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

File No. * SR 2024 - * 015

Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to its Governance Documents to Align with Recently Adopted SEC Governance Rules

Contact Information

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

First Name * **Last Name ***

Title *

E-mail *

Telephone * **Fax**

Signature

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

Date **(Title *)**

By

(Name *)

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

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-OCC-2024-015 - 19b-4 SEC Gove

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-OCC-2024-015 - Exhibit 1A Temp

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-OCC-2024-015 - Exhibit 3A REDA
SR-OCC-2024-015 - Exhibit 3B REDA
SR-OCC-2024-015 - Exhibit 3C REDA

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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Exhibit 5A - BOD Charter.doc
Exhibit 5B - GNC Charter.doc
Exhibit 5C - Risk Committee Charter.d

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

Partial Amendment

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

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) this proposed rule change to make modifications to its governance documents, including OCC’s charters, Fitness Standards, and Third-Party Risk Management Framework, as part of an effort to achieve compliance with the recently adopted governance requirements³ by the Commission for clearing agencies registered with the Commission (“registered clearing agencies”) that became effective on February 5, 2024. Registered clearing agencies, like OCC, must comply with most of the governance requirements by December 5, 2024. However, the governance requirement for independent directors, as described in further detail below, has a compliance date of December 5, 2025.

In addition to the proposed modifications that OCC believes are necessary to comply with the recently adopted governance requirements, OCC is also including proposed modifications to its governance documents that reflect changes identified during OCC’s annual review process. The proposed changes related to the governance requirements and the proposed changes related to OCC’s annual review process are differentiated throughout this filing and described in further detail below. For clarification, OCC’s Board of Directors Charter and Corporate Governance Principles (“Board Charter”), Governance and Nominating Committee (“GNC”) Charter, Risk Committee Charter, Technology Committee Charter, Compensation and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98959 (Dec. 5, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) (“SEC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf>.

Performance Committee (“CPC”) Charter, Regulatory Committee Charter, Audit Committee Charter, Fitness Standards, Third-Party Risk Management Framework, and Article III of OCC’s By-Laws are collectively referred to in this proposed rule change as OCC’s “governance documents.”

The proposed changes to OCC’s governance documents are contained in Exhibits 5A through 5J, respectively, to File No. SR-OCC-2024-015. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text.

All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

Item 2. Procedures of the Self-Regulatory Organization

The proposed change was approved for filing with the Commission by OCC’s Board of Directors (“Board”) at a meeting held on July 18, 2024, and the respective Committee meetings on July 17, 2024.

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

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC operates under the jurisdiction of both the Commission and the Commodity Futures Trading Commission (“CFTC”). OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a “covered

⁴ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

clearing agency”⁵ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a derivatives clearing organization (“DCO”) regulated by the CFTC. OCC is also designated as a systemically important financial market utility (“SIFMU”) by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).

As an SEC registered clearing agency and a CFTC registered DCO, OCC is already subject to regulations that impose requirements on its governance structure. For example, the Exchange Act requires OCC’s rules to assure a fair representation of its shareholders and Clearing Members in the selection of its directors and the administration of its affairs.⁶ In addition, SEC rules, among other things, require OCC to have governance arrangements that are clear and transparent and that provide risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board.⁷ In July of 2023, the CFTC also finalized new governance requirements for DCOs.⁸ Those requirements, among other things, require the establishment of one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants. OCC previously filed a proposed rule change with the SEC to implement changes to address these requirements.⁹

⁵ The term “covered clearing agency” is defined in Exchange Act Rule 17Ad-22(a)(5) to mean “a registered clearing agency that provides the services of a central counterparty or central securities depository.” 17 CFR 240.17Ad-22(a)(5).

⁶ 17 U.S.C. 78q-1(b)(3)(C).

⁷ 17 CFR 240.17Ad-(22)(e)(2)(i) and (3)(iv).

⁸ See 88 FR 44675 (July 13, 2023) (“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁹ See Securities Exchange Act Release No. 100194 (May 21, 2024), 89 FR 46205 (May 28, 2024) (SR-OCC-2024-005).

OCC currently maintains a robust governance structure that is designed to comply with existing requirements of the Commission and CFTC. Recently, the Commission adopted new regulations regarding governance requirements for registered clearing agencies (“SEC Governance Rules”) that supplement the existing governance requirements applicable to OCC as a registered clearing agency.¹⁰ The SEC Governance Rules require, among other things, that registered clearing agencies:

- (i) Establish requirements that a majority of the members of the board of directors of the registered clearing agency be independent directors, as defined in 17Ad-25(a), and that each registered clearing agency consider all the relevant facts and circumstances to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency that would preclude services as an independent director.¹¹
- (ii) Establish a nominating committee and a written evaluation process whereby such committee evaluates nominees for service as directors and evaluating the independence of nominees and directors,¹² and require that a majority of the directors on the nominating committee be independent directors, including the chair of the nominating committee.¹³ The fitness standards for service as a director must be specified by the nominating committee, documented in writing and approved by the board of directors.¹⁴ The nominating committee must also document the outcome of the written evaluation process consistent with the

¹⁰ See SEC Adopting Release, 88 FR 84454.

¹¹ 17 CFR 240.17Ad-25(b)(1),(2).

¹² 17 CFR 240.17Ad-25(c)(1).

¹³ 17 CFR 240.17Ad-25(c)(2).

¹⁴ 17 CFR 240.17Ad-25(c)(3).

fitness standards required in 17Ad-25(c)(3).¹⁵

- (iii) Establish a risk management committee or committees of the board to assist the board of directors in overseeing the risk management of the registered clearing agency, and the membership of each risk management committee must be re-evaluated annually and at all times include representatives from the owners and participants of the registered clearing agency.¹⁶ The risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency.¹⁷
- (iv) Establish composition requirements for committees that have authority to act on behalf of the board of directors, such that the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors.¹⁸
- (v) Maintain policies and procedures to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.¹⁹
- (vi) Maintain policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of

¹⁵ 17 CFR 240.17Ad-25(c)(4).

¹⁶ 17 CFR 240.17Ad-25(d)(1).

¹⁷ 17 CFR 240.17Ad-25(d)(2).

¹⁸ 17 CFR 240.17Ad-25(e).

¹⁹ 17 CFR 240.17Ad-25(g)(1)(2).

any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.²⁰

- (vii) Maintain policies and procedures reasonably designed to: (1) require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation; (3) require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.²¹

- (viii) Maintain policies and procedures for the board to solicit, consider, and document

²⁰ 17 CFR 240.17Ad-25(h).

²¹ 17 CFR 240.17Ad-25(i)(1)-(4).

its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in the registered clearing agency's risk management and operations.²²

OCC already maintains risk and nominating committees of the Board, fitness standards for directors, and written procedures for directors to identify and disclose conflicts of interest. However, to implement a compliant approach with those requirements for which OCC believes changes will be necessary, OCC is proposing to revise its governance documents such that the documents set clear and transparent governance standards and provide a framework for compliance. OCC's proposed changes to its governance documents establish requirements that provide: (i) OCC's Board be comprised of a majority of independent directors; (ii) each Board-level committee that has delegated authority from the Board be comprised of a majority of independent directors; (iii) OCC's existing Risk Committee and GNC align with the related requirements in the SEC Governance Rules regarding the responsibilities and composition of the committees; (iv) OCC's Fitness Standards align with the related requirements in the SEC Governance Rules for directors; and (v) OCC's Board Charter and Third-Party Risk Management Framework incorporate the requirements in the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services. OCC also plans to revise other internal policies and procedures to align with the remaining requirements in the SEC Governance Rules that include, among other things, the identification and analysis of directors for independence, and the management of risks from relationships with service providers for core services.²³ OCC believes that the proposed changes will allow OCC to

²² 17 CFR 240.17Ad-25(j).

²³ OCC has included as confidential Exhibits 3A through 3E to File No SR-OCC-2024-015 the other internal policies and procedures referenced here.

appropriately comply with the SEC Governance Rules by including the proposed provisions in OCC's governance documents.

A. Purpose

The purpose of this proposed rule change by OCC is to modify its governance documents to implement changes that are designed to comply with requirements in the SEC Governance Rules, which are found in 17 CFR 240.17Ad-25 ("Rule 17Ad-25").²⁴ In the Commission's adopting release, the Commission clarifies that it is adopting new rules to improve the governance of registered clearing agencies by reducing the likelihood that conflicts of interest may influence a board of directors or equivalent governing body of a registered clearing agency.²⁵ In addition, the SEC Governance Rules identify certain responsibilities of a clearing agency board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency.²⁶

In addition to the proposed rule changes necessary to comply with the SEC Governance Rules, OCC proposes a series of rule changes identified during OCC's annual review process. While these proposed changes to OCC's governance documents are described in further detail below, thematically, they consist of the following:

- i. Proposed changes in effort to achieve compliance with the SEC Governance Rules:
 - Revisions to OCC's Board Charter to specify: (i) a majority of OCC's Board be comprised of independent directors (ii) that each Board-level committee established by the Board and that has delegated authority from the Board be

²⁴ 17 CFR 240.17Ad-25.

²⁵ See SEC Adopting Release at 84454.

²⁶ Id.

comprised of a majority of independent directors, and (iii) the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services.

- Revisions to the charters for OCC's six Board-level committees that have delegated authority from the Board of Directors, including the GNC Charter, Risk Committee Charter, Technology Committee Charter, CPC Charter, Regulatory Committee Charter, and Audit Committee Charter, to specify that each committee be comprised of a majority of directors who are independent.
- Revisions to OCC's GNC Charter to specify the responsibilities of the GNC, including that: (i) the GNC specify fitness standards for serving as a director that are documented in writing and approved by the Board; (ii) the GNC maintain a written evaluation process to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements; and (iii) the outcome of that evaluation process be documented consistent with regulatory requirements.
- Revisions to OCC's Risk Committee Charter to specify that in making their nominations for the Risk Committee, the GNC and the Board will take into consideration the ability of the Risk Committee to provide a risk-based, independent, and informed opinion on all matters presented to the Risk Committee for consideration.
- Revisions to OCC's Fitness Standards to include the consideration of: (i) whether the nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives, and (ii) the views of

other stakeholders, aside from owners and participants, who may be affected by decisions of OCC's Board.

- Revisions to OCC's Third-Party Risk Management Framework to incorporate the requirements in the SEC Governance Rules related to management of risks from relationships with service providers for core services. This includes requiring senior management to: (i) evaluate and document risks related to an agreement with a service provider for core services; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; and (iii) perform ongoing monitoring of service providers for core services and report to the Board any action taken by senior management to remedy significant deterioration in performance, address material issues, and assess and document weaknesses or deficiencies that cannot be remedied.
- ii. Proposed changes identified during OCC's annual review process:
- Revisions to OCC's Board Charter to provide specific requirements used to determine what constitutes a Public Director.
 - Revisions to Article III, Section 6A of OCC's By-Laws to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's Fitness Standards to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs.

- Revisions to OCC’s Regulatory Charter to incorporate minor grammatical updates.
- Revisions to OCC’s Third-Party Risk Management Framework to: (i) define “Exchange Relationship” as it relates to risks arising from third-party relationships; (ii) update the description of “Information Technology and Security risks and “Legal and Regulatory risks” to align with current practice; (iii) update the name and abbreviation of OCC’s working group to reflect the combination of two pre-existing working groups; and (iv) provide additional clarifying information on how OCC engages and manages vendor relationships.

OCC’s Existing Governance Structure

Currently, OCC’s Board of Directors is composed of Public Directors,²⁷ Exchange Directors,²⁸ Member Directors,²⁹ and a Management Director.³⁰ OCC’s current Board is comprised of up to twenty-one directors total, including nine Member Directors, up to six Public Directors, five Exchange Directors, and one Management Director. In this way, the directors that serve on the Board represent a range of different stakeholders from the markets that OCC serves. OCC’s Board already reviews the independence of each director through its Director Questionnaire, which is used to facilitate the analysis of

²⁷ Terms regarding service by Public Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at “Additional Criteria for the Public Directors,” See supra note 4.

²⁸ Terms regarding service by Exchange Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at “Additional Criteria for Exchange Directors” Id.

²⁹ Terms regarding service by Member Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at “Additional Criteria for Member Directors” Id.

³⁰ Terms regarding service by the Management Director are set forth in OCC’s By-Laws. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7 Id.

whether a director appropriately can be considered independent, as defined by the Board, and to identify and document any potential conflicts of interest. OCC's current processes require, among other things, an annual attestation of the information included in the Director Questionnaire. OCC also maintains a Code of Conduct for OCC Directors that requires that directors update the necessary documents and information if there are any changes.

OCC also already maintains a Board-level Risk Committee and GNC, as required by the SEC Governance Rules. In addition to the Risk Committee and GNC, OCC's Board oversees four other Board-level committees that are comprised of certain Board directors and that assist the Board in carrying out its supervisory role. The other committees include the Regulatory Committee, the Technology Committee, the Audit Committee, and the CPC. In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board-level committees, and Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC's website.³¹

In addition to maintaining a Board-level Risk Committee, OCC also maintains a non-Board-level risk management committee. This non-Board-level risk management committee is a subset of OCC's existing Financial Risk Advisory Council ("FRAC") and is comprised of clearing members and customers of clearing members. As required by the

³¹ See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

recently adopted CFTC governance rules,³² OCC consults with this non-Board-level risk committee on all matters that could materially affect the risk profile of OCC.³³ As such, OCC believes this also satisfies the SEC Governance Rules requirement for the board of directors to solicit and consider viewpoints of participants and other relevant stakeholders regarding material developments in its risk management and operations.³⁴

Lastly, OCC already maintains a Third-Party Risk Management Framework that is reviewed and approved at least annually by OCC’s Risk Committee and Board. OCC’s Third-Party Risk Management Framework outlines OCC’s approach to identify, measure, monitor, and manage risks arising from third-party relationships, consistent with certain requirements in the SEC Governance Rules that require senior management to be responsible for establishing policies and procedures that govern relationships and manage risks related to agreements with service providers for core services, and that require the board of directors to review and approve such policies and procedures.³⁵

Proposed Changes to OCC’s Board Charter

The Mission of the Board

The SEC Governance Rules require the Board to be comprised of a majority of “independent directors” as that term is defined in the SEC Governance Rules.³⁶ To align with this requirement, OCC proposes to modify its Board Charter to clarify that a

³² See 88 FR 44675 (July 13, 2023) (“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

³³ OCC’s FRAC Guiding Principles is included as confidential Exhibit 3F to File No SR-OCC-2024-015, and provides more information on the responsibilities and composition of the non-Board-level risk management committee.

³⁴ 17 CFR 240.17Ad-25(j).

³⁵ 17 CFR 240.17Ad-25(i)(3).

³⁶ 17 CFR 240.17Ad-25(a).

majority of directors, rather than a substantial portion of directors, be independent directors, as defined by the SEC Governance Rules³⁷ and the judgement of the Board. Specifically, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by ensuring that at least a majority of the directors on the Board are independent as determined by the Board and in accordance with Securities and Exchange Commission Rule 17Ad-25(b) adopted on December 5, 2023.³⁸ OCC's proposed changes expand the requirement that all Board-level committees, not just the Audit Committee, be comprised of independent directors. Specifically, OCC's proposed changes eliminate the reference that only the Audit Committee of the Board be comprised of independent directors and provide that at least a majority of the directors on each Board-level committee be comprised of independent directors.

The SEC Governance Rules also require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services, and require senior management to be responsible for establishing the policies and procedures and the Board to be responsible for reviewing and approving such policies and procedures.³⁹ The SEC Governance Rules also require senior management to perform ongoing monitoring of the relationship with a service provider for core services and report to the Board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such

³⁷ 17 CFR 240.17Ad-25(b).

³⁸ Id.

³⁹ 17 CFR 240.17Ad-25(i)(2),(3).

monitoring.⁴⁰ If the risks or issues cannot be remedied, the SEC Governance Rules require that senior management assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the Board.⁴¹ To align with these requirements, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by overseeing service providers that provide core services for OCC, including reviews of risk assessments for current vendors and approving terms for new vendors that will provide core services for OCC. OCC's proposed changes would also provide that the Board fulfills its oversight role by overseeing senior management's review and approval of an agreement that establishes a relationship with a service provider for core services, and overseeing senior management's risk assessment for such agreements. In addition, OCC's proposed changes provide that the Board review and approve policies and procedures established by senior management that govern relationships and manage risks related to agreements with service providers for core services. Lastly, OCC's proposed changes provide that the Board evaluate any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through senior management's monitoring of relationships with a service provider for core services, and oversee senior management's assessment and document of weaknesses or deficiencies with the service provider if such risks or issues cannot be remedied.

Board Issues – Size of Board; Composition

The SEC Governance Rules define independent director as “a director of the registered clearing agency who has no material relationship with the registered clearing

⁴⁰ 17 CFR 240.17Ad-25(i)(4).

⁴¹ Id.

agency or any affiliate thereof.”⁴² The SEC Governance Rules require that the Committee affirmatively determine and document whether a nominee or director is appropriately categorized as an independent director, as defined in the SEC Governance Rules.⁴³ To align with this requirement, OCC proposes to modify its Director Questionnaire to align OCC’s analysis of potential conflicts with the applicable regulatory requirements in the SEC Governance Rules and facilitate the analysis of whether a nominee or director appropriately can be considered independent.

Furthermore, to reflect the definition of independent director as defined by the SEC Governance Rules⁴⁴, OCC’s proposed changes to the Board Charter would also state that it is the policy of the Board that the Board at all times reflect that a majority, rather than a substantial portion, of directors be “independent” as defined by the SEC Governance Rules and the judgment of the Board. OCC’s proposed changes remove the reference that a substantial portion of directors must be independent “of OCC and OCC’s management.” OCC believes these proposed changes to the Board composition section of the Board Charter will satisfy the independent director requirement, as defined in the SEC Governance Rules.

Board Issues – Selection of Exchange Directors

As described in more detail below, the SEC Governance Rules contain several requirements related to the responsibilities of a nominating committee.⁴⁵ Currently, all OCC directors are subject to a standard criterion outlined in OCC’s existing Fitness

⁴² 17 CFR 240.17Ad-25(a).

⁴³ 17 CFR 240.17Ad-25(b)(2).

⁴⁴ 17 CFR 240.17Ad-25(a).

⁴⁵ 17 CFR 240.17Ad-25(c).

Standards that is applicable to all directors and used when determining the nomination of a director. The SEC Governance Rules require that the nominating committee must have a written evaluation process whereby the nominating committee shall evaluate nominees under consideration for a directorship and evaluate the independence of nominees and directors. OCC's proposed changes to the Board Charter clarify this requirement and the role of the GNC when describing the selection of Exchange Directors. OCC's proposed changes state that as provided in the By-Laws, each Exchange Director shall, after evaluation by the Governance and Nominating Committee, be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders.

Committees – Board Committees

As noted above, OCC maintains six Board-level committees including the GNC, the Risk Committee, Technology Committee, CPC, Regulatory Committee and Audit Committee. Subject to the direction of the Board, all six committees are empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the committee charters. The SEC Governance Rules specify that any Board committee that has the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself as identified in paragraph (b)(1) of Rule 17Ad-25.⁴⁶ To reflect this requirement, OCC's proposed changes to its Board Charter provide that each committee established by the Board must be comprised of a majority of directors who are deemed independent by the Board and in accordance with the SEC Governance Rules.

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17 CFR 240.17Ad-25(e).

Committees – Independence for Audit Committee Service

For clarity and consistency, OCC also proposes to add the word “additional” prior to the word “independence” when describing the independence criteria for the Audit Committee service. This helps to clarify that OCC maintains separate independence requirements for the Audit Committee, which are also consistent with listed company Audit Committee standards⁴⁷ and are in addition to the requirements outlined in the SEC Governance Rules.

Proposed Changes to OCC’s Board Charter and By-Laws Identified During OCC’s Annual Review Process

As part of OCC’s annual review of its Board Charter, OCC is proposing changes to its Board Charter and Article III of the By-Laws to provide specific requirements used to determine whether an individual director meets the definition of a Public Director. As outlined in Article III of OCC’s current By-Laws, OCC’s existing Board of Directors must be composed of nine Member Directors, up to five Exchange directors, no less than five Public Directors, and may include one Management Director.⁴⁸ To account for changes in regulatory requirements, OCC’s proposed changes to the Board Charter provide that OCC’s Board must be comprised of no less than five directors who are not an associated person or employee of (i) an entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i). OCC proposes to remove reference to the language that the director must not be affiliated with any national

⁴⁷ See Nasdaq Listing Rule 5605(c)(2) and Section 303A.06 of NYSE Listed Company Manual.

⁴⁸ See supra note 4, Article III, Section I of the By-Laws.

securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

To incorporate these proposed changes in the definition of a Public Director as described in OCC's Board Charter, OCC also proposes to modify Article III, Section 6A of the By-Laws.⁴⁹ OCC's proposed changes to Article III, Section 6A of the By-Laws provide that prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the GNC shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Commission or CFTC; or (ii) affiliate of such an entity described in (i) and submit a list of its nominations in writing to the Board of Directors. To remain consistent with the proposed changes in OCC's Board Charter and provide specific requirements for Public Directors, OCC proposes to eliminate reference to the language that the person must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

OCC believes these proposed changes to its Board Charter and By-Laws identified during the annual review process provide specific requirements for how OCC determines whether a director is affiliated in the industry and the requirements applicable to a Public Director.

Proposed Changes to OCC's GNC Charter

Purpose

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Id.

The SEC Governance Rules require, among other things, that registered clearing agencies establish a nominating committee and a written evaluation process for evaluating board nominees and the independence of nominees and directors and specify requirements with respect to its composition, director fitness standards, and documentation of the outcome of the written evaluation process.⁵⁰ As noted above, OCC already maintains a GNC, and maintenance of OCC's existing GNC is consistent with the requirement in the SEC Governance Rules that OCC must have a nominating committee. OCC's existing GNC Charter provides that the purpose of the GNC is to assist the Board in overseeing OCC's corporate governance processes, including assessing that OCC's governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interest. To clarify the role of the GNC and more closely align with the language in the SEC Governance Rules requirement that the nominating committee evaluate board nominees, OCC's proposed changes to the GNC Charter provide that the GNC is to assist the Board in overseeing OCC's corporate governance processes, including evaluating candidates for Board service.

