



May 15, 2013

**VIA ELECTRONIC MAIL**

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


**Re: Rule Filing Withdrawal (SR-OCC-2013-05 Rule Certification)**

Dear Ms. Jurgens:

On May 1, 2013, The Options Clearing Corporation (“OCC”) submitted, pursuant to the self-certification procedures of Commodity Futures Trading Commission (“CFTC”) Regulation §40.6, the above-referenced rule filing. In addition, OCC also submitted the captioned rule filing with the Securities and Exchange Commission (“SEC”) under the Securities and Exchange Act of 1934. OCC hereby withdraws the captioned submission from consideration by the CFTC subject to OCC’s reservation of the right to re-submit such rule filing. The captioned submission is being withdrawn due to certain language changes requested by the SEC.

Questions on the forgoing may be directed to the undersigned.

Sincerely,

  
Stephen Szarmack



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

**Re: Rule Filing SR-OCC-2013-05 Rule Certification**

Dear Ms. Jurgens:

Enclosed is a copy of the above-referenced rule filing, which The Options Clearing Corporation (“OCC” or “Corporation”) is submitting pursuant to the self-certification procedures of Commodity Futures Trading Commission (the “CFTC” or “Commission”) Regulation 40.6. The date of implementation of the rule is the later of 10 business days following receipt of the rule filing by the CFTC hereof or the date the proposed rule is approved by the Securities and Exchange Commission (the “SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act. This rule filing is a resubmission of a filing that was originally made on May 1, 2013 and was withdrawn on May 15, 2013, in response to a request for certain revisions from the SEC.

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

**Explanation and Analysis**

The principal purpose of this proposed rule change is to authorize OCC, rather than adjustment panels of the Securities Committee, to determine option contract adjustments and to determine the value of distributed property involved in such adjustments. Other conforming or clarifying changes to the By-Laws relating to adjustments and/or adjustment panels also are being proposed.

## 1. Background and Purpose of Proposed Rule Change

Certain corporate actions—such as declaration of dividends or distributions, stock splits, rights offerings, reorganizations, or the merger or liquidation of an issuer—affecting an underlying security may require an adjustment to the terms of the overlying options. For example, in a two-for-one stock split, the overlying options might also be split two-for-one, so that each option would continue to cover the same number of shares but with an exercise price equal to half of the pre-split price. The basic procedural rules governing such “adjustments” in the terms of outstanding options are set forth in Section 11 of Article VI of OCC’s By-Laws, and the substantive rules specifically covering adjustment of stock options are set forth in Section 11A of Article VI. Although much less common, it is also possible that events affecting indexes and other underlying interests could also require adjustment of the overlying options. Rules for adjustment of such other options are generally found in the By-Law provisions applicable to such other options.

The procedural rules of Article VI, Section 11 of the By-Laws provide that all adjustments to option contracts be determined on a case-by-case basis by an adjustment panel of the Securities Committee composed of two representatives of each exchange that trades an option on the underlying security and the OCC Chairman (or his representative). All actions are determined by majority vote, with OCC voting only to break a tie. Besides determining particular adjustments in individual cases, Article VI, Section 11 also authorizes the Securities Committee to adopt statements of policy or interpretations governing option adjustments in general. Additionally, the Securities Committee is authorized to determine the value of distributed property involved in stock option adjustments as stated in Article VI, Section 11A(f).

The options exchanges asked OCC to evaluate possible changes to the structure and procedures which govern option contract adjustments. The request was prompted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. In addition, the exchanges have expressed concern that exchange representatives involved in adjustment decisions may sometimes be subject to undue pressure from investors. Accordingly, the exchanges asked OCC to investigate whether changes to adjustment procedures could insulate the exchanges from undue pressure while concurrently providing greater consistency and efficiency in making adjustment decisions.

## 2. Description of Proposed Changes

Discussions among OCC and the exchanges concerning potential changes to Securities Committee governance in respect of adjustments yielded a consensus that the exchanges should retain policy-making authority under the adjustment By-Laws through

the Securities Committee but that OCC should be the sole determiner of particular adjustment decisions, thereby eliminating adjustment panels convened for the purpose of determining adjustments of particular option contracts. The Securities Committee ratified the following recommendations by unanimous vote:

(i) The policy making role of the Securities Committee should be unchanged. As members of the Securities Committee, exchanges should retain authority to determine adjustment policy in general.

(ii) OCC should apply the adjustment By-Laws and Interpretations to determine particular adjustments on a case-by-case basis. An adjustment panel comprised of exchange and OCC representatives should not be called to determine a particular adjustment, thereby insulating the exchanges from investor pressure to determine a particular outcome.

(iii) OCC and the exchanges should retain unrestricted ability to mutually discuss considerations pertaining to any adjustment decision or policy.

(iv) OCC should be given authority to determine the value of distributed property involved in contract adjustments.

These recommendations were reviewed with OCC's Board of Directors, which unanimously approved them by authorizing the filing of this proposed rule change.

Notwithstanding the elimination of exchange representative adjustment panels, panels of exchange representatives would still retain their existing functions and authority under other provisions of OCC's By-Laws. For example, those panels would retain the authority to fix exercise settlement amounts for cash-settled options where a closing price for the underlying is otherwise unavailable.

The types of adjustments for which exchange representative panels may continue to be convened would be limited to very rare situations involving market closures or the unavailability of accurate pricing, and would need to be done on very short notice, unlike dividend adjustments, for which there can be a period of time between the announcement of a dividend and the decision of the panel. Accordingly, it is much less likely that exchange representatives on these panels would be subject to the same risk of undue pressure from investors. These situations are also less likely to fit within a policy or precedent that could be prescribed in advance by the Securities Committee, and therefore it would be more difficult for the Corporation to make the decisions without the input of the relevant exchanges.

### 3. Discussion

As a result of the proposed changes described above, adjustment panels for the purpose of determining adjustments of particular options contracts would cease to exist, and exchanges would have no obligation or authority to determine a particular

adjustment. OCC would determine the appropriate application of the By-Laws and Interpretations and Policies, but the exchanges would retain policy making authority as members of the Securities Committee. In this policy making capacity, actions of the Securities Committee would continue to require approval by a majority vote.

Occasionally, there may be unique aspects of a corporate event that justify departure from adjustment policy or precedent, or that involve a situation for which there is no existing adjustment policy or precedent. Such events may also highlight a need for a more general reformulation of adjustment policy. Under the proposed changes, if OCC determines such aspects to be present, OCC would determine in its sole discretion any adjustment to be applied in the particular case. The Securities Committee would not initiate policy changes “ad hoc” to address a particular case (which would be a de facto determination of a particular adjustment decision). Instead, after OCC determined a particular adjustment, the Securities Committee, in its discretion, would determine the appropriateness of adopting prospective policy changes or clarifications.

Although OCC and the exchanges believe it is feasible for OCC to independently determine adjustments, both are averse to losing valuable exchange experience and insight that is now brought to bear in adjustment decisions. Accordingly, OCC and the exchanges believe that they should retain unrestricted ability to discuss with each other any considerations pertaining to an adjustment decision or policy – with the understanding that adjustment decisions would be made solely by OCC and the exchanges would be involved solely in an advisory capacity. Accordingly, nothing in the present proposal would prohibit either the exchanges or OCC from initiating conversations concerning adjustment policy or particular adjustment decisions, but neither would such consultation be required. Furthermore, to ensure continued exchange involvement in determining adjustment policy, OCC intends to call periodic meetings of the Securities Committee to discuss policy issues and review recent experience with contract adjustments. Such meetings will be held on a quarterly or more frequent periodic basis.

Occasionally option adjustments involve the substitution of cash value in lieu of delivery of property. For example, this is the case when a security does not trade in the United States or cash in lieu of property is involved. Currently, the Securities Committee has authority to determine such cash value. OCC is proposing that it would instead be authorized to determine cash value in these cases since it would have sole discretion to determine contract adjustments.

The proposed changes would apply only to the functions of OCC and the Securities Committee in the determination of option contract adjustments as described in Article VI, Sections 11 and other By-Law provisions. The Securities Committee – or panels comprised of representatives of the Securities Committee – in respect of actions that do not involve option contract adjustments would retain all other functions and

authority granted under the By-Laws, including, for example, the ability to fix index option settlement values in cases of market disruption and similar actions.

Adjustment provisions of the By-Laws pertaining to classes of options other than stock options sometimes provide for adjustment panels by referring to Article VI, Section 11. Insofar as Article VI, Section 11 would be modified to eliminate the need for adjustment panels, the requirement for adjustment panels to determine contract adjustments for these other types of option contracts would also be eliminated, with case by case adjustment decisions determined solely by OCC.

#### 4. Other changes

In addition to the principal purpose underlying this rule change as described above, certain other conforming and/or clarifying changes are being proposed. These changes are intended to update the By-Laws to eliminate stale rule provisions, to conform cross-references contained in other By-Laws to changes being proposed herein and to clarify certain interpretations adopted under the By-Laws to reflect a recent policy determination made by the Securities Committee in accordance with its authority granted under Article VI, Section 11 of OCC's By-Laws. These changes generally are described below.

OCC is proposing to modify or eliminate certain adjustment related By-Law provisions because, due to industry or other changes, there is no longer any open interest in options covered by such provisions. For example, equity options previously had traded with exercise prices expressed in either fractions or decimals. All exercise prices for equity options now are expressed in decimals, and all open interest in options series for which exercise prices were expressed in fractions has expired. Several By-Law provisions are being modified or eliminated to reflect this circumstance.

OCC also is proposing to eliminate other stale provisions, including those found within Interpretation and Policy .01 under the Article VI, Section 11, which relates to the determination of "ordinary cash dividends or distributions" for which no adjustment is ordinarily made. These provisions preserved the "10% rule" (i.e., the former method used to determine whether a cash dividend or distribution was ordinary) for application to certain series that had open interest prior to rescission of the 10% rule. Open interest in all such "grandfathered" series has expired, and therefore these provisions are no longer necessary. Changes would also be made to Article XIV, Section 3A(a)(3) in relation to binary options for which the underlying is an equity interest.

OCC's Securities Committee is empowered under the By-Laws to adopt statements of policy or interpretations having general application to specified types of events or specific kinds of cleared contracts. Recently, the Securities Committee issued a clarifying interpretation with respect to determinations of corporate issuers to accelerate

or defer payments of otherwise ordinary dividends. More specifically, the Securities Committee determined that such events would not, as a general rule, affect the ordinary nature of such dividends subject to the evaluation of these events on a case-by-case basis. Comparable changes, as applicable, would be made to Article XIV, Section 3A. Other changes being proposed are conforming in nature in that they update cross-references to By-Laws and Rules proposed to be amended.

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 the proposed rule change to authorize OCC, rather than adjustment panels of the Securities Committee, to determine option contract adjustments and to determine the value of distributed property involved in such adjustments will enhance its risk management. The proposed change is designed to lessen investor confusion and enhance consistency in making option contract adjustments. In addition, option exchanges have expressed concern that exchange representatives involved in adjustment decisions may sometimes be subject to undue pressure from investors with respect to adjustments.

