securities in respect of any put option contract included in a short position of such Clearing Member, in accordance with the provisions hereof.

(b) No security held for the account of a customer (other than a Market-Maker) may be deposited hereunder in respect of a position in any account other than the customers' account. No security held for the account of any Market-Maker may be deposited hereunder in respect of a position in any account other than such Market-Maker's account or a combined Market-Makers' account in which such Market-Maker is a participant.

(c) The deposit hereunder of cash or securities held for the account of any customer may be made only to the extent permitted by applicable law and the rules and regulations thereunder, and shall be deemed to constitute the Clearing Member's certificate and representation to the Corporation that such deposit has been duly authorized by the customer and does not contravene any provision of law or any rule thereunder.

(d) A Clearing Member may make a deposit hereunder of cash or securities held in the custody of a **[**bank or trust company or other depositee approved by the Corporation (such bank or trust company or depositee being herein called the "depository")**]** an approved custodian by causing the **[**depository**]** approved custodian to make an escrow deposit for the Clearing Member's account pursuant to Rule 613 or, in the case of a deposit of underlying securities, by filing with the Corporation a depository receipt meeting the requirements of paragraph (f) hereof or by pledging such securities to the Corporation through an EDP Pledge System in accordance with paragraph (f) or (g) hereof.

(e) Specific deposits may be made only of underlying securities held by a Clearing Member for the account of particular customers in respect of specified call option contracts held by the Clearing Member in a short position or exercise position for such customers. The Clearing Member shall maintain a record for each specific deposit identifying the customers, the accounts of the customers in which the underlying securities are held and the specified option contracts for which the specific deposits have been made.

(f) A Clearing Member may make a specific deposit (i) by filing with the Corporation a depository receipt, in a form approved by the Corporation, executed by the **[**depository**]** approved custodian and the Clearing Member and specifying the option contract or contracts in respect of which the deposit is being made, or (ii) by causing confirmation to be issued through an EDP Pledge System that the underlying securities have been transferred or pledged to the

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[2] Current Rule 610 is proposed to be renamed Rule 610T and will be deleted from the Corporation's Rules on December 1, 2017.

Corporation by book entry in respect of a short position of a specified customer in a specified series of calls.

(g) Escrow deposits may be made of cash or securities which have been deposited for that purpose by a Clearing Member's customer, or the customer's agent, with an **[**depository**]** approved custodian. Escrow deposits may be made only in respect of specified option contracts held by the Clearing Member in a short position or an exercise position for such customer. Only the underlying securities may be deposited in respect of calls, and only cash and/or short-term Government securities with a total value of not less than 105% of the aggregate exercise price may be deposited in respect of puts. A Clearing Member may make an escrow deposit:

(1) in the case of deposits made in respect of calls, by causing confirmation to be issued through an EDP Pledge System that the underlying securities have been transferred or pledged by book entry to the Corporation in respect of a short position of a specified customer in a specified series of calls; or

(2) by causing an **[**bank or other depository**]** approved custodian that has entered into an escrow deposit agreement with the Corporation to make an escrow deposit for the Clearing Member's account pursuant to Rule 613.

Unless the context requires otherwise, references to "escrow receipts" elsewhere in these Rules shall be deemed to refer to escrow deposits made in accordance with this Rule 610T.

(h) Short-term Government securities deposited in respect of puts shall be valued at the lesser of par value or 100% of their current market value. An **[**depository**]** approved custodian may from time to time substitute cash or short-term Government securities for any cash or securities theretofore deposited, provided that the value of the substituted cash or securities is at least equal to that of the cash or securities for which it is substitute. If the total value of the deposit shall at the close of any business day be less than 97.5% of the aggregate exercise price of the puts in respect of which the deposit was made, the Corporation may, upon written or telephonic notice to the Clearing Member that made the deposit, disregard the escrow deposit and require that margin be deposited in respect of the short position theretofore covered by the escrow deposit. If such margin is not timely deposited and the Clearing Member is suspended by the Corporation, the Corporation may close out such position and certify to the **[**depository**]** approved custodian that it has closed out such position.

(i) A depository receipt must be delivered to the Corporation between such times as the Corporation may specify, and pledges effected through an EDP Pledge System must be completed between such times as the Corporation may specify, in order to be taken into account in the Daily Margin Report for the following business day.

(j) A depository receipt may be withdrawn by a Clearing Member between such times each business day as the Corporation may specify, and securities pledged through an EDP Pledge System may be released through such system on each business day between such times as the Corporation may specify, with authorization by the Corporation so long as the conditions of this Chapter VI are met after giving effect to such withdrawal or release. A Clearing Member

requesting such withdrawal or release shall comply with such procedures as the Corporation shall prescribe.

(k) If an exercise of options of a series covered by a specific deposit or an escrow deposit is assigned to the customers' account of the Clearing Member that made the deposit, and the Clearing Member fails to make timely settlement in respect of the assignment, the Corporation shall be entitled to receive from the **[**depository**]** approved custodian on demand (i) in the case of call options, the underlying securities, or (ii) in the case of put options, an amount in cash (out of the deposited property or its proceeds) equal to the aggregate exercise price of the exercised puts, plus all applicable commissions and other charges. If an escrow deposit is made in respect of a short position in puts, and the Corporation certifies to the **[**depository**]** approved custodian that it has closed out the short position pursuant to paragraph (h) hereof, the Corporation shall be entitled to receive from the **[**depository**]** approved custodian an amount in cash (out of the deposited property or its proceeds) equal to the cost of the closing transaction or transactions, including any commissions, financing costs, and other charges incurred by the Corporation in connection therewith.

(l) In the event any short position for which a specific deposit or an escrow deposit has been made is closed out by a closing purchase transaction or transferred to an account of another Clearing Member, or in the event that settlement is made in respect of an exercise notice assigned to such position, the Clearing Member that carried such position shall promptly request the withdrawal of such deposit, but unless and until such deposit is withdrawn, the Corporation shall be entitled to demand performance by the **[**depository**]** approved custodian upon the assignment of an exercise notice in respect of any option contract of the same series and included in a short position in the same account as the one for which the deposit was made, or upon the closing out of any such option contract by the Corporation pursuant to paragraph (h) hereof.

...Interpretations and Policies:

.01 The Corporation will not accept the deposit or pledge of underlying securities pursuant to this Rule 610T from an approved **[**bank or trust company or other depositee ("depository")**]** custodian other than through the Depository if such **[**depository**]** custodian, a parent**[**,**]** or an affiliate has an equity interest in the amount of 20% or more of the depositing Clearing Member's total capital.

.02 For the purposes of this Rule, the term "short-term Government securities" means securities with a fixed principal amount issued or guaranteed by the United States and having one year or less to maturity.

.03 For the purposes of this Rule, the Corporation will accept a depository receipt, in a form approved by the Corporation, issued pursuant to the rules of a registered clearing agency.

.04 For the duration of a transition period ending November 30, 2017, existing Rules 610T, 613 and 1801 shall remain effective with respect to deposits in lieu of margin, in addition to Rules 610, 610A, 610B and 610C. During this transition period, Clearing Members may comply with either Rules 610T, 613 and 1801 or Rules 610, 610A, 610B and 610C. After this transition period,

Rules 610T, 613 and 1801 shall be removed from OCC's Rulebook and deposits in lieu of margin shall be governed solely by Rules 610, 610A, 610B and 610C.

Deposits in Lieu of Margin[3]

RULE 610. (a) In lieu of depositing margin in respect of certain options carried in a short position for the account of a customer (including any Market Maker that is not a proprietary Market Maker), a Clearing Member or an approved custodian may deposit eligible collateral in respect of such option contracts, in each case as specified in this Rule 610, and further described in Rules 610A, 610B and 610C, as applicable. Each such deposit shall be referred to as a "deposit in lieu of margin." The types of deposits in lieu of margin permitted by the Corporation are "specific deposits" and "escrow deposits." Specific deposits may be either "member specific deposits," which are provided for in Rule 610A, or "third-party specific deposits," which are provided for in Rule 610B. Escrow deposits are provided for in Rule 610C. All deposits in lieu of margin are also subject to this Rule 610. Specific deposits are limited to stock call option contracts, and only the underlying securities may be deposited in respect of such option contracts. Escrow deposits may be made in respect of stock and index put options and index call options. Escrow deposits in respect of stock and index puts shall consist of cash or U.S. Government securities, or any combination thereof, and escrow deposits in respect of index calls shall consist of cash, U.S. Government securities or any securities that would be eligible for deposit as margin under Rule 604(b)(4).

(b) Deposits in lieu of margin may be made only in respect of option contracts held by the Clearing Member in a short position as specified in paragraph (a) of this Rule 610. A deposit in lieu of margin may be made only when the deposited collateral is either: (i) carried by the Clearing Member for the account of the customer for whom the short option position is carried, or (ii) in the custody of an approved custodian making the deposit that is acting on behalf of such customer. A deposit in lieu of margin may be made only in respect of the Clearing Member account at the Corporation in which the related short option position of the customer is maintained, which must be a customers' account, a Market-Maker's account or combined Market-Makers' account, provided that no proprietary Market-Maker is a participant in such account.

(c) In the event that a stock call option contract with respect to which a specific deposit has been made is adjusted to require delivery of property different from, or in addition to, the security underlying such contract, such specific deposit shall be disregarded except to the extent that the deposited security is deliverable upon exercise, provided that if the adjustment requires the delivery of securities other than the securities included in the deposit, the deposit shall be disregarded in its entirety. Further, the specific deposit shall not cover any obligation to deliver cash.

(d) The deposit hereunder of cash or securities held for the account of any customer may be made only to the extent permitted by applicable law and the rules and regulations thereunder, and shall be deemed to constitute the Clearing Member's certificate and representation to the

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[3] The text of Rule 610 is entirely new. To improve readability, it has not been underlined.

Corporation that such deposit has been duly authorized by the customer and does not contravene any provision of law or any rule thereunder.

(e) Deposits in lieu of margin must be made on any business day between such times as the Corporation may specify.

(f) In the event any short position for which a deposit in lieu of margin has been made is closed out by a closing purchase transaction or transferred to an account of another Clearing Member, or in the event that settlement is made in respect of an exercise notice assigned to such position, the Clearing Member that carried such position shall promptly request the withdrawal of such deposit. Unless and until such deposit is withdrawn from the account, the Corporation shall be entitled, upon the assignment of an exercise notice in respect of any option contract of the same series and included in a short position in the same account as the one for which the deposit was made, or upon the closing out of any such option contract by the Corporation pursuant to Rule 610C(h): (i) in the case of a specific deposit, to take possession of the deposited securities for the purpose of satisfying the obligations of the Clearing Member in connection with such assignment, or (ii) in the case of an escrow deposit, to demand performance by the participating escrow bank (as defined in Rule 610C) in respect of such assignment or closeout, as applicable.

(g) The making of a deposit in lieu of margin shall constitute the grant to the Corporation of a security interest in and right of setoff against the deposit in lieu of margin to secure the Clearing Member's obligations in respect of such short position. The Corporation shall have a first priority perfected security interest in all deposits in lieu of margin.

...Interpretations and Policies:

.01 The Corporation will not accept, or if initially accepted, will thereafter reject, the deposit or pledge of collateral pursuant to this Rule 610 from an approved custodian other than through the Depository if such custodian, a parent or an affiliate has an equity interest in the amount of 20% or more of the depositing Clearing Member's total capital.

.02 For the purposes of this Rule, the term "Government securities" means securities with a fixed principal amount issued or guaranteed by the United States, excluding Separate Trading of Registered Interest and Principal Securities issued on Treasury Inflation Protected Securities (commonly called TIP-STRIPS).

Member Specific Deposits[4]

RULE 610A. (a) *Effecting a Member Specific Deposit* Member specific deposits may be made only of underlying securities held by a Clearing Member at the Depository for the account of a particular customer in respect of specified call stock option contracts held by the Clearing Member in a short position for such customer. To make a member specific deposit, a Clearing Member shall cause confirmation to be issued through the Depository's EDP Pledge System that such securities have been pledged to the Corporation in respect of such short position, subject to

[4] Rule 610A is entirely new. To improve readability, it has not been underlined.

the provisions of this Rule. The Clearing Member shall maintain a record for each member specific deposit identifying the customer, the account of the customer in which the underlying securities are held and the specified option contracts for which the member specific deposit was made, and the Clearing Member shall supply such record to the Corporation upon the Corporation's request.

(b) *Transfer of Member Specific Deposits to the Corporation on Clearing Member Default* If an exercise of options of a series covered by a member specific deposit is assigned to the account of the Clearing Member in respect of which the deposit is made, and the Clearing Member fails to make timely settlement in respect of the assignment, the Corporation shall be entitled to take possession of the underlying securities for the purpose of making such settlement and/or reimbursing the Corporation for losses incurred in connection with such failure. If a short position in an option series covered by a member specific deposit has been closed out through a closing purchase transaction and the Clearing Member has failed to make payment to the Corporation of the premium, the Corporation shall be entitled to take possession of a sufficient number of the securities constituting such member specific deposit to satisfy the Clearing Member's obligation to the Corporation.

(c) *Method of Making Withdrawals* Member specific deposits made through the Depository's EDP Pledge System may be withdrawn or released through such system on each business day between such times as the Corporation may specify, with authorization by the Corporation, so long as the margin requirements under this Chapter VI in respect of the account of the Clearing Member in respect of which the deposit was made would still be met after giving effect to such withdrawal or release.

(d) *Rollover* If a short position covered by a member specific deposit has been closed out, the Clearing Member may "roll over" such specific deposit to cover a different short position of the same customer and option type, by submitting a rollover instruction to the Corporation through the EDP Pledge System of the Corporation. A rollover instruction shall be subject to approval or rejection by the Corporation in its sole discretion.

Third-Party Specific Deposits[5]

RULE 610B. (a) *Effecting a Third-Party Specific Deposit* Third-party specific deposits may be made only of underlying securities held at the Depository through an approved custodian, which is a participant of the Depository, for the account of particular customers of a Clearing Member in respect of specified stock call option contracts held by the Clearing Member in a short position for such customers. To make a third-party specific deposit of securities that have been deposited by a customer of a Clearing Member, an approved custodian shall cause the issuance of a confirmation through the Depository's EDP Pledge System that such securities

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[5] Rule 610B is entirely new. To improve readability, it has not been underlined.

have been pledged to the Corporation in respect of such short position, subject to the provisions of this Rule.

(b) *Rollover* If a short position covered by a third-party specific deposit has been closed out, an approved custodian may "roll over" such specific deposit to cover a different short position of the same customer, Clearing Member and option type, by submitting a rollover instruction to the Corporation through the EDP Pledge System of the Corporation. A rollover instruction shall be subject to approval or rejection by the Corporation in its sole discretion.

(c) *Rights of Clearing Member* The making of a third-party specific deposit or the rollover of a deposit shall constitute the grant to the Clearing Member in respect of whose account the deposit is made of a security interest in and right of setoff against the deposited securities to secure the customer's obligations to such Clearing Member in respect of such short position. With respect to such security interest in such securities:

(1) such security interest shall at all times be subordinated to the Corporation's security interest;

(2) the Clearing Member may not exercise remedies with respect to such security interest unless the Corporation has consented to such exercise or unless the Corporation's interest has been withdrawn or released pursuant to the terms of the Rules; and

(3) the Corporation acknowledges that to the extent it has "control" for purposes of the Uniform Commercial Code over such security entitlements created by the approved custodian in the securities, it has such control both for itself and on behalf of the Clearing Member.

(d) *Method of Making Withdrawals*

(1) An approved custodian may request the release of a third-party specific deposit by submitting a request through the Depository's EDP Pledge System. No requested release shall be given effect by the Corporation unless (i) the margin requirements under this Chapter VI in respect of the customers' account of the Clearing Member in respect of which the deposit was made would still be met after giving effect to such release; (ii) the Clearing Member has approved the release through the Depository's EDP Pledge System, and (iii) the deposit is not subject to a "hold" instruction pursuant to Rule 610B(d)(3).

(2) Any third-party specific deposit made in accordance with this Rule shall be released by the Corporation on its own initiative at a time specified by the Corporation on the business day following the exercise settlement date unless (i) the Corporation has received notice from the correspondent clearing corporation by such time indicating that the settlement obligations in respect of such short position have not been met; that the correspondent clearing corporation has determined to suspend, decline or cease to act for the Clearing Member in respect of whose account such deposit was made; or, that the correspondent clearing corporation has determined to prohibit or limit such Clearing Member's access to services offered by the correspondent clearing corporation, in which case the deposit shall not be released until such time as the Corporation determines it has no further obligations in respect of the short position, (ii) the Corporation has directed that the exercise be settled otherwise than through the correspondent clearing corporation, in which case the deposit shall not be released until the Corporation

determines it has no further obligations in respect of the short position and approves the release of such deposit, or (iii) the deposit is subject to a "hold" instruction pursuant to Rule 610B(d)(3), in which case, notwithstanding clauses (i) or (ii), the deposit shall be treated in accordance with paragraph (e) of this Rule.

(3) A Clearing Member may request a "hold" with respect to a third-party specific deposit by submitting an instruction requesting that the Corporation not release such deposit, either upon request of the relevant approved custodian or on its own initiative, for so long as such instruction is in effect.

(e) *Transfer of Third-Party Specific Deposits to Clearing Member upon Customer Default*

A Clearing Member that has declined to approve of the release of a third-party specific deposit pursuant to paragraph (d) of this Rule or requested a "hold" pursuant to Rule 610B(d)(3) with regard to such deposit which remains in effect may request that the Corporation, through the Depository's systems, obtain possession of the securities constituting such third-party specific deposit, or a portion thereof, and direct the Depository to deliver such securities to an account at the Depository specified by such Clearing Member. By submitting a request for delivery or declining to approve a release of a third-party specific deposit pursuant to this Rule, a Clearing Member shall be deemed: (x) to represent that it has the legal right to submit the request or to decline to approve the release, as applicable, and it has the legal right to take possession and/or direct disposition of the securities requested to be delivered, as a result of a valid and perfected lien on and security interest in such securities or otherwise, and (y) to indemnify and hold harmless the Corporation, its directors, officers, employees and agents, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person for any reason as a result of a breach of such representation or the delivery of such securities.

A Clearing Member shall further provide such documentation as the Corporation may reasonably request relating to its legal right to take possession and/or direct disposition of the securities requested to be delivered. Upon receipt of such request the Corporation shall, unless prohibited by applicable law or regulations or court order, through the facilities of the Depository, instruct the Depository to deliver the relevant securities, directly or indirectly, to the account at the Depository specified by such Clearing Member, provided that if a Clearing Member has not made a request in proper form pursuant to this paragraph (e) by the 5th business day following such Clearing Member's request for a "hold" with regard to such deposit, the Corporation shall, subject to paragraph (f) of this Rule, release such third-party specific deposit, and, provided further, that the Corporation shall not be responsible for any failure by the Depository to act on such instruction.

(f) *Transfer of Third-Party Specific Deposits to the Corporation upon Clearing Member Default*

If an exercise of options of a series covered by a third-party specific deposit is assigned to the customers' account of the Clearing Member in respect of which the deposit is made, and the Clearing Member fails to make timely settlement in respect of the assignment, the Corporation

shall be entitled to take possession of the underlying securities for the purpose of making such settlement and/or reimbursing the Corporation for losses incurred in connection with such failure. If a short position in an option series covered by a third-party specific deposit has been closed out through a closing purchase transaction and the Clearing Member has failed to make payment to the Corporation of the premium, the Corporation shall be entitled to take possession of a sufficient number of the securities constituting such third-party specific deposit to satisfy the Clearing Member's obligation to the Corporation.

(g) *Effect of Release of Third Party Specific Deposit* The release of a third-party specific deposit by the Corporation in accordance with the provisions of this Rule shall have the effect of releasing any and all rights of the Corporation and any rights of the Clearing Member established pursuant to this Rule with respect to the deposit against the relevant approved custodian. A release will not affect any other rights of the Clearing Member for whose account the deposit was made.

Escrow Deposits[6]

RULE 610C. A participating escrow bank, which must be a participant of the Depository unless it effects escrow deposits consisting only of cash, may effect escrow deposits in respect of short positions in stock put option contracts and index put or call option contracts and may effect "roll overs" and withdrawals of such deposits, and a Clearing Member may instruct the Corporation with regard to short positions to be covered by such deposits, by submitting instructions to the Corporation through an EDP Pledge System, subject to the following provisions of this Rule:

(a) *Eligible Collateral.* Escrow deposits may consist of the following instruments with respect to the following short positions:

(1) with respect to short positions in stock put option contracts or index put option contracts: cash; U.S. Government securities; or any combination thereof; and

(2) with respect to short positions in index call options: cash; U.S. Government securities; common stocks; or any combination thereof.

(b) *Manner of Holding.* (i) Shares of common stock and U.S. Government securities included within an escrow deposit shall be held in the participating escrow bank's participant account at the Depository. Cash included within an escrow deposit shall be held in an account of the customer approved by the Corporation, and into which the Corporation has online view access (each, an "approved account"), at the participating escrow bank governed by an agreement in a form acceptable to the Corporation and signed by the customer, the Corporation and the participating escrow bank (the "tri-party agreement").

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6 Rule 610C is a new Rule based on existing Rule 613. To improve readability, it has not been underlined.

(ii) The Corporation shall have a perfected security interest in each approved account and in all cash and securities within an escrow deposit.

(iii) Approved accounts shall be used solely for the purpose of making escrow deposits.

(c) *Method of Effecting Escrow Deposits.*

(1) A participating escrow bank may effect an escrow deposit for a Clearing Member's account by submitting an instruction as follows:

(i) in the case of an escrow deposit consisting of securities, by pledging such securities to the Corporation using the Depository's EDP Pledge System; or

(ii) in the case of an escrow deposit consisting of cash, by pledging such cash to the Corporation using the Corporation's EDP Pledge System.

(2) A participating escrow bank shall specify the number of option contracts to be covered by each escrow deposit through an entry in the Corporation's EDP Pledge System. The number of option contracts covered by an escrow deposit shall be the lesser of the number specified by the participating escrow bank in respect of such deposit and the number determined by the Corporation pursuant to this Rule 610C, in either case subject to the right of the relevant Clearing Member to reduce the number of contracts supported by a deposit.

(3) Notwithstanding any other provision of this Rule 610C, if the Corporation deems necessary for the protection of the Corporation, other Clearing Members or the general public, the Corporation may approve or reject a deposit, or may disregard a deposit at any time, including, without limitation, as a result of the maturity of, or a corporate action involving the issuer of, securities included within an escrow deposit.

(d) *Method of Making Withdrawals.* A participating escrow bank may request a withdrawal of an escrow deposit by submitting an instruction as follows:

(1) in the case of an escrow deposit consisting of securities, by submitting a release request through the Depository's EDP Pledge System;

(2) in the case of an escrow deposit consisting of cash, by submitting an instruction through the Corporation's EDP Pledge System.

A Clearing Member may approve or disapprove of a withdrawal of deposited securities through the Depository's EDP Pledge System. A Clearing Member may request a "hold" with respect to any escrow deposit made in respect of such Clearing Member's account by submitting an instruction through the Corporation's EDP Pledge System requesting that the Corporation not grant any request for withdrawal of such deposit or release such deposit for so long as such instruction is in effect. No withdrawal instruction shall be given effect by the Corporation unless (i) the margin requirements under this Chapter VI in respect of the customers' account of the Clearing Member in respect of which the deposit was made would still be met met after giving effect to such withdrawal, (ii) in the case of a withdrawal of deposited securities, the Clearing

Member has approved the withdrawal through the Depository's EDP Pledge System, and (iii) the deposit is not subject to a "hold" instruction.[7]

(e) *Rollover*. If a short position covered by an escrow deposit has been closed out, a participating escrow bank may effect the "roll over" of such escrow deposit to cover a different short position of the same customer, Clearing Member and option type by submitting a rollover instruction using electronic means prescribed by the Corporation for such purpose. A rollover instruction shall be subject to approval or rejection by the Corporation in its sole discretion.

(f) *Rights of Clearing Member*. The making of an escrow deposit shall constitute the grant by the customer to the Clearing Member in respect of whose account the deposit is made of a security interest in and right of setoff against the deposited securities and deposited cash to secure the customer's obligations to such Clearing Member in respect of such short position. With respect to such security interest in the securities or cash included within an escrow deposit:

(1) such security interest shall at all times be subordinated to the Corporation's security interest;

(2) the Clearing Member may not exercise remedies with respect to such security interest unless the Corporation has consented to such exercise or unless the Corporation's interest has been withdrawn or released pursuant to the terms of the Rules; and

(3) the Corporation acknowledges that to the extent it has "control" for purposes of the Uniform Commercial Code over the security entitlements created by the participating escrow bank in the securities, and over the cash, included within the escrow deposit, it has such control both for itself and on behalf of the Clearing Member.

(g) *Initial Minimum.* The total value of the escrow deposit as of the time such deposit is made shall not be less than the product of:

(1) the applicable initial percentage for the category of option covered by the short position (*e.g.*, stock put options, index call options or index put options), as specified from time to time by the Corporation in such schedule or other form as the Corporation shall make available to Clearing Members and participating escrow banks; and

(2) the product of the number of option contracts specified in the instruction and (i) in the case of a deposit made in respect of index call option contracts, the aggregate current index value of the underlying index at the close of trading on the trading day preceding the date of deposit, or (ii) in the case of a deposit made in respect of stock or index put option contracts, the aggregate exercise price per contract.

(h) *Maintenance Minimum.* In connection with its calculation of required margin pursuant to Rule 601, the Corporation shall calculate the value of each escrow deposit made

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[7] This sentence is based on existing Rule 613(b).

pursuant to this Rule. If in making such calculation the Corporation determines that the total value of an escrow deposit shall be less than the product of:

(1) the applicable maintenance percentage for the category of option covered by the short position, as specified from time to time by the Corporation in such schedule or other form as the Corporation shall make available to Clearing Members and participating escrow banks; and

(2) the product of the number of option contracts covered by the escrow deposit and (i) in the case of a deposit made in respect of index call option contracts, the aggregate current index value of the underlying index at the close of trading on the trading day preceding the date of deposit, or (ii) in the case of a deposit made in respect of stock or index put option contracts, the aggregate exercise price per contract, the Corporation may, upon notice to the Clearing Member on whose behalf the escrow deposit was made, disregard the escrow deposit and require that margin be deposited in respect of the short position theretofore covered by the escrow deposit. If such margin is not timely deposited and the Clearing Member is suspended by the Corporation, the Corporation may close out such short position and: (i) in the case of securities, direct the Depository to deliver such securities to the participant account of the Corporation at the Depository and (ii) in the case of cash, cause such cash to be delivered to a bank account specified by the Corporation, in either case for the purpose of reimbursing itself for costs incurred in connection with such close-out.

(i) *Agreements of Participating Escrow Bank Regarding Escrow Deposits.* By effecting an escrow deposit, a participating escrow bank agrees that:

(1) The participating escrow bank will not release the escrow deposit, nor will it direct the Depository to release, or consent to the Depository's release of, the escrow deposit, either to the customer or to any other party, without the prior consent of the Corporation; provided, however a participating escrow bank may release the escrow deposit to the Corporation or to a third party pursuant to a written court order or an order of the Corporation.