Membership and Organization

The SEC Governance Rules require a majority of directors serving on the nominating committee be independent directors, and the chair of the nominating

⁵⁰ 17 CFR 240.17Ad-25(c).

committee be an independent director.⁵¹ To reflect this requirement, OCC's proposed changes to the GNC Charter provide that at least a majority of the Committee must be comprised of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(c)(2) and the judgment of the Board. OCC's proposed changes also specify that the Chair must be a Public Director, who is also an independent director as defined in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(2).⁵² OCC believes these proposed changes align with the SEC Governance Rules requirements related to composition requirements for a nominating committee.

Functions and Responsibilities

The SEC Governance Rules also contain several other requirements related to the responsibilities of a nominating committee. These requirements provide that: (i) the nominating committee must have a written evaluation process that includes the evaluation of all nominees, no matter the source of nomination, and an evaluation of all nominees and directors regarding status as independent directors⁵³; and (ii) the nominating committee must document the outcome of its written evaluation processes, including identification of whether each nominee or director meets the definition of independent director, as defined in the SEC Governance Rules.⁵⁴ To align with these responsibilities, OCC's proposed changes to the GNC Charter provide that the GNC must maintain a written evaluation process, which will be documented in meeting materials

⁵¹ 17 CFR 240.17Ad-25(c)(2).

⁵² Id.

⁵³ 17 CFR 240.17Ad-25(c)(1).

⁵⁴ 17 CFR 240.17Ad-25(c)(4)(iv).

and minutes, to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements. As part of OCC's written evaluation process that will be documented in meeting materials and minutes, the GNC will review a packet of materials that contains background information for all Board candidates as well as any other documentation that describes other relevant information and criteria for Board candidates. Additionally, OCC maintains various written documents that would guide the GNC's evaluation of director candidates (e.g. Fitness Standards, director questionnaire). These documents provide the requirements for director candidates and articulate what the GNC must consider when evaluating prospective Board members. OCC's proposed changes also specify that the outcome of the written evaluation process must be documented consistent with applicable regulatory requirements. OCC's existing GNC Charter provides that the GNC identifies, screens and reviews individuals qualified to be elected or appointed as Member Directors or Public Directors. The nomination of Exchange Directors is separately the responsibility, under the By-Laws, of each OCC stockholder exchange.⁵⁵ To reflect the requirements outlined in the SEC Governance Rules, OCC's proposed changes provide that the GNC must identify, screen, and review individuals qualified to be elected or appointed, as the case may be, to serve as Directors. Here, OCC's proposed changes eliminate the specific terms "Member Directors" and "Public Directors" and generally use the term "Directors" because the SEC Governance Rules require that the GNC perform the same evaluation process for all nominees for potential service as directors.

⁵⁵See supra note 4.

An additional requirement of the nominating committee that is outlined in the SEC Governance Rules is that the fitness standards for serving as a director must be specified by the nominating committee, documented in writing, and approved by the Board.⁵⁶ Although OCC already maintains fitness standards for directors, OCC's proposed changes to the GNC Charter state that the GNC must specify fitness standards for serving as a director that are documented in writing and approved by the Board in order to comply with Rule 17Ad-25(c)(3).

The SEC Governance Rules also require that the nominating committee document the outcome of the written evaluation process consistent with the fitness standards such that the process demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency.⁵⁷ To align with this requirement, OCC's proposed changes in the GNC Charter provide that the Committee shall, in its evaluation of nominees for serving as directors, consider the views of other stakeholders who may be affected by the decisions of the Board of Directors, other than owners of the Corporation and Clearing Members.

To align with the process of evaluation for determining an independent director as described by the SEC Governance Rules and the requirement for the nominating committee to evaluate the independence of nominees and directors,⁵⁸ OCC's proposed changes provide that the GNC must review and advise the Board with regard to whether directors are independent directors in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(1).

⁵⁶ 17 CFR 240.17Ad-25(c)(3).

⁵⁷ 17 CFR 240.17Ad-25(c)(4)(iii).

⁵⁸ 17 CFR 240.17Ad-25(c)(1).

OCC's GNC Charter provides that the GNC advises the Board with respect to committee structure, operations and charters, including recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman. To incorporate the requirement that the membership of each risk management committee be re-evaluated annually as defined by 17Ad-25(d)(1),⁵⁹ OCC's proposed changes to the GNC Charter include the requirement that each calendar year, the GNC must recommend to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman.

Proposed Changes to OCC's Risk Committee Charter

Membership and Organization

The SEC Governance Rules require, among other things, the establishment of a risk management committee of the Board to assist the Board in overseeing the risk management of the clearing agency.⁶⁰ As noted above, OCC already satisfies this requirement through the maintenance of its Risk Committee of the Board. In the performance of its duties, the SEC Governance Rules require the Risk Committee to be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety, and efficiency of the registered clearing agency.⁶¹ To promote clear consistency with these requirements, OCC's proposed changes to the Risk Committee Charter provide that in making their nominations, the GNC and the Board take into consideration

⁵⁹ 17 CFR 240.17Ad-25(d)(1).

⁶⁰ 17 CFR 240.17Ad-25(d)(1).

⁶¹ 17 CFR 240.17Ad-25(d)(2).

the desire to obtain input from a broad array of market participants on risk management issues and the ability of the Committee to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration.

The SEC Governance Rules also require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶² Because the Risk Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Risk Committee Charter, OCC's proposed changes to the Risk Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Functions and Responsibilities

The SEC Governance Rules require, among other things, that a clearing agency address the management of risks from relationships with service providers for core services, as defined by the SEC Governance Rules.⁶³ These requirements include that each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to evaluate and document the risks related to an agreement with a service provider for core services.⁶⁴ OCC's existing Risk Committee Charter provides that the Committee shall receive a quarterly report from management that provides information on the

⁶² 17 CFR 240.17Ad-25(e).

⁶³ 17 CFR 240.17Ad-25(i).

⁶⁴ 17 CFR 240.17Ad-25(i)(1).

effectiveness of OCC's management of third-party risks, including key linked and vendor relationships. To incorporate the SEC Governance Rules requirements that senior management must evaluate and document the risks related to an agreement with a service provider for core services, OCC's proposed changes to the Risk Committee Charter provide that the Committee shall also provide risk assessments to the Board for any service providers providing core services to OCC, consistent with the SEC Governance Rules.⁶⁵

Proposed Changes to OCC's Technology Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁶ Because the Technology Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Technology Committee Charter, OCC's proposed changes to the Technology Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's CPC Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent

⁶⁵ Id.

⁶⁶ 17 CFR 240.17Ad-25(e).

directors as the Board itself.⁶⁷ Because the CPC, subject to the direction of the Board, is empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the CPC Charter, OCC's proposed changes to the CPC Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's CPC Charter Identified During OCC's Annual Review Process

As part of OCC's annual review of the CPC Charter, OCC also proposes to make updates to the CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs. OCC's proposed changes provide that the CPC must oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, compensation performance management, diversity, equity, and inclusion programs, training and development, benefits, and succession planning for critical roles. The purpose of these proposed changes to the CPC Charter is to more closely align with OCC's existing Human Resources programs and policies.

Proposed Changes to OCC's Regulatory Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent

⁶⁷ Id.

directors as the Board itself.⁶⁸ Because the Regulatory Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Regulatory Committee Charter, OCC's proposed changes to the Regulatory Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's Regulatory Committee Charter Identified During OCC's Annual Review Process

As part of OCC's annual review process, OCC also proposes to make one minor grammatical update to the Regulatory Committee Charter by replacing the word "in" with the word "is" where needed in a sentence under section II subpart B of the document.

Proposed Changes to OCC's Audit Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁹ Because the Audit Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Audit Committee Charter, OCC's proposed changes to the Audit Committee Charter provide that at least a majority of the Committee must be composed of directors

⁶⁸ 17 CFR 240.17Ad-25(e).

⁶⁹ Id.

who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's Fitness Standards

Criteria Applicable to all Directors

As described above, OCC already maintains Fitness Standards for directors. In addition to the requirement that the GNC specify the Fitness Standards and that the Fitness Standards be approved by the Board, the SEC Governance Rules also require that the GNC's written evaluation process in regards to the Fitness Standards consider: (i) the nominee's expertise, availability, and integrity, and demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge experience and perspectives; (ii) the views of other stakeholders who may be affected by OCC's decisions; and (iii) whether each nominee or director would meet the definition of independent director in the SEC Governance Rules and whether each nominee or director has a known material relationship with OCC or other specified persons.⁷⁰ To align with these requirements more closely, OCC's proposed changes to the Fitness Standards provide that in considering nominees for election or appointment to the Board, the GNC must consider whether the individual would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives and whether the individual understands and is able to consider the general position and views of other stakeholders who may be affected by the decisions of the Board of Directors, other than the owners of OCC and Clearing Members.

⁷⁰ 17 CFR 240.17Ad-25(c)(4)(i),(iii), (iv).

Proposed Changes to OCC's Fitness Standards Identified During OCC's Annual Review Process

To incorporate the proposed changes identified during OCC's annual review process as it relates to the description of a Public Director, OCC also proposes changes to the criteria for Public Directors as outlined in the Fitness Standards. To align with the proposed changes in OCC's Board Charter and By-Laws, OCC's proposed changes to the Fitness Standards remove language that states the director must not have an affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker-dealer in securities, and replaces that with the additional criterion that the director must not be an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission; or (ii) affiliate of such an entity described in (i). OCC's proposed changes also provide that for the avoidance of doubt, this criterion will not preclude a person from service as a Public Director solely based on some other relationship with an entity described in (i) or (ii) above that does not involve being an associated person or employee of the entity, such as might be the case, depending on the circumstances, in connection with serving as a director. OCC believes these proposed changes more closely align with the requirements under the SEC Governance Rules.

Proposed Changes to OCC's Third-Party Risk Management Framework

The SEC Governance Rules require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services and require senior management

to be responsible for establishing and the Board to be responsible for reviewing and approving such policies and procedures.⁷¹ More specifically, the SEC Governance Rules require, among other things, that senior management: (i) evaluate and document risks related to an agreement with a service provider for core services, as defined by the SEC Governance Rules; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; (iii) be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for cores service and require the Board to be responsible for review and approving such policies and procedures; and (iv) perform ongoing monitoring of service providers for core services and to report to the Board any action taken by senior management to remedy significant deterioration in performance, to address material issues, or to assess and document deficiencies that cannot be remedied.⁷²

OCC's existing Third-Party Risk Management Framework already meets certain requirements in the SEC Governance Rules.⁷³ OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage risks arising from third-party relationships including, but not limited to, those relationships with Clearing Members, Clearing Banks, custodians, liquidity providers, financial institutions, financial market utilities, exchanges, and vendors. In addition, OCC's Third-

⁷¹ 17 CFR 240.17Ad-25(i).

⁷² 17 CFR 240.17Ad-25(i)(1)-(4).

⁷³ 17 CFR 240.17Ad-25(i)(3).

Party Risk Management Framework is reviewed and approved by OCC's Risk Committee and Board pursuant to OCC's internal policies and procedures.⁷⁴

To incorporate the remaining requirements of the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services, OCC proposes several updates to section III of the Third-Party Risk Management Framework.⁷⁵ First, OCC's proposed changes revise the header in section III to include the words "Third-Party" before "Relationship Lifecycle" to provide further clarity and remain consistent with other headers throughout the document.

In addition, OCC's proposed changes to the Third-Party Risk Management Framework provide that certain third-parties may constitute service providers for core services and are subject to enhanced lifecycle management by OCC's management and Board. OCC's proposed changes specify that this enhanced management applies at the initial on-boarding stage and on an ongoing basis. Consistent with the requirements in the SEC Governance Rules,⁷⁶ OCC's proposed changes provide that during the on-boarding stage and prior to entering into an agreement with a service provider for core services, OCC's Management Committee will evaluate and document the risks related to the agreement, including under changes to circumstances and potential disruptions, and assess whether the risks can be managed in a manner consistent with the Third-Party Risk Management Framework (the "Risk Analysis"). OCC's proposed changes also clarify that prior to entering agreements establishing a relationship with a service provider for

⁷⁴ OCC has included its Policy Governance Policy, which requires Board review and approval of the Third-Party Risk Management Framework, as confidential Exhibit 3G to File No. SR-OCC-2024-015.

⁷⁵ 17 CFR 240.17Ad-25(i).

⁷⁶ 17 CFR 240.17Ad-25(i)(1).

core services, OCC's Management Committee will submit the agreement, as well as its Risk Analysis, to the Board for review and approval, in compliance with the requirements in the SEC Governance Rules.⁷⁷

Furthermore, OCC's proposed changes state that service providers for core services will be monitored on an ongoing basis. OCC's proposed changes provide that OCC's Management Committee evaluates performance of service providers for core services and either: (i) remedies significant deterioration in performance of the service provider for core services; (ii) addresses changing risks or material issues with the service provider for core services identified through such monitoring; or (iii) if such risks or material issues cannot be remedied, assesses and documents weaknesses or deficiencies with the service provider for core services. In addition, OCC's proposed changes provide that OCC's Management Committee will report to the Board for its evaluation any action taken by the Management Committee to remedy significant deterioration in performance of the service provider for core services or address changing risks or material issues with the service provider for core services. OCC's proposed changes will clarify that if the risks or issues with the service provider for core services cannot be remedied, OCC's Management Committee will assess and document the weaknesses and deficiencies and submit to the Board the documented weaknesses or deficiencies in the relationship with the service provider for core services.

OCC's existing Third-Party Risk Management Framework states that risks identified throughout the relationship lifecycle are reported and escalated through associated working groups. OCC's proposed changes provide that each working group

⁷⁷ 17 CFR 240.17Ad-25(i)(2).

has a chair and designated Management Committee member who are responsible for identifying the matters to be escalated to the Management Committee, “in accordance with this Framework.” By including the reference “in accordance with this Framework,” OCC believes this language aligns more closely with the requirements in the SEC Governance Rules.⁷⁸

To align with the defined terms in the SEC Governance Rules,⁷⁹ OCC’s proposed changes to the Third-Party Risk Management Framework include the definition of “Service Provider for Core Services.” OCC’s proposed changes define service provider for core services as any person that, through a written services provider agreement for services provided to or on behalf of OCC, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of OCC. OCC believes these proposed changes to the Third-Party Risk Management Framework satisfy the requirements outlined in the SEC Governance Rules.⁸⁰

*Proposed Changes to OCC’s Third Party-Risk Management Framework
Identified During OCC’s Annual Review Process*

OCC also proposes to incorporate additional edits to the Third-Party Risk Management Framework, as outlined below, to reflect the proposed changes determined through OCC’s annual review process.

Under section I, Executive Summary, OCC proposes to expand the description of risks arising from “Exchanges” to risks arising from “Exchange Relationships.” This

⁷⁸ 17 CFR 240.17Ad-25(i)(1).

⁷⁹ 17 CFR 240.17Ad-25(a).

⁸⁰ 17 CFR 240.17Ad-25(i).

proposed change, which is also reflected in section IV, Third-Party Relationship Management, and throughout the remainder of the document, encompasses risks arising from third-party relationships including options exchanges, futures markets, OTC trade sources or loan markets. OCC believes this proposed change more clearly describes the current risk management activities related to third-party relationships including exchanges and those relationships that are not registered exchanges. OCC's proposed changes also relocate the definition of Exchange Relationships from footnote 2 to section V, Definitions, to promote clarity and consistency throughout the document.

Under section II, Risk Identification, OCC proposes to expand the description of (i) Information Technology and Security risks and (ii) Legal and Regulatory risks. For Information Technology and Security risks, the current description acknowledges that risks arise when third-parties are unable to safeguard OCC data or maintain capabilities to support OCC's operations. While the current description is accurate, it does not encompass the full scope of the current third-parties' obligations required by OCC. OCC proposes to include that Information Technology and Security risks also arise when third-parties are unable to safeguard OCC's systems, in addition to OCC data. OCC also proposes to incorporate the language "in accordance with OCC's service standards" into the description to clearly outline the enforcement of responsibilities. OCC believes this change will better define Information Technology and Security risks from relationships with third-parties related to OCC. For Legal and Regulatory risks, OCC's proposed changes provide that Legal and Regulatory risks arise when a third-party fails to fulfill its obligations to OCC or when OCC fails to fulfill its obligations to a third-party. OCC's proposed changes provide that Legal and Regulatory risks also arise when a third-party

fails to comply with regulatory standards and protocols agreed to with OCC. OCC believes these proposed changes more clearly define Legal and Regulatory risks that arise from relationships with third-parties. OCC also proposes to make minor, non-substantive changes to section II, such as decapitalizing the words “clearing fund” when needed.

Under section III, Relationship Lifecycle, OCC proposes to revise specific language related to off-boarding of third-parties. The off-boarding section currently provides that OCC finalizes its third-party relationship lifecycle by completing “any operational tasks necessary to off-board the relationship.” OCC proposes to include the language “in compliance with agreement terms” to clarify current risk management expectations and responsibilities relating to third-party off-boarding. This revision would be consistent with OCC’s current operations and off-boarding processes. OCC also proposes to make several minor, non-substantive changes to this section, including changing language from “determination to terminate” to “termination of,” and replacing the word “relationship” with “engagement” when describing third-party arrangements with OCC to promote additional clarity. In addition, to provide additional clarity, OCC proposes to replace the word “defined” with “specified” when explaining the decision-making authority, functions and responsibilities in the working group procedure.

Under section IV, Third-Party Relationship Management, OCC proposes to revise the header from “Exchanges” to “Exchange Relationships” to reflect the proposed changes in section I. OCC’s proposed changes update the On-Boarding section under “Exchange Relationships” by revising the distribution methods of the summary activities of exchange relationship. The current description states that summaries of due diligence and on-boarding activities are presented to the Board of Directors for approval to launch.

OCC proposes to clarify the reporting requirements by specifying where they should be reported. OCC's proposed changes would direct the reporting of due diligence and on-boarding activities to the Management Committee. Further, the proposed revisions would direct summaries of legal documents and requirements to the Board of Directors. These proposed revisions would update and clarify the description of OCC's current approach to on-boarding third-parties without impacting current OCC operations. Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Ongoing Monitoring sub-section by removing reference of legal risk related to Exchange Relationships, and including the language "and escalate identified legal risks to OCC's Legal Department." This proposed change clarifies the responsibilities of OCC's business operations and TPRM teams. Legal risks related to Exchange Relationships are monitored by OCC legal, but if legal risks are identified by business operations or TPRM during the ongoing monitoring process, these legal risks should be escalated. OCC believes the proposed change will better describe current risk management activities related to ongoing monitoring of third-party relationships with exchanges. OCC also proposes to update language in the Off-Boarding sub-section by eliminating the specific language that states "such as limiting connectivity with the Exchange" when referencing the immediate actions OCC can take upon the termination of an Exchange Relationship. OCC proposes to remove this language to provide further clarification that limiting connectivity with an Exchange is not specific only to off-boarding situations; OCC's action of limiting connectivity with an Exchange can occur in other situations as well. OCC believes the elimination of this language better aligns with OCC's overall responsibility related to off-boarding and provides for greater flexibility related to OCC's

immediate actions. Finally, OCC proposes several non-substantive, grammatical changes to the Ongoing Monitoring sub-section such as replacing the word “communicate” with “communication of” and “seek” with “solicitation of.”

Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Vendors sub-section of the document. OCC’s proposed changes provide that prior to commencing on-boarding of a new technology vendor, implementing new capabilities, or services to existing technology, Information Technology reviews the request to identify solutions and analyze requirements to verify that they are in line with enterprise strategic requirements. OCC believes these proposed changes more clearly assign ownership and accountability for expectations around risk management for new vendors throughout OCC. In addition, in the On-Boarding section under Vendors, OCC’s proposed changes state that an agreement that addresses control and business requirements is then negotiated with the vendor and executed by authorized signatories designated through the process outlined in the Legal Services Policy. OCC’s proposed changes revise the language that “authorized signatories” rather than an “OCC officer” will be responsible for executing agreements that address control and business requirements. OCC believes the revised text more closely aligns with current practices. Furthermore, this revision would encourage OCC’s longstanding practices to update internal policies, directing staff towards correct procedures and personnel requirements.

OCC’s Third-Party Risk Management Framework also states that vendor relationship managers (“VRMs”) and Third-Party Risk Management (“TPRM”) monitor vendors to assess whether they are delivering services as required by applicable agreements. To align with current OCC business practice and promote clear

accountability, OCC's proposed changes eliminate reference to "TPRM" because it is the VRMs who are responsible for monitoring vendors, while TPRM gathers information and escalates if necessary.

Under section V, Definitions, OCC's proposed changes in the Watch Level section include the addition of "risk management" in its list of deteriorations which signal a risk response. OCC believes this revision would better describe the current risk management methods related to watch level monitoring and would not substantively alter existing processes.

Lastly, OCC's proposed changes to the Third-Party Risk Management Framework reflect the name change as a result of the combination of two working groups. OCC's Exchange Working Group and Vendor Risk Working Group will be combined to form the Exchange and Vendor Working Group, therefore OCC's proposed changes throughout the Third-Party Risk Management Framework reflect the merger of these two groups. OCC's proposed changes also reflect the change in the acronym of the new combined working group's name.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act.⁸¹ Section 17A(b)(3)(F) of the Act⁸² requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance

⁸¹ 15 U.S.C. 78q-1.