Additions are indicated by underlining and deletions are bracketed.

#### Opposing Views

No opposing views were expressed related to the rule amendments.

#### Notice of Pending Rule Certification

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

Melissa Jurgens  
May 15, 2013  
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Certification

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Szarmack". The signature is written in a cursive, flowing style.

Stephen Szarmack

Enclosure



**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change  
By

**THE OPTIONS CLEARING CORPORATION**

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

**Item 1. Text of the Proposed Rule Change**

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend its By-Laws as set forth below in order to provide that OCC, rather than an adjustment panel of the Securities Committee, will determine adjustments to the terms of options contracts to account for certain events, such as certain dividend distributions or other corporate actions, that affect the underlying security or other underlying interest. Other proposed changes to the adjustment By-Laws are conforming or clarifying in nature, or delete outdated references. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION****BY-LAWS**

\* \* \*

**ARTICLE I****Definitions**

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

**A.**

(1) [No change]

**Adjustment Increment**

(2) The term “adjustment increment” in respect of options means [one-eighth in the case of exercise prices expressed in fractions or] one cent [in the case of exercise prices expressed in decimals]. The term “adjustment increment” in respect of a series of futures other than stock futures means the minimum increment in settlement prices for such series and in respect of a series of stock futures means \$0.0001.

(3) – (15) [No change]

B. – Z. [No change]

\* \* \*

## ARTICLE VI

### Clearance of Confirmed Trades

\* \* \*

### Adjustment [Panel] Policies and Procedures

SECTION 11. (a) Unless otherwise provided in the By-Laws or Rules of the Corporation, all adjustments to the terms of outstanding cleared contracts shall be made by the [Securities Committee] Corporation, which shall determine whether to make adjustments to reflect particular events in respect of an underlying interest, and the nature and extent of any adjustment, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers (or purchasers and sellers) of the affected contracts, the maintenance of a fair and orderly market in the affected contracts, consistency of interpretation and practice, efficiency of exercise settlement procedures, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying interest. The Securities Committee [may, in addition to determining adjustments on a case-by-case basis,] shall be authorized to adopt statements of policy or interpretations having general application to specified types of events or specified kinds of cleared contracts. In making any adjustment determination, the Corporation shall apply the factors set forth in this Section 11 and the policies and interpretations of the Securities Committee in light of the circumstances known to it at the time such determination is made, subject to the discretion of the Corporation to depart from policy or precedent where the Corporation determines that unusual circumstances make such a departure appropriate.

(b) Every adjustment determination [by the Securities Committee with respect to an adjustment] under the By-Laws or Rules of the Corporation shall be within the sole discretion of the [Securities Committee] Corporation and shall be conclusive and binding on all investors and not subject to review. If the [Securities Committee] Corporation does not learn, or does not learn in a timely manner, of an event for which the [Securities Committee] Corporation would have otherwise made an adjustment, [neither] the Corporation [nor the Securities Committee] shall not be liable for any failure to make such adjustment or delay in making such adjustment.

(c) The composition and manner of acting of the Securities Committee and panels comprised of representatives of Securities Exchanges that have authority under the By-Laws and Rules to make certain determinations with respect to cleared contracts [and its manner of acting] shall be as set forth below, unless otherwise provided in the By-Laws and Rules of the Corporation:

(1) The Securities Committee shall consist of one designated representative of each Securities Exchange and the Chairman of the Corporation. [In making a determination regarding the adjustment of outstanding cleared contracts on a particular underlying interest, the action of an adjustment panel, consisting of a designated number of representative of each Securities Exchange on which such cleared contracts are open for trading and the Chairman of the Corporation shall constitute the action of the Securities Committee, provided, however, that any panel convened by the Corporation to fix a required amount or value (other than as provided for in Article VI, Section 11A) shall consist of two designated representatives of each Exchange on which the affected series is open for trading.] The Chairman of the Corporation shall not be a voting member of the Committee or of any [adjustment] panel except in the case of a tie vote, in which case the Chairman shall have the right to cast a vote to break the tie and shall, for such purpose, be deemed to be a voting member.

(2) The vote of a majority of the voting members of the Securities Committee shall constitute the determination of the Securities Committee. With respect to [an adjustment] a panel convened for the purpose of determining [an adjustment to a cleared contract] a required amount or value (other than as provided for in Article VI, Section 11A of the By-Laws), a majority of the Securities Exchanges on which such cleared contract is open for trading shall constitute a quorum for purposes of acting[, provided, however, that the vote of a majority of all such Exchanges (including the Corporation's Chairman, if a voting member of such panel) shall be required to determine the action of such adjustment panel].

(3) The Securities Committee or any [adjustment] panel may transact its business by telephone or such other means as may be designated by the Securities Committee from time to time.

[(4) Notwithstanding the foregoing provisions of this Section 11 or any other requirement of the By-Laws and Rules, adjustment panels need not be convened to consider events for which adjustments may be effected in accordance with the general rules described in paragraph (e) and Interpretation and Policy .05 of Section 11A of Article VI of the By-Laws. To the extent that such adjustments are effected without a vote of an adjustment panel, the adjustment nonetheless shall be deemed to have been determined by action of the Securities Committee or an adjustment panel thereof. This subparagraph will not be implemented until an amendment the Options Disclosure Document is effective.]

[(5)] (4) Notwithstanding the foregoing provisions of this Section 11 or any other requirements of the By-Laws and Rules, the Chairman of the Corporation may designate any other representative of the Corporation, and any representative of an Exchange may designate any other representative of such Exchange, to serve in his place at any meeting of the Securities Committee or of any [adjustment] panel. In the event of such designation, the designee shall, for the purposes of such meeting, have all of the powers and duties under this Section 11 of the person designating him. Neither the Corporation nor any Exchange shall designate to serve on any [adjustment] panel (i) any Exchange member or Clearing Member, or any director, officer, partner, or employee of any Exchange member or Clearing Member, or (ii) any person who, to the knowledge of the self-regulatory organization designating such person, is the beneficial

holder of a long or short position in the cleared contracts as to which such [adjustment] panel is to make a determination.

*[ . . . Interpretations and Policies:*

**.01** The designated number of Securities Exchange representatives on an adjustment panel shall be two until an amendment to the Options Disclosure Document is effective. At that time, the number of such designated representatives shall be reduced to one.]

**Adjustments for Stock Option Contracts**

SECTION 11A. (a) [No change]

(b) All adjustments hereunder shall be made by the [Securities Committee] Corporation in accordance with the policies and procedures set forth in Section 11.

(c) It shall be the general rule that[:

(i) with respect to events announced on or prior to January 31, 2009, there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying security;

(ii) with respect to events announced on or after February 1, 2009,] there will be no adjustment to reflect (x) ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying security or (y) any cash dividend or distribution by the issuer of the underlying security if such dividend or distribution is less than \$0.125 per share provided that, in the case of a contract that is originally listed with a unit of trading larger than 100 shares, the applicable threshold shall be \$12.50 per contract[; and

(iii) notwithstanding the foregoing, the general rule set forth in clause (i) above will apply to events announced on or after February 1, 2009 in respect of those series of options expiring on or after that date that have been designated by the Corporation as grandfathered for purposes of this Section 11A ("grandfathered series").

[(d) In the case of any series of option contracts having exercise prices stated in fractions of one dollar (e.g., 1/8) rather than in decimals:

(i) It shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby either one or three additional whole shares of the underlying security are issued with respect to each outstanding share (e.g., a 2 for 1 or 4 for 1 stock split), each option contract covering that underlying security shall be increased by the same number of additional option contracts as the number of additional shares issued with respect to each share of the underlying security, the exercise price per share in effect immediately prior to such event shall be proportionately reduced, and the unit of trading shall remain the same. However, if the proportionate reduction in the exercise price required under this paragraph (d) would result (either because of a previous adjustment to the same series of options or for any other reason) in an exercise price that includes a fraction of an adjustment increment, the foregoing general rule

shall not apply and option contracts on such underlying security shall instead be adjusted in accordance with subparagraph (ii) of this paragraph (d).

(ii) It shall be the general rule with respect to any stock dividend, stock distribution or stock split for which an adjustment is not made pursuant to subparagraph (i) above that each option contract covering the affected underlying security shall be adjusted, solely for purposes of determining the property deliverable upon exercise of the option, by increasing the unit of trading so as to include the number of shares or amount of property distributed (or decreasing the unit of trading to reflect the number of shares eliminated, in the case of a reverse stock split, combination of shares, or similar event). If an adjustment is made in accordance with the preceding sentence, the unit of trading for all such adjusted series of options shall remain unchanged for purposes of determining the aggregate exercise price of the option and for purposes of determining the premium for any such option purchased and sold.]

[(e)] (d) [In the case of any series of options having exercise prices that are stated in decimals] It shall be the general rule that in the case of:

(i) [It shall be the general rule that in the case of] a stock dividend, stock distribution or stock split whereby a whole number of additional shares of the underlying security is issued with respect to each outstanding share, each option contract covering that underlying security shall be increased by the same number of additional option contracts as the additional number of shares issued with respect to each share of the underlying security, the exercise price per share in effect immediately prior to such event shall be proportionately reduced, and the unit of trading shall remain the same.

(ii) [It shall be the general rule that in the case of] a stock dividend, stock distribution or stock split whereby other than a whole number of shares of the underlying security is issued in respect of each outstanding share, the exercise price in effect immediately prior to such event shall be proportionately reduced and the unit of trading shall be proportionately increased.

(iii) [It shall be the general rule that in the case of] reverse stock splits, combinations of shares, or similar events, option contracts shall be adjusted solely for purposes of determining the property deliverable upon exercise of the option, by decreasing the unit of trading to reflect the number of shares eliminated. If an adjustment is made in accordance with the preceding sentence, the unit of trading for all such adjusted series of options shall remain unchanged for purposes of determining the aggregate exercise price of the option and for purposes of determining the premium for any such option purchased and sold [as provided in subparagraph (d)(ii)].

[(f)e] It shall be the general rule that in the case of any distribution made with respect to shares of an underlying security, other than ordinary distributions and other than distributions for which adjustments are provided in paragraph (d) [or (e)] of this Section 11A, if an adjustment is determined by the [Securities Commission] Corporation to be appropriate, (i) the exercise price in effect immediately prior to such event shall be reduced by the value per share of the distributed property, in which event the unit of trading shall not be adjusted, or (ii) the unit of trading in effect immediately prior to such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the unit of trading in effect prior to such adjustment, in which event the exercise price shall not be adjusted. The [Securities Committee] Corporation shall, with respect to adjustments

under this paragraph or any other paragraph of this Section 11A, have the authority to determine the value of distributed property.

([g]f) In the case of any event for which adjustment is not provided in any of the foregoing paragraphs of this Section 11A, the [Securities Committee] Corporation may make such adjustments, if any, with respect to the option contracts affected by such event as the [Securities Committee] Corporation determines.