(2) The participating escrow bank will not subject the escrow deposit, any securities or cash included within the escrow deposit, any cash held in the approved account at the participating escrow bank associated with the deposit or any portion of any of the foregoing to any right (including any right of set-off), charge, security interest, lien or claim of any kind in favor of the participating escrow bank, or any person claiming through the participating escrow bank. Further, the participating escrow bank waives (or, to the extent such waiver is prohibited by law, subordinates) any right (including any right of set-off), charge, security interest, lien or claim of any kind in its favor with respect to any securities or cash included within the escrow deposit, an approved account or other assets credited thereto or proceeds thereof or any portion of any of the foregoing, and the participating escrow bank will promptly notify the Corporation and the Clearing Member with respect to whose account the escrow deposit was made if any notice of lien, levy, court order or other process which purports to affect such escrow deposit or any portion thereof is served upon it.

(3) To the extent the escrow deposit is in respect of a short position in index call options, the participating escrow bank will maintain a written affirmation from the relevant customer

stating that all index call options written for such customers' account and covered by escrow deposits with the participating escrow bank are written against a diversified stock portfolio.

(4) Upon reasonable request of the Corporation, the participating escrow bank shall cooperate with the Corporation in reconciling balances in each approved account.

(j) *Representations and Warranties of Participating Escrow Bank When Giving an Instruction.* A participating escrow bank, by giving an instruction with respect to an escrow deposit or rollover, represents as follows:

(1) The participating escrow bank holds the securities specified in the instruction at the Depository for the account of the customer on whose behalf the escrow deposit was made and holds the cash specified in the instruction in an approved account.

(2) The customer on whose behalf the escrow deposit was made or its agent has specifically authorized the participating escrow bank to submit the instruction to the Corporation and to hold the cash and/or securities specified in the instruction as an escrow deposit pursuant to the Rules in respect of the customer's short position in respect of which the escrow deposit is made.

(3) The escrow deposit, or any portion thereof, is not subject to any right (including any right of set-off), charge, security interest, lien or claim of any kind in favor of the participating escrow bank or any person claiming through the participating escrow bank.

(4) The participating escrow bank has obtained from the customer or its duly authorized representative confirmation of the customer's understanding that: (A) if the short position specified in the instruction is closed out under circumstances permitting the related escrow deposit to be withdrawn by the Clearing Member, the customer shall work with the Clearing Member to ensure that the Clearing Member withdraws the escrow deposit from the Corporation, and until the escrow deposit is duly released by the Corporation, the Corporation will retain the right to demand delivery or payment of the escrow deposit or its proceeds upon the assignment of an exercise notice to any short position in a series of options specified in the instruction carried in the Clearing Member's customers' account with the Corporation; and (B) exercise notices assigned by the Corporation to short positions for which escrow deposits have been made by the Clearing Member are allocated to particular customers by the Clearing Member or by their respective brokers, and if the Clearing Member is suspended by the Corporation and the Corporation cannot promptly determine the identities of the assigned customers, the Corporation will reallocate the exercise notices, and reallocation will be binding on the customer notwithstanding any contrary notice or confirmation which the customer may have received from the Clearing Member or the customer's broker.

(5) If the customer is the participating escrow bank acting in a fiduciary or similar capacity, or a trust or similar account maintained with the participating escrow bank, the participating escrow bank nonetheless understands that in submitting the instruction to the Corporation and functioning as escrowee and bailee of the escrow deposit pursuant to the Rules, the participating escrow bank is acting in a wholly separate capacity, and not in its capacity as customer.

(6) The escrow deposit meets the requirements set forth in paragraphs (a) and (b)(i) above.

(7) The total value of the escrow deposit as of the initial deposit of collateral and upon each addition of collateral to such escrow deposit is sufficient to support the number of contracts specified by the participating escrow bank in the relevant instruction, taking into account the valuation principles set forth in paragraph (g) of this Rule 610C.

(8) The total amount of cash held by the participating escrow bank pursuant to outstanding escrow deposits does not exceed a dollar amount equal to a percentage, as specified from time to time by the Corporation in such schedule or other form as the Corporation shall make available to Clearing Members and participating escrow banks, of the Tier 1 Capital of the participating escrow bank.

(9) To the extent that the escrow deposit includes securities (such securities and any proceeds thereof or distributions thereon, the "deposited securities"):

(i) The deposited securities are held in the participating escrow bank's account at the Depository.

(ii) The participating escrow bank has notified the Depository of the pledge to the Corporation of the deposited securities and the Depository has noted such pledge on its records.

(iii) The customer or its duly authorized representative has provided an authorization under which the Corporation has the right to liquidate the deposited securities in the event of the participating escrow bank's failure to meet its settlement obligations or insolvency.

(iv) The participating escrow bank is a "securities intermediary" (as defined in Section 8-102(a)(14) of the Uniform Commercial Code).

(10) To the extent that the escrow deposit includes cash:

(i) The participating escrow bank has established an approved account for the customer for the purpose of effecting escrow deposits and pledging the cash within escrow deposits to the Corporation, and the deposited cash specified in the instruction (the "deposited cash") has been properly credited to one of such approved accounts.

(ii) The customer's approved account constitutes a "deposit account" within the meaning of Article 9 of the Uniform Commercial Code.

(iii) The customer or its duly authorized representative has provided an authorization under which the Corporation has the right to deliver the deposited cash to its designee in the event of the participating escrow bank's insolvency or failure to meet its settlement obligations.

(iv) The participating escrow bank is a "bank" (as defined in Section 9-102(a)(8) of the Uniform Commercial Code) and will be acting in that capacity with respect to the approved account.

(k) *Agreements of Participating Escrow Bank When Giving an Instruction.* A participating escrow bank, by giving an instruction with respect to an escrow deposit or rollover, irrevocably agrees as follows:

(1) To the extent that the escrow deposit includes deposited securities:

(i) The participating escrow bank shall promptly and fully comply with "entitlement orders" (as that term is defined in Section 8-102(a)(8) of the Uniform Commercial Code) or directions originated by the Corporation concerning all deposited securities without the further consent of the customer, including without limitation any entitlement order or direction originated by the Corporation instructing the participating escrow bank to deliver any or all of the deposited securities to the Corporation or its designees.

(ii) The participating escrow bank shall make reasonable efforts within its powers to ensure that the Depository follows the procedures described in clause (i).

(iii) The participating escrow bank shall comply promptly and fully with an order from the Corporation to liquidate the deposited securities to the extent necessary to perform the participating escrow bank's obligations under the Rules without the further consent of the customer or the Clearing Member.

(2) To the extent that the escrow deposit includes cash:

(i) The participating escrow bank shall hold the deposited cash applicable to the customer in the approved account at the participating escrow bank.

(ii) The participating escrow bank shall promptly and fully comply with disposition instructions originated by the Corporation concerning the approved account and all deposited cash and earnings thereon without the further consent of such customer or the Clearing Member, including without limitation any disposition instruction originated by the Corporation instructing the participating escrow bank to deliver any or all of the deposited cash to the Corporation or its designees.

(l) *Notice of Material Changes to Participating Escrow Bank.* Each participating escrow bank shall give the Corporation prompt prior written notice, in the manner specified by the Corporation, of any material change in its form of organization or ownership structure, including:

(1) the merger, combination or consolidation between the participating escrow bank and another person or entity;

(2) the assumption or guarantee by the participating escrow bank of all or substantially all of the liabilities of another person or entity in connection with the direct or indirect acquisition of all or substantially all of the assets of such person or entity;

(3) the sale of a significant part of the participating escrow bank's business or assets to another person or entity;

(4) a change in the name, form of business organization, or jurisdiction of organization or incorporation of the participating escrow bank; and

(5) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the participating escrow bank.

For the avoidance of doubt, to the extent prohibited by law, a participating escrow bank need not provide the foregoing notice in advance of a public announcement.

(m) *Reports.* On each business day, the Corporation shall make available to the participating escrow bank and to each Clearing Member a listing of all deposit, rollover and withdrawal instructions submitted to the Corporation on that business day with respect to escrow deposits made by the participating escrow bank for such Clearing Member.

(n) *Assignment of Exercises.* If any information made available to a participating escrow bank by the Corporation indicates that an exercise notice has been allocated to a short position covered by an escrow deposit that is being withdrawn or released, the participating escrow bank may not return the escrow deposit to the customer.

(o) *Release of Escrow Deposits in Respect of Stock Put Options upon Expiration.* Any escrow deposit in respect of a short position in stock put options shall be released by the Corporation on its own initiative at a time specified by the Corporation on the fourth business day following the expiration date for the short position covered by such escrow deposit, unless:

(1) the Corporation has received notice from the correspondent clearing corporation indicating that the Clearing Member's obligations in respect of such short position have not been satisfied, in which case the escrow deposit shall not be released until such time as the Corporation determines it has no further obligations in respect of the short position; or

(2) the deposit is subject to a "hold" instruction, in which case the procedures set forth in paragraph (s) below shall apply.

(p) *Release of Escrow Deposits in Respect of Index Options upon Expiration.* Any escrow deposit made in respect of a short position in index options shall be released by the Corporation on its own initiative at a time specified by the Corporation on the first business day following the expiration date for the short position covered by such escrow deposit, unless:

(1) the Clearing Member carrying the short position is not in full compliance with its obligations to the Corporation; or

(2) the deposit is subject to a "hold" instruction, in which case the procedures set forth in paragraph (s) below shall apply.

(q) *Transfer of Escrow Deposits to the Corporation on Clearing Member Default.* If a Clearing Member fails to meet its settlement obligations with the Corporation on any business day or is suspended, the Corporation has the option of approving or disapproving any withdrawal of an escrow deposit by such Clearing Member or the relevant participating escrow bank.

(1) If a Clearing Member is in default with respect to any short position covered by an escrow deposit on any business day, the Corporation may take possession of the cash and securities making up any escrow deposit supporting such short position and: (i) in the case of securities, direct the Depository to deliver such securities to the account at the Depository specified by the Corporation and (ii) in the case of cash, cause such cash to be delivered to a bank account specified by the Corporation, in either case for the purpose of satisfying the Clearing Member's obligations in respect of such short position (or reimbursing itself for losses incurred as a result of the default).

(2) If a Clearing Member fails to meet its settlement obligations with the Corporation or is suspended on any business day, the Corporation may close out any short position held with respect to such Clearing Member, take possession of the securities and/or cash making up any escrow deposit supporting such short position and: (i) in the case of securities, direct the Depository to deliver such securities to the participant account of the Corporation at the Depository and (ii) in the case of cash, cause such cash to be delivered to a bank account specified by the Corporation, in either case, for the purpose of reimbursing itself for costs incurred in connection with such close-out.

(r) *Participating Escrow Bank Default.* If a participating escrow bank has become insolvent, fails to satisfy the applicable requirements set forth in Rules 610 and 610C or breaches the relevant participating escrow bank agreement or tri-party agreement, the Corporation may nonetheless accept new deposits or accept any escrow rollovers or withdrawals for which settlement was to have been made by the participating escrow bank (provided that the affected Clearing Members would be in compliance with their obligations to the Corporation after giving effect thereto), but such acceptance shall not prejudice or impair such rights as such Clearing Members may have against the participating escrow bank or its customers; provided, that the Corporation may also take any of the following actions: (i) disqualify the participating escrow bank from submitting new escrow deposits; (ii) disapprove any withdrawals by such participating escrow bank, (iii) take possession of deposited securities and cause such securities to be delivered to the participant account of the Corporation at the Depository and/or take possession of deposited cash and cause such cash to be delivered to a bank account specified by the Corporation, in either case for satisfying the participating escrow bank's settlement obligations (or reimbursing itself for losses incurred as a result of such failure or insolvency), (iv) disregard any escrow deposits, (v) require the participating escrow bank to withdraw any escrow deposit, or (vi) close out any short position supported by an escrow deposit made by the participating escrow bank, take possession of the securities and/or cash making up any escrow deposit supporting such short position and: (A) in the case of securities, direct the Depository to deliver such securities to the participant account of the Corporation at the Depository and (B) in the case of cash, cause such cash to be delivered to a bank account specified by the Corporation, in either case for the purpose of reimbursing itself for costs incurred in connection with such close-out. In the event of a participating escrow bank's failure to meet its settlement obligations with respect to a Clearing Member or a participating escrow bank's insolvency, the Clearing Member shall have the right to take possession of the deposited securities or cash, as described in paragraph (s) below, provided that the Corporation has released its rights in such deposited securities or cash.

(s) *Transfer of Escrow Deposits to Clearing Member upon Customer Default.*

(1) A Clearing Member that has disapproved of the withdrawal of an escrow deposit (in the case of a withdrawal of deposited securities) or requested a "hold" with regard to such deposit may request, using a form prescribed by the Corporation for such purpose, that the Corporation obtain possession of the securities or cash included within the escrow deposit, or a portion thereof, and deliver such securities to the account at the Depository specified by the Clearing Member, or cash to a location specified by the Clearing Member. By submitting a request for delivery with respect to the securities or cash included within an escrow deposit, a Clearing Member shall be deemed:

(i) to represent that, because the customer has defaulted in its obligations to the Clearing Member in respect of the short position covered by the deposit, it has the legal right to take possession and/or direct disposition of the deposited securities or deposited cash requested to be delivered, as a result of a valid and perfected lien on and security interest in the deposited securities and deposited cash or otherwise, and

(ii) to indemnify and hold harmless the Corporation, its directors, officers, employees and agents, against all losses or expenses (including attorneys' fees) reasonably incurred by such person for any reason as a result of a breach of the representation in clause (1) or the delivery of such deposited securities or deposited cash.

(2) A Clearing Member shall further provide such documentation as the Corporation may reasonably request relating to its legal right to take possession and/or direct disposition of the securities requested to be delivered.

(3) Upon receipt of such a request and upon confirmation that Clearing Member has met any additional required margin, the Corporation shall, unless prohibited by applicable law or regulations or court order: (i) in the case of deposited securities, through the facilities of the Depository, instruct the Depository to deliver such deposited securities, directly or indirectly, to an account at the Depository specified by such Clearing Member, or (ii) in the case of deposited cash, instruct the participating escrow bank to deliver such deposited cash as directed by the Clearing Member. If a Clearing Member has not made a request in proper form or requested an extension by the 5th business day following the Clearing Member's request for a "hold" with respect to such deposit, the Corporation shall release the escrow deposit unless the Clearing Member is not in compliance with its obligations to the Corporation as of such time, in which case the Corporation may exercise the remedies set forth in paragraph (q); and, provided further, the Corporation shall not be responsible for any failure by the Depository or any participating escrow bank to act on any such instruction.

(t) *Effect of Release or Withdrawal of Escrow Deposit.* The release of an escrow deposit by the Corporation or the withdrawal of an escrow deposit with the Corporation's consent releases any and all rights of the Corporation against the participating escrow bank with respect to the escrow deposit. A release or withdrawal of an escrow deposit will not affect any other rights of the Clearing Member for whose account the escrow deposit was made.

. . . Interpretations and Policies:

.01 The Corporation will not accept, or if initially accepted, will thereafter reject, an escrow deposit pursuant to this Rule 610C from a participating escrow bank other than through the Depository, if such participating escrow bank, a parent or an affiliate has an equity interest in the amount of 20% or more of the total capital of the Clearing Member for whose account the deposit is made.

.02 For purposes of this Rule, the term "participating escrow bank" means an approved custodian that has entered into and has in effect a participating escrow bank agreement with the Corporation.

.03 For purposes of this Rule, the term "participating escrow bank agreement" shall mean an agreement between the Corporation and a participating escrow bank approved to act as a custodian of escrow deposits for the purposes of Chapter VI of the Rules, providing, among other things, that such bank is subject to all provisions of the Rules governing the escrow deposit program for effecting escrow deposits, rollovers and withdrawals of escrow deposits without the issuance of escrow receipts.

.04 For the purposes of this Rule, the term "Government securities" means securities with a fixed principal amount issued or guaranteed by the United States, excluding Separate Trading of Registered Interest and Principal Securities issued on Treasury Inflation Protected Securities (commonly called TIP-STRIPS).

.05 For the purposes of this Rule, the term "business day" means any day other than a day on which the Corporation, the Depository and/or commercial banks in New York City are authorized or required to be closed.

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Escrow Deposit Program

RULE 613 IS EFFECTIVE ONLY THROUGH NOVEMBER 30, 2017[8]

RULE 613. A bank or other depository that has entered into an escrow deposit agreement with the Corporation (an "Escrow Bank") may make escrow deposits in respect of stock option contracts and index put or call option contracts carried in short positions and "roll over" and withdraw such deposits, and a Clearing Member may withdraw such deposits, by submitting instructions to the Corporation through any electronic means prescribed by the Corporation for such purposes, subject to the following provisions of this Rule:

(a) An Escrow Bank may make an escrow deposit for a Clearing Member's account, or "roll over" an escrow deposit made in accordance with this Rule to cover a different short position of the same customer, or make an escrow withdrawal for a Clearing Member's account, by submitting a deposit, rollover, or withdrawal instruction to the Corporation through electronic

[8] Rule 613 will be deleted from the Corporation's Rules as of December 1, 2017.

means prescribed by the Corporation for such purposes. Rollover instructions may not be submitted after expiration of the contract covered by the escrow deposit. Rollover instructions submitted after expiration of the contract will be disregarded and eliminated.

(b) A Clearing Member for whose account an escrow deposit has been made in accordance with this Rule may withdraw such deposit by submitting a withdrawal instruction to the Corporation through electronic means prescribed by the Corporation for that purpose, specifying the reason for withdrawal. No withdrawal instruction shall be given effect by the Corporation unless the Clearing Member for whose account the withdrawal is sought to be made would be in full compliance with this Chapter VI after giving effect to such withdrawal.

(c) Any instruction submitted to the Corporation by an Escrow Bank or a Clearing Member pursuant to paragraph (a) or the first sentence of paragraph (b) above may specify, as to each deposit, rollover, or withdrawal instruction, any net premium payable to or by the party submitting the instruction in connection therewith. The Corporation shall act as agent for Escrow Banks and Clearing Members in effecting settlement of such premium payment obligations in accordance with Rule 503 and the applicable escrow deposit agreements.

(d) On each business day, the Corporation shall make available to each Clearing Member and to each Escrow Bank on-line reports listing all escrow deposit, rollover, and withdrawal instructions affecting such Clearing Member or Bank that were submitted to the Corporation on that business day, together with the net premiums (if any) specified by the initiating party as payable to or by such Clearing Member or Bank in connection with each such instruction. At or before such time as the Corporation shall prescribe on that same business day, each Clearing Member or Bank may approve or reject a deposit, rollover, or withdrawal instruction listed on such on-line reports by submitting appropriate responses to the Corporation through electronic means prescribed by the Corporation for such purposes. If any such instruction is rejected, the instruction shall be deemed null and void; provided, however, that if an Escrow Bank submits an escrow deposit instruction without specifying any premium as payable to such Bank, or a Clearing Member submits an escrow withdrawal instruction without specifying any premium as payable to such Clearing Member, such instructions may not be rejected. Instructions that are not approved by such time as the Corporation shall prescribe on that same business day shall be disregarded and eliminated from the Corporation's escrow deposit processing system; provided, however, that if an Escrow Bank submits an escrow deposit instruction without specifying any premium as payable to such Bank or a Clearing Member submits an escrow withdrawal instruction without specifying any premium as payable to such Clearing Member, such instructions will be effected without approval from the Bank or Clearing Member.

(e) At or before 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on each business day, the Corporation shall make available to each Clearing Member and to each Escrow Bank an on-line escrow settlement report listing any approved deposit, rollover, or withdrawal instructions from the previous day's on-line escrow activity reports which affect such Clearing Member or Bank, and listing the aggregate premium settlement amounts in connection therewith. All approved instructions listed on the escrow settlement report shall be deemed to have been accepted by the Corporation as of the opening of business on that business day, provided that if a Clearing Member fails to meet its settlement obligations on that day, the Corporation may, in accordance with the terms of the applicable escrow deposit agreement, reject any deposit or

rollover instruction requiring the payment of premiums by such Clearing Member through the facilities of the Corporation or any withdrawal instruction whatsoever.

(f) Any escrow deposit made in accordance with this Rule in respect of stock options shall be released by the Corporation on its own initiative at 6:00 P.M. Central Time (7:00 P.M. Eastern Time) on the business day following the exercise settlement date unless (i) the Corporation has received notice from the correspondent clearing corporation indicating that the settlement obligations in respect of such short position have not been met by the Clearing Member or the member of the correspondent clearing corporation effecting settlements of exercises and assignments on the Clearing Member's behalf, in which case the deposit shall not be released until the first business day after the Corporation receives confirmation that it shall have no obligations in respect of the short position, or (ii) the Corporation has directed that the exercise be settled otherwise than through the correspondent clearing corporation, until the Corporation receives confirmation that settlement has been made and notifies the Escrow Bank holding the deposit, in accordance with the terms of the applicable escrow deposit agreement, that the deposit is released. Any escrow deposits made in accordance with this Rule in respect of index options shall be released by the Corporation on its own initiative as specified in Rule 1801.

(g) Errors made by a Clearing Member or an Escrow Bank in specifying the premium due in connection with any escrow deposit, escrow rollover, or escrow withdrawal in accordance with this Rule may be corrected by submission of a cash-only entry to the Corporation, either by the party that made the error or by the other party, through electronic means prescribed by the Corporation for such purposes. Cash-only entries shall be subject to being rejected or disregarded in the same manner as escrow deposit activity. Each daily settlement provided for in Rule 503 shall include any cash-only entries initiated by or directed to a Clearing Member which are shown on that day's escrow settlement report as having been approved. Cash-only entries shall be used solely for the purpose of correcting errors made by an Escrow Bank or a Clearing Member in connection with escrow deposits, rollovers, and withdrawals in accordance with this Rule, and for no other purpose.

(h) If an Escrow Bank shall fail to meet its settlement obligations in connection with escrow deposit activity on any business day, the Corporation shall nonetheless accept any escrow rollovers or withdrawals for which settlement was to have been made by such Bank (provided that the affected Clearing Members would be in compliance with their margin obligations after giving effect thereto), but such acceptance shall not prejudice or impair such rights as such Clearing Members may have against such Bank or its customers. The Corporation shall in no event have any responsibility to any Clearing Member for premiums payable by a Bank in connection with escrow deposit activity.

(i) The release of an escrow deposit by the Corporation or the withdrawal of an escrow deposit from the Corporation in accordance with the provisions of this Rule shall have the effect of releasing any and all rights of the Corporation with respect to the deposit against the Escrow Bank through whose facilities the deposit was made. Subject (in the case of a withdrawal) to the provisions of paragraph (h) above, such release or withdrawal shall also release any and all rights against such Bank of the Clearing Member for whose account the escrow deposit was made; provided, however, that if any on-line report referred to in paragraph (d) above indicates that an exercise notice has been allocated to a short position covered by an escrow deposit that is being

withdrawn or released, an Escrow Bank shall be prohibited, under the terms of its escrow deposit agreement, from returning the deposit to the customer and shall remain obligated under the terms of its escrow deposit agreement, (i) as to any stock option escrow deposit, to deliver to the Clearing Member (x) in the case of a deposit made in respect of one or more calls, the underlying securities deposited against payment of the aggregate exercise price of the call(s) covered by such deposit (less all applicable commissions and other charges), upon presentation by the Clearing Member of a duly executed delivery order in a form prescribed by the Corporation, or (y) in the case of a deposit made in respect of one or more puts, the aggregate exercise price of the put(s) covered by such deposit (plus all applicable commissions and other charges) against delivery of the underlying securities, upon presentation by the Clearing Member of a duly executed payment order in a form prescribed by the Corporation, or (ii) as to any index option escrow deposit, to pay to the Clearing Member the exercise settlement amount (plus any applicable commissions or other charges) upon presentation by the Clearing Member of a duly executed payment order in a form prescribed by the Corporation.

(j) Anything else herein to the contrary notwithstanding, on any day on which the Corporation is open for business, but an Escrow Bank is not, such Bank shall have no obligation to respond to any on-line escrow activity report, or to effect any cash settlement pursuant to Rule 503, until the next day on which both the Corporation and the Bank are open for business.

. . . Interpretations and Policies:

.01 The Corporation will not accept, or if initially accepted, will thereafter reject, an escrow deposit pursuant to this Rule 613 from a bank or other depository other than through the Depository, if such bank or other depository, a parent or an affiliate has an equity interest in the amount of 20% or more of the total capital of the Clearing Member for whose account the deposit is made.

.02 The term "escrow deposit agreement" shall mean an agreement between the Corporation and a bank or other depository approved to act as a custodian of escrow deposits for the purposes of Chapter VI of the Rules, providing for the confirmation, rollover, and withdrawal of escrow deposits without the issuance of escrow receipts and establishing procedures whereby premium settlements between such depository and Clearing Members may be made through the facilities of the Corporation.

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CHAPTER XI

Suspension of a Clearing Member

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Open Positions

RULE 1106.

(a) [no change]

(b) Short Positions in Options and BOUNDs.

(1) [no change]

(2) Notwithstanding the foregoing provisions of this Rule 1106(b), open short positions in option contracts and BOUNDs in respect of which one or more specific or escrow deposits have been made (collectively, "covered short positions") **[**shall**]** may be maintained by the Corporation**[**, subject to the instructions of the suspended Clearing Member or its representative**]** or may be closed out, in the Corporation's discretion, provided that if prior to a decision by the Corporation to close out such positions the suspended Clearing Member or its representative shall instruct the Corporation to transfer any such short position to another Clearing Member, and the transferee Clearing Member is willing to accept such transfer and the margin requirements of Chapter VI of the Rules in respect of the customers' account of the Clearing Member in respect of which the deposit is made are met after giving effect to such transfer, the Corporation may comply with such instruction, and any specific deposit or escrow deposit held by the Corporation in respect thereof and not assigned to the transferee Clearing Member shall be released by the Corporation to the suspended Clearing Member or its representative. The Corporation may, in its discretion, postpone acceptance of any transfer instruction tendered for the account of a suspended Clearing Member pending receipt of satisfactory evidence of the authority of the person tendering such instruction and such additional documentation regarding the transfer as the Corporation shall require. If a covered short position is not closed out or transferred and thereafter **[**shall**]** expires without having been assigned an exercise, the Corporation shall release any specific deposit or escrow deposit held by the Corporation in respect thereof to the suspended Clearing Member or its representative. If an exercise shall be assigned to a covered short position, the exercise shall be settled in accordance with the applicable provisions of the Rules, including those of Rule 1107 or a provision of the Rules that is specified in the Rules as replacing or supplementing Rule 1107 with respect to particular classes of options. If an exercise notice assigned to a covered short position is for a number of contracts which is less than the number of contracts included in such short position, the Corporation shall allocate the assignment as among contracts covered by specific deposits and contracts covered by escrow deposits receipts by random selection or another allocation method which the Corporation deems fair and equitable in the circumstances. The Corporation shall give prompt notice of any allocation made hereunder to the suspended Clearing Member or its representative.