⁸² 15 U.S.C. 78q-1(b)(3)(F).

and settlement of securities transactions.⁸³ OCC believes that the proposed rule changes are consistent with these requirements because the proposed changes are designed to, among other things, modify OCC's governance documents such that: (i) OCC's Board and Board-level committees are composed of independent directors, as defined by the SEC Governance Rules, (ii) OCC's policies and procedures identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest, and (iii) OCC's policies and procedures address certain aspects of risk management in connection with relationships with service providers for core clearing agency services.

OCC believes the proposed changes to incorporate the independent director requirement help to promote the ability of the Board to perform its oversight of management function, support a plurality of viewpoints voiced at the Board level, ensure a balance between stakeholders with divergent views, and reduce the likelihood that conflicts of interest may influence the Board. OCC believes that establishing requirements that the Board be comprised of a majority of directors who do not have a material relationship with the registered clearing agency or affiliate thereof helps to promote the integrity of OCC's risk management function, and therefore helps to promote prompt and accurate clearance and settlement of securities transactions and safeguard the securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC believes the proposed changes regarding the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services also help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds in its custody or control or for which OCC is

⁸³ Id.

responsible, consistent with Section 17A(b)(3)(F). The potential failure of a service provider for core services to perform its obligations could pose a significant operational risk to OCC and impact the ability for OCC to facilitate prompt and accurate clearance and settlement. Therefore, by requiring that senior management establish policies and procedures that govern relationships with service providers for core services, manage risks related to those relationships, and perform ongoing monitoring of those relationships, OCC believes these proposed changes help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC's proposed changes to its governance documents establish policies and procedures to identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest in the decision-making process involving directors or senior managers of OCC. OCC believes these proposed changes assist in promoting the integrity of OCC's governance arrangements by helping to ensure that potential conflicts of interests are identified when they arise, and that such conflicts are subject to a transparent and uniform process of review, mitigation or elimination and documentation. By incorporating the proposed changes intended to address conflicts of interest related to directors and senior managers, OCC believes this will help to reduce conflicts that could undermine the decision-making process or interfere with fair representation and equitable treatment of clearing members or market participants. Therefore, OCC believes the proposed changes help to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).

Finally, OCC also believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.⁸⁴ Modifying OCC's governance documents through the proposed changes described in Item III above would be consistent with these requirements because the changes would document in a clear, direct, and transparent way the independent director composition of the Board and Board-level committees, the responsibilities of the Board and Board-level committees as it relates to management of conflicts of interest, Board oversight, and management of risks for service providers for core services. In addition, OCC's proposed changes clearly specify the Fitness Standards for serving as a director and the criteria applicable to all directors, which includes the consideration of whether the director nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience and perspectives consistent with Rule 17Ad-22(e)(2)(iv).

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

Section 17A(b)(3)(I) of the Act⁸⁵ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes to modify OCC's governance documents would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the SEC Governance Rules that OCC must comply with by December 5, 2024 and December 5, 2025. The proposed changes to OCC's governance documents are designed to clearly articulate the newly established requirements of the SEC Governance Rules

⁸⁴ 17 CFR 240.17Ad-22(e)(2)(i),(iv),(v).

⁸⁵ 15 U.S.C. 78q-1(b)(3)(I).

including, but not limited to, the Board and committee composition, independent directors, management of conflicts of interest, board oversight, and management of risks from relationships with service providers for core services. The proposed changes to OCC's governance documents also aim to, among other things, increase transparency into board governance and improve the alignment of incentives among owners and participants of OCC by ensuring that a majority of Board members and Board-level committee members be independent directors, as defined by the SEC Governance Rules, and that functions and responsibilities of the Board and Board-level committees are clearly outlined. In addition, the proposed changes to OCC's governance documents help to reduce the likelihood that conflicts of interest may influence the Board. These changes to OCC's governance documents would apply to all Equity Exchanges and Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

Item 8. Advance Notice Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 3A. Director Questionnaire

Exhibit 3B. Director Code of Conduct

Exhibit 3C. Material Agreements Policy

Exhibit 3D. Strategic Sourcing Policy

Exhibit 3E. Related Party Transactions Policy

Exhibit 3F. FRAC Guiding Principles

Exhibit 3G. Policy Governance Policy

Exhibit 5A. OCC's Board Charter

Exhibit 5B. OCC's GNC Committee Charter

Exhibit 5C. OCC's Risk Committee Charter

Exhibit 5D. OCC's Technology Committee Charter

Exhibit 5E. OCC's CPC Charter

Exhibit 5F. OCC's Regulatory Committee Charter

Exhibit 5G. OCC's Audit Committee Charter

Exhibit 5H. OCC's Fitness Standards

Exhibit 5I. OCC's Third-Party Risk Management Framework

Exhibit 5J OCC's By-Laws, Article III

Exhibits 3A, 3B, 3C, 3D, 3E, 3F and 3G are omitted and filed separately with the Commission in connection with a request for confidential treatment pursuant to 17 CFR 240.24b-2.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2024-015)

[October __, 2024]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to its Governance Documents to Align with Recently Adopted SEC Governance Rules.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change would make modifications to its governance documents, including OCC’s charters, Fitness Standards, and Third-Party Risk Management Framework, as part of an effort to achieve compliance with the recently adopted governance requirements³ by the Commission for clearing agencies registered with the Commission (“registered clearing agencies”) that became effective on February 5, 2024. Registered clearing agencies, like OCC, must comply with most of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98959 (Dec. 5, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) (“SEC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf>.

governance requirements by December 5, 2024. However, the governance requirement for independent directors, as described in further detail below, has a compliance date of December 5, 2025.

In addition to the proposed modifications that OCC believes are necessary to comply with the recently adopted governance requirements, OCC is also including proposed modifications to its governance documents that reflect changes identified during OCC's annual review process. The proposed changes related to the governance requirements and the proposed changes related to OCC's annual review process are differentiated throughout this filing and described in further detail below. For clarification, OCC's Board of Directors Charter and Corporate Governance Principles ("Board Charter"), Governance and Nominating Committee ("GNC") Charter, Risk Committee Charter, Technology Committee Charter, Compensation and Performance Committee ("CPC") Charter, Regulatory Committee Charter, Audit Committee Charter, Fitness Standards, Third-Party Risk Management Framework, and Article III of OCC's By-Laws are collectively referred to in this proposed rule change as OCC's "governance documents."

The proposed changes to OCC's governance documents are contained in Exhibits 5A through 5J, respectively, to File No. SR-OCC-2024-015. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text.

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

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC operates under the jurisdiction of both the Commission and the Commodity Futures Trading Commission ("CFTC"). OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a "covered clearing agency"⁵ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a derivatives clearing organization ("DCO") regulated by the CFTC. OCC is also designated as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council pursuant to Title

⁴ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁵ The term "covered clearing agency" is defined in Exchange Act Rule 17Ad-22(a)(5) to mean "a registered clearing agency that provides the services of a central counterparty or central securities depository." 17 CFR 240.17Ad-22(a)(5).

VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).

As an SEC registered clearing agency and a CFTC registered DCO, OCC is already subject to regulations that impose requirements on its governance structure. For example, the Exchange Act requires OCC’s rules to assure a fair representation of its shareholders and Clearing Members in the selection of its directors and the administration of its affairs.⁶ In addition, SEC rules, among other things, require OCC to have governance arrangements that are clear and transparent and that provide risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board.⁷ In July of 2023, the CFTC also finalized new governance requirements for DCOs.⁸ Those requirements, among other things, require the establishment of one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants. OCC previously filed a proposed rule change with the SEC to implement changes to address these requirements.⁹

OCC currently maintains a robust governance structure that is designed to comply with existing requirements of the Commission and CFTC. Recently, the Commission adopted new regulations regarding governance requirements for registered clearing agencies (“SEC Governance Rules”) that supplement the existing governance

⁶ 17 U.S.C. 78q-1(b)(3)(C).

⁷ 17 CFR 240.17Ad-(22)(e)(2)(i) and (3)(iv).

⁸ See 88 FR 44675 (July 13, 2023) (“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁹ See Securities Exchange Act Release No. 100194 (May 21, 2024), 89 FR 46205 (May 28, 2024) (SR-OCC-2024-005).

requirements applicable to OCC as a registered clearing agency.¹⁰ The SEC Governance Rules require, among other things, that registered clearing agencies:

- (i) Establish requirements that a majority of the members of the board of directors of the registered clearing agency be independent directors, as defined in 17Ad-25(a), and that each registered clearing agency consider all the relevant facts and circumstances to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency that would preclude services as an independent director.¹¹
- (ii) Establish a nominating committee and a written evaluation process whereby such committee evaluates nominees for service as directors and evaluating the independence of nominees and directors,¹² and require that a majority of the directors on the nominating committee be independent directors, including the chair of the nominating committee.¹³ The fitness standards for service as a director must be specified by the nominating committee, documented in writing and approved by the board of directors.¹⁴ The nominating committee must also document the outcome of the written evaluation process consistent with the fitness standards

¹⁰ See SEC Adopting Release, 88 FR 84454.

¹¹ 17 CFR 240.17Ad-25(b)(1),(2).

¹² 17 CFR 240.17Ad-25(c)(1).

¹³ 17 CFR 240.17Ad-25(c)(2).

¹⁴ 17 CFR 240.17Ad-25(c)(3).

required in 17Ad-25(c)(3).¹⁵

- (iii) Establish a risk management committee or committees of the board to assist the board of directors in overseeing the risk management of the registered clearing agency, and the membership of each risk management committee must be re-evaluated annually and at all times include representatives from the owners and participants of the registered clearing agency.¹⁶ The risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency.¹⁷
- (iv) Establish composition requirements for committees that have authority to act on behalf of the board of directors, such that the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors.¹⁸
- (v) Maintain policies and procedures to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.¹⁹

¹⁵ 17 CFR 240.17Ad-25(c)(4).

¹⁶ 17 CFR 240.17Ad-25(d)(1).

¹⁷ 17 CFR 240.17Ad-25(d)(2).

¹⁸ 17 CFR 240.17Ad-25(e).

¹⁹ 17 CFR 240.17Ad-25(g)(1)(2).

- (vi) Maintain policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.²⁰
- (vii) Maintain policies and procedures reasonably designed to: (1) require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation; (3) require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to

²⁰ 17 CFR 240.17Ad-25(h).

assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.²¹

- (viii) Maintain policies and procedures for the board to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in the registered clearing agency's risk management and operations.²²

OCC already maintains risk and nominating committees of the Board, fitness standards for directors, and written procedures for directors to identify and disclose conflicts of interest. However, to implement a compliant approach with those requirements for which OCC believes changes will be necessary, OCC is proposing to revise its governance documents such that the documents set clear and transparent governance standards and provide a framework for compliance. OCC's proposed changes to its governance documents establish requirements that provide: (i) OCC's Board be comprised of a majority of independent directors; (ii) each Board-level committee that has delegated authority from the Board be comprised of a majority of independent directors; (iii) OCC's existing Risk Committee and GNC align with the related requirements in the SEC Governance Rules regarding the responsibilities and composition of the committees; (iv) OCC's Fitness Standards align with the related requirements in the SEC Governance Rules for directors; and (v) OCC's Board Charter and Third-Party Risk Management Framework incorporate the requirements in the SEC

²¹ 17 CFR 240.17Ad-25(i)(1)-(4).

²² 17 CFR 240.17Ad-25(j).

Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services. OCC also plans to revise other internal policies and procedures to align with the remaining requirements in the SEC Governance Rules that include, among other things, the identification and analysis of directors for independence, and the management of risks from relationships with service providers for core services.²³ OCC believes that the proposed changes will allow OCC to appropriately comply with the SEC Governance Rules by including the proposed provisions in OCC's governance documents.

1. Purpose

The purpose of this proposed rule change by OCC is to modify its governance documents to implement changes that are designed to comply with requirements in the SEC Governance Rules, which are found in 17 CFR 240.17Ad-25 ("Rule 17Ad-25").²⁴ In the Commission's adopting release, the Commission clarifies that it is adopting new rules to improve the governance of registered clearing agencies by reducing the likelihood that conflicts of interest may influence a board of directors or equivalent governing body of a registered clearing agency.²⁵ In addition, the SEC Governance Rules identify certain responsibilities of a clearing agency board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency.²⁶

²³ OCC has included as confidential Exhibits 3A through 3E to File No SR-OCC-2024-015 the other internal policies and procedures referenced here.

²⁴ 17 CFR 240.17Ad-25.

²⁵ See SEC Adopting Release at 84454.

²⁶ Id.

In addition to the proposed rule changes necessary to comply with the SEC Governance Rules, OCC proposes a series of rule changes identified during OCC's annual review process. While these proposed changes to OCC's governance documents are described in further detail below, thematically, they consist of the following:

- i. Proposed changes in effort to achieve compliance with the SEC Governance Rules:
 - Revisions to OCC's Board Charter to specify: (i) a majority of OCC's Board be comprised of independent directors (ii) that each Board-level committee established by the Board and that has delegated authority from the Board be comprised of a majority of independent directors, and (iii) the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services.
 - Revisions to the charters for OCC's six Board-level committees that have delegated authority from the Board of Directors, including the GNC Charter, Risk Committee Charter, Technology Committee Charter, CPC Charter, Regulatory Committee Charter, and Audit Committee Charter, to specify that each committee be comprised of a majority of directors who are independent.
 - Revisions to OCC's GNC Charter to specify the responsibilities of the GNC, including that: (i) the GNC specify fitness standards for serving as a director that are documented in writing and approved by the Board; (ii) the GNC maintain a written evaluation process to evaluate all nominees for

potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements; and (iii) the outcome of that evaluation process be documented consistent with regulatory requirements.

- Revisions to OCC's Risk Committee Charter to specify that in making their nominations for the Risk Committee, the GNC and the Board will take into consideration the ability of the Risk Committee to provide a risk-based, independent, and informed opinion on all matters presented to the Risk Committee for consideration.
- Revisions to OCC's Fitness Standards to include the consideration of: (i) whether the nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives, and (ii) the views of other stakeholders, aside from owners and participants, who may be affected by decisions of OCC's Board.
- Revisions to OCC's Third-Party Risk Management Framework to incorporate the requirements in the SEC Governance Rules related to management of risks from relationships with service providers for core services. This includes requiring senior management to: (i) evaluate and document risks related to an agreement with a service provider for core services; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; and (iii) perform ongoing monitoring of service providers for core services and report to the Board any action taken by

senior management to remedy significant deterioration in performance, address material issues, and assess and document weaknesses or deficiencies that cannot be remedied.

- ii. Proposed changes identified during OCC's annual review process:
- Revisions to OCC's Board Charter to provide specific requirements used to determine what constitutes a Public Director.
 - Revisions to Article III, Section 6A of OCC's By-Laws to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's Fitness Standards to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs.
 - Revisions to OCC's Regulatory Charter to incorporate minor grammatical updates.
 - Revisions to OCC's Third-Party Risk Management Framework to: (i) define "Exchange Relationship" as it relates to risks arising from third-party relationships; (ii) update the description of "Information Technology and Security risks" and "Legal and Regulatory risks" to align with current practice; (iii) update the name and abbreviation of OCC's working group to reflect the combination of two pre-existing working groups; and (iv) provide additional clarifying information on how OCC engages and manages vendor relationships.

OCC's Existing Governance Structure

Currently, OCC's Board of Directors is composed of Public Directors,²⁷ Exchange Directors,²⁸ Member Directors,²⁹ and a Management Director.³⁰ OCC's current Board is comprised of up to twenty-one directors total, including nine Member Directors, up to six Public Directors, five Exchange Directors, and one Management Director. In this way, the directors that serve on the Board represent a range of different stakeholders from the markets that OCC serves. OCC's Board already reviews the independence of each director through its Director Questionnaire, which is used to facilitate the analysis of whether a director appropriately can be considered independent, as defined by the Board, and to identify and document any potential conflicts of interest. OCC's current processes require, among other things, an annual attestation of the information included in the Director Questionnaire. OCC also maintains a Code of Conduct for OCC Directors that requires that directors update the necessary documents and information if there are any changes.

²⁷ Terms regarding service by Public Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at "Additional Criteria for the Public Directors," See supra note 4.

²⁸ Terms regarding service by Exchange Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at "Additional Criteria for Exchange Directors" Id.

²⁹ Terms regarding service by Member Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at "Additional Criteria for Member Directors" Id.

³⁰ Terms regarding service by the Management Director are set forth in OCC's By-Laws. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7 Id.

OCC also already maintains a Board-level Risk Committee and GNC, as required by the SEC Governance Rules. In addition to the Risk Committee and GNC, OCC's Board oversees four other Board-level committees that are comprised of certain Board directors and that assist the Board in carrying out its supervisory role. The other committees include the Regulatory Committee, the Technology Committee, the Audit Committee, and the CPC. In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board-level committees, and Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC's website.³¹

In addition to maintaining a Board-level Risk Committee, OCC also maintains a non-Board-level risk management committee. This non-Board-level risk management committee is a subset of OCC's existing Financial Risk Advisory Council ("FRAC") and is comprised of clearing members and customers of clearing members. As required by the recently adopted CFTC governance rules,³² OCC consults with this non-Board-level risk committee on all matters that could materially affect the risk profile of OCC.³³ As such, OCC believes this also satisfies the SEC Governance Rules requirement for the board of directors to

³¹ See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

³² See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

³³ OCC's FRAC Guiding Principles is included as confidential Exhibit 3F to File No. SR-OCC-2024-015, and provides more information on the responsibilities and composition of the non-Board-level risk management committee.

solicit and consider viewpoints of participants and other relevant stakeholders regarding material developments in its risk management and operations.³⁴

Lastly, OCC already maintains a Third-Party Risk Management Framework that is reviewed and approved at least annually by OCC's Risk Committee and Board. OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage risks arising from third-party relationships, consistent with certain requirements in the SEC Governance Rules that require senior management to be responsible for establishing policies and procedures that govern relationships and manage risks related to agreements with service providers for core services, and that require the board of directors to review and approve such policies and procedures.³⁵

Proposed Changes to OCC's Board Charter

The Mission of the Board

The SEC Governance Rules require the Board to be comprised of a majority of "independent directors" as that term is defined in the SEC Governance Rules.³⁶ To align with this requirement, OCC proposes to modify its Board Charter to clarify that a majority of directors, rather than a substantial portion of directors, be independent directors, as defined by the SEC Governance Rules³⁷ and the judgement of the Board. Specifically, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board

³⁴ 17 CFR 240.17Ad-25(j).

³⁵ 17 CFR 240.17Ad-25(i)(3).

³⁶ 17 CFR 240.17Ad-25(a).

³⁷ 17 CFR 240.17Ad-25(b).

fulfills its oversight role by ensuring that at least a majority of the directors on the Board are independent as determined by the Board and in accordance with Securities and Exchange Commission Rule 17Ad-25(b) adopted on December 5, 2023.³⁸ OCC's proposed changes expand the requirement that all Board-level committees, not just the Audit Committee, be comprised of independent directors. Specifically, OCC's proposed changes eliminate the reference that only the Audit Committee of the Board be comprised of independent directors and provide that at least a majority of the directors on each Board-level committee be comprised of independent directors.

The SEC Governance Rules also require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services, and require senior management to be responsible for establishing the policies and procedures and the Board to be responsible for reviewing and approving such policies and procedures.³⁹ The SEC Governance Rules also require senior management to perform ongoing monitoring of the relationship with a service provider for core services and report to the Board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring.⁴⁰ If the risks or issues cannot be remedied, the SEC Governance Rules require that

³⁸ Id.

³⁹ 17 CFR 240.17Ad-25(i)(2),(3).

⁴⁰ 17 CFR 240.17Ad-25(i)(4).

senior management assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the Board.⁴¹ To align with these requirements, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by overseeing service providers that provide core services for OCC, including reviews of risk assessments for current vendors and approving terms for new vendors that will provide core services for OCC. OCC's proposed changes would also provide that the Board fulfills its oversight role by overseeing senior management's review and approval of an agreement that establishes a relationship with a service provider for core services, and overseeing senior management's risk assessment for such agreements. In addition, OCC's proposed changes provide that the Board review and approve policies and procedures established by senior management that govern relationships and manage risks related to agreements with service providers for core services. Lastly, OCC's proposed changes provide that the Board evaluate any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through senior management's monitoring of relationships with a service provider for core services, and oversee senior management's assessment and document of weaknesses or deficiencies with the service provider if such risks or issues cannot be remedied.

Board Issues – Size of Board; Composition

⁴¹ Id.

The SEC Governance Rules define independent director as “a director of the registered clearing agency who has no material relationship with the registered clearing agency or any affiliate thereof.”⁴² The SEC Governance Rules require that the Committee affirmatively determine and document whether a nominee or director is appropriately categorized as an independent director, as defined in the SEC Governance Rules.⁴³ To align with this requirement, OCC proposes to modify its Director Questionnaire to align OCC’s analysis of potential conflicts with the applicable regulatory requirements in the SEC Governance Rules and facilitate the analysis of whether a nominee or director appropriately can be considered independent.

Furthermore, to reflect the definition of independent director as defined by the SEC Governance Rules⁴⁴, OCC’s proposed changes to the Board Charter would also state that it is the policy of the Board that the Board at all times reflect that a majority, rather than a substantial portion, of directors be “independent” as defined by the SEC Governance Rules and the judgment of the Board. OCC’s proposed changes remove the reference that a substantial portion of directors must be independent “of OCC and OCC’s management.” OCC believes these proposed changes to the Board composition section of the Board Charter will satisfy the independent director requirement, as defined in the SEC Governance Rules.

Board Issues – Selection of Exchange Directors

⁴² 17 CFR 240.17Ad-25(a).

⁴³ 17 CFR 240.17Ad-25(b)(2).

⁴⁴ 17 CFR 240.17Ad-25(a).