([h]g) Adjustments pursuant to this Section 11A shall as a general rule become effective in respect of option contracts outstanding on the "ex-date" established by the primary market for the underlying security.

([i]h) It shall be the general rule that (1) all adjustments of the exercise price of an outstanding option contract shall be rounded to the nearest adjustment increment, (2) when an adjustment causes an exercise price to be equidistant between two adjustment increments, the exercise price shall be rounded up to the next highest adjustment increment, (3) all adjustments of the unit of trading shall be rounded down to eliminate any fraction, and (4) if the adjustment is made pursuant to subparagraph (d)(ii) above and the unit of trading is rounded down to eliminate a fraction, the adjusted exercise price may be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the option contract resulting from the elimination of the fraction, or if the adjustment is made pursuant to subparagraph (d)(iii) above and the unit of trading is rounded down to eliminate a fraction, the value of the fractional share so eliminated as determined by the Corporation shall be added to the unit of trading[, or if the adjustment is made pursuant to subparagraph (e)(ii) above, if the unit of trading is rounded down to eliminate a fraction, the adjusted exercise price may be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the option contract resulting from the elimination of the fraction].

([j]i) Notwithstanding the general rules set forth in paragraphs (c) through ([i]h) of this Section 11A or which may be set forth as interpretations and policies under this Section 11A, the [Securities Committee] Corporation shall have the power to make exceptions in those cases or groups of cases (which may include making exceptions for one or more series of flexibly structured options) in which, in applying the standards set forth in Section 11(a) hereof, the [Securities Committee] Corporation shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the [Securities Committee] Corporation affirmatively determines to make an exception in a particular case or group of cases.

*. . . Interpretations and Policies:*

**.01** [With respect to events announced on or prior to January 31, 2009, cash dividends or distributions by the issuer of the underlying security in an aggregate amount per dividend or distribution which does not exceed 10% of the market value (as of the close of trading on the declaration date) of the underlying security outstanding will, as a general rule, be deemed to be "ordinary cash dividends or distributions" within the meaning of paragraph (c) of this Section 11A; provided, however, that in the case of grandfathered series, the provisions of this sentence

shall apply regardless of the date when an event is announced. With respect to events announced on or after February 1, 2009 (except in the case of grandfathered series), cash] Cash dividends or distributions (regardless of size) by the issuer of the underlying security which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which the Corporation believes represents an acceleration or deferral of such payments will, as a general rule, be deemed to be "ordinary cash dividends or distributions" within the meaning of paragraph (c) of Section 11A. Stock dividends or distributions by the issuer of the underlying security (i) in an aggregate amount per dividend or distribution which does not exceed 10% of the number of shares or other units of the underlying security outstanding as of the close of trading on the declaration date, and (ii) which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis or which the Corporation believes represents an acceleration or deferral of such payments will, as a general rule, be deemed to be "ordinary stock dividends or distributions" within the meaning of paragraph (c) of Section 11A. The [Securities Committee] Corporation will determine on a case-by-case basis whether other dividends or distributions are "ordinary distributions" or whether they are dividends or distributions for which an adjustment should be made. Where the [Securities Committee] Corporation determines to adjust for a dividend or distribution, the adjustment shall be made in accordance with paragraph ([f]e) of Section 11A. Any issue as to whether a particular dividend or distribution was declared pursuant to a policy of paying such dividends or distributions on a quarterly or (where applicable) other regular basis shall be referred to the [Securities Committee] Corporation for a determination.

In making such determinations, the [Securities Committee] Corporation may take into account such factors as it deems appropriate, including, without limitation, the issuer's stated dividend payment policy, the issuer's characterization of a particular dividend or distribution as "regular," [or] "special," "accelerated" or "deferred," whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis, and the issuer's dividend payment history. Normally, the [Securities Committee] Corporation shall classify a dividend or distribution as non-ordinary when it believes that similar dividends or distributions will not be paid on a quarterly or other regular basis.

**.02** Adjustments will not ordinarily be made to reflect the issuance of so-called "poison pill" rights that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, begin to trade separately from the underlying security, or are redeemed, the [Securities Committee] Corporation will determine whether an adjustment is appropriate.

**.03 - .07** [No change]

**.08** Notwithstanding Interpretation and Policy .01 under Section 11A of Article VI of the By-Laws, (i) distributions of short-term or long-term capital gains in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be "ordinary [dividends or] distributions" within the meaning of paragraph (c) of Section 11A, and (ii) other distributions in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be "ordinary



distributions” within the meaning of paragraph (c) of this Section 11A [to the extent that]if (x) the fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund[s] shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or (y) the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security (I) that results in an adjustment of options on other fund shares pursuant to clause (ii)(x), or (II) that is not deemed an ordinary [dividend or] distribution under Interpretation .01 above. Adjustments of the terms of options on such fund shares for distributions described in clause (i) or (ii) above shall be made in accordance with paragraph [(f)]e of Section 11A, unless the [Securities Committee] Corporation determines, on a case-by-case basis, not to adjust for such a distribution; provided, however, that no adjustment shall be made for any such distribution that is less than \$.125 per fund share and provided that, in the case of a contract that is originally listed with a unit of trading larger than 100 fund shares, the applicable threshold shall be \$12.50 per contract.

**.09** [In the event that a new series of options is introduced with an exercise price expressed in decimals and there is an outstanding series of options on the same underlying security with an exercise price expressed as a fraction that could be expressed in whole cents, the Securities Committee may restate the exercise price of the outstanding series as its equivalent decimal price. If the exercise price for the outstanding series is a fraction that cannot be expressed in whole cents, the exercise price may not be restated as a decimal.]

**.10** [Renumbered as .09; otherwise no change]

\* \* \*

## ARTICLE XII

\* \* \*

### Adjustments to Futures and Futures Options

SECTION 3. (a) Section 11 of Article VI of the By-Laws shall not apply to futures or futures options. Except as provided in paragraph ([k]j) below, determinations as to whether and how to adjust the terms of futures and futures options to reflect events affecting underlying interests shall be made by the Corporation based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers of such futures and futures options, the maintenance of a fair and orderly market in futures on the underlying interest and options on such futures, consistency of interpretation and practice (including consistency with the actions of the [Securities Committee] Corporation in making adjustments to options on the same underlying interest), efficiency of settlement of delivery obligations arising from physically-settled stock futures, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying interest. The Corporation may, in addition to determining adjustments to futures and futures options on a case-by-case basis, adopt statements of policy or interpretations having general application to specified types of events. Except as provided in paragraph ([k]j) below,

every determination by the Corporation in respect of futures or futures options pursuant to this Section 3, or pursuant to Section 4 or Section 4A of this Article shall be within the sole discretion of the Corporation. Such determinations shall be conclusive and binding on all investors and not subject to review. The following paragraphs of this Section 3 apply to stock futures only. Special rules for adjustment of index futures and futures options and variance futures and futures options are set out in Section 4. Special rules for adjustment of other cash-settled futures are set out in Section 4A.

(b) [No change]

(c) Except as provided in paragraph ([k]j) below, it shall be the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying security.

[(d) In the event an underlying security has any series of option contracts having exercise prices stated in fractions of one dollar (e.g., 1/8) rather than in decimals:

(i) It shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby either one or three additional whole shares of the underlying security are issued with respect to each outstanding share (e.g., a 2 for 1 or 4 for 1 stock split), each stock future covering that underlying security shall be increased by the same number of additional stock futures as the number of additional shares issued with respect to each share of the underlying security, the last settlement price established immediately before such event shall be proportionately reduced, and the unit of trading shall remain the same. However, if options on the underlying security are adjusted in accordance with Article VI, Section 11A(d)(ii), the foregoing general rule shall not apply and stock futures on such underlying security shall instead be adjusted in accordance with subparagraph (ii) of this paragraph (d).

(ii) It shall be the general rule with respect to any stock dividend, stock distribution or stock split for which an adjustment is not made pursuant to subparagraph (i) above that each stock future covering the affected underlying security shall be adjusted, solely for purposes of determining the property deliverable upon exercise of the stock futures, by increasing the unit of trading so as to include the number of shares or amount of property distributed (or decreasing the unit of trading to reflect the number of shares eliminated, in the case of a reverse stock split, combination of shares, or similar event). If an adjustment is made in accordance with the preceding sentence, the unit of trading for all such adjusted series of stock futures shall remain unchanged for purposes of determining the aggregate settlement price of the futures and for purposes of determining the premium for any such futures purchased and sold.]

[(e)] (d) [In the event an underlying security has any series of option contracts having exercise prices that are stated in decimals] It shall be the general rule that in the case of:

(i) [It shall be the general rule that in the case of] a stock dividend, stock distribution or stock split whereby a whole number of additional shares of the underlying security is issued with

respect to each outstanding share, each stock future covering that underlying security shall be increased by the same number of additional stock futures as the additional number of shares issued with respect to each share of the underlying security, the last settlement price established immediately before such event shall be proportionately reduced, and the unit of trading shall remain the same.

(ii) [It shall be the general rule that in the case of] a stock dividend, stock distribution or stock split whereby other than a whole number of shares of the underlying security is issued in respect of each outstanding share, the last settlement price established immediately before such event shall be proportionately reduced and the unit of trading shall be proportionately increased.

(iii) [It shall be the general rule that in the case of] reverse stock splits, combinations of shares, or similar events, stock futures shall be adjusted solely for purposes of determining the property deliverable in respect of such futures contract, by decreasing the unit of trading to reflect the number of shares eliminated. If an adjustment is made in accordance with the preceding sentence, the unit of trading for all such adjusted futures contracts shall remain unchanged for purposes of determining the aggregate settlement value of the futures contract payable upon delivery and for purposes of determining the settlement value for any such futures contract purchased and sold [as provided in subparagraph (d)(ii)].

([f]e) It shall be the general rule that in the case of any distribution made with respect to shares of an underlying security other than ordinary distributions and other than distributions for which adjustments are provided in paragraph (d) [or (e)] of this Section 3, if the Corporation determines that an adjustment to the terms of stock futures on such underlying security is appropriate, (i) the last settlement price established immediately before such event shall be reduced by the value per share of the distributed property, in which event the unit of trading shall not be adjusted, or alternatively, (ii) the unit of trading in effect immediately before such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the unit of trading in effect prior to such adjustment, in which event the settlement price shall not be adjusted. The Corporation shall, with respect to adjustments under this paragraph or any other paragraph of this Section 3, have the authority to determine the value of distributed property.