[(3)**]** If **[**the suspended Clearing Member or its representative shall instruct**]** the Corporation **[**to**]** closes out any covered short position **[**and shall furnish such security as the Corporation may require to secure payment of the premium for the closing purchase transaction, the Corporation shall cause such short position to be closed, and**]**, the Corporation may take possession of all or a portion of the securities and/or cash making up the specific deposit or escrow deposit covering such short position for the purpose of reimbursing itself for costs incurred in connection with such close-out (or may in lieu thereof accept security for such costs furnished by the suspended clearing member or its representative), and any portion of any such specific deposit or escrow deposit held by the Corporation **[**in respect thereof**]** after such reimbursement shall be released by the Corporation to the suspended Clearing Member or its representative. **[**If the suspended Clearing Member or its representative shall instruct the Corporation to transfer any such short position to another Clearing Member, and the transferee Clearing Member is willing to accept such transfer and would be in compliance with Chapter VI of the Rules after giving effect to such transfer, the Corporation shall comply with such instruction, and any specific deposit or escrow deposit held by the Corporation in respect thereof and not assigned to the transferee Clearing Member shall be released by the Corporation to the suspended Clearing Member or its representative. The Corporation may, in its discretion, postpone acceptance of any close-out or transfer instruction tendered for the account of a suspended Clearing Member pending receipt of satisfactory evidence of the authority of the person tendering such instruction.**]**

(c) – (g) [no change]

. . . Interpretations and Policies [no change]

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CHAPTER XV

Binary Options; Range Options

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Deposits in Lieu of Margin Prohibited

RULE 1506. The Corporation will not accept deposits in lieu of margin with respect to range options or binary options on any underlying interest, and **[**neither**]** none of Rule 610T, Rule 610, 610A, Rule 610B, Rule 610C nor Rule 613 shall apply to binary options or range options.

[Rule 1506 replaces Rules 610T, 610 610A, 610B, 610C and 613.]

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CHAPTER XVI

Foreign Currency Options

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Deposit of Foreign Currency Prohibited

RULE 1601. Rules 610, 610A, 610B and 610C shall not apply to foreign currency options.

[Rule 1601 replaces Rules 610, 610A, 610B and 610C.]

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CHAPTER XVII

Yield-Based Treasury Options

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Deposit of Underlying Treasury Securities Prohibited

RULE 1701. Rules 610T, 610A and 610B shall not apply to yield-based Treasury options.

[Rule 1701 replaces Rules 610, 610T, 610A and 610B.]

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CHAPTER XVIII

Index Options and Certain Other Cash-Settled Options

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Index Option Escrow Deposits

RULE 1801 IS EFFECTIVE THROUGH NOVEMBER 30, 2017[9]

RULE 1801. (a) Escrow deposits may be made in respect of index option contracts carried by a Clearing Member in a short position in its customers' account with the Corporation in accordance with the provisions of this Rule. Such escrow deposits are referred to herein as "index option escrow deposits."

(b)(1) Index option escrow deposits shall consist of:

(a) cash,

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9 Rule 1801 will be deleted from the Corporation's Rules on December 1, 2017.

(b) short-term Government securities,

(c) in the case of deposits made in respect of index call option contracts, common stocks listed on a national securities exchange **[**or the NASDAQ Stock Market**]** ("common stocks"), or

(d) any combination thereof, held for the account of the Clearing Member's customer by an **[**bank or trust company approved by the Corporation (the "depository")**]** approved custodian.

(2) The term "common stocks", as used in this Rule 1801, includes fund shares. In order to be eligible to be deposited hereunder, fund shares must meet the requirements applicable to common stocks under subsection (b)(1)(c) and must be of a class approved by the Corporation for deposit as margin under Rule 604(**[**d**]**b).

(c) The total value of the cash, short-term Government securities, and/or common stocks comprising an index option escrow deposit (the "deposited property") as of the date of the writing transaction in which the short position covered by the deposit was opened (the "trade date") shall have been not less than the product of the number of option contracts covered by the deposit and (i) in the case of a deposit made in respect of index call option contracts, the aggregate current index value of the underlying index group at the close of trading on the trade date, or (ii) in the case of a deposit made in respect of index put option contracts, the aggregate exercise price per contract.

(d) A Clearing Member may make an index option escrow deposit by causing an **[**bank or other depository**]** approved custodian that has entered into an on-line escrow deposit agreement with the Corporation to make an escrow deposit for the Clearing Member's account pursuant to Rule 613.

(e) An **[**depository**]** approved custodian may from time to time substitute cash, short-term Government securities, or (in the case of deposits made in respect of index call option contracts) common stocks for any property theretofore deposited, provided that the value of the substituted property is at least equal to that of the property for which it is substituted. If the total value of the deposited property shall at any time be less than 50% of the product of the number of option contracts covered by the deposit and (i) in the case of a deposit made in respect of index call option contracts, the aggregate current index value of the underlying index group, or (ii) in the case of a deposit made in respect of index put option contracts, the aggregate exercise price per contract, the Corporation may, upon telephonic or written notice to the Clearing Member that made the deposit, disregard the escrow deposit and require that margin be deposited in respect of the short position theretofore covered by the escrow deposit. If such margin is not timely deposited and the Clearing Member is suspended by the Corporation, the Corporation may close out such short position and certify to the **[**depository**]** approved custodian that it has closed out such position.

(f) In calculating the value of deposited property for the purposes of this Rule, short-term Government securities shall be valued at the lesser of par value or 100% of their current market values and common stocks shall be valued at their closing sale prices (if subject to last sale reporting) or their closing bid prices (if not subject to last sale reporting) on the applicable date. Notwithstanding the foregoing, if any common stock included in the deposited property shall

cease to meet the requirements of subsection (b)(1)(c) of this Rule, such common stock shall be assigned a value of zero for the purpose of any calculation under this Rule.

(g) An index option escrow deposit must be received by the Corporation prior to such time as the Corporation may specify in order to be reflected in a Clearing Member's margin requirement for the following business day.

(h) Any index option deposit made in accordance with this Rule shall be released by the Corporation on its own initiative at 6:00 P.M. Central Time (7:00 Eastern Time) on the exercise settlement date, provided the Clearing Member has fully complied with its settlement obligations in the account in which the escrow deposit is held.

(i) An index option escrow deposit may be withdrawn by a Clearing Member, during such hours as the Corporation may specify and with the authorization of the Corporation, so long as the conditions of Chapter VI of the Rules are met after giving effect to such withdrawal. A Clearing Member requesting such withdrawal shall comply with such procedures as the Corporation shall prescribe.

(j) If an exercise of options of a series covered by an index option escrow deposit is assigned to the customers' account of the Clearing Member that made the deposit, and the Clearing Member fails to make timely settlement in respect of the assignment, the Corporation shall be entitled to receive from the **[**depository**]** approved custodian on demand, out of the deposited property or its proceeds, an amount in cash equal to the product of (i) the number of contracts covered by the assignment (up to the aggregate number of contracts covered by the escrow deposit) and (ii) the exercise settlement amount per contract, plus all applicable commissions and other charges. If the Corporation certifies to the **[**depository**]** approved custodian that it has closed out a short position pursuant to section (e) of this Rule, the Corporation shall be entitled to receive from the **[**depository**]** approved custodian, out of the deposited property, an amount in cash equal to the cost of the closing transaction or transactions, including any commissions, financing costs, and the charges incurred by the Corporation in connection therewith.

(k) In the event any short index option position for which an escrow deposit has been made with the Corporation is closed out by a closing transaction or transferred to an account of another Clearing Member, or in the event that settlement is made in respect of an exercise notice assigned to such position, the Clearing Member that carried such position shall promptly request the withdrawal of such escrow deposit (subject, in the case of a closing transaction effected by the Corporation described in subsection (e) of this Rule, to the payment to the Corporation of the costs of such closing transaction, including any commissions, financing costs, and other charges incurred by the Corporation in connection therewith, but unless and until such escrow deposit is withdrawn, the Corporation shall be entitled to make a demand on the deposited property in accordance with the terms of the escrow deposit upon the assignment of an exercise notice to any short index option position in the same series and same account as the one for which the escrow deposit was made.

(l) The deposit hereunder by a Clearing Member of any deposited property may be made only to the extent permitted by applicable law and the rules and regulations thereunder, and shall

be deemed to constitute the Clearing Member's certificate and representation to the Corporation that such deposit has been duly authorized by the customer and does not contravene any provision of law or any rule or regulation thereunder.

[Rule 1801 replaces Rule 610T.]

...Interpretations and Policies:

.01 The Corporation will not accept, or if initially accepted, will thereafter reject, an escrow deposit pursuant to this Rule 1801 from an **[**from a bank or other depository**]** approved custodian other than through the Depository if such **[**depository**]** custodian, a parent**[**,**]** or an affiliate has an equity interest in the amount of 20% or more of the total capital of the Clearing Member for whose account the deposit is made.

.02 For the purposes of this Rule, the term "short-term Government securities" means securities with a fixed principal amount issued or guaranteed by the United States and having one year or less to maturity.

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CHAPTER XXI

Cross-Rate Foreign Currency Options

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Deposit of Foreign Currency Prohibited

RULE 2101. Rules 610T, 610, 610A and 610B shall not apply to cross-rate foreign currency options.

[Rule 2101 replaces Rules 610T, 610, 610A and 610B.]

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CHAPTER XXIII

Cash-Settled Foreign Currency Options

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Deposits in Lieu of Margin Prohibited

RULE 2301. Rules 610T, 610, 610A and 610B shall not apply to cash-settled foreign currency options.

[Rule 2301 replaces Rules 610T, 610, 610A and 610B.]

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CHAPTER XXVII

Packaged Spread Options

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Deposits in Lieu of Margin Prohibited

RULE 2701. Rules 610T, 610, 610A and 610B shall not apply to packaged spread options.

[Rule 2701 replaces Rules 610T, 610, 610A and 610B.]

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Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing by the Board of Directors of OCC at a meeting held on March 8, 2013.

Questions regarding the proposed rule change should be addressed to Scott Kalish, Senior Counsel, at (312) 322-4487.

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 improve the resiliency of OCC's escrow deposit program. The changes would: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) provide more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; (3) clarify clearing members' rights to collateral in the escrow deposit program in the event of a customer default to

the clearing member; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. Upon implementation of the proposed rule change, all securities collateral in OCC's escrow deposit program would be held at the Depository Trust Company ("DTC"), and custodian banks would only be allowed to hold cash collateral.

The narrative below is comprised of four sections. The first section provides a background of OCC's current escrow deposit program as well as an overview of the proposed changes to the rules and agreements that govern the escrow deposit program. The second section discusses the changes associated with: (1) increasing OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) providing more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; and, (3) clarifying clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member as well as providing additional detail concerning the manner in which clearing members may take possession of such collateral. The third section discusses proposed technical and conforming changes to the rules and agreements governing the current escrow deposit program that would allow OCC to consolidate all such terms into a single location in OCC's Rulebook. The second and third sections also discuss changes that improve the readability of the rules governing OCC's escrow deposit program, which is primarily achieved by consolidating all such rules into a single location in OCC's Rulebook. The fourth section discusses the manner in which OCC proposes to transition from the current escrow deposit program to the new escrow deposit program, including the removal of certain rules and contractual provisions that would no longer be applicable to the new escrow deposit program.

SECTION 1: BACKGROUND AND OVERVIEW OF PROPOSED RULE CHANGES

Background/Current Escrow Deposit Program

Each day OCC collects collateral from its clearing members in order to protect OCC and the markets it serves from potential losses stemming from a clearing member default. Approximately half of the collateral deposited by clearing members at OCC is deposited through OCC's escrow deposit program. Users of OCC's escrow deposit program are customers of clearing members who, through the escrow deposit program, are permitted to collateralize eligible positions directly with OCC (instead of with the relevant clearing member who would, in turn, deposit margin at OCC). Currently, collateral deposits made through OCC's escrow deposit program are characterized as either "specific deposits" or "escrow deposits." Specific deposits are deposits of the security underlying a given options position and are made through DTC by a clearing member on behalf of its customer (at the direction of the customer).[10] Escrow deposits are deposits of cash or securities made by a custodian bank on behalf of a customer of an OCC clearing member in support of an eligible options position. OCC's Rules currently contemplate two forms of escrow deposits: "third-party escrow deposits" and "escrow program deposits." Third-party escrow deposits are substantially similar to specific deposits except for the fact that third-party escrow deposits are made by a custodian bank, and not a clearing member. Third-party escrow deposits consist entirely of securities and, like specific deposits, are made through DTC. In order to effect third-party specific deposits, custodian banks must be

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10 For example, if customer XYZ holds a short position of options on AAPL, customer XYZ could, through its clearing member's DTC account, pledge shares of AAPL to OCC in order to collateralize such options position and not be charged margin by OCC.

DTC members. Escrow program deposits are bank deposits of eligible securities or cash, which are held at the custodian bank (versus third-party escrow deposits and specific deposits, which are held at DTC).

When a customer of a clearing member makes a deposit in lieu of margin through OCC's escrow deposit program, the relevant positions are excluded from the clearing member's margin requirement at OCC. The escrow deposit program therefore provides users of OCC's services with a means to more efficiently use cash or securities they may have available.

Overview of Rule Changes (including terminology changes) and New Agreements

Rule Consolidation and Terminology Changes

Currently, the rules concerning OCC's escrow deposit program are located in OCC Rules 503, 610, 613 and 1801. Additionally, OCC and custodian banks participating in OCC's escrow deposit program enter into an Escrow Deposit Agreement ("EDA"), which also contains substantive provisions governing the program. OCC is proposing to consolidate all of the rules concerning the escrow deposit program, including the provisions of the EDA relevant to the revised escrow deposit program, into proposed Rules 610, 610A, 610B and 610C.[11] OCC believes that consolidating the many rules governing the escrow deposit program into a single location would significantly enhance the understandability and transparency of the rules concerning the escrow deposit program for current users of the program as well as any persons that may be interested in using the program in the future.

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11 As described herein, OCC is proposing to eliminate the EDA based on such consolidation. When appropriate, and as described in more detail below, conforming changes were made to certain Rules as a result of OCC proposing to require that all non-cash deposits in the escrow deposit program be made through DTC (and not held at custodian banks).

In connection with the above described rule consolidation, OCC is also proposing to rename the types of escrow deposits available within the escrow deposit program, as well as rename the term "approved depository" to "approved custodian." Specific deposits would now be called "member specific deposits," which are equity securities deposited by clearing members at DTC at the direction of their customers; third-party escrow deposits would now be called "third-party specific deposits," which are equity securities deposited by custodian banks at DTC at the direction of their customers; and, escrow program deposits would now be called, "escrow deposits," which are either cash deposits held at a custodian bank for the benefit of OCC, or Government securities deposited at DTC by custodian banks at the direction of their customers. The term "approved depository" would also be changed to "approved custodian" to eliminate any potential confusion with the term "Depository," which is defined in the Rules, to mean DTC.

New Rule Organization

With respect to the rules governing the escrow deposit program, proposed Rule 610 would set forth general terms and conditions common to all types of deposits permitted under the escrow deposit program. Specifically, proposed Rule 610: (1) sets forth the different types of eligible positions for which a deposit in lieu of margin may be used, (2) sets forth operational aspects of the escrow deposit program such as the days and the times during which a deposit in lieu of margin may be made and where the different types of deposits in lieu of margin must be maintained (either DTC or a custodian bank), (3) provides the conditions under which OCC may take possession of a deposit in lieu of margin (from DTC or a custodian bank), and (4) describes OCC's security interest in deposits in lieu of margin.[12] Proposed Rule 610 is supplemented by:

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[12] OCC would continue to maintain a perfected security interest in deposits in the escrow deposit program under the proposed Rules notwithstanding changes to the location of the

(1) proposed Rule 610A for member specific deposits, (2) proposed Rule 610B for third-party specific deposits, and (3) proposed Rule 610C for escrow deposits. Proposed Rules 610A, 610B and 610C provide further guidance and specificity on the topics initially addressed in proposed Rule 610 (and delineated above) as they relate to member specific deposits, third-party specific deposits and escrow deposits, respectively.

The new rule structure differs from the existing rule structure in that existing Rules 503, 610, 613 and 1801 discuss topics concerning deposits in lieu of margin (such as withdrawal, roll-over[13] and release) in general terms and without regard to the type of deposit in lieu of margin. The existing rule structure also does not provide operational details of the escrow deposit program. The new rule structure discusses each aspect of OCC's escrow deposit program by type of deposit in lieu of margin (member specific deposits, third-party specific deposit or escrow deposits) as well as provides operational details concerning the program. OCC believes that the more detailed presentation of the new rules concerning the escrow deposit program enhances the understandability of the program to all users, and potential users, of the program because all such persons will be able to better understand how topics apply by type of deposit in lieu of margin and with regard to the operational differences between each type of deposit in lieu of margin.

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rules that perfect such security interest. OCC's security interest in securities deposits in the escrow deposit program, which are held at DTC, is perfected by operation of DTC's rules. OCC's security interest in cash deposits in the escrow deposit program is perfected under proposed Rules 610C(i), 610C(j) and 610C(k), which replace Sections 3.3, 3.4, 4.3, 4.4, 5.3, 5.4 and 21 of the EDA. Proposed Rule 610(g) also concerns OCC's security interest in deposits in escrow deposit program.

13 A "roll-over" occurs when a customer chooses to maintain an existing escrow deposit after the options supported by the escrow deposit expires, or are closed-out, and the customer re-allocates the escrow deposit to a new options position.

Agreements Concerning the Escrow Deposit Program

In addition to the above-described Rule changes, many provisions of the EDA would be moved into the Rules. Accordingly, OCC is proposing to eliminate the EDA and replace it with a simplified agreement entitled the "Participating Escrow Bank Agreement."[14] The Participating Escrow Bank Agreement would provide that custodian banks are subject to all terms of the Rules governing the revised escrow deposit program,[15] as they may be amended from time to time.[16] The Participating Escrow Bank Agreement would contain eligibility requirements for custodian banks, including representations regarding the custodian bank's Tier 1 Capital,[17] and provide OCC with express representations concerning the bank's authority to enter into the Participating

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14 The Participating Escrow Bank Agreement is attached to this filing as Exhibit 5A, with changes from the EDA marked. Custodian banks participating in the revised escrow deposit program are defined as "Participating Escrow Banks" in the Participating Escrow Bank Agreement, and such banks must also be an Approved Custodian pursuant to proposed Section 1.A(13) of OCC's By-Laws. In addition, and as described above, certain provisions of the EDA are proposed to be incorporated into OCC's Rules; however, no rights or obligations of either OCC or a custodian bank would change solely as a result of such an incorporation.

15 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

16 Under the Participating Escrow Bank Agreement, however, OCC will agree to provide custodian banks with advance notice of material amendments to the Rules relating to deposits in lieu of margin and custodian banks will have the opportunity to withdraw from the escrow deposit program if they object to the amendments. As a general matter, the Participating Escrow Bank Agreement will not be negotiable, although OCC may determine to vary certain non-material terms in limited circumstances.

17 OCC recently enhanced the measurement it uses—Tier 1 Capital instead of shareholders' equity—to establish minimum capital requirements for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset. *See* Securities Exchange Act Release No. 74894 (May 7, 2015), 80 FR 27431 (May 13, 2015) (SR-OCC-2015-007). For the reasons set forth in SR-OCC-2015-007, OCC is proposing to adopt the same standard with respect to custodian bank escrow deposits.

Escrow Bank Agreement.[18] Moreover, standard contractual provisions concerning topics such as assignment, governing law and limitation of liability have been enhanced in the Participating Escrow Bank Agreement when compared to the EDA.[19] OCC is also proposing to move notification requirements into proposed Rule 610C(l), which is an enhancement of Section 7 of the EDA that requires custodian banks to provide notice to OCC only when there are changes to the "authorized persons" and changes to the address of the bank. Proposed Rule 610C(l) would require escrow banks to provide OCC with notices of material changes to the bank (in additional to items such as changes of authorized persons and the address of bank, as currently required under Section 7 of the EDA).

OCC, under Proposed Rule 610C(b), would also require customers wishing to deposit cash collateral and custodian banks holding escrow deposits comprised of cash to enter into a tri-party agreement involving OCC, the customer and the applicable custodian bank ("Tri-Party Agreement," attached hereto as Exhibit 5B). The Tri-Party Agreement governs the customer's use of cash in the program, confirms the grant of a security interest in the customer's account to OCC and the relevant clearing member, as set forth in proposed Rule 610C(f), and causes customers of clearing members to be subject to all terms of the Rules governing the revised

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18 These provisions include, but are not limited to, Sections 1.1 and 1.2 of the EDA.

19 Sections 2.1, 2.2, 3.5, 3.6, 3.8, 4.7, and 5.6, 6 and 7 of the EDA would be removed entirely since they are no longer needed under OCC's revised escrow deposit program. These provisions concern a custodian bank's movement of securities escrow collateral; such collateral would be deposited at DTC under the revised escrow deposit program (as described below). Section 2.3 of the EDA would also be removed in its entirety because escrow deposits would not be permitted for equity calls in the revised escrow deposit program. Additionally, the concept of cash settlements concerning escrow deposits would not be included in the revised escrow deposit program and, as a result, Sections 15, 16, 17 and 18(b) to 18(d) would be removed in their entirety.

escrow deposit program.[20] Each custodian bank entering into the Tri-Party Agreement ("Tri-Party Custodian Bank"), would agree to follow the directions of OCC with respect to cash escrow deposits without further consent by the customer.[21] As discussed in greater detail below, use of the Tri-Party Agreement significantly enhances OCC's rights concerning cash escrow deposits, and provides OCC with greater certainty regarding its rights to cash escrow deposits in the event of a customer or clearing member default.

SECTION 2: TRANSPARENCY AND CONTROLS, TAKING POSSESSION OF COLLATERAL, AND CLEARING MEMBER RIGHTS TO COLLATERAL

Transparency and Control over Collateral Included in Escrow Deposits

Currently, securities deposits in the escrow deposit program are held at either DTC or a custodian bank, and cash deposits in the escrow deposit program are held at a custodian bank. In the case of either cash or securities held at a custodian bank, OCC relies on the custodian bank to verify the value and control of collateral since OCC does not have any visibility into relevant accounts. OCC is proposing to require that all securities deposited within the escrow deposit program, regardless of the type of deposit, be held at DTC.[22] Additionally, OCC is proposing to

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20 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

21 OCC has determined to use this cash account structure as a result of a series of discussions with certain custodian banks involved in the cash portion of the escrow deposit program, as described in Item 5 below. The intended structure would permit a greater number of customers to participate in the escrow deposit program than, for example, a commingled "omnibus" account structure at each custodian bank, which would preclude the participation of customers subject to restrictions under the Investment Company Act of 1940 requiring segregation of a registered investment company's funds.

22 OCC has discussed the proposed rule changes to the escrow deposit program with DTC and, based on feedback from DTC, no concerns were communicated to OCC by DTC regarding the proposed rule changes. DTC has also indicated that the proposed rule changes to the escrow deposit program are consistent with DTC's operations.

require Tri-Party Custodian Banks to provide OCC with view access into the account in which the deposit is held.

Holding securities escrow deposit program collateral at DTC would provide OCC with increased visibility into the collateral within the escrow deposit program because OCC would be able to use its existing interfaces with DTC to view, validate and value collateral within the escrow deposit program in real time, allowing OCC to perform the controls for which it currently relies on the custodian banks. It would also provide OCC with the ability to obtain possession of deposited securities upon a clearing member default by issuing a demand of collateral instruction through DTC's systems, without the need for custodian bank involvement. Furthermore, a clearing member would have the ability to obtain possession of deposited securities upon a customer default in a similar manner by notifying OCC of such customer default and submitting a request for delivery of such deposited securities (OCC's and clearing members' ability to take possession of a deposit within the escrow deposit program is discussed in greater detail below). OCC does not believe that requiring use of DTC to deposit securities escrow collateral presents a material change for users of OCC's escrow deposit program because such users currently use DTC to effect certain types of deposits in lieu of margin under the current escrow deposit program.[23]

Cash collateral pledged to support an escrow deposit would continue to be facilitated through the existing program interfaces; however, for increased security, any pledges of cash would be required to be made in a customer's account at the Tri-Party Custodian Bank that is

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[23] Specifically, users of OCC's escrow deposit program would use DTC's Collateral Loan Services, which is described at: http://www.dtcc.com/products/training/helpfiles/settlement/settlement_help/help/collateral_loans.htm.

used solely for the purpose of making escrow deposits. As described above, under the proposed changes OCC would require Tri-Party Custodian Banks and customers to enter into a Tri-Party Agreement in order to provide legal certainty concerning this arrangement. Further, and as set forth in the Tri-Party Agreement, each Tri-Party Custodian Bank would agree to disburse funds from the pledged account only at OCC's direction. From an operational perspective, each Tri-Party Custodian Bank would provide OCC with online view access to each customer's cash account designated for the escrow deposit program, allowing visibility into transactional activity and account balances. OCC would not process a cash escrow deposit in its systems until it sees the appropriate amount of cash deposited in the designated bank account at the Tri-Party Custodian Bank. This process ensures that OCC does not rely on a third party to value, or warrant the existence of, collateral within the escrow deposit program. The Tri-Party Agreement, in connection with the new cash collateral structure, would provide OCC with additional transparency and control over cash collateral under the revised escrow deposit program.

In order to effect the foregoing, OCC is proposing to adopt proposed Rules 610A(a), 610B(a), 610C(b) and 610C(c). Proposed Rules 610A(a) and 610B(a), Effecting a Member Specific Deposit and Effecting a Third-Party Specific Deposit, respectively, require that member specific deposits and third-party specific deposits must be made through DTC, and are largely based upon existing Rule 610(e), which discusses effecting deposits in lieu or margin generally. Language has been added to each proposed rule to more accurately articulate that member specific deposits and third-party specific deposits must be made through DTC and the party that is required to effect each type of deposit (i.e., a clearing member or a third-party depository). In the case of member specific deposits and third-party specific deposits, which are already made

through DTC, OCC believes that proposed Rules 610A(a) and Rule 610B(a) are rules that clarify existing practices and provide additional operational detail to users of the escrow deposit program (i.e., member specific deposits and third-party specific deposits must be made through DTC's EDP Pledge System and clearing members are required to maintain records of such deposits). Proposed Rules 610C(b) and 610C(c), Manner of Holding and Method of Effecting Escrow Deposits, respectively, are largely based upon existing Rules 610(d), 610(g), 1801(d) and 1801(g), as well as Section 8 of the EDA with language added to more accurately articulate that securities escrow deposits must be made through DTC and cash must be deposited through a Tri-Party Custodian Bank, and provide operational detail concerning effecting escrow deposits. Moreover, OCC is proposing to adopt new Rule 610(e) in order to specify that all types of deposits in the escrow deposit program may be made only during the time specified by OCC. The purpose of specifying the time frames in which participants are allowed to effect deposits in the escrow deposit program is to facilitate OCC daily margin processing and ensure that all of the positions it guarantees are timely collateralized.[24]

In addition to the above, and with respect to escrow deposits only, OCC is proposing enhancements to its process of ensuring that customers meet initial and maintenance minimums.[25] Specifically, under the revised escrow deposit program, in the event a customer falls below the maintenance minimum, the custodian bank, pursuant to the Participating Escrow Bank Agreement, would be required to ensure that the customer deposits additional collateral or

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24 In the event a deposit in the escrow deposit program is not timely made, OCC would collect margin from the relevant clearing member.