As described in more detail below, the SEC Governance Rules contain several requirements related to the responsibilities of a nominating committee.⁴⁵ Currently, all OCC directors are subject to a standard criterion outlined in OCC's existing Fitness Standards that is applicable to all directors and used when determining the nomination of a director. The SEC Governance Rules require that the nominating committee must have a written evaluation process whereby the nominating committee shall evaluate nominees under consideration for a directorship and evaluate the independence of nominees and directors. OCC's proposed changes to the Board Charter clarify this requirement and the role of the GNC when describing the selection of Exchange Directors. OCC's proposed changes state that as provided in the By-Laws, each Exchange Director shall, after evaluation by the Governance and Nominating Committee, be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders.

Committees – Board Committees

As noted above, OCC maintains six Board-level committees including the GNC, the Risk Committee, Technology Committee, CPC, Regulatory Committee and Audit Committee. Subject to the direction of the Board, all six committees are empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the committee charters. The SEC Governance Rules specify that any Board committee that has the authority to act on behalf of the Board must have at least

⁴⁵ 17 CFR 240.17Ad-25(c).

the same percentage of independent directors as the Board itself as identified in paragraph (b)(1) of Rule 17Ad-25.⁴⁶ To reflect this requirement, OCC's proposed changes to its Board Charter provide that each committee established by the Board must be comprised of a majority of directors who are deemed independent by the Board and in accordance with the SEC Governance Rules.

Committees – Independence for Audit Committee Service

For clarity and consistency, OCC also proposes to add the word “additional” prior to the word “independence” when describing the independence criteria for the Audit Committee service. This helps to clarify that OCC maintains separate independence requirements for the Audit Committee, which are also consistent with listed company Audit Committee standards⁴⁷ and are in addition to the requirements outlined in the SEC Governance Rules.

Proposed Changes to OCC's Board Charter and By-Laws Identified

During OCC's Annual Review Process

As part of OCC's annual review of its Board Charter, OCC is proposing changes to its Board Charter and Article III of the By-Laws to provide specific requirements used to determine whether an individual director meets the definition of a Public Director. As outlined in Article III of OCC's current By-Laws, OCC's existing Board of Directors must be composed of nine Member Directors, up to five Exchange directors, no less than five Public Directors, and

⁴⁶ 17 CFR 240.17Ad-25(e).

⁴⁷ See Nasdaq Listing Rule 5605(c)(2) and Section 303A.06 of NYSE Listed Company Manual.

may include one Management Director.⁴⁸ To account for changes in regulatory requirements, OCC's proposed changes to the Board Charter provide that OCC's Board must be comprised of no less than five directors who are not an associated person or employee of (i) an entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i). OCC proposes to remove reference to the language that the director must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

To incorporate these proposed changes in the definition of a Public Director as described in OCC's Board Charter, OCC also proposes to modify Article III, Section 6A of the By-Laws.⁴⁹ OCC's proposed changes to Article III, Section 6A of the By-Laws provide that prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the GNC shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Commission or CFTC; or (ii) affiliate of such an entity described in (i) and submit a list of its nominations in writing to the Board of Directors. To remain consistent with the proposed changes in OCC's Board Charter and provide specific requirements for Public Directors, OCC proposes to eliminate reference to the language that the

⁴⁸ See supra note 4, Article III, Section I of the By-Laws.

⁴⁹ Id.

person must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

OCC believes these proposed changes to its Board Charter and By-Laws identified during the annual review process provide specific requirements for how OCC determines whether a director is affiliated in the industry and the requirements applicable to a Public Director.

Proposed Changes to OCC's GNC Charter

Purpose

The SEC Governance Rules require, among other things, that registered clearing agencies establish a nominating committee and a written evaluation process for evaluating board nominees and the independence of nominees and directors and specify requirements with respect to its composition, director fitness standards, and documentation of the outcome of the written evaluation process.⁵⁰ As noted above, OCC already maintains a GNC, and maintenance of OCC's existing GNC is consistent with the requirement in the SEC Governance Rules that OCC must have a nominating committee. OCC's existing GNC Charter provides that the purpose of the GNC is to assist the Board in overseeing OCC's corporate governance processes, including assessing that OCC's governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible

⁵⁰ 17 CFR 240.17Ad-25(c).

for service as Public Directors and Member Directors, and resolving certain conflicts of interest. To clarify the role of the GNC and more closely align with the language in the SEC Governance Rules requirement that the nominating committee evaluate board nominees, OCC's proposed changes to the GNC Charter provide that the GNC is to assist the Board in overseeing OCC's corporate governance processes, including evaluating candidates for Board service.

Membership and Organization

The SEC Governance Rules require a majority of directors serving on the nominating committee be independent directors, and the chair of the nominating committee be an independent director.⁵¹ To reflect this requirement, OCC's proposed changes to the GNC Charter provide that at least a majority of the Committee must be comprised of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(c)(2) and the judgment of the Board. OCC's proposed changes also specify that the Chair must be a Public Director, who is also an independent director as defined in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(2).⁵² OCC believes these proposed changes align with the SEC Governance Rules requirements related to composition requirements for a nominating committee.

Functions and Responsibilities

⁵¹ 17 CFR 240.17Ad-25(c)(2).

⁵² Id.

The SEC Governance Rules also contain several other requirements related to the responsibilities of a nominating committee. These requirements provide that: (i) the nominating committee must have a written evaluation process that includes the evaluation of all nominees, no matter the source of nomination, and an evaluation of all nominees and directors regarding status as independent directors⁵³; and (ii) the nominating committee must document the outcome of its written evaluation processes, including identification of whether each nominee or director meets the definition of independent director, as defined in the SEC Governance Rules.⁵⁴ To align with these responsibilities, OCC's proposed changes to the GNC Charter provide that the GNC must maintain a written evaluation process, which will be documented in meeting materials and minutes, to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements. As part of OCC's written evaluation process that will be documented in meeting materials and minutes, the GNC will review a packet of materials that contains background information for all Board candidates as well as any other documentation that describes other relevant information and criteria for Board candidates. Additionally, OCC maintains various written documents that would guide the GNC's evaluation of director candidates (e.g. Fitness Standards, director questionnaire). These documents provide the requirements for director candidates and articulate what the GNC must consider when evaluating

⁵³ 17 CFR 240.17Ad-25(c)(1).

⁵⁴ 17 CFR 240.17Ad-25(c)(4)(iv).

prospective Board members. OCC's proposed changes also specify that the outcome of the written evaluation process must be documented consistent with applicable regulatory requirements. OCC's existing GNC Charter provides that the GNC identifies, screens and reviews individuals qualified to be elected or appointed as Member Directors or Public Directors. The nomination of Exchange Directors is separately the responsibility, under the By-Laws, of each OCC stockholder exchange.⁵⁵ To reflect the requirements outlined in the SEC Governance Rules, OCC's proposed changes provide that the GNC must identify, screen, and review individuals qualified to be elected or appointed, as the case may be, to serve as Directors. Here, OCC's proposed changes eliminate the specific terms "Member Directors" and "Public Directors" and generally use the term "Directors" because the SEC Governance Rules require that the GNC perform the same evaluation process for all nominees for potential service as directors.

An additional requirement of the nominating committee that is outlined in the SEC Governance Rules is that the fitness standards for serving as a director must be specified by the nominating committee, documented in writing, and approved by the Board.⁵⁶ Although OCC already maintains fitness standards for directors, OCC's proposed changes to the GNC Charter state that the GNC must specify fitness standards for serving as a director that are documented in writing and approved by the Board in order to comply with Rule 17Ad-25(c)(3).

⁵⁵ See *supra* note 4.

⁵⁶ 17 CFR 240.17Ad-25(c)(3).

The SEC Governance Rules also require that the nominating committee document the outcome of the written evaluation process consistent with the fitness standards such that the process demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency.⁵⁷ To align with this requirement, OCC's proposed changes in the GNC Charter provide that the Committee shall, in its evaluation of nominees for serving as directors, consider the views of other stakeholders who may be affected by the decisions of the Board of Directors, other than owners of the Corporation and Clearing Members.

To align with the process of evaluation for determining an independent director as described by the SEC Governance Rules and the requirement for the nominating committee to evaluate the independence of nominees and directors,⁵⁸ OCC's proposed changes provide that the GNC must review and advise the Board with regard to whether directors are independent directors in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(1).

OCC's GNC Charter provides that the GNC advises the Board with respect to committee structure, operations and charters, including recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman. To incorporate the requirement that the membership of each risk

⁵⁷ 17 CFR 240.17Ad-25(c)(4)(iii).

⁵⁸ 17 CFR 240.17Ad-25(c)(1).

management committee be re-evaluated annually as defined by 17Ad-25(d)(1),⁵⁹ OCC's proposed changes to the GNC Charter include the requirement that each calendar year, the GNC must recommend to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman.

Proposed Changes to OCC's Risk Committee Charter

Membership and Organization

The SEC Governance Rules require, among other things, the establishment of a risk management committee of the Board to assist the Board in overseeing the risk management of the clearing agency.⁶⁰ As noted above, OCC already satisfies this requirement through the maintenance of its Risk Committee of the Board. In the performance of its duties, the SEC Governance Rules require the Risk Committee to be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety, and efficiency of the registered clearing agency.⁶¹ To promote clear consistency with these requirements, OCC's proposed changes to the Risk Committee Charter provide that in making their nominations, the GNC and the Board take into consideration the desire to obtain input from a broad array of market participants on risk management issues and the

⁵⁹ 17 CFR 240.17Ad-25(d)(1).

⁶⁰ 17 CFR 240.17Ad-25(d)(1).

⁶¹ 17 CFR 240.17Ad-25(d)(2).

ability of the Committee to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration.

The SEC Governance Rules also require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶² Because the Risk Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Risk Committee Charter, OCC's proposed changes to the Risk Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Functions and Responsibilities

The SEC Governance Rules require, among other things, that a clearing agency address the management of risks from relationships with service providers for core services, as defined by the SEC Governance Rules.⁶³ These requirements include that each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to evaluate and document the risks related to an agreement with a service provider for core services.⁶⁴ OCC's existing Risk Committee Charter

⁶² 17 CFR 240.17Ad-25(e).

⁶³ 17 CFR 240.17Ad-25(i).

⁶⁴ 17 CFR 240.17Ad-25(i)(1).

provides that the Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third-party risks, including key linked and vendor relationships. To incorporate the SEC Governance Rules requirements that senior management must evaluate and document the risks related to an agreement with a service provider for core services, OCC's proposed changes to the Risk Committee Charter provide that the Committee shall also provide risk assessments to the Board for any service providers providing core services to OCC, consistent with the SEC Governance Rules.⁶⁵

Proposed Changes to OCC's Technology Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁶ Because the Technology Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Technology Committee Charter, OCC's proposed changes to the Technology Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

⁶⁵ Id.

⁶⁶ 17 CFR 240.17Ad-25(e).

Proposed Changes to OCC's CPC Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁷ Because the CPC, subject to the direction of the Board, is empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the CPC Charter, OCC's proposed changes to the CPC Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's CPC Charter Identified During OCC's Annual Review Process

As part of OCC's annual review of the CPC Charter, OCC also proposes to make updates to the CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs. OCC's proposed changes provide that the CPC must oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, compensation performance management, diversity, equity, and inclusion programs, training and development, benefits, and succession planning for critical roles. The purpose of these proposed

⁶⁷

Id.

changes to the CPC Charter is to more closely align with OCC's existing Human Resources programs and policies.

Proposed Changes to OCC's Regulatory Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁸ Because the Regulatory Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Regulatory Committee Charter, OCC's proposed changes to the Regulatory Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's Regulatory Committee Charter Identified During OCC's Annual Review Process

As part of OCC's annual review process, OCC also proposes to make one minor grammatical update to the Regulatory Committee Charter by replacing the word "in" with the word "is" where needed in a sentence under section II subpart B of the document.

Proposed Changes to OCC's Audit Committee Charter

Membership and Organization

⁶⁸ 17 CFR 240.17Ad-25(e).

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁹ Because the Audit Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Audit Committee Charter, OCC's proposed changes to the Audit Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's Fitness Standards

Criteria Applicable to all Directors

As described above, OCC already maintains Fitness Standards for directors. In addition to the requirement that the GNC specify the Fitness Standards and that the Fitness Standards be approved by the Board, the SEC Governance Rules also require that the GNC's written evaluation process in regards to the Fitness Standards consider: (i) the nominee's expertise, availability, and integrity, and demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge experience and perspectives; (ii) the views of other stakeholders who may be affected by OCC's decisions; and (iii) whether each nominee or director would meet the definition of independent director in the SEC Governance Rules and whether each nominee or director has a known material relationship

⁶⁹ Id.

with OCC or other specified persons.⁷⁰ To align with these requirements more closely, OCC's proposed changes to the Fitness Standards provide that in considering nominees for election or appointment to the Board, the GNC must consider whether the individual would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives and whether the individual understands and is able to consider the general position and views of other stakeholders who may be affected by the decisions of the Board of Directors, other than the owners of OCC and Clearing Members.

Proposed Changes to OCC's Fitness Standards Identified During OCC's Annual Review Process

To incorporate the proposed changes identified during OCC's annual review process as it relates to the description of a Public Director, OCC also proposes changes to the criteria for Public Directors as outlined in the Fitness Standards. To align with the proposed changes in OCC's Board Charter and By-Laws, OCC's proposed changes to the Fitness Standards remove language that states the director must not have an affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker-dealer in securities, and replaces that with the additional criterion that the director must not be an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission; or (ii) affiliate of such an entity described in (i). OCC's proposed changes also provide

⁷⁰ 17 CFR 240.17Ad-25(c)(4)(i),(iii), (iv).

that for the avoidance of doubt, this criterion will not preclude a person from service as a Public Director solely based on some other relationship with an entity described in (i) or (ii) above that does not involve being an associated person or employee of the entity, such as might be the case, depending on the circumstances, in connection with serving as a director. OCC believes these proposed changes more closely align with the requirements under the SEC Governance Rules.

Proposed Changes to OCC's Third-Party Risk Management Framework

The SEC Governance Rules require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services and require senior management to be responsible for establishing and the Board to be responsible for reviewing and approving such policies and procedures.⁷¹ More specifically, the SEC Governance Rules require, among other things, that senior management: (i) evaluate and document risks related to an agreement with a service provider for core services, as defined by the SEC Governance Rules; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; (iii) be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for cores service and require the Board to be responsible for review and approving such policies and procedures; and (iv) perform ongoing monitoring of service

⁷¹ 17 CFR 240.17Ad-25(i).

providers for core services and to report to the Board any action taken by senior management to remedy significant deterioration in performance, to address material issues, or to assess and document deficiencies that cannot be remedied.⁷²

OCC's existing Third-Party Risk Management Framework already meets certain requirements in the SEC Governance Rules.⁷³ OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage risks arising from third-party relationships including, but not limited to, those relationships with Clearing Members, Clearing Banks, custodians, liquidity providers, financial institutions, financial market utilities, exchanges, and vendors. In addition, OCC's Third-Party Risk Management Framework is reviewed and approved by OCC's Risk Committee and Board pursuant to OCC's internal policies and procedures.⁷⁴

To incorporate the remaining requirements of the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services, OCC proposes several updates to section III of the Third-Party Risk Management Framework.⁷⁵ First, OCC's proposed changes revise the header in section III to include the words "Third-Party" before "Relationship Lifecycle" to provide further clarity and remain consistent with other headers throughout the document.

⁷² 17 CFR 240.17Ad-25(i)(1)-(4).

⁷³ 17 CFR 240.17Ad-25(i)(3).

⁷⁴ OCC has included its Policy Governance Policy, which requires Board review and approval of the Third-Party Risk Management Framework, as confidential Exhibit 3G to File No SR-OCC-2024-015.

⁷⁵ 17 CFR 240.17Ad-25(i).

In addition, OCC's proposed changes to the Third-Party Risk Management Framework provide that certain third-parties may constitute service providers for core services and are subject to enhanced lifecycle management by OCC's management and Board. OCC's proposed changes specify that this enhanced management applies at the initial on-boarding stage and on an ongoing basis. Consistent with the requirements in the SEC Governance Rules,⁷⁶ OCC's proposed changes provide that during the on-boarding stage and prior to entering into an agreement with a service provider for core services, OCC's Management Committee will evaluate and document the risks related to the agreement, including under changes to circumstances and potential disruptions, and assess whether the risks can be managed in a manner consistent with the Third-Party Risk Management Framework (the "Risk Analysis"). OCC's proposed changes also clarify that prior to entering agreements establishing a relationship with a service provider for core services, OCC's Management Committee will submit the agreement, as well as its Risk Analysis, to the Board for review and approval, in compliance with the requirements in the SEC Governance Rules.⁷⁷

Furthermore, OCC's proposed changes state that service providers for core services will be monitored on an ongoing basis. OCC's proposed changes provide that OCC's Management Committee evaluates performance of service providers for core services and either: (i) remedies significant deterioration in performance of the service provider for core services; (ii) addresses changing risks or material

⁷⁶ 17 CFR 240.17Ad-25(i)(1).

⁷⁷ 17 CFR 240.17Ad-25(i)(2).

issues with the service provider for core services identified through such monitoring; or (iii) if such risks or material issues cannot be remedied, assesses and documents weaknesses or deficiencies with the service provider for core services. In addition, OCC's proposed changes provide that OCC's Management Committee will report to the Board for its evaluation any action taken by the Management Committee to remedy significant deterioration in performance of the service provider for core services or address changing risks or material issues with the service provider for core services. OCC's proposed changes will clarify that if the risks or issues with the service provider for core services cannot be remedied, OCC's Management Committee will assess and document the weaknesses and deficiencies and submit to the Board the documented weaknesses or deficiencies in the relationship with the service provider for core services.

OCC's existing Third-Party Risk Management Framework states that risks identified throughout the relationship lifecycle are reported and escalated through associated working groups. OCC's proposed changes provide that each working group has a chair and designated Management Committee member who are responsible for identifying the matters to be escalated to the Management Committee, "in accordance with this Framework." By including the reference "in accordance with this Framework," OCC believes this language aligns more closely with the requirements in the SEC Governance Rules.⁷⁸

⁷⁸

17 CFR 240.17Ad-25(i)(1).

To align with the defined terms in the SEC Governance Rules,⁷⁹ OCC's proposed changes to the Third-Party Risk Management Framework include the definition of "Service Provider for Core Services." OCC's proposed changes define service provider for core services as any person that, through a written services provider agreement for services provided to or on behalf of OCC, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of OCC. OCC believes these proposed changes to the Third-Party Risk Management Framework satisfy the requirements outlined in the SEC Governance Rules.⁸⁰

Proposed Changes to OCC's Third Party-Risk Management Framework Identified During OCC's Annual Review Process

OCC also proposes to incorporate additional edits to the Third-Party Risk Management Framework, as outlined below, to reflect the proposed changes determined through OCC's annual review process.

Under section I, Executive Summary, OCC proposes to expand the description of risks arising from "Exchanges" to risks arising from "Exchange Relationships." This proposed change, which is also reflected in section IV, Third-Party Relationship Management, and throughout the remainder of the document, encompasses risks arising from third-party relationships including options exchanges, futures markets, OTC trade sources or loan markets. OCC believes this proposed change more clearly describes the current risk management

⁷⁹ 17 CFR 240.17Ad-25(a).

⁸⁰ 17 CFR 240.17Ad-25(i).

activities related to third-party relationships including exchanges and those relationships that are not registered exchanges. OCC's proposed changes also relocate the definition of Exchange Relationships from footnote 2 to section V, Definitions, to promote clarity and consistency throughout the document.

Under section II, Risk Identification, OCC proposes to expand the description of (i) Information Technology and Security risks and (ii) Legal and Regulatory risks. For Information Technology and Security risks, the current description acknowledges that risks arise when third-parties are unable to safeguard OCC data or maintain capabilities to support OCC's operations. While the current description is accurate, it does not encompass the full scope of the current third-parties' obligations required by OCC. OCC proposes to include that Information Technology and Security risks also arise when third- parties are unable to safeguard OCC's systems, in addition to OCC data. OCC also proposes to incorporate the language "in accordance with OCC's service standards" into the description to clearly outline the enforcement of responsibilities. OCC believes this change will better define Information Technology and Security risks from relationships with third-parties related to OCC. For Legal and Regulatory risks, OCC's proposed changes provide that Legal and Regulatory risks arise when a third-party fails to fulfill its obligations to OCC or when OCC fails to fulfill its obligations to a third-party. OCC's proposed changes provide that Legal and Regulatory risks also arise when a third-party fails to comply with regulatory standards and protocols agreed to with OCC. OCC believes these proposed changes more clearly define Legal and Regulatory risks that arise from

relationships with third-parties. OCC also proposes to make minor, non-substantive changes to section II, such as decapitalizing the words “clearing fund” when needed.

Under section III, Relationship Lifecycle, OCC proposes to revise specific language related to off-boarding of third-parties. The off-boarding section currently provides that OCC finalizes its third-party relationship lifecycle by completing “any operational tasks necessary to off-board the relationship.” OCC proposes to include the language “in compliance with agreement terms” to clarify current risk management expectations and responsibilities relating to third-party off-boarding. This revision would be consistent with OCC’s current operations and off-boarding processes. OCC also proposes to make several minor, non-substantive changes to this section, including changing language from “determination to terminate” to “termination of,” and replacing the word “relationship” with “engagement” when describing third-party arrangements with OCC to promote additional clarity. In addition, to provide additional clarity, OCC proposes to replace the word “defined” with “specified” when explaining the decision-making authority, functions and responsibilities in the working group procedure.