([g]f) [No change]

([h]g) [No change]

([i]h) It shall be the general rule that (i) all adjustments of the settlement price of an outstanding stock future shall be rounded to the nearest adjustment increment, (ii) when an adjustment causes a settlement price to be equidistant between two adjustment increments, the settlement price shall be rounded up to the next highest adjustment increment, (iii) all adjustments of the unit of trading shall be rounded down to eliminate any fraction, and (iv) if the adjustment is made pursuant to subparagraph (d)(ii) above and the unit of trading is rounded down to eliminate a fraction, the adjusted settlement price may be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the stock future resulting from the

elimination of the fraction, or if the adjustment is made pursuant to subparagraph (d)(iii) above and the unit of trading is rounded down to eliminate a fraction, the value of the fractional share so eliminated as determined by the Corporation shall be added to the unit of trading[, or if the adjustment is made pursuant to subparagraph (d)(ii) above, if the unit of trading is rounded down to eliminate a fraction, the adjusted settlement price may be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the stock future resulting from the elimination of the fraction].

([j]i) Notwithstanding the general rules set forth in paragraphs (c) through ([i]h) and ([k]j) of this Section 3 or which may be set forth as interpretations and policies under this Section 3, the Corporation shall have the power to make exceptions in those cases or groups of cases in which, in applying the standards set forth in paragraph (a) of this Section 3, the Corporation shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the Corporation affirmatively determines to make an exception in a particular case or group of cases.

([k]j) Notwithstanding the general rule set forth in paragraph (c), such security futures as may be designated by the Exchange on which such contracts are traded as subject to this paragraph ([k]j) shall be adjusted for the aggregate amount of all cash dividends or distributions as reported by such Exchange to the Corporation. The settlement price of each such contract on the ex-date shall be adjusted by such aggregate amount of such dividend or distribution, provided that (i) the Exchange has reported such information to the Corporation prior to the ex-date in accordance with the Corporation's requirements, or (ii) the Exchange failed to provide the information on a timely basis or reported incorrect information to the Corporation, but provides such information or corrected information to the Corporation on the ex-date. The Corporation shall have no liability with respect to a dividend or distribution that has not been timely reported by the trading Exchange or for which such Exchange has reported incorrect information without making a timely subsequent correction.

*. . . Interpretations and Policies:*

**.01** (a) Cash dividends or distributions by the issuer of the underlying security that the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which the Corporation believes represents an acceleration or deferral of such payments will, as a general rule, be deemed to be "ordinary distributions" within the meaning of paragraph (c) of Section 3. The Corporation will determine on a case-by-case basis whether other dividends or distributions are "ordinary distributions" or whether they are dividends or distributions for which an adjustment should be made.

In making such determinations, the Corporation may take into account such factors as it deems appropriate, including, without limitation, the issuer's stated dividend payment policy, the issuer's characterization of a particular dividend or distribution as "regular," or] "special," "accelerated" or "deferred," whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis, and the issuer's dividend payment history.

Normally, the Corporation shall classify a dividend or distribution as non-ordinary when it believes that similar dividends or distributions will not be paid on a quarterly or other regular basis.

(b) – (c) [No change]

**.02 - .07** [No change]

**.08** Notwithstanding Interpretation and Policy .01 above, (i) distributions of short-term and long-term capital gains in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary [dividends or] distributions” within the meaning of paragraph (c) of this Section 3 and (ii) other distributions in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary [dividends or] distributions” within the meaning of paragraph (c) of Section 3 if (x) the fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or (y) the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security (I) that results in an adjustment of stock futures on other fund shares pursuant to clause (ii)(x) or (II) [in an aggregate amount exceeding 10% of the market value (as of the close of trading on the declaration date) of the portfolio security outstanding] that is not deemed an ordinary distribution under Interpretation .01 above. Adjustments of the terms of stock futures on such fund shares for distributions described in clause (i) or (ii) above shall be made in accordance with paragraph ([f]e) of this Section 3 unless the [Securities Committee] the Corporation determines, on a case-by-case basis, not to adjust for such a distribution.

[.09 In the event that a new series of stock futures is introduced with a settlement price expressed in decimals and there is an outstanding series of stock futures on the same underlying security with a settlement price expressed as a fraction that could be expressed in whole cents, the Corporation may restate the settlement price of the outstanding series as its equivalent decimal price. If the settlement price for the outstanding series is a fraction that cannot be expressed in whole cents, the settlement price may not be restated as a decimal.]

[.10] **.09** Other than as provided for in the By-Laws and Rules, including in paragraph ([k]j) of this Section 3, the Corporation will not adjust officially reported settlement prices, even if the information provided by the Exchange regarding dividends or distributions is subsequently found to have been erroneous, except in extraordinary circumstances. Such circumstances might be found to exist where, for example, the information initially provided by the Exchange is clearly erroneous or the Corporation otherwise learns of the error, and corrected information is promptly provided by the Exchange. In no event will a completed settlement be adjusted due to errors discovered after settlement.

[.11] **.10** [Renumbered as .10; otherwise no change]

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### **Adjustments to Other Cash-Settled Futures**

SECTION 4A. (a) *Cash-settled foreign currency futures.* In the event that (i) the currency underlying a cash-settled foreign currency future is officially replaced by a new currency, or (ii) such currency's exchange rate or exchange characteristics with respect to other currencies are officially altered, the Corporation may adjust the underlying interest, unit of trading, settlement price or any other terms of futures affected by such event. The Corporation shall determine whether to make adjustments to reflect particular events, and the nature and extent of any such adjustment, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers, the maintenance of a fair and orderly market in futures on the underlying interest, and consistency of interpretation and practice (including consistency with the actions of the [Securities Committee] Corporation in making adjustments to option contracts on the same underlying interest).

(b) *Other cash-settled futures.* In the case of any futures contract that does not require physical delivery of the underlying interest and that is not covered under Section 4 or 4A(a), the Corporation may adjust the underlying interest, unit of trading, settlement price or any other terms of such futures if the Corporation determines that an adjustment is appropriate to reflect the occurrence of an event affecting such underlying interest. The Corporation shall determine whether to make adjustments to reflect particular events, and the nature and extent of any such adjustment, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers, the maintenance of a fair and orderly market in futures on the underlying interest, and consistency of interpretation and practice (including consistency with the actions of the [Securities Committee] Corporation in making adjustments to option contracts on the same underlying interest).

\* \* \*

### **ARTICLE XIV**

#### **Binary Options; Range Options**

\* \* \*

#### **Adjustments of Binary Options (other than Event Options) and Range Options for which the Underlying Interest is a Security or an Index of Securities**

SECTION 3A. (a) Binary Options for which the Underlying Interest is an Equity Security.

(1) [No change]

(2) All adjustments under Section 3A(a) and 3A(b) shall be made by the [Securities Committee] Corporation in accordance with the policies and procedures set forth in Section 11 of Article VI of the By-Laws.

(3) It shall be the general rule that

(i) with respect to events announced on or prior to January 31, 2009, there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying equity security.

(ii) with respect to events announced on or after February 1, 2009,] there will be no adjustment to reflect (x) ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying equity security or (y) any cash dividend or distribution by the issuer of the underlying equity security if such dividend or distribution is less than \$.125 per unit of trading.

(4) [No change]

(5) It shall be the general rule that in the case of any distribution made with respect to shares of an underlying equity security, other than ordinary distributions and other than distributions for which adjustments are provided in Section 3A(a)(4), if an adjustment is determined by the [Securities Committee] Corporation to be appropriate, (i) the exercise price in effect immediately prior to such event shall be reduced by the value per unit of trading of the distributed property, or (ii) the unit of trading in effect immediately prior to such event shall be adjusted so as to include the amount of property distributed. The [Securities Committee] Corporation shall, with respect to adjustments under this paragraph or any other paragraph of this Section 3A(a), have the authority to determine the value of distributed property.

(6) - (7) [No change]

(b) Binary Options and Range Options for which the Underlying Interest is an Index of Securities.

(1) No adjustments will ordinarily be made in the terms of binary options or range options in the event that one or more underlying securities are added to or deleted from the underlying index or when the relative weight of one or more securities in the underlying index is changed. However, if the [Securities Committee] Corporation shall determine in its sole discretion that any such addition, deletion, or change causes significant discontinuity in the level of the underlying index, the [Securities Committee] Corporation may adjust the terms of the affected binary options or range options by adjusting the exercise price (or in the case of range options, the range length) with respect to such contracts or by taking such other action as the [Securities Committee] Corporation in its sole discretion deems fair to both the holders and writers of such contracts.

(2) If a reporting authority shall change the method of calculation of an underlying index so as to create a discontinuity or change in the level of the index that does not reflect a change in the prices or values of the constituent securities in the underlying index, or the [Securities Committee] Corporation shall substitute one underlying index for another pursuant to Section 3A(b)(3) of this Article, the [Securities Committee] Corporation shall make such

adjustments to the exercise prices of such options or such other adjustments, if any, as the [Securities Committee] Corporation in its sole discretion deems fair to both the holders and the writers of such options.

(3) In the event the [Securities Committee] Corporation determines that: (A) publication of an underlying index has been discontinued; (B) an underlying index has been replaced by another index; or (C) the composition or method of calculation of an underlying index is so materially changed since its selection as an underlying index that it is deemed to be a different index, the [Securities Committee] Corporation may substitute another index (a “successor index”) as the underlying index. A successor index shall be reasonably comparable, as determined by the [Securities Committee] Corporation in its sole discretion, to the original underlying index for which it substitutes. An index may be created specifically for the purpose of becoming a successor index.

(c) In the case of any event for which adjustment is not provided in any of the foregoing paragraphs of this Section 3A, the [Securities Committee] Corporation may make such adjustments, if any, with respect to the option contracts affected by such event as the [Securities Committee] Corporation determines.

(d) Notwithstanding the general rules set forth in paragraphs (a) through (c) of this Section 3A or which may be set forth as interpretations and policies under this Section 3A, the [Securities Committee] Corporation shall have the power to make exceptions in those cases or groups of cases (which may include making exceptions for one or more series of flexibly structured options) in which, in applying the standards set forth in Article VI, Section 11(a) of the By-Laws, the [Securities Committee] Corporation shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the [Securities Committee] Corporation affirmatively determines to make an exception in a particular case or group of cases.

*... Interpretations and Policies:*

**.01** [With respect to events announced on or prior to January 31, 2009, cash dividends or distributions by the issuer of the underlying equity security for a binary option in an aggregate amount per dividend or distribution which does not exceed 10% of the market value (as of the close of trading on the declaration date) of the underlying equity security outstanding will, as a general rule, be deemed to be “ordinary distributions or distributions” within the meaning of Section 3A(a)(3). With respect to events announced on or after February 1, 2009, cash] Cash dividends or distributions (regardless of size) by the issuer of the underlying equity security which the Corporation believes to have been declared pursuant to a [policy] policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which the Corporation believes represent an acceleration or deferral of such payments will, as a general rule, be deemed to be “ordinary cash dividends or distributions” within the meaning of Section 3A(a)(3). Stock dividends or distributions by the issuer of the underlying equity security (i) in an aggregate amount per dividend or distribution which does not exceed 10% of the number of shares or other units of the underlying equity security outstanding as of the close of trading on the declaration date, and (ii) which the [Securities Committee] Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly



or other regular basis or which the Corporation believes represent an acceleration or deferral of such payments will, as a general rule, be deemed to be “ordinary distributions” within the meaning of Section 3A(a)(3). The [Securities Committee] Corporation will determine on a case-by-case basis whether other dividends or distributions are “ordinary distributions” or whether they are dividends or distributions for which an adjustment should be made. Where the [Securities Committee] Corporation determines to adjust for a dividend or distribution, the adjustment shall be made in accordance with Sections 3A(a)(4) and 3A(a)(5). Any issue as to whether a particular dividend or distribution was declared pursuant to a policy or practice of paying such dividend or distribution on a quarterly or (where applicable) other regular basis shall be referred to the [Securities Committee] Corporation for a determination.