25 Initial and maintenance minimums do not apply to member specific deposits and third-party specific deposits since the clearing member or custodian bank, as applicable, is pledging the security that is deliverable upon exercise of the germane options position.

escalate the matter to OCC. In addition to such notification requirement, OCC would also implement automated processes to ensure that escrow deposits meet required initial and maintenance minimums. In the event the matter is escalated to OCC or OCC's systems identify a shortfall, OCC would: (1) demand that the relevant clearing member post additional margin to cover the margin requirement on the applicable position, and (2) if the relevant clearing member fails to satisfy such a demand for additional margin, OCC would close-out the applicable position and demand the escrow deposit from DTC or the Tri-Party Custodian Bank, as applicable, under its existing authority pursuant to Rule 1106. This process is much more robust than the current process concerning maintenance minimums in that OCC currently relies entirely on custodian banks holding escrow deposits to ensure the customer deposits additional collateral, as necessary, to meet initial and maintenance minimums. OCC believes that the proposed new process is more streamlined and efficient because OCC would not have to rely entirely on a custodian bank to ensure customers comply with initial and maintenance minimums.

In order to implement the foregoing within the new rules concerning the escrow deposit program, OCC is proposing to adopt Rules 610C(g) and 610C(h) that concern the initial and maintenance minimum escrow deposit values required by OCC as well as actions OCC is permitted to take in the event an escrow deposit falls below a required amount. These proposed rules are based on existing Rules 1801(c) and 1801(e) as well as Sections 3.2, 4.2, 5.2, 3.7, 4.8 and 5.7 of the EDA.[26] With respect to the computation of initial and maintenance minimums, proposed Rules 610C(g) and 610C(h) would explain the formula through which OCC computes

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[26] OCC is proposing to eliminate the concept of "substitutions" of escrow deposit collateral (located in Sections 4.7 and 5.6 of the EDA)—instead a given escrow deposit must at all times must meet the minimum amount (as set forth in proposed Rules 610(g)(1) and (2)) and OCC would permit any excess amount to be withdrawn.

the initial and maintenance minimum for a given options position, with the specific percentage applicable to such calculation provided to participants in the escrow deposit program in a schedule posted on OCC's website. With respect to the effects of a failure to meet maintenance minimums, proposed Rule 610C(h) sets forth the conditions under which OCC would close out a given escrow deposit should it fall below the requisite maintenance minimum. Proposed Rule 610C(h) would also provide OCC with the authority to use the cash and securities included within the escrow deposit to reimburse itself for costs incurred in connection with the close-out. OCC believes that by virtue of their proposed new location in the rules, as well as the additional detail provided in the proposed rules, all participants, and potential participants, in OCC's escrow deposit program would better understand the rules concerning initial and maintenance minimums, as they relate to escrow deposits, under the enhanced escrow deposit program (versus under the current escrow deposit program).

OCC's Rights to Collateral in the Escrow Deposit Program in the Event of a Clearing Member or Bank Default

The proposed Rules would enhance OCC's default management regime as it relates to the escrow deposit program by more specifically delineating the conditions under, and the process through which, OCC would take possession of collateral within the escrow deposit program should a clearing member or custodian bank default. Specifically, proposed Rules 610A(b), 610B(f), 610C(q) and 610C(r) provide that in the event of a clearing member or custodian bank default OCC would have the right to direct DTC to deliver the securities included in a member specific deposit, third-party specific deposit or escrow deposit to OCC's DTC participant account for the purpose of satisfying the obligations of the clearing member or reimbursing itself for losses incurred as a result of the failure, as applicable. Similarly, pursuant to proposed Rules 610C(q) and 610C(r) OCC would have the right in the event of a Tri-Party Custodian Bank

default to take possession of cash included within an escrow deposit for the same purposes. In the event of a custodian bank default, pursuant to proposed Rule 610C(r) OCC would have the right to remove the custodian bank from the escrow deposit program, prohibit the custodian bank from making new escrow deposits, disallow withdrawals with respect to existing deposits, close out short positions covered by escrow deposits at the defaulted custodian bank and use such escrow deposits to reimburse itself for the costs of the close-out, or disregard or require the withdrawal of existing escrow deposits.

Proposed Rules 610A(b), 610B(f) and 610C(q) concern OCC's rights to member specific deposits, third-party specific deposits and escrow deposits, respectively, in the event of a clearing member default. They would provide a more specific description of OCC's rights to a third-party specific deposit during a default than existing Rule 610(k) and Section 18 of the EDA. However, the additional specificity that would be provided in proposed Rules 610A(b), 610B(f) and 610C(q) would not change OCC's nor clearing members' rights or obligations regarding member specific, third-party specific or escrow deposits in the event of a clearing member default. Proposed Rule 610C(r) addresses OCC's rights in the event of a custodian bank default and is based on existing Rules 613(h) and 1801(k). Proposed Rule 610C(r) would clarify OCC's existing operational practices when a custodian defaults (i.e., demand monies, not allow new deposits, etc., as described immediately above), but does not change any of the rights of OCC, clearing members or custodian banks set forth in existing Rules 613(h) and 1801(k).

In addition to the above-described proposed rule changes, OCC is proposing to amend Rule 1106 to set forth the treatment of deposits in the escrow deposit program in the event of a suspension of a clearing member. Rule 1106(b)(2) would be amended to provide that OCC may close out a short position of a suspended clearing member covered by a member specific, third-

party specific or escrow deposit, subject to the ability of the suspended clearing member or its representative to transfer the short position to another clearing member under certain circumstances. Further, current Rule 1106(b)(3) would be combined with Rule 1106(b)(2) and amended to set forth OCC's right to take possession of the cash and/or securities included within an escrow, member specific or third-party specific deposit for the purpose of reimbursing itself for costs incurred in connection with the close-out of a short position covered by the deposit. These proposed amendments to Rule 1106 are consistent with proposed Rules 610B(f), 610C(q) and 610C(r).

Clearing Members' Rights to Collateral in the Escrow Deposit Program

Clearing members' rights to escrow deposits and third-party specific deposits would be clarified under the proposed rules. While clearing members have secondary lien rights to the escrow deposits of their customers under the current escrow deposit program, OCC is proposing to add several rules that would clarify these rights and provide additional guidance to clearing members regarding operational steps that would need to be taken in order to exercise their secondary lien rights. Specifically, OCC is proposing to add Rules 610B(c) and 610C(f) to delineate the rights of a clearing member as they relate to third-party specific deposits and escrow deposits. Proposed Rules 610B(c) and 610C(f) would provide for the grant of a security interest by the customer to the clearing member with respect to any given third-party specific deposit and escrow deposit, as applicable. The Rules would further provide that any such security interest of a clearing member in an escrow deposit would be subordinated to OCC's interest. For purposes of perfecting a clearing member's security interest under the Uniform Commercial Code ("UCC"), OCC would obtain control over the security both on its own behalf and on behalf of the relevant clearing member, with clear subordination of the clearing member's

interest to OCC's interest. In the event OCC had to direct delivery of the security to the clearing member, OCC would do so on the clearing member's behalf. Proposed Rules 610B(c) and 610C(f) would better codify clearing members' secondary lien rights to third-party specific deposits and escrow deposit than they are currently codified in Section 21 of the EDA, without changing any clearing member rights or obligations. OCC believes that such a codification would provide more transparency regarding clearing members' secondary lien rights under the enhanced escrow deposit program because all users and potential users of OCC's escrow deposit program would be able to easily identify and understand the rules concerning clearing members' secondary lien rights in a single location within OCC's publicly available Rulebook.

Additionally, OCC is proposing to add several procedural rules that would set forth the process by which clearing members could exercise their secondary lien rights in a given deposit in the escrow deposit program. Proposed Rules 610C(d), 610C(o), 610C(p) and 610C(s), relating to escrow deposits, and proposed Rules 610B(d) and 610B(e), relating to third-party specific deposits, would provide that, in the event of a customer default to a clearing member, the clearing member would have the right to request a "hold" on a deposit. The hold would prevent the withdrawal of deposited securities or cash by a custodian bank or the release of a deposit that would otherwise occur in the ordinary course. Subsequent to placing a hold instruction on a deposit, a clearing member would have the right to request that OCC direct delivery of the deposit to the clearing member through DTC's systems in the case of securities, or an instruction to the Tri-Party Custodian Bank in the case of cash. Providing clearing members with transparent instructions regarding how to place a hold instruction on, and direct delivery of a deposit within the escrow deposit program, would significantly enhance the current escrow deposit program.

OCC is also proposing to adopt Rules 610B(e) and 610C(s), which would protect OCC in the event that it delivers a third-party specific deposit or escrow deposit to a clearing member. Under proposed Rules 610B(e) and 610C(s), a clearing member making a request for delivery would be deemed to have made the appropriate representations to OCC that the clearing member has a right to take possession of the deposited securities or cash and would agree to indemnify OCC against losses resulting from a breach of these representations or the delivery of the deposit. A clearing member would also be required to provide documentation regarding its right to possession of the securities or cash as OCC may reasonably request.

SECTION 3: TECHINCAL AND CONFORMING CHANGES TO OCC'S RULES

OCC also proposes a number of technical, conforming and structural changes in order to move the majority of the terms governing the escrow deposit program into one section in its Rulebook. OCC believes that changes to proposed Rules 610, 610A, 610B and 610C, described in greater detail below, are either non-substantive or conforming changes that do not alter the current rights or obligations of OCC, clearing members or participants in the escrow deposit program.

Proposed Rule 610-Deposits in Lieu of Margin (General Provisions)

Proposed Rule 610 contains general provisions applicable to the escrow deposit program. Specifically, proposed Rule 610(a) replaces existing Rule 610(a) and sets forth general provisions of the escrow deposit program including: (1) who may participate in the escrow deposit program, (2) the types of positions included in the escrow deposit program, (3) the types of deposits in the escrow deposit program, and (4) the collateral that is eligible for the escrow deposit program. Proposed Rule 610(b) replaces existing Rule 610(b) and provides further specificity with respect to the types of options positions included within OCC's escrow deposit

program.[27] This additional specificity clarifies OCC's existing rules and provides more transparency to users and potential users of OCC's escrow deposit program. Proposed Rule 610(c), which is not derived from an existing rule, clarifies OCC's existing practice that OCC will disregard a member specific deposit or a third-party specific deposit if such deposit is no longer eligible to be delivered upon the exercise of the associated stock option contract. Proposed Rule 610(d), which replaces existing Rules 610(c) and 1801(l), requires that deposits within the escrow deposit program be made in accordance with applicable laws and regulations, and be appropriately authorized. Proposed Rule 610(f), which replaces existing Rule 610(l), would clarify OCC's right to use deposits within the escrow deposit program until such deposits are withdrawn. Proposed Rule 610(f) is supplemented by proposed Rules 610A, 610B and 610C with respect to member specific, third-party specific and escrow deposits. Proposed Rule 610(g) codifies OCC's security interest in deposits within the escrow deposit program.

Proposed Rule 610A-Member Specific Deposits

Proposed Rule 610A clarifies many of the current rules concerning the escrow deposit program as they relate to member specific deposits. For example, proposed 610A(c) describes the process by which a clearing member may withdraw a member specific deposit (i.e., effecting a withdrawal or release through DTC's EDP Pledge System and ensuring that its margin requirement at OCC is met). While this issue is addressed in existing Rule 610(j) in general terms, OCC believes that the additional operational details regarding its existing processes in proposed Rule 610A(c), along with its inclusion in proposed Rule 610A, further clarify how

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27 As described in greater detail below, proposed Rules 610(a) and 610(b) are supplemented by proposed Rules 610A, 610B and 610C.

those existing processes apply to member specific deposits as opposed to other types of deposits in lieu of margin in existing Rule 610.[28] Proposed Rule 610A(d) also establishes that member specific deposits may be "rolled-over," a concept that is not specifically set forth in existing Rule 610 but has historically applied in connection with member specific deposits (formerly specific deposits).

Proposed Rule 610B-Third-Party Specific Deposits

Proposed Rule 610B clarifies many of the current rules concerning third-party specific deposits. For example, Proposed Rule 610B(b) addresses rollovers of a third-party specific deposit and replaces existing Rules 613(a) and Section 9 of the EDA, and articulates how to rollover third-party specific deposits by its inclusion within Rule 610B. Withdrawals and releases of third-party specific deposits are addressed in proposed Rule 610B(d), which is based on existing Rules 613(b) and 613(f). Specifically, releases and withdrawals of third-party specific deposits would be effected through DTC's EDP Pledge System, subject to the clearing member's margin requirement being met, the clearing member's approval of the release or withdrawal, and the absence of a "hold" instruction. In addition, proposed Rule 610B(g) seeks to provide a more detailed description of the effect of a release of a third-party specific deposit than the applicable portions of existing Rule 613(i).

Proposed Rule 610C-Escrow Deposits

Proposed Rule 610C, which is based on existing Rule 1801(a), would clarify the current rules concerning escrow deposits. For example, the introductory paragraph of proposed Rule 610C would provide a more detailed overview of a custodian bank's role in the escrow deposit program, specifying such a bank's role in effecting escrow deposits, and would describe eligible

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[28] Proposed Rule 610A(c) supplements proposed Rule 610(f).

positions as they relate to escrow deposits. Proposed Rules 610C(a) through 610C(e) and proposed Rule 610C(t) concern eligible collateral, the manner in which escrow deposits are to be held, and withdrawing an escrow deposit and rolling over an escrow deposit. These operational rules are based on: (1) existing Rules 610(g) and 1801(b) and Sections 3.1, 4.1 and 5.1 of the EDA with respect to eligible collateral (proposed Rule 610C(a)); (2) existing Rules 610(j) and 1801(i), and Sections 10 and 20 of the EDA with respect to withdrawing an escrow deposit (proposed Rule 610C(d)); (3) existing Rule 613(i) with respect to the effect of a release or withdrawal of an escrow deposit (proposed Rule 610C(t)); and (4) existing Rule 613(a) and Section 9 of the EDA with respect to rollovers of an escrow deposit (Proposed Rule 610C(e)).

In order to provide additional transparency concerning representations that custodian banks are deemed to make when effecting an escrow deposit, OCC is proposing to move several contractual provisions of the EDA into proposed Rules 610C(i), 610C(j) and 610C(k). Specifically: (1) proposed Rule 610C(i), which concerns agreements and representations a custodian bank is deemed to have made when effecting an escrow deposit, is based upon Sections 1.6 and 4.6 of the EDA; (2) proposed Rule 610C(j), which concerns representations and warranties a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 of the EDA; and (3) proposed Rule 610C(k), which concerns agreements a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 4, 5 and 21 of the EDA. Moreover, and in addition to locating deemed representations of custodian banks in the Rules, proposed Rules 610C(i), 610C(j) and 610C(k) contain language that perfects OCC's security interest in escrow deposits under Section

9 of the UCC, and replace Sections 3.3, 3.4, 4.3, 4.4, 5.3 and 5.4 of the EDA.[29] OCC believes that by locating the above-described provisions in the Rules, all users and potential users of OCC's escrow deposit program would better understand the relationship between OCC and custodian banks.

Proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) concern the exercise of options positions collateralized by escrow deposits and the release of escrow deposits upon expiration. As with other parts of proposed Rule 610C, OCC believes that the location of proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) provides all users and potential users of OCC's escrow deposit program with a more transparent understanding of how exercises of options positions affect escrow deposits as well as the manner in which OCC would release an escrow deposit upon the expiration of an options position. Similar to other parts of Rule 610C, proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) are based on existing Rules of OCC as well as the EDA.[30] Proposed Rule 610C(m) concerns reports OCC provides regarding escrow deposits and is based upon existing Rules 613(d) and 613(e) as well as Sections 11, 12 and 13 of the EDA. Proposed Rules 610C(n), 610C(o) and 610C(p), which concern assignments of exercises and releases of escrow deposits upon expiration is based upon existing Rules 613(f) and 1801(j) and Section 14 of the EDA.

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29 The primary UCC-related provisions in the proposed Rules include Rules 610C(j)(1), 610C(j)(9) and 610C(k)(1), which provide for the perfection of OCC's security interest in deposits consisting of securities under UCC Sections 9-106 and 9-314; Rules 610C(j)(1), 610C(j)(10), and 610C(k)(2), which provide for the perfection of OCC's security interest in deposits consisting of cash under UCC Sections 9-104, 9-312 and 9-314; and Rules 610C(i)(1), 610C(i)(2) and 610C(j)(3), which support the first priority of OCC's security interest by preventing competing liens or claims.

30 As discussed in Section 3 above, Rules 610C(n) and 610C(p) contain language that prevents the release of an escrow deposit in the event such deposit is subject to a hold instruction, which is a proposed enhancement to the escrow deposit program.

SECTION 4: TRANSITION PERIOD

For the administrative convenience of clearing members, custodian banks and customers, the existing Rules governing deposits in lieu of margin would remain in effect, in parallel with the proposed Rules, for a transition ending November 30, 2017. During this transition period, deposits in lieu of margin could be made under either the existing Rules or the proposed Rules. This will eliminate the need of all clearing members to provide new collateral on a single date in the absence of a transition period. After the transition period, proposed Rules 610, 610A, 610B and 610C would provide the sole means of making deposits in lieu of margin and existing Rules 613 and 1801 would be removed from the Rulebook. In connection with the transition, existing Rule 610 would be re-designated as 610T to indicate that it is a temporary rule, and would become ineffective and removed after the transition period. Furthermore, following the transition period, existing Rule 503, which addresses instructions that call for the payment of a premium by or to the clearing member for whose account the deposit is made, would be removed from the Rules because these instructions would no longer be permitted under the revised escrow deposit program since this aspect of the program has not been used for a number of years.[31] In addition, Government securities would be given full market value under the revised escrow deposit program and therefore existing Rule 610(h) would be removed from the Rules after the transition period.

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[31] For the purposes of clarity, existing Rules 613(c), 613(g), 613(h), 613(j) address the same topic and would be removed from OCC's Rulebook following the transition period without being migrated into a proposed Rule.

B. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the "Act")[32] because it would ensure the safeguarding of securities and funds which are in the custody and control of OCC. As described above, the proposed rule change would increase OCC's visibility into and control over cash and securities deposits made in OCC's escrow deposit program. Deposits in OCC's escrow deposit program collateralize open securities positions guaranteed by OCC and protect OCC and market participants from the risk associated with a default of a clearing member. The proposed rule change would better ensure that OCC could verify that deposits of both cash and securities within OCC's escrow deposit program sufficiently collateralize germane short options position(s). In addition, OCC would: (1) be able to use its existing functionality with DTC to more quickly take possession of such deposits without involving custodian banks in the event of a clearing member default, and (2) obtain a contractual commitment from Tri-Party Custodian Bank that they would disperse cash within the escrow deposit program to OCC at OCC's direction. OCC believes that these features of the revised escrow deposit program would reduce potential losses that may occur as a result of a clearing member default. As a result of the foregoing, the proposed rule change would better ensure the safeguarding of securities and funds that are in the custody and control of OCC.

OCC also believes that the proposed rule change is consistent with Rule 17Ad-22(d)(3), which requires OCC to hold assets in a manner that minimizes risk of loss or delay or in access to them.[33] Specifically, and with respect to non-cash collateral, all non-cash collateral in the

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32 15 U.S.C. 78q-1(b)(3)(F).

33 17 CFR 240.17Ad-22(d)(3)

escrow deposit program would be held at DTC thereby allowing OCC to validate and value collateral in real time and quickly obtain possession of deposited securities by issuing a transfer instruction through DTC's systems in an event of default without involving custodian banks. With respect to cash collateral, all such collateral would be held in an escrow deposit program specific account at a Tri-Party Custodian Bank, OCC would have view access into such account, and OCC would obtain a contractual commitment from the Tri-Party Custodian Banks that they would disperse cash within the escrow deposit program to OCC at OCC's direction. By more widely utilizing its existing infrastructure for non-cash collateral in the escrow deposit program, as well as by obtaining specific agreements regarding its right to take possession of cash collateral, OCC will be able to more quickly take possession of collateral in the escrow deposit program in the event of a clearing member default that would, in turn, reduce potential losses to OCC, other clearing members and market participants. Moreover, OCC believes that the proposed rule change is consistent with the requirement in Rule 17Ad-22(d)(11)[34] that clearing agencies establish, implement, maintain and enforce policies and procedures reasonably designed to make key aspects of their default procedures publicly available, because the substantive terms of the escrow deposit program, and specifically the rules concerning default management, would be incorporated into OCC's Rules, which are publicly available on OCC's website, rather than in private agreements.

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

The proposed rule change would reflect changes to the Rules governing OCC's escrow deposit program and, more generally, amend the Rules to more clearly identify the three forms of deposits in lieu of margin: (1) escrow deposits, (2) third-party specific deposits and (3) member

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34 17 CFR 240.17Ad-22(d)(11).

specific deposits. The proposed rule change would impose a burden on competition that is necessary and appropriate in furtherance of the Act.[35] In particular, a burden would be imposed on Tri-Party Custodian Bank in light of the requirement that cash included within an escrow deposit be held in an account of the relevant customer at the Tri-Party Custodian Bank pursuant to a Tri-Party Agreement. This requirement may limit certain custodian banks' participation in the escrow deposit program because the escrow deposit program would now require a Tri-Party Custodian Bank to have the technological capability to allow both OCC and customers of clearing members to have view access into bank accounts within the escrow deposit program. However, OCC believes that the resulting burden on competition is both necessary and appropriate in furtherance of the Act because OCC's view access into bank accounts within the escrow deposit program provides OCC additional transparency over cash collateral. As described in Item 3 above, by obtaining view access into bank accounts within the escrow deposit program OCC would not have to rely on Tri-Party Custodian Bank to value, or warrant the existence of, cash collateral within the escrow deposit program. OCC believes that obtaining such additional transparency over cash collateral is necessary and appropriate in furtherance of the Act.

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

Communications with Custodian Banks

In light of the substantial changes proposed to the escrow deposit program, OCC has sought to keep custodian banks informed regarding the proposed rule changes. These communications began in January and February 2012, when OCC notified each custodian bank

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35 15 U.S.C. 78q-1(b)(3)(I).

of the proposal to restructure the escrow deposit program. As part of this notification, OCC informed each custodian bank of (1) OCC's intention to require that security pledges be made through DTC, (2) the percentage of cash used in the escrow deposit program and (3) the potential elimination of cash deposits.[36]

In June through August 2012, OCC provided a PowerPoint presentation to each custodian bank summarizing proposed rule changes to the escrow deposit program. This presentation included an explanation of the reasons for the proposed rule changes, including the desire to enhance and strengthen the escrow deposit program and increase collateral transparency. The presentation also included a discussion of changes to the validation and valuation of collateral, and the calculation of contract quantities based on the collateral that has been pledged.

In April and May 2013, OCC provided each custodian bank with an operational overview of the restructured escrow deposit program in the form of a PowerPoint presentation. This presentation covered: eligible option types, types of eligible supporting collateral, required collateral value calculations for option contact coverage, valuation of supporting collateral, asset management locations/processing of supporting collateral, and validation and valuation of supporting collateral and calculation of option contract coverage.

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[36] While it was ultimately determined in April 2014 that cash collateral would remain in the escrow deposit program, prior discussions with participating escrow banks reflected the evolution of OCC's decision on this point. For example, the PowerPoint presentation given to banks during June – August 2012 indicated that cash collateral would not be permitted in the escrow deposit program, while the PowerPoint presentation given during April – May 2013, as well as the draft rules distributed to participating escrow banks for comment in July – August 2013, indicated that it *would* be included. A number of current participants in the escrow deposit program use cash, some to a substantial degree, and OCC determined that the use of cash collateral should remain an essential aspect of the escrow deposit program.

In July and August 2013, OCC distributed a draft Participating Escrow Bank Agreement (as described below) and the related proposed OCC Rules to custodian banks along with a request for feedback. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

During September 2013, OCC provided a walkthrough of the functions of its ENCORE[37] system applicable to the enhanced escrow deposit program for custodian banks in order to provide an orientation of such functionality. In connection with the restructured escrow deposit program, clearing members will continue to use ENCORE to view member specific deposits, and custodian banks will use ENCORE to view third-party specific deposits and make escrow deposits consisting of cash. Moreover, OCC sent requests to custodian banks for validation of the DTC pledgor accounts to be used for the restructured escrow deposit program. In October 2013, OCC distributed escrow deposit program eligible securities file details to custodian banks.

In February and March 2014, OCC arranged a series of calls with custodian banks to solicit feedback on a term sheet detailing cash account structures. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

Comments Received from Custodian Banks

As described above, OCC discussed the proposed rule changes to its escrow deposit program with custodian banks several times since 2012. While these discussions were generally informational in nature, custodian banks provided OCC with comments and questions in two instances: the July/August 2013 discussions and the February/March 2014 discussion. The primary focus of the comments in both sets of discussions was the manner in which custodian

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37 ENCORE is OCC's real-time clearing and settlement system that allows clearing members to, among other things, post and view margin collateral as well as deposits in lieu of margin.

banks would be required to hold cash under the new escrow rules: in an omnibus structure or in a tri-party structure. The omnibus structure would provide OCC with an account in OCC's name and thereby perfect OCC's right under the UCC to take possession of cash escrow deposits in the event of a clearing member default. This would also eliminate the need for a separate tri-party agreement. However, the omnibus structure was less desirable to custodian banks since all of a custodian bank's OCC escrow deposit program clients' assets would be comingled in a single account. From an operational perspective, a single omnibus account at a custodian bank is easier for OCC to manage since OCC would only need to have "view access" into one account at a custodian bank. On the other hand, custodian banks expressed privacy concerns with respect to several clients having view access into a single account.

Eventually, OCC decided to use a tri-party account structure for cash escrow deposits, with certain controls to alleviate the concerns on both sides. Specifically, custodian banks agreed to facilitate the execution of a form tri-party agreement with each of its clients that participates in OCC's escrow deposit program, which perfects OCC's security interest in cash escrow deposits. Additionally, custodian banks agreed to establish an escrow specific cash account for each client so that OCC does not need to differentiate a client's OCC escrow cash from the client's non-escrow cash. OCC believes that the proposed structure for cash accounts strikes the appropriate balance between OCC's desire for legal certainty as to its right to take possession of cash escrow deposits in the event of a clearing member default, and the operational desire to only have view access to a client's OCC escrow deposit program cash account balance at a custodian bank.

Additional comments OCC received from the July/August 2013 discussions with custodian banks centered on administrative items such as the escrow deposit program

documentation structure and the manner in which custodian banks would post escrow deposits in OCC's clearing system, ENCORE. As discussed above, OCC moved the substantial majority of its Amended and Restated On-Line Escrow Deposit Agreement into proposed Rule 610C in order to have the majority of escrow rules in one place. Custodian banks did not express any concerns regarding the operational steps necessary to post an escrow deposit in ENCORE once OCC provided custodian banks with a "walkthrough" of the operational process.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

Item 8. Advance Notice 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 the proposed rule change for publication in the ederal Register.

Exhibit 5A. Participating Escrow Bank Agreement.

Exhibit 5B. Escrow Deposit Program Tri-Party Agreement.