Under section IV, Third-Party Relationship Management, OCC proposes to revise the header from “Exchanges” to “Exchange Relationships” to reflect the proposed changes in section I. OCC’s proposed changes update the On-Boarding section under “Exchange Relationships” by revising the distribution methods of the summary activities of exchange relationship. The current description states

that summaries of due diligence and on-boarding activities are presented to the Board of Directors for approval to launch. OCC proposes to clarify the reporting requirements by specifying where they should be reported. OCC's proposed changes would direct the reporting of due diligence and on-boarding activities to the Management Committee. Further, the proposed revisions would direct summaries of legal documents and requirements to the Board of Directors. These proposed revisions would update and clarify the description of OCC's current approach to on-boarding third-parties without impacting current OCC operations. Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Ongoing Monitoring sub-section by removing reference of legal risk related to Exchange Relationships, and including the language "and escalate identified legal risks to OCC's Legal Department." This proposed change clarifies the responsibilities of OCC's business operations and TPRM teams. Legal risks related to Exchange Relationships are monitored by OCC legal, but if legal risks are identified by business operations or TPRM during the ongoing monitoring process, these legal risks should be escalated. OCC believes the proposed change will better describe current risk management activities related to ongoing monitoring of third-party relationships with exchanges. OCC also proposes to update language in the Off-Boarding sub-section by eliminating the specific language that states "such as limiting connectivity with the Exchange" when referencing the immediate actions OCC can take upon the termination of an Exchange Relationship. OCC proposes to remove this language to provide further clarification that limiting connectivity with an Exchange is not specific only to

off-boarding situations; OCC's action of limiting connectivity with an Exchange can occur in other situations as well. OCC believes the elimination of this language better aligns with OCC's overall responsibility related to off-boarding and provides for greater flexibility related to OCC's immediate actions. Finally, OCC proposes several non-substantive, grammatical changes to the Ongoing Monitoring sub-section such as replacing the word "communicate" with "communication of" and "seek" with "solicitation of."

Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Vendors sub-section of the document. OCC's proposed changes provide that prior to commencing on-boarding of a new technology vendor, implementing new capabilities, or services to existing technology, Information Technology reviews the request to identify solutions and analyze requirements to verify that they are in line with enterprise strategic requirements. OCC believes these proposed changes more clearly assign ownership and accountability for expectations around risk management for new vendors throughout OCC. In addition, in the On-Boarding section under Vendors, OCC's proposed changes state that an agreement that addresses control and business requirements is then negotiated with the vendor and executed by authorized signatories designated through the process outlined in the Legal Services Policy. OCC's proposed changes revise the language that "authorized signatories" rather than an "OCC officer" will be responsible for executing agreements that address control and business requirements. OCC believes the revised text more closely aligns with current practices. Furthermore, this revision

would encourage OCC's longstanding practices to update internal policies, directing staff towards correct procedures and personnel requirements.

OCC's Third-Party Risk Management Framework also states that vendor relationship managers ("VRMs") and Third-Party Risk Management ("TPRM") monitor vendors to assess whether they are delivering services as required by applicable agreements. To align with current OCC business practice and promote clear accountability, OCC's proposed changes eliminate reference to "TPRM" because it is the VRMs who are responsible for monitoring vendors, while TPRM gathers information and escalates if necessary.

Under section V, Definitions, OCC's proposed changes in the Watch Level section include the addition of "risk management" in its list of deteriorations which signal a risk response. OCC believes this revision would better describe the current risk management methods related to watch level monitoring and would not substantively alter existing processes.

Lastly, OCC's proposed changes to the Third-Party Risk Management Framework reflect the name change as a result of the combination of two working groups. OCC's Exchange Working Group and Vendor Risk Working Group will be combined to form the Exchange and Vendor Working Group, therefore OCC's proposed changes throughout the Third-Party Risk Management Framework reflect the merger of these two groups. OCC's proposed changes also reflect the change in the acronym of the new combined working group's name.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act.⁸¹ Section 17A(b)(3)(F) of the Act⁸² requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁸³ OCC believes that the proposed rule changes are consistent with these requirements because the proposed changes are designed to, among other things, modify OCC's governance documents such that: (i) OCC's Board and Board-level committees are composed of independent directors, as defined by the SEC Governance Rules, (ii) OCC's policies and procedures identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest, and (iii) OCC's policies and procedures address certain aspects of risk management in connection with relationships with service providers for core clearing agency services.

OCC believes the proposed changes to incorporate the independent director requirement help to promote the ability of the Board to perform its oversight of management function, support a plurality of viewpoints voiced at the Board level, ensure a balance between stakeholders with divergent views, and reduce the likelihood that conflicts of interest may influence the Board. OCC believes that establishing requirements that the Board be comprised of a majority of directors who do not have a

⁸¹ 15 U.S.C. 78q-1.

⁸² 15 U.S.C. 78q-1(b)(3)(F).

⁸³ Id.

material relationship with the registered clearing agency or affiliate thereof helps to promote the integrity of OCC's risk management function, and therefore helps to promote prompt and accurate clearance and settlement of securities transactions and safeguard the securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC believes the proposed changes regarding the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services also help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds in its custody or control or for which OCC is responsible, consistent with Section 17A(b)(3)(F). The potential failure of a service provider for core services to perform its obligations could pose a significant operational risk to OCC and impact the ability for OCC to facilitate prompt and accurate clearance and settlement. Therefore, by requiring that senior management establish policies and procedures that govern relationships with service providers for core services, manage risks related to those relationships, and perform ongoing monitoring of those relationships, OCC believes these proposed changes help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC's proposed changes to its governance documents establish policies and procedures to identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest in the decision-making process involving directors or senior managers of OCC. OCC believes these proposed changes assist in promoting

the integrity of OCC's governance arrangements by helping to ensure that potential conflicts of interests are identified when they arise, and that such conflicts are subject to a transparent and uniform process of review, mitigation or elimination and documentation. By incorporating the proposed changes intended to address conflicts of interest related to directors and senior managers, OCC believes this will help to reduce conflicts that could undermine the decision-making process or interfere with fair representation and equitable treatment of clearing members or market participants. Therefore, OCC believes the proposed changes help to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).

Finally, OCC also believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.⁸⁴ Modifying OCC's governance documents through the proposed changes described in Item III above would be consistent with these requirements because the changes would document in a clear, direct, and transparent way the independent director composition of the Board and Board-level committees, the responsibilities of the Board and Board-level committees as it relates to management of conflicts of interest, Board oversight, and management of risks for service providers for core services. In addition, OCC's proposed changes clearly specify the Fitness Standards for serving as a director and the criteria

⁸⁴ 17 CFR 240.17Ad-22(e)(2)(i),(iv),(v).

applicable to all directors, which includes the consideration of whether the director nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience and perspectives consistent with Rule 17Ad-22(e)(2)(iv).

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

Section 17A(b)(3)(I) of the Act⁸⁵ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes to modify OCC's governance documents would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the SEC Governance Rules that OCC must comply with by December 5, 2024 and December 5, 2025. The proposed changes to OCC's governance documents are designed to clearly articulate the newly established requirements of the SEC Governance Rules including, but not limited to, the Board and committee composition, independent directors, management of conflicts of interest, board oversight, and management of risks from relationships with service providers for core services. The proposed changes to OCC's governance documents also aim to, among other things, increase transparency into board governance and improve the alignment of incentives among owners and participants of OCC by ensuring that a majority of Board members and Board-level committee members be independent directors, as defined by the SEC Governance Rules, and that functions and responsibilities of the Board and Board-level committees are clearly outlined. In addition, the proposed changes to OCC's governance documents help to reduce the likelihood that conflicts of interest may influence the Board. These changes to OCC's governance

⁸⁵ 15 U.S.C. 78q-1(b)(3)(I).

documents would apply to all Equity Exchanges and Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed 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 selfregulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2024-015 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2024-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-OCC-2024-015 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.⁸⁶

Secretary

⁸⁶ 17 CFR 200.30-3(a)(12).

Exhibit 3A

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Exhibit 3B

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Exhibit 3D

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Exhibit 3E

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Exhibit 3F

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Exhibit 5A**THE OPTIONS CLEARING CORPORATION
BOARD OF DIRECTORS
CHARTER
AND
CORPORATE GOVERNANCE PRINCIPLES**

The following Board of Directors Charter and Corporate Governance Principles (“Principles”) have been adopted by the Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) to assist the Board in the exercise of its responsibilities.

The Board is responsible for advising the Management Committee and overseeing the management of the business and affairs of OCC (except as may otherwise be provided in OCC’s Amended and Restated Certificate of Incorporation or its By-Laws and Rules). The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of all relevant stakeholders of OCC. In doing so, the Board exercises its authority to provide for governance arrangements that: are clear and transparent; clearly prioritize the safety and efficiency of OCC; support applicable public interest requirements and the objectives of owners and participants; establish that the Board and the Management Committee have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of clearing members’ customers, securities issuers and holders, and other relevant stakeholders. The Board additionally seeks to: promote the safe and efficient operation of OCC; maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC in light of OCC’s role as a systemically important financial market utility (“SIFMU”); and pursue objectives that are consistent with the interests of its stakeholders and support the public interest. In consideration of its responsibility to maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC, the Board has explicitly delegated the oversight of specific risks to the Board committees. To the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the Risk Committee. Accordingly, the Board is mindful of the public interest as it fulfills its duties by complying with the obligations imposed upon the Board by federal and state laws and regulations applicable to OCC and ensures that major decisions of OCC are appropriately disclosed to relevant stakeholders and to the public. Where the Board is authorized to approve reports or proposals provided to it by the Management Committee or a committee, the Board may or may not approve such matters in its business judgment. If the Board does not approve such a report or proposal, it shall report to the Management Committee or the relevant committee(s) that it has not approved such matter and may provide direction as to the revisions or alternative courses of action as appropriate.

These Principles set forth the shared vision of the Board and the Management Committee regarding the governance, management, and oversight practices to be followed at OCC, and reflect the Board’s commitment to monitor the effectiveness of policy and decision-making both at the Board and management level. The Board may form and delegate authority to committees and may delegate authority to one or more

of its members and to one or more designated officers of OCC. However, in all instances, the Board retains the obligation to oversee such delegated activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

These Principles are not intended to change or interpret any Federal or state law or regulation, including the Delaware General Corporation Law, or the OCC Amended and Restated Certificate of Incorporation, the OCC By-Laws, or the Rules of OCC. These Principles are subject to modification from time to time by the Board.

THE MISSION OF THE BOARD

The Board performs an oversight role (either directly or indirectly through delegating certain authority to its committees) to ensure that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities as a SIFMU in connection with providing its services to the industry, and that OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe and efficient manner. The Board fulfills its oversight role by:

- Overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with these Principles and regulatory requirements, including through regular assessments of Board and individual director performance;
- Ensuring that the Board and the Management Committee have appropriate experience and skills to discharge their respective responsibilities and have established clear and direct lines of responsibility between the Board and the Management Committee;
- Ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, and access to the Board;
- Ensuring that risk management, compliance, and internal audit personnel have a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board, respectively;
- Ensuring that at least a majority of the directors on the ~~Audit Committee of the~~ Board and on each Board-level committee is are independent as determined by the Board and in accordance with Securities and Exchange Commission Rule 17Ad-25(b) adopted on December 5, 2023;
- Periodically reviewing and approving the amount of compensation for Public Directors;
- Setting expectations about the tone and ethical culture of OCC, and reviewing the Management Committee's efforts to instill an appropriate tone

¹ OCC is subject to comprehensive regulation and supervision by the Securities and Exchange Commission (with respect to its clearing agency registration) and by the Commodity Futures Trading Commission (with respect to its derivatives clearing organization registration). As a SIFMU, OCC is also subject to supervision by the Board of Governors of the Federal Reserve System under Title VIII of the Dodd-Frank Act. Capitalized terms used in these

Principles shall have the meanings set forth in OCC's By-Laws and Rules unless otherwise indicated.

- and culture throughout OCC;
- Overseeing the Management Committee's activities in managing and operating OCC and evaluating the Management Committee's performance in executing its responsibilities;
 - Selecting and overseeing and, where appropriate, replacing the Chairman¹, Chief Executive Officer, and the Chief Operating Officer, as well as counseling and advising such officers in the management of OCC's business and affairs;
 - Overseeing the development and design of employee compensation, incentive, and benefit programs and evaluating the performance of any Executive Chairman, the Chief Executive Officer, and the Chief Operating Officer and approving the compensation of each;
 - Overseeing management succession planning and talent management processes;
 - Overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest;
 - Monitoring OCC's performance in delivering clearance and settlement services;
 - Reviewing and approving major corporate plans and actions, including capital expenditures, financial objectives, operating capital and capital structure, and fee structure, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearance and settlement services;
 - [Overseeing service providers that provide core services for OCC, including review of risk assessment for current vendors and approving terms for new vendors that will provide core services for OCC;](#)
 - [Overseeing senior management's review and approval of an agreement that establishes a relationship with a service provider for core services, and overseeing senior management's risk assessment for such agreements;](#)
 - [Reviewing and approving policies and procedures established by senior management that govern relationships and manage risks related to agreements with service providers for core services;](#)
 - [Evaluating any action taken by senior management to remedy](#)

² Or the Executive Chairman, if applicable.

significant deterioration in performance or address changing risks or material issues identified through senior management's monitoring of relationships with a service provider for core services, and if such risks or issues cannot be remedied, overseeing senior management's assessment and documentation of weaknesses or deficiencies in the relationship with the service provider;

- Overseeing OCC's processes and framework for comprehensively managing the range of risks that arise in or are borne by OCC, including the risk management policies, procedures, and systems designed to identify, measure, monitor, and manage such risks consistent within the risk appetite and risk tolerances approved by the Board;
- Assigning responsibility and accountability for risk decisions and overseeing the establishment of policies addressing decision-making in crises and emergencies;
- Overseeing and approving OCC's Recovery and Orderly Wind-Down Plan;
- Overseeing OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of material changes in auditing and accounting principles and practices;
- Overseeing OCC's processes designed to ensure compliance with applicable laws and regulations, including banking, securities, and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;
- Overseeing OCC's system of internal controls, including review of the annual study and evaluation of OCC's system of internal accounting controls;
- Overseeing OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services;
- Overseeing OCC's process for consultation with a non-Board-level risk management committee and the consideration of, and responses to, input from the non-Board-level risk management committee by the Board through reports from the Risk Committee.
- Reviewing and considering the discussions with the Risk Committee regarding the Risk Committee's consultation with a non-Board-level risk management committee; and
- Performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, or other policies.

BOARD ISSUES

Membership

1. **Size of Board; Composition.** OCC's By-Laws currently provide that the Board shall be comprised of:

- Nine directors who represent OCC clearing members ("Member Directors");
- Five directors designated by and representing each of OCC's Equity Exchanges ("Exchange Directors");
- No less than five directors who are not ~~affiliated an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i) with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities~~ ("Public Directors"); and
- At the discretion of the Board, one Management Director, who may be chosen from the employees of the Corporation ("Management Director").

It is the policy of the Board that the Board at all times reflect the following characteristics:

- Each director shall at all times be committed to discharging effectively OCC's regulatory responsibilities in connection with its provision of clearance and settlement services as a SIFMU;
- Each director shall at all times exhibit high standards of integrity and commitment;
- Each director shall dedicate sufficient time, energy, and attention to ensure the diligent performance of his or her duties, including by attending meetings of the Board and committees of which he or she is a member, and by reviewing in advance all meeting materials;
- The Board shall encompass a range of talent, skill, industry knowledge, and expertise sufficient to provide sound and prudent guidance with respect to all of OCC's business, operations and interests;
- The Board shall reflect the diversity of OCC's employees and the employees of the market participants that OCC serves; and
- A ~~substantial portion majority~~ of directors shall be "independent" ~~of OCC and OCC's management~~ as defined by applicable regulatory requirements and the judgment of the Board.

The Governance and Nominating Committee is responsible for making recommendations to the Board regarding the composition of the Board as a whole, including whether the Board reflects: the appropriate balance of Member Directors, Exchange Directors, Public Directors and any Management Director; business specialization, technical skills, diversity (including diverse professional backgrounds); and other desired qualities such as sound judgment and a reputation for integrity.

2. **Board Membership Criteria.** The Board seeks directors from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity. In making their nominations, the Governance and Nominating Committee and the Board shall take into

consideration applicable board of directors composition requirements of the Securities and Exchange Commission (as well as the Commodity Futures Trading Commission, to the extent applicable to OCC). The Governance and Nominating Committee and the Board shall also take into consideration the desire to obtain input from a broad array of market participants on risk management issues. As provided in OCC's By-Laws, the Governance and Nominating Committee and the Board also shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards") in considering nominees for election to the Board. In addition, Board members should have the highest professional and personal ethics and values, the relevant expertise and experience required to offer advice and guidance to the Chairman, Chief Executive Officer, and Chief Operating Officer, and other members of the Management Committee, the ability to make independent analytical inquiries, a commitment to discharging effectively OCC's regulatory responsibilities and an understanding of OCC's business, and should be willing to devote adequate time and effort to Board responsibilities. Each Board member is expected to ensure that his or her other commitments do not materially interfere with his or her service overall as a director. The Governance and Nominating Committee shall take the foregoing criteria into account in connection with its recommendations for nomination of the Member Directors and Public Directors, as well as other considerations discussed in Section 4 below. In addition, in determining whether to recommend a Member Director or a Public Director for re-election, the Governance and Nominating Committee shall also consider the director's past performance, including attendance at meetings and participation and contributions to the activities of the Board.

Resignations and disqualifications from the Board shall be addressed as provided in the By-Laws.

3. **Appointment of Governance and Nominating Committee.** On an annual basis, the Board shall appoint a Governance and Nominating Committee having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. The Chair of the Governance and Nominating Committee shall be designated by the Board, after consultation with the Chairman, from among the Public Director members of the Governance and Nominating Committee.
4. **Selection of Member Directors and Public Directors.** As provided in its Charter, the Governance and Nominating Committee conducts periodic assessments of the overall composition of the Board in light of OCC's current and expected business needs and, as a result of such assessments, the Governance and Nominating Committee shall recommend to the Board specific qualifications that it determines would be desirable to seek in candidates for Member Directors and Public Directors. In light of such assessments, the Governance and Nominating Committee may seek to identify new candidates for the Board who possess the specific qualifications approved by the Board and satisfy the other requirements for Board service, including those set forth in OCC's By-Laws. It is acknowledged that, over time, different skill sets are likely to be determined to be

desirable, so that the specific qualifications are likely to change. Moreover, it is acknowledged that it is not expected that the Board will necessarily include all identified skill sets at all times in light of the pool of candidates available to the Governance and Nominating Committee and other considerations such as re-nominating incumbent directors to maintain continuity and particular skills that they may have. In identifying new director candidates, the Governance and Nominating Committee seeks advice and names of candidates from Governance and Nominating Committee members, other members of the Board, members of management, and other public and private sources. The Governance and Nominating Committee may also, but need not, retain a search firm to assist it in these efforts.

As provided in the By-Laws, prior to each annual meeting of stockholders, the Governance and Nominating Committee shall nominate for approval by the Board one person for each directorship among the Member Directors and the Public Directors to be filled at the annual meeting. In selecting such nominees, the Governance and Nominating Committee shall follow the Director Nomination Procedure. With respect to Public Directors, the Governance and Nominating Committee shall consider whether the candidate lacks material relationships to OCC, OCC's the Management Committee, and other directors such that the Public Director may be considered to be "independent" by the Board. In order to achieve a balanced representation on the Board among Member Directors, the Board has determined that other considerations are to be taken into account in the nomination of Member Directors, including the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. As further provided in the By-Laws, the Board shall be responsible for filling vacancies on the Board among the Member Directors or the Public Directors that may occur between annual meetings of stockholders, in each case with a nominee recommended by the Governance and Nominating Committee.

5. **Selection of Exchange Directors.** As provided in the By-Laws, each Exchange Director shall, [after evaluation by the Governance and Nominating Committee](#), be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders. An individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange. As further provided in the By-Laws, a vacancy occurring for any reason among the Exchange Directors shall be filled by the Equity Exchange entitled to elect such Exchange Director.
6. **Selection of Management Director.** As provided in the By-Laws, a Management Director may be elected by the stockholders at each annual meeting of the stockholders. If a Management Director shall cease to hold the office by virtue of which he or she was elected as a Management Director, he or she shall simultaneously be disqualified to serve as a Management Director.
7. **Extending Invitation to New Board Members.** The Chairman shall extend the invitation to potential candidates to stand for election to the Board.
8. **Retirement.**

Term Limits. As provided in the By-Laws, Member Directors are limited to serving three consecutive three-year terms; Exchange Directors, Public Directors, and any Management Director do not have term limits. As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee is responsible for reviewing periodically the continued appropriateness of the term limits applicable to Member Directors set forth in the By-Laws and for recommending to the Board, where appropriate, changes to such provisions.

Retirement Policy. The Board does not favor a mandatory retirement age for directors, therefore no age limitations are imposed with respect to any category of director.

Retirement Policy – Management Director. As provided in the By-Laws, a Management Director is no longer eligible to serve if he or she ceases to hold a senior officer position at OCC by virtue of which he was elected as a Management Director.

Member Directors Changing Their Employment. If a Member Director ceases to be employed by the Clearing Member Organization that employed him or her at the time of his or her election as a Member Director, the director shall notify the Chairman. As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee shall assess the appropriateness of such Member Director continuing to serve on the Board, and shall recommend to the Board any action to be taken, consistent with the By-Laws concerning the continued eligibility of such person to remain a Member Director. The affected director is expected to act in accordance with the Board's decision following such review. The Governance and Nominating Committee, in accordance with the By-Laws, is responsible for recommending a replacement in the event that any such resignation is accepted by the Board.

Other Board Commitments. It is the policy of the Board that non-employee directors shall disclose to the Chairman information regarding each other board of directors on which a non-employee director serves at the time of his or her election to the Board, and after election shall advise the Chairman in advance of accepting an invitation to serve on another board, in each case to ensure that such additional board service will not impact such director's ability to serve on OCC's Board and does not create a conflict of interest. Any Management Director should not accept an invitation to serve on another board without prior approval of the Governance and Nominating Committee.

The Chairman may request the voluntary resignation of a director whose other board service (i) interferes with the director's ability to dedicate sufficient time, energy and attention to the performance of his or her duties as a director of OCC, or (ii) results in the need for the director to recuse himself or herself regularly as a result of conflicts of interest.