**.02 Notwithstanding Interpretation and Policy .01**, (i) distributions of short-term and long-term capital gains in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary [dividends or] distributions” within the meaning of Section 3A(a)(3) and (ii) other distributions in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary [dividends or] distributions” within the meaning of Section 3A(a)(3) if (x) the fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or (y) the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security (I) that results in an adjustment of options on other fund shares pursuant to clause (ii)(x) of this Interpretation or pursuant to clause (ii)(x) of Interpretation .08 under Article VI, Section 11A of the By-Laws or (II) that is not deemed an ordinary [dividend or] distribution under Interpretation .01 above. Adjustments for distributions described in clause (i) or (ii) above to the terms of binary options that have such fund shares as their underlying security shall be made in accordance with Section 3A(a)(5), unless the [Securities Committee] Corporation determines, on a case-by-case basis, not to adjust for such a distribution; provided, however, that no adjustment shall be made for any such distribution where the amount of the adjustment would be less than \$.125 per fund share.

**.03** Adjustments will not ordinarily be made to reflect the issuance of so-called “poison pill” rights that are not immediately exercisable, trade as a unit or automatically with the underlying equity security, and may be redeemed by the issuer. In the event such rights become exercisable, begin to trade separately from the underlying equity security, or are redeemed, the [Securities Committee] Corporation will determine whether an adjustment is appropriate.

**.04 - .08** [No change]

**.09** In the event that a new series of binary options is introduced with an exercise price expressed in decimals and there is an outstanding series of binary options on the same underlying interest with an exercise price expressed as a fraction that could be expressed in whole cents, the Securities Committee may restate the exercise price of the outstanding series as its equivalent decimal price. If the exercise price for the outstanding series is a fraction that cannot be expressed in whole cents, the exercise price may not be restated as a decimal.]

\* \* \*

**Unavailability or Inaccuracy of Final Underlying Interest Value**

## SECTION 5. (a) [No change]

(b) In the case of a binary option or range option that is traded on a Securities Exchange, determinations by the Corporation under this Section 5 shall be made by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. In the case of a binary option or range option that is not traded on a Securities Exchange, determinations under this Section 5 shall be made by the Corporation alone. The panel (or the Corporation, if there is no panel) shall fix the underlying interest value based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of the affected series, the maintenance of a fair and orderly market in the affected series, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel or the Corporation may fix the underlying interest value using: (i) the reported price or value for the relevant underlying interest or index component at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant underlying interest or index component at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting authority; or (iii) a price or value for the relevant underlying interest or index component at such other time, or representing a combination or average of prices or values at such time or times, as the panel or the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of [an adjustment] a panel, the voting rights of members of [adjustment] panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel [or the Corporation convened] or the Corporation pursuant to this Section 5 shall be within the sole discretion of such panel or the Corporation, as the case may be, and shall be conclusive and binding on all investors and not subject to review.

## (c) [No change]

\* \* \*

## ARTICLE XV

### Foreign Currency Options

\* \* \*

#### Adjustments

SECTION 4. In the event that (i) a trading or an underlying currency is replaced by a new currency, or (ii) the exchange rate or exchange characteristics of a trading or underlying currency with respect to other currencies are officially altered, [an adjustment panel] the Corporation may adjust the exercise price, unit of trading, number of contracts of underlying currency, or other terms of option contracts affected by such event. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation [panels convened] pursuant to this Article XV, Section 4.

\* \* \*

## ARTICLE XVI

### Yield-Based Treasury Options

\* \* \*

#### Adjustments

SECTION 3. (a) – (c) [no change]

(d) Determinations with respect to adjustments pursuant to this Section shall be made by the [Securities Committee] Corporation as provided [for] in Article VI, Section 11 of the By-Laws.

### Unavailability or Inaccuracy of Settlement Value of Underlying Yield

SECTION 4. (a) [No change]

(1) [No change]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. The exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the

maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel may fix the exercise settlement amount using: (i) the reported value of the underlying yield at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a value was reported by the reporting authority; (ii) the reported value of the underlying yield at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening value is reported by the reporting authority; or (iii) a value for the underlying yield at such other time, or representing a combination or average of values at such time or times, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of [an adjustment] a panel, the voting rights of members of [adjustment] such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel convened pursuant to this Section shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review.

(3) If [an adjustment] a panel acting pursuant to subsection (2) above delays fixing an exercise settlement amount for a series of options past the last trading day before expiration of that series, the expiration date exercise procedures of Rules 805 and 1704 shall not apply to expiring options of the affected series, and each Clearing Member shall be deemed to have properly and irrevocably tendered to the Corporation prior to the Expiration Time an exercise notice with respect to each expiring contract of the affected series carried in a long position in each account of the Clearing Member if, and only if, the exercise settlement amount fixed by the panel for options of that series is \$1.00 or more. The exercise settlement date for such options shall be postponed until the business day next following the day on which the exercise settlement amount is fixed. Options for which the exercise settlement amount fixed by the panel is less than \$1.00 shall be deemed to have expired unexercised.

(b) [No change]

\* \* \*

## ARTICLE XVII

### Index Options and Other Cash-Settled Options

\* \* \*

#### Adjustments

SECTION 3. (a) – (e) [No change]

(f) In the event that the value of an underlying relative performance index falls below zero, any such negative value of the index will be deemed by the Corporation to be zero; provided, however, that if it is deemed impractical for systems reasons to have an index value of zero, then any index value of zero or below will be deemed to be an economically nominal positive number. Such an adjustment will have the effect of limiting the maximum exercise settlement amount for in-the-money put options on such indexes to the difference between the exercise price and the nominal positive number substituted for the actual index value (times the applicable multiplier). [Adjustment in the value of an underlying relative performance index pursuant to this paragraph shall not require any action of an adjustment panel.]

(g) [No change]

(h) Except in the case of OTC index options or any of the events described in paragraphs (f) and (g) of this Section 3, determinations with respect to adjustments pursuant to this Section shall be made by [an adjustment panel] the Corporation. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to [adjustment panels convened] adjustments made by the Corporation pursuant to this Article XVII, Section 3[(g)].

**Unavailability or Inaccuracy of Current Underlying Interest Value**  
**[Effective for Series of Options Opened for Trading After September 16, 2000]**

SECTION 4. (a) [No change]

(1) [No change]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. In the case of cash-settled securities options other than OTC index options, the exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. In the case of OTC index options or cash-settled commodity options, unless the By-Laws or Rules specifically provide otherwise in respect of a particular class of such options, the exercise settlement amount shall be fixed by the Corporation. The Corporation will consult with the Membership/Risk Committee when appropriate to obtain any additional or supplemental market information or data from the members of such committee that the Corporation believes will be useful in setting such exercise settlement value. The panel (or the Corporation, as the case may be) shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel (or the Corporation) may fix the exercise settlement amount using: (i) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the

opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting authority; or (iii) a price or value for the relevant security(ies), commodity(ies) or underlying interest at such other time, or representing a combination or average of prices or values at such time or times, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of [an adjustment] a panel, the voting rights of members of [adjustment] such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination pursuant to this Section shall be within the sole discretion of the Corporation or the panel making such determination, as the case may be, and shall be conclusive and binding on all investors and not subject to review.

(3) If the Corporation or [an adjustment] a panel acting pursuant to subsection (2) above delays fixing an exercise settlement amount for a series of options past the last trading day before expiration of that series, the expiration date exercise procedures of Rules 805 and 1804 shall not apply to expiring cash-settled options of the affected series, and each Clearing Member shall be deemed to have properly and irrevocably tendered to the Corporation prior to the Expiration Time an exercise notice with respect to each expiring cash-settled option contract of the affected series carried in a long position in each account of the Clearing Member if, and only if, the exercise settlement amount fixed for options of that series is \$1.00 or more. The exercise settlement date for such options shall be postponed until the business day next following the day on which the exercise settlement amount is fixed. Options for which the exercise settlement amount is fixed at less than \$1.00 shall be deemed to have expired unexercised.

(b) [No change]

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## ARTICLE XX

### Cross-Rate Foreign Currency Options

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### Adjustments

SECTION 4. (a) In the event that (i) origin of an underlying foreign currency or a trading currency is replaced by a new currency, or (ii) the exchange rate or exchange characteristics of an underlying foreign or trading currency with respect to other currencies are officially altered, [an adjustment panel] the Corporation may adjust the exercise price, unit of trading, number of contracts, underlying foreign currency or trading currency, or other terms of option contracts affected by such event. The provisions of Article VI, Section 11 of the By-Laws shall apply

equally to adjustments made by the Corporation [panels convened] pursuant to this Article XX, Section 4.

(b) If an Exchange shall decrease the unit of trading for any cross-rate foreign currency option contract and the decreased unit of trading is evenly divisible into the original unit of trading, the Corporation shall proportionately subdivide each affected cross-rate foreign currency option contract outstanding prior to the change or shall make such other adjustments as the Corporation in its sole discretion deems fair to both the holders and the writers of such contracts. Determinations with respect to adjustments pursuant to this paragraph (b) shall be made by the Corporation [adjustment panel provided for in paragraph (a) of this Section].

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## ARTICLE XXII

### Cash-Settled Foreign Currency Options

\* \* \*

#### Adjustments

SECTION 3. In the event that (i) a trading or an underlying currency is replaced by a new currency, or (ii) the exchange rate or exchange characteristics of a trading or underlying currency with respect to other currencies are officially altered, [an adjustment panel] the Corporation may adjust the exercise price, unit of trading, number of contracts, underlying currency, or other terms of option contracts affected by such event. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation [panels convened] pursuant to this Article XXII, Section 4.

\* \* \*

#### Unavailability or Inaccuracy of Spot Price

SECTION 4. (a) [No change]

(1) [No change]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. The exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without

limiting the generality of the foregoing, the panel may fix the exercise settlement amount using: (i) the reported price of the underlying currency at the close of regular trading hours for options on the affected series (as determined by the Corporation) on the last preceding trading day for which such a price was reported by the reporting authority; (ii) the reported price of the underlying currency at the opening of regular trading hours for options on the affected series (as determined by the Corporation) on the next trading day for which such a price is reported by the reporting authority; or (iii) the price of the underlying currency at such other time, or representing a combination or average of prices or quotations at such time or times, and reported in such manner, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of [an adjustment] a panel, the voting rights of members of [adjustment] such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel convened pursuant to this Section shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review.