SIGNATURES

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

THE OPTIONS CLEARING CORPORATION

By: _____

Scott M. Kalish
Assistant Secretary

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-OCC-2016-009)

August 15, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning The Options Clearing Corporation's Escrow Deposit Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 15, 2016, 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 rule change from interested persons.

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

The purpose of this proposed rule change by OCC is to improve the resiliency of OCC's escrow deposit program. OCC is proposing changes that are designed to: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) strengthen clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; (3) provide more specificity concerning the manner in which OCC or clearing members would take possession of collateral in OCC's escrow deposit program; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of this proposed rule change is to improve the resiliency of OCC's escrow deposit program. The changes would: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) provide more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; (3) clarify clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. Upon implementation of the proposed rule change, all securities collateral in OCC's escrow deposit program would be held at the Depository Trust Company ("DTC"), and custodian banks would only be allowed to hold cash collateral.

The narrative below is comprised of four sections. The first section provides a background of OCC's current escrow deposit program as well as an overview of the proposed changes to the rules and agreements that govern the escrow deposit program. The second section

discusses the changes associated with: (1) increasing OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) providing more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; and, (3) clarifying clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member as well as providing additional detail concerning the manner in which clearing members may take possession of such collateral. The third section discusses proposed technical and conforming changes to the rules and agreements governing the current escrow deposit program that would allow OCC to consolidate all such terms into a single location in OCC's Rulebook. The second and third sections also discuss changes that improve the readability of the rules governing OCC's escrow deposit program, which is primarily achieved by consolidating all such rules into a single location in OCC's Rulebook. The fourth section discusses the manner in which OCC proposes to transition from the current escrow deposit program to the new escrow deposit program, including the removal of certain rules and contractual provisions that would no longer be applicable to the new escrow deposit program.

SECTION 1: BACKGROUND AND OVERVIEW OF PROPOSED RULE CHANGES

Background/Current Escrow Deposit Program

Each day OCC collects collateral from its clearing members in order to protect OCC and the markets it serves from potential losses stemming from a clearing member default. Approximately half of the collateral deposited by clearing members at OCC is deposited through OCC's escrow deposit program. Users of OCC's escrow deposit program are customers of clearing members who, through the escrow deposit program, are permitted to collateralize eligible positions directly with OCC (instead of with the relevant clearing member who would, in

turn, deposit margin at OCC). Currently, collateral deposits made through OCC's escrow deposit program are characterized as either "specific deposits" or "escrow deposits." Specific deposits are deposits of the security underlying a given options position and are made through DTC by a clearing member on behalf of its customer (at the direction of the customer).[3] Escrow deposits are deposits of cash or securities made by a custodian bank on behalf of a customer of an OCC clearing member in support of an eligible options position. OCC's Rules currently contemplate two forms of escrow deposits: "third-party escrow deposits" and "escrow program deposits." Third-party escrow deposits are substantially similar to specific deposits except for the fact that third-party escrow deposits are made by a custodian bank, and not a clearing member. Third-party escrow deposits consist entirely of securities and, like specific deposits, are made through DTC. In order to effect third-party specific deposits, custodian banks must be DTC members. Escrow program deposits are bank deposits of eligible securities or cash, which are held at the custodian bank (versus third-party escrow deposits and specific deposits, which are held at DTC).

When a customer of a clearing member makes a deposit in lieu of margin through OCC's escrow deposit program, the relevant positions are excluded from the clearing member's margin requirement at OCC. The escrow deposit program therefore provides users of OCC's services with a means to more efficiently use cash or securities they may have available.

Overview of Rule Changes (including terminology changes) and New Agreements

Rule Consolidation and Terminology Changes

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3 For example, if customer XYZ holds a short position of options on AAPL, customer XYZ could, through its clearing member's DTC account, pledge shares of AAPL to OCC in order to collateralize such options position and not be charged margin by OCC.

Currently, the rules concerning OCC's escrow deposit program are located in OCC Rules 503, 610, 613 and 1801. Additionally, OCC and custodian banks participating in OCC's escrow deposit program enter into an Escrow Deposit Agreement ("EDA"), which also contains substantive provisions governing the program. OCC is proposing to consolidate all of the rules concerning the escrow deposit program, including the provisions of the EDA relevant to the revised escrow deposit program, into proposed Rules 610, 610A, 610B and 610C.[4] OCC believes that consolidating the many rules governing the escrow deposit program into a single location would significantly enhance the understandability and transparency of the rules concerning the escrow deposit program for current users of the program as well as any persons that may be interested in using the program in the future.

In connection with the above described rule consolidation, OCC is also proposing to rename the types of escrow deposits available within the escrow deposit program, as well as rename the term "approved depository" to "approved custodian." Specific deposits would now be called "member specific deposits," which are equity securities deposited by clearing members at DTC at the direction of their customers; third-party escrow deposits would now be called "third-party specific deposits," which are equity securities deposited by custodian banks at DTC at the direction of their customers; and, escrow program deposits would now be called, "escrow deposits," which are either cash deposits held at a custodian bank for the benefit of OCC, or Government securities deposited at DTC by custodian banks at the direction of their customers.

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4 As described herein, OCC is proposing to eliminate the EDA based on such consolidation. When appropriate, and as described in more detail below, conforming changes were made to certain Rules as a result of OCC proposing to require that all non-cash deposits in the escrow deposit program be made through DTC (and not held at custodian banks).

The term "approved depository" would also be changed to "approved custodian" to eliminate any potential confusion with the term "Depository," which is defined in the Rules, to mean DTC.

New Rule Organization

With respect to the rules governing the escrow deposit program, proposed Rule 610 would set forth general terms and conditions common to all types of deposits permitted under the escrow deposit program. Specifically, proposed Rule 610: (1) sets forth the different types of eligible positions for which a deposit in lieu of margin may be used, (2) sets forth operational aspects of the escrow deposit program such as the days and the times during which a deposit in lieu of margin may be made and where the different types of deposits in lieu of margin must be maintained (either DTC or a custodian bank), (3) provides the conditions under which OCC may take possession of a deposit in lieu of margin (from DTC or a custodian bank), and (4) describes OCC's security interest in deposits in lieu of margin.[5] Proposed Rule 610 is supplemented by: (1) proposed Rule 610A for member specific deposits, (2) proposed Rule 610B for third-party specific deposits, and (3) proposed Rule 610C for escrow deposits. Proposed Rules 610A, 610B and 610C provide further guidance and specificity on the topics initially addressed in proposed Rule 610 (and delineated above) as they relate to member specific deposits, third-party specific deposits and escrow deposits, respectively.

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[5] OCC would continue to maintain a perfected security interest in deposits in the escrow deposit program under the proposed Rules notwithstanding changes to the location of the rules that perfect such security interest. OCC's security interest in securities deposits in the escrow deposit program, which are held at DTC, is perfected by operation of DTC's rules. OCC's security interest in cash deposits in the escrow deposit program is perfected under proposed Rules 610C(i), 610C(j) and 610C(k), which replace Sections 3.3, 3.4, 4.3, 4.4, 5.3, 5.4 and 21 of the EDA. Proposed Rule 610(g) also concerns OCC's security interest in deposits in escrow deposit program.

The new rule structure differs from the existing rule structure in that existing Rules 503, 610, 613 and 1801 discuss topics concerning deposits in lieu of margin (such as withdrawal, roll-over[6] and release) in general terms and without regard to the type of deposit in lieu of margin. The existing rule structure also does not provide operational details of the escrow deposit program. The new rule structure discusses each aspect of OCC's escrow deposit program by type of deposit in lieu of margin (member specific deposits, third-party specific deposit or escrow deposits) as well as provides operational details concerning the program. OCC believes that the more detailed presentation of the new rules concerning the escrow deposit program enhances the understandability of the program to all users, and potential users, of the program because all such persons will be able to better understand how topics apply by type of deposit in lieu of margin and with regard to the operational differences between each type of deposit in lieu of margin.

Agreements Concerning the Escrow Deposit Program

In addition to the above-described Rule changes, many provisions of the EDA would be moved into the Rules. Accordingly, OCC is proposing to eliminate the EDA and replace it with a simplified agreement entitled the "Participating Escrow Bank Agreement."[7] The Participating

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6 A "roll-over" occurs when a customer chooses to maintain an existing escrow deposit after the options supported by the escrow deposit expires, or are closed-out, and the customer re-allocates the escrow deposit to a new options position.

7 The Participating Escrow Bank Agreement is attached to this filing as Exhibit 5A, with changes from the EDA marked. Custodian banks participating in the revised escrow deposit program are defined as "Participating Escrow Banks" in the Participating Escrow Bank Agreement, and such banks must also be an Approved Custodian pursuant to proposed Section 1.A(13) of OCC's By-Laws. In addition, and as described above, certain provisions of the EDA are proposed to be incorporated into OCC's Rules; however, no rights or obligations of either OCC or a custodian bank would change solely as a result of such an incorporation.

Escrow Bank Agreement would provide that custodian banks are subject to all terms of the Rules governing the revised escrow deposit program,[8] as they may be amended from time to time.[9] The Participating Escrow Bank Agreement would contain eligibility requirements for custodian banks, including representations regarding the custodian bank's Tier 1 Capital,[10] and provide OCC with express representations concerning the bank's authority to enter into the Participating Escrow Bank Agreement.[11] Moreover, standard contractual provisions concerning topics such as assignment, governing law and limitation of liability have been enhanced in the Participating Escrow Bank Agreement when compared to the EDA.[12] OCC is also proposing to move

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8 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

9 Under the Participating Escrow Bank Agreement, however, OCC will agree to provide custodian banks with advance notice of material amendments to the Rules relating to deposits in lieu of margin and custodian banks will have the opportunity to withdraw from the escrow deposit program if they object to the amendments. As a general matter, the Participating Escrow Bank Agreement will not be negotiable, although OCC may determine to vary certain non-material terms in limited circumstances.

10 OCC recently enhanced the measurement it uses—Tier 1 Capital instead of shareholders' equity—to establish minimum capital requirements for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset. *See* Securities Exchange Act Release No. 74894 (May 7, 2015), 80 FR 27431 (May 13, 2015) (SR-OCC-2015-007). For the reasons set forth in SR-OCC-2015-007, OCC is proposing to adopt the same standard with respect to custodian bank escrow deposits.

11 These provisions include, but are not limited to, Sections 1.1 and 1.2 of the EDA.

12 Sections 2.1, 2.2, 3.5, 3.6, 3.8, 4.7, and 5.6, 6 and 7 of the EDA would be removed entirely since they are no longer needed under OCC's revised escrow deposit program. These provisions concern a custodian bank's movement of securities escrow collateral; such collateral would be deposited at DTC under the revised escrow deposit program (as described below). Section 2.3 of the EDA would also be removed in its entirety because escrow deposits would not be permitted for equity calls in the revised escrow deposit program. Additionally, the concept of cash settlements concerning escrow deposits would not be included in the revised escrow deposit program and, as a result, Sections 15, 16, 17 and 18(b) to 18(d) would be removed in their entirety.

notification requirements into proposed Rule 610C(l), which is an enhancement of Section 7 of the EDA that requires custodian banks to provide notice to OCC only when there are changes to the "authorized persons" and changes to the address of the bank. Proposed Rule 610C(l) would require escrow banks to provide OCC with notices of material changes to the bank (in additional to items such as changes of authorized persons and the address of bank, as currently required under Section 7 of the EDA).

OCC, under Proposed Rule 610C(b), would also require customers wishing to deposit cash collateral and custodian banks holding escrow deposits comprised of cash to enter into a tri-party agreement involving OCC, the customer and the applicable custodian bank ("Tri-Party Agreement," attached hereto as Exhibit 5B). The Tri-Party Agreement governs the customer's use of cash in the program, confirms the grant of a security interest in the customer's account to OCC and the relevant clearing member, as set forth in proposed Rule 610C(f), and causes customers of clearing members to be subject to all terms of the Rules governing the revised escrow deposit program.[13] Each custodian bank entering into the Tri-Party Agreement ("Tri-Party Custodian Bank"), would agree to follow the directions of OCC with respect to cash escrow deposits without further consent by the customer.[14] As discussed in greater detail below, use of the Tri-Party Agreement significantly enhances OCC's rights concerning cash escrow

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13 The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

14 OCC has determined to use this cash account structure as a result of a series of discussions with certain custodian banks involved in the cash portion of the escrow deposit program, as described in Item 5 below. The intended structure would permit a greater number of customers to participate in the escrow deposit program than, for example, a commingled "omnibus" account structure at each custodian bank, which would preclude the participation of customers subject to restrictions under the Investment Company Act of 1940 requiring segregation of a registered investment company's funds.

deposits, and provides OCC with greater certainty regarding its rights to cash escrow deposits in the event of a customer or clearing member default.

SECTION 2: TRANSPARENCY AND CONTROLS, TAKING POSSESSION OF COLLATERAL, AND CLEARING MEMBER RIGHTS TO COLLATERAL

Transparency and Control over Collateral Included in Escrow Deposits

Currently, securities deposits in the escrow deposit program are held at either DTC or a custodian bank, and cash deposits in the escrow deposit program are held at a custodian bank. In the case of either cash or securities held at a custodian bank, OCC relies on the custodian bank to verify the value and control of collateral since OCC does not have any visibility into relevant accounts. OCC is proposing to require that all securities deposited within the escrow deposit program, regardless of the type of deposit, be held at DTC.[15] Additionally, OCC is proposing to require Tri-Party Custodian Banks to provide OCC with view access into the account in which the deposit is held.

Holding securities escrow deposit program collateral at DTC would provide OCC with increased visibility into the collateral within the escrow deposit program because OCC would be able to use its existing interfaces with DTC to view, validate and value collateral within the escrow deposit program in real time, allowing OCC to perform the controls for which it currently relies on the custodian banks. It would also provide OCC with the ability to obtain possession of deposited securities upon a clearing member default by issuing a demand of collateral instruction through DTC's systems, without the need for custodian bank involvement. Furthermore, a

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15 OCC has discussed the proposed rule changes to the escrow deposit program with DTC and, based on feedback from DTC, no concerns were communicated to OCC by DTC regarding the proposed rule changes. DTC has also indicated that the proposed rule changes to the escrow deposit program are consistent with DTC's operations.

clearing member would have the ability to obtain possession of deposited securities upon a customer default in a similar manner by notifying OCC of such customer default and submitting a request for delivery of such deposited securities (OCC's and clearing members' ability to take possession of a deposit within the escrow deposit program is discussed in greater detail below). OCC does not believe that requiring use of DTC to deposit securities escrow collateral presents a material change for users of OCC's escrow deposit program because such users currently use DTC to effect certain types of deposits in lieu of margin under the current escrow deposit program.[16]

Cash collateral pledged to support an escrow deposit would continue to be facilitated through the existing program interfaces; however, for increased security, any pledges of cash would be required to be made in a customer's account at the Tri-Party Custodian Bank that is used solely for the purpose of making escrow deposits. As described above, under the proposed changes OCC would require Tri-Party Custodian Banks and customers to enter into a Tri-Party Agreement in order to provide legal certainty concerning this arrangement. Further, and as set forth in the Tri-Party Agreement, each Tri-Party Custodian Bank would agree to disburse funds from the pledged account only at OCC's direction. From an operational perspective, each Tri-Party Custodian Bank would provide OCC with online view access to each customer's cash account designated for the escrow deposit program, allowing visibility into transactional activity and account balances. OCC would not process a cash escrow deposit in its systems until it sees

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16 Specifically, users of OCC's escrow deposit program would use DTC's Collateral Loan Services, which is described at: http://www.dtcc.com/products/training/helpfiles/settlement/settlement_help/help/collateral_loans.htm.

the appropriate amount of cash deposited in the designated bank account at the Tri-Party Custodian Bank. This process ensures that OCC does not rely on a third party to value, or warrant the existence of, collateral within the escrow deposit program. The Tri-Party Agreement, in connection with the new cash collateral structure, would provide OCC with additional transparency and control over cash collateral under the revised escrow deposit program.

In order to effect the foregoing, OCC is proposing to adopt proposed Rules 610A(a), 610B(a), 610C(b) and 610C(c). Proposed Rules 610A(a) and 610B(a), Effecting a Member Specific Deposit and Effecting a Third-Party Specific Deposit, respectively, require that member specific deposits and third-party specific deposits must be made through DTC, and are largely based upon existing Rule 610(e), which discusses effecting deposits in lieu or margin generally. Language has been added to each proposed rule to more accurately articulate that member specific deposits and third-party specific deposits must be made through DTC and the party that is required to effect each type of deposit (i.e., a clearing member or a third-party depository). In the case of member specific deposits and third-party specific deposits, which are already made through DTC, OCC believes that proposed Rules 610A(a) and Rule 610B(a) are rules that clarify existing practices and provide additional operational detail to users of the escrow deposit program (i.e., member specific deposits and third-party specific deposits must be made through DTC's EDP Pledge System and clearing members are required to maintain records of such deposits). Proposed Rules 610C(b) and 610C(c), Manner of Holding and Method of Effecting Escrow Deposits, respectively, are largely based upon existing Rules 610(d), 610(g), 1801(d) and 1801(g), as well as Section 8 of the EDA with language added to more accurately articulate that securities escrow deposits must be made through DTC and cash must be deposited through a Tri-

Party Custodian Bank, and provide operational detail concerning effecting escrow deposits. Moreover, OCC is proposing to adopt new Rule 610(e) in order to specify that all types of deposits in the escrow deposit program may be made only during the time specified by OCC. The purpose of specifying the time frames in which participants are allowed to effect deposits in the escrow deposit program is to facilitate OCC daily margin processing and ensure that all of the positions it guarantees are timely collateralized.[17]

In addition to the above, and with respect to escrow deposits only, OCC is proposing enhancements to its process of ensuring that customers meet initial and maintenance minimums.[18] Specifically, under the revised escrow deposit program, in the event a customer falls below the maintenance minimum, the custodian bank, pursuant to the Participating Escrow Bank Agreement, would be required to ensure that the customer deposits additional collateral or escalate the matter to OCC. In addition to such notification requirement, OCC would also implement automated processes to ensure that escrow deposits meet required initial and maintenance minimums. In the event the matter is escalated to OCC or OCC's systems identify a shortfall, OCC would: (1) demand that the relevant clearing member post additional margin to cover the margin requirement on the applicable position, and (2) if the relevant clearing member fails to satisfy such a demand for additional margin, OCC would close-out the applicable position and demand the escrow deposit from DTC or the Tri-Party Custodian Bank, as applicable, under its existing authority pursuant to Rule 1106. This process is much more robust

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17 In the event a deposit in the escrow deposit program is not timely made, OCC would collect margin from the relevant clearing member.

18 Initial and maintenance minimums do not apply to member specific deposits and third-party specific deposits since the clearing member or custodian bank, as applicable, is pledging the security that is deliverable upon exercise of the germane options position.

than the current process concerning maintenance minimums in that OCC currently relies entirely on custodian banks holding escrow deposits to ensure the customer deposits additional collateral, as necessary, to meet initial and maintenance minimums. OCC believes that the proposed new process is more streamlined and efficient because OCC would not have to rely entirely on a custodian bank to ensure customers comply with initial and maintenance minimums.

In order to implement the foregoing within the new rules concerning the escrow deposit program, OCC is proposing to adopt Rules 610C(g) and 610C(h) that concern the initial and maintenance minimum escrow deposit values required by OCC as well as actions OCC is permitted to take in the event an escrow deposit falls below a required amount. These proposed rules are based on existing Rules 1801(c) and 1801(e) as well as Sections 3.2, 4.2, 5.2, 3.7, 4.8 and 5.7 of the EDA.[19] With respect to the computation of initial and maintenance minimums, proposed Rules 610C(g) and 610C(h) would explain the formula through which OCC computes the initial and maintenance minimum for a given options position, with the specific percentage applicable to such calculation provided to participants in the escrow deposit program in a schedule posted on OCC's website. With respect to the effects of a failure to meet maintenance minimums, proposed Rule 610C(h) sets forth the conditions under which OCC would close out a given escrow deposit should it fall below the requisite maintenance minimum. Proposed Rule 610C(h) would also provide OCC with the authority to use the cash and securities included within the escrow deposit to reimburse itself for costs incurred in connection with the close-out. OCC believes that by virtue of their proposed new location in the rules, as well as the additional

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19 OCC is proposing to eliminate the concept of "substitutions" of escrow deposit collateral (located in Sections 4.7 and 5.6 of the EDA)—instead a given escrow deposit must at all times must meet the minimum amount (as set forth in proposed Rules 610(g)(1) and (2)) and OCC would permit any excess amount to be withdrawn.

detail provided in the proposed rules, all participants, and potential participants, in OCC's escrow deposit program would better understand the rules concerning initial and maintenance minimums, as they relate to escrow deposits, under the enhanced escrow deposit program (versus under the current escrow deposit program).

OCC's Rights to Collateral in the Escrow Deposit Program in the Event of a Clearing Member or Bank Default

The proposed Rules would enhance OCC's default management regime as it relates to the escrow deposit program by more specifically delineating the conditions under, and the process through which, OCC would take possession of collateral within the escrow deposit program should a clearing member or custodian bank default. Specifically, proposed Rules 610A(b), 610B(f), 610C(q) and 610C(r) provide that in the event of a clearing member or custodian bank default OCC would have the right to direct DTC to deliver the securities included in a member specific deposit, third-party specific deposit or escrow deposit to OCC's DTC participant account for the purpose of satisfying the obligations of the clearing member or reimbursing itself for losses incurred as a result of the failure, as applicable. Similarly, pursuant to proposed Rules 610C(q) and 610C(r) OCC would have the right in the event of a Tri-Party Custodian Bank default to take possession of cash included within an escrow deposit for the same purposes. In the event of a custodian bank default, pursuant to proposed Rule 610C(r) OCC would have the right to remove the custodian bank from the escrow deposit program, prohibit the custodian bank from making new escrow deposits, disallow withdrawals with respect to existing deposits, close out short positions covered by escrow deposits at the defaulted custodian bank and use such escrow deposits to reimburse itself for the costs of the close-out, or disregard or require the withdrawal of existing escrow deposits.

Proposed Rules 610A(b), 610B(f) and 610C(q) concern OCC's rights to member specific deposits, third-party specific deposits and escrow deposits, respectively, in the event of a clearing member default. They would provide a more specific description of OCC's rights to a third-party specific deposit during a default than existing Rule 610(k) and Section 18 of the EDA. However, the additional specificity that would be provided in proposed Rules 610A(b), 610B(f) and 610C(q) would not change OCC's nor clearing members' rights or obligations regarding member specific, third-party specific or escrow deposits in the event of a clearing member default. Proposed Rule 610C(r) addresses OCC's rights in the event of a custodian bank default and is based on existing Rules 613(h) and 1801(k). Proposed Rule 610C(r) would clarify OCC's existing operational practices when a custodian defaults (i.e., demand monies, not allow new deposits, etc., as described immediately above), but does not change any of the rights of OCC, clearing members or custodian banks set forth in existing Rules 613(h) and 1801(k).

In addition to the above-described proposed rule changes, OCC is proposing to amend Rule 1106 to set forth the treatment of deposits in the escrow deposit program in the event of a suspension of a clearing member. Rule 1106(b)(2) would be amended to provide that OCC may close out a short position of a suspended clearing member covered by a member specific, third-party specific or escrow deposit, subject to the ability of the suspended clearing member or its representative to transfer the short position to another clearing member under certain circumstances. Further, current Rule 1106(b)(3) would be combined with Rule 1106(b)(2) and amended to set forth OCC's right to take possession of the cash and/or securities included within an escrow, member specific or third-party specific deposit for the purpose of reimbursing itself for costs incurred in connection with the close-out of a short position covered by the deposit.

These proposed amendments to Rule 1106 are consistent with proposed Rules 610B(f), 610C(q) and 610C(r).

Clearing Members' Rights to Collateral in the Escrow Deposit Program

Clearing members' rights to escrow deposits and third-party specific deposits would be clarified under the proposed rules. While clearing members have secondary lien rights to the escrow deposits of their customers under the current escrow deposit program, OCC is proposing to add several rules that would clarify these rights and provide additional guidance to clearing members regarding operational steps that would need to be taken in order to exercise their secondary lien rights. Specifically, OCC is proposing to add Rules 610B(c) and 610C(f) to delineate the rights of a clearing member as they relate to third-party specific deposits and escrow deposits. Proposed Rules 610B(c) and 610C(f) would provide for the grant of a security interest by the customer to the clearing member with respect to any given third-party specific deposit and escrow deposit, as applicable. The Rules would further provide that any such security interest of a clearing member in an escrow deposit would be subordinated to OCC's interest. For purposes of perfecting a clearing member's security interest under the Uniform Commercial Code ("UCC"), OCC would obtain control over the security both on its own behalf and on behalf of the relevant clearing member, with clear subordination of the clearing member's interest to OCC's interest. In the event OCC had to direct delivery of the security to the clearing member, OCC would do so on the clearing member's behalf. Proposed Rules 610B(c) and 610C(f) would better codify clearing members' secondary lien rights to third-party specific deposits and escrow deposit than they are currently codified in Section 21 of the EDA, without changing any clearing member rights or obligations. OCC believes that such a codification would provide more transparency regarding clearing members' secondary lien rights under the

enhanced escrow deposit program because all users and potential users of OCC's escrow deposit program would be able to easily identify and understand the rules concerning clearing members' secondary lien rights in a single location within OCC's publicly available Rulebook.

Additionally, OCC is proposing to add several procedural rules that would set forth the process by which clearing members could exercise their secondary lien rights in a given deposit in the escrow deposit program. Proposed Rules 610C(d), 610C(o), 610C(p) and 610C(s), relating to escrow deposits, and proposed Rules 610B(d) and 610B(e), relating to third-party specific deposits, would provide that, in the event of a customer default to a clearing member, the clearing member would have the right to request a "hold" on a deposit. The hold would prevent the withdrawal of deposited securities or cash by a custodian bank or the release of a deposit that would otherwise occur in the ordinary course. Subsequent to placing a hold instruction on a deposit, a clearing member would have the right to request that OCC direct delivery of the deposit to the clearing member through DTC's systems in the case of securities, or an instruction to the Tri-Party Custodian Bank in the case of cash. Providing clearing members with transparent instructions regarding how to place a hold instruction on, and direct delivery of a deposit within the escrow deposit program, would significantly enhance the current escrow deposit program.

OCC is also proposing to adopt Rules 610B(e) and 610C(s), which would protect OCC in the event that it delivers a third-party specific deposit or escrow deposit to a clearing member. Under proposed Rules 610B(e) and 610C(s), a clearing member making a request for delivery would be deemed to have made the appropriate representations to OCC that the clearing member has a right to take possession of the deposited securities or cash and would agree to indemnify OCC against losses resulting from a breach of these representations or the delivery of the

deposit. A clearing member would also be required to provide documentation regarding its right to possession of the securities or cash as OCC may reasonably request.

SECTION 3: TECHINCAL AND CONFORMING CHANGES TO OCC'S RULES

OCC also proposes a number of technical, conforming and structural changes in order to move the majority of the terms governing the escrow deposit program into one section in its Rulebook. OCC believes that changes to proposed Rules 610, 610A, 610B and 610C, described in greater detail below, are either non-substantive or conforming changes that do not alter the current rights or obligations of OCC, clearing members or participants in the escrow deposit program.