Conduct

Conduct

1. Board Meetings.

Selection of Agenda Items. The Chairman, in consultation with the Chief Executive Officer and Chief Operating Officer, other directors or officers of OCC, and the Corporate Secretary, shall establish the agenda for Board meetings. Any director may request that an item be included on any meeting agenda.

Calling Board Meetings. Meetings of the Board shall be called by the Chairman, the Chairman's designee, or as provided in the By-Laws.

Attendance. Directors are expected to prepare for, attend, and participate in all Board and applicable committee meetings. Directors should use their best efforts to attend Board and committee meetings in person. When necessary, a director who is unable to attend in person may attend by telephone or other means of communication that allows all participants to hear and speak to each other if appropriate under the circumstances. A director who is unable to attend a meeting (which it is understood will occur on occasion) or who wishes to participate telephonically or use other communications equipment is expected to notify the Corporate Secretary or the Chairman in advance of such meeting. As provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

Distribution of Materials; Board Presentations. It is important for directors to have materials on topics to be discussed sufficiently in advance of a meeting date and for directors to be kept abreast of developments between Board meetings. OCC regularly informs directors of internal and competitive developments between such meetings.

Directors can generally expect to receive materials at least a week in advance of a meeting to permit meaningful review and enable them to prepare for the meeting. Directors should review material distributed in advance of such meetings. In the event of a pressing need for the Board to meet on short notice or if such materials would otherwise contain highly confidential or sensitive information, it is recognized that written materials may not be available in advance of the meeting. OCC operates a board portal for the general dissemination of meeting and other written material to directors.

Attendance of Non-Directors. The Board believes that attendance of key executive officers relevant for the topic being discussed augments the meeting process. Members of OCC's and other employees may attend Board meetings at the invitation of the Chairman, Chief Executive Officer, or Chief Operating Officer, and provide pertinent information as is necessary. Such persons may be excluded from Executive Sessions either of the Board or any committee thereof.

The Chairman, Chief Executive Officer, and Chief Operating Officer encourage members of the Management Committee to respond to questions posed by directors relating to their areas of expertise. The Board also believes that members of the Management Committee can assist the Board with its deliberations and provide critical insights and analyses, particularly when the Board hears presentations on the business plan for the upcoming year. Attendance of such officers allows the most knowledgeable and accountable executives to communicate directly with the Board. It also provides the Board

direct access to individuals critical to OCC's succession planning.

Participation in Strategic Issues Discussions. To facilitate the Board's oversight of OCC's major strategic, financial, and business activities, OCC will hold a meeting of the Board and the Management Committee focused on the overall strategic objectives of OCC each calendar year.

Number of Meetings. The Board shall hold a minimum of four meetings per year with additional meetings called as the Board deems appropriate.

Quorum. Except as may otherwise be provided in the By-Laws, a majority of the directors then in office, but not less than six (6) directors, shall constitute a quorum for the transaction of business.

Minutes. The Board shall maintain minutes of all Board meetings, which shall be furnished to the directors for review.

2. **Executive Sessions.** The Board and each Board committee may call executive sessions from which members of management and invited guests may be excluded. While it is up to the Board and each committee to decide when to call an executive session and who will participate in such sessions, it is expected that management will be excluded from executive sessions or portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual members of the Board and of a committee also may be excluded from executive sessions or portions thereof at which the discussion concerns a matter as to which that member has an actual or potential conflict of interest. The Board shall select a director to chair executive sessions in the absence of the Chairman. The Chair or Acting Chair of each committee shall chair an executive session of the committee. The chair of the executive session shall determine if separate minutes of an executive session are to be recorded as well as determine the level of detail to be included in such minutes, taking into account the sensitivity of the matters to be discussed and the possibility that candor may be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed in executive session.

3. **Ethics and Conflicts of Interest.** Each director is required to act in good faith in the best interests of OCC and with due regard to the fiduciary responsibilities owed to OCC as a business and a SIFMU. The Board has adopted a Code of Conduct for OCC Directors that includes a Conflict of Interest Policy. The Conflict of Interest Policy incorporates various provisions of applicable corporate law and other standards adopted by OCC to ensure that actual, potential or apparent conflicts of interests (referred to herein as "conflicts of interest") are handled with care. Directors are expected to avoid any action, position or interest that conflicts with an interest of OCC, or gives the appearance of a conflict, in accordance with the Conflict of Interest Policy. Each calendar year, OCC solicits information from directors in order to monitor conflicts of interest and directors are expected to be mindful of their fiduciary obligations to OCC as set forth in the Code of Conduct for OCC Directors. Public

Directors are expected to refrain from entering into material business relationships with other directors.

When faced with a situation involving a conflict of interest, directors are at all times expected to err on the side of caution and immediately bring to the attention of the Chairman and OCC's Chief Legal Officer any matters that may involve conflicts of interest even if the director does not believe that an actual conflict exists.

Each director is required to comply with the provisions of the Code of Conduct for OCC Directors, including, without limitation, the provisions relating to conflicts of interest and confidentiality. Directors are required to confirm each calendar year their compliance with the Code of Conduct for OCC Directors.

3. **Board Compensation.** A Management Director shall not receive additional compensation for service as a director. Because OCC is an industry utility that benefits both clearing members and participant exchanges, Member Directors and Exchange Directors are not paid an annual retainer, but instead are each entitled to be paid \$100 for each meeting attended.

OCC believes that compensation for Public Directors should be competitive. The Compensation and Performance Committee will periodically review the level of the compensation for Public Directors, including how such compensation relates to director compensation of companies of comparable size and complexity. Changes to the compensation for Public Directors will be proposed to the full Board for consideration and approval.

4. **Board Access to the Management Committee and Independent Advisors.** In discharging its oversight role, the Board may inquire into any matter it considers appropriate to carry out its duties and responsibilities. Directors should have complete and open access to members of the Management Committee and, as appropriate, to OCC's outside advisors. Directors shall coordinate such access through the Chairman, Chief Executive Officer, or Chief Operating Officer. Directors will use their judgment to assure that this access is not distracting to the business operation of OCC.

The Board shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Board also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Board shall have the right at any time to retain independent outside financial, legal, or other advisors. The Board committees may retain independent outside financial, legal, or other advisors, and OCC will provide appropriate funding, as determined by the relevant committee, for the payment of reasonable compensation to such advisors. When providing the annual report of its activities to the Board, the relevant committee will include information concerning any engagement of outside advisors and the associated fees and expenses.

5. **Board Interaction with Media and Others.** The Code of Conduct for OCC Directors includes provisions related to inquiries made to directors from media and others (including regulators). Directors are expected to comply with these

provisions.

6. **Confidentiality of Information.** In order to facilitate open discussion, confidentiality of information and deliberations is an imperative. As provided in the Code of Conduct for OCC Directors, each director has an affirmative duty to safeguard the confidentiality of information provided to the Board as well as the nature of Board room deliberations.
7. **Board Orientation and Continuing Education.** OCC shall provide new directors with a director orientation program to familiarize such directors with, among other things, OCC's business, strategic plans, significant financial, accounting and risk management issues, compliance programs, conflicts policies, the Code of Conduct for OCC Directors, the OCC By-Laws and Rules, the Principles, principal officers, internal auditors, and external auditors. Each director is encouraged to participate in continuing education programs as necessary or appropriate to assist him or her in performing his or her responsibilities as a director. The Corporate Secretary will periodically advise directors of available educational opportunities.
8. **Board and Committee Evaluations.** The Governance and Nominating Committee is responsible for developing and administering an annual self-evaluation of the Board and its committees. The Governance and Nominating Committee shall be responsible for establishing the evaluation criteria, implementing the process for such evaluation, as well as making appropriate recommendations for improving performance. These self-evaluations will focus primarily on the performance of the Board and each committee as a whole and shall concentrate on areas where performance might be improved.

COMMITTEES

1. **Board Committees.** The Board shall establish any standing and other committees that it deems necessary or appropriate to discharge its responsibilities. [Each committee established by the Board must be comprised of a majority of directors who are deemed independent by the Board and in accordance with regulatory requirements.](#) The Board has established Board-level committees including: Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk, and Technology. The Board may form a new committee or disband a current committee depending on circumstances. The Board may form such other committees, including subcommittees, as it from time to time deems appropriate, and may delegate authority to one or more designated members of such committees. In addition, the Board may determine to form ad hoc committees or groups from time to time, and determine the composition and areas of responsibility of such committees or groups.
2. **Independence Criteria for Audit Committee Service.** The Board has adopted the following [additional](#) independence criteria with respect to the Audit Committee. A Management Director does not qualify as independent for Audit Committee purposes provided that any Non-Executive Chairman of OCC shall not be deemed to be a Management Director for this purpose. Exchange Directors, Member Directors, and Public Directors may qualify as independent for Audit Committee purposes, subject to an assessment by the Board (through the Governance and Nominating Committee) of individual directors for other

disqualifying material relationships with OCC, the Management Committee and other directors.

3. **Committee Assignments and Chairs.** The Chairs of the committees shall be determined in accordance with the terms of the applicable Committee Charter and, if applicable, the By-Laws. The Board shall have the authority to approve and shall each calendar year review committee assignments.

The Governance and Nominating Committee, after consultation with the Chairman, shall be responsible for making recommendations to the Board with respect to the assignment of directors to various committees, including the designation of Chair. After reviewing the recommendations, the Board shall be responsible for appointing the members to the committees.

Committee assignments and the designation of committee Chairs should be based on the director's knowledge, interests and areas of expertise. The Board does not favor mandatory rotation of committee assignments or Chairs. The Board believes experience and continuity are more important than rotation and that directors and Chairs should be rotated only if a change is likely to increase committee performance or facilitate committee work.

4. **Frequency and Length of Board Committee Meetings.** Committee Chairs should regularly consult with the Chairman, Chief Executive Officer, or Chief Operating Officer to obtain their insights and to optimize committee performance. The committee Chairs, in consultation with the Chairman, Chief Executive Officer, or Chief Operating Officer, as necessary, should establish the frequency and length of committee meetings. The Board agendas shall include regular reports from the Chairs of each of the Board committees.
5. **Development of Committee Agendas.** The committee Chairs, working with the Chairman, should establish committee agendas for the year. All standing committees should meet regularly during the year and receive reports from OCC personnel on developments affecting the committee's work.
6. **Attendance at and Preparation for Committee Meetings.** Directors are expected to attend all meetings of committees to which they are appointed, review all materials in advance and be prepared to participate fully in the committee's meetings.
7. **Charters.** For each standing committee the Board shall establish a written charter which shall set forth the responsibilities of that committee, as well as committee structure and operations, and any required reporting to the full Board.

For each of the Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk, and Technology Committees the charter shall set forth the purposes, goals, and responsibilities of such committee, the qualifications for committee membership, and committee reporting to the Board (which shall include a requirement that each committee provide the Board with an annual report summarizing the committee's activities over the prior year). Current versions of these charters shall be available on OCC's website.

MANAGEMENT STRUCTURE, EVALUATION AND SUCCESSION

1. **Management Structure.** OCC's By-Laws provide the Board with the flexibility to select the appropriate management leadership structure for OCC. OCC's management leadership may be comprised of an Executive Chairman, a Chief Executive Officer, and a Chief Operating Officer, as the Board determines necessary. In making leadership determinations, the Board considers many factors, including the specific needs of the business and the best interests of OCC and the market participants that it serves.
2. **Selection and Evaluation of Management.** As required by the By-Laws, the Board annually elects certain corporate officers including any Executive Chairman (if applicable), and the Chief Executive Officer, Chief Operating Officer, Secretary, and Treasurer. Each of these officers has the authorities, responsibilities and duties allocated to them as set forth in the By-Laws and Rules and such other duties as may be delegated to them as provided in the By-Laws or otherwise. Factors the Board considers in delegating authority to an officer to authorize a regulatory filing include, but are not limited to, the responsibilities and expertise of the officer and any limitations on the scope of the delegated authority that the Board determines are appropriate, including limitations to the subject matter, materiality of the changes, the regulatory process required to implement the changes, and the manner in which the officer must notify the Board or a committee about filings approved pursuant to such authority.

The Compensation and Performance Committee shall conduct an annual evaluation of the performance of each of any Executive Chairman and the Chief Executive Officer and Chief Operating Officer, including performance against his or her established goals. The Compensation and Performance Committee shall take such evaluations into consideration in recommending to the Board each such officer's compensation. After reviewing the recommendations of the Compensation and Performance Committee, the Board shall be responsible for establishing each such officer's compensation.

3. **Management Succession Planning.** Succession planning for OCC's senior management, including any Executive Chairman, the Chief Executive Officer, and the Chief Operating Officer, is critical to OCC's long-term success. To assist the Board, such officers shall provide an annual succession planning report to the Compensation and Performance Committee. There should also be available, on a continuing basis, the recommendations of any Executive Chairman, Chief Executive Officer, and Chief Operating Officer as a successor should any of them unexpectedly become unable to serve.
4. **Review Cycle.** These Principles, along with the Fitness Standards, shall be reviewed by the Board at least once every twelve months.

Exhibit 5B**THE OPTIONS CLEARING CORPORATION
GOVERNANCE AND NOMINATING COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Governance and Nominating Committee (the “Committee”) to assist the Board in overseeing OCC’s corporate governance processes, including assessing that OCC’s governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, [evaluating candidates for Board service](#), identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

- A. Composition. The Committee shall be comprised of at least one Public Director, at least one Exchange Director, and at least one Member Director. No Management Director will be a member of the Committee. [At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25\(c\)\(2\) and the judgment of the Board.](#) Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. The Chair shall be a Public Director [who is also an independent director as defined under Securities and Exchange Commission Rule 17Ad-25\(c\)\(2\)](#). In the absence of the Chair at any meeting of the Committee, those members of the Committee present will designate a Committee member to serve as the Acting Chair.

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

- B. Meetings. The Committee shall meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Chair or its designee shall, in consultation with management, as well as the Corporate

Secretary, prepare an agenda in advance of each meeting. The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for an executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

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

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

III. Authority

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

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The

Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including fees and expenses associated therewith. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

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

- The Committee shall identify for purposes of making recommendations to the Board the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. The Committee shall, in its evaluation of nominees for serving as directors, consider the views of other stakeholders who may be affected by the decisions Board of Directors, other than owners of the Corporation and Clearing Members.
- The Committee shall specify fitness standards for serving as a director that are documented in writing and approved by the Board.
- The Committee shall maintain a written evaluation process to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements. The outcome of the written evaluation process will be documented consistent with applicable regulatory requirements.
- The Committee shall identify, screen and review individuals qualified to be elected or appointed, as the case may be, to serve as ~~Member Directors and Public~~ Directors, consistent with the Standards approved by the Board (including evaluation of incumbent directors for potential re-nomination, taking into consideration, among

other things, an incumbent director's past performance, including attendance at meetings and participation and contributions to the activities of the Board), after consultation with the Chairman.

- The Committee shall assess the appropriateness of a director continuing to serve on the Board where such director submits his or her offer to resign upon the director ceasing to hold the principal occupation or business association that such director held when originally invited to join the Board, and recommend to the Board any action to be taken related thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a director.
- The Committee shall review at least every three years the composition of the Board as a whole for consistency with public interest and regulatory requirements, including whether the Board reflects the appropriate balance across the categories of directors (i.e., Member Directors, Exchange Directors, Public Directors and Management Director).
- The Committee shall review at least every three years the continued appropriateness of the term limits applicable to Member Directors set forth in the By-Laws and recommend to the Board, where appropriate, changes to such provisions.
- The Committee shall review at least once every twelve months the Board of Directors Charter and Corporate Governance Principles and the charters of the Board's committees for consistency with the public interest and other regulatory requirements, transparency of the governance process, and other sound governance practices.
- The Committee shall recommend to the Board, where appropriate, changes to the charters of the Board's committees, including this Charter, and the Board of Directors Charter and Corporate Governance Principles.
- Each calendar year, the Committee shall review and advise the Board with regard to whether directors are independent [directors in accordance with Securities and Exchange Commission Rule 17Ad-25\(c\)\(1\)](#) and the Board.
- The Committee shall advise the Board with respect to committee structure, operations and charters, including:
 - Reviewing periodically the committee structure of the Board; and
 - [Each calendar year](#), recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman.
- The Committee shall consider and advise the Board on matters pertaining to director leadership development and Board succession planning.
- Each calendar year, the Committee shall develop, and coordinate and provide oversight of, the annual process of self-evaluation of the role and performance of the

Board's committees and directors in the governance of OCC.

- The Committee shall oversee, review and consider changes to the orientation program for new directors and continuing director training and education opportunities.
- The Committee shall review and approve changes to OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct. The Committee shall review any director conflicts of interest and how they are to be monitored and resolved.
- The Committee shall have the authority to approve all material changes to written policies related to related party transactions. The Committee shall review and, if appropriate, approve or ratify any related party transactions involving OCC, in accordance with the written policy governing such transactions.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Board for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee shall review this Charter at least once every twelve months. The Committee shall submit this Charter to the Board for approval, with such changes, if any, as the Committee deems advisable.

Exhibit 5C**THE OPTIONS CLEARING CORPORATION
RISK COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Risk Committee (the “Committee”) to assist the Board in overseeing OCC’s financial, collateral, risk model and third-party risk management processes. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation. Additionally, the Committee is responsible for performing those functions delegated to the Committee under OCC’s By-Laws and Rules. In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

- A. Composition. The Committee shall consist of (i) the Chairman¹, (ii) at least one Exchange Director, (iii) at least one Member Director, and (iii) at least one Public Director, each of whom shall be appointed each calendar year by the Board. At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgement of the Board. Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. In making their nominations, the Governance and Nominating Committee and the Board take into consideration the desire to obtain input from a broad array of market participants on risk management issues and the ability of the Committee to provide a risk-based, independent and informed opinion on all matters presented to it for consideration. The Board may remove or replace any member of the Committee at any time. The Committee shall be chaired by a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as the Acting Chair.

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

Meetings. The Committee will meet at least four times a year, inclusive of

¹ Or “Executive Chairman” in the event this role is filled by an Executive Chairman.

joint meetings with other Board committees. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests of the Committee may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or the Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged. The Committee shall meet regularly, and at least once each calendar year, with members of management and the Chief Risk Officer in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Risk Officer is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

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

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

III. Authority

- A. Scope. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

From time to time, the Committee may receive reports and guidance relating to financial risk issues from, among others, the OCC Financial Risk Advisory Council and, in the exercise of its fiduciary judgment, shall take such guidance into account in the performance of its functions and responsibilities.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

The Committee shall perform its responsibilities in accordance with this Charter and applicable regulatory requirements.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

The Committee's role is one of oversight. It remains the responsibility of OCC management to identify, measure, manage, monitor and report on financial, collateral, risk model and third-party risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

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

- The Committee shall review at least once every twelve months the adequacy of OCC's management of risks related to credit exposures, including its margin and clearing fund methodologies. The Committee shall have the authority to approve all material changes to written policies with respect to the management of risks related to credit exposures. The Committee shall receive a monthly report from management that provides information on the effectiveness of the management of risks related to credit exposures, including the results of (i) a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin model and a review of the margin model's parameters and assumptions for back testing.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of collateral risks. The Committee shall have the authority to approve all material changes to written policies related to the management of collateral risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of collateral risks.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of liquidity risks, including the adequacy of any committed liquidity facilities. The Committee shall have the authority to approve all material changes to written policies with respect to the management of liquidity risks. The Committee shall receive a monthly report from management that provides information on the effectiveness of OCC's management of liquidity risks, including the results of a comprehensive analysis of existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs.
- The Committee shall oversee OCC's risk models and risk model validation process. The Committee shall have the authority to approve all material changes to written policies with respect to risk model management. The Committee shall review and have the authority to approve all new risk models and recommend such changes to the Board for approval. The Committee shall review and have the authority to approve material changes to existing risk models. Additionally, the Committee shall review and have the authority to approve the annual risk model validation plan and plan deviations, and any Chief Risk Officer recommendations for removing or deferring any risk model validation from a previously approved risk model validation plan. The Committee shall receive a quarterly report from the Chief Risk Officer that provides information on progress against the annual risk model validation plan and measures being taken by management regarding findings made. The Committee also shall review the results of any third-party validations of OCC's risk models and, if any, recommended actions and remediation plans.

- The Committee shall review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances.
- The Committee shall review and have the authority to approve new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third-party risks and shall refer such products to the Board for approval.
- The Committee shall oversee OCC's Recovery and Orderly Wind-Down Plan. The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board for approval.
- The Committee shall consult with OCC's non-Board-level risk management committee and consider and respond to input from that non-Board-level risk management committee on all matters that could materially affect OCC's risk profile, and provide such information to the Board for its consideration.
- The Committee shall oversee the framework for Clearing Membership, including (i) periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for Clearing Membership, (ii) overseeing the processes established for reviewing and monitoring Clearing Membership (including in respect of the continuance of potentially problematic members), and (iii) making recommendations to the Board, as applicable, for final determination in respect of the foregoing. At least once each calendar year, the Committee shall review the investigation and enforcement outcomes of disciplinary actions taken by the OCC against Clearing Members through its established processes.
- The Committee shall at least once every twelve months review the adequacy of OCC's management of third-party risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third-party risks, including key linked and vendor relationships, [and provide risk assessments to the Board for any service providers providing core services to OCC, consistent with regulatory requirements.](#)
- The Committee shall have the authority to approve management's recommendation to appoint or replace the Chief Risk Officer. The Chief Risk Officer shall report functionally to the Committee and administratively to a member of the Management Committee designated by the Committee. The Committee shall at least once every twelve months review and have the authority to approve the Chief Risk Officer's goals and objectives and any material changes thereto. The Committee shall at least once every twelve months review the performance of the Chief Risk Officer with respect to performance assessment and annual compensation for the Chief Risk Officer.
- The Committee shall at least once every twelve months review the structure and

staffing of OCC's financial risk management and corporate risk management functions.