(3) If [an adjustment] a panel acting pursuant to subsection (2) above delays fixing an exercise settlement amount for a series of options past the last trading day before expiration of that series, the expiration date exercise procedures of Rules 805 and 2302 shall not apply to expiring cash-settled foreign currency options of the affected series, and each Clearing Member shall be deemed to have properly and irrevocably tendered to the Corporation prior to the Expiration Time an exercise notice with respect to each expiring cash-settled foreign currency option contract of the affected series carried in a long position in each account of the Clearing Member if, and only if, the exercise settlement amount fixed by the panel for options of that series is \$1.00 or more. The exercise settlement date for such options shall be postponed until the business day next following the day on which the exercise settlement amount is fixed. Options for which the exercise settlement amount fixed by the panel is less than \$1.00 shall be deemed to have expired unexercised.

(b) [No change]

\* \* \*

## ARTICLE XXIII

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

\* \* \*

#### Adjustments

SECTION 4. (a) – (d) [No change]



(e) Determinations with respect to adjustments pursuant to this Section shall be made by [an adjustment panel] the Corporation. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation [panels convened] pursuant to this Article XXIII, Section 4(e).

### **Unavailability or Inaccuracy of Current Index Value**

SECTION 5. (a) [No change]

(1) [No change]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. The exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of affected option contracts, the maintenance of a fair and orderly market in such options, and consistency of interpretation and practice. Without limiting the generality of the foregoing, the panel may, if it deems such action appropriate for the protection of investors and the public interest, fix the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported by the reporting authority. The provisions of Article VI, Section 11([k]c) of the By-Laws with respect to the vote required to constitute the determination of [an adjustment] a panel, the voting rights of members of [adjustment] such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination of a panel convened pursuant to this Section shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review.

(b) [No change]

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## **ARTICLE XXIV**

### **BOUNDs**

\* \* \*

### **Adjustments**

SECTION 4. (a) [No change]

(b) Whenever an adjustment is considered in respect of options on an underlying security which is also an underlying security for a class of BOUNDS, the [same adjustment panel] Corporation shall make a determination as to both the options and the BOUNDS; and it shall be the general rule that, if an adjustment is made in respect of the options, a corresponding adjustment will be made in respect of the BOUNDS. Notwithstanding the foregoing, an additional or different adjustment may be made in respect of BOUND contracts when the [adjustment panel] Corporation considers such additional or different adjustment to be necessary or appropriate to reflect differences between BOUNDS and options.

(c) [No change]

(d) If a distribution governed by the provisions of paragraph ([f]e) of Section 11A of Article VI of the By-Laws is made with respect to shares of an underlying security, and BOUNDS of the affected class are adjusted by including the distributed property within the unit of trading covered by such BOUNDS, the "Closing Price" for such BOUND contract at expiration shall also include the value of the distributed property. If such distributed property is a security that is traded on a national securities exchange [or through the facilities of a national association of securities dealers], then the value of the distributed security shall be determined in the same way that the Closing Price of any other underlying security would ordinarily be determined. In other cases, the [Securities Committee] Corporation shall use its discretion to determine how the current market value of the distributed property is to be fixed.

(e) [No change]

(f) The foregoing are general rules, and the [Securities Committee] Corporation shall have the same discretionary authority with respect to the adjustment of BOUNDS as it has with respect to adjustments of option contracts under Article VI, Section 11 and Section 11A of the By-Laws.

### **Unavailability of Closing Price**

SECTION 6. (a) [No change]

(1) The Corporation may suspend the settlement obligations of Clearing Members with respect to BOUNDS contracts of the affected series. At such time as the Corporation determines that the required Closing Price is available or the Corporation has fixed the Closing Price pursuant to subparagraph (2) of this definition, the Corporation shall fix a new date for settlement of the BOUNDS contracts.

(2) The Corporation may fix the Closing Price for BOUNDS contracts of an affected series. The Closing Price shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chairman of the Corporation. The panel shall fix the Closing Price based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of affected BOUNDS contracts, the maintenance of a fair and orderly

market in such contracts, and consistency of interpretation and practice. Without limiting the generality of the foregoing, the panel may, if it deems such action appropriate for the protection of investors and the public interest, fix the Closing Price on the basis of the price at the close of trading on the last preceding trading day for which a Closing Price was reported by the primary market. The provisions of Article VI, Section 11([k]c) of the By-Laws with respect to the vote required to constitute the determination of a [an adjustment] panel, the voting rights of members of [adjustment] such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chairman of the Corporation and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this subparagraph. Every determination of a panel convened pursuant to this subparagraph shall be within the sole discretion of such panel and shall be conclusive and binding on all investors and not subject to review.

(b) [No change]

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

The proposed rule change was approved by OCC's Board of Directors at a meeting held on July 24, 2012, and was approved unanimously by OCC's stockholders on the same date.

Questions regarding the proposed rule change should be addressed to Stephen Szarmack, Vice President and Associate General Counsel, at (312) 322-4802.

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

The principal purpose of this proposed rule change is to authorize OCC, rather than adjustment panels of the Securities Committee,<sup>1</sup> to determine option contract adjustments and to determine the value of distributed property involved in such adjustments. Other

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<sup>1</sup> The OCC Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

conforming or clarifying changes to the By-Laws relating to adjustments and/or adjustment panels also are being proposed.

**1. Background and Purpose of Proposed Rule Change**

Certain corporate actions—such as declaration of dividends or distributions, stock splits, rights offerings, reorganizations, or the merger or liquidation of an issuer—affecting an underlying security may require an adjustment to the terms of the overlying options. For example, in a two-for-one stock split, the overlying options might also be split two-for-one, so that each option would continue to cover the same number of shares but with an exercise price equal to half of the pre-split price. The basic procedural rules governing such “adjustments” in the terms of outstanding options are set forth in Section 11 of Article VI of OCC’s By-Laws, and the substantive rules specifically covering adjustment of stock options are set forth in Section 11A of Article VI. Although much less common, it is also possible that events affecting indexes and other underlying interests could also require adjustment of the overlying options. Rules for adjustment of such other options are generally found in the By-Law provisions applicable to such other options.

The procedural rules of Article VI, Section 11 of the By-Laws provide that all adjustments to option contracts be determined on a case-by-case basis by an adjustment panel of the Securities Committee composed of two representatives<sup>2</sup> of each exchange that trades an

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<sup>2</sup> The Commission has approved an amendment to OCC’s By-Laws under which only one representative of each relevant exchange is required on an adjustment panel. Securities Exchange Act Release No. 34-67333 (July 2, 2012), 77 FR 40394 (July 9, 2012) (SR-OCC-2012-07). However, the amendment will not be implemented until an amendment to the Options Disclosure Document reflecting this change is made. Interpretation and Policy .01 to Article VI, Section 11 clarifies that until such time as the amendment to the Options Disclosure Document is made and only one representative is required, an adjustment panel must have two representatives of each exchange that trades an option on the underlying security.

option on the underlying security and the OCC Chairman (or his representative). All actions are determined by majority vote, with OCC voting only to break a tie. Besides determining particular adjustments in individual cases, Article VI, Section 11 also authorizes the Securities Committee to adopt statements of policy or interpretations governing option adjustments in general. Additionally, the Securities Committee is authorized to determine the value of distributed property involved in stock option adjustments as stated in Article VI, Section 11A(f).

The options exchanges asked OCC to evaluate possible changes to the structure and procedures which govern option contract adjustments. The request was prompted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. In addition, the exchanges have expressed concern that exchange representatives involved in adjustment decisions may sometimes be subject to undue pressure from investors. Accordingly, the exchanges asked OCC to investigate whether changes to adjustment procedures could insulate the exchanges from undue pressure while concurrently providing greater consistency and efficiency in making adjustment decisions.

## **2. Description of Proposed Changes**

Discussions among OCC and the exchanges concerning potential changes to Securities Committee governance in respect of adjustments yielded a consensus that the exchanges should retain policy-making authority under the adjustment By-Laws through the Securities Committee but that OCC should be the sole determiner of particular adjustment decisions, thereby eliminating adjustment panels convened for the purpose of determining adjustments of particular option contracts. The Securities Committee ratified the following recommendations by unanimous vote:

- (i) The policy making role of the Securities Committee should be unchanged. As members of the Securities Committee, exchanges should retain authority to determine adjustment policy in general.
- (ii) OCC should apply the adjustment By-Laws and Interpretations to determine particular adjustments on a case-by-case basis. An adjustment panel comprised of exchange and OCC representatives should not be called to determine a particular adjustment, thereby insulating the exchanges from investor pressure to determine a particular outcome.<sup>3</sup>
- (iii) OCC and the exchanges should retain unrestricted ability to mutually discuss considerations pertaining to any adjustment decision or policy.
- (iv) OCC should be given authority to determine the value of distributed property involved in contract adjustments.

These recommendations were reviewed with OCC's Board of Directors, which unanimously approved them by authorizing the filing of this proposed rule change.

Notwithstanding the elimination of exchange representative adjustment panels, panels of exchange representatives would still retain their existing functions and authority under other provisions of OCC's By-Laws. For example, those panels would retain the authority to fix exercise settlement amounts for cash-settled options where a closing price for the underlying is otherwise unavailable.<sup>4</sup>

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<sup>3</sup> There is precedent for this approach in that OCC currently determines all contract adjustments for security futures. *See* Article XII, Sections 3 and 4 of OCC's By-Laws.

<sup>4</sup> *See, e.g.*, Article XIV, Section 5, Article XVII, Section 4, Article XXII, Section 4 and Article XXIV, Section 4.

The types of adjustments for which exchange representative panels may continue to be convened would be limited to very rare situations involving market closures or the unavailability of accurate pricing, and would need to be done on very short notice, unlike dividend adjustments, for which there can be a period of time between the announcement of a dividend and the decision of the panel. Accordingly, it is much less likely that exchange representatives on these panels would be subject to the same risk of undue pressure from investors. These situations are also less likely to fit within a policy or precedent that could be prescribed in advance by the Securities Committee, and therefore it would be more difficult for the Corporation to make the decisions without the input of the relevant exchanges.

### **3. Discussion**

As a result of the proposed changes described above, adjustment panels for the purpose of determining adjustments of particular options contracts would cease to exist, and exchanges would have no obligation or authority to determine a particular adjustment. OCC would determine the appropriate application of the By-Laws and Interpretations and Policies, but the exchanges would retain policy making authority as members of the Securities Committee. In this policy making capacity, actions of the Securities Committee would continue to require approval by a majority vote.