Proposed Rule 610-Deposits in Lieu of Margin (General Provisions)

Proposed Rule 610 contains general provisions applicable to the escrow deposit program. Specifically, proposed Rule 610(a) replaces existing Rule 610(a) and sets forth general provisions of the escrow deposit program including: (1) who may participate in the escrow deposit program, (2) the types of positions included in the escrow deposit program, (3) the types of deposits in the escrow deposit program, and (4) the collateral that is eligible for the escrow deposit program. Proposed Rule 610(b) replaces existing Rule 610(b) and provides further specificity with respect to the types of options positions included within OCC's escrow deposit program.[20] This additional specificity clarifies OCC's existing rules and provides more transparency to users and potential users of OCC's escrow deposit program. Proposed Rule 610(c), which is not derived from an existing rule, clarifies OCC's existing practice that OCC

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[20] As described in greater detail below, proposed Rules 610(a) and 610(b) are supplemented by proposed Rules 610A, 610B and 610C.

will disregard a member specific deposit or a third-party specific deposit if such deposit is no longer eligible to be delivered upon the exercise of the associated stock option contract. Proposed Rule 610(d), which replaces existing Rules 610(c) and 1801(l), requires that deposits within the escrow deposit program be made in accordance with applicable laws and regulations, and be appropriately authorized. Proposed Rule 610(f), which replaces existing Rule 610(l), would clarify OCC's right to use deposits within the escrow deposit program until such deposits are withdrawn. Proposed Rule 610(f) is supplemented by proposed Rules 610A, 610B and 610C with respect to member specific, third-party specific and escrow deposits. Proposed Rule 610(g) codifies OCC's security interest in deposits within the escrow deposit program.

Proposed Rule 610A-Member Specific Deposits

Proposed Rule 610A clarifies many of the current rules concerning the escrow deposit program as they relate to member specific deposits. For example, proposed 610A(c) describes the process by which a clearing member may withdraw a member specific deposit (i.e., effecting a withdrawal or release through DTC's EDP Pledge System and ensuring that its margin requirement at OCC is met). While this issue is addressed in existing Rule 610(j) in general terms, OCC believes that the additional operational details regarding its existing processes in proposed Rule 610A(c), along with its inclusion in proposed Rule 610A, further clarify how those existing processes apply to member specific deposits as opposed to other types of deposits in lieu of margin in existing Rule 610.[21] Proposed Rule 610A(d) also establishes that member specific deposits may be "rolled-over," a concept that is not specifically set forth in existing Rule

[21] Proposed Rule 610A(c) supplements proposed Rule 610(f).

610 but has historically applied in connection with member specific deposits (formerly specific deposits).

Proposed Rule 610B-Third-Party Specific Deposits

Proposed Rule 610B clarifies many of the current rules concerning third-party specific deposits. For example, Proposed Rule 610B(b) addresses rollovers of a third-party specific deposit and replaces existing Rules 613(a) and Section 9 of the EDA, and articulates how to rollover third-party specific deposits by its inclusion within Rule 610B. Withdrawals and releases of third-party specific deposits are addressed in proposed Rule 610B(d), which is based on existing Rules 613(b) and 613(f). Specifically, releases and withdrawals of third-party specific deposits would be effected through DTC's EDP Pledge System, subject to the clearing member's margin requirement being met, the clearing member's approval of the release or withdrawal, and the absence of a "hold" instruction. In addition, proposed Rule 610B(g) seeks to provide a more detailed description of the effect of a release of a third-party specific deposit than the applicable portions of existing Rule 613(i).

Proposed Rule 610C-Escrow Deposits

Proposed Rule 610C, which is based on existing Rule 1801(a), would clarify the current rules concerning escrow deposits. For example, the introductory paragraph of proposed Rule 610C would provide a more detailed overview of a custodian bank's role in the escrow deposit program, specifying such a bank's role in effecting escrow deposits, and would describe eligible positions as they relate to escrow deposits. Proposed Rules 610C(a) through 610C(e) and proposed Rule 610C(t) concern eligible collateral, the manner in which escrow deposits are to be held, and withdrawing an escrow deposit and rolling over an escrow deposit. These operational rules are based on: (1) existing Rules 610(g) and 1801(b) and Sections 3.1, 4.1 and 5.1 of the

EDA with respect to eligible collateral (proposed Rule 610C(a)); (2) existing Rules 610(j) and 1801(i), and Sections 10 and 20 of the EDA with respect to withdrawing an escrow deposit (proposed Rule 610C(d)); (3) existing Rule 613(i) with respect to the effect of a release or withdrawal of an escrow deposit (proposed Rule 610C(t)); and (4) existing Rule 613(a) and Section 9 of the EDA with respect to rollovers of an escrow deposit (Proposed Rule 610C(e)).

In order to provide additional transparency concerning representations that custodian banks are deemed to make when effecting an escrow deposit, OCC is proposing to move several contractual provisions of the EDA into proposed Rules 610C(i), 610C(j) and 610C(k). Specifically: (1) proposed Rule 610C(i), which concerns agreements and representations a custodian bank is deemed to have made when effecting an escrow deposit, is based upon Sections 1.6 and 4.6 of the EDA; (2) proposed Rule 610C(j), which concerns representations and warranties a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 of the EDA; and (3) proposed Rule 610C(k), which concerns agreements a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 4, 5 and 21 of the EDA. Moreover, and in addition to locating deemed representations of custodian banks in the Rules, proposed Rules 610C(i), 610C(j) and 610C(k) contain language that perfects OCC's security interest in escrow deposits under Section 9 of the UCC, and replace Sections 3.3, 3.4, 4.3, 4.4, 5.3 and 5.4 of the EDA.[22] OCC believes

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22 The primary UCC-related provisions in the proposed Rules include Rules 610C(j)(1), 610C(j)(9) and 610C(k)(1), which provide for the perfection of OCC's security interest in deposits consisting of securities under UCC Sections 9-106 and 9-314; Rules 610C(j)(1), 610C(j)(10), and 610C(k)(2), which provide for the perfection of OCC's security interest in deposits consisting of cash under UCC Sections 9-104, 9-312 and 9-314; and Rules 610C(i)(1), 610C(i)(2) and 610C(j)(3), which support the first priority of OCC's security interest by preventing competing liens or claims.

that by locating the above-described provisions in the Rules, all users and potential users of OCC's escrow deposit program would better understand the relationship between OCC and custodian banks.

Proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) concern the exercise of options positions collateralized by escrow deposits and the release of escrow deposits upon expiration. As with other parts of proposed Rule 610C, OCC believes that the location of proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) provides all users and potential users of OCC's escrow deposit program with a more transparent understanding of how exercises of options positions affect escrow deposits as well as the manner in which OCC would release an escrow deposit upon the expiration of an options position. Similar to other parts of Rule 610C, proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) are based on existing Rules of OCC as well as the EDA.[23] Proposed Rule 610C(m) concerns reports OCC provides regarding escrow deposits and is based upon existing Rules 613(d) and 613(e) as well as Sections 11, 12 and 13 of the EDA. Proposed Rules 610C(n), 610C(o) and 610C(p), which concern assignments of exercises and releases of escrow deposits upon expiration is based upon existing Rules 613(f) and 1801(j) and Section 14 of the EDA.

SECTION 4: TRANSITION PERIOD

For the administrative convenience of clearing members, custodian banks and customers, the existing Rules governing deposits in lieu of margin would remain in effect, in parallel with the proposed Rules, for a transition ending November 30, 2017. During this transition period,

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[23] As discussed in Section 3 above, Rules 610C(n) and 610C(p) contain language that prevents the release of an escrow deposit in the event such deposit is subject to a hold instruction, which is a proposed enhancement to the escrow deposit program.

deposits in lieu of margin could be made under either the existing Rules or the proposed Rules. This will eliminate the need of all clearing members to provide new collateral on a single date in the absence of a transition period. After the transition period, proposed Rules 610, 610A, 610B and 610C would provide the sole means of making deposits in lieu of margin and existing Rules 613 and 1801 would be removed from the Rulebook. In connection with the transition, existing Rule 610 would be re-designated as 610T to indicate that it is a temporary rule, and would become ineffective and removed after the transition period. Furthermore, following the transition period, existing Rule 503, which addresses instructions that call for the payment of a premium by or to the clearing member for whose account the deposit is made, would be removed from the Rules because these instructions would no longer be permitted under the revised escrow deposit program since this aspect of the program has not been used for a number of years.[24] In addition, Government securities would be given full market value under the revised escrow deposit program and therefore existing Rule 610(h) would be removed from the Rules after the transition period.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[25] because it would ensure the safeguarding of securities and funds which are in the custody and control of OCC. As described above, the proposed rule change would increase OCC's visibility into and control over cash and securities deposits made in OCC's escrow

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[24] For the purposes of clarity, existing Rules 613(c), 613(g), 613(h), 613(j) address the same topic and would be removed from OCC's Rulebook following the transition period without being migrated into a proposed Rule.

[25] 15 U.S.C. 78q-1(b)(3)(F).

deposit program. Deposits in OCC's escrow deposit program collateralize open securities positions guaranteed by OCC and protect OCC and market participants from the risk associated with a default of a clearing member. The proposed rule change would better ensure that OCC could verify that deposits of both cash and securities within OCC's escrow deposit program sufficiently collateralize germane short options position(s). In addition, OCC would: (1) be able to use its existing functionality with DTC to more quickly take possession of such deposits without involving custodian banks in the event of a clearing member default, and (2) obtain a contractual commitment from Tri-Party Custodian Bank that they would disperse cash within the escrow deposit program to OCC at OCC's direction. OCC believes that these features of the revised escrow deposit program would reduce potential losses that may occur as a result of a clearing member default. As a result of the foregoing, the proposed rule change would better ensure the safeguarding of securities and funds that are in the custody and control of OCC.

OCC also believes that the proposed rule change is consistent with Rule 17Ad-22(d)(3), which requires OCC to hold assets in a manner that minimizes risk of loss or delay or in access to them.[26] Specifically, and with respect to non-cash collateral, all non-cash collateral in the escrow deposit program would be held at DTC thereby allowing OCC to validate and value collateral in real time and quickly obtain possession of deposited securities by issuing a transfer instruction through DTC's systems in an event of default without involving custodian banks. With respect to cash collateral, all such collateral would be held in an escrow deposit program specific account at a Tri-Party Custodian Bank, OCC would have view access into such account, and OCC would obtain a contractual commitment from the Tri-Party Custodian Banks that they

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[26] 17 CFR 240.17Ad-22(d)(3)

would disperse cash within the escrow deposit program to OCC at OCC's direction. By more widely utilizing its existing infrastructure for non-cash collateral in the escrow deposit program, as well as by obtaining specific agreements regarding its right to take possession of cash collateral, OCC will be able to more quickly take possession of collateral in the escrow deposit program in the event of a clearing member default that would, in turn, reduce potential losses to OCC, other clearing members and market participants. Moreover, OCC believes that the proposed rule change is consistent with the requirement in Rule 17Ad-22(d)(11)[27] that clearing agencies establish, implement, maintain and enforce policies and procedures reasonably designed to make key aspects of their default procedures publicly available, because the substantive terms of the escrow deposit program, and specifically the rules concerning default management, would be incorporated into OCC's Rules, which are publicly available on OCC's website, rather than in private agreements.

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

The proposed rule change would reflect changes to the Rules governing OCC's escrow deposit program and, more generally, amend the Rules to more clearly identify the three forms of deposits in lieu of margin: (1) escrow deposits, (2) third-party specific deposits and (3) member specific deposits. The proposed rule change would impose a burden on competition that is necessary and appropriate in furtherance of the Act.[28] In particular, a burden would be imposed on Tri-Party Custodian Bank in light of the requirement that cash included within an escrow deposit be held in an account of the relevant customer at the Tri-Party Custodian Bank pursuant

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27 17 CFR 240.17Ad-22(d)(11).

28 15 U.S.C. 78q-1(b)(3)(I).

to a Tri-Party Agreement. This requirement may limit certain custodian banks' participation in the escrow deposit program because the escrow deposit program would now require a Tri-Party Custodian Bank to have the technological capability to allow both OCC and customers of clearing members to have view access into bank accounts within the escrow deposit program. However, OCC believes that the resulting burden on competition is both necessary and appropriate in furtherance of the Act because OCC's view access into bank accounts within the escrow deposit program provides OCC additional transparency over cash collateral. As described in Item 3 above, by obtaining view access into bank accounts within the escrow deposit program OCC would not have to rely on Tri-Party Custodian Bank to value, or warrant the existence of, cash collateral within the escrow deposit program. OCC believes that obtaining such additional transparency over cash collateral is necessary and appropriate in furtherance of the Act.

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

Communications with Custodian Banks

In light of the substantial changes proposed to the escrow deposit program, OCC has sought to keep custodian banks informed regarding the proposed rule changes. These communications began in January and February 2012, when OCC notified each custodian bank of the proposal to restructure the escrow deposit program. As part of this notification, OCC informed each custodian bank of (1) OCC's intention to require that security pledges be made through DTC, (2) the percentage of cash used in the escrow deposit program and (3) the potential elimination of cash deposits.[29]

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[29] While it was ultimately determined in April 2014 that cash collateral would remain in the escrow deposit program, prior discussions with participating escrow banks reflected the

In June through August 2012, OCC provided a PowerPoint presentation to each custodian bank summarizing proposed rule changes to the escrow deposit program. This presentation included an explanation of the reasons for the proposed rule changes, including the desire to enhance and strengthen the escrow deposit program and increase collateral transparency. The presentation also included a discussion of changes to the validation and valuation of collateral, and the calculation of contract quantities based on the collateral that has been pledged.

In April and May 2013, OCC provided each custodian bank with an operational overview of the restructured escrow deposit program in the form of a PowerPoint presentation. This presentation covered: eligible option types, types of eligible supporting collateral, required collateral value calculations for option contact coverage, valuation of supporting collateral, asset management locations/processing of supporting collateral, and validation and valuation of supporting collateral and calculation of option contract coverage.

In July and August 2013, OCC distributed a draft Participating Escrow Bank Agreement (as described below) and the related proposed OCC Rules to custodian banks along with a request for feedback. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

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evolution of OCC's decision on this point. For example, the PowerPoint presentation given to banks during June – August 2012 indicated that cash collateral would not be permitted in the escrow deposit program, while the PowerPoint presentation given during April – May 2013, as well as the draft rules distributed to participating escrow banks for comment in July – August 2013, indicated that it *would* be included. A number of current participants in the escrow deposit program use cash, some to a substantial degree, and OCC determined that the use of cash collateral should remain an essential aspect of the escrow deposit program.

During September 2013, OCC provided a walkthrough of the functions of its ENCORE[30] system applicable to the enhanced escrow deposit program for custodian banks in order to provide an orientation of such functionality. In connection with the restructured escrow deposit program, clearing members will continue to use ENCORE to view member specific deposits, and custodian banks will use ENCORE to view third-party specific deposits and make escrow deposits consisting of cash. Moreover, OCC sent requests to custodian banks for validation of the DTC pledgor accounts to be used for the restructured escrow deposit program. In October 2013, OCC distributed escrow deposit program eligible securities file details to custodian banks.

In February and March 2014, OCC arranged a series of calls with custodian banks to solicit feedback on a term sheet detailing cash account structures. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

Comments Received from Custodian Banks

As described above, OCC discussed the proposed rule changes to its escrow deposit program with custodian banks several times since 2012. While these discussions were generally informational in nature, custodian banks provided OCC with comments and questions in two instances: the July/August 2013 discussions and the February/March 2014 discussion. The primary focus of the comments in both sets of discussions was the manner in which custodian banks would be required to hold cash under the new escrow rules: in an omnibus structure or in a tri-party structure. The omnibus structure would provide OCC with an account in OCC's name and thereby perfect OCC's right under the UCC to take possession of cash escrow deposits in the event of a clearing member default. This would also eliminate the need for a separate tri-party

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30 ENCORE is OCC's real-time clearing and settlement system that allows clearing members to, among other things, post and view margin collateral as well as deposits in lieu of margin.

agreement. However, the omnibus structure was less desirable to custodian banks since all of a custodian bank's OCC escrow deposit program clients' assets would be comingled in a single account. From an operational perspective, a single omnibus account at a custodian bank is easier for OCC to manage since OCC would only need to have "view access" into one account at a custodian bank. On the other hand, custodian banks expressed privacy concerns with respect to several clients having view access into a single account.

Eventually, OCC decided to use a tri-party account structure for cash escrow deposits, with certain controls to alleviate the concerns on both sides. Specifically, custodian banks agreed to facilitate the execution of a form tri-party agreement with each of its clients that participates in OCC's escrow deposit program, which perfects OCC's security interest in cash escrow deposits. Additionally, custodian banks agreed to establish an escrow specific cash account for each client so that OCC does not need to differentiate a client's OCC escrow cash from the client's non-escrow cash. OCC believes that the proposed structure for cash accounts strikes the appropriate balance between OCC's desire for legal certainty as to its right to take possession of cash escrow deposits in the event of a clearing member default, and the operational desire to only have view access to a client's OCC escrow deposit program cash account balance at a custodian bank.

Additional comments OCC received from the July/August 2013 discussions with custodian banks centered on administrative items such as the escrow deposit program documentation structure and the manner in which custodian banks would post escrow deposits in OCC's clearing system, ENCORE. As discussed above, OCC moved the substantial majority of its Amended and Restated On-Line Escrow Deposit Agreement into proposed Rule 610C in order to have the majority of escrow rules in one place. Custodian banks did not express any

concerns regarding the operational steps necessary to post an escrow deposit in ENCORE once OCC provided custodian banks with a "walkthrough" of the operational process.

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2016-009 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-2016-009. 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_16_009.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-2016-009 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.[31]

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:_____

[31] 17 CFR 200.30-3(a)(12).

EXHIBIT 5A

Participating Escrow Bank Agreement

This Participating Escrow Bank Agreement ("Agreement"), dated this _____ day of _____, 20___, is made between _____("Bank") and The Options Clearing Corporation, a Delaware corporation ("OCC") in respect of Bank's participation in OCC's Escrow Deposit Program (the "Program").

WHEREAS, Bank desires to participate in the Program, under which, in order to cover their obligations as writers of option contracts issued by OCC, customers of Bank may from time to time deposit with Bank, in escrow, cash and/or securities, and Bank may in turn effect escrow deposits of such cash and securities with OCC ("Deposits"), and effect withdrawals or "roll overs" of such Deposits;

WHEREAS, OCC desires to admit Bank as a participating escrow bank in the Program (a "Participating Escrow Bank"), subject to the terms and conditions set forth herein and the provisions of OCC's By-Laws and Rules (together, the "Rules") relating to the Program (the "Program Rules"), as described in greater detail in Section 2 below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Representations, Warranties and Covenants of Bank.** As of the date set forth above and subsequently upon effecting a Deposit or submitting an instruction with respect to a Deposit, Bank represents and warrants to OCC that it satisfies the following Participating Escrow Bank eligibility criteria:

    a. Bank is a bank or trust company organized under the laws of the United States or any state thereof, or a branch of a foreign bank, in either case doing business under the laws of any state or of the United States and supervised and examined by a state or federal authority having supervision over banks or trust companies.

    b. Equity attributable to all outstanding shares of capital stock issued by Bank is not less than the minimum amount specified by OCC to Bank in connection with this Agreement and set forth in such schedule or other form as OCC may make available to Bank.

    c. If Bank effects any Deposit of securities under the Program, Bank is a Participant of The Depository Trust Company and, if Bank effects any Deposit of cash under the Program, Bank will establish an "approved account" at Bank for each customer participating in the Program, as described in the Program Rules, for holding such cash Deposits and will enter into an Escrow Program Tri-Party Agreement ("Tri-Party Agreement") with OCC and each customer.

    d. Neither the execution and delivery of this Agreement, nor any act to be performed pursuant to this Agreement by, or on behalf of, Bank, will violate Bank's charter, bylaws or other organizational documents, or any other material agreement which is binding upon Bank, or any provisions of law applicable to Bank.

    e. This Agreement is the legal, valid and binding obligation of Bank, enforceable against Bank in accordance with its terms, subject to the effects of bankruptcy, insolvency and equitable principles.

Bank covenants and agrees that it will continue to satisfy the foregoing Participating Escrow Bank eligibility criteria during the term of this Agreement; provided, that with respect to the eligibility criteria in Section 1.b above, Bank will maintain sufficient equity attributable to all outstanding shares of capital stock issued by Bank in an amount not less than the amount specified by OCC from time to time, provided that Bank may terminate this Agreement immediately upon the effectiveness of an increase in the capital requirement that would cause it to no longer be eligible to be a Participating Escrow Bank.

2. **Compliance with and Incorporation of Program Rules.** Bank shall abide by the Program Rules and shall be bound by all the provisions thereof and by all operating procedures adopted by OCC pursuant thereto, as either may be amended from time to time, including without limitation the financial requirements specified in Rule 610C(j)(8). The Program Rules shall be a part of the terms and conditions of every Deposit that may be made or maintained by Bank or any customer of Bank with OCC, while Bank is a Participating Escrow Bank. The following provisions of the Rules shall constitute the Program Rules, provided that OCC may amend this list to reflect one or more Program Rules' ceasing to be effective or in connection with any amendment to the Program Rules adopted pursuant to Section 3 below:

   Article I of OCC's By-Laws – Definitions
   Article XVII of OCC's By-Laws – Index Options and Certain Other Cash-Settled Options – Section 1 – Definitions
   Chapter I of OCC's Rules – Definitions
   OCC Rules 610, 610A, 610B and 610C – Deposits in Lieu of Margin

3. **Amendment.** No provision of this Agreement may be amended, supplemented or modified, or any of its terms waived, except by a written instrument executed by OCC and Bank, provided that Bank shall be bound by any amendment to the Program Rules and by all operating procedures adopted by OCC pursuant thereto as fully as though such amendment were now a part of the Program Rules or operating procedures without further consent by Bank. OCC agrees to provide 60 days' written notice prior to implementation of any amendments to the Program Rules. Bank may terminate this Agreement upon written notice to OCC within 30 days of such notification, with effectiveness as of the later of the implementation of such amendments to the Program Rules or applicable procedures or the receipt by OCC of such notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date until such Deposits are withdrawn or released, provided that during such period such rule change shall not be effective with respect to such Deposits.

4. **Instructions of OCC/UCC Jurisdiction.** Bank agrees that it will follow disbursement directions of OCC with respect to cash included within Deposits promptly and fully without further consent by the customer. Bank shall have no duty to investigate or make any determinations as to whether OCC is entitled to give disbursement directions with respect to Deposits and shall comply with such disbursement directions without regard to the authority or lack of authority to give such disbursement directions. Bank agrees that its "jurisdiction" (as described in Section 8-110 and 9-304 of the Uniform Commercial Code) for purposes of the Uniform Commercial Code as in effect in the State of Illinois is the State of Illinois.

5. **Binding Court Order or Judgment.** Nothing herein shall be deemed to require Bank to deliver a Deposit or any portion thereof in contravention of any court order or judgment binding on Bank in its capacity as Participating Escrow Bank, [which on its face affects such Deposit or portion thereof] **[OPEN POINT]**. Bank agrees that it will not take any action to cause the issuance of an order described in the preceding sentence.

6. **Default by Bank.** If at any time (a) Bank fails to comply with its obligations under this Agreement or the Program Rules, (b) any representation and warranty made or deemed made by the Bank hereunder or under the Program Rules is determined to have been false or misleading when made or deemed made or (c) Bank becomes insolvent (each a "Bank Default"), OCC shall have all remedies available to it under this Agreement, the Program Rules and all procedures adopted by OCC pursuant thereto, as well as all remedies available to it under applicable law (subject in all respects to Section 14 below).

7. **Term/Termination.** Either OCC or Bank may terminate this Agreement for any reason on 45 days' prior written notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date, until such Deposits are withdrawn or released. Upon the occurrence of a Bank Default, OCC may terminate this Agreement immediately and disregard any existing Deposits pursuant to Rule 610C(r).

8. **Access to Rules.** Bank acknowledges that it has access to a copy of the Program Rules on OCC's website and has reviewed the Program Rules as in effect at the date of this Agreement.

9. **Secure Website Access Agreement.** Bank's use of OCC's Escrow Deposit Processing System in connection with the transactions contemplated by this Agreement shall be governed by the Secure Website Access Agreement entered into between the Bank and OCC.

10. **Assignment; Beneficiaries.** The rights and obligations of Bank hereunder shall not be assignable without the written consent of OCC. This Agreement shall be binding upon, and inure to the benefit of, Bank and its successors and assigns, and shall also inure to the benefit of OCC and its successors and assigns.

11. **GOVERNING LAW AND CONSENT TO JURISDICTION.** THIS AGREEMENT IS DEEMED TO BE MADE UNDER, AND SHALL BE CONSTRUED BY, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES. BANK IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE PROGRAM. OCC AND BANK WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROGRAM.

12. **Miscellaneous.** No failure by OCC to exercise, and no delay in exercising, any right under this Agreement waives that right. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, together shall constitute one instrument. This Agreement, including the Program Rules and all operating procedures adopted by OCC pursuant thereto, constitutes the entire agreement and understanding between the parties with respect to the Program. In the event that any one or more of the provisions in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. Section headings used in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement.

13. **Notices**. All notices or other communications to be given in writing shall be sent to the addresses provided below. In addition, any notice of a material change from Bank pursuant to Rule 610C(l) shall also be provided via email to [banknotifications@occ.com] **[OCC TO CONFIRM.]**

14. **Limitation of Bank Liability**. Bank has no duties with respect to the Program other than those expressly set forth herein, in each Tri-Party Agreement to which Bank is a party, and in the Program Rules and operating procedures. Bank shall have no liability for losses arising in connection with the Program other than those caused by its own breach of its obligations in respect of the Program (including a breach of this Agreement or any Tri-Party Agreement among OCC, Bank and any customer of Bank or a violation of the Program Rules) or by its own negligence, fraud or willful misconduct. Bank shall not be liable for any special, indirect, consequential or punitive damages of any form incurred by any person or entity with respect to Bank's performance or non-performance under this Agreement. In addition, Bank shall have no liability for any damage, loss, expense or liability of any nature that OCC or Customer may suffer or incur caused by an event beyond the control of Bank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, as of the date first set forth above.