- The Committee shall review the results of any audits (internal and external) as to financial, collateral, risk model and third-party risk management processes or any other matter relating to the areas that the Committee oversees, as well as management's responses pertaining to such audits.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

Exhibit 5D**THE OPTIONS CLEARING CORPORATION
TECHNOLOGY COMMITTEE CHARTER****I. Purpose**

The Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) has established a Technology Committee (the “Committee”) to assist the Board in overseeing OCC’s information technology (“IT”) strategy and other company-wide operational capabilities. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

Composition. The Committee shall be comprised of three or more directors as appointed each calendar year by the Board. Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board. The Board may remove or replace any member of the Committee at any time. The Chair of the Committee shall be a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair. In fulfilling their responsibilities, it is recognized that the members of the Committee are not full-time employees of OCC and are not, and do not represent themselves to be, technology experts.

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

- A. **Meetings.** The Committee shall meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of

management or others to attend the meeting and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or the Acting Chair, as applicable, will serve as chair for an executive session. The Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

The Committee shall meet regularly, and no less than once each calendar year, with members of management in separate executive sessions to discuss any matters that either side believes should be discussed privately. The Committee shall meet regularly, and no less than once each calendar year, in separate executive sessions with the Chief Security Officer (“CSO”) in order to provide for the CSO’s autonomy and independence. Between meetings of the Committee, the CSO is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

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

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

III. Authority

- A. **Scope.** Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including fees and expenses associated therewith.

Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

The Committee's role is one of oversight. It remains the responsibility of OCC management to identify, measure, manage, monitor and report on IT and other operational risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

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

- The Committee shall review at least once every twelve months OCC's IT and operational strategies, costs and planning, including the financial, tactical and strategic benefits of proposed major IT and operational related initiatives. The Committee shall have the authority to approve major IT and operational initiatives, recommend any major capital expenditures to implement to the Board and the IT and operational budget for each calendar year.
- During each regular meeting, the Committee shall receive a report from management that provides information on management's progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance, including metrics concerning technology investments, talent management, and system availability, integrity, capacity and performance.
- The Committee shall review material changes to the operational execution and delivery of core clearing and settlement services and has the authority to recommend approval thereof to the Board.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of security risks. The Committee shall have the authority to approve all material changes to written policies related to the management of security risks. During each regular meeting, the Committee shall receive a report from management that provides information on the effectiveness of the management of security risks, including metrics concerning security incidents, systems intrusions and vulnerability management.
- The Committee shall oversee OCC's Business Continuity and Disaster Recovery Programs. During each regular meeting, the Committee shall receive a report from management that includes the progress on executing the annual test plan and achieving recovery time objectives.
- The Committee shall oversee OCC's major operational initiatives. During each regular meeting, the Committee shall receive a report from management that provides information on any major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators.
- The Committee shall monitor and oversee the overall adequacy of OCC's IT and operational control environment, including the implementation of key controls in response to regulatory requirements.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.

- Each calendar year, the Committee shall review its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

Exhibit 5E**THE OPTIONS CLEARING CORPORATION
COMPENSATION AND PERFORMANCE COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established a Compensation and Performance Committee (the “Committee”) to assist the Board in overseeing general business, regulatory capital, investment, corporate planning, compensation and human capital risks as well as executive management succession planning and performance assessment, including recommending to the Board for approval the annual compensation awards of any Executive Chairman and the Chief Executive Officer and Chief Operating Officer. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

- A. **Composition**. The Committee shall be comprised of the Chairman, the Member Vice Chairman, and three or more other directors appointed each calendar year by the Board. Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. [At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25\(e\) and the judgment of the Board.](#) The Board may remove or replace any member of the Committee at any time. The Chair of the Committee shall be a Public Director. Unless a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair.

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

- B. **Meetings**. The Committee shall meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of

management or others to attend the meeting and provide pertinent information as necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded.

Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair of the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

The Committee shall meet at least once each calendar year with the Chief Executive Officer, any Executive Chairman, and any other OCC officers the Committee deems appropriate, to discuss and review the performance and compensation awards of members of the Management Committee. Except as otherwise requested by the other members of the Committee, the Chief Executive Officer and any Executive Chairman shall recuse themselves from any discussion of their individual compensation, benefits, or perquisites.

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

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

III. Authority

- A. **Scope**. Subject to the direction of the Board, the Committee is authorized

to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee, the Administrative Committee, and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

The Committee's role is one of oversight. It remains the responsibility of OCC management to identify, manage, measure, monitor and report on general business risks, including as they relate to OCC's corporate performance report and corporate budget, capital requirements, human capital, compensation and benefit programs, management succession planning and management performance assessment processes, arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

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

- The Committee shall oversee the annual corporate performance report and corporate budget, including their alignment with OCC's business strategy. The Committee shall review and approve the annual corporate performance report

and corporate budget. During each regular meeting, the Committee shall receive a report from management that provides information on performance against the corporate performance report and corporate budget.

- The Committee shall review and have the authority to approve the annual goals and objectives of any Executive Chairman and the Chief Executive Officer, and Chief Operating Officer.
- The Committee shall make recommendations to the Board concerning capital requirements.
- The Committee is authorized to review and approve changes in OCC's fees, including authorizing the filing of regulatory submissions relating thereto.
- The Committee is authorized to review and approve significant unanticipated capital expenditures or, where required, make recommendations to the Board.
- The Committee is authorized to review and recommend to the Board changes to OCC's fee structure.
- The Committee shall oversee Management Committee succession planning and performance assessment processes. At least once every twelve months the Committee shall review the results of Management Committee succession planning activities.
- Each calendar year, the Committee shall review the performance of the members of the Management Committee and have the authority to approve their compensation awards. Each calendar year, the Committee shall assess the performance and make recommendations to the Board regarding the compensation awards of any Executive Chairman and the Chief Executive Officer, and Chief Operating Officer.
- The Committee shall meet at least once each calendar year with any Executive Chairman, the Chief Executive Officer, the Chief Operating Officer, and any other corporate officers the Committee deems appropriate to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.
- The Committee shall oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, [compensation](#) performance management, [diversity, equity, and inclusion programs](#), training and development, benefits and succession planning for critical roles.
- The Committee shall oversee OCC's employee benefit, retiree benefit, and welfare benefit programs and plans, as well as the operation and administration thereof, including funding obligations (if any).

- At least once every twelve months, the Committee shall provide a report to the Board (with more frequent reporting as the Committee deems necessary or advisable under the circumstances) relating to: (i) actions taken by the Committee with respect to its review of OCC's retirement and welfare benefit plans, (ii) the financial position and performance of such plans, and (iii) adherence to investment guidelines, in each case, where applicable.
- The Committee shall oversee the Administrative Committee. The Committee shall be authorized to approve the charter of the Administrative Committee and any changes thereto, appoint and remove members of the Administrative Committee, and oversee and monitor the activities of the Administrative Committee with regard to the matters set forth in the Administrative Committee's charter.
- The Committee shall be authorized to adopt new compensation, retirement and welfare benefit plans and to amend or terminate existing plans other than such plans that require Board action to approve, amend or terminate.
- No less frequently than every two calendar years, the Committee shall review the compensation of Public Directors and recommend to the Board any changes thereto.
- At least once every twelve months, the Committee shall review OCC's insurance program.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

Exhibit 5F**THE OPTIONS CLEARING CORPORATION
REGULATORY COMMITTEE CHARTER****I. Purpose**

The Board of Directors (“Board”) of The Options Clearing Corporation (“OCC”) has established a Regulatory Committee (“Committee”) to assist the Board in overseeing OCC’s efforts to demonstrate compliance with its regulatory obligations with particular attention to the Regulatory Compliance Oversight Group (“RCOG”), a working group established by OCC management. Given OCC’s designation as a Systemically Important Financial Market Utility (“SIFMU”), the Board believes it is critical that OCC demonstrate its continued strong commitment to compliance with applicable regulations in the conduct of its core clearance and settlement activities. Nothing in this Charter alters the existing roles and responsibilities of other Board Committees.

II. Membership and Organization**A. Composition**

The Committee shall be comprised of all Public Directors, as that term is defined in the Board of Directors Charter and Corporate Governance Principles (“Board Charter”). [At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25\(e\) and the judgment of the Board.](#) Unless a Chair is elected by the Board, the members of the Committee shall designate a Chair by majority vote of the full membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair. In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

B. Meetings

The Committee will meet at least quarterly, or more frequently, as deemed necessary by the Committee in order to fulfill its purposes as described in this Charter. Other meetings may be called by the Chair as circumstances dictate. The Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. The Chief Compliance Officer, or one of his or her deputies if the Chief Compliance Officer is unable to attend, shall attend all meetings of the Committee. The Committee may call executive sessions from which members of management, invited

guests, and other Committee members, to the extent the Chair determines there exists an actual or potential conflict of interest, may be excluded. The Chair or Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other.

C. Quorum

A simple majority of the Committee members shall constitute a quorum for the transaction of business.

D. Minutes and Reports

The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. Meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

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

III. Authority

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

The Committee shall have the authority to hire specialists or rely upon other outside advisors, including legal advisors, to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

IV. Functions and Responsibilities

The Committee's role is one of oversight. It remains the responsibility of the RCOG to identify, manage, monitor, and report on OCC's activities that demonstrate compliance with regulatory obligations.

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

- Oversee, and assist the Board in evaluating, OCC's efforts to demonstrate compliance with applicable laws and regulations, including banking and securities laws and other applicable regulatory guidance and standards, through regular reporting to the Committee by the RCOG.
- Oversee OCC management's action plans to achieve compliance with any proposed new regulation to which OCC is subject.
- Oversee work performed by any independent compliance auditor(s) engaged by OCC and approved by the Board.
- Make recommendations to the Board as it deems appropriate, and as the Board may request.
- Meet with OCC's regulators, with or without OCC management, as the Committee deems necessary, in order to discuss OCC's efforts to enhance its regulatory compliance posture.
- Review any annual regulatory compliance reports provided by OCC management.
- Review any final exam report letter received from OCC's regulators. Additionally, the Committee shall review any OCC response to an exam report letter received from OCC's regulators. The Committee shall receive a briefing on OCC's action plans, if any, in response to items identified in any final exam report letter received from OCC's regulators.
- Perform such other activities consistent with the Board Charter and By-Laws and applicable legal and regulatory requirements, as the Committee deems necessary or appropriate.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Board for approval, with such changes, if any, as the Committee deems advisable. The Board shall have the authority to diminish or eliminate the duties and obligations of the Committee as of the date of any final report of any independent compliance auditor, but in any case, no sooner than November 20, 2022, subject to the approval of the Securities and Exchange Commission.

Exhibit 5G**THE OPTIONS CLEARING CORPORATION
AUDIT COMMITTEE CHARTER****I. Purpose**

The Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) has established an Audit Committee (the “Committee”) to assist the Board in overseeing OCC’s financial reporting process, OCC’s system of internal control, OCC’s auditing process, OCC’s process for monitoring compliance with applicable laws and regulation, and OCC’s compliance and legal risks. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation.

In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

- A. **Composition.** The Committee shall be comprised of three or more directors as appointed each calendar year by the Board. Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. At least a majority of the Committee shall be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board. The Board may remove or replace any member of the Committee at any time. All members of the Committee shall be independent from management as determined by the Board. Management Directors do not qualify as independent and may not serve on the Committee.¹ All members of the Committee shall have a working familiarity with basic finance and accounting practices (i.e., financial literacy). At least one member of the Committee shall have accounting or related financial management expertise. The Chair shall be a Public Director. Unless a Chair is elected by the Board, the members of the Committee shall designate a Chair by majority vote. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as Acting Chair.

¹ In the event OCC has a Non-Executive Chairman, such individual shall not be considered a Management Director.

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

- B. **Meetings**. The Committee shall meet at least four times a year. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or Acting Chair, as applicable, will serve as chair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

The Committee will meet at least once each calendar year with management, the Chief Audit Executive, the Chief Compliance Officer, the Chief Financial Officer, and the external auditors in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Audit Executive, the Chief Compliance Officer and the Chief Financial Officer are authorized to communicate directly with the Chair with respect to any of the responsibilities of the Audit Committee.

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

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

III. Authority

- A. **Scope.** Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

Delegation. The Committee may form and delegate authority to subcommittees, and may delegate authority to one or more designated members of the Committee, including the approval of non-audit services performed by the external auditors as set forth below. The Committee may also delegate authority to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

The Committee's role is that of oversight and its primary duties and responsibilities are to serve as an independent and objective party to oversee:

- OCC's financial reporting process, including the integrity of its financial statements;
- The impact of litigation and other legal matters that may have a material impact on the financial statements;
- OCC's system of internal control;
- The audit efforts of OCC's external auditors and the Internal Audit Department;
- OCC's compliance environment and processes; and
- The facilitation of open communication among the external auditors, the Corporate Finance Department, the Compliance Department, and the Board.

In fulfilling their responsibilities, it is recognized that the members of the Committee are not full-time employees of OCC and are not, and do not represent themselves to be, accountants or auditors of OCC. It is not the duty or responsibility of the Committee or its members to conduct fieldwork or other types of auditing, accounting, or compliance reviews or procedures. It is the responsibility of OCC management to develop, implement and maintain appropriate accounting, compliance and financial reporting principles and policies, internal controls and procedures that comply with accounting standards and applicable laws and regulation as well as to identify, manage, measure, monitor and report on compliance and legal risks. The external auditors and the Internal Audit Department of OCC are responsible for planning and carrying out audit work, as appropriate.

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

- The Committee shall review, as appropriate, with management and the external auditor the audited and unaudited financial statements. The Committee is authorized to resolve any disagreements between management and the external auditor regarding financial reporting.
- The Committee is authorized to approve OCC's annual audited financial statements and issuance of the annual financial statements after reviewing such statements with management and the external auditor prior to issuance and receiving management's recommendations with regard to such issuance.
- The Committee is authorized to review with management, the external auditor and Internal Audit (as appropriate) significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting

principles and financial statement presentation and the effect of regulatory and accounting initiatives.

- The Committee is authorized to approve material changes in accounting principles and practices and recommend such changes to the Board for approval.
- During each regular meeting, the Committee shall receive a report from the Chief Legal Officer on existing, pending or threatened litigation and discuss any legal matters that may have a material impact on OCC's financial statements. Each calendar year, the General Counsel shall report on OCC's use of external counsel services, including costs thereof.
- The Committee is authorized to ensure that there is a clear understanding with management and the external auditor that the external auditor is ultimately accountable to the Board and the Committee. The Committee is authorized to review and discuss with the external auditor any audit problems or difficulties and management's response thereto.
- The Committee is authorized to: pre-approve all audit and other services provided by the external auditor each calendar year; approve the fees related to such services, including any adjustments thereto; and review and approve the scope and approach of the external auditor's annual service plan and any adjustments thereto. The Committee shall review reports of the external auditor issued in connection with its annual service plan, as well as any other special reports, and inquire of management regarding steps taken to deal with items raised.
- The Committee shall at least once every calendar year monitor and evaluate the external auditor's qualifications, performance and independence and, based upon such evaluations, re-appoint or recommend to the Board dismissal of the external auditor.
- The Committee shall at least once every calendar year obtain and review reports prepared by the external auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review or peer review, or by any inquiry or investigation conducted by governmental or professional authorities during the preceding five years with respect to independent audits carried out by the firm, and any steps taken to deal with any such issues; and all relationships between the external auditors and OCC that could be thought to bear on its independence, as well as its independence status within the meaning of the Securities Acts administered by the Securities and Exchange Commission. These reports are to be used to evaluate the external auditor's qualifications, performance, and independence.
- The Committee is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor as well as any other

active audit engagement team partner and consider whether there should be a regular rotation of the audit firm itself.

- The Committee is authorized to discuss with the external auditor any significant issues that may be required in accordance with generally accepted auditing standards relating to the conduct of the financial statement audit.
- The Committee is authorized to approve management's recommendation to appoint or replace the Chief Audit Executive. The Chief Audit Executive shall report functionally to the Committee and administratively to a member of the Management Committee designated by the Committee.
- The Committee shall review at least once every twelve months the Internal Audit Policy. The Committee is authorized to approve the Internal Audit Policy and ensure there are no unjustified scope restrictions or limitations placed on the Internal Audit Department.
- The Committee shall review the Internal Audit Department process for establishing the risk-based annual internal audit plan, is authorized to approve the annual internal audit plan and deviations to the plan, shall monitor progress against the annual internal audit plan through the receipt of reports on at least a quarterly basis, and is authorized to approve any Chief Audit Executive recommendations for removing or deferring any audits from a previously approved annual internal audit plan.
- The Committee shall monitor ongoing internal audit activities by reviewing reports and other communications prepared by the Internal Audit Department and inquire of management regarding steps taken to deal with items raised.
- The Committee shall oversee the structure, independence and objectivity, staffing, resources and budget of the Internal Audit Department.
- The Committee is authorized to delegate to the Chief Audit Executive the authority to approve, within the co-sourced audit hour limits of the approved annual internal audit plan, the following:
 - Hiring of the internal audit co-sourcing service providers whenever it is determined a specialist is needed to review particular areas of the OCC, to augment the resources available internally within OCC's Internal Audit Department or for any other practical purpose.
 - Reviewing the performance of the internal audit co-sourcing service providers and exercising final approval on the appointment, retention or discharge of such providers.
 - Approving the scope of services to be performed by the internal audit co-sourcing service provider.

- The Committee shall review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing.
- The Committee shall review at least once every twelve months the Reporting Concerns and Whistleblower Policy, the Code of Conduct and the Compliance Risk Policy. The Committee is authorized to approve each of these policies. The Committee shall discuss with relevant parties, management staff or advisors any material issues, including those relating to questionable accounting or auditing matters, reported under these policies.
- The Committee is authorized to approve management's recommendation to appoint or replace the Chief Compliance Officer. The Chief Compliance Officer shall report functionally to the Committee and administratively to a member of the Management Committee designated by the Committee.
- Each calendar year, the Committee shall receive a report from the Chief Compliance Officer concerning OCC's system to communicate and monitor compliance with and enforcement of its Code of Conduct and Reporting Concerns and Whistleblower Policy.
- The Committee shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the Chief Compliance Officer and inquire of management regarding steps taken to deal with items raised.
- The Committee shall oversee the structure, staffing, resources and budget of the Compliance Department.
- During each regular meeting, the Committee shall review regulatory inspection reports, management's responses thereto, and the Compliance Department's tracking of remediation by OCC of noted items.
- The Committee is authorized to review and evaluate any Annual Compliance Report certified by the Chief Compliance Officer as required by regulation.
- During each regular meeting, the Committee shall review with management OCC's system of internal controls. The Committee shall review any (i) significant deficiencies and material weaknesses in the design or operation of internal control, and (ii) any fraud, whether or not material, that involves management or other employees.
- The Committee shall review the performance of the Internal Audit function and the Chief Audit Executive, and the Compliance function and the Chief Compliance Officer, with respect to the performance assessment and annual compensation for each.

- The Committee is authorized to approve management's decision to hire employees or former employees of the external auditor who were engaged on OCC's account.
- The Committee is authorized to delegate authority to one of its members to approve non-audit services performed by the external auditors, with such decisions communicated regularly to the Committee.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall review its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee is authorized to perform any other duties consistent with this Charter, as the Committee or Board deems necessary, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.

Exhibit 5H

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

The Options Clearing Corporation Fitness Standards

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

Fitness Standards for Directors

The Corporation's By-Laws contain governance standards designed to provide fair representation to stockholders and Clearing Members. These standards also facilitate the performance of the Corporation's role as a systemically important financial market utility.

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

Criteria Applicable to all Directors

- Characteristics essential for effectiveness as a member of the Board, including, but not limited to, integrity, objectivity, sound judgment, and leadership;
- Expertise and experience in an area relevant to governance of the Corporation, including, but not limited to: (i) strategic planning, such as new business development, expansion of markets, products and customers, and joint venture development; (ii) risk management relevant to risks such as credit, market, liquidity, operational, legal and regulatory compliance, payment systems, clearance and settlement, new products, risk modeling, risk valuation, and systemic risk management; (iii) technology, such as infrastructure, applications development and maintenance, information security, and disaster recovery; (iv) operations; (v) trading; (vi) business management; (vii) finance; (viii) audit; (ix) governmental and legislative relationship management; (x) compensation and human resources; and (xi) legal, regulatory, and compliance expertise.
- [Whether the individual would help demonstrate that the Board of Directors, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives and whether the individual understands and is able to consider the general position and views of other stakeholders who may be affected by the decisions of the Board of Directors, other than owners of the Corporation and Clearing Members.](#)
- Substantial seniority in own firm;
- Knowledge of securities and/or futures industries;
- Appropriate educational credentials or other certifications;

- For current directors eligible for re-election, length of service on the Board and attendance, and participation, and contribution at Board and committee meetings; and
- Appropriate weight given to diversity factors.

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

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

Additional Criteria for Member Directors

- Balanced representation among all Clearing Members;
- Balanced representation of all business activities of Clearing Members;
- Nature of the firm with which each prospective director is associated;
- Industry affiliations;
- Assure that not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume; and
- Develop a mix of Member Directors that includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors.

Additional Criteria for Exchange Directors

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

Additional Criteria for the Public Directors

- Is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i) ~~No affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities~~, as stated in the Corporation's By-Laws.
 - For the avoidance of doubt, this criterion will not preclude a person from service as a Public Director solely based on some other relationship with an entity described in (i) or (ii) above that does not involve being an associated person or employee of the entity, such as might be the case, depending on the circumstances, in connection with serving as a director.

Fitness Standards for Clearing Members

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

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

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

Fitness Standards for Affiliates and Access Persons

Any person affiliated, within the meaning of Section 5b(c)(2)(0) of the CEA, with a director of the Corporation or a Clearing Member ("Affiliates") shall not:

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

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

Section 5b(c)(2)(0)(ii)(IV) of the CEA requires each derivative clearing organization ("DCO") to establish Fitness Standards for persons with direct access to the settlement or clearing activities of the DCO ("Access Persons"). The Corporation believes that there are presently no persons with such access other than the Clearing Members.