Occasionally, there may be unique aspects of a corporate event that justify departure from adjustment policy or precedent, or that involve a situation for which there is no existing adjustment policy or precedent. Such events may also highlight a need for a more general reformulation of adjustment policy. Under the proposed changes, if OCC determines such aspects to be present, OCC would determine in its sole discretion any adjustment to be applied in the particular case. The Securities Committee would not initiate policy changes “ad

hoc” to address a particular case (which would be a *de facto* determination of a particular adjustment decision). Instead, after OCC determined a particular adjustment, the Securities Committee, in its discretion, would determine the appropriateness of adopting prospective policy changes or clarifications.<sup>5</sup>

Although OCC and the exchanges believe it is feasible for OCC to independently determine adjustments, both are averse to losing valuable exchange experience and insight that is now brought to bear in adjustment decisions. Accordingly, OCC and the exchanges believe that they should retain unrestricted ability to discuss with each other any considerations pertaining to an adjustment decision or policy – with the understanding that adjustment decisions would be made solely by OCC and the exchanges would be involved solely in an advisory capacity. Accordingly, nothing in the present proposal would prohibit either the exchanges or OCC from initiating conversations concerning adjustment policy or particular adjustment decisions, but neither would such consultation be required.<sup>6</sup> Furthermore, to ensure continued exchange involvement in determining adjustment policy, OCC intends to call periodic meetings of the Securities Committee to discuss policy issues and review recent experience with contract adjustments.<sup>7</sup> Such meetings will be held on a quarterly or more frequent periodic basis.

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<sup>5</sup> This approach was followed in 2006 in response to a special cash dividend. In that case, adjustment panels determined to depart from precedent and adjust certain ETF options where the ETF distributed pro rata dividends based on the amount of a special dividend paid by the issuer of one of the component stocks in the ETF. Following these adjustments, the Securities Committee recommended to the OCC Board a policy reformulation. *See* Interpretation .08 to Article VI, Section 11A.

<sup>6</sup> Confidentiality of the communications between OCC and the Exchanges would continue to be observed – as it is today.

<sup>7</sup> As a practical matter, even if adjustments are determined solely by OCC it would still be necessary for OCC and the exchanges to coordinate the operational execution of all option



Occasionally option adjustments involve the substitution of cash value in lieu of delivery of property. For example, this is the case when a security does not trade in the United States or cash in lieu of property is involved. Currently, the Securities Committee has authority to determine such cash value. OCC is proposing that it would instead be authorized to determine cash value in these cases since it would have sole discretion to determine contract adjustments.

The proposed changes would apply only to the functions of OCC and the Securities Committee in the determination of option contract adjustments as described in Article VI, Sections 11 and other By-Law provisions.<sup>8</sup> The Securities Committee – or panels comprised of representatives of the Securities Committee – in respect of actions that do not involve option contract adjustments would retain all other functions and authority granted under the By-Laws, including, for example, the ability to fix index option settlement values in cases of market disruption<sup>9</sup> and similar actions.

Adjustment provisions of the By-Laws pertaining to classes of options other than stock options sometimes provide for adjustment panels by referring to Article VI, Section 11. Insofar as Article VI, Section 11 would be modified to eliminate the need for adjustment panels, the requirement for adjustment panels to determine contract adjustments for these other types of option contracts would also be eliminated, with case by case adjustment decisions determined solely by OCC.

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adjustments. This coordination includes, but is not limited to, the determination of an effective date, option symbols and strike prices and the publication of notices.

<sup>8</sup> See, e.g., Article XII, Sections 3 and 4; Article XIV, Section 3A; Article XV, Section 4; Article XVI, Section 3; Article XVII, Section 3; Article XX, Section 4; Article XXII, Section 3; Article XXIII, Section 4; and Article XXIV, Section 6.

<sup>9</sup> See, e.g., By-Law Article XVII, Section 4.

#### 4. Other changes

In addition to the principal purpose underlying this rule change as described above, certain other conforming and/or clarifying changes are being proposed. These changes are intended to update the By-Laws to eliminate stale rule provisions, to conform cross-references contained in other By-Laws to changes being proposed herein and to clarify certain interpretations adopted under the By-Laws to reflect a recent policy determination made by the Securities Committee in accordance with its authority granted under Article VI, Section 11 of OCC's By-Laws. These changes generally are described below.

OCC is proposing to modify or eliminate certain adjustment related By-Law provisions because, due to industry or other changes, there is no longer any open interest in options covered by such provisions. For example, equity options previously had traded with exercise prices expressed in either fractions or decimals. All exercise prices for equity options now are expressed in decimals, and all open interest in options series for which exercise prices were expressed in fractions has expired. Several By-Law provisions are being modified or eliminated to reflect this circumstance.<sup>10</sup>

OCC also is proposing to eliminate other stale provisions, including those found within Interpretation and Policy .01 under the Article VI, Section 11, which relates to the determination of "ordinary cash dividends or distributions" for which no adjustment is ordinarily made. These provisions preserved the "10% rule" (*i.e.*, the former method used to determine whether a cash dividend or distribution was ordinary) for application to certain series that had open interest prior to rescission of the 10% rule. Open interest in all such "grandfathered" series

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<sup>10</sup> See, *e.g.*, the proposed changes to the definition of the term "adjustment increment," Article I, Section 1.A(2); Article VI, Section 11A(d); Interpretation & Policy .09 under Article VI, Section 11A; and Article XII, Section 3(d).

has expired, and therefore these provisions are no longer necessary. Changes would also be made to Article XIV, Section 3A(a)(3) in relation to binary options for which the underlying is an equity interest.

OCC's Securities Committee is empowered under the By-Laws to adopt statements of policy or interpretations having general application to specified types of events or specific kinds of cleared contracts. Recently, the Securities Committee issued a clarifying interpretation with respect to determinations of corporate issuers to accelerate or defer payments of otherwise ordinary dividends. More specifically, the Securities Committee determined that such events would not, as a general rule, affect the ordinary nature of such dividends subject to the evaluation of these events on a case-by-case basis.<sup>11</sup> Comparable changes, as applicable, would be made to Article XIV, Section 3A. Other changes being proposed are conforming in nature in that they update cross-references to By-Laws and Rules proposed to be amended.

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OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended, (the "Act")<sup>12</sup> and the rules and regulations thereunder because the proposed changes would help promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the settlement of securities transactions<sup>13</sup> by providing OCC with sole discretion for particular adjustment decisions to help ensure that decisions are consistent, efficient and free from undue influence and by providing conforming

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<sup>11</sup> Securities Exchange Act Release No. 34-68531 (December 21, 2012), 77 FR 77157 (December 31, 2012) (SR-OCC-2012-26).

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

and clarifying changes to OCC's By-Laws and Rules to help ensure that OCC maintains a well-founded, transparent and enforceable legal framework as required by Rule 17Ad-22(d)(1).<sup>14</sup> The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

OCC will not implement these proposed rule changes until the effectiveness of an amendment to the Options Disclosure Document relating to the proposed changes.

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

OCC does not believe that the proposed rule change will impact, or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change primarily affects OCC's clearing members and their customers, but it would not impose any additional burden on them because options are already subject to adjustment and the revised procedures apply equally to all clearing members. OCC does not believe that providing OCC with sole discretion for particular adjustment decisions, rather than continuing to rely on adjustment panels consisting of exchange representatives, would inhibit access to any of OCC's services or disadvantage or favor any user of OCC's services in relationship to any other such user. In fact, OCC believes that the proposed rule change would promote competition among participants in the options markets because it would help ensure that adjustment decisions are consistent, efficient and free from undue influence and therefore it would promote certainty, fairness and a level playing field in the options markets with respect to when and how participants are affected by adjustments.

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<sup>14</sup> 17 CFR 240.17Ad-22(d)(1).

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest and consistent with the requirements of the Act applicable to clearing agencies because it would promote competition in the options markets that OCC serves and not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

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

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

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

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

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

Not applicable.

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

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

**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 Federal Register.

**SIGNATURE**

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

**THE OPTIONS CLEARING CORPORATION**

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

**EXHIBIT 1A**

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-\_\_\_\_\_]; File No. SR-OCC-2013-05)**

May 15, 2013

Clearing Agency; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Provide that OCC, Rather Than an Adjustment Panel of the Securities Committee, Will Determine Adjustments to the Terms of Options Contracts to Account for Certain Events, Such as Certain Dividend Distributions or Other Corporate Actions, That Affect the Underlying Security or Other Underlying Interest

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on May 15, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

OCC proposes to provide that OCC, rather than an adjustment panel of the Securities Committee, will determine adjustments to the terms of options contracts to account for certain events, such as certain dividend distributions or other corporate actions, that affect the underlying security or other underlying interest.

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

<sup>2</sup> 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**

The principal purpose of this proposed rule change is to authorize OCC, rather than adjustment panels of the Securities Committee,<sup>3</sup> to determine option contract adjustments and to determine the value of distributed property involved in such adjustments. Other conforming or clarifying changes to the By-Laws relating to adjustments and/or adjustment panels also are being proposed.

#### **1. Background and Purpose of Proposed Rule Change**

Certain corporate actions—such as declaration of dividends or distributions, stock splits, rights offerings, reorganizations, or the merger or liquidation of an issuer—affecting an underlying security may require an adjustment to the terms of the overlying options. For example, in a two-for-one stock split, the overlying options might also be split two-for-one, so that each option would continue to cover the same number of shares but with an exercise price

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<sup>3</sup> The OCC Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

equal to half of the pre-split price. The basic procedural rules governing such “adjustments” in the terms of outstanding options are set forth in Section 11 of Article VI of OCC’s By-Laws, and the substantive rules specifically covering adjustment of stock options are set forth in Section 11A of Article VI. Although much less common, it is also possible that events affecting indexes and other underlying interests could also require adjustment of the overlying options. Rules for adjustment of such other options are generally found in the By-Law provisions applicable to such other options.

The procedural rules of Article VI, Section 11 of the By-Laws provide that all adjustments to option contracts be determined on a case-by-case basis by an adjustment panel of the Securities Committee composed of two representatives<sup>4</sup> of each exchange that trades an option on the underlying security and the OCC Chairman (or his representative). All actions are determined by majority vote, with OCC voting only to break a tie. Besides determining particular adjustments in individual cases, Article VI, Section 11 also authorizes the Securities Committee to adopt statements of policy or interpretations governing option adjustments in general. Additionally, the Securities Committee is authorized to determine the value of distributed property involved in stock option adjustments as stated in Article VI, Section 11A(f).

The options exchanges asked OCC to evaluate possible changes to the structure and procedures which govern option contract adjustments. The request was prompted by a desire to

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<sup>4</sup> The Commission has approved an amendment to OCC’s By-Laws under which only one representative of each relevant exchange is required on an adjustment panel. Securities Exchange Act Release No. 34-67333 (July 2, 2012), 77 FR 40394 (July 9, 2012) (SR-OCC-2012-07). However, the amendment will not be implemented until an amendment to the Options Disclosure Document reflecting this change is made. Interpretation and Policy .01 to Article VI, Section 11 clarifies that until such time as the amendment to the Options Disclosure Document is made and only one representative is required, an adjustment panel must have two representatives of each exchange that trades an option on the underlying security.

consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. In addition, the exchanges have expressed concern that exchange representatives involved in adjustment decisions may sometimes be subject to undue pressure from investors. Accordingly, the exchanges asked OCC to investigate whether changes to adjustment procedures could insulate the exchanges from undue pressure while concurrently providing greater consistency and efficiency in making adjustment decisions.

## **2. Description of Proposed Changes**

Discussions among OCC and the exchanges concerning potential changes to Securities Committee governance in respect of adjustments yielded a consensus that the exchanges should retain policy-making authority under the adjustment By-Laws through the Securities Committee but that OCC should be the sole determiner of particular adjustment decisions, thereby eliminating adjustment panels convened for the purpose of determining adjustments of particular option contracts. The Securities Committee ratified the following recommendations by unanimous vote:

- (i) The policy making role of the Securities Committee should be unchanged. As members of the Securities Committee, exchanges should retain authority to determine adjustment policy in general.
- (ii) OCC should apply the adjustment By-Laws and Interpretations to determine particular adjustments on a case-by-case basis. An adjustment panel comprised of exchange and OCC representatives should not be called to determine a particular

adjustment, thereby insulating the exchanges from investor pressure to determine a particular outcome.<sup>5</sup>

- (iii) OCC and the exchanges should retain unrestricted ability to mutually discuss considerations pertaining to any adjustment decision or policy.
- (iv) OCC should be given authority to determine the value of distributed property involved in contract adjustments.

These recommendations were reviewed with OCC's Board of Directors, which unanimously approved them by authorizing the filing of this proposed rule change.

Notwithstanding the elimination of exchange representative adjustment panels, panels of exchange representatives would still retain their existing functions and authority under other provisions of OCC's By-Laws. For example, those panels would retain the authority to fix exercise settlement amounts for cash-settled options where a closing price for the underlying is otherwise unavailable.<sup>6</sup>

The types of adjustments for which exchange representative panels may continue to be convened would be limited to very rare situations involving market closures or the unavailability of accurate pricing, and would need to be done on very short notice, unlike dividend adjustments, for which there can be a period of time between the announcement of a dividend and the decision of the panel. Accordingly, it is much less likely that exchange representatives on these panels would be subject to the same risk of undue pressure from investors. These situations are also

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<sup>5</sup> There is precedent for this approach in that OCC currently determines all contract adjustments for security futures. *See* Article XII, Sections 3 and 4 of OCC's By-Laws.

<sup>6</sup> *See, e.g.*, Article XIV, Section 5, Article XVII, Section 4, Article XXII, Section 4 and Article XXIV, Section 4.

less likely to fit within a policy or precedent that could be prescribed in advance by the Securities Committee, and therefore it would be more difficult for the Corporation to make the decisions without the input of the relevant exchanges.

### 3. Discussion

As a result of the proposed changes described above, adjustment panels for the purpose of determining adjustments of particular options contracts would cease to exist, and exchanges would have no obligation or authority to determine a particular adjustment. OCC would determine the appropriate application of the By-Laws and Interpretations and Policies, but the exchanges would retain policy making authority as members of the Securities Committee. In this policy making capacity, actions of the Securities Committee would continue to require approval by a majority vote.

Occasionally, there may be unique aspects of a corporate event that justify departure from adjustment policy or precedent, or that involve a situation for which there is no existing adjustment policy or precedent. Such events may also highlight a need for a more general reformulation of adjustment policy. Under the proposed changes, if OCC determines such aspects to be present, OCC would determine in its sole discretion any adjustment to be applied in the particular case. The Securities Committee would not initiate policy changes “ad hoc” to address a particular case (which would be a *de facto* determination of a particular adjustment decision). Instead, after OCC determined a particular adjustment, the Securities Committee, in

its discretion, would determine the appropriateness of adopting prospective policy changes or clarifications.<sup>7</sup>

Although OCC and the exchanges believe it is feasible for OCC to independently determine adjustments, both are averse to losing valuable exchange experience and insight that is now brought to bear in adjustment decisions. Accordingly, OCC and the exchanges believe that they should retain unrestricted ability to discuss with each other any considerations pertaining to an adjustment decision or policy – with the understanding that adjustment decisions would be made solely by OCC and the exchanges would be involved solely in an advisory capacity. Accordingly, nothing in the present proposal would prohibit either the exchanges or OCC from initiating conversations concerning adjustment policy or particular adjustment decisions, but neither would such consultation be required.<sup>8</sup> Furthermore, to ensure continued exchange involvement in determining adjustment policy, OCC intends to call periodic meetings of the Securities Committee to discuss policy issues and review recent experience with contract adjustments.<sup>9</sup> Such meetings will be held on a quarterly or more frequent periodic basis.

Occasionally option adjustments involve the substitution of cash value in lieu of delivery of property. For example, this is the case when a security does not trade in the United States or

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<sup>7</sup> This approach was followed in 2006 in response to a special cash dividend. In that case, adjustment panels determined to depart from precedent and adjust certain ETF options where the ETF distributed pro rata dividends based on the amount of a special dividend paid by the issuer of one of the component stocks in the ETF. Following these adjustments, the Securities Committee recommended to the OCC Board a policy reformulation. *See* Interpretation .08 to Article VI, Section 11A.

<sup>8</sup> Confidentiality of the communications between OCC and the Exchanges would continue to be observed – as it is today.

<sup>9</sup> As a practical matter, even if adjustments are determined solely by OCC it would still be necessary for OCC and the exchanges to coordinate the operational execution of all option adjustments. This coordination includes, but is not limited to, the determination of an effective date, option symbols and strike prices and the publication of notices.

cash in lieu of property is involved. Currently, the Securities Committee has authority to determine such cash value. OCC is proposing that it would instead be authorized to determine cash value in these cases since it would have sole discretion to determine contract adjustments.

The proposed changes would apply only to the functions of OCC and the Securities Committee in the determination of option contract adjustments as described in Article VI, Sections 11 and other By-Law provisions.<sup>10</sup> The Securities Committee – or panels comprised of representatives of the Securities Committee – in respect of actions that do not involve option contract adjustments would retain all other functions and authority granted under the By-Laws, including, for example, the ability to fix index option settlement values in cases of market disruption<sup>11</sup> and similar actions.

Adjustment provisions of the By-Laws pertaining to classes of options other than stock options sometimes provide for adjustment panels by referring to Article VI, Section 11. Insofar as Article VI, Section 11 would be modified to eliminate the need for adjustment panels, the requirement for adjustment panels to determine contract adjustments for these other types of option contracts would also be eliminated, with case by case adjustment decisions determined solely by OCC.

#### **4. Other changes**

In addition to the principal purpose underlying this rule change as described above, certain other conforming and/or clarifying changes are being proposed. These changes are

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<sup>10</sup> See, e.g., Article XII, Sections 3 and 4; Article XIV, Section 3A; Article XV, Section 4; Article XVI, Section 3; Article XVII, Section 3; Article XX, Section 4; Article XXII, Section 3; Article XXIII, Section 4; and Article XXIV, Section 6.

<sup>11</sup> See, e.g., By-Law Article XVII, Section 4.

intended to update the By-Laws to eliminate stale rule provisions, to conform cross-references contained in other By-Laws to changes being proposed herein and to clarify certain interpretations adopted under the By-Laws to reflect a recent policy determination made by the Securities Committee in accordance with its authority granted under Article VI, Section 11 of OCC's By-Laws. These changes generally are described below.

OCC is proposing to modify or eliminate certain adjustment related By-Law provisions because, due to industry or other changes, there is no longer any open interest in options covered by such provisions. For example, equity options previously had traded with exercise prices expressed in either fractions or decimals. All exercise prices for equity options now are expressed in decimals, and all open interest in options series for which exercise prices were expressed in fractions has expired. Several By-Law provisions are being modified or eliminated to reflect this circumstance.<sup>12</sup>

OCC also is proposing to eliminate other stale provisions, including those found within Interpretation and Policy .01 under the Article VI, Section 11, which relates to the determination of "ordinary cash dividends or distributions" for which no adjustment is ordinarily made. These provisions preserved the "10% rule" (*i.e.*, the former method used to determine whether a cash dividend or distribution was ordinary) for application to certain series that had open interest prior to rescission of the 10% rule. Open interest in all such "grandfathered" series has expired, and therefore these provisions are no longer necessary. Changes would also be made to Article XIV, Section 3A(a)(3) in relation to binary options for which the underlying is an equity interest.

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<sup>12</sup> See, *e.g.*, the proposed changes to the definition of the term "adjustment increment," Article I, Section 1.A (2); Article VI, Section 11A(d); Interpretation & Policy .09 under Article VI, Section 11A; and Article XII, Section 3(d).



OCC's Securities Committee is empowered under the By-Laws to adopt statements of policy or interpretations having general application to specified types of events or specific kinds of cleared contracts. Recently, the Securities Committee issued a clarifying interpretation with respect to determinations of corporate issuers to accelerate or defer payments of otherwise ordinary dividends. More specifically, the Securities Committee determined that such events would not, as a general rule, affect the ordinary nature of such dividends subject to the evaluation of these events on a case-by-case basis.<sup>13</sup> Comparable changes, as applicable, would be made to Article XIV, Section 3A. Other changes being proposed are conforming in nature in that they update cross-references to By-Laws and Rules proposed to be amended.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended, (the "Act")<sup>14</sup> and the rules and regulations thereunder because the proposed changes would help promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the settlement of securities transactions<sup>15</sup> by providing OCC with sole discretion for particular adjustment decisions to help ensure that decisions are consistent, efficient and free from undue influence and by providing conforming and clarifying changes to OCC's By-Laws and Rules to help ensure that OCC maintains a well-founded, transparent and enforceable legal framework as required by Rule 17Ad-22(d)(1).<sup>16</sup> The proposed

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<sup>13</sup> Securities Exchange Act Release No. 34-68531 (December 21, 2012), 77 FR 77157 (December 31, 2012) (SR-OCC-2012-26).

<sup>14</sup> 15 U.S.C. 78q-1.

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

<sup>16</sup> 17 CFR 240.17Ad-22(d)(1).

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

OCC will not implement these proposed rule changes until the effectiveness of an amendment to the Options Disclosure Document relating to the proposed changes.

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

OCC does not believe that the proposed rule change will impact, or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change primarily affects OCC's clearing members and their customers, but it would not impose any additional burden on them because options are already subject to adjustment and the revised procedures apply equally to all clearing members. OCC does not believe that providing OCC with sole discretion for particular adjustment decisions, rather than continuing to rely on adjustment panels consisting of exchange representatives, would inhibit access to any of OCC's services or disadvantage or favor any user of OCC's services in relationship to any other such user. In fact, OCC believes that the proposed rule change would promote competition among participants in the options markets because it would help ensure that adjustment decisions are consistent, efficient and free from undue influence and therefore it would promote certainty, fairness and a level playing field in the options markets with respect to when and how participants are affected by adjustments.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest and consistent with the requirements of the Act applicable to clearing agencies because it would promote competition in the options markets that OCC serves and not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

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

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

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

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 Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2013-05 on the subject line.

**Paper Comments:**

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and

Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2013-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <http://www.theocc.com/about/publications/bylaws.jsp>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2013-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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

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

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

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

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