THE OPTIONS CLEARING CORPORATION	BANK
By_____	By_____
Printed Name_____	Printed Name_____
Title_____	Title_____
Address: Email: Attn: General Counsel	Address: Email:

OCC

~~AMENDED AND RESTATED ON-LINE ESCROW DEPOSIT AGREEMENT~~

Participating Escrow Bank Agreement

This Participating Escrow Bank Agreement (“Agreement”), dated this_____day of ~~20__, between ("Bank"),~~ , 20___, is made between

_____(“Bank”) and The Options Clearing Corporation, a Dela in OCC’s Escrow Deposit Program (the “Program”).

~~and THE OPTIONS CLEARING CORPORATION, a Delaware corporation ("OCC"),~~

~~W I T N E S S E T H:~~

WHEREAS, Bank desires to participate in the Program, under which, in order to cover their obligations as writers of option contracts issued by OCC, customers of ~~the~~ Bank may from time to time deposit with ~~the~~ Bank, in escrow, ~~(i) the underlying securities in respect of any equity call option contract, (ii) cash, securities with a fixed principal amount issued or guaranteed by the United States and having one year or less to maturity ("Short Term U.S. Government Securities"), and/or common stocks in respect of any index call option contract, or (iii), cash and/or Short-Term U.S. Government Securities in respect of any equity or index put option contract (collectively, the "deposit" or the "escrow deposit"); and~~cash and/or securities, and Bank may in turn effect escrow deposits of such cash and securities with OCC (“Deposits”), and effect withdrawals or “roll overs” of such Deposits;

WHEREAS, OCC ~~and the Bank desire to amend and restate the procedures whereby deposits may be confirmed, "rolled over" to cover other option writing transactions, and withdrawn;~~desires to admit Bank as a participating escrow bank in the Program (a “Participating Escrow Bank”), subject to the terms and conditions set forth herein and the provisions of OCC’s By-Laws and Rules (together, the “Rules”) relating to the Program (the “Program Rules”), as described in greater detail in Section 2 below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Representations, Warranties and Covenants of Bank.** As of the date set forth above and subsequently upon effecting a Deposit or submitting an instruction with respect to a Deposit, Bank represents and warrants to OCC that it satisfies the following Participating Escrow Bank eligibility criteria:

~~I. BANK’S REPRESENTATIONS~~

~~1. General.~~

~~Upon submitting any escrow deposit instruction or escrow rollover instruction ("Instruction") to OCC, the Bank shall be deemed to represent and warrant to OCC, and to agree with OCC, as follows:~~

~~1.1~~a. ~~The~~ Bank is a bank or trust company organized under the laws of the United States or ~~a~~any state thereof, or a branch of a foreign bank, in either case doing business under the laws of any state or of the United States and supervised and examined by a state or federal authority having supervision over banks or trust companies.

~~1.2~~b. ~~The equity~~ Equity attributable to all outstanding shares of capital stock issued by ~~the~~ Bank is not less than the minimum amount specified by OCC to Bank in connection with this Agreement and set forth in such schedule or other form as OCC may make available to Bank.

~~than $20,000,000.~~

~~1.3. Either (i) the total amount of cash and securities (valuing securities at current market value) held~~

c. If Bank effects any Deposit of securities under the Program, Bank is a Participant of The Depository Trust Company and, if Bank effects any Deposit of cash under the Program, Bank will establish an "approved account" at Bank for each customer participating in the Program, as described in the Program Rules, for holding such cash Deposits and will enter into an Escrow Program Tri-Party Agreement ("Tri-Party Agreement") with OCC and each customer.

d. Neither the execution and delivery of this Agreement, nor any act to be performed pursuant to this Agreement by, or on behalf of, Bank, will violate Bank's charter, bylaws or other organizational documents, or any other material agreement which is binding upon Bank, or any provisions of law applicable to Bank.

e. This Agreement is the legal, valid and binding obligation of Bank, enforceable against Bank in accordance with its terms, subject to the effects of bankruptcy, insolvency and equitable principles.

Bank covenants and agrees that it will continue to satisfy the foregoing Participating Escrow Bank eligibility criteria during the term of this Agreement; provided, that with respect to the eligibility criteria in Section 1.b above, Bank will maintain sufficient equity attributable to all outstanding shares of capital stock issued by Bank in an amount not less than the amount specified by OCC from time to time, provided that Bank may terminate this Agreement immediately upon the effectiveness of an increase in the capital requirement that would cause it to no longer be eligible to be a Participating Escrow Bank.

2. **Compliance with and Incorporation of Program Rules.** Bank shall abide by the Program Rules and shall be bound by all the provisions thereof and by all operating procedures adopted by OCC pursuant thereto, as either may be amended from time to time, including without limitation the financial requirements specified in Rule 610C(j)(8). The Program Rules shall be a part of the terms and conditions of every Deposit that may be made or maintained by Bank or any customer of Bank with OCC, while Bank is a Participating Escrow Bank. The following provisions of the Rules shall constitute the Program Rules, provided that OCC may amend this list to reflect one or more Program Rules' ceasing to be effective or in connection with any amendment to the Program Rules adopted pursuant to Section 3 below:

   Article I of OCC's By-Laws – Definitions
   Article XVII of OCC's By-Laws – Index Options and Certain Other Cash-Settled Options – Section 1 – Definitions
   Chapter I of OCC's Rules – Definitions
   OCC Rules 610, 610A, 610B and 610C – Deposits in Lieu of Margin

3. **Amendment.** No provision of this Agreement may be amended, supplemented or modified, or any of its terms waived, except by a written instrument executed by OCC and Bank, provided that Bank shall be bound by any amendment to the Program Rules and by all operating procedures adopted by OCC pursuant thereto as fully as though such amendment were now a part of the Program Rules or operating procedures without further consent by Bank. OCC agrees to provide 60 days' written notice prior to implementation of any amendments to the Program Rules. Bank may terminate this Agreement upon written notice to OCC within 30 days of such notification, with effectiveness as of the later of the implementation of such amendments to the Program Rules or applicable procedures or the receipt by OCC of such notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date until such Deposits are withdrawn or released, provided that during such period such rule change shall not be effective with respect to such Deposits.

4. **Instructions of OCC/UCC Jurisdiction.** Bank agrees that it will follow disbursement directions of OCC with respect to cash included within Deposits promptly and fully without further consent by the customer. Bank shall have no duty to investigate or make any determinations as to whether OCC is entitled to give disbursement directions with respect to Deposits and shall comply with such disbursement directions without regard to the authority or lack of authority to give such disbursement directions. Bank agrees that its "jurisdiction" (as described in Section 8-110 and 9-304 of the Uniform Commercial Code) for purposes of the Uniform Commercial Code as in effect in the State of Illinois is the State of Illinois.

5. **Binding Court Order or Judgment.** Nothing herein shall be deemed to require Bank to deliver a Deposit or any portion thereof in contravention of any court order or judgment binding on Bank in its capacity as Participating Escrow Bank, [which on its face affects such Deposit or portion thereof] **[OPEN POINT]**. Bank agrees that it will not take any action to cause the issuance of an order described in the preceding sentence.

6. **Default by Bank.** If at any time (a) Bank fails to comply with its obligations under this Agreement or the Program Rules, (b) any representation and warranty made or deemed made by the Bank hereunder or under the Program Rules is determined to have been false or misleading when made or deemed made or (c) Bank becomes insolvent (each a "Bank Default"), OCC shall have all remedies available to it under this Agreement, the Program Rules and all procedures adopted by OCC pursuant thereto, as well as all remedies available to it under applicable law (subject in all respects to Section 14 below).

7. **Term/Termination.** Either OCC or Bank may terminate this Agreement for any reason on 45 days' prior written notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date, until such Deposits are withdrawn or released. Upon the occurrence of a Bank Default, OCC may terminate this Agreement immediately and disregard any existing Deposits pursuant to Rule 610C(r).

8. **Access to Rules.** Bank acknowledges that it has access to a copy of the Program Rules on OCC's website and has reviewed the Program Rules as in effect at the date of this Agreement.

by the Bank pursuant to outstanding escrow receipts and guarantee letters collateralizing put and call options, or (ii) the intrinsic value ("in-the-money" amount) of all such put and call options, does not exceed a dollar amount equal to 100% of the equity attributable to all outstanding shares of capital stock issued by the Bank.

1.4. During any period in which the amount referred to in clause (i) of Section 1.3 exceeds 100% of the stockholders' equity of the Bank, the Bank shall furnish to OCC, on a monthly basis, a computation setting forth the amount referred to in clause (ii) of Section 1.3, expressed as a percentage of the stockholders' equity of the Bank, for each business day during the preceding calendar month.

1.5. The Bank (i) holds the cash and/or securities specified in the Instruction in the United States of America as custodian for the account of a customer (the "Customer"), and the Customer or its agent has specifically authorized the Bank to submit the Instruction to OCC and to hold the cash and/or securities as an escrow deposit pursuant to the Rules of OCC in respect of the Customer's position ("short position") as a writer of the option contract(s) specified in the Instruction.

1.6. The Bank will not subject the deposit or any portion thereof to any right (including any right of setoff), charge, security interest, lien or claim of any kind in favor of the Bank or any person claiming through the Bank, and the Bank will promptly notify OCC, the Clearing Member of OCC named in the Instruction (the "Clearing Member"), the Broker, if any, named in the Instruction (the "Broker"), and the Customer, if any notice of lien, levy, court order or other process which purports to effect the deposit or any portion thereof is served upon it.

1.7. The Bank has been authorized by the Customer or its duly authorized representative to confirm the Customer's understanding that (i) if the short position specified in the Instruction is closed out under circumstances permitting the related escrow deposit to be withdrawn by the Clearing Member, it is the Customer's responsibility to ensure that the Clearing Member withdraws the escrow deposit from OCC, and until the escrow deposit is duly released by OCC, OCC will retain the right to demand delivery (in the case of an equity call option) or payment (in the case of an equity put option or an index option) of the deposit or its proceeds upon the assignment of an exercise notice to any short position in a series of options specified in the

Instruction carried in the Clearing Member's customers' account with OCC; and (ii) exercise notices assigned by OCC to short positions for which escrow deposits have been made by the Clearing Member are allocated to particular customers by the Clearing Member or by their respective brokers, and if the Clearing Member is suspended by OCC and OCC cannot promptly determine the identities of the assigned customers, OCC will reallocate such exercise notices, and such reallocation shall be binding on the Customer notwithstanding any contrary notice or confirmation which the Customer may have received from the Clearing Member or the Customer's broker.

1.8. If the Customer is the Bank acting in a fiduciary or similar capacity, or a trust or custodial or similar account maintained with the Bank, it is nonetheless understood that in submitting the Instruction to OCC and functioning as escrowee and bailee of the deposit pursuant to this Agreement, the Bank is acting in a wholly separate capacity, and not in its capacity as Customer. Nothing herein shall be deemed to require the Bank to deliver the deposit or any portion thereof in contravention of any court order or judgment binding on the Bank in its capacity as escrowee and bailee, which on its face affects such deposit or portion thereof.

2. Escrow Deposits for Short Positions in Equity Calls.

Upon submitting to OCC an Instruction in respect of a short position in equity call options, the Bank shall be deemed to represent and warrant to OCC and to agree with OCC, in addition to the Bank's representations, warrants, and agreements set forth in paragraph 1 above, as follows:

2.1. The Bank has by book entry or otherwise identified as comprising the deposited securities: (a) specific certificates in the possession of the Bank, (b) a quantity of securities that constitutes or is a part of a fungible bulk of securities in the possession of the Bank, (c) a quantity of securities that constitutes or is part of a fungible bulk of securities credited to the account of the Bank on the books of a "securities intermediary" (as defined in applicable provisions of the Uniform Commercial Code), or (d) any combination thereof.

2.2. To the extent that the deposited securities include securities described in clauses (a) or (b) of Section 2.1 above, such securities are in good deliverable form with any and all necessary endorsements (or the Bank has the unrestricted power to put such securities into good deliverable form) in accordance with applicable

market practice.

2.3. In the event that the terms of outstanding equity call option contracts of the series specified in the Instruction are adjusted pursuant to OCC's By-Laws, then from and after the ex-date for the event giving rise to the adjustment, the term "short position" as used herein shall be deemed to refer to the Customer's position as a writer of the equity call option contracts specified in the Instruction as so adjusted. If any such adjustment is made by reason of a distribution of securities or other property in respect of the deposited securities, then from and after the ex-date for such distribution, the term "deposited securities" as used herein shall be deemed to include the distributed property; provided that if a delivery order is presented to the Bank pursuant to Section 21(a) of this Agreement prior to the Bank's receipt of the distributed property, the Bank shall not be obligated to deliver the distributed property until receipt thereof, but shall be obligated to deliver such property not later than three business days thereafter.

3. Escrow Deposits for Short Positions in Equity Puts.

Upon submitting to OCC an Instruction in respect of a short position in equity put options, the Bank shall be deemed to represent and warrant to OCC and to agree with OCC, in addition to the Bank's representations, warranties, and agreements set forth in paragraph 1 above, as follows:

3.1. The deposit consists of (a) cash, (b) Short-Term U.S. Government Securities, or (c) any combination thereof.

3.2. The total value of the deposit as of the trade date specified in the Instruction (valuing Short-Term U.S. Government Securities at the lesser of par value or 100% of their current market value) was not less than 105% of the product of (a) the number of contracts specified in the Instruction and (b) the aggregate exercise price (as defined in OCC's By-Laws) per contract specified in the Instruction (the "Minimum Value").

3.3. To the extent that the deposit includes securities, the Bank has by book entry or otherwise identified as being included within the deposit: (a) specific certificates for such securities in the Bank's possession; (b) a quantity of such securities that constitutes or is part of a fungible bulk of securities in the Bank's possession; (c) a quantity of such securities that constitutes or is part of a fungible bulk of securities

credited to the account of the Bank on the books of a Federal Reserve Bank or other "securities intermediary" (as defined in applicable provisions of the Uniform Commercial Code); or (d) any combination thereof.

3.4. To the extent that the deposit includes securities described in clause (a) or (b) of Section 3.3 above, such securities are in good deliverable form with any and all necessary endorsements (or the Bank has the unrestricted power to put such securities into good deliverable form) in accordance with applicable market practice.

3.5. The Customer or its duly authorized representative has duly authorized the Bank to liquidate any securities included in the deposit to the extent necessary to perform the Bank's obligations under this Agreement.

3.6. Upon the instructions of the Customer or its duly authorized representative, the Bank may from time to time substitute cash or Short-Term U.S. Government Securities for any property theretofore included in the deposit, provided that (a) the current value of the substituted property, valued in accordance with Section 3.2 above, is at least equal to that of the property for which it is substituted, and (b) the representations made in Sections 3.3, 3.4 and 3.5 above remain true and correct after giving effect to such substitution.

3.7. Upon the request of OCC, the Clearing Member, or the Broker (collectively, the "Beneficiaries") at any time, the Bank will promptly provide such Beneficiary with a written listing of the cash and/or Short-Term U.S. Government Securities then included within the deposit. If the total value of the deposit (valued in accordance with Section 3.2 above) shall at the close of any business day be less than 100% of the Minimum Value, the Bank shall promptly notify the Customer or its duly authorized representative thereof and request that the deposit be supplemented. If the total value of the deposit (valued in accordance with Section 3.2 above) shall at the close of any business day be less than 97.5% of the Minimum Value, whether or not a request to the Customer for supplementation is then pending, the Bank will immediately advise the Beneficiaries in writing thereof. Such advice may be via facsimile or other electronic transmission if followed by immediate telephonic confirmation thereof.

3.8. In the event that the terms of outstanding equity put option contracts of the series specified in the

Instruction are adjusted pursuant to OCC's By-Laws, then from and after the ex-date for the event giving rise to the adjustment, the term "short position" as used herein shall be deemed to refer to the Customer's position as a writer of the equity put option contracts specified in the Instruction as so adjusted, and the term "underlying security" shall be deemed to refer to the securities, cash, and/or other property deliverable upon exercise of such adjusted equity put option contracts. If any such adjustment is made by reason of a distribution of securities or other property, and a payment order is presented to the Bank pursuant to Section 21(b) of this Agreement prior to receipt of the distributed property by the party presenting the payment order, such party's failure to deliver the distributed property to the Bank shall not defer or otherwise affect the Bank's obligation to make full payment hereunder, but such party shall be obligated to deliver the distributed property to the Bank not later than three business days following receipt thereof.

4. Escrow Deposits for Short Positions in Index Calls

Upon submitting to OCC an Instruction in respect of a short position in index call options, the Bank shall be deemed to represent and warrant to OCC and to agree with OCC, in addition to the Bank's representations, warranties, and agreements set forth in paragraph 1 above, as follows:

4.1. The deposit consists of (a) cash, (b) Short-Term U.S. Government Securities, (c) common stocks listed on a national securities exchange or the Nasdaq Stock Market, or (d) any combination thereof. As used in this Section 4.1, the term "common stocks" includes stock fund shares that are listed on a national securities exchange or the Nasdaq Stock Market and are of a class that has been approved by OCC.

4.2. The total value of the deposit as of the trade date specified in the Instruction (valuing Short-Term U.S. Government Securities at the lesser of par value or 100% of their current market value and Common Stocks at their closing sale prices, if subject to last sale reporting, or their closing bid prices, if not subject to last sale reporting) was not less than the product of (a) the number of contracts specified in the Instruction and (b) the aggregate closing index value per contract at trade date specified in the Instruction.

4.3. To the extent that the deposit includes securities, the Bank has by book entry or otherwise identified as being included within the deposit: (a) specific certificates for such securities in the Bank's

possession; (b) a quantity of such securities that constitutes or is part of a fungible bulk of securities in the Bank's possession; (c) a quantity of such securities that constitutes or is part of a fungible bulk of securities credited to the account of the Bank on the books of a Federal Reserve Bank or other "securities intermediary" (as defined in applicable provisions of the Uniform Commercial Code); or (d) any combination thereof.

4.4. To the extent that the deposit includes securities described in clause (a) or (b) of Section 4.3 above, such securities are in good deliverable form with any and all necessary endorsements (or the Bank has the unrestricted power to put such securities into good deliverable form) in accordance with applicable market practice.

4.5. The Customer or its duly authorized representative has duly authorized the Bank to liquidate any securities included in the deposit to the extent necessary to perform the Bank's obligations under this Agreement.

4.6. The Bank maintains a written affirmation from the Customer or its duly authorized representative stating that all index call options written for the Customer's account and covered by escrow deposits with the Bank are written against a diversified stock portfolio.

4.7. Upon the instructions of the Customer or its duly authorized representative, the Bank may from time to time substitute cash, Short-Term U.S. Government Securities or Common Stocks for any property theretofore included in the deposit, provided that (a) the current value of the substituted property, valued in accordance with Section 4.2 above, is at least equal to that of the property for which it is substituted, and (b) the representations made in Sections 4.3, 4.4, and 4.5 above remain true and correct after giving effect to such substitution.

4.8. Upon the request of a Beneficiary at any time, the Bank will promptly provide such Beneficiary with a written listing of the cash, Short-Term U.S. Government Securities and/or Common Stocks then included within the deposit. If the total value of the deposit (valued in accordance with Section 4.2 above) shall at the close of any business day be less than 55% of the product of (a) the number of contracts specified in the Instruction and (b) the "Aggregate Current Index Value" of the underlying index (as defined in OCC's By-Laws), the Bank shall

promptly notify the Customer or its duly authorized representative thereof and request that the deposit be supplemented. If the total value of the deposit (valued in accordance with Section 4.2 above) shall at the close of any business day be less than 50% of said product, whether or not a request to the Customer for supplementation is then pending, the Bank will immediately advise the Beneficiaries in writing thereof. Such advice may be via facsimile or other electronic transmission if followed by immediate telephonic confirmation thereof. If any Common Stock included in the deposit shall cease to meet the requirements of Section 4.1(c) above, such Common Stock shall be assigned a value of zero for the purposes of any computation of total value hereunder.

5. Escrow Deposits for Short Positions in Index Puts.

Upon submitting to OCC an Instruction in respect of a short position in index put options, the Bank shall be deemed to represent and warrant to OCC and to agree with OCC, in addition to the Bank's representations, warranties, and agreements set forth in paragraph 1 above, as follows:

5.1. The deposit consists of (a) cash, (b) Short-Term U.S. Government Securities, or (c) any combination thereof.

5.2. The total value of the deposit as of the trade date specified in the Instruction (valuing Short-Term U.S. Government Securities at the lesser of par value or 100% of their current market value) was not less than the product of (a) the number of contracts specified in the Instruction and (b) the aggregate exercise price (as defined in OCC's By-Laws per contract specified in the Instruction (the "Contract Value").

5.3. To the extent that the deposit includes securities, the Bank has by book entry or otherwise identified as being included within the deposit: (a) specific certificates for such securities in the Bank's possession; (b) a quantity of such securities that constitutes or is part of a fungible bulk of securities in the Bank's possession; (c) a quantity of such securities that constitutes or is part of a fungible bulk of securities credited to the account of the Bank on the books of a Federal Reserve Bank other or "securities intermediary" (as defined in applicable provisions of the Uniform Commercial Code); or (d) any combination thereof.

5.4. To the extent that the deposit includes securities described in clause (a) or (b) of Section 5.3

above, such securities are in good deliverable form with any and all necessary endorsements (or the Bank has the unrestricted power to put such securities into good deliverable form) in accordance with applicable market practice.

5.5. The Customer or its duly authorized representative has duly authorized the Bank to liquidate any securities included in the deposit to the extent necessary to perform the Bank's obligations under this Agreement.

5.6. Upon the instructions of the Customer or its duly authorized representative, the Bank may from time to time substitute cash or Short-Term U.S. Government Securities for any property theretofore included in the deposit, provided that (a) the current value of the substituted property, valued in accordance with Section 5.2 above, is at least equal to that of the property for which it is substituted, and (b) the representations made in Sections 5.3, 5.4 and 5.5 above remain true and correct after giving effect to such substitution.

5.7. Upon the request of a Beneficiary at any time, the Bank will promptly provide such Beneficiary with a written listing of the cash and/or Short-Term U.S. Government Securities then included within the deposit. If the total value of the deposit (valued in accordance with Section 5.2 above) shall at the close of any business day be less than 55% of the Contract Value, the Bank shall promptly notify the Customer or its duly authorized representative thereof and request that the deposit be supplemented. If the total value of the deposit (valued in accordance with Section 5.2 above) shall at the close of any business day be less than 50% of the Contract Value, whether or not a request to the Customer for supplementation is then pending, the Bank will immediately advise the Beneficiaries in writing thereof. Such advice may be via facsimile or other electronic transmission if followed by immediate telephonic confirmation thereof.

II. ON LINE ACCESS

6. Access Fee.

The Bank shall pay a fee (the "access fee") to OCC for access to the Escrow Deposit Processing System in accordance with OCC's schedule of fees in effect from time to time. The access fee will cover the telecommunications costs of providing on-line access to the System to the Bank.

7. On-Line Security.

The Bank shall deliver to OCC upon execution of this Agreement and from time to time, as appropriate, an Authorized Signature List containing the names and specimen signatures of persons duly authorized by all necessary action to act, and/or to designate persons to act, on behalf of the Bank in connection with the Agreement (each an "Authorized Person") accompanied by a certificate signed by the appropriate Bank officer and documentation attesting to the authorization of each Authorized Person and the authenticity of each signature. The Bank hereby authorizes OCC to act in reliance thereon and in reliance on the instructions provided or purported to be provided by an Authorized Person or its designee. When practicable, Bank shall provide to OCC notice of any change of Authorized Persons or other relevant information, such as addresses or telephone numbers, at least fifteen (15) days prior to the effective date of such change. If it is impracticable for Bank to give OCC fifteen (15) days' prior notice of any such change, Bank shall give OCC as much prior notice thereof as is practicable in the circumstances. Until OCC receives notice of any change of Authorized Persons, OCC shall be authorized to rely on instructions provided or believed by OCC in good faith to be provided by any Authorized Person listed on the most current Authorized Signature List.

III. ESCROW TRANSACTIONS

8. Confirmation of Escrow Deposits.

Upon agreeing with a customer to hold cash and/or securities as an escrow deposit, the Bank shall submit an online deposit Instruction to OCC. A deposit Instruction shall specify such information as OCC may from time to time prescribe in its escrow deposit program operations manual.

9. Rollover of Escrow Deposit.

Upon being instructed by a customer to "roll over" an escrow deposit to cover a short position other than the

short position previously covered by such deposit, the Bank shall submit an on-line rollover Instruction to OCC. A roll-over Instruction shall specify such information as OCC may from time to time prescribe in its escrow deposit program operations manual and shall be subject to approval by the Clearing Member carrying the relevant short position. Rollover Instructions shall not be submitted after expiration of the contract covered by the escrow deposit. Any rollover Instructions submitted after expiration of the contract will be disregarded and eliminated from OCC's Escrow Deposit Processing System.

10. Withdrawal of Escrow Deposit Before Expiration.

Prior to being released as provided in Section 14 below, an escrow deposit made in accordance with this Agreement may be withdrawn by the Clearing Member carrying the short position covered by the deposit, or, with the approval of such Clearing Member, by the Bank for the account of such Clearing Member through submission of an online escrow withdrawal instruction to OCC.

11. On-Line Transaction and Inquiry Reports.

On each business day, OCC shall make available to the Bank and to each OCC Clearing Member on-line reports listing all escrow deposit, rollover, and withdrawal instructions submitted to OCC on that business day with respect to escrow deposits held by the Bank for such Clearing Member, and the net premiums (if any) specified by the initiating party as payable to or by the Bank in connection with each such instruction. Except as otherwise provided in this Agreement, instructions not involving premium payments shall be executed without further action by the Bank or the Clearing Member. Instructions involving premium payments ("Valued Instructions") shall be executed only with the approval of the non-initiating party. At or before such time as OCC shall prescribe on the business day on which a Valued Instruction is submitted, the non-initiating party may approve or reject such instruction through electronic means prescribed by OCC for such purpose. If a Valued Instruction is rejected or is not approved by such time as OCC shall prescribe on the business day on which it is submitted, the instruction shall be disregarded and eliminated from OCC's Escrow Deposit Processing System.

12. On-Line Escrow Settlement Reports.

At or before 9:00 A.M. (Central Time) on each business day, OCC shall make available to the Bank an on-line

escrow settlement report listing all deposit, rollover, and withdrawal instructions involving the Bank from the previous business day's on-line escrow activity, other than Valued Instructions that were not approved. All instructions listed on the escrow settlement report shall be deemed to have been executed by OCC as of the opening of business on that business day, except to the extent that OCC notifies the Bank that it has rejected one or more instructions pursuant to Section 18 hereof.

13. Reserved.

14. Release of Escrow Deposits on Expiration.

Any escrow deposit made in accordance with this Agreement in respect of equity options shall be released by OCC on its own initiative at 6:00 P.M. (Central Time) on the first business day after the exercise settlement date for the short position covered by the deposit, unless (i) OCC has received notice from National Securities Clearing Corporation or any successor thereto ("NSCC") indicating that the settlement obligations in respect of such short position have not been met by the Clearing Member carrying such short position or the member of NSCC effecting settlements of exercises and assignments on such Clearing Member's behalf, in which case the deposit shall not be released until the first business day after OCC receives confirmation that it shall have no obligations in respect of the short position, or (ii) if OCC has directed that the exercise be settled otherwise than through NSCC, until OCC receives confirmation that settlement has been made and notifies the Bank, in accordance with the terms hereof, that the deposit is released. Any escrow deposit made in accordance with this Agreement in respect of index options shall be released by OCC on its own initiative at 6:00 P.M. (Central Time) on the exercise settlement date, unless the Clearing Member carrying such short position is not in full compliance with its settlement obligations in the account in which such deposit is held.

15. Maintenance of Settlement Account.

If the Bank desires to enter escrow deposit or withdrawal Instructions involving premium payments, the Bank shall maintain an account ("Settlement Account") with a bank approved by OCC in accordance with its Rules as a Clearing Bank, for the purpose of accommodating cash settlements hereunder between the Bank and Clearing Members of OCC. If the Bank is itself a Clearing Bank, the Bank shall designate a proprietary account to be used for that purpose. The Bank shall authorize OCC to make deposits to its Settlement Account or withdraw funds from its Settlement Account for the

purposes hereinafter set forth.