Third-Party Risk Management Framework

Exhibit 5I

Effective Date:	12/22/2022 [TBD]
Board Approval:	Risk Committee

I. EXECUTIVE SUMMARY

As a central counterparty, The Options Clearing Corporation (“OCC”) is exposed to risks arising from its Third-Party relationships. This Third-Party Risk Management Framework (“Framework”) outlines OCC’s approach to identify, measure, monitor, and manage risks arising from Third-Party relationships including:

- Clearing Members
- Clearing Banks, custodians, liquidity providers, and investment counterparties (“Financial Institutions”)
- Financial market utilities (“FMU”)¹
- Exchanges² [Relationships](#)
- Vendors

This Framework is approved by the Risk Committee of OCC’s Board of Directors (“Risk Committee”) at least annually and implemented by the Management Committee (“MC”).

II. RISK IDENTIFICATION

OCC faces risks associated with its Third-Party relationships, including:

Financial risks arise from a Clearing Member failing to meet its financial obligations to OCC including, but not limited to, obligations related to settlement, margin, and [Clearing Fund](#). OCC may also face financial risks from other Third-Parties not meeting their obligations to OCC, including, but not limited to, facilitating daily settlements, providing timely access to collateral, honoring liquidity draw requests, or meeting obligations under an agreement.

Operational risks arise from errors, disruptions, failures, or the inability of a Third-Party to fulfill its obligations to OCC. These risks include a Third-Party disruption preventing OCC from completing trade processing, daily settlements, accessing collateral, or safeguarding OCC property, equipment, or personnel.

General Business Risk arise when a Third-Party is unable to fulfill its obligations due to events or disruptions from the Third-Partys’ administration and operation of its business resulting in a loss to OCC.

¹ FMUs may include any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among Financial Institutions or between Financial Institutions and the person.

² ~~Exchange relationships may include options exchanges, futures markets, OTC Trade Sources, or Loan Markets~~



Third-Party Risk Management Framework

Exhibit 5I

Information Technology and Security risks arise when a Third-Party is unable to safeguard OCC [systems or](#) data or maintain capabilities or services to support OCC's operations [in accordance with OCC's service standards](#).

Legal and Regulatory risks arise when a Third-Party fails to fulfill its obligations to OCC [or OCC fails to fulfill its obligations to a Third-Party](#). [These risks also arise when a Third-Party fails to comply with regulatory standards and protocols agreed to with OCC](#). They also include exposure to potential litigation or regulatory compliance concerns.

III. THIRD-PARTY RELATIONSHIP LIFECYCLE

OCC's relationship lifecycle is designed to identify, measure, monitor, and manage Third-Party risks. The lifecycle consists of three stages.

- **On-Boarding** – Third-Parties are evaluated to determine whether they can engage in or expand a relationship with OCC. After evaluation, OCC completes any operational tasks necessary to activate the relationship.
- **Ongoing Monitoring** – Third-Parties are monitored for compliance with standards, the presence of additional or increased risks, and fulfillment of contractual obligations. Ongoing monitoring is conducted based upon the nature of each relationship and is commensurate with the risks posed by the Third-Party.
- **Off-Boarding** – Third-Party [ies relationships or OCC](#) may [elect to terminate a relationship](#). Following the [determination to terminate termination of](#) a relationship, OCC completes any operational tasks necessary to off-board the relationship [in compliance with agreement terms](#).

[In addition to the lifecycle management processes set forth above, certain Third-Parties may constitute Service Providers for Core Services and are subject to enhanced lifecycle management by both the MC and the Board. Enhanced lifecycle management includes:](#)

- **On-Boarding:** [Prior to entering into an agreement with a Service Provider for Core Services, the MC will evaluate and document the risks related to the agreement, including under changes to circumstances and potential disruptions, and assess whether the risks can be managed in a manner consistent with this Framework \(the "Risk Analysis"\). Prior to entering agreements establishing a relationship with a Service Provider for Core Services, the MC will submit the agreement, along with the Risk Analysis, to the Board of Directors for review and approval.](#)
 - **Ongoing Monitoring:** [Service Providers for Core Services are monitored on an ongoing basis. The MC evaluates performance of Service Providers for Core Services and either: \(a\) remedies significant deterioration in performance of the Service Provider for Core Services, \(b\) addresses changing risks or material issues with the Service Provider for Core Services identified through such monitoring, or \(c\) if such risks or material issues cannot be remedied, documents](#)
-



Third-Party Risk Management Framework

Exhibit 5I

weaknesses or deficiencies with the Service Provider for Core Services. The MC will report to the Board for its evaluation any action taken by the MC to remedy significant deterioration in performance of the Service Provider for Core Services or address changing risks or material issues with the Service Provider for Core Services. If the risks or issues with the Service Provider for Core Services cannot be remedied, the MC will assess and document the weaknesses and deficiencies and submit to the board the documented weaknesses or deficiencies in the relationship with the Service Provider for Core Services.

Third-Parties that have multiple engagements ~~relationships~~ with OCC are subject to the processes described below for each type of engagement ~~relationship~~. OCC recognizes that multiple engagements ~~relationships~~ with a single entity may result in additional risks (as identified in Section II) and incorporates this into its on-boarding and ongoing monitoring through their respective procedures (as identified in each Third-Party type below) and working groups.

As described below, risks identified throughout the relationship lifecycle are reported and escalated through associated working groups. Working groups are cross-departmental and support OCC's business as assigned by the MC. Each working group has a chair and designated MC member who are responsible to determine the matters to be escalated to the MC in accordance with this Framework. The working groups identified in this Framework have defined decision-making authority, functions and responsibilities as specified ~~defined~~ in the associated working group procedure. The working groups that support the activities described in this Framework are:

- Credit and Liquidity Risk Working Group ("CLRWG")
- Exchange and Vendor Working Group ("EVWG")
- ~~Vendor Risk Working Group ("VRWG")~~

IV. THIRD-PARTY RELATIONSHIP MANAGEMENT

Clearing Members

OCC's membership standards are designed to be objective and risk-based and are publicly disclosed in OCC's Rules and By-Laws. Annually, Business Operations, Financial Risk Management ("FRM"), Treasury, and Third-Party Risk Management ("TPRM") assess the adequacy of OCC's membership standards to address the management of risks presented by Clearing Members and the processes used to monitor initial and ongoing compliance with those standards, in accordance with the Credit and Liquidity Risk Working Group Procedure. The review may contain recommendations to change the standards or monitoring processes. The results of the annual assessment are summarized for consecutive review and approval by the CLRWG, MC, Risk Committee, and if rule changes are necessary, the Board of Directors.



Third-Party Risk Management Framework

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On-Boarding: Business Operations, FRM, and TPRM complete a risk-based evaluation of Clearing Member applicants by evaluating their financial resources, operational capacity, personnel, and facilities against OCC's membership standards. FRM presents the results of this evaluation to the CLRWG and other key stakeholders as identified within Article V, Section 2 of OCC's By-Laws for review and approval.

Ongoing Monitoring: Clearing Members are monitored for ongoing compliance with OCC's membership standards. FRM, with support from Business Operations and TPRM, performs Watch Level reporting and ongoing monitoring of financial and operational risks. In addition to or in support of Watch Level reporting, Business Operations and FRM conduct the following processes to monitor Clearing Members:

- Determining an internal credit rating to identify credit worthiness;
- Performing periodic examinations to evaluate Clearing Member risk management policies, procedures, and practices; and
- Evaluating material risks related to customers of Clearing Members.

FRM provides informational Watch Level reporting at meetings of the CLRWG, MC, and Risk Committee that summarizes the circumstances leading to violations of higher tier Watch Level criteria, additional risks observed, and any corrective measures taken by such Clearing Members.

Should a Clearing Member approach or no longer meet minimum membership standards, protective measures may be imposed to limit or eliminate OCC's counterparty exposure. OCC maintains authorities in its Rules (Chapter III, Chapter VI, and Chapter VII) to act to protect OCC, given the facts and circumstances of the exposure presented by a Clearing Member, including but not limited to the imposition of additional monitoring, changes to margin requirements or composition, or suspension of some or all product and account approvals.

Business Operations, FRM, and TPRM provide reporting to the CLRWG, comprised of results from ongoing monitoring and management of Clearing Member financial, operational, legal, and regulatory risks and may raise matters for consideration to the CLRWG. The CLRWG may take action or escalate the matter to the MC, in accordance with the functions and responsibilities assigned to the CLRWG by the MC in the Credit and Liquidity Risk Working Group Procedure.

Off-Boarding: A Clearing Member may voluntarily terminate its membership. Upon request for termination, Business Operations and FRM ensure all financial exposures and operational capabilities are wound down and all obligations to OCC are satisfied before the relationship is terminated. In the event a Clearing Member is suspended by OCC, the suspension will be managed in accordance with the Default Management Policy.

Clearing Banks, Custodians, Liquidity Providers, and Investment Counterparties

OCC maintains relationships with Financial Institutions that facilitate clearance and settlement activities, manage collateral, provide liquidity, and serve as investment counterparties.



Third-Party Risk Management Framework

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On-Boarding: FRM and TPRM, with support as needed from Business Operations and Treasury, complete a risk-based evaluation of each entity by evaluating its financial resources and operational capacity. For custodians, the evaluation considers whether a relationship is structured to allow prompt access to OCC and Clearing Member assets and whether the custodian is a supervised and regulated institution that adheres to generally accepted accounting practices, maintains safekeeping procedures, and has controls that fully protect these assets. The results of the evaluation are presented to the CLRWG for review and recommendation for approval prior to presentation to the Chief Executive Officer or Chief Operating Officer, each of whom has the authority to approve such relationships.

Ongoing Monitoring: Business Operations, FRM, Treasury, and TPRM monitor the financial, operational, legal, and regulatory risks related to Financial Institution relationships. This monitoring includes Watch Level reporting, material agreement reviews, and ongoing monitoring of financial and operational risks. Should Watch Level reporting detect potential issues or trends that might indicate the deterioration of a Financial Institution's ability to perform, protective measures that may be applied include, but are not limited to, modifying the business relationship or termination of the relationship.

Business Operations, FRM, Treasury, and TPRM provide reporting to the CLRWG, comprised of results from ongoing monitoring and management of a Financial Institution's financial, operational, legal, and regulatory risks and may raise matters for consideration to the CLRWG. The CLRWG may take action or escalate the matter to the MC, in accordance with the functions and responsibilities assigned to the CLRWG by the MC in the Credit and Liquidity Risk Working Group Procedure.

Off-Boarding: A Financial Institution relationship may be terminated by the Financial Institution or OCC, pursuant to applicable agreements. The Chief Executive Officer or Chief Operating Officer, each of whom has the authority, must approve the termination of a Financial Institution relationship initiated by OCC. OCC may terminate a relationship if risks rise to an unacceptable level or a relationship is no longer required. Business Operations, FRM, Treasury, and Legal perform activities necessary to off-board the relationship in accordance with the agreement between OCC and the applicable Financial Institution.

Financial Market Utilities

FMUs provide OCC with a range of services, including custody, stock loan processing, cross-margin programs, and securities settlement.

On-Boarding: Business Operations, FRM, Legal, and TPRM consider an FMU's financial condition, operational capabilities, and any legal or regulatory risks associated with the relationship during the on-boarding process. The CLRWG reviews this evaluation and recommends approval prior to presentation to the Chief Executive Officer or Chief Operating Officer, each of whom has the authority to approve such relationships. On-boarding of the relationship may be subject to completion of any necessary agreements or regulatory filings.



Third-Party Risk Management Framework

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Ongoing Monitoring: Business Operations, FRM and TPRM monitor the financial, operational, legal, and regulatory risks related to FMU relationships. This monitoring includes Watch Level reporting, material agreement reviews, and ongoing monitoring of financial and operational risks.

Business Operations, FRM, and TPRM provide reporting to the CLRWG, comprised of results from ongoing monitoring and management of an FMU's financial, operational, legal, and regulatory risks and may raise matters for consideration to the CLRWG. The CLRWG may take action or escalate the matter to the MC in accordance with the functions and responsibilities assigned to the CLRWG by the MC in the Credit and Liquidity Risk Working Group Procedure.

Off-Boarding: An FMU relationship may be terminated by the FMU or OCC, pursuant to applicable agreements. The Chief Executive Officer or Chief Operating Officer, each of whom has the authority, must approve the termination of an FMU relationship initiated by OCC. Business Operations, FRM, Legal, and TPRM coordinate the activities necessary to off-board the relationship, including, but not limited to, the wind down of all services with the FMU and, if necessary, revising OCC policies and procedures and filing rule changes with OCC's regulators after receiving the appropriate internal approvals.

Exchanges Relationships

OCC provides clearing services for Exchanges Relationships pursuant to applicable agreements³. Under these agreements, OCC clears products including equity and index options, commodity contracts, treasury futures, security futures, and stock loan transactions.

On-Boarding: Participant Services and Solutions, in coordination with stakeholders which may include, but are not limited to, FRM, Business Operations, and TPRM, completes an evaluation of proposed Exchange Relationships, including assessing whether an Exchange Relationship meets OCC's qualification requirements⁴. The due diligence performed for a proposed Exchange Relationship is presented to the EVWG for review and subsequently to the MC for approval. A summary of due diligence and on-boarding activities are presented to the MC. [A summary of legal documents and requirements are presented to the](#) Board of Directors for approval to launch.

Ongoing Monitoring: Business Operations and TPRM monitor the operational, ~~legal~~ and regulatory risks related to Exchange Relationships, [and escalate identified legal risks to OCC's Legal Department](#). Such relationships are monitored for connectivity and trade activity on an ongoing basis. Exchange Relationships monitoring allows for internal escalation to Production Support and the EVWG, and externally to Exchanges Relationships.

Business Operations and TPRM conduct reviews to assess an Exchange's Relationship's operational performance, overall financial condition, and ability to meet contractual obligations. To assess operational performance, Business Operations executes testing activities throughout the year aimed at mitigating

³ Exchange Relationship agreements are filed with OCC's regulators, as required.

⁴ See OCC By-Laws, Article VIIA – Equity Exchanges and Article VIIB – Non-Equity Exchanges for further detail.



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operational risk, including the requirement that all Exchange [Relationships](#) must participate in annual disaster recovery tests. In addition, Business Operations supports external testing with all Exchange [Relationships](#) upon request or related to OCC system changes and enhancements. TPRM monitors the financial condition of Exchange [Relationships](#) and evaluates whether an Exchange [Relationship's](#) operations meet its contractual obligations. Business Operations facilitates annual meetings with each Exchange [Relationship](#) that include an operational performance review, communication ~~e~~ of updates about upcoming OCC system enhancements and changes, and [solicitation of seek](#)-feedback.

Business Operations and TPRM provide reporting to the [E\WG](#), comprised of results from ongoing monitoring and management of an Exchange [Relationship's](#) financial, operational, legal and regulatory risks and may raise matters for consideration to the [E\WG](#). The [E\WG](#) may take action or escalate the matter to the MC, in accordance with the functions and responsibilities assigned to the [E\WG](#) by the MC in the Exchange [and Vendor](#) Working Group Procedure.

Off-Boarding: An Exchange [R](#)elationship may be terminated by the Exchange or OCC, pursuant to the applicable Exchange [Relationship](#) agreement. Upon request for termination by the Exchange [Relationship](#), Business Operations notifies the [E\WG](#) and the MC to discuss any immediate actions ~~such as limiting connectivity with the Exchange~~ to mitigate exposure to operational, legal, or regulatory risks and to determine a termination date.

Additionally, Business Operations leads the development of a deployment plan to identify the departments and required actions necessary to reduce any interim risk prior to termination, which may include performing clearing system maintenance and limiting or removing connectivity to the Exchange [Relationship](#). Business Operations and other supporting departments coordinate and perform activities necessary to off-board the relationship in accordance with the applicable Exchange [Relationship](#) agreements.

Vendors

OCC engages and maintains vendor relationships for various purposes, including to accomplish its strategic objectives, outsource operational activities, and assist in compliance with legal and regulatory obligations. All Third-Party relationships that are not Clearing Members, Financial Institutions, FMUs, or Exchange [Relationships](#) are treated as vendor relationships. [Prior to commencing on-boarding of a new technology Vendor, implementing new capabilities, or services to existing technology, Information Technology reviews the request to identify solutions and analyze requirements to verify that they are in line with enterprise strategic requirements.](#)

On-Boarding: During on-boarding, TPRM works with the business area requesting the vendor to assign a vendor relationship manager ("VRM") who manages the vendor relationship and execute the phases of the vendor relationship lifecycle. TPRM coordinates with the VRM to complete an evaluation of inherent risks posed by the vendor relationship. The evaluation of inherent risk results in a vendor risk tier which is used to inform the level of due diligence and frequency of monitoring for each vendor. Due diligence is



Third-Party Risk Management Framework

Exhibit 5I

based on the inherent risks identified and may include a review of financial health, operational capacity, and other standards based on the relationship.

Any potential risk issues identified are presented to the VRM and OCC's Legal Department for review. Potential risk issues may also be shared with the [EVRWG](#). An agreement that addresses control and business requirements is then negotiated with the vendor and executed by ~~an OCC officer (as defined in Article IV of OCC's By-Laws)~~ [authorized signatories designated through the process outlined in the Legal Services Policy](#).

Ongoing Monitoring: VRMs ~~and TPRM~~ monitor vendors to assess whether they are delivering services as required by applicable agreements. The scope and frequency of monitoring is determined by the vendor risk tier and inherent risks identified during on-boarding. Monitoring may include reviewing a vendor's financial health, operational capacity, and other standards based on the relationship's inherent risks.

TPRM provides reporting to the [EVRWG](#), comprised of results from ongoing monitoring and management of a vendor's financial, operational, legal, and regulatory risks and may raise matters for consideration to the [EVRWG](#). The [EVRWG](#) may take action (e.g., additional monitoring, require contingency plans, and additional contractual requirements) or escalate the matter to the MC, in accordance with the functions and responsibilities assigned to the [EVRWG](#) by the MC in the [Exchange and Vendor Risk-Working Group Procedure](#).

Off-Boarding: A vendor relationship may be terminated by the vendor or OCC, pursuant to applicable agreements. OCC mitigates exposure to operational, legal, and regulatory risk and performs activities necessary to off-board the relationship in accordance with the applicable vendor agreement.

V. DEFINITIONS

Capitalized terms used and not defined below have the meaning set forth in OCC's Rules and By-Laws.

[Exchange Relationships: Includes options exchanges, futures markets, OTC trade sources, or loan markets.](#)

[Service Provider for Core Services: Any person that, through a written services provider agreement for services provided to or on behalf of OCC, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of OCC.](#)

Third-Party: A Clearing Member, Clearing Bank, custodian, liquidity provider, investment counterparty, financial market utility, Exchange, or vendor, which also has:

- (i) a relationship with OCC where products and/or services are exchanged;
 - (ii) other ongoing business relationships with OCC; or
 - (iii) responsibility for OCC associated records.
-



Third-Party Risk Management Framework

Exhibit 5I

Watch Level: OCC assigns a level of required monitoring and reporting (i.e., a “Watch Level”) based on the identification of events or trends that might signal the deterioration of an entity’s financial ~~or~~ operational, [or risk management](#) ability to timely meet its future obligations to OCC. Watch Level is a tiered structure with financial (e.g., capital and profitability), operational (e.g., operational difficulties and late financial report submissions), and general business (e.g., risk management issues and business restrictions by another SRO) criteria at each tier. Reaching the criteria at higher tier levels signals a more material event or trend has been detected and an entity may require heightened risk management. The CLRWG may recommend changes to Watch Level criteria to the MC, which maintains approval authority for recommended changes. FRM is responsible for implementing all approved Watch Level criteria changes.

Exhibit 5J**ARTICLE III – BOARD OF DIRECTORS****Public Directors**

SECTION 6A. Prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the Governance and Nominating Committee shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i) ~~affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities~~ and submit a list of its nominations in writing to the Board of Directors. The Board of Directors shall either approve such nominations or instruct the Governance and Nominating Committee regarding the submission of revised nominations, and at the annual meeting the stockholders entitled to vote thereon shall elect as Public Director(s) such person(s) as shall have been nominated by the Governance and Nominating Committee and approved by the Board of Directors. The Public Directors shall be divided into three classes, designated as Class I, Class II and Class III, respectively. The Public Director elected at the 2011 annual meeting will be designated as a Class II Public Director. One of the two Public Directors appointed prior to the 2013 annual meeting will be designated as a Class I Public Director and the other will be designated as a Class III Public Director. The successor of the initial Class I Public Director shall be elected at the 2013 annual meeting of stockholders, the successor of the initial Class II Public Director at the 2014 annual meeting and the successor of the initial Class III Public Director at the 2015 annual meeting. One of the two Public Directors first appointed or elected after the 2014 annual meeting as a result of the increase of the number of Public Directors from three to five will be designated as a Class I Public Director and the other will be designated as a Class III Public Director so that, following such appointment or election, there shall be two Class I Public Directors, one Class II Public Director and two Class III Public Directors. The successor of the Class III Public Director appointed or elected as described in the preceding sentence shall be elected at the 2015 annual meeting of stockholders and the successor of the Class I Public Director appointed or elected as described in the preceding sentence shall be elected at the 2016 annual meeting. Except as provided above in the case of the initial Class I Public Director and the initial Class III Public Director, and in the preceding sentence of this Section 6A for the Class I Public Director and the Class III Public Director referred to therein, each Public Director shall serve until a successor is elected and qualified, or until the earlier death, disqualification, resignation, or removal of such Director.

. . . Interpretations and Policies:

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

Adopted March 6, 1992, Amended October 16, 1992, March 19, 1997; October 27, 2011; March 9, 2012; March 6, 2014; March 21, 2014; May 13, 2014; September 16, 2016; ~~May 26, 2022~~–[TBD].