16. Cash Settlement Procedures.

Any on-line escrow deposit or escrow rollover Instruction may specify any net premium payable to the Bank in connection therewith. Any on-line escrow withdrawal Instruction may specify any net premium payable by the Bank in connection therewith. Subject to the provisions of Sections 18 and 19 hereof, OCC shall act as agent for the Bank and for Clearing Members of OCC in effecting settlement of such premium payment obligations, as hereinafter provided.

(a) At or before 9:00 A.M. (Central Time) on each business day, OCC shall:

(1) withdraw from the Bank's Settlement Account an amount equal to the net premium, if any, shown on that day's on-line escrow settlement report as payable by the Bank to Clearing Members of OCC (in the aggregate) in connection with escrow deposits, rollovers, and withdrawals; and

(2) charge the regular OCC settlement account of each Clearing Member with an amount equal to the net premiums, if any, shown on that day's on-line escrow settlement report as payable by that Clearing Member to the Bank.

(b) At or before 10:00 A.M. (Central Time) on each business day, OCC shall:

(1) deposit in the Bank's Settlement Account an amount equal to the net premiums, if any, shown on that day's on-line escrow settlement report as payable to the Bank by Clearing Members of OCC (in the aggregate) in connection with escrow deposits, rollovers, and withdrawals; and

(2) credit the regular OCC settlement account of each Clearing Member with an amount equal to the net premium, if any, shown on that day's on-line escrow settlement report as payable to that Clearing Member by the Bank.

It is understood and agreed that in facilitating cash settlements between the Bank and Clearing Members as provided herein, OCC shall act solely as agent for the parties to each settlement, and shall have no obligation (except such obligations as it may expressly assume pursuant to Section 18 hereof) to credit or deposit to the account of any party

funds not collected from the other party as provided above.

17. Cash-Only Entries.

Errors made by the Bank or a Clearing Member in specifying the premium due in connection with any escrow deposit, escrow rollover, or escrow withdrawal may be corrected by the submission to OCC, either by the party who made the error or by the other party, of an on-line cash-only entries instruction. Cash-only entries instructions shall be subject to being rejected or disregarded in the same manner as escrow deposit activity. Each daily settlement provided for in Section 16 hereof shall include any cash-only entries instructions initiated by or directed to the Bank which are shown on that day's escrow settlement report. Cash-only entries shall be used solely for the purpose of correcting errors made by the Bank or a Clearing Member in connection with escrow deposits, rollovers, and withdrawals, and for no other purpose.

18. Defaults by Clearing Members.

(a) If a Clearing Member fails to meet its settlement obligations with OCC on any business day, OCC shall have the option of accepting or rejecting any escrow withdrawal by such Clearing Member that would otherwise become effective on such business day. If OCC rejects a withdrawal for which moneys are payable by the Bank to the Clearing Member, the settlement amount payable to or by the Bank on that business day shall be adjusted accordingly.

(b) If a Clearing Member fails to meet its settlement obligations with OCC on a day on which moneys are payable by the Clearing Member to the Bank through the facilities of OCC in respect of escrow deposits or rollovers (whether or not such moneys net out against moneys payable by the Bank to the Clearing Member or other Clearing Members on the same day), OCC shall have the option of accepting or rejecting each deposit or rollover for which moneys are payable by the Clearing Member to the Bank. If OCC accepts a deposit or rollover, it shall credit to the Bank's Settlement account, on behalf of the Clearing Member, the premium payable by the Clearing Member to the Bank in respect thereof. If OCC rejects a deposit or rollover, the settlement amount payable to or by the Bank on that business day shall be adjusted accordingly, and the Bank shall have no further responsibility to OCC in respect of such deposit or rollover (but shall continue, in the case of a rollover, to be obligated to OCC in respect of the previous escrow deposit sought to be rolled over). The Bank's rights against OCC in the event of a default by a Clearing Member shall be limited to the right to require OCC to elect one of the foregoing options, and in no event shall the Bank have the right to offset

against its settlement obligations hereunder any premiums payable to the Bank by the defaulting Clearing Member in respect of escrow deposits or rollovers rejected by OCC as provided above. If a Clearing Member meets its settlement obligations to OCC in part, any funds collected by OCC shall be applied first to the Clearing Member's obligations to OCC, and only the excess, if any, shall be applied against the Clearing Member's obligations to the Bank. In the event that any excess is so applied, it shall be deemed to have been applied first against the Clearing Member's obligations to the Bank in respect of cash-only entries, and second against the Clearing Member's obligations in respect of escrow deposits and rollovers. If the excess is insufficient to cover the Clearing Member's obligations in respect of escrow deposits and rollovers, OCC shall designate the particular deposits and rollovers for which payment shall be deemed to have been made, and shall elect one of the options referred to in the first sentence of this Section 18(b) with respect to any escrow deposit or rollover for which payment is not deemed to have been made. Except to the extent that OCC elects to accept deposits or rollovers as provided above, OCC shall have no responsibility to the Bank for any premiums payable to the Bank by a defaulting Clearing Member.

(c) Designations and elections made by OCC pursuant to this Section shall be communicated by OCC to the Bank prior to 12:00 Noon (Central Time) on the date of the Clearing Member's default, or as soon as practicable thereafter; and, if not initially communicated by telegram or in writing, shall be confirmed by telegram or in writing promptly thereafter.

(d) If the Bank shall at any time be advised by OCC that a Clearing Member has defaulted in meeting its settlement obligations with OCC (whether or not on a day on which moneys were payable to the Bank by such Clearing Member hereunder), the Bank shall, at OCC's request, disclose to OCC the identity of each customer for whom the Bank is holding an escrow deposit made by the Bank for the account of the defaulting Clearing Member.

19. Default by Bank.

If the Bank shall fail to meet its settlement obligations hereunder on any business day, OCC shall nonetheless accept any escrow rollovers or withdrawals for which settlement was to have been made by the Bank (provided that the affected Clearing Members would be in compliance with their margin obligations after giving effect thereto), but such

acceptance shall not prejudice or impair such rights as such Clearing Members may have against the Bank or its customers. OCC shall in no event have any responsibility to any Clearing Member for premiums payable by the Bank hereunder.

20. Effect of Release or Withdrawal of Escrow Deposit.

The release of an escrow deposit by OCC or the withdrawal of an escrow deposit from OCC in accordance with the provisions of this Agreement shall have the effect of releasing any and all rights of OCC against the Bank with respect to the deposit. Subject (in the case of a withdrawal) to Section 19 hereof, such release or withdrawal shall also release any and all rights of the Clearing Member for whose account the escrow deposit was made provided, however, that if any on-line report referred to in Section 11 above indicates that an exercise notice has been allocated to a short position covered by an escrow deposit that is being withdrawn or released, the Bank shall be prohibited from returning the deposit to the Customer and shall remain obligated (i) as to any stock option escrow deposit, to deliver to the Clearing Member for whose account the deposit was made (x) in the case of a deposit made in respect of one or more calls, the underlying securities deposited against payment of the aggregate exercise price of the call(s) covered by such deposit (less all applicable commissions and other charges), upon presentation by the Clearing Member of a duly executed delivery order in the form attached hereto as Exhibit A, or (y) in the case of a deposit made in respect of one or more puts, the aggregate exercise price of the put(s) covered by such deposit (plus all applicable commissions and other charges) against delivery of the underlying securities, upon presentation by the Clearing Member of a duly executed payment order in the form attached hereto as Exhibit B, or (ii) as to any index option escrow deposit, to pay to the Clearing Member the exercise settlement amount (plus any applicable commissions or other charges) upon presentation by the Clearing Member of a duly executed payment order in the form attached hereto as Exhibit B. The release or withdrawal of an escrow deposit as provided herein shall not affect the rights of any Broker specified in the Instruction by which the deposit was made, and the Bank shall not return the deposit, or any portion thereof, to its customer without first having been authorized to do so by such Broker.

21. Delivery or Payment by the Bank.

~~(a) Upon presentation of a duly executed delivery order (which shall constitute an "entitlement order" for purposes of the 1994 revision of Article 8 of the Uniform Commercial Code) in the form attached hereto as Exhibit A~~

relating to escrow deposits held by the Bank hereunder covering equity call options carried in a short position:

(1) by OCC at any time prior to the release or withdrawal of the escrow deposit, or

(2) at any time after the release or withdrawal of the escrow deposit,

(i) by the Clearing Member for whose account the escrow deposit was made (provided that such Clearing Member's rights have not theretofore been released pursuant to Section 20 hereof), or

(ii) by the Broker, if any, specified in the Instruction by which the deposit was made (provided that such Broker has not theretofore authorized the Bank to return the deposit, or any portion thereof, to its customer), with the consent of the aforesaid Clearing Member endorsed on such delivery order;

the Bank will deliver all or any part of the deposit to the order of the party presenting the delivery order, against payment to the Bank of the exercise price of the call(s) covered by the deposit to be delivered, less all applicable commissions and other charges.

(b) Upon presentation of a duly executed payment order (which shall constitute an "entitlement order" for purposes of the 1994 revision of Article 8 of the Uniform Commercial Code) in the form attached hereto as Exhibit B relating to escrow deposits held by the Bank hereunder covering equity put options or index put or call options carried in a short position:

(1) by OCC at any time prior to the release or withdrawal of the escrow deposit, or

(2) at any time after the release or withdrawal of the escrow deposit,

(i) by the Clearing Member for whose account the escrow deposit was made (provided that such Clearing Member's rights have not theretofore been released pursuant to Section 20 hereof), or

(ii) by the Broker, if any, specified in the Instruction by which the deposit was made (provided that such Broker has not theretofore authorized the Bank to return the deposit, or any portion thereof, to its customer), with the consent of the aforesaid

9. **Secure Website Access Agreement.** Bank's use of OCC's Escrow Deposit Processing System in connection with the transactions contemplated by this Agreement shall be governed by the Secure Website Access Agreement entered into between the Bank and OCC.

10. **Assignment; Beneficiaries.** The rights and obligations of Bank hereunder shall not be assignable without the written consent of OCC. This Agreement shall be binding upon, and inure to the benefit of, Bank and its successors and assigns, and shall also inure to the benefit of OCC and its successors and assigns.

11. **GOVERNING LAW AND CONSENT TO JURISDICTION.** THIS AGREEMENT IS DEEMED TO BE MADE UNDER, AND SHALL BE CONSTRUED BY, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES. BANK IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE PROGRAM. OCC AND BANK WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROGRAM.

~~Clearing Member endorsed on such payment order;~~
~~the Bank will pay in cash to the order of the party presenting the payment order, out of the deposit or its proceeds, the amount specified in such payment order. If Paragraph A is marked in such payment order, such payment shall be made against delivery to the Bank of the securities underlying the number of exercised put option contracts specified in the payment order.~~

~~IV. MISCELLANEOUS~~

~~22. Force Majeure~~

~~Neither party shall be liable for any delay in delivery or payment for nondelivery or nonpayment, in whole or in part, caused by the occurrence of any contingency beyond the control of such party, including, but not limited to, work stoppages, fires, civil disobedience, riot, rebellion, accident, explosion, flood, storm, Acts of God, power failures, equipment malfunctions, and similar occurrences.~~

~~Notwithstanding the above, if unusual or unforeseen conditions (including but not limited to power failures or equipment malfunctions) prevent either party from submitting any report, notice, instruction, data or other item via on-line data entry prior to any applicable cut-off time, OCC may in its discretion (i) require that such items be provided by other approved means, including the use of hard copy forms, and/or (ii) extend the applicable cut-off time by such period as OCC deems reasonable, practicable and equitable under the circumstances~~

~~23. Waiver.~~

12. **Miscellaneous.** No ~~waiver by either party of any breach by the other of this Agreement shall be deemed a waiver of any other breach of this Agreement. The section headings used in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement~~failure by OCC to exercise, and no delay in exercising, any right under this Agreement waives that right. This Agreement may be executed in any number of counterparts, each of

which shall be deemed to be an original and all of which, together shall constitute one instrument. This Agreement, including the Program Rules and all operating procedures adopted by OCC pursuant thereto, constitutes the entire agreement and understanding between the parties with respect to the Program. In the event that any one or more of the provisions ~~contained~~ in this Agreement ~~shall for any reason be~~is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement~~, but~~. Section headings used in this Agreement ~~shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein~~are for convenience of reference only and shall not define or limit the provisions of this Agreement.

13. **Notices**. All notices or other communications to be given in writing shall be sent to the addresses provided below. In addition, any notice of a material change from Bank pursuant to Rule 610C(l) shall also be provided via email to [banknotifications@occ.com] **[OCC TO CONFIRM.]**

14. **Limitation of Bank Liability**. Bank has no duties with respect to the Program other than those expressly set forth herein, in each Tri-Party Agreement to which Bank is a party, and in the Program Rules and operating procedures. Bank shall have no liability for losses arising in connection with the Program other than those caused by its own breach of its obligations in respect of the Program (including a breach of this Agreement or any Tri-Party Agreement among OCC, Bank and any customer of Bank or a violation of the Program Rules) or by its own negligence, fraud or willful misconduct. Bank shall not be liable for any special, indirect, consequential or punitive damages of any form incurred by any person or entity with respect to Bank's performance or nonperformance under this Agreement. In addition, Bank shall have no liability for any damage, loss, expense or liability of any nature that OCC or Customer may suffer or incur caused by an event beyond the control of Bank.

~~24. Complete Agreement.~~

~~This Agreement supersedes in all respects all prior proposals, negotiations, conversations, discussions and~~

agreements, including any on-line escrow deposit agreement, between the parties concerning the subject matter hereof.

25. Effective Date.

This Agreement shall become effective upon the later of (i) execution of this Agreement by all the parties or (ii) the Bank being notified by OCC so that the procedures contemplated by this Agreement may be commenced.

26. Business Day.

The term "business day," as used herein, shall be deemed to refer to any day other than a Saturday or a Sunday on which both OCC and the Bank are open for business. OCC may, for reasons of convenience, issue any reports provided for hereunder on any day on which OCC is open for business, but if the Bank is not open for business on that day, the Bank shall have no obligation to respond to any such report, or to effect any cash settlement, until the next business day, as defined herein.

27. Termination.

Either party may terminate this Agreement at any time by giving written notice of termination to the other, but such termination shall not become effective until all escrow deposits made by the Bank hereunder have been released or withdrawn, and all deposited cash and securities have either been returned to the Bank's customers, with the authorization of any interested Clearing Members and Brokers, or delivered in accordance with Section 21 hereof.

28. Notices.

All notices or other communications to be given in writing shall be sent to the following address:

OCC: Director
Treasury Operations
The Options Clearing Corporation
One North Wacker Drive, Suite 500
Chicago, Illinois 60606
Phone: (312) 322-6200
Fax: (312) 322-6270

BANK:

WITH A COPY TO:

General Counsel
The Options Clearing Corporation
One North Wacker Drive, Suite 500
Chicago, Illinois 60606
Phone: (312) 322-6269
Fax: (312) 322-6280

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, as of the date first set forth above.

~~THE OPTIONS CLEARING CORPORATION~~

~~Name:~~

~~By:~~ ~~Title:~~

~~BANK: Name: By: Title:~~

~~THE OPTIONS CLEARING CORPORATION~~

~~DELIVERY ORDER~~

~~EPD~~

C.M. NO. CLEARING MEMBER NAME SETTLEMENT DATE

The undersigned hereby certifies to _____ ("the Bank") that exercise notices filed with The Options Clearing Corporation ("OCC") have been allocated to short positions carried by the above Clearing Member ("Clearing Member") in its customers' account, which short positions are covered by the deposit of securities in escrow with the Bank pursuant to the Escrow Deposit Agreement between the Bank and OCC, as set forth below:

*ASSIGNED SHARE QUANTITY	ASSIGNED CONTRACT QUANTITY	P/C	SYMBOL	OLD	EXPIRATION MO DA YR	EXER PRICE DOL FRAC	BROKER DEALER	CUSTOMER ACCOUNT NUMBER	CUSTOMER NAME	**SETTLEMENT PRICE
_____	_____									_____

*Aggregate exercise price less applicable commissions and other charges.

TOTAL SHARES TOTAL CONTRACTS $ TOTAL

The undersigned hereby demands delivery, of the above securities against payment (which is tendered herewith) of the aggregate exercise price therefor, less all applicable commissions and other charges.

Date:____

Check one

~~The Options Clearing Corporation~~

~~Clearing Member~~

~~By:~~ _____

~~(Name of Non-Clearing Broker)~~ ~~(Authorized Signature)~~

~~If this Delivery Order is submitted by a Non-Clearing Broker, the above-named Clearing Member hereby consents thereto.~~

~~By:~~

(Authorized Signature)

EXHIBIT B

THE OPTIONS CLEARING CORPORATION

PAYMENT ORDER

C.M. NO. CLEARING MEMBER NAME SETTLEMENT DATE

The undersigned hereby certifies to _____ ("the Bank") that exercise notices filed with The Options Clearing Corporation ("OCC") have been allocated to (i) equity put options, or (ii) index put or call option contracts carried by the above Clearing Member ("Clearing Member") in short positions in its customers account, which short positions are covered by the deposit of property in escrow with the Bank pursuant to the Escrow Deposit Agreement between the Bank and OCC, as set forth below:

ASSIGNED

BROKER

CUSTOMER

CONTRACT

EXPIRATION

EXER PRICE

DEALER

ACCOUNT

""SETTLEMENT

QUANTITY

P/C

SYMBOL

OLD

MO YR

DOL FRAC

NUMBER

NUMBER

CUSTOMER NAME

PRICE

(Authorized Signature)

""Sum of exercise settlement amount plus any applicable commissions and other charges.

TOTAL $ TOTAL

CONTRACTS

The undersigned hereby demands payment, out of the deposited property or its proceeds, of the total exercise settlement value set forth above

Date:

Check one

___ The Options Clearing Corporation ___

The Options Clearing Corporation
Clearing Member

___ Clearing Member

___

By: _____

By: _____

(Authorized Signature)

(Name of Non-Clearing Broker) (Authorized Signature)

(Name of Non-Clearing Broker) (Authorized Signature)

If this Delivery Order is submitted by a Non-Clearing Broker, the above-named Clearing Member hereby consents thereto.

By:

THE OPTIONS CLEARING CORPORATION	BANK
By_____	By_____
Printed Name_____	Printed Name
Title	Title_____
Address: Email:	Address: Email:

EXHIBIT 5B

Escrow Program Tri-Party Agreement

This Escrow Program Tri-Party Agreement ("Agreement"), dated this _____ day of _____, 20___, is made between _____("Bank"), _____ ("Customer") and The Options Clearing Corporation, a Delaware corporation ("OCC") in respect of Bank's participation in OCC's Escrow Deposit Program (the "Program").

WHEREAS, Customer desires to participate in the Program, under which, in order to cover its obligations as writer of option contracts issued by OCC, Customer may from time to time deposit with Bank, in escrow, cash held in an account at Bank, and Bank, in its capacity as a Participating Escrow Bank and on behalf of Customer, may in turn effect deposits of such cash in connection with the Program for the benefit of OCC ("Deposits"), and withdrawals or "roll overs" such Deposits;

WHEREAS, OCC has admitted Bank as a participating escrow bank in the Program (a "Participating Escrow Bank");

WHEREAS, the participation by the Customer and the Bank is, in each case, subject to the terms and conditions set forth herein and the provisions of OCC's By-Laws and Rules (together, the "Rules") relating to the Program (the "Program Rules"), as described in greater detail in Section 2 below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Representations, Warranties and Covenants of Customer.** As of the date set forth above and subsequently upon making a Deposit or submitting an instruction with respect to a Deposit, Customer represents and warrants to OCC and Bank that:

    a. Customer by entering into this Agreement appoints Bank as a Participating Escrow Bank with respect to its participation in the Program in accordance with the Program Rules.

    b. This Agreement is the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to the effects of bankruptcy, insolvency and equitable principles.

    c. To the extent of a Deposit in respect of a short position in index call options, Customer or its duly authorized representative affirms that all index call options written for such Customer's account and covered by Deposits with the Bank are written against a diversified stock portfolio.

    d. Customer understands that, in accordance with Rule 610C(j)(4): (i) if the short position specified in the instruction is closed out under circumstances permitting the related Deposit to be withdrawn by the clearing member, Customer shall work with Bank to withdraw the Deposit from OCC, and until the Deposit is duly released by OCC, OCC will retain the right to demand delivery or payment of the Deposit or its proceeds upon the assignment of an exercise notice to any short position in an option series specified in the instruction carried in the clearing member's customers' account with OCC; and (ii) exercise notices assigned by OCC to short positions for which Deposits have been made by the clearing member are allocated to particular customers by the clearing member or by their respective brokers, and if the clearing member is suspended by OCC and OCC cannot promptly determine the identities of the assigned customers, OCC will reallocate the exercise notices, and reallocation will be binding on Customer notwithstanding any contrary notice or confirmation which Customer may have received from the clearing member or Customer's broker.

e. Customer has established an account at the Bank for the benefit of OCC and such account shall be used solely for the purpose of making Deposits.

Customer covenants and agrees that each of the foregoing shall remain true during the term of this Agreement.

2. **Compliance with and Incorporation of Program Rules.** Customer shall abide by the Program Rules and shall be bound by all the provisions thereof and by all operating procedures adopted by OCC pursuant thereto, as either may be amended from time to time. The Program Rules shall be a part of the terms and conditions of every Deposit which Customer may make pursuant to the Program. The following provisions of the Rules shall constitute the Program Rules, provided that OCC may amend this list to reflect one or more Program Rules' ceasing to be effective or in connection with any amendment to the Program Rules adopted pursuant to Section 3 below:

Article I of OCC's By-Laws – Definitions
Article XVII of OCC's By-Laws – Index Options and Certain Other Cash-Settled Options – Section 1 – Definitions
Chapter I of OCC's Rules – Definitions
OCC Rules 610, 610A, 610B and 610C – Deposits in Lieu of Margin

3. **Amendment.** No provision of this Agreement may be amended, supplemented or modified, or any of its terms waived, except by a written instrument executed by OCC, Customer and Bank, provided that Bank and Customer shall be bound by any amendment to the Program Rules and by all operating procedures adopted by OCC pursuant thereto as fully as though such amendment were now a part of the Program Rules or operating procedures without further consent by Customer or Bank. OCC agrees to provide Bank with 60 days' written notice prior to implementation of any amendments to the Program Rules. Customer agrees that OCC shall not be required to deliver notice of amendments to the Customer. Customer or Bank may terminate this Agreement upon written notice to OCC within 30 days of such notification to Bank, with effectiveness as of the later of the implementation of such amendments to the Program Rules or applicable procedures or the receipt by OCC of such notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date until such Deposits are withdrawn or released, provided that during such period such rule change shall not be effective with respect to such Deposits.

4. **Security Interest; Instructions of OCC/UCC Jurisdiction.**

a. Pursuant to the Rules and this Agreement, Customer grants a security interest to OCC in and a right of setoff against all cash Deposits, and in all proceeds thereof, to secure Customer's obligations to the clearing member or OCC and to secure clearing member's obligations to OCC with respect to the applicable short position.

b. Each of OCC, Customer and Bank agree that Bank will follow disbursement directions of OCC with respect to cash included within Deposits promptly and fully without further consent by the Customer. Bank shall have no duty to investigate or make any determinations as to whether OCC is entitled to give disbursement directions with respect to Deposits and shall comply with such disbursement directions without regard to the authority or lack of authority to give such disbursement directions. Bank agrees that its "jurisdiction" (as described in Section 9-304 of the Uniform Commercial Code) for purposes of the Uniform Commercial Code as in effect in the State of Illinois is the State of Illinois.

5. **Binding Court Order or Judgment.** Nothing herein shall be deemed to require Bank to deliver a Deposit or any portion thereof in contravention of any court order or judgment binding on Bank in its capacity as Participating Escrow Bank, [which on its face affects such Deposit or portion thereof] **[OPEN POINT]**.

6. **Default by Customer.** If at any time (a) Customer fails to comply with its obligations under this Agreement or the Program Rules, (b) any representation and warranty made or deemed made by the Customer hereunder or under the Program Rules is determined to have been false or misleading when made or deemed made or (c) Customer becomes insolvent (each a "Customer Default"), OCC shall have all remedies available to it under this

Agreement, the Program Rules and all procedures adopted by OCC pursuant thereto, as well as all remedies available to it under applicable law (subject in all respects to Section 13 below).

7. **Term/Termination.** Any of OCC, Bank or Customer may terminate this Agreement for any reason on 45 days' prior written notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date, until such Deposits are withdrawn or released. Upon the occurrence of a Customer Default, OCC may terminate this Agreement immediately and disregard any existing Deposits, or take possession of cash and/or securities making up such Deposits for the purposes set forth in, and in accordance with, Rule 610C(r).

8. **Access to Rules.** Customer acknowledges that it has access to a copy of the Program Rules on OCC's website and has reviewed the Program Rules as in effect at the date of this Agreement.

9. **Assignment; Beneficiaries.** The rights and obligations of Customer and Bank hereunder shall not be assignable without the written consent of OCC. This Agreement shall be binding upon, and inure to the benefit of, Customer and Bank and their respective successors and assigns, and shall also inure to the benefit of OCC and its successors and assigns.

10. **GOVERNING LAW AND CONSENT TO JURISDICTION.** THIS AGREEMENT IS DEEMED TO BE MADE UNDER, AND SHALL BE CONSTRUED BY, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES. CUSTOMER AND BANK IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE PROGRAM. OCC, CUSTOMER AND BANK WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROGRAM.

11. **Miscellaneous.** No failure by OCC to exercise, and no delay in exercising, any right under this Agreement waives that right. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, together shall constitute one instrument. This Agreement, including the Program Rules and all operating procedures adopted by OCC pursuant thereto, constitutes the entire agreement and understanding between the parties with respect to the Program. In the event that any one or more of the provisions in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. Section headings used in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement.

12. **Notices**. All notices or other communications to be given in writing shall be sent to the addresses provided below.

13. **Limitation of Bank Liability**. Bank has no duties with respect to the Program other than those expressly set forth herein, in the Participating Escrow Bank agreement to which Bank is a Party (the "PEB Agreement"), and in the Program Rules and operating procedures. Bank shall have no liability for losses arising in connection with the Program other than those caused by its own breach of its obligations in respect of the Program (including a breach of this Agreement, the PEB Agreement or a violation of the Program Rules) or by its own negligence, fraud or willful misconduct. Bank shall not be liable for any special, indirect, consequential or punitive damages of any form incurred by any person or entity with respect to Bank's performance or non-performance under this Agreement. In addition, Bank shall have no liability for any damage, loss, expense or liability of any nature that OCC or Customer may suffer or incur caused by an event beyond the control of Bank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, as of the date first set forth above.

THE OPTIONS CLEARING CORPORATION

By_____

Printed Name_____

Title_____

Address:
Email:

BANK

By_____

Printed Name_____

Title_____

Address:
Email:

CUSTOMER

By_____

Printed Name_____

Title_____

Address:
Email:
Bank Account Number: