

Required fields are shown with yellow backgrounds and asterisks.

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

File No. \* SR 2024 - \* 011

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 Its Stock Loan Programs

**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 EFFS website.

**Form 19b-4 Information \***

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SR-OCC-2024-011 - 19b-4 (Final).doc

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-2024-011 - Exhibit 1A.doc

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-2024-011 - Exhibit 3A (Rule I  
SR-OCC-2024-011 - Exhibit 3B [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**

Add Remove View

SR-OCC-2024-011 - Exhibit 5A (Rules  
SR-OCC-2024-011 - Exhibit 5B (By-La  
SR-OCC-2024-011 - Exhibit 5C [REDA

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**

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Form 19b-4

Proposed Rule Change  
by

THE OPTIONS CLEARING CORPORATION

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

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Options Clearing Corporation (“OCC” or “Corporation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) this proposed rule change designed to address limitations in the structure of OCC’s Stock Loan/Hedge (“Hedge”) Program and Market Loan Program (together, the “Stock Loan Programs”) by creating the framework for a single, enhanced program designed to support current and future needs. The proposed enhancements would, among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of stock loans submitted under the Market Loan Program (“Market Loans”) more closely to the provisions most commonly included in stock loan transactions executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan Programs through OCC’s new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC’s By-Laws and Rules governing the Stock Loan Programs.

The proposed amendments to OCC’s Rules and By-Laws can be found in Exhibit 5A and Exhibit 5B to File No. SR-OCC-2024-011, respectively. Proposed conforming changes to OCC’s internal Margin Policy and Recovery and Wind-Down (“RWD”) Plan, which can be found in confidential Exhibits 5C and 5D to File No. SR-OCC-2024-011, respectively. Material proposed to be added is marked by underlining and material proposed to be deleted is marked

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

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

with strikethrough text. For ease of presentation and to distinguish between changes to rule text versus relocation of existing rule text, Exhibits 5A and 5B to File No. OCC-2024-011 contain bracketed text to indicate when existing text has been relocated from the By-Laws to the Rules with changes as marked. That bracketed text describes changes that would be performed upon implementation of File No. SR-OCC-2024-011, but it is not intended to be rule text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>3</sup>

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

The proposed rule change was approved for filing with the Commission by OCC's Board of Directors at meetings held on October 15, 2020, and October 6, 2021.

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

In its capacity as a central counterparty registered with the Commission, OCC currently operates two programs through which it clears stock loan transactions: the Hedge Program and the Market Loan Program. Under both Stock Loan Programs, OCC becomes the lender to the borrower and the borrower to the lender, thereby guaranteeing the return of the full value of cash collateral to the Borrowing Clearing Member and the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC also offers certain additional guarantees, discussed in more detail below, with respect to other payment obligations arising from the stock loan transactions (e.g., dividend equivalent payments and rebate payments). As a result of OCC's novation of cleared stock loan transactions, the rights and obligations of the Borrowing and Lending Clearing Members are thereafter governed

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<sup>3</sup> 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>.

by OCC's By-Laws and Rules.<sup>4</sup> OCC's By-Laws and Rules also provide for, among other things, how Clearing Members initiate Stock Loans at OCC, how those Stock Loans are recorded in OCC's books and records, how returns and recalls are processed, and risk management procedures specific to Stock Loans in the event that OCC suspends one of the Clearing Member counterparties.

As announced in 2022, OCC intends to replace its current clearance and settlement system (ENCORE) with a streamlined operational framework for clearance and settlement (Ovation).<sup>5</sup> The move to Ovation gives OCC the opportunity to address limitations in the structure of OCC's Stock Loan Programs and enhance OCC's stock loan services to support current and future needs.<sup>6</sup> OCC proposes a number of amendments to its By-Laws and Rules designed to, among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of Market Loans cleared by OCC more closely to the provisions most commonly included in stock loan transactions executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan

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<sup>4</sup> Terms provided under a Master Stock Lending Agreement ("MSLA") between the parties to a Stock Loan may remain in effect as between the parties to the extent they are not inconsistent with the By-Laws and Rules, but do not impose any obligation on OCC. See OCC Rule 2202(b).

<sup>5</sup> See OCC Announces New Platform Name and Launches Enhanced Transformation Website (May 10, 2022), <https://www.theocc.com/newsroom/views/2022/05-10-occ-announces-new-platform-name-and-launches-enhanced-transformation-website>.

<sup>6</sup> As discussed in more detail below, OCC's current programs are limited by certain inefficient legacy practices including, for example: (1) position-based recordkeeping that does not align with the contract-level accounting that is common throughout the stock loan industry, which adds complexity to the process of ensuring that all parties are in alignment on the state of their stock loans; (2) workflows that involve settlement of delivery versus payment obligations at the Depository prior to clearance or settlement at OCC, which adds further complexity to the reconciliation process and can lead to position breaks; and (3) payment flows common to stock loans that are not guaranteed under OCC's Hedge Loan program and must currently be settled as between the parties away from OCC.

Programs through OCC's new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC's By-Laws and Rules governing the Stock Loan Programs.

OCC believes these changes will address certain pain points that OCC's members have raised and enhance the overall process. In particular, the proposed changes would allow members who currently participate in the Hedge Loan Program to submit transactions through an improved workflow to the Market Loan Program, under which the counterparties will benefit from OCC's enhanced guaranty and the efficiency of allowing OCC's systems to handle certain post-trade transactions that Hedge Loan Program participants must currently address bilaterally with each of their counterparties, away from OCC. In addition, the proposed changes would align how OCC records stock loan transactions in its books and records with an industry-standard, contract-level approach, which is expected to alleviate operational burdens on members that must currently reconcile their internal records with OCC's position-based records on a daily basis.

These enhancements would also serve as a foundation for consolidating OCC's Hedge Loan and Market Loan Programs. As discussed more fully below, OCC intends to eventually decommission the Hedge Program, after which the Market Loan Program would become OCC's single Stock Loan Program. OCC would take a phased approach to decommissioning the Hedge Program and would commence its Hedge Program phase-out plan only after conferring with Clearing Members that they are prepared for the transition.

A. Purpose**Background****Stock Loan Initiation**

In the Hedge Program, OCC acts as the principal counterparty for stock loans that are executed bilaterally between Clearing Members and sent to OCC for clearance and settlement. Prospective Lending and Borrowing Clearing Members identify each other (independent of OCC), agree to bilaterally negotiated terms of the Hedge Loan, and then send the details of the stock loan to the Depository, the Depository Trust Company (“DTC”), with a certain “reason code,”<sup>7</sup> which designates the stock loan as a Hedge Loan for guarantee and clearance at OCC. The Lending Clearing Member then instructs DTC to transfer a specified number of shares of Eligible Stock to the account of the Borrowing Clearing Member versus transfer of the appropriate amount of cash collateral to the account of the Lending Clearing Member. This current process, in which settlement at DTC occurs before clearance at OCC, adds complexity to balancing and reconciliation under the current Hedge Program.

In the Market Loan Program, stock loans are initiated through the matching of bids and offers that are agreed upon by the Market Loan Clearing Members or otherwise matched through a Loan Market. A Loan Market is an electronic platform that supports securities lending and borrowing transactions in the Market Loan Program by matching lenders and borrowers based on loan terms that each party is willing to accept.<sup>8</sup> In order to initiate a Market Loan, the Loan Market sends a matched transaction to OCC, which in turn sends two separate but linked

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<sup>7</sup> Unique reason codes were created by DTC for Clearing Members to designate stock loan transactions intended to be sent to OCC for novation and guarantee.

<sup>8</sup> Currently, one Loan Market operates within OCC’s Market Loan Program—Automated Equity Finance Markets, Inc. (“AQS”), a subsidiary of Equilend Holdings LLC (“Equilend”).



settlement instructions to DTC to effect the movement of Eligible Stock and cash collateral between the accounts of the Market Loan Clearing Members through OCC's account at DTC.

### **Scope of OCC's Guaranty**

Regardless of whether a transaction is initiated under the Hedge Program or Market Loan Program, OCC novates the transaction and becomes the lender to the Borrowing Clearing Member and the borrower to the Lending Clearing Member.<sup>9</sup> As the principal counterparty to the Borrowing and Lending Clearing Members, OCC guarantees the return of the full value of cash collateral to a Borrowing Clearing Member and guarantees the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC also provides a limited guaranty of substitute dividend<sup>10</sup> and rebate payments,<sup>11</sup> in each case limited to the amount OCC has collected in margins from the responsible Market Loan Clearing Member based upon instructions received by the Loan Market prior to the payment date. Under the Hedge Program, OCC does not currently offer a guaranty of dividends or distributions, which must be resolved bilaterally between the Borrowing and Lending Clearing Members.

### **Mark-to-Market Payments**

After novation, as part of the guaranty, OCC processes mark-to-market payments for all cleared stock loans on a daily basis to collateralize all loans to the negotiated levels. Mark-to-market payments are based on the value of the loaned securities and made between Clearing

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<sup>9</sup> See OCC Rules 2202(b) and 2202A(b).

<sup>10</sup> The terms "substitute dividend" or "dividend equivalent payment" in respect of a stock loan transaction means a payment made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of the stock loan.

<sup>11</sup> In respect of a stock loan transaction, a rebate is typically a fee payable from the Lending Clearing Member to the Borrowing Clearing Member, expressed as a rate based on the amount of cash Collateral held by the Lending Clearing Member ("Positive Rebate"). However, if the rebate rate is negative ("Negative Rebate"), the fee is payable from the Borrowing Clearing Member to the Lending Clearing Member.

Members using OCC's cash settlement system. In the Hedge Program, the percentage of the value of the loaned securities, either 100% or 102%, and the preferred mark-to-market rounding are dependent upon the terms of the Master Securities Loan Agreement ("MSLA") between the two Clearing Member parties to the transaction. Currently, members may select between several default rates to which the mark price would be rounded to the nearest interval (1.00, .05, 0.25, 0.10, 0.05, and 0.01). In the Market Loan Program, all Market Loans are collateralized based on the rate and rounding convention established by the Loan Market—currently 102% with rounding to the nearest dollar.

In both Stock Loan Programs, daily mark-to-market of cash collateral typically are settled in the firm lien account or combined Market-Makers' account of the Clearing Member.<sup>12</sup> Settlements generally are combined and netted against other OCC settlement obligations in a Clearing Member's account, including trade premiums and margin deficits. Clearing Member open positions in the Stock Loan Programs are factored into the Clearing Member's overall margin<sup>13</sup> and Clearing Fund contribution requirements.<sup>14</sup>

### **Position Aggregation**

OCC aggregates all stock loan positions and stock borrow positions of a Clearing Member relating to the same Eligible Stock for reporting and margin calculation purposes. OCC separately identifies stock loan and stock borrow positions resulting from each of the Stock Loan Programs, and such positions are not fungible with positions resulting from the other program. Position aggregation in both Stock Loan Programs is a legacy practice and does not follow industry-standard book-keeping practices. Because of position aggregation, certain industry

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<sup>12</sup> See OCC Rule 2201(a)(iii); Rule 2201A(a)(iii).

<sup>13</sup> See OCC Rules 601, 2203 & 2203A.

<sup>14</sup> See OCC Rule 1001.

standard post-trade activity must be performed bilaterally away from OCC, such as re-rate transactions that change the rebate rate on an individual loan.

### **Dividends and Distributions**

Dividend equivalent payments for the Market Loan Program are ordinarily effected through DTC's Dividend Service. If a Loan Market has advised OCC that the dividend or distribution for such Market Loan is not tracked by DTC's Dividend Service, or if OCC determines, in its discretion, to remove a Market Loan from the Dividend Service, OCC Rule 2206A(a)(ii) currently provides that dividend equivalent payments are effected through OCC's cash settlement system the day following the expected dividend or distribution payment date. OCC Rule 2206A(a)(ii) further provides that the calculation of the margin in respect of dividend equivalent payments shall be solely based on calculations provided by the Loan Market, and OCC shall have no responsibility to verify the accuracy of the Loan Market's calculation. In addition, OCC Rule 2206A(a)(iii) provides that with respect to non-cash dividends and distributions, a Loan Market may determine in its discretion to fix a cash settlement value for which the Loan Market may instruct OCC to effect collection and payment. In the event of a Borrowing Clearing Member's default, OCC guarantees dividend equivalent payments to the extent that OCC has collected margin equal to such dividend equivalent according to the instructions provided by the Loan Market.

### **Termination of Stock Loans**

Hedge Loans are typically terminated when either (i) a Borrowing Clearing Member instructs DTC to transfer a specified quantity of the Loaned Stock to the Lending Clearing Member against payment of the settlement price by the Lending Clearing Member to the Borrowing Clearing Member, after which DTC notifies OCC of the transaction with special

codes after the transaction has settled; or (ii) the Lending Clearing Member gives notice to the Borrowing Clearing Member that the Lending Clearing Member is terminating the Stock Loan, or a portion thereof and specifies the number of shares of the Loaned Stock in respect of which the Lending Clearing Member is terminating the Stock Loan.<sup>15</sup> The current process of initiating return transactions for the Hedge Program through DTC can lead to position breaks if the return transactions are not properly coded. Market Loans are typically terminated by a Market Loan Clearing Member giving notice to the relevant Loan Market calling for the recall or return of a specified quantity of the Loaned Stock.<sup>16</sup> The Loan Market then sends details of the matched return/recall transaction to OCC, which validates the transaction and sends a pair of delivery orders to DTC in connection with the recall/return.

However, in certain circumstances when a Clearing Member under either Stock Loan Program fails to return the specified quantity of Loaned Stock or to pay the applicable settlement price for a Loaned Stock, the counterparty Clearing Member may choose to execute a “buy-in” or “sell-out” of the Loaned Stock on its own.<sup>17</sup> The Clearing Member executing a buy-in or sell-out is then required to provide notice to OCC and its counterparty, in the case of a Hedge Loan,<sup>18</sup> or the Loan Market, in the case of a Market Loan,<sup>19</sup> of the buy-in or sell-out after execution is complete. Termination is not complete until the records of OCC, which are the official record of open and closed stock loan transactions, reflect the termination of the Stock Loan, and Clearing Members remain liable for all obligations related to open stock loan positions as reflected in the records of OCC.

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<sup>15</sup> See OCC Rule 2209(a).

<sup>16</sup> See OCC Rule 2209A(a).

<sup>17</sup> See OCC Rule 2209(b), (f); Rules 2209A(b), (c).

<sup>18</sup> See OCC Rule 2209A(b), (f).

<sup>19</sup> See OCC Rule 2209A(b)(1), (c)(1).

### **Offset and Re-Matching of Matched-Book Positions**

A portion of the activity in OCC's Hedge Program relates to what is often referred to as matched-book activity, when a Hedge Clearing Member maintains in an account a stock loan position for a specified number of shares of an Eligible Stock reflecting a stock lending transaction with one Hedge Clearing Member (the Borrowing Clearing Member) and also maintains in that same account a stock borrow position for the same number, or lesser number, of shares of the same Eligible Stock with another Hedge Clearing Member (the Lending Clearing Member) (such positions being "Matched-Book Positions"). In the event of a Clearing Member suspension, OCC has authority to re-match Matched-Book Positions of the defaulting Clearing Member in the Hedge Loan Program.<sup>20</sup> Such re-matching in suspension eliminates risk associated with price dislocation if OCC were required to instruct the surviving lender to buy-in and the surviving borrower to sell-out the same quantity of Loaned Stock in order to unwind the Matched-Book Positions.

### **Canadian Clearing Members**

OCC expanded the Hedge Program to accommodate Canadian Hedge Clearing Members in 2013.<sup>21</sup> To be eligible for the Hedge Program, a Canadian Clearing Member must appoint CDS Clearing and Depository Services Inc. ("CDS"), Canada's national securities depository, to act as its agent through CDS's arrangements with DTC and the National Securities Clearing Corporation ("NSCC") to provide cross-border service to clear and settle trades with U.S.

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<sup>20</sup> See OCC Rule 2212.

<sup>21</sup> See Exchange Act Release No. 69534 (May 8, 2013), 78 FR 28267 (May 14, 2013) (File No. SR-OCC-2013-03).

counterparties.<sup>22</sup> Currently, Canadian Clearing Members are not eligible for the Market Loan Program.

Canadian Clearing Members are also subject to additional requirements intended to allow OCC to perform its clearance and settlement services free from tax withholding obligations with respect to payments to such members. Specifically, OCC has established rules to address the application of Section 871(m) of the Internal Revenue Code of 1986, as amended (“I.R.C.”)<sup>23</sup> to listed options transactions effective on January 1, 2017.<sup>24</sup> Section 871(m) imposes a 30% withholding tax on “dividend equivalent” payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. OCC Rule 202 provides that Clearing Members that are non-U.S. entities for U.S. federal tax purposes (“FFI Clearing Members”) must establish to the OCC’s satisfaction that the member’s conduct of transactions or activities with or through OCC will not result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC’s net income).<sup>25</sup> When taxes or obligations would be imposed but for the qualification of a member for a special U.S. or foreign tax status, ongoing membership of such members is conditioned on the member to qualify for, maintain, and document such status to OCC’s satisfaction.<sup>26</sup> In addition, an FFI Clearing

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<sup>22</sup> See OCC Rule 302(e), (f)(1).

<sup>23</sup> 26 U.S.C. 871(m).

<sup>24</sup> In September 2015, the Treasury Department adopted final regulations based on a proposal issued in December 2013 expanding the types of derivatives to which Section 871(m) applies to include certain listed options transactions with an effective date of January 1, 2017. See T.D. 9734, 80 FR 56866 (Sept. 18, 2015). The Treasury Department adopted final regulations providing additional guidance on section 871(m) in January 2017. See T.D. 9815, 82 FR 8144 (Jan. 24, 2017).

<sup>25</sup> OCC Rule 202(a).

<sup>26</sup> See OCC Rule 202. FFI Clearing Members satisfy this requirement by (1) entering into a “qualified intermediary agreement” with the Internal Revenue Service (“IRS”) under which the Clearing Member assumes primary withholding responsibility (such member being a “Qualified Intermediary Assuming

Member is prohibited from conducting transactions with or through OCC that would result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC's net income).<sup>27</sup> Notwithstanding these requirements, which OCC implemented to facilitate the clearance and settlement of listed options transactions, OCC has no current tax withholding or reporting obligations for Canadian Hedge Clearing Members' transactions under the Hedge Program because substitute dividend payments are handled bilaterally between Hedge Clearing Members, away from OCC.

### **Proposed Changes**

OCC is proposing a number of amendments to enhance the structure and operation of the Stock Loan Programs discussed above and provide a framework for combining those programs into a single Stock Loan Program. First, OCC proposes to make several changes to the rules governing its Market Loan Program. Specifically, the proposed rule change would enhance OCC's Market Loan Program by:

- (1) expanding the Market Loan Program to include bilaterally negotiated stock loans submitted by Clearing Members directly to OCC, for which the original counterparties shall remain paired in OCC's system for purposes of post-trade activity, including modifications, recalls, and returns;
- (2) allowing for and recognizing supplementary or additional terms under an MSLA between the counterparties to such bilaterally negotiated transactions submitted under the Market Loan Program, as OCC's Rules currently recognize under the Hedge Loan Program;

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Primary Withholding Responsibility") and qualifies under IRS procedures for exemption from withholding under the Foreign Account Tax Compliance Act ("FATCA"), 26 U.S.C. 1471-1474, such that OCC is not required to withhold any amount with respect to any payment or deemed payment to such FFI Clearing Member under FATCA or Chapter 3 of subtitle A of the I.R.C. ("Chapter 3"), 26 U.S.C. 1441-1446, for transactions in the FFI Clearing Member's customer accounts; and (2) entering into an agreement with the IRS that permits OCC to make dividend equivalent payments or deemed payments to such FFI Clearing Member free from U.S. withholding tax for transactions or activity in the FFI Clearing Member's capacity as principal through its firm account (such member being a "Qualified Derivatives Dealer").

<sup>27</sup> See OCC Rule 202(b)(1).

- (3) fixing cash collateral delivered and returned versus a bilaterally negotiated Market Loan submitted directly to OCC at 102%, as is the current practice for Market Loans submitted through a Loan Market, and allowing Clearing Members to select a default rate at which mark-to-market payments would be rounded to the nearest level for Market Loans submitted directly to OCC, as is the current practice for Hedge Loans;
- (4) allowing for Clearing Members to cancel pending transactions by sending instructions directly to OCC as opposed to through a Loan Market;
- (5) establishing rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC, as opposed to through a Loan Market;
- (6) allowing OCC's clearance and settlement system to calculate and handle cash distributions, including substitute dividends and rebates;
- (7) allowing OCC's clearance and settlement system to accept and handle contract modifications agreed to by the parties to bilaterally negotiated contracts submitted through the Market Loan Program, including modifications to rebate rate, interest rate benchmark, and loan terms;
- (8) implementing additional OCC controls over the buy-in process in the case of the Borrowing Clearing Member's failure to deliver the Loaned Stock following a recall by the Lending Clearing Member in situations other than the suspension of the Borrowing Clearing Member under Chapter XI of the Rules;
- (9) supporting Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could otherwise introduce tax withholding obligations; and
- (10) providing that in lieu of being a participant at the Depository for purposes of delivering or receiving Eligible Stock in connection with the initiation and termination of Market Loans, an Appointing Clearing Member may appoint an Appointed Clearing Member who is a member of the Depository to deliver or receive Eligible Stock, in the same way as how the Rules currently allow for Appointed Clearing Members to deliver or receive underlying securities arising from the exercise or maturity of an Appointing Clearing Member's physically-settled equity options or stock futures.

As discussed in more detail below, OCC intends that with these enhancements to the Market Loan Program, OCC would eventually decommission the Hedge Program, after which the Market Loan Program would become OCC's single stock loan program. In the interim, however, and in addition to enhancements (1) through (9) to the Market Loan Program, the



proposed rule changes would apply amendments to both Stock Loan Programs for the transition to OCC's new clearance and settlement system by:

- (11) replacing OCC's current practice of aggregating new stock loan positions and stock borrow positions for the same Clearing Member in the same Eligible Stock with contract-level accounting, consistent with industry-standard bookkeeping practices;
- (12) aligning settlement of daily mark-to-market of cash collateral through the account in which the stock borrow or stock loan position sits, rather than requiring that mark-to-market settlement occur in a Clearing Member's firm lien account or combined Market-Makers' account;
- (13) simplifying the mark-to-market calculation to focus on the change to the contract value of a Clearing Member's Stock Loans; and
- (14) allowing for re-matching of Matched-Book Positions across OCC's Stock Loan Programs in the event of a Clearing Member default.

In conjunction with these changes to the Stock Loan Programs, OCC would also make certain other clarifying, conforming, and organizational changes to OCC's By-Laws and Rules, and rule-filed policies that reference those By-Laws or Rules. In particular, OCC would reorganize, restate, and consolidate provisions of OCC's By-Laws governing the Stock Loan Programs into Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program) of OCC's Rules, as amended by this proposed rule change. As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the OCC By-Laws.

### **Plan to Consolidate OCC's Stock Loan Programs**

OCC plans to consolidate its Stock Loan Programs into a single, enhanced stock loan program. OCC intends to achieve this consolidation in three phases. The first phase, which is described in this proposed rule change, would enhance the Market Loan Program in a way that would allow that program to eventually become OCC's single, enhanced stock loan program. The first phase will also involve certain enhancements to both the Hedge and Market Loan

Programs in connection with the implementation of OCC's new system for clearance and settlement. After OCC implements the enhancements and the new clearance and settlement system becomes OCC's system of record, OCC will begin authorizing and encouraging Hedge Clearing Members to begin submitting bilateral transactions through the enhanced Market Loan Program. While OCC would require Hedge Clearing Members to provide the appropriate documentation and certifications required of Market Loan Clearing Members and submit to certification testing prior to utilizing the enhanced program, OCC does not plan to require business expansions for Hedge Clearing Members migrating to the Market Loan Program because they are already approved for stock loan activity.<sup>28</sup> Currently, the business expansion for Market Loan Program participation serves mainly to ensure that the Clearing Member is properly subscribed through a Loan Market, which will no longer be necessary to participate in the Market Loan Program.

During the second phase, which also is covered by this proposed rule change, OCC would encourage Clearing Members to transition to the Market Loan Program and would monitor the movement of activity from the Hedge Program to the enhanced Market Loan Program. Based on interest expressed by Clearing Members,<sup>29</sup> OCC anticipates that Clearing Members will be motivated to migrate activity to the Market Loan Program because of OCC's expanded guarantee under that program and the operational enhancements under this proposed

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<sup>28</sup> Currently, a Clearing Member that participates in the Hedge Loan Program that desires to expand its participation into the Market Loan Program is subject to a business expansion review under OCC's Third-Party Risk Management Framework. See Third-Party Risk Management Framework, available at <https://www.theocc.com/risk-management/risk-management-framework> (providing for assessments for Clearing Member onboarding, including with respect to expanded relationships).

<sup>29</sup> OCC has provided results of a survey and other informal discussions with Clearing Members concerning the enhancements to the OCC's Stock Loan Programs in confidential Exhibit 3B to SR-OCC-2024-011. Members have expressed interest in the enhancements such as having the rebate amounts calculated, settled, and guaranteed by OCC. The migration from Hedge to the Market Loan Program is necessary for such expansion to OCC's services.

rule change. Once transition plans for each Clearing Member are understood, OCC would announce that on a future date, OCC will no longer accept new loans through the Hedge Program, but would continue to support existing Hedge Loans. The decision to make this announcement will be made by OCC's Chief Executive Officer or Chief Operating Officer based upon factors including, but not limited to, the number of participants that are able to conduct business under the enhanced Market Loan Program, the amount of transactions flowing through the enhanced Market Loan Program, the proportion of loan balances between the two Stock Loan Programs, and feedback from members about when they expect to be ready to migrate fully to the enhanced Market Loan Program. OCC's goal is to transition all Hedge Program participants to the enhanced Market Loan Program within a year after implementing the enhanced program. Beginning on the announced date, existing Hedge Loans will naturally terminate through return or recall instructions until none are left. OCC does not expect that this period will last more than six months from the announced date given the average term for stock loans.

This second phase would be reflected in proposed Rule 2213(e)(2), which would address the termination of the Hedge Loan Program. Section 2(c) of OCC By-Law Article XXI, which would become OCC Rule 2213(e)(1) as part of the reorganization of the Stock Loan By-Laws and Rules, already provides OCC authority, upon two business days' notice to Clearing Members, to terminate the outstanding Hedge Loans relating to one or more particular Eligible Stock at its sole discretion for certain enumerated reasons, including the impending termination of that business on the part of OCC. OCC Rule 2213(e)(2) would allow OCC to take a phased approach to terminating the Hedge Loan Program by first, upon approval by the Chief Executive Officer or Chief Operating Officer, announcing that OCC will cease to accept the initiation of new Hedge Loans. OCC Rule 2213(e)(2) also would provide that the determination to terminate

the Hedge Loan Program will be made based upon factors including, but not limited to, the number of participants that are able to conduct business under the Market Loan Program, the amount of transactions flowing through the Market Loan Program, the proportion of loan balances between the two Stock Loan/Hedge Programs and the Market Loan Program, and feedback from members about when they expect to be ready to migrate fully to the Market Loan Program. During this phasing out, Clearing Members would be allowed to maintain open positions in Hedge Loans until termination of those positions through returns and recalls initiated by the Clearing Members.

The third phase, which is not covered by this proposed rule change, would be the ultimate decommission of the Hedge Program Rules. Once all Hedge Loans terminate through return or recall, OCC intends to file another proposed rule change that would remove the Hedge Program from OCC's By-Laws and Rules. Thereafter, the Market Loan Program would then become OCC's single "Stock Loan Program." Until then, OCC is proposing to amend its Rules to avoid ambiguity by using "Hedge Loan" instead of "Stock Loan" when referring to Stock Loans under the Hedge Program unless in reference to Stock Loans under either of the Stock Loan Programs, consistent with the current definition of that term in Article I of the By-Laws.

### **Market Loan Program Enhancements**

OCC proposes enhancements to the Market Loan Program that would (1) expand the Market Loan Program to allow for submission of Market Loans bilaterally negotiated by Clearing Members; (2) recognize MSLAs under the Market Loan Program; (3) fix the value of cash collateral delivered and returned versus the Loaned Stock at 102% of the value of the Loaned Stock, as Market Loans are currently collateralized, and allow for flexible pricing, as under the current Hedge Loan Program; (4) provide for the cancellation of pending transactions

that have not yet been accepted by OCC; (5) establish rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC; (6) facilitate the calculation and processing of cash distributions, including substitute dividends and rebate payments, by OCC's new clearance and settlement system, rather than by a Loan Market; (7) provide for modification of Market Loan terms agreed to by Market Loan Clearing Members; (8) implement additional OCC controls over the buy-in process in the case of a Borrowing Clearing Member's failure to deliver after the Lending Clearing Member initiated a recall, as well as to prepare those controls and OCC's other Market Loan and Hedge Loan Rules for the shortening of the standard settlement cycle for securities transactions; (9) support Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could introduce tax withholding obligations; and (10) provide a framework for allow an Appointing Clearing Member to settle its Market Loan activity through an Appointed Clearing Member in lieu of maintaining membership at a Depository.

(1) *Bilaterally Negotiated Market Loans*

OCC is proposing to expand the Market Loan Program to include bilaterally negotiated Market Loans submitted directly by Clearing Members. Under the Market Loan Program, OCC currently accepts electronic messages from the Loan Market for new loans and returns. OCC would expand the Market Loan Program to accept submissions directly from Clearing Members (or their third-party service providers). Following the affirmation of a new loan or return, OCC would instruct DTC to settle the transaction using the account of the lender, the borrower, or the Appointed Clearing Members, or using OCC's DTC account. While there would be two separate avenues for submitting loans (i.e., through a Loan Market or direct submission of bilaterally negotiated Loans to OCC), the scope of OCC's guaranty and post-trade processing for all

transactions would be uniform. By allowing for automated submission of transactions to OCC prior to DTC settlement and by controlling the settlement process, the enhanced program would help reduce the burden and risks associated with the balancing and reconciliation under the current Hedge Program.<sup>30</sup> As under the current Hedge Program, counterparties to bilaterally negotiated contracts submitted through the Market Loan Program would remain paired in OCC's system for purposes of recalls, returns, and contract modifications.

Because certain proposed Rules would apply differently to Loans matched anonymously through a Loan Market and those that would be initiated bilaterally, whether through a Loan Market or with OCC directly, OCC would add definitions of "Anonymous Market Loan" and "Disclosed Market Loan" to OCC Rule 101. Anonymous Market Loans would be defined as those initiated through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are not disclosed to each other. Disclosed Market Loans would be defined to include either those Market Loans (i) initiated through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other, or (ii) initiated directly between the Lending Clearing Member and Borrowing Clearing Member away from a Loan Market such that the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other. Paragraph (h) to proposed OCC Rule 2202A (Initiation of Market Loans) would provide that a Market Loan may be either an Anonymous Market Loan or a Disclosed Market Loan. Paragraph (a) to proposed OCC Rule 2206A (Maintaining Stock Loan and Stock Borrow Positions in Accounts) would provide that the identities of the Lending Clearing Member and Borrowing Clearing Member

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<sup>30</sup> Surveys of stock loan industry participants indicate most firms have a significant spend for stock loan post-trade and reconciliation processing. Based on this industry feedback, OCC believes that a service that can provide operational efficiencies and further reduce manual processing and operational risk would be well received. OCC's review of this feedback is provided in confidential Exhibit 3B to SR-OCC-2024-011.

would be elements identified for stock loan positions and stock borrow positions resulting from Disclosed Market Loans.

To expand the Market Loan Program to bilateral transactions, OCC would amend OCC Rule 2202A. Specifically, the proposed rule change would amend current OCC Rule 2202A(a)(i), which would be renumbered to OCC Rule 2202A(a)(1) as part of the restatement of the Stock Loan Program rules, to add that, in addition to initiation through a Loan Market, a Market Loan may be initiated when a Lending Clearing Member and Borrowing Clearing Member send details of a stock loan between the two Clearing Members directly to OCC. To ensure that the original counterparties to such a Disclosed Market Loan remain paired in OCC system, notwithstanding OCC's novation, OCC would also amend current Article XXIA, Section 5 of OCC's By-Laws (Maintaining Stock Loan and Stock Borrow Positions in Accounts), which would become OCC Rule 2206A, by adding a new sentence to the beginning of that provision that introduces the concept of "matched pairs," consistent with the OCC By-Law's definition of Hedge Loans.<sup>31</sup>

In addition to providing for the initiation of bilateral Market Loans, OCC would also amend its Rules to accommodate direct submission of other types of post-trade transactions for which the Rules currently rely on actions taken by a Loan Market. Specifically, OCC would amend the first paragraph of current OCC Rule 2209A(a) (Termination of Market Loans), which would be numbered as OCC Rule 2216A(a) as part of the broader reorganization of the Market Loan Program Rules, and new OCC Rule 2214A (Modifications) by providing that termination or modification of a Market Loan, respectively, may be initiated either through a Loan Market or OCC, depending on the way in which the Loan was initiated. Such instructions would be made

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<sup>31</sup> See By-Law Art. I, § 1.H.(2).

through the Loan Market for Anonymous Market Loans; through OCC for Disclosed Market Loans initiated through OCC directly; and through either the Loan Market or OCC for Disclosed Market Loans initiated through a Loan Market. OCC would similarly amend the definitions of “Recall” and “Return,” as migrated from the By-Laws to OCC Rule 101, to reflect the separate channels for initiating such a transaction. OCC would also make other conforming changes to the text of the Rules to reflect submission of bilaterally negotiated loans directly to OCC:

- Throughout the rules governing the Market Loan Program, OCC would also remove references to “matching” or “matched” transactions (i.e., matched through a Loan Market) to reflect that Market Loan transactions could also be initiated bilaterally, either through a Loan Market or directly with OCC.<sup>32</sup>
- The definition of “Market Loan Program,” as migrated from Section 1 of Article I of the OCC By-Laws to OCC Rule 101, would be amended to recognize that Market Loans may be initiated either through a Loan Market or through direct submission of bilaterally negotiated Loans to OCC.

(2) *Recognizing MSLAs*

Parties to a bilaterally negotiated stock loan transaction typically execute an MSLA. Under current OCC Rule 2202(b), Hedge Clearing Members are permitted to establish and maintain additional terms under the MSLA that are not extinguished through OCC’s novation provided that the additional terms are not inconsistent with anything in OCC’s By-Laws or Rules. Examples of such additional or supplementary terms include a term structure or fees for

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<sup>32</sup> See OCC By-Law Art. I, § 1.L.(5) (defining “Loan Market” as “an electronic platform . . . that supports securities lending and borrowing transactions by lenders and borrowers based on loan terms that each party is willing to accept”); OCC Rules 2202A(a)(i) (“If the matched transaction passes [OCC]’s validation process . . .”); 2202A(a)(ii) (“previously reported matched transaction” and “related matched transaction”); 2202A(b) (“the matched stock loan transaction submitted by the Loan Market”); 2209A(a)(1) (“matched return/recall transaction”).



buy-in transactions. The proposed rule change would add the same provision to the Market Loan Program in proposed OCC Rule 2202A(b)(2)(E). As described below, the recognition of MSLAs within the Market Loan Program would also facilitate the re-matching of Matched Book Positions in suspension because OCC would give priority to re-matching counterparties with existing MSLAs, both when re-matching within and across the Stock Loan Programs.

(3) *Collateral and Mark-to-Market Pricing*

To accommodate the submission of bilaterally negotiated Market Loans directly to OCC, OCC proposes to establish rules that would fix the collateral for Market Loans at 102%—the same rate at which Market Loans submitted through a Loan Market are collateralized today. Specifically, OCC would amend current OCC Rule 2204A (Mark-to-Market Payments), which would become proposed OCC Rule 2209A per the reorganization discussed below, to provide in proposed paragraph (b) (Market-to-Market Payment Amount) that the collateralization rate for all Market Loans would be 102%, regardless of whether initiated through a Loan Market or submitted directly to OCC. Accordingly, OCC would delete the current text in Rule 2204A and the definition of the term “Collateral” in Article XXIA of the OCC By-Laws, as migrated to OCC Rule 101, that provides that the collateralization rate shall be set by the relevant Loan Market. OCC believes that fixing collateral at 102% would help to preserve the compatibility of OCC’s cleared offering with standard practices for over-the-counter (“OTC”), uncleared stock loans while minimizing complexity in OCC’s risk management processes.

OCC previously considered standardizing collateralization at 100% because in a cleared transaction, OCC’s guaranty replaces the additional collateral in protecting Lenders from market risk in the event of a counterparty default. In a survey OCC submitted to all Clearing Members who participate in OCC’s Stock Loan Programs, the vast majority of respondents objected to a

proposal to standardize collateralization at 100%.<sup>33</sup> The most common reasons cited for this objection were (i) desire to align the collateral amount and mark-to-market cashflows for members who commonly have uncleared positions at the OTC-standard 102% and a matching position within clearing; and (ii) loss of the additional 2% in collateral would materially reduce what the income lenders earn by investing the cash collateral, which is one of the reasons lenders choose to lend their shares. In response to this feedback, OCC now proposes to fix collateral at 102%, which would align OCC's offering with standard OTC practices and with OCC's current practice within the Market Loan Program. Fixing the collateral at a single rate—as under the current Market Loan Program—would also minimize complexity in OCC's risk management of stock loan positions by establishing a single rate across all Market Loans.

OCC also proposes to establish rules that would allow Clearing Members submitting Market Loans directly to OCC to select the default rate at which mark-to-market payments would be rounded up to the nearest level, which is the current practice for Hedge Loans. Specifically, OCC would amend OCC Rule 2201A (Instructions to the Corporation), which would become proposed OCC Rule 2207A, to reflect that the default rate is one of the standing instructions that Market Loan Clearing Members must submit with respect to Market Loans submitted directly to OCC. Rounding rates for Market Loans submitted through a Loan Market would not change. If the default rate differs between a Borrowing Clearing Member and a Lending Clearing Member, the Lending Clearing Member's default rate would govern the Market Loan. When surveyed, Clearing Members cited the same reasons for supporting flexibility in pricing as they did in objecting to fixing collateral at 100%.<sup>34</sup> OCC currently offers this flexibility in the Hedge Program today. OCC believes that offering the same flexibility with

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<sup>33</sup> OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

<sup>34</sup> OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

respect to bilaterally negotiated Market Loans submitted to OCC directly will aid Clearing Members in aligning cash flows between cleared and OTC stock loan transactions.

(4) *Cancellation of Pending Transactions*

To facilitate the acceptance of bilaterally negotiated contracts in the Market Loan Program, OCC is proposing to modify its Rules that concern the cancellation of pending transactions to accommodate the submission of cancellation instructions by Clearing Members, in addition to a Loan Market. Under current OCC Rule 2202A(a)(ii), a Loan Market may instruct OCC to disregard a previously reported matched transaction that is pending settlement at DTC, after which OCC instructs DTC to cancel the previously issued delivery order. Upon confirmation that DTC has processed such cancellation instructions, the related matched transaction is deemed null and void and given no effect. OCC has no obligation to any Market Loan Clearing Member in acting pursuant to a Loan Market's instruction to disregard a previously reported transaction. The proposed rule change would amend OCC Rule 2202A(a)(ii), which would be renumbered as proposed OCC Rule 2202A(a)(2), to recognize the ability of a Market Loan Clearing Member to submit an instruction to cancel a pending transaction directly to OCC for bilaterally negotiated transactions submitted under the Market Loan Program.

The proposed changes would also add a new OCC Rule 2215A (Cancellation of Pending Instructions) to address the cancellation of pending post-trade instructions other than cancellation of loan initiation under Rule 2202A. For example, under OCC's current OCC Rule 2202A, Hedge Clearing Members currently have the capability to cancel return instructions or recall instructions pending with DTC. Similarly, Market Loan Clearing Members currently may cancel pending transactions by issuing a cancellation instruction to the Loan Market, which may then

instruct OCC to disregard a previously reported transaction under current OCC Rule 2202A(a)(ii). This new OCC Rule 2215A would preserve that ability under the enhanced program by allowing members that submit bilaterally negotiated Market Loans to issue cancellation instructions directly to OCC, as they do now to DTC and the Loan Market.

(5) *Transaction Affirmation*

Currently, Market Loan Program transactions are presumed matched when sent to OCC by a Loan Market. OCC would establish a transaction affirmation process for loans submitted directly to OCC, rather than through a Loan Market:

- **New Loans:** Counterparties to a new loan would be required to affirm the transaction details prior to OCC submitting the new loan to DTC for settlement. New loans that are not affirmed by the time that OCC stops accepting instructions for the day would be rejected. This affirmation process would be reflected in proposed OCC Rule 2202A(a)(1), which would provide that a Market Loan is initiated when (i) the Loan Market sends details of a stock loan transaction to OCC or (ii) a Lending Clearing Member and Borrowing Clearing Member send details to OCC of a stock loan transaction between them and such details, as applicable, are either matched by OCC or affirmed by the Clearing Members.
- **Returns:** Provided that the Borrowing Clearing Member initiated a return within OCC's timeframe for submitting such instruction on a stock loan business day, the Lending Clearing Member would have the opportunity to affirm or reject the initiation of a return by a cut-off time on the same business day.<sup>35</sup> Any returns pending after that cut-off time would be deemed affirmed and submitted to DTC for processing. This auto-affirmation

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<sup>35</sup> OCC anticipates that upon implementation of these proposed changes, the cut-off for rejections will be 30 minutes prior to DTC's standard settlement submission deadline.

would be reflected in proposed OCC Rule 2216A(a)(2). Based on conversations with Clearing Members, OCC believes this affirmation process balances Lending Clearing Members' desire to have the opportunity to affirm or reject return instructions, while also addressing Borrowing Clearing Members' concerns that delay in affirmation or allowing the transaction to pend indefinitely could have regulatory consequences for the Borrowing Clearing Member.<sup>36</sup>

- **Recalls:** Recalls would not need to be affirmed. Per standard MSLA terms, a Borrowing Clearing Member will be deemed to have affirmed the initiation of a recall provided that the Lending Clearing Member requested the return of the specific quantity of Loaned Stock no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Stock in the principal market of such Loaned Stock.<sup>37</sup> This understanding would be added to proposed OCC Rule 2216A(a)(3).
- **Contract Modifications:** Contract modifications to the rebate rate, interest rate benchmark, or loan term submitted by either a Borrowing Clearing Member or Lending Clearing Member, the proposed Rule amendments for which are discussed below, would not become effective until affirmed by both parties. This affirmation requirement would be added to new OCC Rule 2214A(a).

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<sup>36</sup> OCC's settlement procedures for Stock Loan termination are intended to facilitate its Clearing Member's compliance with requirements under applicable rules of the Commission and self-regulatory organizations, including the requirements imposed by Regulation SHO. See Exchange Act Release No. 59294 (Jan. 23, 2009), 74 FR 5958 (Feb. 3, 2009) (SR-OCC-2008-20). However, the ultimate responsibility for compliance with Regulation SHO rests with the Clearing Member, and OCC has no liability for any Clearing Member's failure to comply with its obligations. See, e.g., OCC Rules 2209A(g) ("[OCC] shall not be held liability for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of the relevant Loan Market or any exchange or self-regulatory organization.").

<sup>37</sup> The standard settlement cycle currently corresponds with the one stock loan business day after submission of the recall. See OCC Rule 2209A(a)(3).

- **Buy-Ins & Sell-Outs:** For Market Loans submitted directly through the Corporation, the Borrowing Clearing Member and Lending Clearing will be given the opportunity to affirm or reject a buy-in or sell-out, respectively, by a cut-off time specified by OCC on the stock loan business day the buy-in or sell-out transaction is received by OCC. If the Clearing Member does not affirm or reject the buy-in or sell-out by that time, OCC would deem the buy-in or sell-out to be complete if OCC determines that the Buy-In or Sell-Out Costs for the Loaned Stock initiated is more than the lowest market price and less than the highest market price for the Loaned Stock on the stock loan business day the buy-in or sell-out is submitted to OCC.<sup>38</sup> Otherwise, the buy-in or sell-out would be rejected. As with buy-ins and sell-outs under the Hedge Program today,<sup>39</sup> any objection that the counterparty has with respect to the timeliness of the buy-in or sell-out or the reasonableness of the Buy-In or Sell-Out Costs are matters that must be resolved between the Lending Clearing Member and the Borrowing Clearing Member, away from OCC. These understandings and processes would be reflected in paragraphs (b)(2)(B) and (c)(2) of proposed OCC Rule 2216A.

To support Clearing Members in making the affirmations required under these rules, OCC's new stock loan system would support automatic affirmation based on system settings that could be selected by the Clearing Member.<sup>40</sup> Through OCC's new clearance and settlement system, Clearing Members will be able to create and manage standing instructions for

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<sup>38</sup> OCC would evaluate the price per share paid or received against market prices on that stock loan business day, consistent with the Clearing Member's obligation to immediately give OCC written notice of the buy-in or sell-out. In making its determination, OCC would account for transaction costs, fees or interest paid or incurred in connection with the buy-in and sell-out that may be included in the Buy-In and Sell-Out Costs provided by the Clearing Member executing the buy-in or sell-out.

<sup>39</sup> See OCC Rule 2209(b), (f).

<sup>40</sup> Buy-ins and sell-outs under OCC Rule 2216A would require manual affirmation, subject to automatic affirmation following a cut-off time discussed above.

affirmation of their Market Loans based on variables including the type of transaction, the counterparty, the amount, or the rebate rate. For example, a member would be able to set instructions to: (i) affirm every transaction; (ii) limit affirmation to a certain set of counterparties; (iii) establish more granular rules, such as affirming any transaction with a rebate rate less than 250 basis points; or (iv) combine one or more of the above instructions. When new loans are received, the system would check whether there is a standing instruction that applies to the new loan. If no instruction is found, then the new loan would be pended for affirmation, subject to the above referenced Rules. If a standing instruction applies, then OCC would follow that instruction as satisfaction of the affirmation requirement. Authority to permit such standing instructions currently exists under current OCC Rule 2201A (Instructions to the Corporation), the applicable provision of which would be renumbered OCC Rule 2207A(a)(2).

(6) *Cash Distributions*

The proposed changes would allow OCC to calculate and effect cash entitlements through its new clearance and settlement system, including dividends, distributions and rebates. OCC proposes to revise paragraphs (a)(ii) and (a)(iii) of current OCC Rule 2206A (Dividends and Distributions; Rebates), renumbered as proposed OCC Rule 2211A(b) and (c), to reflect that under OCC's new clearance and settlement system, OCC shall assume responsibility for calculating the margin add-on collected with respect to dividend equivalent payments. While OCC shall continue to effect dividend equivalent payments primarily through the facilities of DTC using its dividend tracking service, OCC would effect the payments through OCC's new clearance and settlement system if OCC determines that the dividend or distribution for a Market Loan is not tracked through DTC's dividend tracking service or if OCC has determined to remove a Market Loan from the dividend tracking service, as under OCC's current Rules. In

addition, OCC would continue to add non-cash dividends and distributions to the Loaned Stock if OCC determines that such dividends and distributions are legally transferable and the transfer can be effected through DTC. The determination to fix a cash value for non-cash dividends and distributions not added to the Loaned Stock would be OCC's under the proposed changes, rather than the Loan Market. Because OCC will no longer be reliant on the Loan Market for OCC's margin add-on process and settlement of dividend equivalent payments, OCC proposes to eliminate the limitations under the current Rule, including the current provision that OCC's guaranty is limited by the amount of margin OCC collected in reliance on the Loan Market's calculation. This change would not have any effect on OCC's margin methodology. OCC would continue to collect a margin add-on for such cash distributions.

The proposed changes would also add paragraph (d) to proposed OCC Rule 2211A to address the rights of a Lending Clearing Member with respect to optional dividends (i.e., a dividend the shareholder can elect to receive in cash, stock, or some combination of the two). Proposed OCC Rule 2211A(d) would provide that a Lending Clearing Member will have the right to elect an option only if it recalls the Loaned Stock in time to make such election. If the Lending Clearing Member does not recall the Loaned Stock, the Lending Clearing Member would be entitled to receive the default option set by the issuer of the Loaned Stock. OCC understands this proposed rule would match the Loan Market's current process for optional dividends. Because optional dividends on Market Loans are currently governed by the Loan Market's processes, OCC's rules do not currently address the rights of a Lending Clearing Member with respect to optional dividends.

OCC would also amend its rules to facilitate calculation, collection, and payment of rebates under the new clearance and settlement system. OCC Rule 2206A(b) currently provides



that OCC generally will collect and pay rebate payments on a monthly basis as instructed by the Loan Market. As with dividend equivalent payments, the Loan Market is currently responsible for calculation of the rebate payments. OCC would amend OCC Rule 2206A(b), which would be renumbered OCC Rule 2211A(e), to reflect that OCC shall assume responsibility for calculating rebate payments under its new clearance and settlement system. OCC also proposes to amend the Rule so that OCC will be prepared if and when the stock loan industry transitions to daily, rather than monthly, collection of rebate payments. Because OCC anticipates that upon implementation of the new system, OCC will continue to calculate and collect rebate on a monthly basis, proposed OCC Rule 2211A(e) would provide that the calculation and collection of rebate payments could also be made on such other basis, not to exceed monthly.

(7) *Market Loan Modifications*

OCC is proposing to add a new rule to support contract modifications to the Market Loan Program made possible by the change to contract-level recordkeeping, discussed below. Modifications agreed to by the Market Loan Clearing Members over the life of a Market Loan would be accepted by OCC and handled by OCC's new clearance and settlement system. Specifically, modifications would be permitted regarding the (a) rebate rate; (b) interest rate benchmark; and (c) loan term. Any modifications would be maintained in OCC's books and records at the contract level. OCC's new clearance and settlement system would allow, but not require, submission of these terms.<sup>41</sup> The channel through which modification requests would be processed would be determined by the manner in which the loan was initiated. Clearing Members would be required to submit post-trade transactions for Anonymous Market Loans through the Loan Market on which the transaction was initiated, consistent with current practice.

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<sup>41</sup> See infra item (11) (Contract-Level Recordkeeping).

Clearing Members may submit post-trade transactions for Disclosed Market Loans to OCC directly or, if the Disclosed Market Loan was submitted through a Loan Market, Clearing Members would have the option of submitting the post-trade transaction through the Loan Market.

The proposed change would add a new rule, which would be numbered OCC Rule 2214A as part of the broader proposed reorganization of Chapter XXIIA. In addition to specifying the terms subject to modification, proposed OCC Rule 2214A would provide that OCC shall update the relevant terms in its books and records if, as applicable, (1) the Loan Market notifies OCC that the parties agreed to the modification, or, (2) with respect to Market Loans initiated directly through OCC, the parties provided OCC with matching or affirmed instructions, as discussed above. OCC would provide notice of the modified terms in the daily reports that OCC is required to make available to Market Loan Clearing Members under proposed OCC Rule 2210A.

(8) *Buy-In Controls and Settlement Cycle*

The proposed changes would also provide OCC with additional controls over the buy-in process for the recall of a Market Loan initiated by a Lending Clearing Member if the Borrowing Clearing Member fails to return the Loaned Stock in situations other than suspension of the Borrowing Clearing Member.<sup>42</sup> Under current OCC Rule 2209A, a Lending Clearing Member is entitled to initiate a buy-in if a recall transaction fails to settle by the Settlement Time on the first stock loan business day after submitting the recall.<sup>43</sup> Under OCC's current rules, the Borrowing Clearing Member may return the Loaned Stock up until the time that the Lending Clearing Member that initiated the return or recall provides written notice to the Loan Market that it has

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<sup>42</sup> As a practical matter, if the Borrowing Clearing Member initiates a return, it would have the shares in its possession to return. Accordingly, the proposed controls are limited to buy-ins following failure to deliver initiated by a recall by the Lending Clearing Member.

<sup>43</sup> See OCC Rule 2209A(a)(3).

executed the buy-in or sell-out. This process can lead to situations in which the Borrowing Clearing Member may return the Loaned Stock during the period between when buy-in becomes permissible, but before the Lending Clearing Member executes the transaction and provides written notice.

OCC proposes to provide for enhanced controls over the buy-in process by amending current OCC Rule 2209A(b), which would be renumbered OCC Rule 2216A(b) as part of the reorganization of Chapter XXIIA of OCC's Rules. Proposed OCC Rule 2216A(b) would be amended to provide that upon timely notice from the Lending Clearing Member that it intends to execute a buy-in after a Borrowing Clearing Member fails to return the Loan Stock following a recall transaction, OCC would prevent the Borrowing Clearing Member from returning the Loaned Stock while the Lending Clearing Member executes the buy-in. Until such time as the Lending Clearing Member provides such notice, OCC would recognize the Borrowing Clearing Member's return of the Loaned Stock. The stock loan and stock borrow positions would remain open until such time as the Lending Clearing Member provides notice that the buy-in is complete.

(9) *Supporting Canadian Clearing Members*

As described above, Canadian Clearing Members are currently limited to participation in OCC's Hedge Program. The proposed changes would support Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could give rise to tax withholding obligations.

First, OCC would revise certain of OCC's current By-Laws and Rules to recognize Canadian Clearing Members as potential participants in the Market Loan Program and address certain unique operational capabilities that will be required to support that participation:

- OCC would revise paragraph (f) of OCC Rule 302 (Operational Capability) to include Canadian Clearing Members as among those members that qualify for participation in the Market Loan Program, including by providing for such Canadian Clearing Members to settle transactions through a CDS sub-account at the Depository, as they do under the Hedge Program today.
- OCC would further revise and restate paragraph (f) to consolidate the subparagraphs specific to the operational requirements for participation in the Hedge Loan Program and the Market Loan Program. The current division can be attributed to the evolution of those programs, which led OCC to make approval for participation in the Hedge Loan Program—OCC’s initial Stock Loan Program—a condition for participation in the Market Loan Program. The proposed changes would consolidate the provisions so that the present division does not serve as an impediment to the planned decommission of the Hedge Loan Program. Requirements specific to a particular program, or a particular means of initiating a Stock Loan through one of the Stock Loan Programs, would be amended to delineate the scope of applicability.
- OCC would revise OCC Rule 306A (Event-Based Reporting) to reflect that a Canadian Clearing Member’s obligation to notify OCC if CDS has or likely will cease to act for that Canadian Clearing Member extends to such members that participate in both Stock Loan Programs.
- OCC would replicate OCC Rule 2201(c), which concerns a Canadian Clearing Member’s appointment of CDS for purposes of settling Hedge Loan delivery-versus-payment transactions, as proposed OCC Rule 2207A(c). As such, the same requirements would apply to Canadian Clearing Members that participate in the Market Loan Program.

In making its determination to extend the Market Loan Program to Canadian Clearing Members, OCC has also considered OCC's ability to offer that program's expanded guaranty to Canadian Clearing Members without incurring tax or withholding obligations on the associated payment obligations. Under the expanded Market Loan Program, OCC would clear and settle the types of cash distributions, such as substitute dividend and rebate payments, that OCC does not guarantee under the Hedge Program and must be resolved bilaterally by Hedge Clearing Members, away from OCC. OCC believes its current Rules already provide the framework to allow Canadian Clearing Members to transact under the Market Loan Program without imposing tax withholding obligations on payments made or received by OCC. As discussed above, OCC currently imposes obligations on Canadian Clearing Members intended to allow OCC to clear listed options transactions free from tax withholding obligations on dividend equivalent payments or deemed payments. Current OCC Rule 202 generally would also allow OCC to make substitute dividend payments to Canadian Clearing Members as Lending Clearing Members under the enhanced Market Loan Program without imposing tax or withholding obligations. While OCC understands that, subject to the conditions in OCC Rule 202, OCC's payments of substitute dividends to Canadian Clearing Members would not be subject to withholding, OCC would report substitute dividend payments to the IRS using information provided by the Canadian Clearing Members, as OCC currently does for dividend equivalent payments or deemed payments to Canadian Clearing Members in connection with listed options transactions. Pursuant to current OCC Rule 202(b)(5), the Canadian Clearing Member is required to indemnify OCC for any loss, liability or expense (including taxes and penalties) it may sustain as a result of the member's failure to comply with requirements of OCC Rule 202(b).

Current OCC Rule 202(b) also provides OCC with authority to prohibit or limit specific transactions with respect to non-U.S. members that may give rise to tax or withholding obligations. Pursuant to that authority, OCC expects to impose certain limitations on the Market Loan activity of Canadian Clearing Members to address specific situations in which tax withholding obligations might otherwise arise, including limitations on transactions involving (a) Canadian underlying securities, (b) Positive Rebate, and (c) Negative Rebate.

(a) Canadian Securities

Pursuant to OCC Rule 202(b), OCC would preclude Canadian Clearing Members from executing Market Loan transactions as a Borrowing Clearing Member, whether on behalf of a customer or for its own account, for which the Loaned Stock is issued by a Canadian issuer because of tax withholding obligations under Canadian law for substitute dividend payments that would be owed by the Canadian Clearing Member in its capacity as the lender. OCC understands that under Canadian law, the loan of a security issued by a Canadian company would be treated as a loan of the underlying shares for Canadian tax purposes. The substitute dividend paid by the Canadian Clearing Member as the Borrowing Clearing Member to OCC, in its capacity as the lender, would be a payment made by the Canadian Clearing Member, as a corporation, to OCC of a dividend payable on the underlying securities under subparagraph 260(8)(a)(ii) of the Income Tax Act (Canada), and the payment would be subject to Canadian withholding tax under subsection 212(2) of that act. Accordingly, a Borrowing Clearing Member would be precluded from initiating a Market Loan in its capacity as a Borrowing Clearing Member because the Canadian Clearing Member could not fulfil its obligation under OCC's Rules to provide a substitute dividend payment free from tax and withholding obligations. OCC understands that no similar tax withholding obligation would exist for

substitute dividend payments with respect to a Canadian underlying security made by OCC, in its capacity as the borrower, to a Canadian Clearing Member that was a Lending Clearing Member.<sup>44</sup>

(b) Positive Rebate

OCC believes that OCC Rule 202 also allows OCC to clear and settle Positive Rebate payments to Canadian Clearing Members in connection with Market Loans without introducing tax withholding obligations. While neither the I.R.C. or IRS regulations specifically provide for the treatment of rebate payments, OCC believes that Positive Rebate would be treated as interest for U.S. federal tax purposes because Positive Rebate compensates the Borrowing Clearing Member for the use of the cash collateral by the Lending Clearing Member,<sup>45</sup> and would therefore constitute U.S.-source “fixed or determinable annual or periodic income,” or “FDAPI,” under section 1442 of the I.R.C. While U.S.-source FDAPI generally is subject to a 30% U.S. withholding tax when paid to a foreign corporation, exemptions from withholding apply to (i) payments to a Qualified Intermediary in its capacity as an intermediary that has accepted primary withholding responsibility, and (ii) interest paid to a Canadian Clearing Member that qualifies for an exemption from withholding on interest under Article XI of the Convention Between the United States of America and Canada with Respect to Taxes on Income, October 16, 1980, as amended by subsequent Protocols (the “Canada Treaty”).

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<sup>44</sup> OCC understands that dividends on Eligible Stock of issuers that are not Canadian residents are exempt from taxation on dividends under subsection 212(2.1) of the Income Tax Act (Canada) when paid as part of a fully collateralized stock lending arrangement pursuant to 2021 amendments thereto.

<sup>45</sup> The U.S. Supreme Court has characterized interest as “compensation for the use or forbearance of money.” See Deputy v. du Pont, 308 U.S. 488, 498 (1940). Positive Rebate is a payment from the Lending Clearing Member to the Borrowing Clearing Member equal to the amount of cash collateral posted by the Borrowing Clearing Member multiplied by a positive rebate rate. The Lending Clearing Member has the right to use the cash collateral during the term of the stock loan. Accordingly, Positive Rebate represents a payment by the Lending Clearing Member to the Borrowing Clearing Member for the right to use the cash collateral and therefore is properly characterized as interest.

A Qualified Intermediary that has accepted primary withholding responsibility is exempt from U.S. federal withholding on payments from a withholding agent, including U.S.-source interest, received in its capacity as an intermediary.<sup>46</sup> Accordingly, OCC understands that rebate payments (whether Positive Rebate or Negative Rebate) to a Canadian Clearing Member in its capacity as a Qualified Intermediary, may be made by OCC free from withholding, consistent with treatment of dividend equivalent payments in connection with listed options transactions. As discussed above,<sup>47</sup> Canadian Clearing Members are required to be Qualified Intermediaries as a condition of membership under OCC Rule 202. As with substitute dividends, OCC would add payment of rebates for transactions in a Canadian Clearing Member's capacity as a Qualified Intermediary to the current reporting OCC submits to the IRS for dividend equivalent payments on listed options, based on information to be received from the Canadian Clearing Member pursuant to current OCC Rule 202(b)(3).

With respect to Positive Rebate payments on Market Loans initiated by a Canadian Clearing Member in its capacity as principal, OCC would require Canadian Clearing Members to demonstrate, pursuant to OCC Rule 202, that such payments are subject to exemption from U.S. withholding obligations under the Canada Treaty. Article XI(1) of the Canada Treaty reduces the rate of withholding from 30% to zero for U.S.-source interest beneficially owned by a resident of Canada entitled to treaty benefits, provided that income is not attributable to a permanent establishment, within the meaning of the Canada Treaty, or effectively connected

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<sup>46</sup> See Treas. Reg. 1.1441-1(e)(5)(iv) ("If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment.").

<sup>47</sup> See supra note 26.



with a trade or business conducted in the United States.<sup>48</sup> Under current OCC Rule 202(b)(2), an FFI Clearing Member must certify annually to OCC that the member satisfies the requirements of OCC Rule 202 by submitting appropriate tax documentation. A Canadian Clearing Member participating in the Market Loan Program may evidence its entitlement to the benefits of the Canada Treaty with respect to interest by providing OCC with a correct and complete IRS Form W-8 BEN-E. Under OCC's current Rules, a FFI Clearing Member must promptly inform OCC in writing if it undergoes a change in circumstances that would affect its compliance with Rule 202(b) or otherwise knows or has reason to know that it is not, or will not be, in compliance with OCC Rule 202(b), in each case, within two days of knowledge thereof.<sup>49</sup>

(c) Negative Rebate

Although exemptions for withholding requirements would apply to payment of Negative Rebate to a Canadian Clearing Member acting as a Qualified Intermediary with respect to customer transactions, OCC understands that there is a risk that no exemption from U.S. tax withholding would apply to the payment of Negative Rebate to a Canadian Clearing Member outside its capacity as a Qualified Intermediary. Therefore, pursuant to OCC Rule 202(b), OCC would limit Canadian Clearing Members from initiating Market Loans with a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. In addition, OCC would limit Canadian Clearing Members' ability to modify the rebate on a Market Loan to a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. OCC's new clearance and settlement system will prevent a Canadian Clearing Member from initiating or modifying a Market Loan to a Negative Rebate in its capacity as a Lending Clearing Member for its firm account.

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<sup>48</sup> See 26 U.S.C. 894; Canada Treaty, Art. XI(1).

<sup>49</sup> See OCC Rule 202(b)(4).

(10) *Provide for Appointed and Appointing Clearing Members*

Currently, OCC Rule 302 requires that all participants in the Market Loan Program must be members of the Depository, DTC. As discussed above, OCC would also extend the Market Loan Program to Canadian Clearing Members by allowing for such members to settle Market Loan transactions through a CDS sub-account maintained at DTC. However, OCC recently filed and the Commission approved a proposed rule change to allow OCC to expand its membership to other types of participants who may or may not be members of the Depository, including bank members and members of jurisdictions other than the U.S. and Canada.<sup>50</sup>

In order to build a framework for accommodating such new types of members in the Market Loan Program, OCC proposes to revise OCC Rules 101, 302 and proposed OCC Rules 2202A, 2207A and 2216A to allow a Clearing Member participating in the Market Loan Program (the Appointing Clearing Member) to appoint an Appointed Clearing Member to make settlement of obligations arising from the initiation or termination of Market Loans, in a similar manner to how OCC Rule 901 currently allows for Appointed and Appointing Clearing Members with respect to delivery or receipt of underlying securities arising from the exercise of equity options and maturity of stock futures, or how OCC Rule 2201 current allows Canadian Clearing Members to appoint CDS as its agent for purposes of effective delivery orders for stock loan and stock borrow transactions. In lieu of membership at the Depository, establishing a relationship with an Appointed Clearing Member would be a means by which Clearing Members could access the Market Loan Program. Specifically, OCC would revise the current definitions in OCC Rule 101 for “Appointed Clearing Member” and “Appointing Clearing Member” to reference the initiation and termination of Market Loans. The definitions would also refer to

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<sup>50</sup> See Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373, 30373 (May 11, 2023) (SR-OCC-2023-002).

proposed Rule 2207A (Instructions to the Corporation), which like current OCC Rule 901(f) would contain a paragraph providing the mechanism for such appointments. Proposed OCC Rules 2202A and 2216A (Termination of Market Loans) would also provide for OCC to submit delivery orders to the Depository's account for the Appointed Clearing Member in connection with the initiation or termination of a Market Loan, respectively.

### **Enhancements to Facilitate OCC's New Clearance and Settlement System**

In addition to the enhancements (1) through (10) above, which are specific to the Market Loan Program, except when otherwise indicated, the proposed rule change would also implement enhancements to both Stock Loan Programs to support the implementation of OCC's new clearance and settlement system. Specifically, the proposed changes would (11) replace the legacy practice of position aggregation with contract-level recordkeeping; (12) align the settlement of daily mark-to-market of cash collateral to accounts; (13) simplify the mark-to-market calculation to focus on the change to the contract value of a Clearing Member's Stock Loan; and (14) allow for re-matching of Matched-Book Positions across both Stock Loan Programs in the event of a Clearing Member default and suspension.

#### *(11) Contract-Level Recordkeeping*

OCC proposes to eliminate the legacy practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in favor of contract-level accounting, consistent with industry-standard bookkeeping practices. Under the new contract-based approach, each Stock Loan (i.e., a stock loan position or stock borrow position) would be a distinct contract and no aggregation would be done when positions are recorded in accounts. Every new loan that is recorded will generate a new stock borrow position and stock loan position for the number of shares lent and borrowed. Contract-level recordkeeping would allow Clearing Members to see

more precisely the contracts with shares lent by lender and borrower, which aligns to industry standard recordkeeping. By maintaining stock loan positions and stock borrow positions at the contract level, OCC would also be able to record additional terms, including but not limited to: (a) rebate rate; (b) whether the rebate rate is a fixed or a floating value (and if floating the interest rate benchmark); and (c) end date if it is a term loan. Clearing Member submission of these additional terms would not be mandatory, and OCC would assume that no such terms exist unless otherwise directed by its Clearing Members.<sup>51</sup>

To implement contract-level recordkeeping, the proposed rule change would amend Article XXI, Sections 2 (Hedge Program) and Article XXIA, Section 5 (Market Loan Program) of OCC's By-Laws, retained portions of which would migrate to become OCC Rules 2203 and 2206A, respectively. Specifically, OCC would amend proposed Rule 2203(c)(1)–(2) and 2206A(b)(1) – (2) to delete the text providing for the aggregation of positions, which OCC proposes to eliminate. In addition, OCC would delete the last sentence of Article XXI, Section 2(b) and Article XXIA, Section 5(b), as relocated to proposed OCC Rules 2203(d)(2)(B) and 2206A(a)(2), which provide that OCC shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans. Because OCC proposes to eliminate position aggregation altogether, this prohibition against aggregating positions across programs would no longer be relevant.

The proposed changes would also allow OCC to record additional terms at the contract level. The By-Laws currently provide that upon acceptance of a Hedge Loan or Market Loan, OCC creates a stock loan position and stock borrow position in the account designated by the Lending Clearing Member and Borrowing Clearing Member, respectively, that identifies the

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<sup>51</sup> If these additional terms are not recorded on a Market Loan submitted to OCC, OCC would not make any assumptions and the fields would be left blank in OCC's system.

Eligible Stock, the number of shares loaned, the amount of Collateral received, and the identities of the Lending Clearing Member or the Borrowing Clearing Member, as applicable.<sup>52</sup> OCC proposes to amend proposed OCC Rules 2203(d)(2)(A) and 2206A(a)(1) to provide that in addition to those terms, which are required for OCC's acceptance of a Hedge Loan or Market Loan, OCC would record such additional terms that the Clearing Members may provide at the contract level. Such additional terms could include, but are not limited to, rebate rate, interest rate benchmark and loan term. Pursuant to proposed additions to proposed OCC Rules 2202(b)(2)(E) and 2202A(b)(2)(E), recording additional terms that are not associated with OCC's guaranty (i.e., rebate rate and interest rate benchmark with respect to Hedge Loans, and loan term with respect to both Hedge Loans and Market Loans) would not impose any additional obligations on OCC. Rather, they would be additional terms as between the parties that survive OCC's novation and would be recorded in OCC's system for the Clearing Members' convenience.

In addition to the changes related to proposed OCC Rules 2203 and 2206A above, OCC would make conforming changes to other provisions to reflect the change from position-level to contract-level record keeping:

- Current Interpretation and Policy .01 to OCC Rules 2201 and 2201A (i.e., proposed OCC Rules 2206(b) and 2206A(d) per the reorganization discussed below), which concern the transfer of stock loan positions or stock borrow positions between Clearing Member accounts, would be amended to delete the phrase "all or any portion of" as it relates to stock loan or stock borrower positions, and the text "provided, that any such transfer will result in the transfer of all shares related to the relevant stock

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<sup>52</sup> See OCC By-Law Art. XXI, § 2(b); Art. XXIA, § 5(a).

- loan position or stock borrow position” would be added. These changes reflect that stock loan positions and stock borrow positions would be recorded at the contract level and would not be aggregated. Accordingly, any transfer of a stock loan position or stock borrow position (each representing an individual contract) would be for all shares that are the subject of the contract.
- Current Interpretation and Policy .02 to OCC Rule 2201 (i.e., proposed OCC Rule 2206(c)(1) per the reorganization discussed below), which concerns how OCC would apply Hedge Loan return instructions received from DTC to a Clearing Member’s default account, would be modified to eliminate functionality in ENCORE for Clearing Members to designate OCC accounts in DTC delivery orders that is not currently utilized by Clearing Members participating in the Hedge Loan Program and, accordingly, is not being built for the new clearance and settlement system. To account for the shift to contract-level recordkeeping, OCC would also add OCC Rule 2206(c)(2), which would provide that returns will decrease the number of shares borrowed beginning with the oldest Hedge Loan between the Borrowing Clearing Member and the Lending Clearing Member on OCC’s books and records. If the return exhausts the oldest Hedge Loan, OCC would decrement the next oldest, and so on and so forth.
  - Current Interpretation and Policy .02 to OCC Rule 2201A (i.e., proposed OCC Rule 2206A(e) per the reorganization discussed below), which concerns how Market Loan return instructions would be applied to a Clearing Member’s accounts, would be amended to reflect that if there are insufficient shares in the account designated by the delivery order submitted to OCC, or in the default account if the delivery order did

not specify an account, OCC would reject the return instruction rather than fulfill the return to the extent of the shares in the designated or default account, as applicable. If an account was designated in the delivery order, OCC would fulfill the return based only on that account and would reject the return instruction if sufficient shares were not available in that account rather than applying shares in the default account to cover the excess.

- Current OCC Rule 2209A(a)(2) (i.e., proposed OCC Rule 2216A(a)(5) per the reorganization discussed below), which concerns the termination of Market Loans upon receipt of end-of-day information from DTC concerning return or recall delivery orders, would be amended to delete the phrase “and reduce the respective Clearing Members’ open stock loan and stock borrow positions accordingly.” This phrase refers to adjustments required for aggregated stock loan and stock borrow positions, which would not be relevant under the contract-level recordkeeping proposal. OCC would also remove the phrase “the end of the day” with respect to the stock loan activity files it receives from DTC because OCC receives and processes such information from DTC throughout the business day.

(12) *Aligning Mark-to-Market Settlement to Accounts*

Under the proposed rules designed to facilitate OCC’s new clearance and settlement system, OCC would end the practice of limiting cash settlement of daily mark-to-market of cash collateral to the Clearing Member’s firm account or combined Market-Makers’ account. Instead, cash settlement will occur in the account in which the stock loan or stock borrow position is held. OCC implemented the current structure for settlement of mark-to-market payments in 1997 and

1998.<sup>53</sup> At that time, OCC believed that settlement through a firm's lien account would prevent premiums by option writers (which constitute customer funds) from being netted against stock loan mark-to-market payments from a clearing member (which do not constitute customer funds). The assumption at the time appears to have been that stock loan transactions would be limited to loans initiated by a Clearing Member in its capacity as principal. However, fully paid for lending programs have developed over the last two decades that allow customers to earn returns on their portfolios by allowing their broker to lend their shares.

The proposed change would align mark-to-market cash settlements with positions by deleting current OCC Rules 2201(a)(iii) and 2201A(a)(iii), as relocated to proposed OCC Rules 2207(a)(1)(C) and 2207A(a)(1)(C), which require Clearing Members to provide OCC with standing instructions identifying the Clearing Member's firm accounts or combined Market-Makers' accounts from which mark-to-market payments are to be made. No standing instruction would be needed because OCC will simply settle the mark-to-market payments in whichever account the stock loan or stock borrow position is held. In addition, OCC would amend current OCC Rules 2204(a) and 2204A(a), the relevant portions of which would be renumbered OCC Rules 2209(a) and 2209A(a), respectively, to provide that any mark-to-market payment shall be made in the account in which the Hedge Loan or Market Loan is held.

OCC would also delete the last clause to Interpretation and Policy .04 to Rule 1104, which concerns the use of a Liquidating Settlement Account to satisfy mark-to-market obligations arising from a suspended Clearing Member's stock loan or borrow positions in customers' accounts. That clause provides for use of the Liquidating Settlement Account

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<sup>53</sup> See Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424-01 (Jun 18, 1998) (File No. SR-OCC-98-03); Exchange Act Release No. 39738 (Mar. 10, 1998), 63 FR 13082 (Mar. 17, 1998) (File No. SR-OCC-97-11).



notwithstanding that such mark-to-market payments may settle in another account under current Rules 2201(a) and 2201A(a). This clarifying clause would no longer be relevant because of the alignment of settlement with the accounts in which the positions are held.

(13) *Simplifying Mark-to-Market Calculations*

Because OCC proposes to end the practice of aggregating stock loan and stock borrow positions, OCC also proposes to simplify the mark-to-market calculation described in proposed OCC Rules 2209 and 2209A. Currently, the mark-to-market calculation focuses on the value of the loaned shares of stock.<sup>54</sup> Specifically, it takes the quantity of stock that is on loan each morning and marks it to a closing price each night. Quantities of stock that correspond to new loans put on during the day are also marked to the end-of-day closing price. As such, the calculation was designed with the practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in mind. The proposed mark-to-market calculation will instead focus on the change to the contract value of a Clearing Member's stock loans. Specifically, proposed OCC Rules 2209(b) and 2209A(b) would provide that the mark-to-market payment will be the amount necessary to cause the amount of Collateral to be equal to the Collateral requirement applicable to the Stock Loan. For Hedge Loans, the Collateral requirement is either 100% or 102% of the mark-to-market value of the Loaned Stock, depending on which percentage the parties selected when initiating the Hedge Loan. For Market Loans, as discussed above, the Collateral requirement would be fixed at 102% of the value of the Loaned Stock, which is the collateralization for all Market Loans currently. While this proposed amendment would change the way OCC makes mark-to-market calculations, the change would have no impact on the results of the calculation.

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<sup>54</sup> See OCC Rules 2204(a); 2204A(a).

(14) *Re-matching Matched-Book Positions in Suspension Across Stock Loan Programs*

The proposed changes would also extend OCC's authority to close out and re-establish the Matched-Book Positions of a suspended Clearing Member to the Market Loan Program and would allow re-matching in suspension across the Hedge and Market Loan Programs. Under the current Hedge Program, OCC has authority to terminate Matched-Book Positions by offset and re-matching with other Clearing Members.<sup>55</sup> OCC's authority to re-match Matched-Book Positions in suspension facilitates the orderly and efficient termination and re-establishment of stock loans involving suspended Clearing Members, thereby mitigating operational and price dislocation risks that may arise for non-defaulting Clearing Members if OCC were required to unwind positions by recalling all borrowed securities from specific Borrowing Clearing Members and returning those securities to specific Lending Clearing Members. Extending such re-matching authority to the Market Loan Program and allowing re-matching across OCC's two Stock Loan Programs would also align OCC's close-out processes with how OCC already margins stock loan and borrow positions. Specifically, stock loan and borrow positions covering the same Eligible Stock in either program are treated under OCC's margin methodology as fungible and are permitted to offset one another in calculating a Clearing Member's margin requirement for the relevant account.

OCC would extend re-matching authority and allow for re-matching across programs by inserting a new OCC Rule 2219A to the Rules governing the Market Loan Program. The new rule would be similar in structure and content to current OCC Rule 2212, which concerns re-matching in suspension for the Hedge Program. Proposed OCC Rule 2219A(a) would provide that, in the event that a suspended Clearing Member has Matched-Book Positions within the

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<sup>55</sup> See OCC Rule 2212.

Hedge or Market Loan Programs, OCC will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible by (i) the termination by offset of stock loan and stock borrow positions that are Matched-Book Positions in the suspended Clearing Member's account(s) and (ii) OCC's re-matching in the order of priority in paragraph (c) of stock borrow positions for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Borrowing Clearing Member against a stock lending position for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Lending Clearing Member.

Under proposed OCC Rule 2219A(b), as under current OCC Rule 2212(b), the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member would not be required to issue instructions to DTC to terminate the relevant stock loan and stock borrow positions or to initiate new stock loan transactions to reestablish such positions, as the affected positions would be re-matched without requiring the transfer of securities against the payment of settlement prices.

Proposed OCC Rule 2219A(c), as under current OCC Rule 2212(c), would provide that OCC shall make reasonable efforts to re-match Matched-Book Borrowing Clearing Members with Matched-Book Lending Clearing Members that maintain MSLAs executed between them, based upon information provided by Clearing Members to OCC on an ongoing basis. OCC would be entitled to rely on, and would have no responsibility to verify, the MSLA records provided by Clearing Members and on record as of the time of re-matching. As under current OCC Rule 2212(d), proposed Rule OCC 2219A(c)(1) through (13) would require the termination by offset and re-matching be done using a matching algorithm in which the Matched-Book Positions of the suspended Clearing Member are first terminated by offset and then affected

Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members are re-matched in order of priority based first upon whether the re-matched Clearing Members have an existing MSLA between them or, in the case of Anonymous Market Loans, can be kept anonymous by re-matching with a Matched-Book Position that is another Anonymous Market Loan initiated through the same Loan Market. OCC believes prioritizing the re-matching of Disclosed Market Loans between parties that have MSLAs and re-matching that results in maintaining Anonymous Market Loans will limit the number of returns that may be initiated for re-matching that results in Disclosed Market Loans between parties who have not executed an MSLA.

Specifically, under the re-matching algorithm, OCC would select the largest stock loan or stock borrow position in a given Eligible Stock from the suspended Clearing Member's Matched-Book Positions within the Hedge Program. The selected positions would then be re-matched with the largest available stock borrow or stock loan positions within the Hedge Program, as applicable, for the selected Eligible Stock for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member. OCC would repeat this process until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with MSLAs is completed for positions within the Hedge Program. Simultaneously, OCC would perform the same re-matching process within the Market Loan Program for (i) Matched-Book Positions that are Disclosed Market Loans for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, and (ii) Matched-Book Positions that are Anonymous Market Loans initiated through the same Loan Market. After re-matching to the extent possible within the Market Loan Program based on manner of initiation

and trade source, OCC would proceed to re-match Matched-Book Positions within the Market Loan Program for which an MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, without regards to whether Matched-Book Position was part of a Disclosed Market Loan or Anonymous Market Loan.

After matching Matched-Book Positions to the extent possible between borrowers and lenders with existing MSLAs within both the Hedge Program and the Market Loan Program, OCC would then select the largest remaining stock loan or stock borrow positions for a given Eligible Stock regardless of whether the position is a Hedge Loan or a Market Loan and re-match it with the largest available stock borrow or stock loan position for the selected Eligible Stock in the other Stock Loan Program for which an MSLA exists between the lenders and borrowers in the other Stock Loan Program, regardless of whether the Market Loan selected or matched is a Disclosed Market Loan or Anonymous Market Loan. OCC would repeat this process until it has rematched all Matched-Book Positions to the extent possible between parties to existing MSLAs between the two Stock Loan Programs.

After re-matching among lenders and borrowers with existing MSLAs, the process would then be repeated for all remaining Matched-Book Positions for which MSLAs do not exist between the lenders and borrowers. OCC would first complete such rematching to the extent possible within each program. The re-matching process would then be repeated for all remaining Matched-Book Positions across the Stock Loan Programs for which MSLAs do not exist between the lenders and borrowers. Remaining positions that are not able to be rematched either within or across programs would then be closed-out pursuant to the rules governing close-out of Hedge Loans or Market Loans, as applicable.

Under proposed OCC Rule 2219A(d), as under current OCC Rule 2212(e), in the event Borrowing and Lending Clearing Members are re-matched through this process, the re-matched positions would be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to renumbered OCC Rule 2207 (for Hedge Loans) or Rule 2207A (for Market Loans). For Matched-Book Positions re-matched across programs, the resulting re-matched loan would be a Hedge Loan. If the re-matched positions were Anonymous Market Loans, the resulting Loan would be an Anonymous Market Loan. However, if one of the positions was a Disclosed Market Loan or the positions were Anonymous Market Loans initiated through different Loan Markets, the resulting loan would be a Disclosed Market Loan. Going forward, such a Disclosed Market Loan would be deemed to have been initiated through OCC, which would facilitate re-matching within the Market Loan Program for parties who are not subscribers to a Loan Market. Pursuant to proposed OCC Rule 2219A(j), the re-matched Clearing Members may choose to execute an MSLA or close-out the re-matched positions in accordance with proposed OCC Rules 2213 or 2216A, as applicable.

Under proposed OCC Rule 2219A(e), which corresponds to the second sentence of current OCC Rule 2212(e), any change in Collateral requirements arising from a change in the terms of stock loan or stock borrow positions between a Lending Clearing Member and Borrowing Clearing Member with re-matched positions would be included in the calculation of the mark-to-market payment obligations on the stock loan business day following the completion of the positions adjustments as set forth in proposed OCC Rule 2219A(f).

Under proposed OCC Rule 2219A(f), as under current OCC Rule 2212(f), the termination by offset and re-matching of positions would be complete upon OCC completing all position adjustments in the accounts of the suspended Clearing Member and the Borrowing

Clearing Members and Lending Clearing Members with re-matched positions and the applicable systems reports are produced and provided to the Clearing Members reflecting the transactions.

Under proposed OCC Rules 2219A(g) through (i), from and after the time OCC has completed the position adjustments as set forth in proposed OCC Rule 2219A(f), the suspended Clearing Member would have no further obligations under the By-Laws and Rules with respect to such positions; however, a Borrowing Clearing Member with re-matched stock borrow positions would remain obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions would remain obligated as a Lending Clearing Member as specified in the By-Laws and Rules applicable to the Stock Loan Programs.

Furthermore, upon notification that OCC has completed the termination by offset and re-matching of stock loan and borrow positions, the suspended Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched positions would be required promptly to make any necessary bookkeeping entries at DTC to ensure the accuracy and efficacy of those stock loan terms not governed by OCC's By-Laws and Rules. Under proposed OCC Rule 2219A(j), as under current OCC Rule 2212(j), Borrowing Clearing Members and Lending Clearing Members that have been re-matched would be required to work in good faith to either (i) reestablish any terms, representations, warranties and covenants not covered by the By-Laws and Rules (e.g., establish an MSLA) or (ii) terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to OCC Rules 2213 or 2216A, as applicable, as soon as reasonably practicable.

Because OCC has designed proposed OCC Rule 2219A to address the process for re-matching in suspension in both Stock Loan Programs, OCC further proposes to delete current OCC Rule 2212, which concerns re-matching in suspension for the Hedge Program, and replace

it, as renumbered to proposed OCC Rule 2217, with a cross-reference to proposed OCC Rule 2219A.

### **By-Laws and Rules Reorganization and Restatement**

OCC would also make a number of other clarifying, conforming, and organizational changes to OCC's By-Laws and Rules, and rule-filed policies that reference the By-Law and Rules provisions governing the Stock Loan Programs.

#### *(1) Reorganization*

OCC proposes to reorganize the provisions of OCC's By-Laws and Rules relating to the Stock Loan Programs into newly revised Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program). This consolidation of rules governing the Stock Loan Programs is similar to changes OCC made to migrate By-Laws governing OCC's Clearing Fund and membership standards to the Rules.<sup>56</sup> As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the By-Laws.

The provisions governing the Stock Loan Programs are currently found in Articles XXI and XXIA of OCC's By-Laws and Chapters XXII and XXIIA of the OCC Rules. Because the proposed changes to the Stock Loan Programs would substantially amend the relevant By-Law and Rule provisions, OCC believes that this is an appropriate opportunity to consolidate the primary provisions that address the Stock Loan Programs into Chapters XXII and XXIIA of the Rules. As a result, the content of Articles XXI and XXIA of the By-Laws would be consolidated into Chapters XXII, XXIIA and, with respect to definitions, Chapter I of the OCC Rules, subject

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<sup>56</sup> See Exchange Act Release No. 97439, *supra* note 50, 88 FR at 30377 (membership standards); Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855, 36859 (File No. SR-OCC-2018-008) (Clearing Fund).



to the proposed amendments described in this rule filing. OCC would also migrate to the OCC Rules the definitions currently located in Article I of the By-Laws that are specific to the Stock Loan Programs.<sup>57</sup> To account for migrated definitions of terms that are used elsewhere in the By-Laws, OCC would revise the By-Law definition to refer to the definition of that term in OCC Rule 101.<sup>58</sup> OCC believes that consolidating the provisions governing the Stock Loan Programs into one place would provide more clarity around, and enhance the readability of, OCC's rules governing the Stock Loan Programs. OCC has included a chart mapping the provisions moved from the By-Laws to the Rules, and the resulting renumbering of existing Rules, in Exhibit 3A to File No. SR-OCC-2024-011.

To preserve the governance requirements for amendments to the By-Law provisions that would be migrated to the Rules, OCC would also amend Article XI of the By-Laws.

Specifically, OCC would amend Article XI, Section 2 of the By-Laws, which requires the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by the By-Laws) to amend certain enumerated provisions.

Specifically, OCC would add Rule 2201, Rule 2203, Rule 2204, Rule 2205, Rule 2206(a) and (d), Rule 2213(e)(1), Rule 2214(e)(1), Rule 2201A, Rule 2203A, Rule 2204A, Rule 2205A and Rule 2206A(a)-(c) and (f) to these enumerated provisions.

(2) *Restatement*

In addition to consolidating the By-Laws and Rules specific to the Stock Loan Programs within the Rules, OCC proposes to restate those provisions and make certain other changes for

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<sup>57</sup> See By-Law Art. I, § 1.B.(4), E.(3), H.(1), L.(2), L.(5), M.(3)-(4), M.(7)-(9), S. (19), (21)-(23). Rule 101 provides that terms in the Rules have the meanings defined in the By-Laws or as set forth in the Rules.

<sup>58</sup> References to the definition of the terms “stock borrow position” and “stock loan position” in proposed Rule 101 would be retained in the By-Laws because these terms are referenced in certain other definitions in the By-Laws, as well as Article VI, Section 27 of the OCC By-Laws (Close-Out Netting).

clarity and consistency. The changes would include (a) global changes across the By-Laws and Rules to add courtesy titles and standardize terms; (b) integration of Interpretations and Policies within the Stock Loan Program rules into the body of the text of the Rules themselves; and (c) certain other administrative or technical changes to the rule text.

(a) Global Changes

Global changes to be applied across the By-Laws and Rules concerning the Stock Loan Programs include:

- Adding courtesy titles to the beginning of paragraphs or other subdivisions, where appropriate, to aid the reader in locating provisions governing specific topics.
- Replacing references to “Stock Loan” that are specific to the Hedge Program with “Hedge Loan” in order to better differentiate between Hedge Loans and Market Loans while the Hedge Program is still in place. Use of the defined term “stock loan” would be retained when referring to either a Hedge Loan or a Market Loan or both as the context requires.<sup>59</sup> Reference to the “Stock Loan/Hedge Program” would remain unchanged.
- Replacing references to “Hedge Clearing Member” or “Market Loan Clearing Member” with “Clearing Member,” “Borrowing Clearing Member,” or “Lending Clearing Member,” as applicable, to simplify OCC’s membership structure and reflect that Clearing Members may be authorized to transact in either program.<sup>60</sup>

(b) Interpretations and Policies

OCC would also relocate current Interpretations and Policies (“I&P”) within Chapters XXI and XXIA of the Rules by moving those provisions within the body of the applicable Rules,

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<sup>59</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 101.S.(6), (7), (9), (10); Rules 2201-2206; Rules 2209-2216.

<sup>60</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 1006(h)(C); Rule 2202; Rules 2206-2210; Rules 2213- 2214; Rule 2215-17; Rule 2202A; Rules 2207A-2212A; Rules 2216A-2219A.

subject to any further amendments discussed herein. The location of the text as reorganized within the Rules is included in Exhibit 3A to SR-OCC-2024-011 and noted in footnotes to the proposed rule text in Exhibit 5A to SR-OCC-2024-011.<sup>61</sup> OCC believes that consolidating the I&Ps, which have no less legal effect than the text of the Rules themselves, would provide more clarity around, and further enhance the readability of, OCC's Rules governing the Stock Loan Programs.

In certain instances, OCC is proposing to eliminate the existing Interpretations and Policies altogether:

- Interpretations and Policies .01 to current OCC Rules 2202 and 2202A, which concern the position information OCC provides to Clearing Members on an intraday basis, would be deleted because they concern a topic covered by and more properly addressed in proposed OCC Rules 2210 and 2210A (Daily Reports). The specific information referenced in those Interpretations and Policies—i.e., new position, transfer positions, returns and cancels—would be integrated into the proposed Rules.
- I&P .01 to current OCC Rule 2210 (Suspension of Hedge Clearing Members – Pending and Open Stock Loans) and OCC Rule 2210A (Suspension of Market Loan Clearing Members – Pending and Open Market Loans)—which refers the reader to Interpretation and Policy .02 of OCC Rule 1104 for a description of OCC's private auction process—would be deleted. In its place, a cross-reference to that description would be added to

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<sup>61</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2206(b) (replacing Rule 2201, I&P .01); Rule 2206(c)(1) (replacing Rule 2201 I&P .02); Rule 2206(d) (replacing By-Law Art. XXI § 5, I&P .01); Rule 2214(e)(1) (replacing By-Law Art. XXI § 2, I&P.01); Rule 2206A(d) (replacing Rule 2201A, I&P .01); Rule 2206A(e) (replacing Rule 2201A, I&P .02); Rule 2206A(f) (replacing I&P By-Law Art. XXIA § 5, I&P .01).

paragraph (b) of that Rule, as renumbered to OCC Rule 2215 per the reorganization discussed above.

(c) Administrative Changes

OCC would also improve the clarity and readability of certain Rules, including by:

- breaking certain lengthy Rule provisions into subparagraphs with additional convenience headings to aid the reader in navigating the requirements and obligations therein;
- numbering provisions with multiple paragraphs that are currently unnumbered, in whole or in part, or with lengthy provisions that can be split into multiple paragraphs, and adding convenience headings to paragraphs, where such convenience headings would be helpful to the reader.<sup>62</sup>
- renumbering subdivisions in Chapters XXII and XXIIA based on a consistent numbering convention for (a) paragraphs, (1) subparagraphs, and (A) items.<sup>63</sup>
- updating cross-references found throughout the By-Laws and Rules based on the proposed reorganization and renumbering.
- improving consistency of the text between similar Hedge Program and Market Loan Program rules;<sup>64</sup>
- deleting duplicative provisions of the Rules that merely refer the reader to substantive rights and obligations located elsewhere in the Rules;<sup>65</sup>

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<sup>62</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2202(b)(1)-(3); Rule 2203(b)(1)-(2), (c)(1)-(2), (d)(1)-(2); Rule 2204(a)-(b); Rule 2205(a)-(b); Rule 2207(a)(1)-(3); Rule 2213(b)(1)-(2); Rule 2214(b)(1)-(6), (c)(1)-(4); Rule 2216(a)-(d); Rule 2202A(b)(1)-(3); Rule 2206A(a)(1)-(2); Rule 2207A(a)(1)-(3); Rule 2216A (d)(1)-(2); Rule 2218A(a)-(d).

<sup>63</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed Rule 2202(b)(2)(A)-(E).

<sup>64</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 101.C.(4), L.(2), M.(1), S.(2) (conforming language in definitions specific to Hedge Loans and Market Loans); Rule 2213 (modifying title to “Termination of Hedge Loans” based on a similar title for current Market Loan Rule 2209A); Rule 2202A(b)(2)(E) (amending the Rule for initiation of Market Loans to include novation provisions governing Hedge Loans).

OCC would also make conforming edits to OCC's Margin Policy and the Recovery and Orderly Wind-Down Plan ("RWD Plan"). Specifically, OCC's Margin Policy references OCC's default management practices under current Rules 2211 and 2211A, which provide that OCC may instruct a non-defaulting Clearing Member to buy-in or sell-out of positions. The proposed rule change would renumber those references to Rules 2216 and 2218A, respectively. OCC would also amend the description of the margin add-on in the Margin Policy to capture the full range of factors that determine the margin add-on charge for stock loan activity (i.e., collateral rate, mark-to-market pricing, dividends and distributions announced by an issuer, and rebate payments). Similarly, references in the RWD Plan to Section 2(c) of Article XXI of the By-Laws and Rule 2209A(d), which refer to OCC's authority to terminate the Stock Loan Programs, would be renumbered to proposed Rules 2213(e) and 2216A(d)(2), respectively, and the excerpted text of those Rules appearing in the RWD Plan would be conformed with the text as amended by this proposed rule change.

### **Implementation Timeframe**

OCC will implement the proposed changes at the time Ovation becomes OCC's system of record, which is planned to launch no earlier than July of 2025.<sup>66</sup> OCC will announce the implementation date of the proposed change by Information Memorandum posted to its public website at least four weeks prior to implementation. OCC plans to launch Ovation and implement the proposed changes no later than December 31, 2025, and OCC will announce

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<sup>65</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2202(d) & I&P .01 (deleting duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209 and 2211); Rule 2202A(e) (deleting duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209A and 2211A).

<sup>66</sup> See <https://www.theocc.com/Participant-Resources> (linking to reference guides and timelines for the launch of Ovation).

another intended implementation date by Information Memorandum posted to its public website if the changes will not be implemented by that date.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act<sup>67</sup> requires, among other things, that the rules of a clearing agency (i) promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; (ii) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; (iii) in general, protect investors and the public interest; and (iv) are not designed to permit unfair discrimination among participants in the use of the clearing agency. OCC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, protect investors and the public interest, and not unfairly discriminate among Clearing Members for the reasons below.

**Enhancements to Facilitate OCC's New Clearance and Settlement System**

As described above, the proposed changes would involve certain changes to accommodate OCC's new clearance and settlement system, including by transitioning away from the legacy practice of aggregating positions in the same Eligible Stock into stock loan and stock borrow positions to contract-level record keeping. Contract-level recordkeeping would allow Clearing Members to see more precisely the contracts with shares lent by lender and borrower, which aligns to the record keeping industry standard. Allowing for terms to be recorded at the

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<sup>67</sup> 15 U.S.C. 78q-1(b)(3)(F).

contract level will allow OCC to record other terms at the contract level, including terms related to OCC's guaranty of substitute dividend and rebate payments. Eliminating position aggregation would also allow OCC to simplify the calculation for mark-to-market payments in OCC's Rules. And by aligning mark-to-market payments to the accounts in which a stock loan position is held, OCC would end the practice of requiring cash mark-to-market payments for stock loan or stock borrow positions to settle in a Clearing Member's firm lien account or combined Market-Makers' account. Aligning mark-to-market cash settlements with the accounts in which the position is held simplifies OCC's processes and reduces complexity. Accordingly, OCC believes that conforming its practices for maintaining stock loan and stock borrow positions to industry standards and simplifying its processes for marking those positions to market helps to promote the prompt and accurate clearance and settlement of stock loan transactions, and protect investors and the public interest by reducing operational complexity that could cause delay and impose costs on market participants.

The proposed changes to allow for re-matching of Matched-Book Positions in suspension also promote the prompt and accurate clearance and settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act<sup>68</sup> and Rule 17Ad-22(e)(13)<sup>69</sup> and (e)(23)<sup>70</sup> thereunder. Rule 17Ad-22(e)(13) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to

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<sup>68</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>69</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>70</sup> 17 CFR 240.17Ad-22(e)(23).

meet its obligations in the event of a Clearing Member default.<sup>71</sup> Rule 17Ad-22(e)(23) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.<sup>72</sup>

As noted above, a significant portion of the activity in OCC's Hedge Program relates to matched-book activity. Under the current Hedge Program Rules, OCC has authority to perform an orderly close out of a suspended Hedge Clearing Member's Matched-Book Positions through the termination by offset and rematching of such positions without requiring the transfer of securities against the payment of settlement prices as currently required under OCC Rule 2211. As a result, the Hedge Program rules minimize the potential for operational and execution risks and eliminate any risk resulting from potential price dislocation between recall and return transactions. Extending this authority to the Market Loan Program would provide the same benefits. In addition, by allowing re-matching across OCC's Stock Loan Programs, the proposed rule change would more closely align OCC's close-out process with the assumptions underlying OCC's margin methodology, STANS. Specifically, STANS assumes stock loan and borrow positions covering the same Eligible Stock in OCC's Stock Loan Programs are fungible and are permitted to offset one another in calculating a Clearing Member's margin requirement for the relevant account. Allowing for re-matching across Stock Loan Programs is consistent with this assumption. OCC believes the proposed rule change will strengthen the risk management processes in place at OCC by mitigating the risks involved in the buy-in/sell-out of Matched-Book Positions as well as provide the overall marketplace with more stability with respect to the Stock Loan Programs. OCC therefore believes the proposed rule change is designed to promote

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<sup>71</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>72</sup> 17 CFR 240.17Ad-22(e)(23).



the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act,<sup>73</sup> and would establish default procedures for the Market Loan Program that ensure that OCC can take timely action to contain losses and liquidity pressures and continue meeting its obligations in the event of a participant default in accordance with Rule 17Ad-22(e)(13).<sup>74</sup>

In addition, OCC would use a matching algorithm to re-match stock loan and stock borrow positions in order of priority based on the largest available stock borrow or stock loan positions, as applicable, for the selected Eligible Stock for which a MSLA exists between the Borrowing and Lending Clearing Members or for which both positions are Anonymous Market Loans. In the event parties to a resulting Disclosed Market Loan do not have existing securities lending relationships, those members may choose to either work in good faith to reestablish any terms, representations, warranties and covenants not governed by the By-Laws and Rules (e.g., MSLA) or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to renumbered OCC Rules 2213 and 2216A, as soon as reasonably practicable. The proposed rule change therefore provides for an objective process for re-matching stock loan and borrow positions and ensures that members that initiated Anonymous Market Loans or that have existing securities lending relationships are re-matched to the greatest extent possible and would still allow for Clearing Members that are re-matched but that do not have existing securities lending relationships to terminate such positions in the ordinary course pursuant to renumbered OCC Rules 2213 and 2216A. As a result, OCC believes that the proposed rule change is

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<sup>73</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>74</sup> 17 CFR 240.17Ad-22(e)(13).

designed to not permit unfair discrimination among participants in the use of the clearing agency in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>75</sup> Furthermore, the proposed rule change would make key aspects of OCC's default procedures with respect to the close out of Matched-Book Positions in suspension public by amending OCC's Rules, which are posted to OCC's website, consistent with Rule 17Ad-22(e)(23).<sup>76</sup>

### **Market Loan Program Enhancements**

The proposed enhancements specific to the Market Loan Program would also promote the prompt and accurate clearance and settlement of stock loan transactions and, in general, protect investors and the public interest. Allowing for bilaterally negotiated Stock Loans in the Market Loan Program would allow OCC to expand its guaranty of cash distributions, such as substitute dividend and rebate payments, to such loans, limiting existing counterparty risks that remain for Hedge Loans, in which such payments must be resolved by the counterparties away from OCC. Transitioning bilaterally negotiated transactions to the Market Loan Program would also reduce operational burden associated with the reconciliation process and risk associated with errors that currently occur under the Hedge Program because settlement at DTC currently occurs prior to OCC's validation and acceptance of the transaction. Under the enhanced Market Loan Program, such bilaterally negotiated transactions would be submitted directly to OCC, which would validate the trade before sending delivery instructions to DTC, thereby helping to identify and resolve any errors prior to settlement occurring. Accordingly, OCC believes that expanding the Market Loan Program to include direct submission of bilaterally negotiated stock loans would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

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<sup>75</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>76</sup> 17 CFR 240.17Ad-22(e)(23).

Allowing for the submission of bilateral transactions through the Market Loan Program would also help simplify OCC's post-trade processing of stock loan transactions. For instance, allowing Borrowing Clearing Members to send return instructions directly to OCC for bilaterally initiated Market Loans would help eliminate errors in the Hedge Program that occur when notices of returns initiated through DTC are not received by OCC with the correct reason codes, resulting in position breaks. The proposed changes would disclose OCC's process for affirming transactions related to bilaterally negotiated Market Loans submitted directly to OCC, which would give members opportunities to affirm or reject transactions within time-frames specified by OCC, after which OCC would either reject the transaction if not affirmed (i.e., new loans) or would be deemed affirmed and processed accordingly (i.e., returns, buy-ins, sell-outs), thereby avoiding transactions that would pend indefinitely. The proposed changes would also accommodate modifications to certain terms, such as the rebate rate, interest rate benchmark or the loan term, without the need for those loans to be returned. The proposed changes would also improve OCC's control over the buy-in process by giving OCC the authority to prevent situations in which a Borrowing Clearing Member that failed to deliver the Loaned Stock in response to a recall instruction then attempts to deliver the Loaned Stock after the Lending Clearing Member may initiate a buy-in.

OCC's new clearance and settlement system would also assume certain processes currently performed by a Loan Market, including calculation of payments with respect to cash distributions for substitute dividend and rebate payments. Consolidating such processing at OCC will help ensure consistency across Market Loans, regardless of whether initiated through a Loan Market or directly with OCC. Assuming the responsibility to calculate such payments would also allow OCC to eliminate Rules intended to limit OCC's guaranty for such payments to the

margin OCC collected in reliance on the Loan Market's determinations. OCC would also modify the Market Loan rules concerning the collateralization rate and mark-to-market pricing, which are currently set by the Loan Market. Fixing collateral at the single rate of 102%, which is the Loan Market's rate, would minimize complexity in the evaluation of a member's Stock Loan portfolio for the purposes of liquidation in the event of a default. Accordingly, OCC believes that these post-trade processing enhancements to the Market Loan Program would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

Finally, the proposed enhancements to support Canadian Clearing Members in the Market Loan Program would also promote the prompt and accurate clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, and protect investors and the public interest. The introduction of withholding responsibilities would introduce new complications and risks into OCC's clearance and settlement process and could create uncertainty around the settlement of funds at OCC, as discussed in detail in connection with OCC's proposed rule change to address the implementation of I.R.C. Section 871(m) with respect to OCC's listed options transactions.<sup>77</sup> The proposed rule change would implement prudent, preventive measures to protect OCC against the obligation for any withholding (and any

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<sup>77</sup> See Exchange Act Release No. 79435 (Nov. 30, 2016), 81 FR 87984 (Dec. 6, 2016) (File No. SR-OCC-2016-014). As the Commission recognized, application of Section 871(m) to listed options transactions would "have significant implications for OCC and its Clearing Members"—especially with respect to Non-U.S. Clearing Members, for which OCC would be required "to develop and maintain systems (i) to identify transactions that are Section 871(m) Transactions, (ii) to determine the amount of any dividend equivalents, (iii) to effectuate withholding, and (iv) to remit the withheld tax to the IRS." *Id.* at 87986. Treasury has yet to release guidance on key aspects of Section 871(m) that would be needed to build such systems. See IRS Notice 2024-44, Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m), available at <https://www.irs.gov/pub/irs-drop/n-24-44.pdf>. Like the changes implemented when Section 871(m) went into effect, this proposed change would transfer the costs and liability associated with tax withholding requirements to the Non-U.S. Clearing Members, thereby eliminating the potential uncertainty and risks in the daily settlement of funds at OCC that otherwise would be imposed if those withholding obligations rested with OCC.

resulting liability) by (a) applying similar conditions for the payment of substitute dividends as those for dividend equivalent payments for listed options; (b) preventing a Canadian Clearing Member from executing Market Loans in its capacity as a Borrowing Clearing Member for Canadian Securities, which may give rise to withholding obligations under Canadian law; (c) clarifying Canadian Clearing Member membership requirements such that Positive Rebate transactions would be subject to exemptions from withholding under U.S. law; and (d) preventing a Canadian Clearing Member from executing Market Loans with Negative Rebate in its capacity as a Borrowing Clearing Member for its own account, which may give rise to withholding obligations under U.S. Law. OCC believes these steps are necessary to prevent tax withholding obligations that OCC is not currently able to identify or collect. Thus, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>78</sup>

Furthermore, while the proposed rule change would impose additional requirements and restrictions on Canadian Clearing Members, the proposed rules are intended to address specific issues and potential risks to OCC arising from those Canadian Clearing Members whose membership and participation in the Market Loan Program creates potential withholding obligations for OCC. Because Canadian Clearing Members are already subject to similar requirements to accommodate dividend equivalent payments or deemed payments for listed options transactions without imposing withholding obligations under Section 871(m), OCC believes that the additional conditions and requirements with respect to participation in the

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

Market Loan Program will not impose a significant burden. In addition, the limitations on certain transactions OCC proposes because of the heightened risk of withholding obligations are narrowly tailored to address the specific risks based on the Canadian Clearing Member's role in the transaction and whether it is transacting in its capacity as principal or on behalf of a customer. Therefore, OCC believes that the proposed rule change is not unfairly discriminatory among participants in the use of the clearing agency and is therefore consistent with Section 17A(b)(3)(F) of the Exchange Act.<sup>79</sup>

### **By-Laws and Rules Reorganization and Restatement**

OCC believes that the proposed reorganization and restatement of OCC's By-Laws and Rules specific to OCC's Stock Loan Programs is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>80</sup> and Rule 17Ad-22(e)(1),<sup>81</sup> which requires OCC to, among other things, maintain written policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each aspect of OCC's activities. OCC believes that the proposed reorganization improves the clarity and transparency of its By-Laws and Rules by consolidating provisions governing the clearance and settlement of stock loan transactions in the Rules, rather than split across OCC's By-Laws and Rules. Similarly, OCC believes that integrating Interpretations and Policies into the text of the Rules helps enhance clarity and transparency by placing those provisions closer to the text they interpret. In addition, the global changes and administrative changes discussed above would apply consistent terms and numbering conventions, improve consistency of the text between similar Hedge Program and Market Loan Program rules, and remove duplicative provisions. Accordingly, OCC believes the

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<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> 17 CFR 240.17Ad-22(e)(1).

proposed changes help ensure OCC's By-Laws and Rules, which form the legal basis for OCC's clearance and settlement of stock loan transactions, are clear and transparent.

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

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>82</sup> With the exception of the Rules specific to Canadian Clearing Members, addressed further below, the proposed changes are meant to enhance OCC's Stock Loan Programs, and would apply equally to all Clearing Members.

The transition to the Market Loan Program is not expected to impose a burden on competition or inhibit access for Clearing Members who currently transact exclusively through the Hedge Loan Program because the enhanced Market Loan Program would allow for the clearance of bilaterally negated transactions submitted to OCC for clearance, as the Hedge Loan Program does today. Accordingly, the changes do not require any participant in the Hedge Loan Program to transact through a Loan Market. In addition, OCC plans to authorize Clearing Members that currently participate in the Hedge Loan Program to transact through the Market Loan Program without requiring additional onboarding from a membership perspective, subject to providing the necessary authorizations required of all Market Loan Program participants, thereby reducing the administrative burden of the transition. All Clearing Members would be subject to training with respect to the new ways of submitting transactions through the Market Loan Program. In addition, the proposed changes would facilitate, rather than burden, competition with respect to Canadian Clearing Members by allowing them, for the first time, to participate in the Market Loan Program.

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<sup>82</sup> 15 U.S.C. 78q-1(b)(3)(I).

The proposed rule change could potentially impact or burden competition by imposing upon Canadian Clearing Members certain requirements and limitations with respect to participation in the Market Loan Program. For example, Canadian Clearing Members would be required to provide certain documentation to satisfy OCC that participation will not impose tax or withholding obligations arising from payments under the Market Loan Program, as well as to allow OCC to satisfy its own tax reporting obligations. However, OCC does not believe that conditioning Canadian Clearing Members' participation on compliance with OCC Rule 202 would impose a significant burden on competition. Canadian Clearing Members are already subject to ongoing certification and reporting provisions of Rule 202 for derivative equivalent payments made or deemed to be made to such members with respect to options. As a matter of standard practice, Clearing Members are required to inform OCC of material changes in, for example, their formal organization, ownership structure, or financial condition<sup>83</sup> and are subject to ongoing financial reporting requirements.<sup>84</sup> OCC believes the proposed rule change would impose reasonable reporting and notification requirements with respect to Canadian Clearing Members' tax compliance status similar to those rules referenced above.

The proposed restrictions on certain Market Loan transactions with Negative Rebate rates and transactions for which the Loaned Stock is a Canadian Security are also narrowly tailored. These restrictions address specific issues and potential risks to OCC arising from those firms whose membership creates potential withholding obligations for OCC. The proposed restriction on transactions with Negative Rebate for a Canadian Clearing Member's own account in its capacity as a Lending Clearing Member would eliminate the uncertainty in funds settlement that would arise if OCC were subject to withholding or tax obligations with respect to Negative

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<sup>83</sup> See, e.g., OCC Rules 201 and 303.

<sup>84</sup> See OCC Rule 306.



Rebate payments owed to the Canadian Clearing Member. Canadian Clearing Members would not be restricted from entering into Market Loans with Negative Rebate as a Lending Clearing Member for its customer accounts, for which OCC could make Negative Rebate payments free from withholding obligations by virtue of the Canadian Clearing Member's status as a Qualified Intermediary, or as a Borrowing Clearing Member, either for its own account or for its customer accounts.

The proposed restriction on transactions where the Loaned Stock is a Canadian Security when the Canadian Clearing Member is the Borrowing Clearing Member would similarly eliminate uncertainty in funds settlement that would arise if OCC or the Canadian Clearing Member were subject to tax withholding obligations with respect to substitute dividends on the Canadian Security. Canadian Clearing Members would not be restricted from executing Market Loan transactions on Canadian Securities as a Lending Clearing Member. As discussed further above, OCC believes that the proposed rule change is necessary to eliminate potential complications and risk to its clearance and settlement process that would be presented by OCC's potential withholding responsibilities (and which would be a direct consequence of providing its clearance and settlement services for these Canadian Clearing Members). OCC believes the proposed rule change is necessary to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to assure the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>85</sup> Accordingly, OCC believes any burden on competition that this proposed change could be regarded as imposing are necessary and appropriate to promote the prompt and accurate clearance and

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<sup>85</sup> 15 U.S.C. 78q-1(b)(3)(F).

settlement of stock loan transactions as required by the Exchange Act. Furthermore, as stated above, all of OCC's current Canadian Clearing Members are already Qualified Intermediaries, FATCA Compliant, and Qualified Derivatives Dealers. Therefore, applying the same requirements as conditions to participate in the Market Loan Program would not impose any additional burden on those members.

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

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

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

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

**Exhibit 1A. Completed notice of the proposed rule change for publication in the Federal Register.**

**Exhibit 3A. By-Laws and Rules Reorganization Chart.**

**Exhibit 3B. Surveys results of stock loan industry participants indicating most firms have a significant spend for stock loan post-trade and reconciliation processing, based on which OCC believes that a service that can provide operational efficiencies and further reduce manual processing and operational risk would be well received.**

**Exhibit 5A. Proposed changes to OCC's Rules.**

**Exhibit 5B. Proposed changes to OCC's By-Laws.**

**Exhibit 5C. Proposed conforming changes to OCC's Margin Policy.**

**Exhibit 5D. Proposed conforming changes to OCC's RWD Plan.**

**CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBITS 3B, 5C AND 5D  
PURSUANT TO SEC RULE 24b-2**

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2024-011)

[August \_\_, 2024]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Its Stock Loan Programs.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 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 address limitations in the structure of OCC’s Stock Loan/Hedge (“Hedge”) Program and Market Loan Program (together, the “Stock Loan Programs”) by creating the framework for a single, enhanced program designed to support current and future needs. The proposed enhancements would, among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of stock loans submitted under the Market Loan Program (“Market Loans”) more closely to the provisions most commonly included in stock loan transactions

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

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

executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan Programs through OCC's new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC's By-Laws and Rules governing the Stock Loan Programs.

The proposed amendments to OCC's Rules and By-Laws can be found in Exhibit 5A and Exhibit 5B to File No. SR-OCC-2024-011, respectively. Proposed conforming changes to OCC's internal Margin Policy and Recovery and Wind-Down ("RWD") Plan, which can be found in confidential Exhibits 5C and 5D to File No. SR-OCC-2024-011, respectively. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. For ease of presentation and to distinguish between changes to rule text versus relocation of existing rule text, Exhibits 5A and 5B to File No. OCC-2024-011 contain bracketed text to indicate when existing text has been relocated from the By-Laws to the Rules with changes as marked. That bracketed text describes changes that would be performed upon implementation of File No. SR-OCC-2024-011, but it is not intended to be rule text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>3</sup>

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<sup>3</sup> 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>.

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

In its capacity as a central counterparty registered with the Commission, OCC currently operates two programs through which it clears stock loan transactions: the Hedge Program and the Market Loan Program. Under both Stock Loan Programs, OCC becomes the lender to the borrower and the borrower to the lender, thereby guaranteeing the return of the full value of cash collateral to the Borrowing Clearing Member and the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC also offers certain additional guarantees, discussed in more detail below, with respect to other payment obligations arising from the stock loan transactions (e.g., dividend equivalent payments and rebate payments). As a result of OCC's novation of cleared stock loan transactions, the rights and obligations of the Borrowing and Lending Clearing Members are thereafter governed by OCC's By-Laws and Rules.<sup>4</sup> OCC's By-Laws and Rules also provide for, among other things, how Clearing Members initiate Stock Loans at OCC, how those Stock Loans are recorded in OCC's books and records, how returns and recalls are processed,

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<sup>4</sup> Terms provided under a Master Stock Lending Agreement ("MSLA") between the parties to a Stock Loan may remain in effect as between the parties to the extent they are not inconsistent with the By-Laws and Rules, but do not impose any obligation on OCC. See OCC Rule 2202(b).

and risk management procedures specific to Stock Loans in the event that OCC suspends one of the Clearing Member counterparties.

As announced in 2022, OCC intends to replace its current clearance and settlement system (ENCORE) with a streamlined operational framework for clearance and settlement (Ovation).<sup>5</sup> The move to Ovation gives OCC the opportunity to address limitations in the structure of OCC's Stock Loan Programs and enhance OCC's stock loan services to support current and future needs.<sup>6</sup> OCC proposes a number of amendments to its By-Laws and Rules designed to, among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of Market Loans cleared by OCC more closely to the provisions most commonly included in stock loan transactions executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan Programs through OCC's new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC's By-Laws and Rules governing the Stock Loan Programs.

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<sup>5</sup> See OCC Announces New Platform Name and Launches Enhanced Transformation Website (May 10, 2022), <https://www.theocc.com/newsroom/views/2022/05-10-occ-announces-new-platform-name-and-launches-enhanced-transformation-website>.

<sup>6</sup> As discussed in more detail below, OCC's current programs are limited by certain inefficient legacy practices including, for example: (1) position-based recordkeeping that does not align with the contract-level accounting that is common throughout the stock loan industry, which adds complexity to the process of ensuring that all parties are in alignment on the state of their stock loans; (2) workflows that involve settlement of delivery versus payment obligations at the Depository prior to clearance or settlement at OCC, which adds further complexity to the reconciliation process and can lead to position breaks; and (3) payment flows common to stock loans that are not guaranteed under OCC's Hedge Loan program and must currently be settled as between the parties away from OCC.

OCC believes these changes will address certain pain points that OCC's members have raised and enhance the overall process. In particular, the proposed changes would allow members who currently participate in the Hedge Loan Program to submit transactions through an improved workflow to the Market Loan Program, under which the counterparties will benefit from OCC's enhanced guaranty and the efficiency of allowing OCC's systems to handle certain post-trade transactions that Hedge Loan Program participants must currently address bilaterally with each of their counterparties, away from OCC. In addition, the proposed changes would align how OCC records stock loan transactions in its books and records with an industry-standard, contract-level approach, which is expected to alleviate operational burdens on members that must currently reconcile their internal records with OCC's position-based records on a daily basis.

These enhancements would also serve as a foundation for consolidating OCC's Hedge Loan and Market Loan Programs. As discussed more fully below, OCC intends to eventually decommission the Hedge Program, after which the Market Loan Program would become OCC's single Stock Loan Program. OCC would take a phased approach to decommissioning the Hedge Program and would commence its Hedge Program phase-out plan only after conferring with Clearing Members that they are prepared for the transition.



## 1. Purpose

### **Background**

#### **Stock Loan Initiation**

In the Hedge Program, OCC acts as the principal counterparty for stock loans that are executed bilaterally between Clearing Members and sent to OCC for clearance and settlement. Prospective Lending and Borrowing Clearing Members identify each other (independent of OCC), agree to bilaterally negotiated terms of the Hedge Loan, and then send the details of the stock loan to the Depository, the Depository Trust Company (“DTC”), with a certain “reason code,”<sup>7</sup> which designates the stock loan as a Hedge Loan for guarantee and clearance at OCC. The Lending Clearing Member then instructs DTC to transfer a specified number of shares of Eligible Stock to the account of the Borrowing Clearing Member versus transfer of the appropriate amount of cash collateral to the account of the Lending Clearing Member. This current process, in which settlement at DTC occurs before clearance at OCC, adds complexity to balancing and reconciliation under the current Hedge Program.

In the Market Loan Program, stock loans are initiated through the matching of bids and offers that are agreed upon by the Market Loan Clearing Members or otherwise matched through a Loan Market. A Loan Market is an electronic platform that supports securities lending and borrowing transactions in the Market Loan Program by matching lenders and borrowers based on loan terms that each party is willing to accept.<sup>8</sup> In order to initiate a Market Loan, the Loan Market sends a matched transaction to OCC, which in

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<sup>7</sup> Unique reason codes were created by DTC for Clearing Members to designate stock loan transactions intended to be sent to OCC for novation and guarantee.

<sup>8</sup> Currently, one Loan Market operates within OCC’s Market Loan Program—Automated Equity Finance Markets, Inc. (“AQF”), a subsidiary of Equilend Holdings LLC (“Equilend”).

turn sends two separate but linked settlement instructions to DTC to effect the movement of Eligible Stock and cash collateral between the accounts of the Market Loan Clearing Members through OCC's account at DTC.

### **Scope of OCC's Guaranty**

Regardless of whether a transaction is initiated under the Hedge Program or Market Loan Program, OCC novates the transaction and becomes the lender to the Borrowing Clearing Member and the borrower to the Lending Clearing Member.<sup>9</sup> As the principal counterparty to the Borrowing and Lending Clearing Members, OCC guarantees the return of the full value of cash collateral to a Borrowing Clearing Member and guarantees the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC also provides a limited guaranty of substitute dividend<sup>10</sup> and rebate payments,<sup>11</sup> in each case limited to the amount OCC has collected in margins from the responsible Market Loan Clearing Member based upon instructions received by the Loan Market prior to the payment date. Under the Hedge Program, OCC does not currently offer a guaranty of dividends or distributions, which must be resolved bilaterally between the Borrowing and Lending Clearing Members.

### **Mark-to-Market Payments**

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<sup>9</sup> See OCC Rules 2202(b) and 2202A(b).

<sup>10</sup> The terms "substitute dividend" or "dividend equivalent payment" in respect of a stock loan transaction means a payment made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of the stock loan.

<sup>11</sup> In respect of a stock loan transaction, a rebate is typically a fee payable from the Lending Clearing Member to the Borrowing Clearing Member, expressed as a rate based on the amount of cash Collateral held by the Lending Clearing Member ("Positive Rebate"). However, if the rebate rate is negative ("Negative Rebate"), the fee is payable from the Borrowing Clearing Member to the Lending Clearing Member.

After novation, as part of the guaranty, OCC processes mark-to-market payments for all cleared stock loans on a daily basis to collateralize all loans to the negotiated levels. Mark-to-market payments are based on the value of the loaned securities and made between Clearing Members using OCC's cash settlement system. In the Hedge Program, the percentage of the value of the loaned securities, either 100% or 102%, and the preferred mark-to-market rounding are dependent upon the terms of the Master Securities Loan Agreement ("MSLA") between the two Clearing Member parties to the transaction. Currently, members may select between several default rates to which the mark price would be rounded to the nearest interval (1.00, .05, 0.25, 0.10, 0.05, and 0.01). In the Market Loan Program, all Market Loans are collateralized based on the rate and rounding convention established by the Loan Market—currently 102% with rounding to the nearest dollar.

In both Stock Loan Programs, daily mark-to-market of cash collateral typically are settled in the firm lien account or combined Market-Makers' account of the Clearing Member.<sup>12</sup> Settlements generally are combined and netted against other OCC settlement obligations in a Clearing Member's account, including trade premiums and margin deficits. Clearing Member open positions in the Stock Loan Programs are factored into the Clearing Member's overall margin<sup>13</sup> and Clearing Fund contribution requirements.<sup>14</sup>

### **Position Aggregation**

OCC aggregates all stock loan positions and stock borrow positions of a Clearing Member relating to the same Eligible Stock for reporting and margin calculation

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<sup>12</sup> See OCC Rule 2201(a)(iii); Rule 2201A(a)(iii).

<sup>13</sup> See OCC Rules 601, 2203 & 2203A.

<sup>14</sup> See OCC Rule 1001.

purposes. OCC separately identifies stock loan and stock borrow positions resulting from each of the Stock Loan Programs, and such positions are not fungible with positions resulting from the other program. Position aggregation in both Stock Loan Programs is a legacy practice and does not follow industry-standard book-keeping practices. Because of position aggregation, certain industry standard post-trade activity must be performed bilaterally away from OCC, such as re-rate transactions that change the rebate rate on an individual loan.

### **Dividends and Distributions**

Dividend equivalent payments for the Market Loan Program are ordinarily effected through DTC's Dividend Service. If a Loan Market has advised OCC that the dividend or distribution for such Market Loan is not tracked by DTC's Dividend Service, or if OCC determines, in its discretion, to remove a Market Loan from the Dividend Service, OCC Rule 2206A(a)(ii) currently provides that dividend equivalent payments are effected through OCC's cash settlement system the day following the expected dividend or distribution payment date. OCC Rule 2206A(a)(ii) further provides that the calculation of the margin in respect of dividend equivalent payments shall be solely based on calculations provided by the Loan Market, and OCC shall have no responsibility to verify the accuracy of the Loan Market's calculation. In addition, OCC Rule 2206A(a)(iii) provides that with respect to non-cash dividends and distributions, a Loan Market may determine in its discretion to fix a cash settlement value for which the Loan Market may instruct OCC to effect collection and payment. In the event of a Borrowing Clearing Member's default, OCC guarantees dividend equivalent payments to the extent

that OCC has collected margin equal to such dividend equivalent according to the instructions provided by the Loan Market.

### **Termination of Stock Loans**

Hedge Loans are typically terminated when either (i) a Borrowing Clearing Member instructs DTC to transfer a specified quantity of the Loaned Stock to the Lending Clearing Member against payment of the settlement price by the Lending Clearing Member to the Borrowing Clearing Member, after which DTC notifies OCC of the transaction with special codes after the transaction has settled; or (ii) the Lending Clearing Member gives notice to the Borrowing Clearing Member that the Lending Clearing Member is terminating the Stock Loan, or a portion thereof and specifies the number of shares of the Loaned Stock in respect of which the Lending Clearing Member is terminating the Stock Loan.<sup>15</sup> The current process of initiating return transactions for the Hedge Program through DTC can lead to position breaks if the return transactions are not properly coded. Market Loans are typically terminated by a Market Loan Clearing Member giving notice to the relevant Loan Market calling for the recall or return of a specified quantity of the Loaned Stock.<sup>16</sup> The Loan Market then sends details of the matched return/recall transaction to OCC, which validates the transaction and sends a pair of delivery orders to DTC in connection with the recall/return.

However, in certain circumstances when a Clearing Member under either Stock Loan Program fails to return the specified quantity of Loaned Stock or to pay the applicable settlement price for a Loaned Stock, the counterparty Clearing Member may

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<sup>15</sup> See OCC Rule 2209(a).

<sup>16</sup> See OCC Rule 2209A(a).

choose to execute a “buy-in” or “sell-out” of the Loaned Stock on its own.<sup>17</sup> The Clearing Member executing a buy-in or sell-out is then required to provide notice to OCC and its counterparty, in the case of a Hedge Loan,<sup>18</sup> or the Loan Market, in the case of a Market Loan,<sup>19</sup> of the buy-in or sell-out after execution is complete. Termination is not complete until the records of OCC, which are the official record of open and closed stock loan transactions, reflect the termination of the Stock Loan, and Clearing Members remain liable for all obligations related to open stock loan positions as reflected in the records of OCC.

### **Offset and Re-Matching of Matched-Book Positions**

A portion of the activity in OCC’s Hedge Program relates to what is often referred to as matched-book activity, when a Hedge Clearing Member maintains in an account a stock loan position for a specified number of shares of an Eligible Stock reflecting a stock lending transaction with one Hedge Clearing Member (the Borrowing Clearing Member) and also maintains in that same account a stock borrow position for the same number, or lesser number, of shares of the same Eligible Stock with another Hedge Clearing Member (the Lending Clearing Member) (such positions being “Matched-Book Positions”). In the event of a Clearing Member suspension, OCC has authority to re-match Matched-Book Positions of the defaulting Clearing Member in the Hedge Loan Program.<sup>20</sup> Such re-matching in suspension eliminates risk associated with price dislocation if OCC were required to instruct the surviving lender to buy-in and the

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<sup>17</sup> See OCC Rule 2209(b), (f); Rules 2209A(b), (c).

<sup>18</sup> See OCC Rule 2209A(b), (f).

<sup>19</sup> See OCC Rule 2209A(b)(1), (c)(1).

<sup>20</sup> See OCC Rule 2212.

surviving borrower to sell-out the same quantity of Loaned Stock in order to unwind the Matched-Book Positions.

### Canadian Clearing Members

OCC expanded the Hedge Program to accommodate Canadian Hedge Clearing Members in 2013.<sup>21</sup> To be eligible for the Hedge Program, a Canadian Clearing Member must appoint CDS Clearing and Depository Services Inc. (“CDS”), Canada’s national securities depository, to act as its agent through CDS’s arrangements with DTC and the National Securities Clearing Corporation (“NSCC”) to provide cross-border service to clear and settle trades with U.S. counterparties.<sup>22</sup> Currently, Canadian Clearing Members are not eligible for the Market Loan Program.

Canadian Clearing Members are also subject to additional requirements intended to allow OCC to perform its clearance and settlement services free from tax withholding obligations with respect to payments to such members. Specifically, OCC has established rules to address the application of Section 871(m) of the Internal Revenue Code of 1986, as amended (“I.R.C.”)<sup>23</sup> to listed options transactions effective on January 1, 2017.<sup>24</sup> Section 871(m) imposes a 30% withholding tax on “dividend equivalent” payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. OCC Rule 202 provides that Clearing

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<sup>21</sup> See Exchange Act Release No. 69534 (May 8, 2013), 78 FR 28267 (May 14, 2013) (File No. SR-OCC-2013-03).

<sup>22</sup> See OCC Rule 302(e), (f)(1).

<sup>23</sup> 26 U.S.C. 871(m).

<sup>24</sup> In September 2015, the Treasury Department adopted final regulations based on a proposal issued in December 2013 expanding the types of derivatives to which Section 871(m) applies to include certain listed options transactions with an effective date of January 1, 2017. See T.D. 9734, 80 FR 56866 (Sept. 18, 2015). The Treasury Department adopted final regulations providing additional guidance on section 871(m) in January 2017. See T.D. 9815, 82 FR 8144 (Jan. 24, 2017).

Members that are non-U.S. entities for U.S. federal tax purposes (“FFI Clearing Members”) must establish to the OCC’s satisfaction that the member’s conduct of transactions or activities with or through OCC will not result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC’s net income).<sup>25</sup> When taxes or obligations would be imposed but for the qualification of a member for a special U.S. or foreign tax status, ongoing membership of such members is conditioned on the member to qualify for, maintain, and document such status to OCC’s satisfaction.<sup>26</sup> In addition, an FFI Clearing Member is prohibited from conducting transactions with or through OCC that would result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC’s net income).<sup>27</sup> Notwithstanding these requirements, which OCC implemented to facilitate the clearance and settlement of listed options transactions, OCC has no current tax withholding or reporting obligations for Canadian Hedge Clearing Members’ transactions under the Hedge Program because

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<sup>25</sup> OCC Rule 202(a).

<sup>26</sup> See OCC Rule 202. FFI Clearing Members satisfy this requirement by (1) entering into a “qualified intermediary agreement” with the Internal Revenue Service (“IRS”) under which the Clearing Member assumes primary withholding responsibility (such member being a “Qualified Intermediary Assuming Primary Withholding Responsibility”) and qualifies under IRS procedures for exemption from withholding under the Foreign Account Tax Compliance Act (“FATCA”), 26 U.S.C. 1471-1474, such that OCC is not required to withhold any amount with respect to any payment or deemed payment to such FFI Clearing Member under FATCA or Chapter 3 of subtitle A of the I.R.C. (“Chapter 3”), 26 U.S.C. 1441-1446, for transactions in the FFI Clearing Member’s customer accounts; and (2) entering into an agreement with the IRS that permits OCC to make dividend equivalent payments or deemed payments to such FFI Clearing Member free from U.S. withholding tax for transactions or activity in the FFI Clearing Member’s capacity as principal through its firm account (such member being a “Qualified Derivatives Dealer”).

<sup>27</sup> See OCC Rule 202(b)(1).



substitute dividend payments are handled bilaterally between Hedge Clearing Members, away from OCC.

### **Proposed Changes**

OCC is proposing a number of amendments to enhance the structure and operation of the Stock Loan Programs discussed above and provide a framework for combining those programs into a single Stock Loan Program. First, OCC proposes to make several changes to the rules governing its Market Loan Program. Specifically, the proposed rule change would enhance OCC's Market Loan Program by:

- (a) expanding the Market Loan Program to include bilaterally negotiated stock loans submitted by Clearing Members directly to OCC, for which the original counterparties shall remain paired in OCC's system for purposes of post-trade activity, including modifications, recalls, and returns;
- (b) allowing for and recognizing supplementary or additional terms under an MSLA between the counterparties to such bilaterally negotiated transactions submitted under the Market Loan Program, as OCC's Rules currently recognize under the Hedge Loan Program;
- (c) fixing cash collateral delivered and returned versus a bilaterally negotiated Market Loan submitted directly to OCC at 102%, as is the current practice for Market Loans submitted through a Loan Market, and allowing Clearing Members to select a default rate at which mark-to-market payments would be rounded to the nearest level for Market Loans submitted directly to OCC, as is the current practice for Hedge Loans;
- (d) allowing for Clearing Members to cancel pending transactions by sending instructions directly to OCC as opposed to through a Loan Market;
- (e) establishing rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC, as opposed to through a Loan Market;
- (f) allowing OCC's clearance and settlement system to calculate and handle cash distributions, including substitute dividends and rebates;
- (g) allowing OCC's clearance and settlement system to accept and handle contract modifications agreed to by the parties to bilaterally negotiated

contracts submitted through the Market Loan Program, including modifications to rebate rate, interest rate benchmark, and loan terms;

- (h) implementing additional OCC controls over the buy-in process in the case of the Borrowing Clearing Member's failure to deliver the Loaned Stock following a recall by the Lending Clearing Member in situations other than the suspension of the Borrowing Clearing Member under Chapter XI of the Rules;
- (i) supporting Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could otherwise introduce tax withholding obligations; and
- (j) providing that in lieu of being a participant at the Depository for purposes of delivering or receiving Eligible Stock in connection with the initiation and termination of Market Loans, an Appointing Clearing Member may appoint an Appointed Clearing Member who is a member of the Depository to deliver or receive Eligible Stock, in the same way as how the Rules currently allow for Appointed Clearing Members to deliver or receive underlying securities arising from the exercise or maturity of an Appointing Clearing Member's physically-settled equity options or stock futures.

As discussed in more detail below, OCC intends that with these enhancements to the Market Loan Program, OCC would eventually decommission the Hedge Program, after which the Market Loan Program would become OCC's single stock loan program. In the interim, however, and in addition to enhancements (a) through (j) to the Market Loan Program, the proposed rule changes would apply amendments to both Stock Loan Programs for the transition to OCC's new clearance and settlement system by:

- (k) replacing OCC's current practice of aggregating new stock loan positions and stock borrow positions for the same Clearing Member in the same Eligible Stock with contract-level accounting, consistent with industry-standard bookkeeping practices;
- (l) aligning settlement of daily mark-to-market of cash collateral through the account in which the stock borrow or stock loan position sits, rather than requiring that mark-to-market settlement occur in a Clearing Member's firm lien account or combined Market-Makers' account;
- (m) simplifying the mark-to-market calculation to focus on the change to the contract value of a Clearing Member's Stock Loans; and

- (n) allowing for re-matching of Matched-Book Positions across OCC's Stock Loan Programs in the event of a Clearing Member default.

In conjunction with these changes to the Stock Loan Programs, OCC would also make certain other clarifying, conforming, and organizational changes to OCC's By-Laws and Rules, and rule-filed policies that reference those By-Laws or Rules. In particular, OCC would reorganize, restate, and consolidate provisions of OCC's By-Laws governing the Stock Loan Programs into Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program) of OCC's Rules, as amended by this proposed rule change. As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the OCC By-Laws.

#### **Plan to Consolidate OCC's Stock Loan Programs**

OCC plans to consolidate its Stock Loan Programs into a single, enhanced stock loan program. OCC intends to achieve this consolidation in three phases. The first phase, which is described in this proposed rule change, would enhance the Market Loan Program in a way that would allow that program to eventually become OCC's single, enhanced stock loan program. The first phase will also involve certain enhancements to both the Hedge and Market Loan Programs in connection with the implementation of OCC's new system for clearance and settlement. After OCC implements the enhancements and the new clearance and settlement system becomes OCC's system of record, OCC will begin authorizing and encouraging Hedge Clearing Members to begin submitting bilateral transactions through the enhanced Market Loan Program. While OCC would require Hedge Clearing Members to provide the appropriate documentation

and certifications required of Market Loan Clearing Members and submit to certification testing prior to utilizing the enhanced program, OCC does not plan to require business expansions for Hedge Clearing Members migrating to the Market Loan Program because they are already approved for stock loan activity.<sup>28</sup> Currently, the business expansion for Market Loan Program participation serves mainly to ensure that the Clearing Member is properly subscribed through a Loan Market, which will no longer be necessary to participate in the Market Loan Program.

During the second phase, which also is covered by this proposed rule change, OCC would encourage Clearing Members to transition to the Market Loan Program and would monitor the movement of activity from the Hedge Program to the enhanced Market Loan Program. Based on interest expressed by Clearing Members,<sup>29</sup> OCC anticipates that Clearing Members will be motivated to migrate activity to the Market Loan Program because of OCC's expanded guarantee under that program and the operational enhancements under this proposed rule change. Once transition plans for each Clearing Member are understood, OCC would announce that on a future date, OCC will no longer accept new loans through the Hedge Program, but would continue to support existing Hedge Loans. The decision to make this announcement will be made by OCC's Chief Executive Officer or Chief Operating Officer based upon factors including,

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<sup>28</sup> Currently, a Clearing Member that participates in the Hedge Loan Program that desires to expand its participation into the Market Loan Program is subject to a business expansion review under OCC's Third-Party Risk Management Framework. See Third-Party Risk Management Framework, available at <https://www.theocc.com/risk-management/risk-management-framework> (providing for assessments for Clearing Member onboarding, including with respect to expanded relationships).

<sup>29</sup> OCC has provided results of a survey and other informal discussions with Clearing Members concerning the enhancements to the OCC's Stock Loan Programs in confidential Exhibit 3B to SR-OCC-2024-011. Members have expressed interest in the enhancements such as having the rebate amounts calculated, settled, and guaranteed by OCC. The migration from Hedge to the Market Loan Program is necessary for such expansion to OCC's services.

but not limited to, the number of participants that are able to conduct business under the enhanced Market Loan Program, the amount of transactions flowing through the enhanced Market Loan Program, the proportion of loan balances between the two Stock Loan Programs, and feedback from members about when they expect to be ready to migrate fully to the enhanced Market Loan Program. OCC's goal is to transition all Hedge Program participants to the enhanced Market Loan Program within a year after implementing the enhanced program. Beginning on the announced date, existing Hedge Loans will naturally terminate through return or recall instructions until none are left. OCC does not expect that this period will last more than six months from the announced date given the average term for stock loans.

This second phase would be reflected in proposed Rule 2213(e)(2), which would address the termination of the Hedge Loan Program. Section 2(c) of OCC By-Law Article XXI, which would become OCC Rule 2213(e)(1) as part of the reorganization of the Stock Loan By-Laws and Rules, already provides OCC authority, upon two business days' notice to Clearing Members, to terminate the outstanding Hedge Loans relating to one or more particular Eligible Stock at its sole discretion for certain enumerated reasons, including the impending termination of that business on the part of OCC. OCC Rule 2213(e)(2) would allow OCC to take a phased approach to terminating the Hedge Loan Program by first, upon approval by the Chief Executive Officer or Chief Operating Officer, announcing that OCC will cease to accept the initiation of new Hedge Loans. OCC Rule 2213(e)(2) also would provide that the determination to terminate the Hedge Loan Program will be made based upon factors including, but not limited to, the number of participants that are able to conduct business under the Market Loan Program, the

amount of transactions flowing through the Market Loan Program, the proportion of loan balances between the two Stock Loan/Hedge Programs and the Market Loan Program, and feedback from members about when they expect to be ready to migrate fully to the Market Loan Program. During this phasing out, Clearing Members would be allowed to maintain open positions in Hedge Loans until termination of those positions through returns and recalls initiated by the Clearing Members.

The third phase, which is not covered by this proposed rule change, would be the ultimate decommission of the Hedge Program Rules. Once all Hedge Loans terminate through return or recall, OCC intends to file another proposed rule change that would remove the Hedge Program from OCC's By-Laws and Rules. Thereafter, the Market Loan Program would then become OCC's single "Stock Loan Program." Until then, OCC is proposing to amend its Rules to avoid ambiguity by using "Hedge Loan" instead of "Stock Loan" when referring to Stock Loans under the Hedge Program unless in reference to Stock Loans under either of the Stock Loan Programs, consistent with the current definition of that term in Article I of the By-Laws.

### **Market Loan Program Enhancements**

OCC proposes enhancements to the Market Loan Program that would (a) expand the Market Loan Program to allow for submission of Market Loans bilaterally negotiated by Clearing Members; (b) recognize MSLAs under the Market Loan Program; (c) fix the value of cash collateral delivered and returned versus the Loaned Stock at 102% of the value of the Loaned Stock, as Market Loans are currently collateralized, and allow for flexible pricing, as under the current Hedge Loan Program; (d) provide for the cancellation of pending transactions that have not yet been accepted by OCC;

(e) establish rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC; (f) facilitate the calculation and processing of cash distributions, including substitute dividends and rebate payments, by OCC's new clearance and settlement system, rather than by a Loan Market; (g) provide for modification of Market Loan terms agreed to by Market Loan Clearing Members; (h) implement additional OCC controls over the buy-in process in the case of a Borrowing Clearing Member's failure to deliver after the Lending Clearing Member initiated a recall, as well as to prepare those controls and OCC's other Market Loan and Hedge Loan Rules for the shortening of the standard settlement cycle for securities transactions; (i) support Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could introduce tax withholding obligations; and (j) provide a framework for allow an Appointing Clearing Member to settle its Market Loan activity through an Appointed Clearing Member in lieu of maintaining membership at a Depository.

(a) Bilaterally Negotiated Market Loans

OCC is proposing to expand the Market Loan Program to include bilaterally negotiated Market Loans submitted directly by Clearing Members. Under the Market Loan Program, OCC currently accepts electronic messages from the Loan Market for new loans and returns. OCC would expand the Market Loan Program to accept submissions directly from Clearing Members (or their third-party service providers). Following the affirmation of a new loan or return, OCC would instruct DTC to settle the transaction using the account of the lender, the borrower, or the Appointed Clearing Members, or using OCC's DTC account. While there would be two separate avenues for

submitting loans (i.e., through a Loan Market or direct submission of bilaterally negotiated Loans to OCC), the scope of OCC's guaranty and post-trade processing for all transactions would be uniform. By allowing for automated submission of transactions to OCC prior to DTC settlement and by controlling the settlement process, the enhanced program would help reduce the burden and risks associated with the balancing and reconciliation under the current Hedge Program.<sup>30</sup> As under the current Hedge Program, counterparties to bilaterally negotiated contracts submitted through the Market Loan Program would remain paired in OCC's system for purposes of recalls, returns, and contract modifications.

Because certain proposed Rules would apply differently to Loans matched anonymously through a Loan Market and those that would be initiated bilaterally, whether through a Loan Market or with OCC directly, OCC would add definitions of "Anonymous Market Loan" and "Disclosed Market Loan" to OCC Rule 101. Anonymous Market Loans would be defined as those initiated through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are not disclosed to each other. Disclosed Market Loans would be defined to include either those Market Loans (i) initiated through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other, or (ii) initiated directly between the Lending Clearing Member and Borrowing Clearing Member away from a Loan Market such that the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other.

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<sup>30</sup> Surveys of stock loan industry participants indicate most firms have a significant spend for stock loan post-trade and reconciliation processing. Based on this industry feedback, OCC believes that a service that can provide operational efficiencies and further reduce manual processing and operational risk would be well received. OCC's review of this feedback is provided in confidential Exhibit 3B to SR-OCC-2024-011.



Paragraph (h) to proposed OCC Rule 2202A (Initiation of Market Loans) would provide that a Market Loan may be either an Anonymous Market Loan or a Disclosed Market Loan. Paragraph (a) to proposed OCC Rule 2206A (Maintaining Stock Loan and Stock Borrow Positions in Accounts) would provide that the identities of the Lending Clearing Member and Borrowing Clearing Member would be elements identified for stock loan positions and stock borrow positions resulting from Disclosed Market Loans.

To expand the Market Loan Program to bilateral transactions, OCC would amend OCC Rule 2202A. Specifically, the proposed rule change would amend current OCC Rule 2202A(a)(i), which would be renumbered to OCC Rule 2202A(a)(1) as part of the restatement of the Stock Loan Program rules, to add that, in addition to initiation through a Loan Market, a Market Loan may be initiated when a Lending Clearing Member and Borrowing Clearing Member send details of a stock loan between the two Clearing Members directly to OCC. To ensure that the original counterparties to such a Disclosed Market Loan remain paired in OCC system, notwithstanding OCC's novation, OCC would also amend current Article XXIA, Section 5 of OCC's By-Laws (Maintaining Stock Loan and Stock Borrow Positions in Accounts), which would become OCC Rule 2206A, by adding a new sentence to the beginning of that provision that introduces the concept of "matched pairs," consistent with the OCC By-Law's definition of Hedge Loans.<sup>31</sup>

In addition to providing for the initiation of bilateral Market Loans, OCC would also amend its Rules to accommodate direct submission of other types of post-trade transactions for which the Rules currently rely on actions taken by a Loan Market.

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<sup>31</sup> See By-Law Art. I, § 1.H.(2).

Specifically, OCC would amend the first paragraph of current OCC Rule 2209A(a) (Termination of Market Loans), which would be numbered as OCC Rule 2216A(a) as part of the broader reorganization of the Market Loan Program Rules, and new OCC Rule 2214A (Modifications) by providing that termination or modification of a Market Loan, respectively, may be initiated either through a Loan Market or OCC, depending on the way in which the Loan was initiated. Such instructions would be made through the Loan Market for Anonymous Market Loans; through OCC for Disclosed Market Loans initiated through OCC directly; and through either the Loan Market or OCC for Disclosed Market Loans initiated through a Loan Market. OCC would similarly amend the definitions of “Recall” and “Return,” as migrated from the By-Laws to OCC Rule 101, to reflect the separate channels for initiating such a transaction. OCC would also make other conforming changes to the text of the Rules to reflect submission of bilaterally negotiated loans directly to OCC:

- Throughout the rules governing the Market Loan Program, OCC would also remove references to “matching” or “matched” transactions (i.e., matched through a Loan Market) to reflect that Market Loan transactions could also be initiated bilaterally, either through a Loan Market or directly with OCC.<sup>32</sup>
- The definition of “Market Loan Program,” as migrated from Section 1 of Article I of the OCC By-Laws to OCC Rule 101, would be amended to recognize that

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<sup>32</sup> See OCC By-Law Art. I, § 1.L.(5) (defining “Loan Market” as “an electronic platform . . . that supports securities lending and borrowing transactions by lenders and borrowers based on loan terms that each party is willing to accept”); OCC Rules 2202A(a)(i) (“If the matched transaction passes [OCC]’s validation process . . .”); 2202A(a)(ii) (“previously reported matched transaction” and “related matched transaction”); 2202A(b) (“the matched stock loan transaction submitted by the Loan Market”); 2209A(a)(1) (“matched return/recall transaction”).

Market Loans may be initiated either through a Loan Market or through direct submission of bilaterally negotiated Loans to OCC.

(b) Recognizing MSLAs

Parties to a bilaterally negotiated stock loan transaction typically execute an MSLA. Under current OCC Rule 2202(b), Hedge Clearing Members are permitted to establish and maintain additional terms under the MSLA that are not extinguished through OCC's novation provided that the additional terms are not inconsistent with anything in OCC's By-Laws or Rules. Examples of such additional or supplementary terms include a term structure or fees for buy-in transactions. The proposed rule change would add the same provision to the Market Loan Program in proposed OCC Rule 2202A(b)(2)(E). As described below, the recognition of MSLAs within the Market Loan Program would also facilitate the re-matching of Matched Book Positions in suspension because OCC would give priority to re-matching counterparties with existing MSLAs, both when re-matching within and across the Stock Loan Programs.

(c) Collateral and Mark-to-Market Pricing

To accommodate the submission of bilaterally negotiated Market Loans directly to OCC, OCC proposes to establish rules that would fix the collateral for Market Loans at 102%—the same rate at which Market Loans submitted through a Loan Market are collateralized today. Specifically, OCC would amend current OCC Rule 2204A (Mark-to-Market Payments), which would become proposed OCC Rule 2209A per the reorganization discussed below, to provide in proposed paragraph (b) (Market-to-Market Payment Amount) that the collateralization rate for all Market Loans would be 102%, regardless of whether initiated through a Loan Market or submitted directly to OCC.

Accordingly, OCC would delete the current text in Rule 2204A and the definition of the term “Collateral” in Article XXIA of the OCC By-Laws, as migrated to OCC Rule 101, that provides that the collateralization rate shall be set by the relevant Loan Market. OCC believes that fixing collateral at 102% would help to preserve the compatibility of OCC’s cleared offering with standard practices for over-the-counter (“OTC”), uncleared stock loans while minimizing complexity in OCC’s risk management processes.

OCC previously considered standardizing collateralization at 100% because in a cleared transaction, OCC’s guaranty replaces the additional collateral in protecting Lenders from market risk in the event of a counterparty default. In a survey OCC submitted to all Clearing Members who participate in OCC’s Stock Loan Programs, the vast majority of respondents objected to a proposal to standardize collateralization at 100%.<sup>33</sup> The most common reasons cited for this objection were (i) desire to align the collateral amount and mark-to-market cashflows for members who commonly have uncleared positions at the OTC-standard 102% and a matching position within clearing; and (ii) loss of the additional 2% in collateral would materially reduce what the income lenders earn by investing the cash collateral, which is one of the reasons lenders choose to lend their shares. In response to this feedback, OCC now proposes to fix collateral at 102%, which would align OCC’s offering with standard OTC practices and with OCC’s current practice within the Market Loan Program. Fixing the collateral at a single rate—as under the current Market Loan Program—would also minimize complexity in OCC’s risk management of stock loan positions by establishing a single rate across all Market Loans.

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<sup>33</sup> OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

OCC also proposes to establish rules that would allow Clearing Members submitting Market Loans directly to OCC to select the default rate at which mark-to-market payments would be rounded up to the nearest level, which is the current practice for Hedge Loans. Specifically, OCC would amend OCC Rule 2201A (Instructions to the Corporation), which would become proposed OCC Rule 2207A, to reflect that the default rate is one of the standing instructions that Market Loan Clearing Members must submit with respect to Market Loans submitted directly to OCC. Rounding rates for Market Loans submitted through a Loan Market would not change. If the default rate differs between a Borrowing Clearing Member and a Lending Clearing Member, the Lending Clearing Member's default rate would govern the Market Loan. When surveyed, Clearing Members cited the same reasons for supporting flexibility in pricing as they did in objecting to fixing collateral at 100%.<sup>34</sup> OCC currently offers this flexibility in the Hedge Program today. OCC believes that offering the same flexibility with respect to bilaterally negotiated Market Loans submitted to OCC directly will aid Clearing Members in aligning cash flows between cleared and OTC stock loan transactions.

(d) Cancellation of Pending Transactions

To facilitate the acceptance of bilaterally negotiated contracts in the Market Loan Program, OCC is proposing to modify its Rules that concern the cancellation of pending transactions to accommodate the submission of cancellation instructions by Clearing Members, in addition to a Loan Market. Under current OCC Rule 2202A(a)(ii), a Loan Market may instruct OCC to disregard a previously reported matched transaction that is pending settlement at DTC, after which OCC instructs DTC to cancel the previously

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<sup>34</sup> OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

issued delivery order. Upon confirmation that DTC has processed such cancellation instructions, the related matched transaction is deemed null and void and given no effect. OCC has no obligation to any Market Loan Clearing Member in acting pursuant to a Loan Market's instruction to disregard a previously reported transaction. The proposed rule change would amend OCC Rule 2202A(a)(ii), which would be renumbered as proposed OCC Rule 2202A(a)(2), to recognize the ability of a Market Loan Clearing Member to submit an instruction to cancel a pending transaction directly to OCC for bilaterally negotiated transactions submitted under the Market Loan Program.

The proposed changes would also add a new OCC Rule 2215A (Cancellation of Pending Instructions) to address the cancellation of pending post-trade instructions other than cancellation of loan initiation under Rule 2202A. For example, under OCC's current OCC Rule 2202A, Hedge Clearing Members currently have the capability to cancel return instructions or recall instructions pending with DTC. Similarly, Market Loan Clearing Members currently may cancel pending transactions by issuing a cancellation instruction to the Loan Market, which may then instruct OCC to disregard a previously reported transaction under current OCC Rule 2202A(a)(ii). This new OCC Rule 2215A would preserve that ability under the enhanced program by allowing members that submit bilaterally negotiated Market Loans to issue cancellation instructions directly to OCC, as they do now to DTC and the Loan Market.

(e) Transaction Affirmation

Currently, Market Loan Program transactions are presumed matched when sent to OCC by a Loan Market. OCC would establish a transaction affirmation process for loans submitted directly to OCC, rather than through a Loan Market:

- **New Loans:** Counterparties to a new loan would be required to affirm the transaction details prior to OCC submitting the new loan to DTC for settlement. New loans that are not affirmed by the time that OCC stops accepting instructions for the day would be rejected. This affirmation process would be reflected in proposed OCC Rule 2202A(a)(1), which would provide that a Market Loan is initiated when (i) the Loan Market sends details of a stock loan transaction to OCC or (ii) a Lending Clearing Member and Borrowing Clearing Member send details to OCC of a stock loan transaction between them and such details, as applicable, are either matched by OCC or affirmed by the Clearing Members.
- **Returns:** Provided that the Borrowing Clearing Member initiated a return within OCC's timeframe for submitting such instruction on a stock loan business day, the Lending Clearing Member would have the opportunity to affirm or reject the initiation of a return by a cut-off time on the same business day.<sup>35</sup> Any returns pending after that cut-off time would be deemed affirmed and submitted to DTC for processing. This auto-affirmation would be reflected in proposed OCC Rule 2216A(a)(2). Based on conversations with Clearing Members, OCC believes this affirmation process balances Lending Clearing Members' desire to have the opportunity to affirm or reject return instructions, while also addressing Borrowing Clearing Members' concerns that delay in affirmation or allowing the transaction to pend indefinitely could have regulatory consequences for the Borrowing Clearing Member.<sup>36</sup>

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<sup>35</sup> OCC anticipates that upon implementation of these proposed changes, the cut-off for rejections will be 30 minutes prior to DTC's standard settlement submission deadline.

<sup>36</sup> OCC's settlement procedures for Stock Loan termination are intended to facilitate its Clearing Member's compliance with requirements under applicable rules of the Commission and self-

- **Recalls:** Recalls would not need to be affirmed. Per standard MSLA terms, a Borrowing Clearing Member will be deemed to have affirmed the initiation of a recall provided that the Lending Clearing Member requested the return of the specific quantity of Loaned Stock no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Stock in the principal market of such Loaned Stock.<sup>37</sup> This understanding would be added to proposed OCC Rule 2216A(a)(3).
- **Contract Modifications:** Contract modifications to the rebate rate, interest rate benchmark, or loan term submitted by either a Borrowing Clearing Member or Lending Clearing Member, the proposed Rule amendments for which are discussed below, would not become effective until affirmed by both parties. This affirmation requirement would be added to new OCC Rule 2214A(a).
- **Buy-Ins & Sell-Outs:** For Market Loans submitted directly through the Corporation, the Borrowing Clearing Member and Lending Clearing will be given the opportunity to affirm or reject a buy-in or sell-out, respectively, by a cut-off time specified by OCC on the stock loan business day the buy-in or sell-out transaction is received by OCC. If the Clearing Member does not affirm or reject the buy-in or sell-out by that time, OCC would deem the buy-in or sell-out to be

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regulatory organizations, including the requirements imposed by Regulation SHO. See Exchange Act Release No. 59294 (Jan. 23, 2009), 74 FR 5958 (Feb. 3, 2009) (SR-OCC-2008-20). However, the ultimate responsibility for compliance with Regulation SHO rests with the Clearing Member, and OCC has no liability for any Clearing Member's failure to comply with its obligations. See, e.g., OCC Rules 2209A(g) (“[OCC] shall not be held liability for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of the relevant Loan Market or any exchange or self-regulatory organization.”).

<sup>37</sup> The standard settlement cycle currently corresponds with the one stock loan business day after submission of the recall. See OCC Rule 2209A(a)(3).



complete if OCC determines that the Buy-In or Sell-Out Costs for the Loaned Stock initiated is more than the lowest market price and less than the highest market price for the Loaned Stock on the stock loan business day the buy-in or sell-out is submitted to OCC.<sup>38</sup> Otherwise, the buy-in or sell-out would be rejected. As with buy-ins and sell-outs under the Hedge Program today,<sup>39</sup> any objection that the counterparty has with respect to the timeliness of the buy-in or sell-out or the reasonableness of the Buy-In or Sell-Out Costs are matters that must be resolved between the Lending Clearing Member and the Borrowing Clearing Member, away from OCC. These understandings and processes would be reflected in paragraphs (b)(2)(B) and (c)(2) of proposed OCC Rule 2216A.

To support Clearing Members in making the affirmations required under these rules, OCC's new stock loan system would support automatic affirmation based on system settings that could be selected by the Clearing Member.<sup>40</sup> Through OCC's new clearance and settlement system, Clearing Members will be able to create and manage standing instructions for affirmation of their Market Loans based on variables including the type of transaction, the counterparty, the amount, or the rebate rate. For example, a member would be able to set instructions to: (i) affirm every transaction; (ii) limit affirmation to a certain set of counterparties; (iii) establish more granular rules, such as affirming any transaction with a rebate rate less than 250 basis points; or (iv) combine

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<sup>38</sup> OCC would evaluate the price per share paid or received against market prices on that stock loan business day, consistent with the Clearing Member's obligation to immediately give OCC written notice of the buy-in or sell-out. In making its determination, OCC would account for transaction costs, fees or interest paid or incurred in connection with the buy-in and sell-out that may be included in the Buy-In and Sell-Out Costs provided by the Clearing Member executing the buy-in or sell-out.

<sup>39</sup> See OCC Rule 2209(b), (f).

<sup>40</sup> Buy-ins and sell-outs under OCC Rule 2216A would require manual affirmation, subject to automatic affirmation following a cut-off time discussed above.

one or more of the above instructions. When new loans are received, the system would check whether there is a standing instruction that applies to the new loan. If no instruction is found, then the new loan would be pended for affirmation, subject to the above referenced Rules. If a standing instruction applies, then OCC would follow that instruction as satisfaction of the affirmation requirement. Authority to permit such standing instructions currently exists under current OCC Rule 2201A (Instructions to the Corporation), the applicable provision of which would be renumbered OCC Rule 2207A(a)(2).

(f) Cash Distributions

The proposed changes would allow OCC to calculate and effect cash entitlements through its new clearance and settlement system, including dividends, distributions and rebates. OCC proposes to revise paragraphs (a)(ii) and (a)(iii) of current OCC Rule 2206A (Dividends and Distributions; Rebates), renumbered as proposed OCC Rule 2211A(b) and (c), to reflect that under OCC's new clearance and settlement system, OCC shall assume responsibility for calculating the margin add-on collected with respect to dividend equivalent payments. While OCC shall continue to effect dividend equivalent payments primarily through the facilities of DTC using its dividend tracking service, OCC would effect the payments through OCC's new clearance and settlement system if OCC determines that the dividend or distribution for a Market Loan is not tracked through DTC's dividend tracking service or if OCC has determined to remove a Market Loan from the dividend tracking service, as under OCC's current Rules. In addition, OCC would continue to add non-cash dividends and distributions to the Loaned Stock if OCC determines that such dividends and distributions are legally transferable and the

transfer can be effected through DTC. The determination to fix a cash value for non-cash dividends and distributions not added to the Loaned Stock would be OCC's under the proposed changes, rather than the Loan Market. Because OCC will no longer be reliant on the Loan Market for OCC's margin add-on process and settlement of dividend equivalent payments, OCC proposes to eliminate the limitations under the current Rule, including the current provision that OCC's guaranty is limited by the amount of margin OCC collected in reliance on the Loan Market's calculation. This change would not have any effect on OCC's margin methodology. OCC would continue to collect a margin add-on for such cash distributions.

The proposed changes would also add paragraph (d) to proposed OCC Rule 2211A to address the rights of a Lending Clearing Member with respect to optional dividends (i.e., a dividend the shareholder can elect to receive in cash, stock, or some combination of the two). Proposed OCC Rule 2211A(d) would provide that a Lending Clearing Member will have the right to elect an option only if it recalls the Loaned Stock in time to make such election. If the Lending Clearing Member does not recall the Loaned Stock, the Lending Clearing Member would be entitled to receive the default option set by the issuer of the Loaned Stock. OCC understands this proposed rule would match the Loan Market's current process for optional dividends. Because optional dividends on Market Loans are currently governed by the Loan Market's processes, OCC's rules do not currently address the rights of a Lending Clearing Member with respect to optional dividends.

OCC would also amend its rules to facilitate calculation, collection, and payment of rebates under the new clearance and settlement system. OCC Rule 2206A(b) currently

provides that OCC generally will collect and pay rebate payments on a monthly basis as instructed by the Loan Market. As with dividend equivalent payments, the Loan Market is currently responsible for calculation of the rebate payments. OCC would amend OCC Rule 2206A(b), which would be renumbered OCC Rule 2211A(e), to reflect that OCC shall assume responsibility for calculating rebate payments under its new clearance and settlement system. OCC also proposes to amend the Rule so that OCC will be prepared if and when the stock loan industry transitions to daily, rather than monthly, collection of rebate payments. Because OCC anticipates that upon implementation of the new system, OCC will continue to calculate and collect rebate on a monthly basis, proposed OCC Rule 2211A(e) would provide that the calculation and collection of rebate payments could also be made on such other basis, not to exceed monthly.

(g) Market Loan Modifications

OCC is proposing to add a new rule to support contract modifications to the Market Loan Program made possible by the change to contract-level recordkeeping, discussed below. Modifications agreed to by the Market Loan Clearing Members over the life of a Market Loan would be accepted by OCC and handled by OCC's new clearance and settlement system. Specifically, modifications would be permitted regarding the (a) rebate rate; (b) interest rate benchmark; and (c) loan term. Any modifications would be maintained in OCC's books and records at the contract level. OCC's new clearance and settlement system would allow, but not require, submission of these terms.<sup>41</sup> The channel through which modification requests would be processed would be determined by the manner in which the loan was initiated. Clearing Members

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<sup>41</sup> See infra item (k) (Contract-Level Recordkeeping).

would be required to submit post-trade transactions for Anonymous Market Loans through the Loan Market on which the transaction was initiated, consistent with current practice. Clearing Members may submit post-trade transactions for Disclosed Market Loans to OCC directly or, if the Disclosed Market Loan was submitted through a Loan Market, Clearing Members would have the option of submitting the post-trade transaction through the Loan Market.

The proposed change would add a new rule, which would be numbered OCC Rule 2214A as part of the broader proposed reorganization of Chapter XXIIA. In addition to specifying the terms subject to modification, proposed OCC Rule 2214A would provide that OCC shall update the relevant terms in its books and records if, as applicable, (1) the Loan Market notifies OCC that the parties agreed to the modification, or, (2) with respect to Market Loans initiated directly through OCC, the parties provided OCC with matching or affirmed instructions, as discussed above. OCC would provide notice of the modified terms in the daily reports that OCC is required to make available to Market Loan Clearing Members under proposed OCC Rule 2210A.

(h) Buy-In Controls and Settlement Cycle

The proposed changes would also provide OCC with additional controls over the buy-in process for the recall of a Market Loan initiated by a Lending Clearing Member if the Borrowing Clearing Member fails to return the Loaned Stock in situations other than suspension of the Borrowing Clearing Member.<sup>42</sup> Under current OCC Rule 2209A, a Lending Clearing Member is entitled to initiate a buy-in if a recall transaction fails to settle by the Settlement Time on the first stock loan business day after submitting the

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<sup>42</sup> As a practical matter, if the Borrowing Clearing Member initiates a return, it would have the shares in its possession to return. Accordingly, the proposed controls are limited to buy-ins following failure to deliver initiated by a recall by the Lending Clearing Member.

recall.<sup>43</sup> Under OCC's current rules, the Borrowing Clearing Member may return the Loaned Stock up until the time that the Lending Clearing Member that initiated the return or recall provides written notice to the Loan Market that it has executed the buy-in or sell-out. This process can lead to situations in which the Borrowing Clearing Member may return the Loaned Stock during the period between when buy-in becomes permissible, but before the Lending Clearing Member executes the transaction and provides written notice.

OCC proposes to provide for enhanced controls over the buy-in process by amending current OCC Rule 2209A(b), which would be renumbered OCC Rule 2216A(b) as part of the reorganization of Chapter XXIIA of OCC's Rules. Proposed OCC Rule 2216A(b) would be amended to provide that upon timely notice from the Lending Clearing Member that it intends to execute a buy-in after a Borrowing Clearing Member fails to return the Loan Stock following a recall transaction, OCC would prevent the Borrowing Clearing Member from returning the Loaned Stock while the Lending Clearing Member executes the buy-in. Until such time as the Lending Clearing Member provides such notice, OCC would recognize the Borrowing Clearing Member's return of the Loaned Stock. The stock loan and stock borrow positions would remain open until such time as the Lending Clearing Member provides notice that the buy-in is complete.

(i) Supporting Canadian Clearing Members

As described above, Canadian Clearing Members are currently limited to participation in OCC's Hedge Program. The proposed changes would support Canadian

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<sup>43</sup> See OCC Rule 2209A(a)(3).

Clearing Members in the Market Loan Program while preventing certain transactions that could give rise to tax withholding obligations.

First, OCC would revise certain of OCC's current By-Laws and Rules to recognize Canadian Clearing Members as potential participants in the Market Loan Program and address certain unique operational capabilities that will be required to support that participation:

- OCC would revise paragraph (f) of OCC Rule 302 (Operational Capability) to include Canadian Clearing Members as among those members that qualify for participation in the Market Loan Program, including by providing for such Canadian Clearing Members to settle transactions through a CDS sub-account at the Depository, as they do under the Hedge Program today.
- OCC would further revise and restate paragraph (f) to consolidate the subparagraphs specific to the operational requirements for participation in the Hedge Loan Program and the Market Loan Program. The current division can be attributed to the evolution of those programs, which led OCC to make approval for participation in the Hedge Loan Program—OCC's initial Stock Loan Program—a condition for participation in the Market Loan Program. The proposed changes would consolidate the provisions so that the present division does not serve as an impediment to the planned decommission of the Hedge Loan Program. Requirements specific to a particular program, or a particular means of initiating a Stock Loan through one of the Stock Loan Programs, would be amended to delineate the scope of applicability.

- OCC would revise OCC Rule 306A (Event-Based Reporting) to reflect that a Canadian Clearing Member's obligation to notify OCC if CDS has or likely will cease to act for that Canadian Clearing Member extends to such members that participate in both Stock Loan Programs.
- OCC would replicate OCC Rule 2201(c), which concerns a Canadian Clearing Member's appointment of CDS for purposes of settling Hedge Loan delivery-versus-payment transactions, as proposed OCC Rule 2207A(c). As such, the same requirements would apply to Canadian Clearing Members that participate in the Market Loan Program.

In making its determination to extend the Market Loan Program to Canadian Clearing Members, OCC has also considered OCC's ability to offer that program's expanded guaranty to Canadian Clearing Members without incurring tax or withholding obligations on the associated payment obligations. Under the expanded Market Loan Program, OCC would clear and settle the types of cash distributions, such as substitute dividend and rebate payments, that OCC does not guarantee under the Hedge Program and must be resolved bilaterally by Hedge Clearing Members, away from OCC. OCC believes its current Rules already provide the framework to allow Canadian Clearing Members to transact under the Market Loan Program without imposing tax withholding obligations on payments made or received by OCC. As discussed above, OCC currently imposes obligations on Canadian Clearing Members intended to allow OCC to clear listed options transactions free from tax withholding obligations on dividend equivalent payments or deemed payments. Current OCC Rule 202 generally would also allow OCC to make substitute dividend payments to Canadian Clearing Members as Lending



Clearing Members under the enhanced Market Loan Program without imposing tax or withholding obligations. While OCC understands that, subject to the conditions in OCC Rule 202, OCC's payments of substitute dividends to Canadian Clearing Members would not be subject to withholding, OCC would report substitute dividend payments to the IRS using information provided by the Canadian Clearing Members, as OCC currently does for dividend equivalent payments or deemed payments to Canadian Clearing Members in connection with listed options transactions. Pursuant to current OCC Rule 202(b)(5), the Canadian Clearing Member is required to indemnify OCC for any loss, liability or expense (including taxes and penalties) it may sustain as a result of the member's failure to comply with requirements of OCC Rule 202(b).

Current OCC Rule 202(b) also provides OCC with authority to prohibit or limit specific transactions with respect to non-U.S. members that may give rise to tax or withholding obligations. Pursuant to that authority, OCC expects to impose certain limitations on the Market Loan activity of Canadian Clearing Members to address specific situations in which tax withholding obligations might otherwise arise, including limitations on transactions involving (i) Canadian underlying securities, (ii) Positive Rebate, and (iii) Negative Rebate.

(i) Canadian Securities

Pursuant to OCC Rule 202(b), OCC would preclude Canadian Clearing Members from executing Market Loan transactions as a Borrowing Clearing Member, whether on behalf of a customer or for its own account, for which the Loaned Stock is issued by a Canadian issuer because of tax withholding obligations under Canadian law for substitute dividend payments that would be owed by the Canadian Clearing Member in its capacity

as the lender. OCC understands that under Canadian law, the loan of a security issued by a Canadian company would be treated as a loan of the underlying shares for Canadian tax purposes. The substitute dividend paid by the Canadian Clearing Member as the Borrowing Clearing Member to OCC, in its capacity as the lender, would be a payment made by the Canadian Clearing Member, as a corporation, to OCC of a dividend payable on the underlying securities under subparagraph 260(8)(a)(ii) of the Income Tax Act (Canada), and the payment would be subject to Canadian withholding tax under subsection 212(2) of that act. Accordingly, a Borrowing Clearing Member would be precluded from initiating a Market Loan in its capacity as a Borrowing Clearing Member because the Canadian Clearing Member could not fulfil its obligation under OCC's Rules to provide a substitute dividend payment free from tax and withholding obligations. OCC understands that no similar tax withholding obligation would exist for substitute dividend payments with respect to a Canadian underlying security made by OCC, in its capacity as the borrower, to a Canadian Clearing Member that was a Lending Clearing Member.<sup>44</sup>

(ii) Positive Rebate

OCC believes that OCC Rule 202 also allows OCC to clear and settle Positive Rebate payments to Canadian Clearing Members in connection with Market Loans without introducing tax withholding obligations. While neither the I.R.C. or IRS regulations specifically provide for the treatment of rebate payments, OCC believes that Positive Rebate would be treated as interest for U.S. federal tax purposes because

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<sup>44</sup> OCC understands that dividends on Eligible Stock of issuers that are not Canadian residents are exempt from taxation on dividends under subsection 212(2.1) of the Income Tax Act (Canada) when paid as part of a fully collateralized stock lending arrangement pursuant to 2021 amendments thereto.

Positive Rebate compensates the Borrowing Clearing Member for the use of the cash collateral by the Lending Clearing Member,<sup>45</sup> and would therefore constitute U.S.-source “fixed or determinable annual or periodic income,” or “FDAPI,” under section 1442 of the I.R.C. While U.S.-source FDAPI generally is subject to a 30% U.S. withholding tax when paid to a foreign corporation, exemptions from withholding apply to (i) payments to a Qualified Intermediary in its capacity as an intermediary that has accepted primary withholding responsibility, and (ii) interest paid to a Canadian Clearing Member that qualifies for an exemption from withholding on interest under Article XI of the Convention Between the United States of America and Canada with Respect to Taxes on Income, October 16, 1980, as amended by subsequent Protocols (the “Canada Treaty”).

A Qualified Intermediary that has accepted primary withholding responsibility is exempt from U.S. federal withholding on payments from a withholding agent, including U.S.-source interest, received in its capacity as an intermediary.<sup>46</sup> Accordingly, OCC understands that rebate payments (whether Positive Rebate or Negative Rebate) to a Canadian Clearing Member in its capacity as a Qualified Intermediary, may be made by OCC free from withholding, consistent with treatment of dividend equivalent payments

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<sup>45</sup> The U.S. Supreme Court has characterized interest as “compensation for the use or forbearance of money.” See Deputy v. du Pont, 308 U.S. 488, 498 (1940). Positive Rebate is a payment from the Lending Clearing Member to the Borrowing Clearing Member equal to the amount of cash collateral posted by the Borrowing Clearing Member multiplied by a positive rebate rate. The Lending Clearing Member has the right to use the cash collateral during the term of the stock loan. Accordingly, Positive Rebate represents a payment by the Lending Clearing Member to the Borrowing Clearing Member for the right to use the cash collateral and therefore is properly characterized as interest.

<sup>46</sup> See Treas. Reg. 1.1441-1(e)(5)(iv) (“If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment.”).

in connection with listed options transactions. As discussed above,<sup>47</sup> Canadian Clearing Members are required to be Qualified Intermediaries as a condition of membership under OCC Rule 202. As with substitute dividends, OCC would add payment of rebates for transactions in a Canadian Clearing Member's capacity as a Qualified Intermediary to the current reporting OCC submits to the IRS for dividend equivalent payments on listed options, based on information to be received from the Canadian Clearing Member pursuant to current OCC Rule 202(b)(3).

With respect to Positive Rebate payments on Market Loans initiated by a Canadian Clearing Member in its capacity as principal, OCC would require Canadian Clearing Members to demonstrate, pursuant to OCC Rule 202, that such payments are subject to exemption from U.S. withholding obligations under the Canada Treaty. Article XI(1) of the Canada Treaty reduces the rate of withholding from 30% to zero for U.S.-source interest beneficially owned by a resident of Canada entitled to treaty benefits, provided that income is not attributable to a permanent establishment, within the meaning of the Canada Treaty, or effectively connected with a trade or business conducted in the United States.<sup>48</sup> Under current OCC Rule 202(b)(2), an FFI Clearing Member must certify annually to OCC that the member satisfies the requirements of OCC Rule 202 by submitting appropriate tax documentation. A Canadian Clearing Member participating in the Market Loan Program may evidence its entitlement to the benefits of the Canada Treaty with respect to interest by providing OCC with a correct and complete IRS Form W-8 BEN-E. Under OCC's current Rules, a FFI Clearing Member must promptly inform OCC in writing if it undergoes a change in circumstances that would affect its

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<sup>47</sup> See supra note 26.

<sup>48</sup> See 26 U.S.C. 894; Canada Treaty, Art. XI(1).

compliance with Rule 202(b) or otherwise knows or has reason to know that it is not, or will not be, in compliance with OCC Rule 202(b), in each case, within two days of knowledge thereof.<sup>49</sup>

(iii) Negative Rebate

Although exemptions for withholding requirements would apply to payment of Negative Rebate to a Canadian Clearing Member acting as a Qualified Intermediary with respect to customer transactions, OCC understands that there is a risk that no exemption from U.S. tax withholding would apply to the payment of Negative Rebate to a Canadian Clearing Member outside its capacity as a Qualified Intermediary. Therefore, pursuant to OCC Rule 202(b), OCC would limit Canadian Clearing Members from initiating Market Loans with a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. In addition, OCC would limit Canadian Clearing Members' ability to modify the rebate on a Market Loan to a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. OCC's new clearance and settlement system will prevent a Canadian Clearing Member from initiating or modifying a Market Loan to a Negative Rebate in its capacity as a Lending Clearing Member for its firm account.

(j) Provide for Appointed and Appointing Clearing Members

Currently, OCC Rule 302 requires that all participants in the Market Loan Program must be members of the Depository, DTC. As discussed above, OCC would also extend the Market Loan Program to Canadian Clearing Members by allowing for such members to settle Market Loan transactions through a CDS sub-account maintained

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<sup>49</sup> See OCC Rule 202(b)(4).

at DTC. However, OCC recently filed and the Commission approved a proposed rule change to allow OCC to expand its membership to other types of participants who may or may not be members of the Depository, including bank members and members of jurisdictions other than the U.S. and Canada.<sup>50</sup>

In order to build a framework for accommodating such new types of members in the Market Loan Program, OCC proposes to revise OCC Rules 101, 302 and proposed OCC Rules 2202A, 2207A and 2216A to allow a Clearing Member participating in the Market Loan Program (the Appointing Clearing Member) to appoint an Appointed Clearing Member to make settlement of obligations arising from the initiation or termination of Market Loans, in a similar manner to how OCC Rule 901 currently allows for Appointed and Appointing Clearing Members with respect to delivery or receipt of underlying securities arising from the exercise of equity options and maturity of stock futures, or how OCC Rule 2201 current allows Canadian Clearing Members to appoint CDS as its agent for purposes of effective delivery orders for stock loan and stock borrow transactions. In lieu of membership at the Depository, establishing a relationship with an Appointed Clearing Member would be a means by which Clearing Members could access the Market Loan Program. Specifically, OCC would revise the current definitions in OCC Rule 101 for “Appointed Clearing Member” and “Appointing Clearing Member” to reference the initiation and termination of Market Loans. The definitions would also refer to proposed Rule 2207A (Instructions to the Corporation), which like current OCC Rule 901(f) would contain a paragraph providing the mechanism for such appointments. Proposed OCC Rules 2202A and 2216A (Termination of Market Loans) would also

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<sup>50</sup> See Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373, 30373 (May 11, 2023) (SR-OCC-2023-002).

provide for OCC to submit delivery orders to the Depository's account for the Appointed Clearing Member in connection with the initiation or termination of a Market Loan, respectively.

### **Enhancements to Facilitate OCC's New Clearance and Settlement System**

In addition to the enhancements (a) through (j) above, which are specific to the Market Loan Program, except when otherwise indicated, the proposed rule change would also implement enhancements to both Stock Loan Programs to support the implementation of OCC's new clearance and settlement system. Specifically, the proposed changes would (k) replace the legacy practice of position aggregation with contract-level recordkeeping; (l) align the settlement of daily mark-to-market of cash collateral to accounts; (m) simplify the mark-to-market calculation to focus on the change to the contract value of a Clearing Member's Stock Loan; and (n) allow for re-matching of Matched-Book Positions across both Stock Loan Programs in the event of a Clearing Member default and suspension.

#### (k) Contract-Level Recordkeeping

OCC proposes to eliminate the legacy practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in favor of contract-level accounting, consistent with industry-standard bookkeeping practices. Under the new contract-based approach, each Stock Loan (i.e., a stock loan position or stock borrow position) would be a distinct contract and no aggregation would be done when positions are recorded in accounts. Every new loan that is recorded will generate a new stock borrow position and stock loan position for the number of shares lent and borrowed. Contract-level recordkeeping would allow Clearing Members to see more precisely the contracts with

shares lent by lender and borrower, which aligns to industry standard recordkeeping. By maintaining stock loan positions and stock borrow positions at the contract level, OCC would also be able to record additional terms, including but not limited to: (a) rebate rate; (b) whether the rebate rate is a fixed or a floating value (and if floating the interest rate benchmark); and (c) end date if it is a term loan. Clearing Member submission of these additional terms would not be mandatory, and OCC would assume that no such terms exist unless otherwise directed by its Clearing Members.<sup>51</sup>

To implement contract-level recordkeeping, the proposed rule change would amend Article XXI, Sections 2 (Hedge Program) and Article XXIA, Section 5 (Market Loan Program) of OCC's By-Laws, retained portions of which would migrate to become OCC Rules 2203 and 2206A, respectively. Specifically, OCC would amend proposed Rule 2203(c)(1)–(2) and 2206A(b)(1) – (2) to delete the text providing for the aggregation of positions, which OCC proposes to eliminate. In addition, OCC would delete the last sentence of Article XXI, Section 2(b) and Article XXIA, Section 5(b), as relocated to proposed OCC Rules 2203(d)(2)(B) and 2006A(a)(2), which provide that OCC shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans. Because OCC proposes to eliminate position aggregation altogether, this prohibition against aggregating positions across programs would no longer be relevant.

The proposed changes would also allow OCC to record additional terms at the contract level. The By-Laws currently provide that upon acceptance of a Hedge Loan or Market Loan, OCC creates a stock loan position and stock borrow position in the account

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<sup>51</sup> If these additional terms are not recorded on a Market Loan submitted to OCC, OCC would not make any assumptions and the fields would be left blank in OCC's system.



designated by the Lending Clearing Member and Borrowing Clearing Member, respectively, that identifies the Eligible Stock, the number of shares loaned, the amount of Collateral received, and the identities of the Lending Clearing Member or the Borrowing Clearing Member, as applicable.<sup>52</sup> OCC proposes to amend proposed OCC Rules 2203(d)(2)(A) and 2206A(a)(1) to provide that in addition to those terms, which are required for OCC's acceptance of a Hedge Loan or Market Loan, OCC would record such additional terms that the Clearing Members may provide at the contract level. Such additional terms could include, but are not limited to, rebate rate, interest rate benchmark and loan term. Pursuant to proposed additions to proposed OCC Rules 2202(b)(2)(E) and 2202A(b)(2)(E), recording additional terms that are not associated with OCC's guaranty (i.e., rebate rate and interest rate benchmark with respect to Hedge Loans, and loan term with respect to both Hedge Loans and Market Loans) would not impose any additional obligations on OCC. Rather, they would be additional terms as between the parties that survive OCC's novation and would be recorded in OCC's system for the Clearing Members' convenience.

In addition to the changes related to proposed OCC Rules 2203 and 2206A above, OCC would make conforming changes to other provisions to reflect the change from position-level to contract-level record keeping:

- Current Interpretation and Policy .01 to OCC Rules 2201 and 2201A (i.e., proposed OCC Rules 2206(b) and 2206A(d) per the reorganization discussed below), which concern the transfer of stock loan positions or stock borrow positions between Clearing Member accounts, would be amended to delete the

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<sup>52</sup> See OCC By-Law Art. XXI, § 2(b); Art. XXIA, § 5(a).

phrase “all or any portion of” as it relates to stock loan or stock borrower positions, and the text “provided, that any such transfer will result in the transfer of all shares related to the relevant stock loan position or stock borrow position” would be added. These changes reflect that stock loan positions and stock borrow positions would be recorded at the contract level and would not be aggregated. Accordingly, any transfer of a stock loan position or stock borrow position (each representing an individual contract) would be for all shares that are the subject of the contract.

- Current Interpretation and Policy .02 to OCC Rule 2201 (i.e., proposed OCC Rule 2206(c)(1) per the reorganization discussed below), which concerns how OCC would apply Hedge Loan return instructions received from DTC to a Clearing Member’s default account, would be modified to eliminate functionality in ENCORE for Clearing Members to designate OCC accounts in DTC delivery orders that is not currently utilized by Clearing Members participating in the Hedge Loan Program and, accordingly, is not being built for the new clearance and settlement system. To account for the shift to contract-level recordkeeping, OCC would also add OCC Rule 2206(c)(2), which would provide that returns will decrease the number of shares borrowed beginning with the oldest Hedge Loan between the Borrowing Clearing Member and the Lending Clearing Member on OCC’s books and records. If the return exhausts the oldest Hedge Loan, OCC would decrement the next oldest, and so on and so forth.

- Current Interpretation and Policy .02 to OCC Rule 2201A (i.e., proposed OCC Rule 2206A(e) per the reorganization discussed below), which concerns how Market Loan return instructions would be applied to a Clearing Member's accounts, would be amended to reflect that if there are insufficient shares in the account designated by the delivery order submitted to OCC, or in the default account if the delivery order did not specify an account, OCC would reject the return instruction rather than fulfill the return to the extent of the shares in the designated or default account, as applicable. If an account was designated in the delivery order, OCC would fulfill the return based only on that account and would reject the return instruction if sufficient shares were not available in that account rather than applying shares in the default account to cover the excess.
- Current OCC Rule 2209A(a)(2) (i.e., proposed OCC Rule 2216A(a)(5) per the reorganization discussed below), which concerns the termination of Market Loans upon receipt of end-of-day information from DTC concerning return or recall delivery orders, would be amended to delete the phrase "and reduce the respective Clearing Members' open stock loan and stock borrow positions accordingly." This phrase refers to adjustments required for aggregated stock loan and stock borrow positions, which would not be relevant under the contract-level recordkeeping proposal. OCC would also remove the phrase "the end of the day" with respect to the stock loan activity files it receives from DTC because OCC receives and processes such information from DTC throughout the business day.

(1) Aligning Mark-to-Market Settlement to Accounts

Under the proposed rules designed to facilitate OCC's new clearance and settlement system, OCC would end the practice of limiting cash settlement of daily mark-to-market of cash collateral to the Clearing Member's firm account or combined Market-Makers' account. Instead, cash settlement will occur in the account in which the stock loan or stock borrow position is held. OCC implemented the current structure for settlement of mark-to-market payments in 1997 and 1998.<sup>53</sup> At that time, OCC believed that settlement through a firm's lien account would prevent premiums by option writers (which constitute customer funds) from being netted against stock loan mark-to-market payments from a clearing member (which do not constitute customer funds). The assumption at the time appears to have been that stock loan transactions would be limited to loans initiated by a Clearing Member in its capacity as principal. However, fully paid for lending programs have developed over the last two decades that allow customers to earn returns on their portfolios by allowing their broker to lend their shares.

The proposed change would align mark-to-market cash settlements with positions by deleting current OCC Rules 2201(a)(iii) and 2201A(a)(iii), as relocated to proposed OCC Rules 2207(a)(1)(C) and 2207A(a)(1)(C), which require Clearing Members to provide OCC with standing instructions identifying the Clearing Member's firm accounts or combined Market-Makers' accounts from which mark-to-market payments are to be made. No standing instruction would be needed because OCC will simply settle the mark-to-market payments in whichever account the stock loan or stock borrow position is held. In addition, OCC would amend current OCC Rules 2204(a) and 2204A(a), the

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<sup>53</sup> See Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424-01 (Jun 18, 1998) (File No. SR-OCC-98-03); Exchange Act Release No. 39738 (Mar. 10, 1998), 63 FR 13082 (Mar. 17, 1998) (File No. SR-OCC-97-11).

relevant portions of which would be renumbered OCC Rules 2209(a) and 2209A(a), respectively, to provide that any mark-to-market payment shall be made in the account in which the Hedge Loan or Market Loan is held.

OCC would also delete the last clause to Interpretation and Policy .04 to Rule 1104, which concerns the use of a Liquidating Settlement Account to satisfy mark-to-market obligations arising from a suspended Clearing Member's stock loan or borrow positions in customers' accounts. That clause provides for use of the Liquidating Settlement Account notwithstanding that such mark-to-market payments may settle in another account under current Rules 2201(a) and 2201A(a). This clarifying clause would no longer be relevant because of the alignment of settlement with the accounts in which the positions are held.

(m) Simplifying Mark-to-Market Calculations

Because OCC proposes to end the practice of aggregating stock loan and stock borrow positions, OCC also proposes to simplify the mark-to-market calculation described in proposed OCC Rules 2209 and 2209A. Currently, the mark-to-market calculation focuses on the value of the loaned shares of stock.<sup>54</sup> Specifically, it takes the quantity of stock that is on loan each morning and marks it to a closing price each night. Quantities of stock that correspond to new loans put on during the day are also marked to the end-of-day closing price. As such, the calculation was designed with the practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in mind. The proposed mark-to-market calculation will instead focus on the change to the contract value of a Clearing Member's stock loans. Specifically, proposed OCC Rules 2209(b)

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<sup>54</sup> See OCC Rules 2204(a); 2204A(a).

and 2209A(b) would provide that the mark-to-market payment will be the amount necessary to cause the amount of Collateral to be equal to the Collateral requirement applicable to the Stock Loan. For Hedge Loans, the Collateral requirement is either 100% or 102% of the mark-to-market value of the Loaned Stock, depending on which percentage the parties selected when initiating the Hedge Loan. For Market Loans, as discussed above, the Collateral requirement would be fixed at 102% of the value of the Loaned Stock, which is the collateralization for all Market Loans currently. While this proposed amendment would change the way OCC makes mark-to-market calculations, the change would have no impact on the results of the calculation.

(n) Re-matching Matched-Book Positions in Suspension Across Stock Loan Programs

The proposed changes would also extend OCC's authority to close out and re-establish the Matched-Book Positions of a suspended Clearing Member to the Market Loan Program and would allow re-matching in suspension across the Hedge and Market Loan Programs. Under the current Hedge Program, OCC has authority to terminate Matched-Book Positions by offset and re-matching with other Clearing Members.<sup>55</sup> OCC's authority to re-match Matched-Book Positions in suspension facilitates the orderly and efficient termination and re-establishment of stock loans involving suspended Clearing Members, thereby mitigating operational and price dislocation risks that may arise for non-defaulting Clearing Members if OCC were required to unwind positions by recalling all borrowed securities from specific Borrowing Clearing Members and returning those securities to specific Lending Clearing Members. Extending such re-matching authority to the Market Loan Program and allowing re-matching across OCC's

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<sup>55</sup> See OCC Rule 2212.

two Stock Loan Programs would also align OCC's close-out processes with how OCC already margins stock loan and borrow positions. Specifically, stock loan and borrow positions covering the same Eligible Stock in either program are treated under OCC's margin methodology as fungible and are permitted to offset one another in calculating a Clearing Member's margin requirement for the relevant account.

OCC would extend re-matching authority and allow for re-matching across programs by inserting a new OCC Rule 2219A to the Rules governing the Market Loan Program. The new rule would be similar in structure and content to current OCC Rule 2212, which concerns re-matching in suspension for the Hedge Program. Proposed OCC Rule 2219A(a) would provide that, in the event that a suspended Clearing Member has Matched-Book Positions within the Hedge or Market Loan Programs, OCC will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible by (i) the termination by offset of stock loan and stock borrow positions that are Matched-Book Positions in the suspended Clearing Member's account(s) and (ii) OCC's re-matching in the order of priority in paragraph (c) of stock borrow positions for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Borrowing Clearing Member against a stock lending position for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Lending Clearing Member.

Under proposed OCC Rule 2219A(b), as under current OCC Rule 2212(b), the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member would not be required to issue instructions to DTC to terminate the relevant

stock loan and stock borrow positions or to initiate new stock loan transactions to reestablish such positions, as the affected positions would be re-matched without requiring the transfer of securities against the payment of settlement prices.

Proposed OCC Rule 2219A(c), as under current OCC Rule 2212(c), would provide that OCC shall make reasonable efforts to re-match Matched-Book Borrowing Clearing Members with Matched-Book Lending Clearing Members that maintain MSLAs executed between them, based upon information provided by Clearing Members to OCC on an ongoing basis. OCC would be entitled to rely on, and would have no responsibility to verify, the MSLA records provided by Clearing Members and on record as of the time of re-matching. As under current OCC Rule 2212(d), proposed Rule OCC 2219A(c)(1) through (13) would require the termination by offset and re-matching be done using a matching algorithm in which the Matched-Book Positions of the suspended Clearing Member are first terminated by offset and then affected Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members are re-matched in order of priority based first upon whether the re-matched Clearing Members have an existing MSLA between them or, in the case of Anonymous Market Loans, can be kept anonymous by re-matching with a Matched-Book Position that is another Anonymous Market Loan initiated through the same Loan Market. OCC believes prioritizing the re-matching of Disclosed Market Loans between parties that have MSLAs and re-matching that results in maintaining Anonymous Market Loans will limit the number of returns that may be initiated for re-matching that results in Disclosed Market Loans between parties who have not executed an MSLA.



Specifically, under the re-matching algorithm, OCC would select the largest stock loan or stock borrow position in a given Eligible Stock from the suspended Clearing Member's Matched-Book Positions within the Hedge Program. The selected positions would then be re-matched with the largest available stock borrow or stock loan positions within the Hedge Program, as applicable, for the selected Eligible Stock for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member. OCC would repeat this process until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with MSLAs is completed for positions within the Hedge Program. Simultaneously, OCC would perform the same re-matching process within the Market Loan Program for (i) Matched-Book Positions that are Disclosed Market Loans for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, and (ii) Matched-Book Positions that are Anonymous Market Loans initiated through the same Loan Market. After re-matching to the extent possible within the Market Loan Program based on manner of initiation and trade source, OCC would proceed to re-match Matched-Book Positions within the Market Loan Program for which an MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, without regards to whether Matched-Book Position was part of a Disclosed Market Loan or Anonymous Market Loan.

After matching Matched-Book Positions to the extent possible between borrowers and lenders with existing MSLAs within both the Hedge Program and the Market Loan Program, OCC would then select the largest remaining stock loan or stock borrow

positions for a given Eligible Stock regardless of whether the position is a Hedge Loan or a Market Loan and re-match it with the largest available stock borrow or stock loan position for the selected Eligible Stock in the other Stock Loan Program for which an MSLA exists between the lenders and borrowers in the other Stock Loan Program, regardless of whether the Market Loan selected or matched is a Disclosed Market Loan or Anonymous Market Loan. OCC would repeat this process until it has rematched all Matched-Book Positions to the extent possible between parties to existing MSLAs between the two Stock Loan Programs.

After re-matching among lenders and borrowers with existing MSLAs, the process would then be repeated for all remaining Matched-Book Positions for which MSLAs do not exist between the lenders and borrowers. OCC would first complete such rematching to the extent possible within each program. The re-matching process would then be repeated for all remaining Matched-Book Positions across the Stock Loan Programs for which MSLAs do not exist between the lenders and borrowers. Remaining positions that are not able to be rematched either within or across programs would then be closed-out pursuant to the rules governing close-out of Hedge Loans or Market Loans, as applicable.

Under proposed OCC Rule 2219A(d), as under current OCC Rule 2212(e), in the event Borrowing and Lending Clearing Members are re-matched through this process, the re-matched positions would be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to renumbered OCC Rule 2207 (for Hedge Loans) or Rule 2207A (for Market Loans). For Matched-Book Positions re-matched across programs, the resulting re-matched loan would be a Hedge Loan. If the

re-matched positions were Anonymous Market Loans, the resulting Loan would be an Anonymous Market Loan. However, if one of the positions was a Disclosed Market Loan or the positions were Anonymous Market Loans initiated through different Loan Markets, the resulting loan would be a Disclosed Market Loan. Going forward, such a Disclosed Market Loan would be deemed to have been initiated through OCC, which would facilitate re-matching within the Market Loan Program for parties who are not subscribers to a Loan Market. Pursuant to proposed OCC Rule 2219A(j), the re-matched Clearing Members may choose to execute an MSLA or close-out the re-matched positions in accordance with proposed OCC Rules 2213 or 2216A, as applicable.

Under proposed OCC Rule 2219A(e), which corresponds to the second sentence of current OCC Rule 2212(e), any change in Collateral requirements arising from a change in the terms of stock loan or stock borrow positions between a Lending Clearing Member and Borrowing Clearing Member with re-matched positions would be included in the calculation of the mark-to-market payment obligations on the stock loan business day following the completion of the positions adjustments as set forth in proposed OCC Rule 2219A(f).

Under proposed OCC Rule 2219A(f), as under current OCC Rule 2212(f), the termination by offset and re-matching of positions would be complete upon OCC completing all position adjustments in the accounts of the suspended Clearing Member and the Borrowing Clearing Members and Lending Clearing Members with re-matched positions and the applicable systems reports are produced and provided to the Clearing Members reflecting the transactions.

Under proposed OCC Rules 2219A(g) through (i), from and after the time OCC has completed the position adjustments as set forth in proposed OCC Rule 2219A(f), the suspended Clearing Member would have no further obligations under the By-Laws and Rules with respect to such positions; however, a Borrowing Clearing Member with re-matched stock borrow positions would remain obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions would remain obligated as a Lending Clearing Member as specified in the By-Laws and Rules applicable to the Stock Loan Programs. Furthermore, upon notification that OCC has completed the termination by offset and re-matching of stock loan and borrow positions, the suspended Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched positions would be required promptly to make any necessary bookkeeping entries at DTC to ensure the accuracy and efficacy of those stock loan terms not governed by OCC's By-Laws and Rules. Under proposed OCC Rule 2219A(j), as under current OCC Rule 2212(j), Borrowing Clearing Members and Lending Clearing Members that have been re-matched would be required to work in good faith to either (i) reestablish any terms, representations, warranties and covenants not covered by the By-Laws and Rules (e.g., establish an MSLA) or (ii) terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to OCC Rules 2213 or 2216A, as applicable, as soon as reasonably practicable.

Because OCC has designed proposed OCC Rule 2219A to address the process for re-matching in suspension in both Stock Loan Programs, OCC further proposes to delete current OCC Rule 2212, which concerns re-matching in suspension for the Hedge

Program, and replace it, as renumbered to proposed OCC Rule 2217, with a cross-reference to proposed OCC Rule 2219A.

### **By-Laws and Rules Reorganization and Restatement**

OCC would also make a number of other clarifying, conforming, and organizational changes to OCC's By-Laws and Rules, and rule-filed policies that reference the By-Law and Rules provisions governing the Stock Loan Programs.

(a) Reorganization

OCC proposes to reorganize the provisions of OCC's By-Laws and Rules relating to the Stock Loan Programs into newly revised Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program). This consolidation of rules governing the Stock Loan Programs is similar to changes OCC made to migrate By-Laws governing OCC's Clearing Fund and membership standards to the Rules.<sup>56</sup> As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the By-Laws.

The provisions governing the Stock Loan Programs are currently found in Articles XXI and XXIA of OCC's By-Laws and Chapters XXII and XXIIA of the OCC Rules. Because the proposed changes to the Stock Loan Programs would substantially amend the relevant By-Law and Rule provisions, OCC believes that this is an appropriate opportunity to consolidate the primary provisions that address the Stock Loan Programs into Chapters XXII and XXIIA of the Rules. As a result, the content of Articles XXI and XXIA of the By-Laws would be consolidated into Chapters XXII, XXIIA and, with

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<sup>56</sup> See Exchange Act Release No. 97439, supra note 50, 88 FR at 30377 (membership standards); Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855, 36859 (File No. SR-OCC-2018-008) (Clearing Fund).

respect to definitions, Chapter I of the OCC Rules, subject to the proposed amendments described in this rule filing. OCC would also migrate to the OCC Rules the definitions currently located in Article I of the By-Laws that are specific to the Stock Loan Programs.<sup>57</sup> To account for migrated definitions of terms that are used elsewhere in the By-Laws, OCC would revise the By-Law definition to refer to the definition of that term in OCC Rule 101.<sup>58</sup> OCC believes that consolidating the provisions governing the Stock Loan Programs into one place would provide more clarity around, and enhance the readability of, OCC's rules governing the Stock Loan Programs. OCC has included a chart mapping the provisions moved from the By-Laws to the Rules, and the resulting renumbering of existing Rules, in Exhibit 3A to File No. SR-OCC-2024-011.

To preserve the governance requirements for amendments to the By-Law provisions that would be migrated to the Rules, OCC would also amend Article XI of the By-Laws. Specifically, OCC would amend Article XI, Section 2 of the By-Laws, which requires the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by the By-Laws) to amend certain enumerated provisions. Specifically, OCC would add Rule 2201, Rule 2203, Rule 2204, Rule 2205, Rule 2206(a) and (d), Rule 2213(e)(1), Rule 2214(e)(1), Rule 2201A, Rule 2203A, Rule 2204A, Rule 2205A and Rule 2206A(a)-(c) and (f) to these enumerated provisions.

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<sup>57</sup> See By-Law Art. I, § 1.B.(4), E.(3), H.(1), L.(2), L.(5), M.(3)-(4), M.(7)-(9), S. (19), (21)-(23). Rule 101 provides that terms in the Rules have the meanings defined in the By-Laws or as set forth in the Rules.

<sup>58</sup> References to the definition of the terms “stock borrow position” and “stock loan position” in proposed Rule 101 would be retained in the By-Laws because these terms are referenced in certain other definitions in the By-Laws, as well as Article VI, Section 27 of the OCC By-Laws (Close-Out Netting).

(b) Restatement

In addition to consolidating the By-Laws and Rules specific to the Stock Loan Programs within the Rules, OCC proposes to restate those provisions and make certain other changes for clarity and consistency. The changes would include (i) global changes across the By-Laws and Rules to add courtesy titles and standardize terms; (ii) integration of Interpretations and Policies within the Stock Loan Program rules into the body of the text of the Rules themselves; and (iii) certain other administrative or technical changes to the rule text.

(i) Global Changes

Global changes to be applied across the By-Laws and Rules concerning the Stock Loan Programs include:

- Adding courtesy titles to the beginning of paragraphs or other subdivisions, where appropriate, to aid the reader in locating provisions governing specific topics.
- Replacing references to “Stock Loan” that are specific to the Hedge Program with “Hedge Loan” in order to better differentiate between Hedge Loans and Market Loans while the Hedge Program is still in place. Use of the defined term “stock loan” would be retained when referring to either a Hedge Loan or a Market Loan or both as the context requires.<sup>59</sup> Reference to the “Stock Loan/Hedge Program” would remain unchanged.
- Replacing references to “Hedge Clearing Member” or “Market Loan Clearing Member” with “Clearing Member,” “Borrowing Clearing Member,” or “Lending

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<sup>59</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 101.S.(6), (7), (9), (10); Rules 2201-2206; Rules 2209-2216.

Clearing Member,” as applicable, to simplify OCC’s membership structure and reflect that Clearing Members may be authorized to transact in either program.<sup>60</sup>

(ii) Interpretations and Policies

OCC would also relocate current Interpretations and Policies (“I&P”) within Chapters XXI and XXIA of the Rules by moving those provisions within the body of the applicable Rules, subject to any further amendments discussed herein. The location of the text as reorganized within the Rules is included in Exhibit 3A to SR-OCC-2024-011 and noted in footnotes to the proposed rule text in Exhibit 5A to SR-OCC-2024-011.<sup>61</sup> OCC believes that consolidating the I&Ps, which have no less legal effect than the text of the Rules themselves, would provide more clarity around, and further enhance the readability of, OCC’s Rules governing the Stock Loan Programs.

In certain instances, OCC is proposing to eliminate the existing Interpretations and Policies altogether:

- Interpretations and Policies .01 to current OCC Rules 2202 and 2202A, which concern the position information OCC provides to Clearing Members on an intraday basis, would be deleted because they concern a topic covered by and more properly addressed in proposed OCC Rules 2210 and 2210A (Daily Reports). The specific information referenced in those Interpretations and

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<sup>60</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 1006(h)(C); Rule 2202; Rules 2206-2210; Rules 2213- 2214; Rule 2215-17; Rule 2202A; Rules 2207A-2212A; Rules 2216A-2219A.

<sup>61</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2206(b) (replacing Rule 2201, I&P .01); Rule 2206(c)(1) (replacing Rule 2201 I&P .02); Rule 2206(d) (replacing By-Law Art. XXI § 5, I&P .01); Rule 2214(e)(1) (replacing By-Law Art. XXI § 2, I&P.01); Rule 2206A(d) (replacing Rule 2201A, I&P .01); Rule 2206A(e) (replacing Rule 2201A, I&P .02); Rule 2206A(f) (replacing I&P By-Law Art. XXIA § 5, I&P .01).



Policies—i.e., new position, transfer positions, returns and cancels—would be integrated into the proposed Rules.

- I&P .01 to current OCC Rule 2210 (Suspension of Hedge Clearing Members – Pending and Open Stock Loans) and OCC Rule 2210A (Suspension of Market Loan Clearing Members – Pending and Open Market Loans)—which refers the reader to Interpretation and Policy .02 of OCC Rule 1104 for a description of OCC’s private auction process—would be deleted. In its place, a cross-reference to that description would be added to paragraph (b) of that Rule, as renumbered to OCC Rule 2215 per the reorganization discussed above.

(iii) Administrative Changes

OCC would also improve the clarity and readability of certain Rules, including by:

- breaking certain lengthy Rule provisions into subparagraphs with additional convenience headings to aid the reader in navigating the requirements and obligations therein;
- numbering provisions with multiple paragraphs that are currently unnumbered, in whole or in part, or with lengthy provisions that can be split into multiple paragraphs, and adding convenience headings to paragraphs, where such convenience headings would be helpful to the reader.<sup>62</sup>

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<sup>62</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2202(b)(1)-(3); Rule 2203(b)(1)-(2), (c)(1)-(2), (d)(1)-(2); Rule 2204(a)-(b); Rule 2205(a)-(b); Rule 2207(a)(1)-(3); Rule 2213(b)(1)-(2); Rule 2214(b)(1)-(6), (c)(1)-(4); Rule 2216(a)-(d); Rule 2202A(b)(1)-(3); Rule 2206A(a)(1)-(2); Rule 2207A(a)(1)-(3); Rule 2216A (d)(1)-(2); Rule 2218A(a)-(d).

- renumbering subdivisions in Chapters XXII and XXIIA based on a consistent numbering convention for (a) paragraphs, (1) subparagraphs, and (A) items.<sup>63</sup>
- updating cross-references found throughout the By-Laws and Rules based on the proposed reorganization and renumbering.
- improving consistency of the text between similar Hedge Program and Market Loan Program rules,<sup>64</sup>
- deleting duplicative provisions of the Rules that merely refer the reader to substantive rights and obligations located elsewhere in the Rules;<sup>65</sup>

OCC would also make conforming edits to OCC's Margin Policy and the Recovery and Orderly Wind-Down Plan ("RWD Plan"). Specifically, OCC's Margin Policy references OCC's default management practices under current Rules 2211 and 2211A, which provide that OCC may instruct a non-defaulting Clearing Member to buy-in or sell-out of positions. The proposed rule change would renumber those references to Rules 2216 and 2218A, respectively. OCC would also amend the description of the margin add-on in the Margin Policy to capture the full range of factors that determine the margin add-on charge for stock loan activity (i.e., collateral rate, mark-to-market pricing, dividends and distributions announced by an issuer, and rebate payments). Similarly, references in the RWD Plan to Section 2(c) of Article XXI of the By-Laws and Rule

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<sup>63</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed Rule 2202(b)(2)(A)-(E).

<sup>64</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 101.C.(4), L.(2), M.(1), S.(2) (conforming language in definitions specific to Hedge Loans and Market Loans); Rule 2213 (modifying title to "Termination of Hedge Loans" based on a similar title for current Market Loan Rule 2209A); Rule 2202A(b)(2)(E) (amending the Rule for initiation of Market Loans to include novation provisions governing Hedge Loans).

<sup>65</sup> See, e.g., Exhibit 5A to SR-OCC-2024-011, proposed OCC Rule 2202(d) & I&P .01 (deleting duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209 and 2211); Rule 2202A(e) (deleting duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209A and 2211A).

2209A(d), which refer to OCC's authority to terminate the Stock Loan Programs, would be renumbered to proposed Rules 2213(e) and 2216A(d)(2), respectively, and the excerpted text of those Rules appearing in the RWD Plan would be conformed with the text as amended by this proposed rule change.

### **Implementation Timeframe**

OCC will implement the proposed changes at the time Ovation becomes OCC's system of record, which is planned to launch no earlier than July of 2025.<sup>66</sup> OCC will announce the implementation date of the proposed change by Information Memorandum posted to its public website at least four weeks prior to implementation. OCC plans to launch Ovation and implement the proposed changes no later than December 31, 2025, and OCC will announce another intended implementation date by Information Memorandum posted to its public website if the changes will not be implemented by that date.

#### 2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act<sup>67</sup> requires, among other things, that the rules of a clearing agency (i) promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; (ii) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; (iii) in general, protect investors and the public

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<sup>66</sup> See <https://www.theocc.com/Participant-Resources> (linking to reference guides and timelines for the launch of Ovation).

<sup>67</sup> 15 U.S.C. 78q-1(b)(3)(F).

interest; and (iv) are not designed to permit unfair discrimination among participants in the use of the clearing agency. OCC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, protect investors and the public interest, and not unfairly discriminate among Clearing Members for the reasons below.

### **Enhancements to Facilitate OCC's New Clearance and Settlement System**

As described above, the proposed changes would involve certain changes to accommodate OCC's new clearance and settlement system, including by transitioning away from the legacy practice of aggregating positions in the same Eligible Stock into stock loan and stock borrow positions to contract-level record keeping. Contract-level recordkeeping would allow Clearing Members to see more precisely the contracts with shares lent by lender and borrower, which aligns to the record keeping industry standard. Allowing for terms to be recorded at the contract level will allow OCC to record other terms at the contract level, including terms related to OCC's guaranty of substitute dividend and rebate payments. Eliminating position aggregation would also allow OCC to simplify the calculation for mark-to-market payments in OCC's Rules. And by aligning mark-to-market payments to the accounts in which a stock loan position is held, OCC would end the practice of requiring cash mark-to-market payments for stock loan or stock borrow positions to settle in a Clearing Member's firm lien account or combined Market-Makers' account. Aligning mark-to-market cash settlements with the accounts in which the position is held simplifies OCC's processes and reduces complexity. Accordingly, OCC believes that conforming its practices for maintaining stock loan and stock borrow positions to industry standards and simplifying its processes for marking

those positions to market helps to promote the prompt and accurate clearance and settlement of stock loan transactions, and protect investors and the public interest by reducing operational complexity that could cause delay and impose costs on market participants.

The proposed changes to allow for re-matching of Matched-Book Positions in suspension also promote the prompt and accurate clearance and settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act<sup>68</sup> and Rule 17Ad-22(e)(13)<sup>69</sup> and (e)(23)<sup>70</sup> thereunder. Rule 17Ad-22(e)(13) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a Clearing Member default.<sup>71</sup> Rule 17Ad-22(e)(23) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.<sup>72</sup>

As noted above, a significant portion of the activity in OCC's Hedge Program relates to matched-book activity. Under the current Hedge Program Rules, OCC has authority to perform an orderly close out of a suspended Hedge Clearing Member's

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<sup>68</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>69</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>70</sup> 17 CFR 240.17Ad-22(e)(23).

<sup>71</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>72</sup> 17 CFR 240.17Ad-22(e)(23).

Matched-Book Positions through the termination by offset and rematching of such positions without requiring the transfer of securities against the payment of settlement prices as currently required under OCC Rule 2211. As a result, the Hedge Program rules minimize the potential for operational and execution risks and eliminate any risk resulting from potential price dislocation between recall and return transactions. Extending this authority to the Market Loan Program would provide the same benefits. In addition, by allowing re-matching across OCC's Stock Loan Programs, the proposed rule change would more closely align OCC's close-out process with the assumptions underlying OCC's margin methodology, STANS. Specifically, STANS assumes stock loan and borrow positions covering the same Eligible Stock in OCC's Stock Loan Programs are fungible and are permitted to offset one another in calculating a Clearing Member's margin requirement for the relevant account. Allowing for re-matching across Stock Loan Programs is consistent with this assumption. OCC believes the proposed rule change will strengthen the risk management processes in place at OCC by mitigating the risks involved in the buy-in/sell-out of Matched-Book Positions as well as provide the overall marketplace with more stability with respect to the Stock Loan Programs. OCC therefore believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act,<sup>73</sup> and would establish default procedures for the Market Loan Program that ensure that OCC can take timely action to contain losses and liquidity pressures and

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<sup>73</sup> 15 U.S.C. 78q-1(b)(3)(F).

continue meeting its obligations in the event of a participant default in accordance with Rule 17Ad-22(e)(13).<sup>74</sup>

In addition, OCC would use a matching algorithm to re-match stock loan and stock borrow positions in order of priority based on the largest available stock borrow or stock loan positions, as applicable, for the selected Eligible Stock for which a MSLA exists between the Borrowing and Lending Clearing Members or for which both positions are Anonymous Market Loans. In the event parties to a resulting Disclosed Market Loan do not have existing securities lending relationships, those members may choose to either work in good faith to reestablish any terms, representations, warranties and covenants not governed by the By-Laws and Rules (e.g., MSLA) or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to renumbered OCC Rules 2213 and 2216A, as soon as reasonably practicable. The proposed rule change therefore provides for an objective process for re-matching stock loan and borrow positions and ensures that members that initiated Anonymous Market Loans or that have existing securities lending relationships are re-matched to the greatest extent possible and would still allow for Clearing Members that are re-matched but that do not have existing securities lending relationships to terminate such positions in the ordinary course pursuant to renumbered OCC Rules 2213 and 2216A. As a result, OCC believes that the proposed rule change is designed to not permit unfair discrimination among participants in the use of the clearing agency in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>75</sup> Furthermore, the proposed rule change would make key aspects of OCC's default procedures with respect to the close out of Matched-Book Positions in

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<sup>74</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>75</sup> 15 U.S.C. 78q-1(b)(3)(F).

suspension public by amending OCC's Rules, which are posted to OCC's website, consistent with Rule 17Ad-22(e)(23).<sup>76</sup>

### **Market Loan Program Enhancements**

The proposed enhancements specific to the Market Loan Program would also promote the prompt and accurate clearance and settlement of stock loan transactions and, in general, protect investors and the public interest. Allowing for bilaterally negotiated Stock Loans in the Market Loan Program would allow OCC to expand its guaranty of cash distributions, such as substitute dividend and rebate payments, to such loans, limiting existing counterparty risks that remain for Hedge Loans, in which such payments must be resolved by the counterparties away from OCC. Transitioning bilaterally negotiated transactions to the Market Loan Program would also reduce operational burden associated with the reconciliation process and risk associated with errors that currently occur under the Hedge Program because settlement at DTC currently occurs prior to OCC's validation and acceptance of the transaction. Under the enhanced Market Loan Program, such bilaterally negotiated transactions would be submitted directly to OCC, which would validate the trade before sending delivery instructions to DTC, thereby helping to identify and resolve any errors prior to settlement occurring. Accordingly, OCC believes that expanding the Market Loan Program to include direct submission of bilaterally negotiated stock loans would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

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<sup>76</sup> 17 CFR 240.17Ad-22(e)(23).



Allowing for the submission of bilateral transactions through the Market Loan Program would also help simplify OCC's post-trade processing of stock loan transactions. For instance, allowing Borrowing Clearing Members to send return instructions directly to OCC for bilaterally initiated Market Loans would help eliminate errors in the Hedge Program that occur when notices of returns initiated through DTC are not received by OCC with the correct reason codes, resulting in position breaks. The proposed changes would disclose OCC's process for affirming transactions related to bilaterally negotiated Market Loans submitted directly to OCC, which would give members opportunities to affirm or reject transactions within time-frames specified by OCC, after which OCC would either reject the transaction if not affirmed (i.e., new loans) or would be deemed affirmed and processed accordingly (i.e., returns, buy-ins, sell-outs), thereby avoiding transactions that would pend indefinitely. The proposed changes would also accommodate modifications to certain terms, such as the rebate rate, interest rate benchmark or the loan term, without the need for those loans to be returned. The proposed changes would also improve OCC's control over the buy-in process by giving OCC the authority to prevent situations in which a Borrowing Clearing Member that failed to deliver the Loaned Stock in response to a recall instruction then attempts to deliver the Loaned Stock after the Lending Clearing Member may initiate a buy-in.

OCC's new clearance and settlement system would also assume certain processes currently performed by a Loan Market, including calculation of payments with respect to cash distributions for substitute dividend and rebate payments. Consolidating such processing at OCC will help ensure consistency across Market Loans, regardless of whether initiated through a Loan Market or directly with OCC. Assuming the

responsibility to calculate such payments would also allow OCC to eliminate Rules intended to limit OCC's guaranty for such payments to the margin OCC collected in reliance on the Loan Market's determinations. OCC would also modify the Market Loan rules concerning the collateralization rate and mark-to-market pricing, which are currently set by the Loan Market. Fixing collateral at the single rate of 102%, which is the Loan Market's rate, would minimize complexity in the evaluation of a member's Stock Loan portfolio for the purposes of liquidation in the event of a default. Accordingly, OCC believes that these post-trade processing enhancements to the Market Loan Program would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

Finally, the proposed enhancements to support Canadian Clearing Members in the Market Loan Program would also promote the prompt and accurate clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, and protect investors and the public interest. The introduction of withholding responsibilities would introduce new complications and risks into OCC's clearance and settlement process and could create uncertainty around the settlement of funds at OCC, as discussed in detail in connection with OCC's proposed rule change to address the implementation of I.R.C. Section 871(m) with respect to OCC's listed options transactions.<sup>77</sup> The proposed rule change would implement prudent, preventive measures

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<sup>77</sup> See Exchange Act Release No. 79435 (Nov. 30, 2016), 81 FR 87984 (Dec. 6, 2016) (File No. SR-OCC-2016-014). As the Commission recognized, application of Section 871(m) to listed options transactions would "have significant implications for OCC and its Clearing Members"—especially with respect to Non-U.S. Clearing Members, for which OCC would be required "to develop and maintain systems (i) to identify transactions that are Section 871(m) Transactions, (ii) to determine the amount of any dividend equivalents, (iii) to effectuate withholding, and (iv) to remit the withheld tax to the IRS." *Id.* at 87986. Treasury has yet to release guidance on key aspects of Section 871(m) that would be needed to build such systems. See IRS Notice 2024-44, Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m), [available at](#)

to protect OCC against the obligation for any withholding (and any resulting liability) by (a) applying similar conditions for the payment of substitute dividends as those for dividend equivalent payments for listed options; (b) preventing a Canadian Clearing Member from executing Market Loans in its capacity as a Borrowing Clearing Member for Canadian Securities, which may give rise to withholding obligations under Canadian law; (c) clarifying Canadian Clearing Member membership requirements such that Positive Rebate transactions would be subject to exemptions from withholding under U.S. law; and (d) preventing a Canadian Clearing Member from executing Market Loans with Negative Rebate in its capacity as a Borrowing Clearing Member for its own account, which may give rise to withholding obligations under U.S. Law. OCC believes these steps are necessary to prevent tax withholding obligations that OCC is not currently able to identify or collect. Thus, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>78</sup>

Furthermore, while the proposed rule change would impose additional requirements and restrictions on Canadian Clearing Members, the proposed rules are intended to address specific issues and potential risks to OCC arising from those Canadian Clearing Members whose membership and participation in the Market Loan

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<https://www.irs.gov/pub/irs-drop/n-24-44.pdf>. Like the changes implemented when Section 871(m) went into effect, this proposed change would transfer the costs and liability associated with tax withholding requirements to the Non-U.S. Clearing Members, thereby eliminating the potential uncertainty and risks in the daily settlement of funds at OCC that otherwise would be imposed if those withholding obligations rested with OCC.

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

Program creates potential withholding obligations for OCC. Because Canadian Clearing Members are already subject to similar requirements to accommodate dividend equivalent payments or deemed payments for listed options transactions without imposing withholding obligations under Section 871(m), OCC believes that the additional conditions and requirements with respect to participation in the Market Loan Program will not impose a significant burden. In addition, the limitations on certain transactions OCC proposes because of the heightened risk of withholding obligations are narrowly tailored to address the specific risks based on the Canadian Clearing Member's role in the transaction and whether it is transacting in its capacity as principal or on behalf of a customer. Therefore, OCC believes that the proposed rule change is not unfairly discriminatory among participants in the use of the clearing agency and is therefore consistent with Section 17A(b)(3)(F) of the Exchange Act.<sup>79</sup>

### **By-Laws and Rules Reorganization and Restatement**

OCC believes that the proposed reorganization and restatement of OCC's By-Laws and Rules specific to OCC's Stock Loan Programs is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>80</sup> and Rule 17Ad-22(e)(1),<sup>81</sup> which requires OCC to, among other things, maintain written policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each aspect of OCC's activities. OCC believes that the proposed reorganization improves the clarity and transparency of its By-Laws and Rules by consolidating provisions governing the clearance and settlement of stock loan transactions in the Rules, rather than split across

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<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> 17 CFR 240.17Ad-22(e)(1).

OCC's By-Laws and Rules. Similarly, OCC believes that integrating Interpretations and Policies into the text of the Rules helps enhance clarity and transparency by placing those provisions closer to the text they interpret. In addition, the global changes and administrative changes discussed above would apply consistent terms and numbering conventions, improve consistency of the text between similar Hedge Program and Market Loan Program rules, and remove duplicative provisions. Accordingly, OCC believes the proposed changes help ensure OCC's By-Laws and Rules, which form the legal basis for OCC's clearance and settlement of stock loan transactions, are clear and transparent.

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

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>82</sup> With the exception of the Rules specific to Canadian Clearing Members, addressed further below, the proposed changes are meant to enhance OCC's Stock Loan Programs, and would apply equally to all Clearing Members.

The transition to the Market Loan Program is not expected to impose a burden on competition or inhibit access for Clearing Members who currently transact exclusively through the Hedge Loan Program because the enhanced Market Loan Program would allow for the clearance of bilaterally negated transactions submitted to OCC for clearance, as the Hedge Loan Program does today. Accordingly, the changes do not require any participant in the Hedge Loan Program to transact through a Loan Market. In addition, OCC plans to authorize Clearing Members that currently participate in the Hedge Loan Program to transact through the Market Loan Program without requiring

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<sup>82</sup> 15 U.S.C. 78q-1(b)(3)(I).

additional onboarding from a membership perspective, subject to providing the necessary authorizations required of all Market Loan Program participants, thereby reducing the administrative burden of the transition. All Clearing Members would be subject to training with respect to the new ways of submitting transactions through the Market Loan Program. In addition, the proposed changes would facilitate, rather than burden, competition with respect to Canadian Clearing Members by allowing them, for the first time, to participate in the Market Loan Program.

The proposed rule change could potentially impact or burden competition by imposing upon Canadian Clearing Members certain requirements and limitations with respect to participation in the Market Loan Program. For example, Canadian Clearing Members would be required to provide certain documentation to satisfy OCC that participation will not impose tax or withholding obligations arising from payments under the Market Loan Program, as well as to allow OCC to satisfy its own tax reporting obligations. However, OCC does not believe that conditioning Canadian Clearing Members' participation on compliance with OCC Rule 202 would impose a significant burden on competition. Canadian Clearing Members are already subject to ongoing certification and reporting provisions of Rule 202 for derivative equivalent payments made or deemed to be made to such members with respect to options. As a matter of standard practice, Clearing Members are required to inform OCC of material changes in, for example, their formal organization, ownership structure, or financial condition<sup>83</sup> and are subject to ongoing financial reporting requirements.<sup>84</sup> OCC believes the proposed rule change would impose reasonable reporting and notification requirements with

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<sup>83</sup> See, e.g., OCC Rules 201 and 303.

<sup>84</sup> See OCC Rule 306.

respect to Canadian Clearing Members' tax compliance status similar to those rules referenced above.

The proposed restrictions on certain Market Loan transactions with Negative Rebate rates and transactions for which the Loaned Stock is a Canadian Security are also narrowly tailored. These restrictions address specific issues and potential risks to OCC arising from those firms whose membership creates potential withholding obligations for OCC. The proposed restriction on transactions with Negative Rebate for a Canadian Clearing Member's own account in its capacity as a Lending Clearing Member would eliminate the uncertainty in funds settlement that would arise if OCC were subject to withholding or tax obligations with respect to Negative Rebate payments owed to the Canadian Clearing Member. Canadian Clearing Members would not be restricted from entering into Market Loans with Negative Rebate as a Lending Clearing Member for its customer accounts, for which OCC could make Negative Rebate payments free from withholding obligations by virtue of the Canadian Clearing Member's status as a Qualified Intermediary, or as a Borrowing Clearing Member, either for its own account or for its customer accounts.

The proposed restriction on transactions where the Loaned Stock is a Canadian Security when the Canadian Clearing Member is the Borrowing Clearing Member would similarly eliminate uncertainty in funds settlement that would arise if OCC or the Canadian Clearing Member were subject to tax withholding obligations with respect to substitute dividends on the Canadian Security. Canadian Clearing Members would not be restricted from executing Market Loan transactions on Canadian Securities as a Lending Clearing Member. As discussed further above, OCC believes that the proposed

rule change is necessary to eliminate potential complications and risk to its clearance and settlement process that would be presented by OCC's potential withholding responsibilities (and which would be a direct consequence of providing its clearance and settlement services for these Canadian Clearing Members). OCC believes the proposed rule change is necessary to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to assure the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>85</sup> Accordingly, OCC believes any burden on competition that this proposed change could be regarded as imposing are necessary and appropriate to promote the prompt and accurate clearance and settlement of stock loan transactions as required by the Exchange Act. Furthermore, as stated above, all of OCC's current Canadian Clearing Members are already Qualified Intermediaries, FATCA Compliant, and Qualified Derivatives Dealers. Therefore, applying the same requirements as conditions to participate in the Market Loan Program would not impose any additional burden on those members.

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

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<sup>85</sup> 15 U.S.C. 78q-1(b)(3)(F).



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

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

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

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

- (A) by order approve or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2024-011 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-2024-011. 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-2024-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to  
delegated authority.<sup>86</sup>

Secretary

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<sup>86</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 3A****Stock Loan By-Laws and Rules Reorganization****By-Law Article I (Definitions)**

<b>Current Title</b>	<b>Current Provision</b>	<b>Proposed Provision, with changes as marked in Exhibit 5A</b>
Borrowing Clearing Member	Sec. 1.B(4)	Rule 101.B.(2)
Eligible Stock	Sec. 1.E.(3)	First sentence relocated to Rule 101.E.(4); Second and third sentences relocated to Rules 2201 and 2201A.
Hedge Loan	Sec. 1.H.(1)	Rule 101.H.(1)
Lending Clearing Member	Sec.1.L.(2)	Rule 101.L.(1)
Loan Market	Sec.1.L.(5)	Rule 101.L.(2)
Market Loan	Sec.1.M.(3)	Rule 101.M.(2)
Market Loan Program	Sec.1.M.(4)	Rule 101.M.(3)
Matched-Book Borrowing Clearing Member	Sec. 1.M.(7)	Rule 101.M.(5)
Matched-Book Lending Clearing Mem	Sec. 1.M.(8)	Rule 101.M.(6)
Matched-Book Positions	Sec. 1.M.(9)	Rule 101.M.(7)
Stock Borrow Position	Sec. 1.S.(19)	Rule 101.S.(6), with reference to that Rule in By-Law Arti. I, Sec. 1.S.(19)
Stock Loan	Sec. 1.S.(21)	Rule 101.S.(7)
Stock Loan/Hedge Program	Sec. 1.S.(22)	Rule 101.S.(8)
Stock Loan Position	Sec. 1.S.(23)	Rule 101.S.(10), with reference to that Rule in By-Law Art. I, Sec. 1.S.(21)

**By-Law Article XXI (Stock Loan/Hedge Program)**

<b>Current Title</b>	<b>Current Provision</b>	<b>Proposed Provision, with changes as marked in Exhibit 5A</b>
Introduction	Introduction	Deleted
Collateral	Sec. 1.C.(1)	Rule 101.C.(4)(i)
Depository	Sec. 1.D.(1)	Rule 101.D.(1)
Loaned Stock	Sec. 1.L.(1)	Rule 101.L.(3)(i)
Marking Price	Sec. 1.M.(1)	Rule 101.M.(4)
Mark-to-Market Payment	Sec. 1.M.(2)	Rule 101.M.(1)(i)
Settlement Date	Sec. 1.S.(1)	Rule 101.S.(1)
Settlement Price	Sec. 1.S.(2)	Rule 101.S.(2)(i)
Stock Loan	Sec. 1.S.(3)	Rule 101.S.(7)
Stock Loan Business Day	Sec. 1.S.(4)	Rule 101.S.(9)
Role of the Corporation	Sec. 2(a)-(b)	Rule 2203
	Sec. 2(c)	Rule 2213(e)(1)
	Sec. 2, Interpretation & Policy ("I&P") .01	Rule 2214(e)(1)
Agreements of Borrowing Clearing Member	Sec. 3	Rule 2204
Agreement of Lending Clearing Member	Sec. 4	Rule 2205
Maintaining Stock Loan and Stock Borrow Positions in Accounts	Sec. 5	Rule 2206(a)
	Sec. 5, I&P .01	Rule 2206(d)

**By-Law Article XXIA (Market Loan Program)**

<b>Current Title</b>	<b>Current Provision</b>	<b>Proposed Provision, with changes as marked in Exhibit 5A</b>
Introduction	Introduction	Deleted
Collateral	Sec. 1.C.(1)	Rule 101.C.(4)(ii)
Depository	Sec. 1.D.(1)	Rule 101.D.(1)
Dividend Equivalent Payment	Sec. 1.D.(2)	Rule 101.D.(3)
Loaned Stock	Sec. 1.L.(1)	Rule 101.L.(3)(ii)
Mark-to-Market Payment	Sec. 1.M.(1)	Rule 101.M.(1)(ii)
Marking Price	Sec. 1.M.(2)	Rule 101.M.(4)
Rebate	Sec. 1.R.(1)	Rule 101.R.(1)
Recall	Sec. 1.R.(2)	Rule 101.R.(2)
Return	Sec. 1.R.(3)	Rule 101.R.(5)
Settlement Price	Sec. 1.S.(1)	Rule 101.S.(2)(ii)
Stock Loan Business Day	Sec. 1.S.(2)	Deleted
Role of the Corporation	Sec. 2	Rule 2203A
Agreement of Borrowing Clearing Member	Sec. 3	Rule 2204A
Agreement of Lending Clearing Member	Sec. 4	Rule 2205A
Maintaining Stock Loan and Borrow Positions in Accounts	Sec. 5(a)	Rule 2206A(a), (b)
	Sec. 5(b)	Rule 2206A(c)
	Sec. 5, I&P .01	Rule 2206A(f)

**Rule Chapter XXII (Stock Loan/Hedge Program)**

<b>Current Title</b>	<b>Current Provision</b>	<b>Proposed Provision, with changes as marked in Exhibit 5A</b>
Introduction	Introduction	Introduction
Instructions to the Corporation	Rule 2201(a)-(d)	Rule 2207
	Rule 2201, I&P .01	Rule 2206(b)
	Rule 2201, I&P .02	Rule 2206(c)(1)
Initiation of Hedge Loans	Rule 2202(a)-(f)	Rule 2202(a)-(f)
	Rule 2202, I&P .01	Deleted
Margin Deposited with Corporation	Rule 2203	Rule 2208
Mark-to-Market Payments	Rule 2204	Rule 2209
Daily Reports	Rule 2205	Rule 2210
Dividends and Distributions	Rule 2206	Rule 2211
Indemnification by Borrowing Clearing Member	Rule 2207	Rule 2212
Settlement Date	Rule 2208(a)-(e)	Rule 2213(a)-(d)
Settlement	Rule 2209(a)-(i)	Rule 2214(a)-(d), (f)
	Rule 2209, I&P .01	Rule 2214(e)(2)
Suspension of Hedge Clearing Members – Pending and Open Stock Loans	Rule 2210(a)-(c)	Rule 2215
	Rule 2210, I&P .01	Deleted
Suspension of Hedge Clearing Members – By-In and Sell-out Procedures	Rule 2211	Rule 2216
Suspension of Hedge Clearing Members – Re-Matching in Suspension	Rule 2212	Rule 2217; Rule 2219A

**Rule Chapter XXIIA (Market Loan Program)**

<b>Current Title</b>	<b>Current Provision</b>	<b>Proposed Provision, with changes as marked in Exhibit 5A</b>
Introduction	Introduction	Introduction
Instructions to the Corporation	Rule 2201A(a)-(b)	Rule 2207A(a)-(b)
	Rule 2201A, I&P .01	Rule 2206A(d)
	Rule 2201A, I&P .02	Rule 2206A(e)
Initiation of Market Loans	Rule 2202A(a)-(g)	Rule 2202A(a)-(g)
	Rule 2202A, I&P .01	Deleted
Margin Deposited with Corporation	Rule 2203A	Rule 2208A
Mark-to-Market Payments	Rule 2204A	Rule 2209A
Daily Reports	Rule 2205A	Rule 2210A
Dividends and Distributions	Rule 2206A(a)-(b)	Rule 2211A(a)-(c), (e)
	Rule 2206A, I&P .01	Rule 2211A(c), last sentence
Erroneous Transactions	Rule 2207A(a)-(b)	Rule 2212A(a)-(b)
	Rule 2207A I&P .01	Rule 2212A(c)
Indemnification by Borrowing Clearing Member	Rule 2208A	Rule 2213A
Termination of Market Loans	Rule 2209A	Rule 2216A
Suspension of Market Loan Clearing Members – Pending and Open Market Loans	Rule 2210A(a)-(c)	Rule 2217A(a)-(c)
	Rule 2210A, I&P .01	Deleted
Suspension of Market Loan Clearing Members – Buy-In and Sell-Out Procedures	Rule 2211A	Rule 2218A



**Exhibit 3B**

This Exhibit contains three electronic files embedded in this cover page for filing efficiency, as identified below. OCC has omitted the embedded files pursuant to 17 CFR 240.24b-2. OCC has separately filed and requested confidential treatment of the cover page containing the embedded files as protected from public disclosure by Exemptions 4 and 8 of the Freedom of Information Act (“FOIA”), 5 U.S.C. 552(b)(4), (b)(8), and 15 U.S.C. 78x(e) because the information they contain concerns (i) OCC’s trade secrets and commercial information not customarily released to the public and is, and always has been, treated as the private information of OCC, the release of which is likely to cause foreseeable harm to OCC’s commercial or financial interests; and (ii) the supervision of OCC, a financial institution regulated by the Commission. OCC believes the Form 19b-4 Information and Exhibit 1A provide a clear and adequate description of the relevant substance of the embedded files to facilitate meaningful public comment.

**Embedded Files: [Redacted Pursuant to Rule 24b-2]**

- Exhibit 3B.1 Summary of an anonymous survey of Clearing Members participating in OCC’s Stock Loan Programs, conducted by a third-party service provider on behalf of OCC; 8 pages.
- Exhibit 3B.2 Survey report prepared by the third-party service provider; 36 pages.
- Exhibit 3B.3 Summary of OCC’s survey of Clearing Members concerning their preferences on collateral value and rounding conventions under OCC’s Stock Loan Programs; 3 pages.

**EXHIBIT 5A**



**OCC RULES**

Underlined text indicates new text proposed to be added by SR-OCC-2024-011 (Stock Loan Enhancements).

~~Strikethrough~~ text indicates existing text proposed to be deleted by SR-OCC-2024-011 (Stock Loan Enhancements).

[Bracketed] text describes actions to be performed upon regulatory approval of SR-OCC-2024-011.

## THE OPTIONS CLEARING CORPORATION

### RULES

\* \* \*

### CHAPTER I Definitions

#### RULE 101 – Definitions

A.

##### Anonymous Market Loan

(1) The term “Anonymous Market Loan” means any Loan Market Loan for which the identities of the Lending Clearing Member and Borrowing Clearing Member are not disclosed to each other.

##### **Appointed Clearing Member**

(+)(2) The term “Appointed Clearing Member” means a Clearing Member authorized to clear physically-settled equity options and stock futures or Market Loans that, in accordance with the provisions of Rule 901 or Rule 2207A, has been appointed by an Appointing Clearing Member to make settlement of obligations of the Appointing Clearing Member to deliver or receive underlying securities arising from the exercise or maturity of cleared securities or the initiation or termination of Market Loans.

##### **Appointing Clearing Member**

(-)(3) The term “Appointing Clearing Member” means a Clearing Member that, in accordance with the provisions of Rule 901 or Rule 2207A, has appointed an Appointed Clearing Member to make settlement of obligations of the Appointing Clearing Member to deliver or receive underlying securities arising from the exercise or maturity of cleared securities or the initiation or termination of Market Loans.

B.

##### **Bank Account**

(1) [No change.]

##### **Borrowing Clearing Member**<sup>[1]</sup>

(+)(2) The term “Borrowing Clearing Member” means any ~~Hedge Clearing Member or Market Loan~~ Clearing Member that borrows Eligible Stock in a ~~Stock Loan~~ Hedge Loan or Market Loan, respectively.

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[<sup>1</sup> [By-Law Article I, Sec. 1.B.(4) is deleted and relocated here with changes as marked.]

C.

\* \* \*

**Collateral**

~~(4)~~(4)(i) *Hedge Loan*. The term “Collateral,” in respect of any Hedge Loan, means the amount in U.S. dollars deposited by a Borrowing Clearing Member with a Lending Clearing Member upon initiation of a ~~Stock Loan~~Hedge Loan as security for the obligations of the Borrowing Clearing Member in respect of the ~~Stock Loan~~Hedge Loan, as such amount may be adjusted from time to time through mark-to-market payments made by the Borrowing Clearing Member and the Lending Clearing Member pursuant to Rule ~~2204~~2209.<sup>[2]</sup>

~~(4)~~(ii) *Market Loan*. The term “Collateral,” ~~means~~ means in respect of any Market Loan, means the amount in U.S. dollars a Borrowing Clearing Member is required to transfer to the Corporation’s account at the Depository, which the Corporation in turn instructs the Depository to transfer to the Lending Clearing Member, as security for the obligations of the Borrowing Clearing Member in respect of the Market Loan, as such amount may be adjusted from time to time through mark-to-market payments made by the Borrowing Clearing Member and the Lending Clearing Member pursuant to Rule ~~2204A~~2209A. ~~The Collateral requirement applicable to a Market Loan shall be the mark-to-market value of the Loaned Stock multiplied by a percentage (no less than 100%) specified by the relevant Loan Market.~~<sup>[3]</sup>

D.

~~Reserved.~~**Depository**<sup>[4]</sup>

(1) The term “Depository” means The Depository Trust Company.

**Disclosed Market Loan**

(2) The term “Disclosed Market Loan” means, as the context requires, either a Market Loan that is initiated (i) through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other or (ii) directly between the Lending Clearing Member and Borrowing Clearing Member away from a Loan Market such that the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other.

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<sup>[2]</sup> By-Law Article XXI, Sec. 1.C.(1) is deleted and relocated here with changes as marked.]

<sup>[3]</sup> By-Law Article XXIA, Sec. 1.C.(1) is deleted and relocated here with changes as marked.]

<sup>[4]</sup> By-Law Article XXI, Sec. 1.D.(1) is deleted and relocated here with changes as marked. The definition of “Depository” in Article XXIA, Sec. 1.M.(2) is also deleted and this definition applies to the use of the capitalized term “Depository” throughout the OCC Rules, including Chapters XXII and XXIIA.]

**Dividend Equivalent Payment<sup>[5]</sup>**

~~(2)~~(3) The term “dividend equivalent payment” means, in respect of a Market Loan, a payment to be made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of a Market Loan.

**E.**

(1) – (3) [No change.]

**Eligible Stock**

~~(3)~~(4) The term “Eligible Stock” means any security that is eligible for lending in the Stock Loan/Hedge Program and the Market Loan Program [under Rules 2201 and 2201A, respectively.](#)<sup>[6]</sup>

(4) – (6) [Renumbered (5) – (7). Otherwise, no change.]

**F. – G.** [No change]

**H. — L.**

**Hedge Loan**

(1) The term “Hedge Loan” means a matched pair of securities contracts for the loan of Eligible Stock made through the Stock Loan/Hedge Program, with one such securities contract being between the Lending Clearing Member and the Corporation as the borrower and the second such securities contract being between the Corporation as the lender and the Borrowing Clearing Member.<sup>[7]</sup>

**I. – K.**

Reserved.

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<sup>[5]</sup> By-Law Article XXIA, Sec. 1.D.(2) is deleted and relocated here with changes as marked.]

<sup>[6]</sup> This text replaces the first sentence of By-Law Article I, Sec. 1.E.(3) with changes as marked. The second sentence has been relocated to Rule 2201 and 2201A with changes as marked thereto.]

<sup>[7]</sup> By-Law Article I, Sec. 1.H.(1) is deleted and relocated here with changes as marked.]

L.**Lending Clearing Member**<sup>[8]</sup>

~~(2)~~(1) The term “Lending Clearing Member” means any Clearing Member that lends Eligible Stock in a ~~Stock Loan~~ Hedge Loan or Market Loan, respectively.

**Loan Market**<sup>[9]</sup>

~~(5)~~(2) The term “Loan Market” means an electronic platform included in the Corporation’s Market Loan Program that supports securities lending and borrowing transactions by matching lenders and borrowers based on loan terms that each party is willing to accept.

**Loaned Stock**

~~(+)~~(3)(i) Hedge Loan. The term “Loaned Stock,” in respect of any Hedge Loan, means Eligible Stock transferred by a Lending Clearing Member to a Borrowing Clearing Member upon initiation of a ~~Stock Loan~~ Hedge Loan, and any securities issued in exchange for such securities by reason of a reorganization, recapitalization, merger, consolidation or other corporate action of the issuer, and non-cash distributions described in Rule ~~2206~~2211 in respect of all such securities.<sup>[10]</sup>

~~(+)~~(ii) Market Loan. The term “Loaned Stock,” ~~means~~ in respect of any Market Loan, means Eligible Stock that is the subject of the Market Loan and any securities issued in exchange for such Eligible Stock by reason of a reorganization, recapitalization, merger, consolidation or other corporate action of the issuer, and any non-cash distributions described in Rule ~~2206A~~2211A in respect of the Loaned Stock.<sup>[11]</sup>

**M.****Mark-To-Market Payment**

~~(2)~~(1)(i) Hedge Loan. The term “mark-to-market payment,” ~~as used~~ in respect of any ~~Stock Loan~~ Hedge Loan, means a payment made by a Lending Clearing Member or Borrowing Clearing Member to the Corporation or by the Corporation to a Lending Clearing Member or Borrowing Clearing Member pursuant to Rule ~~2204~~2209.<sup>[12]</sup>

~~(+)~~(ii) Market Loan. The term “mark-to-market payment,” ~~as used~~ in respect of any Market Loan, means a payment made by a Lending Clearing Member or Borrowing Clearing Member to

[<sup>8</sup> By-Law Article I, Sec. 1.L.(2) is deleted and relocated here with changes as marked.]

[<sup>9</sup> By-Law Article I, Sec. 1.L.(5) is deleted and relocated here with changes as marked.]

[<sup>10</sup> By-Law Article XXI, Sec. 1.L.(1) is deleted and relocated here with changes as marked.]

[<sup>11</sup> By-Law Article XXIA, Sec. 1.L.(1) is deleted and relocated here with changes as marked.]

[<sup>12</sup> By-Law Article XXI, Sec. 1.M.(2) is deleted and relocated here with changes as marked.]

the Corporation or by the Corporation to a Lending Clearing Member or Borrowing Clearing Member pursuant to Rule ~~2204A~~2209A.<sup>[13]</sup>

**Market Loan**<sup>[14]</sup>

~~(3)~~(2) The term “Market Loan” means a loan of Eligible Stock that was effected through ~~a Loan Market~~ the Market Loan Program and accepted by the Corporation in accordance with the By-Laws and Rules.

**Market Loan Program**<sup>[15]</sup>

~~(4)~~(3) The term “Market Loan Program” means the Corporation's program for processing and maintaining stock loan positions and stock borrow positions originated through a Loan Market or submitted directly to the Corporation under Rule 2202A and effecting required payments in respect of such positions, ~~all as further described in the By-Laws and Rules.~~

**Marking Price**<sup>[16]</sup>

~~(1)~~(4) The term “marking price”, as used in respect of any Loaned Stock ~~shall have~~has the meaning given to it in Article I of the By-Laws.

**Matched-Book Borrowing Clearing Member**<sup>[17]</sup>

~~(7)~~(5) The term “Matched-Book Borrowing Clearing Member” ~~shall mean~~means, with respect to any Matched-Book Positions, the Clearing Member that borrows Eligible Stock from a Clearing Member maintaining Matched-Book Positions in that Eligible Stock.

**Matched-Book Lending Clearing Member**<sup>[18]</sup>

~~(8)~~(6) The term “Matched-Book Lending Clearing Member” ~~shall mean~~means, with respect to any Matched-Book Positions, the Clearing Member that lends Eligible Stock to a Clearing Member maintaining Matched-Book Positions in that Eligible Stock.

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[<sup>13</sup> By-Law Article XXIA, Sec. 1.M.(1) is deleted and relocated here with changes as marked.]

[<sup>14</sup> By-Law Article I, Sec. 1.M.(3) is deleted and relocated here with amendments as marked.]

[<sup>15</sup> By-Law Article I, Sec. 1.M.(4) is deleted and relocated here with amendments as marked.]

[<sup>16</sup> By-Law Article XXI, Sec. 1.M.(1) is deleted and relocated here with changes as marked. The definition of “Marking Price” in By-Law Article XXIA, Sec. 1.M.(2) is also deleted and this definition applies to the use of the term “Marking Price” throughout the OCC Rules, including Chapters XXII and XXIIA.]

[<sup>17</sup> By-Law Article I, Sec. 1.M.(7) is deleted and relocated here with changes as marked.]

[<sup>18</sup> By-Law Article I, Sec. 1.M.(8) is deleted and relocated here with changes as marked.]

**Matched-Book Positions**<sup>[19]</sup>

~~(9)~~(7) The term “Matched-Book Positions” ~~shall mean~~means stock loan and stock borrow positions in which a single Clearing Member borrows Eligible Stock from a Matched-Book Lending Clearing Member and lends an equal or lesser amount of the same Eligible Stock to a Matched-Book Borrowing Clearing Member.

**Minimum Corporate Contribution**

[Renumbered (8). Otherwise, no change.]

N. – Q. [No change.]

**R.****Rebate**<sup>[20]</sup>

(1) The term “rebate,” ~~as used~~ in respect of any Market Loan, means a fee payable from the Lending Clearing Member to the Borrowing Clearing Member (or, if the rebate rate is negative, from the Borrowing Clearing Member to the Lending Clearing Member), expressed as a rate based on the amount of cash Collateral held by the Lending Clearing Member.

**Recall**<sup>[21]</sup>

(2) The term “recall,” ~~as used~~ in respect of any Market Loan, means the process by which the Lending Clearing Member may initiate the termination of the Market Loan, or any portion thereof, by submitting a notice to the applicable Loan Market or the Corporation, as applicable, calling for the return of all or any portion of the Loaned Stock.

**Regulatory Organization**

[Renumbered (3). Otherwise, no change.]

**Restricted Letter of Credit**

[Renumbered (4). Otherwise, no change.]

**Return**<sup>[22]</sup>

~~(3)~~(5) The term “return,” ~~as used~~ in respect of any Market Loan, means the process by which the Borrowing Clearing Member may initiate the termination of the Market Loan, or any portion

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[<sup>19</sup> By-Law Article I, Sec. 1.M.(9) is deleted and relocated here w with changes as marked.]

[<sup>20</sup> By-Law Article XXIA, Sec. 1.R.(1) is deleted and relocated here with changes as marked.]

[<sup>21</sup> By-Law Article XXIA, Sec. 1.R.(2) is deleted and relocated here with changes as marked.]

[<sup>22</sup> By-Law Article XXIA, Sec. 1.R.(3) is deleted and relocated here with changes as marked.]



thereof, by submitting a notice to the Loan Market or the Corporation, as applicable, indicating its intention to return all or any portion of the Loaned Stock.

S.

### Settlement Date

(1) The term “settlement date” in respect of the termination of ~~Stock Loans~~ Hedge Loan has the meaning set forth in Rule ~~2208~~ 2213.<sup>[23]</sup>

### Settlement Price

(2)(i) Hedge Loan. The term “settlement price,” in respect of a ~~Stock Loan~~ Hedge Loan, means the amount of Collateral specified by the Lending Clearing Member in its instructions to initiate the ~~Stock Loan~~ Hedge Loan as described in Rule 2202. The term “settlement price,” in respect of the termination by either a Lending Clearing Member or a Borrowing Clearing Member of a ~~Stock Loan~~ Hedge Loan or portion thereof, means the amount of Collateral required to be returned by the Lending Clearing Member on the settlement date.<sup>[24]</sup>

~~(1)~~(ii) Market Loan. The term “settlement price,” ~~as used~~ in respect of any Market Loan, means the amount of Collateral specified in the instructions submitted by the Corporation to the Depository to effect such Market Loan. The term “settlement price,” in respect of the termination of a Market Loan or portion thereof, means the amount of Collateral required to be returned by the Lending Clearing Member on the settlement date.<sup>[25]</sup>

### Settlement Time

[Renumbered (3). Otherwise, no change.]

### Spot Month Series

[Renumbered (4). Otherwise, no change.]

### Statutory Disqualification

[Renumbered (5). Otherwise, no change.]

### Stock Borrow Position<sup>[26]</sup>

~~(19)~~(6) The term “stock borrow position” means the position of a Borrowing Clearing Member in respect of a ~~Stock Loan~~ Hedge Loan or Market Loan.

<sup>[23]</sup> By-Law Article XXI, Sec. 1.S.(1) is deleted and relocated here with changes as marked.]

<sup>[24]</sup> By-Law Article XXI, Sec. 1.S.(2) is deleted and relocated here with changes as marked.]

<sup>[25]</sup> By-Law Article XXIA, Sec. 1.S.(1) is deleted and relocated here with changes as marked.]

<sup>[26]</sup> This definition replicates Article I, Sec. 1.S.(19) with changes as marked.]

**Stock Loan** <sup>[27]</sup>

~~(21)~~(7) The term “~~Stock Loan~~stock loan” means a loan of Eligible Stock submitted to OCC as either a “Hedge Loan” or a “Market Loan” ~~or both~~ as the context requires.

**Stock Loan/Hedge Program** <sup>[28]</sup>

~~(22)~~(8) The term “Stock Loan/Hedge Program” means the Corporation’s program for processing and monitoring ~~Stock Hedge~~ Loans and hedging stock loan positions and stock borrow positions against stock option positions, all as further described in the By-Laws and Rules.

**Stock Loan Business Day** <sup>[29]</sup>

~~(4)~~(9) The term “stock loan business day” means any day on which the Corporation and the Depository are open for business.

**Stock Loan Position**

~~(23)~~(10) The term “stock loan position” means the position of a Lending Clearing Member in respect of a ~~Stock Loan~~ Hedge Loan or Market Loan.<sup>[30]</sup>

T. – Z. [No change]

\* \* \*

### CHAPTER III Membership Standards

**RULE 302 – Operational Capability**

\* \* \*

~~(f) Stock Loan Programs. Clearing Members participating in the Corporation’s Stock Loan programs shall meet the following additional operational requirements:~~

(1) ~~Stock Loan/Hedge Program. Every~~ Until a Clearing Member has terminated all open stock borrow and loan positions from Hedge Loans, a Clearing Member participating in the Stock Loan/Hedge Program must:

~~(i)~~(A) be a member of the Depository ~~(as defined in Article XXI of the By-Laws)~~ or be a Canadian Clearing Member on behalf of which CDS maintains an identifiable sub-account in a

<sup>[27]</sup> By-Law Article I, Sec. 1.S.(21) and relocated here with changes as marked.]

<sup>[28]</sup> By-Law Article I, Sec. 1.S.(22) is deleted and relocated here with changes as marked.]

<sup>[29]</sup> By-Law Article XXI, Sec. 1.S.(4) is deleted and relocated here without amendment. The definition of “Stock Loan Business Day” in Article XXIA, Sec. 1.S.(2) is also deleted and this definition applies to the use of the term “Stock Loan Business Day” throughout the OCC Rules, including Chapters XXII and XXIIA.]

<sup>[30]</sup> This definition replicates Article I, Sec. 1.S.(23) with changes as marked.]

CDS account at the Depository, provided that CDS is a participant of the Depository eligible to perform the necessary functions on behalf of the Canadian Clearing Member during the period when such Canadian Clearing Member has in effect an appointment of CDS pursuant to the provisions set forth in ~~this Interpretation, Rule 2207(c);~~ and

~~(ii)(B)~~ execute such agreements and other documents as the Corporation may prescribe.

(2) *Market Loan Program.* ~~Every~~ Until the Clearing Member has terminated all open stock borrow and loan positions from Market Loans, every Clearing Member participating in the ~~Stock Loan/Hedge Program~~ Market Loan Program must:

~~(i)(A)~~ be a U.S. Clearing Member, Canadian Clearing Member, or Clearing Member from any other foreign country or jurisdiction approved by the Risk Committee~~;~~

~~(ii)(B)~~ to the extent the Clearing Member will initiate Market Loans through a Loan Market, be a subscriber to such Loan Market with full access to services provided by the Loan Market~~;~~

~~(iii)(C)~~ be a (i) member of the Depository that has provided the Depository with written authorization to honor instructions issued by the Corporation against such Clearing Member's account at the Depository; (ii) a Canadian Clearing Member on behalf of which CDS maintains an identifiable sub-account in a CDS account at the Depository, provided that CDS is a participant of the Depository eligible to perform the necessary functions on behalf of the Canadian Clearing Member during the period when such Canadian Clearing Member has in effect an appointment of CDS pursuant to the provisions set forth in Rule 2207A(c); or (iii) an Appointing Clearing Member that, in accordance with Rule 2207A(d), has appointed an Appointed Clearing Member to make settlement of obligations of the Appointing Clearing to deliver or receive Eligible Stock arising from the initiation or termination of Market Loans; and

~~(iv)(D)~~ execute such agreements and other documents as the Corporation may prescribe~~;~~ including, as applicable, A separate designation ~~is required~~ for each Loan Market in which a Clearing Member participates. ~~A Market Loan Clearing Member must continue to comply with all conditions referred to in (i) — (iv) above until the Clearing Member has terminated all open stock borrow and loan positions resulting from Market Loans.~~

\* \* \*

### **RULE 306A – Event-Based Reporting**

(b) *Notice of Material Changes and Information Requests.* Each Clearing Member must give the Corporation written notice of any material changes specified in this Rule 306A(b).

\* \* \*

(2) Each Clearing Member must give the Corporation prompt written notice of material operational or financial changes, including:

\* \* \*

(L) If a Canadian Clearing Member participating in the Stock Loan/Hedge Program [or Market Loan Program](#) knows or reasonably expects that CDS will cease, or if CDS has ceased, to act on behalf of the Canadian Clearing Member with respect to effecting delivery orders for stock loan and stock borrow transactions.

\* \* \*

## CHAPTER VI Margins

\* \* \*

### RULE 601 – Margin Requirements

[No change]

\* \* \*

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

**.01 – .04** [No change]

**.05** To the extent that stock loan positions and stock borrow positions established in an account pursuant to the Stock Loan/Hedge Program (provided for in ~~Article XXI of the By-Laws and Chapter XXII of the Rules~~) or the Market Loan Program (provided for in ~~Article XXIA of the By-Laws and Chapter XXIIA of the Rules~~) have Collateral set at a percentage greater than 100% of the market value of the Loaned Stock, an additional margin charge equal to the excess Collateral shall be applied to the account of the Lending Clearing Member, and a margin credit equal to the excess Collateral shall be applied to the account of the Borrowing Clearing Member. This margin charge/credit shall be an addition to, or a reduction of, the margin requirement otherwise determined for the accounts of the Lending Clearing Members and Borrowing Clearing Members in accordance with this Rule 601. For purposes of calculating their net capital requirements in accordance with Rule 15c3-1 promulgated under the Securities Exchange Act of 1934, as amended, Lending Clearing Members and Borrowing Clearing Members shall not be required to treat such additional margin, any portion of the Collateral or any portion of the Loaned Stock as an “unsecured receivable” requiring a deduction from net capital.

**.06 – .08** [No change]

\* \* \*

## CHAPTER X Clearing Fund Contributions

\* \* \*

### RULE 1006 – Purpose and Use of Clearing Fund

(h) *Making Good of Charges to the Clearing Fund. . . .*

(C) *Termination During Cooling-Off Period.* After the expiration of the cooling-off period, a Clearing Member will not be liable for replenishment of the Clearing Fund as required by paragraph (A) of this Rule 1006(h) or assessments as contemplated by paragraph (B) of this Rule 1006(h), if (i) not later than the last day of the cooling-off period the Clearing Member submits a Voluntary Termination Notice to the Corporation, (ii) after giving such notice no opening purchase transaction or opening writing transaction is submitted for clearance through any of the Clearing Member's accounts and (if the Clearing Member is a [Market Loan Borrowing](#) Clearing Member or a [Hedge Lending](#) Clearing Member) no Stock Loan is initiated through any of the Clearing Member's accounts after the giving of such notice, and (iii) the Clearing Member closes out or transfers all of its open positions with the Corporation, in each case not later than the last day of the cooling off period. A Clearing Member that so terminates its status as a Clearing Member will be ineligible to be readmitted to such membership unless the Clearing Member agrees to such reimbursement of the persons who were Clearing Members at the time of such termination as the Board of Directors deems fair and equitable in the circumstances. In the event a Clearing Member notifies the Corporation of its intent to terminate its status as a Clearing Member in accordance this Rule, and such Clearing Member's computed contribution is less than its minimum required contribution, then the Clearing Member must also make good 100% of the amount equal to its minimum required contribution less its computed contribution to the Clearing Fund.

\* \* \*

### RULE 1011 – Voluntary Payments

(a) Where, after the default of a Clearing Member, the Corporation determines that, notwithstanding the availability of any resources remaining under Rules 707, 1001, 1104 through 1107, ~~2210 and 2211~~[5 through 2217, and 2217A through 2219A](#), the Corporation may not have sufficient resources to satisfy its obligations and liabilities as a result of such default, the Corporation will issue a notice (a “**Voluntary Payment Notice**”) inviting all non-defaulting Clearing Members to make a payment to the Clearing Fund in addition to amounts required under Rule 1001 (a “Voluntary Payment”) to make up for the relevant shortfall. Terms for Voluntary Payments shall be set forth in the Voluntary Payment Notice and shall include, without limitation, the following:

(i) no Clearing Member shall be obliged to make a Voluntary Payment;

(ii) no Voluntary Payment may be withdrawn once made; and

(iii) the Corporation shall have full discretion whether or not to accept a particular Voluntary Payment.

(b) [No change]

\* \* \*

## CHAPTER XI Suspension of a Clearing Member

\* \* \*

### **RULE 1104 – Creation of Liquidating Settlement Account**

(a) Upon the suspension of a Clearing Member, the Corporation shall promptly liquidate, in the most orderly manner practicable, including, but not limited to, a private auction, all margins deposited with the Corporation by such Clearing Member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such Clearing Member's contributions to the Clearing Fund; provided, however, that (i) cash derived from margin deposited in respect of segregated futures accounts (including any segregated futures professional account) shall not be commingled with any other cash, and may be applied only to the obligations of such segregated futures accounts, and (ii) if the issuer of a letter of credit deposited by such Clearing Member pursuant to Rule 604(c) shall agree in writing to extend the irrevocability of its commitment thereunder in a manner satisfactory to the Corporation, the Corporation may, in lieu of demanding immediate payment of the face amount of such letter of credit, but reserving its right thereto, demand only such amounts as it may from time to time deem necessary to meet anticipated disbursements from the Liquidating Settlement Accounts provided for below. These and all other funds of the suspended Clearing Member subject to the control of the Corporation, except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a segregated futures account, shall be placed by the Corporation in a special account, to be known as the Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes hereinafter specified. Funds held in or payable to segregated futures accounts, and only such funds, shall be placed by the Corporation in a separate special account, to be known as the Segregated Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes herein specified. Funds obtained from the issuer of a letter of credit shall be disbursed only after all other funds contained in the Liquidating Settlement Account, with the exception of funds derived from the suspended Clearing Member's contributions to the Clearing Fund, have been exhausted, or in the case of a letter of credit indicating on its face that it is being deposited to serve as margin for a segregated futures account, only after all other funds contained in the Segregated Futures Liquidating Settlement Account, have been exhausted. In the event the sum of (i) the proceeds from any restricted letter of credit held in a restricted lien account, (ii) the proceeds from the closing out of positions and securities in a restricted lien account over which the Corporation has a restricted lien as provided in Article VI, Section 3 of the By-Laws, (iii) the proceeds from the closing out of exercised option contracts, matured futures and expired BOUNDS in such restricted lien

account, and (iv) the proceeds from the liquidation of securities held as margin in such restricted lien account should exceed the amount withdrawn by the Corporation from the Liquidating Settlement Account pursuant to Rules 1105 through 1107 and Rules 22~~40~~15 and 22~~41~~16A in respect of transactions or positions in such restricted lien account, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. In the event the sum of (i) the proceeds from any restricted letter of credit held in segregated futures accounts, (ii) any variation payments received from closing out long or short positions in futures in segregated futures accounts, and (iii) the proceeds from the closing out of matured futures and long futures options and commodity options positions in segregated futures accounts should exceed the amount withdrawn by the Corporation from the Segregated Liquidating Settlement Account pursuant to Rules 1105 through 1107 in respect of transactions or positions in all segregated futures accounts, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. Notwithstanding the foregoing provisions of this rule, margin and all other funds of a suspended Clearing Member in respect of sets of X-M accounts (other than such Clearing Member's contributions to the Clearing Fund) shall be subject to Rule 707 and the applicable Participating CCO Agreement and not to this Rule.

(b) – (f) [No change]

\* \* \*

*... Interpretations and Policies:*

**.01** [No change]

**.02** (a) For purposes of this Rule 1104 and Rules 1106, 1107, 22~~40~~15 and 22~~41~~16A, in order to minimize the execution and liquidity risks associated with (i) liquidating a suspended Clearing Member's margins deposited with the Corporation and Clearing Fund contributions (collectively referred to in this Interpretation and Policy as "Collateral"), (ii) closing out such Clearing Member's open positions in cleared contracts and stock loans (collectively referred to in this Interpretation and Policy as "Open Positions") and (iii) closing out exercised or matured cleared contracts to which such Clearing Member was a party either as the exercising Clearing Member or as the assigned Clearing Member (collectively referred to in this Interpretation and Policy as "Exercised/Matured Contracts"), the Corporation may elect to use one or more private auctions to liquidate all or any part of such Collateral, Open Positions and/or Exercised/Matured Contracts, as determined by the Board of Directors, the Executive Chairman, Chief Executive Officer, or Chief Operating Officer of the Corporation. As used in this interpretation, the term "private auction" means an auction open to bidders invited by the Corporation pursuant to this interpretation and with respect to which bidders submit confidential bids. If such determination is made by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. The option to elect a private auction process is discretionary; the Corporation may use other procedures as provided for or permitted in the By-Laws and Rules to liquidate a suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts if the Corporation decides that circumstances warrant. The Corporation shall provide prompt notice to

the Risk Committee (or other committee of the Board of Directors to which the auction oversight function is delegated) whenever a private auction is expected to be conducted.

(b) – (g) [No change]

.03 [No change]

.04 For the avoidance of doubt, for purposes of this Chapter XI of the Rules, when mark-to-market payments are owed with respect to stock loan (borrow) positions maintained in a Clearing Member’s customers’ account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers’ account, may be used to satisfy the mark-to-market obligations arising from the stock loan and ~~(borrow)~~ positions in such customers’ account, ~~notwithstanding that such mark-to-market payments may settle in another account as provided for in Rules 2201(a) and 2201A(a).~~

\* \* \*

#### **RULE 1111 – Voluntary Tear-Ups and Partial Tear-Ups**

(a)(i) The Corporation may notify Clearing Members and provide an opportunity for Clearing Members to voluntarily agree to have positions of a Clearing Member or, with the consent of customers of such Clearing Member, to agree to have each such customer’s position, extinguished by the Corporation (a “**Voluntary Tear-Up**”) at any time following the suspension or default of a Clearing Member and after the Corporation has attempted one or more auctions pursuant to Rule 1104 or Rule 1106, and after the Corporation has determined that, notwithstanding the availability of any resources remaining under Rules 707, 1001, 1011, 1104 through 1107, ~~2210 and 2215 through 2217, and 2217A through 2219A~~, the Corporation may not have sufficient resources to satisfy its obligations and liabilities as a result of such default. The Corporation will issue a notice (a “**Voluntary Tear-Up Notice**”) informing all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up. Terms for Voluntary Tear-Ups shall be set forth in the Voluntary Tear-Up Notice and shall include, without limitation, the following:

(x) no Clearing Member, or customers of a Clearing Member, shall be obliged to participate in a Voluntary Tear-Up; and

(y) the Corporation shall have full discretion whether or not to accept a particular Voluntary Tear-Up offer.

(ii) If the Corporation successfully recovers from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member) and the amount of such recovery exceeds the amount the Corporation received in voluntary payments, the Corporation shall compensate from such remaining amounts of the recovery the non-defaulting Clearing Members and non-defaulting customers that voluntarily extinguished open positions in the amount of losses, costs or fees directly resulting from the Voluntary Tear-Up, but only after the Corporation has fully compensated non-defaulting Clearing Members that made voluntary payments in the



amount of such voluntary payments and only to the extent that such losses, costs and fees can reasonably be determined by the Corporation. If the remaining amount of any such recovery is less than the amount of losses, costs and fees incurred by non-defaulting Clearing Members and non-defaulting customers participated in the Voluntary Tear-Up, then each such non-defaulting Clearing Member and non-defaulting customer shall be compensated pro rata according to the relative size of its incurred losses, costs and fees from the Voluntary Tear-Ups.

(b) If Clearing Member or customer positions of a defaulted Clearing Member remain open (“**Remaining Open Positions**”) after the Corporation has attempted one or more auctions pursuant to Rule 1104 or Rule 1106 and after the Corporation has accounted for any positions voluntarily extinguished in accordance with subparagraph (a), and the Corporation determines that, notwithstanding the availability of any resources remaining under Rules 707, 1001, 1009, 1104 through 1107, 2210 and 2215 through 2217, and 2217A through 2219A, the Corporation may not have sufficient resources to satisfy its obligations and liabilities as a result of such default, the Board of Directors of the Corporation may elect to extinguish (i) the Remaining Open Positions, and/or (ii) any related open positions deemed necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (“**Related Open Positions**”), through a partial tear-up process (“**Partial Tear-Up**”). The Corporation will notify the staff of the SEC and the CFTC of a determination that Partial Tear-Up will apply.

(c) – (h) [No change]

\* \* \*

## CHAPTER XXII Stock Loan/Hedge Program

### Introduction

The Rules in this Chapter are applicable only to the Stock Loan/Hedge Program. In addition, the Rules in Chapters I through XII are also applicable to the Stock Loan/Hedge Program, in some cases supplemented by one or more Rules in this Chapter, except for Rules that have been replaced in respect of the Stock Loan/Hedge Program by one or more Rules in this Chapter and except where the context otherwise requires. Whenever a Rule in this Chapter supplements or, for purposes of this Chapter, replaces one or more of the By-Laws or Rules in Chapters I through XII, that fact is indicated in brackets following the Rule in this Chapter.

### Rule 2201 – Eligible Stock<sup>[31]</sup>

(a) Eligibility. A security shall be eligible for lending in the Stock Loan/Hedge Program ~~and the Market Loan Program~~ if and only if:

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<sup>[31]</sup> The second and third sentence of By-Law Article I, Sec. 1.E.(3) with respect to Hedge Loans are relocated here with changes as marked.]

- (1) the security is an equity security that the Depository has determined is eligible for deposit at the Depository,
- (2) the Corporation has not determined to terminate all outstanding ~~Hedge Loans~~~~Stock Loans~~ and/or Market Loans in respect of such security pursuant to the By-Laws,
- (3) the security is a “covered security” within the meaning of Section 18(b)(1) of the Securities Act of 1933, and
- (4) in the case of securities which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract, the security is trading at a market price of at least \$3 per share, as determined by the Corporation.

(b) Waiver by the Corporation. The Corporation may waive the requirement in paragraph (a)(4) of this Rule at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. However, should the market price for a security for which the Corporation has not waived the requirement ~~(4)~~ fall below \$3, no new ~~Hedge Loan~~~~Stock Loan or Market Loan~~ transactions may be submitted for clearance, but existing positions may be maintained.

#### **RULE 2202 – Initiation of ~~Stock~~Hedge Loans**

(a) Initiation. A stock loan which is intended for inclusion in the Stock Loan/Hedge Program shall be initiated by an instruction from a ~~Hedge~~-Clearing Member to the Depository, in a form specified by the Depository and approved by the Corporation, to transfer a specified number of shares of a specified Eligible Stock from the account of such ~~Hedge~~-Clearing Member to the account of a specified second ~~Hedge~~-Clearing Member against the transfer of a specified settlement price from the account of the second ~~Hedge~~-Clearing Member to the account of the first ~~Hedge~~-Clearing Member. In order to identify such transfers as constituting a stock loan transaction intended for inclusion in the Stock Loan/Hedge Program, the instruction shall use the appropriate “reason code,” as provided by the Depository. Any stock loan so initiated shall be complete as between the ~~Hedge~~-Clearing Members when the Depository has made final entries on its books reflecting transfers made in accordance with such instruction.

(b) Acceptance.

(1) Upon receipt of information reported to the Corporation from the Depository showing a completed stock loan, the Corporation shall (subject to Rule 22~~10~~15(a)) accept such stock loan as a ~~Stock~~Hedge Loan, unless the Corporation determines that a stock loan is not in accordance with the By-Laws and Rules or that one or both account numbers are invalid for ~~Stock~~Hedge Loans, or that the information provided by the Depository contains unresolved errors or omissions, in which case the Corporation shall reject such stock loan.

(2) Upon the Corporation’s acceptance of a stock loan, the following shall automatically occur:

~~(i)~~(A) the stock loan contract negotiated between the ~~lending Hedge~~Lending Clearing Member and the ~~borrowing Hedge~~Borrowing Clearing Member that initiated the ~~Stoek~~Hedge Loan shall be extinguished and replaced in its entirety by ~~(1)~~ a congruent contract between the ~~lending Hedge~~Lending Clearing Member, as stock lender, and the Corporation, as stock borrower, and ~~(2)~~(i) an identical congruent contract between the Corporation, as stock lender, and the ~~borrowing Hedge~~Borrowing Clearing Member, as stock borrower;

~~(ii)~~(B) such pair of contracts shall constitute the ~~Stoek~~Hedge Loan;

~~(iii)~~(C) the initial deliveries of Loaned Stock against the settlement price in respect of each such contract shall be deemed to have been made;

~~(iv)~~(D) the ~~lending Hedge~~Lending Clearing Member shall be the Lending Clearing Member and the ~~borrowing Hedge~~Borrowing Clearing Member shall be the Borrowing Clearing Member in respect of such ~~Stoek~~Hedge Loan for all purposes of the Rules; and

~~(v)~~(E) the terms of the original stock loan (other than terms that establish congruence) and the representations, warranties and covenants made by each of the parties to the original stock loan under the Master Securities Loan Agreement or any other agreements with respect to the original stock loan shall ~~(1)~~A to the extent that they are inconsistent with the By-Laws and Rules of the Corporation, be eliminated from the pair of congruent contracts constituting the ~~Stoek~~Hedge Loan and replaced by applicable By-Laws and Rules of the Corporation, and ~~(2)~~B to the extent that they are not inconsistent with the By-Laws and Rules of the Corporation, remain in effect as between such parties to the original stock loan, but shall not impose any additional obligations on the Corporation.

~~(3)~~A stock loan contract which is rejected by the Corporation shall remain effective as between the initiating ~~Hedge~~ Clearing Members but shall have no further effect as regards the Corporation. For purposes of the foregoing, a replacement stock loan contract shall be “congruent” to the stock loan contract replaced if and only if the contracts agree with respect to the identity of the Eligible Stock that is to be lent, the number of shares that are to be lent and the settlement price.

(c) Use of Collateral. Subject only to the provisions of paragraph (e) of this Rule and such obligations in respect of the Collateral as the Lending Clearing Member may have by agreement with the person for whose account the Loaned Stock is held, the Lending Clearing Member may use or invest the Collateral as it may deem fit at its own risk and for its own account and shall retain any income and profits therefrom and bear all losses therefrom. The sole obligation of the Lending Clearing Member in respect of the Collateral shall be to act as agent for the Corporation in repaying an amount equal to the Collateral (as adjusted from time to time by mark-to-market payments made pursuant to Rule 22049) to the Borrowing Clearing Member, or in otherwise disposing of the Collateral in such other manner as the Corporation may direct in the event that the Borrowing Clearing Member has been suspended pursuant to Chapter XI of the ~~r~~Rules, if and when the ~~Stoek~~Hedge Loan is terminated as provided in the Rules.

(d) Use of Loaned Stock. Until such time as a ~~Stock~~Hedge Loan is terminated as provided in the Rules, the Borrowing Clearing Member shall have all incidents of ownership of the Loaned Stock, including without limitation the right to transfer the Loaned Stock to others; ~~provided, however, that (1) the Borrowing Clearing Member shall be obligated to make mark-to-market payments to the Corporation and receive mark-to-market payments from the Corporation with respect to the Loaned Stock as provided in Rule 2204; and (2) the Borrowing Clearing Member shall be obligated with respect to all dividends and distributions pertaining to the Loaned Stock as set forth in Rule 2206.~~

(e) Covenants of Clearing Members. Each lending of Loaned Stock by a Lending Clearing Member, and each borrowing of Loaned Stock by a Borrowing Clearing Member, shall constitute a representation and covenant by the Clearing Member to the Corporation that its participation in such lending or borrowing is in compliance, and will comply, with all applicable laws and regulations, including without limitation Rule 15c3-3 and all other applicable rules and regulations of the Securities and Exchange Commission, any applicable provisions of Regulation T of the Board of Governors of the Federal Reserve System, and the rules of the Financial Industry Regulatory Authority and any other regulatory or self-regulatory organization to which the Clearing Member is subject.

(f) Prohibited Transactions. ~~Hedge~~ Clearing Members shall be prohibited from initiating stock loans intended for inclusion in the Stock Loan/~~Hedge~~ Program that involve the lending of any Eligible Stock issued by such ~~Hedge~~ Clearing Member or any Member Affiliate of such ~~Hedge~~ Clearing Member.

~~...~~ ***Interpretations and Policies:***

~~.01 The Corporation makes available to each Hedge Clearing Member, during a business day, updated position information that reflects current stock loan and borrow activity, including new positions, transfers of positions, reclaim notifications, and returns.~~

**RULE 2203 – Role of the Corporation**<sup>[32]</sup>

**SECTION 2.** (a) In General. Commencing at the time at which the Corporation accepts a ~~Stock Loan~~Hedge Loan as described in Rule 2202, the role of the Corporation in respect of the ~~Stock Loan~~Hedge Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member.

(b) Rights and Obligations as Against the Corporation. ~~Without limiting the generality of the foregoing (i) the rights of the two Clearing Members that are parties to a Stock Loan to receive mark-to-market payments, and their obligations to make mark-to-market payments~~ Rights and obligations of Clearing Members that are parties to a Hedge Loan that shall be as against the Corporation, and not as against each other; include:

<sup>[32]</sup> By-Law Article XXI, Sec. 2 is deleted and relocated here with changes as marked.]

(1) the right to receive mark-to-market payments, and the obligation to make mark-to-market payments; and

~~(ii)~~ (2) in the event of a termination of a ~~Stock Loan~~Hedge Loan in accordance with the Rules (with the exception of a termination by offset as provided in Rule ~~2208(e)~~2213(d) or Rule ~~2212~~2217), the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price, and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price ~~shall be as against the Corporation. In addition to the foregoing:~~

(c) Position Netting. (1) ~~stock~~Stock loan positions of a Clearing Member established as a result of ~~Stock Loans~~Hedge Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member ~~shall be aggregated for position reporting purposes, but shall~~ will not be netted against any stock borrow position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members or the voluntary termination by offset and re-matching of Matched-Book Positions in accordance with Rule ~~2208(e)~~2213(d).; ~~and~~

(2) ~~stock~~Stock borrow positions of a Clearing Member established as the result of ~~Stock Loans~~Hedge Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing Member ~~shall be aggregated for position reporting purposes, but shall~~ will not be netted against any stock loan position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members or the voluntary termination by offset and re-matching of Matched-Book Positions in accordance with Rule ~~2208(e)~~2213(d).

~~(b)~~ (d) Stock Loan and Stock Borrow Positions.

(1) Each Hedge Loan will be maintained on the books and records of the Corporation as a unique matched pair of contracts with one such contract being between the Lending Clearing Member and the Corporation as borrower and the second such contract being between the Corporation as Lender and the Borrowing Clearing Member.

(2) Upon acceptance of a ~~Stock Loan~~Hedge Loan, the Corporation shall in connection with each unique pair of contracts:

(A) create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Stock that is the subject of the ~~Stock Loan~~Hedge Loan, the number of shares loaned, the amount of Collateral received from the Borrowing Clearing Member and the identity of the Borrowing Clearing Member, and such other terms that the Corporation receives from the Clearing Members; and

~~(B) shall~~ create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Stock that is the subject of the Stock Loan Hedge Loan, the number of shares borrowed, the amount of Collateral delivered to the Lending Clearing Member, ~~and~~ the identity of the Lending Clearing Member and such other terms that the Corporation receives from the Clearing Members. ~~The Corporation shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans.~~

~~(e)~~ [relocated to Rule 2213(e) with changes as marked thereto]

~~... Interpretations and Policies:~~

~~01~~ [relocated to Rule 2214(e) with changes as marked thereto]

**Rule 2204 – Agreements of the Borrowing Clearing Member**<sup>[33]</sup>

~~SECTION 3.~~(a) Agreements. The Clearing Member that is the Borrowing Clearing Member in respect of a Stock Loan Hedge Loan agrees with the Corporation that:

~~(a)~~(1) upon the acceptance of the Hedge Loan by the Corporation, the resulting stock borrow position of the Borrowing Clearing Member shall be created and subsequently maintained in accordance with ~~Section 2 of this Article XXI~~Rule 2203(d) and Rule 2206;

~~(b)~~(2) so long as such stock borrow position is thereafter maintained, the Borrowing Clearing Member shall make all required margin deposits with the Corporation in accordance with Rule ~~2203~~2208 and all required mark-to-market payments to the Corporation in accordance with Rule ~~2204~~2209; and

~~(e)~~(3) with the exception of a termination by offset as provided in Rule ~~2208(e)~~2213(d) or Rule ~~2212~~2217, in the event that the Lending Clearing Member, the Borrowing Clearing Member or the Corporation terminates the Stock Loan Hedge Loan, the Borrowing Clearing Member shall deliver the Loaned Stock, against payment of the settlement price, in accordance with the By-Laws and the Rules.

(b) Conflicting Records. In the event of a conflict between the records of the Corporation and any records generated by the Borrowing Clearing Member regarding a Stock Loan Hedge Loan and resulting stock borrow positions, the records generated by the Corporation will prevail and the Borrowing Clearing Member shall remain liable for all obligations associated with such stock borrow positions maintained on the records of the Corporation.

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<sup>[33]</sup> By-Law Article XXI, Sec. 3 is deleted and relocated here with changes as marked.]

**Rule 2205 – Agreements of the Lending Clearing Member**<sup>[34]</sup>

**SECTION 4.** (a) Agreements. The Clearing Member that is the Lending Clearing Member in respect of a Stock Loan Hedge Loan agrees with the Corporation that:

(a)(1) upon the acceptance of the Stock Loan Hedge Loan by the Corporation, the resulting stock loan position of the Lending Clearing Member shall be created and subsequently maintained in accordance with ~~Section 2 of this Article XXI~~ Rule 2203(d) and Rule 2206;

(b)(2) so long as such stock loan position is thereafter maintained, the Lending Clearing Member shall make all required margin deposits with the Corporation in accordance with Rule ~~2203~~ 2208 and all required mark-to-market payments to the Corporation in accordance with Rule ~~2204~~ 2209; and

~~(e)~~ (3) with the exception of a termination by offset as provided in Rule ~~2208(e)~~ 2213(d) or Rule ~~2212~~ 2217, in the event that the Borrowing Clearing Member, the Lending Clearing Member or the Corporation terminates the Stock Loan Hedge Loan, the Lending Clearing Member shall pay the settlement price, against delivery of the Loaned Stock, in accordance with the By-Laws and the Rules.

(b) Conflicting Records. In the event of a conflict between the records of the Corporation and any records generated by the Lending Clearing Member regarding a Stock Loan Hedge Loan and resulting stock loan positions, the records generated by the Corporation will prevail and the Lending Clearing Member shall remain liable for all obligations associated with such stock loan positions maintained on the records of the Corporation.

**Rule 2206 – Maintaining Stock Loan and Stock Borrow Positions in Accounts**<sup>[35]</sup>

**SECTION 5.** (a) Maintenance in Accounts. Notwithstanding the provisions of Section 3 of Article VI of the By-Laws, stock loan positions and stock borrow positions resulting from Stock Loan Hedge Loan may be maintained in any of a ~~Hedge~~-Clearing Member's accounts with the Corporation except those excluded by Rule 2206(d). For the purposes of Section 3 of Article VI of the By-Laws, stock loan positions resulting from Stock Loans Hedge Loans shall be deemed to be “securities” and stock borrow positions resulting from Stock Loans Hedge Loans shall be deemed to be “funds,” and the authority of the Corporation to close out “positions” in any account shall include the authority to close out such stock loan positions and stock borrow positions.

(b) Transfer Among Accounts. At any time on any business day prior to the deadline specified by the Corporation, an eligible Clearing Member may transfer ~~all or any portion of~~ an existing stock loan or stock borrow position (including positions resulting from that day’s activity) with respect

<sup>[34]</sup> By-Law Article XXI, Sec. 4 is deleted and relocated here with changes as marked.]

<sup>[35]</sup> By-Law Article XXI, Sec. 5 is deleted and relocated here with changes as marked.]

to a [Hedge Loan](#) among its accounts by submitting an appropriate transfer instruction to the Corporation that designates the accounts and/or sub-accounts from and to which the positions shall be transferred; provided, that any such transfer will result in the transfer of all shares related to the relevant stock loan position and stock borrow position. ~~If a Clearing Member's request for transfer exceeds the number of stock loan or stock borrow shares available in the account from which the shares will be transferred, then the transfer instruction will be rejected.~~<sup>[36]</sup>

(c) Satisfying Return Instructions. (1) Returns of shares will be reflected in the Clearing Member's ~~account or sub-account designated on a delivery order submitted by the Depository default account.~~ If there are insufficient shares in the designated account to fulfill the return instruction, or if there is no account designated in the Depository delivery order, the excess shares to be returned shall will be taken from the Clearing Member's default account. If there are insufficient shares in the default account to fulfill the return instruction, the remaining shares will be rejected and the return instruction will be void to that extent.<sup>[37]</sup>

(2) The Corporation will record any return of shares in the relevant account or sub-account of the Borrowing Clearing Member by decreasing the number of shares borrowed in a contract that then reflects the oldest Hedge Loan between the Borrowing Clearing Member and the Lending Clearing Member for the Eligible Stock on the books and records of the Corporation. If a return would close out the oldest Hedge Loan, or any subsequent Hedge Loan in accordance with this Rule, the Corporation will decrease the number of shares borrowed in a contract that then reflects the next oldest Hedge Loan.

~~...~~ ***Interpretations and Policies:***

~~.01~~ (d) Ineligible Accounts. Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a ~~Hedge~~ Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from ~~Stock Loans~~ Hedge Loans to any proprietary X-M account, non-proprietary X-M account, internal non-proprietary cross-margining account or segregated futures account.

~~[Section 5 of this Article]~~ Rule 2206 supplements Section 3 of Article VI of the By-Laws.]

**RULE 2207~~1~~ – Instructions to the Corporation**

(a) Standing Instructions.

(1) In respect of stock loan and stock borrow transactions which are intended for inclusion in the Stock Loan/Hedge Program and stock loan and stock borrow positions resulting from such transactions, a ~~Hedge~~ Clearing Member shall provide standing instructions to the Corporation

<sup>[36]</sup> Interpretation and Policy (“I&P”) .01 to current Rule 2201 is deleted and relocated here with changes as marked.]

<sup>[37]</sup> I&P .02 to current Rule 2201 is deleted and relocated here with changes as marked.]



with respect to matters identified by the Corporation from time to time, including but not limited to:

~~(i)~~(A) the account number of each account with the Depository in which stock loan and stock borrow transactions are to be effected;

~~(ii)~~(B) the default account with the Corporation, which may be any of the ~~Hedge~~-Clearing Member's accounts or sub-accounts thereof that are not ineligible under ~~Article XXI, Section 5, Interpretation .01 of the By-Laws~~Rule 2206(d), to which new stock loan positions and stock borrow positions are to be allocated in the absence of executable instructions of the Clearing Member to allocate the positions to a different account; and

~~(C) (iii) the account with the Corporation (which may be the Clearing Member's firm account or its combined Market Makers' account) from and to which mark-to-market payments are to be made, and (iv) the Collateral requirement that will be applicable to the stock loan positions of the Hedge-Clearing Member (expressed as a percentage of the mark-to-market value of the Eligible Stocks that are the subject of the stock loan positions, which percentage may be set at 100% or 102%).~~

(2) The Corporation may also permit a ~~Hedge~~-Clearing Member to provide standing instructions with respect to other aspects of the Clearing Member's participation in the Stock Loan/Hedge Program.

(3) A ~~Hedge~~-Clearing Member may revise its standing instructions, subject to the Corporation's notice requirements as in effect from time to time.

(b) Specific Instructions. A ~~Hedge~~-Clearing Member may give the Corporation specific instructions from time to time which are contrary to its standing instructions with respect to the account (or sub-account thereof) to which a particular stock loan or stock borrow position (either a new position or an existing position which the ~~Hedge~~-Clearing Member wishes to transfer to a different account) is to be allocated. With respect to a new position, in the absence of such specific instructions, or if the specific instruction is invalid for any reason, the position will be allocated to the ~~Hedge~~-Clearing Member's default account.

(c) Appointment of CDS as Agent.

(1) A Canadian Clearing Member on behalf of which CDS maintains an identifiable sub-account in a CDS account at the Depository may appoint, in such manner as the Corporation will from time to time prescribe, CDS to act on its behalf with respect to effecting delivery orders for stock loan and stock borrow transactions in the accounts of such Clearing Member through the Depository. An appointment pursuant to this paragraph will become effective as of the second business day following the day on which the Corporation receives written notice of the appointment from the Clearing Member, or such later date as may be specified by the Clearing Member, and (unless the Corporation terminates the appointment at an earlier time) will remain effective until the close of business on the thirtieth calendar day after the Corporation receives, from either the Clearing Member or CDS, written notice of revocation of the appointment, and

remains effective thereafter, with respect to each obligation of the Clearing Member to close out open stock loan and borrow positions directed to CDS prior to the effective date of the revocation, until the close out of all such positions is completed. If, for any reason, CDS ceases to act on behalf of the Clearing Member with respect to effecting delivery orders for stock loan and stock borrow transactions, the Corporation may require the Clearing Member to close out open stock loan and borrow positions through buy-in and sell-out procedures, or any other procedures provided in the By-Laws or Rules, as necessary.

~~(d)~~(2) During the effectiveness of an appointment pursuant to paragraph (c)(1) above, the Clearing Member remains responsible to the Corporation with respect to its stock loan and borrow positions, regardless of any non-performance or failure by CDS, and the Corporation may treat any failure by CDS to complete delivery or payment required to close out an open stock loan or borrow position as a default by such Clearing Member and the Corporation may thereby exercise all remedies that the Corporation has under its By-Laws and Rules against a defaulting Clearing Member and the collateral deposited by the Clearing Member.

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

~~.01~~ [Relocated to Rule 2206(b) with changes marked thereto.]

~~.02~~ [Relocated to Rule 2206(c)(1) with changes marked thereto.]

**RULE 22083 – Margin Deposited with the Corporation**

Each ~~Hedge~~ Clearing Member shall be required to maintain margin with the Corporation in respect of its stock loan positions and stock borrow positions resulting from Hedge Loans. The amount of margin assets required to be deposited shall be as determined pursuant to Rule 601.

**RULE 22094 – Mark-to-Market Payments**

(a) *In General.* In order to adjust the amount of the Collateral securing a ~~Stock~~Hedge Loan for changes in the market value of the Eligible Stock that is the subject of the ~~Stock~~Hedge Loan, Borrowing and Lending Clearing Members shall be required to make mark-to-market payments to the Corporation, and the Corporation shall be required to make mark-to-market payments to such Clearing Members, on each business day with respect to each ~~Stock~~Hedge Loan until such Hedge Loan has been repaid by the Borrowing Clearing Member in accordance with the Rules. Any mark-to-market payment shall be made in the account in which the Hedge Loan is held. No mark-to-market payment shall be required in respect of any stock loan or stock borrow position on and after the business day following the day on which such position was extinguished.

(b) *Mark-to-Market Payment Amount.* The amount of any mark-to-market payment to be made on any business day will be the amount necessary to cause the amount of Collateral to be equal to the Collateral requirement applicable to a Hedge Loan. The Collateral requirement applicable to a Hedge Loan will be the mark-to-market value of the Loaned Stock, as determined by the Corporation, multiplied by a percentage (either 100% or 102%) as specified in Rule 2207(a).

~~shall represent the increase or decrease, as applicable, in the value of the stock loan position and stock borrow position relating to such Stock Loan. The increase or decrease in value of a stock borrow position shall be deemed to be equal to: (i) in the case of a stock borrow position that was established on the preceding business day, the result of subtracting the marking price on such day from the settlement price; and (ii) in the case of any other stock borrow position, the result of subtracting the marking price on the preceding business day from the marking price on the second preceding business day. The increase or decrease in value of a stock loan position shall be deemed to be equal to: (1) in the case of a stock loan position that was established on the preceding business day, the result of subtracting the settlement price from the marking price on such day; and (2) in the case of any other stock loan position, the result of subtracting the marking price on the second preceding business day from the marking price on the preceding business day. No mark-to-market payment shall be required in respect of any stock loan or stock borrow position on and after the business day following the day on which such position was extinguished.~~

(bc) Netting; Debits. On each business day, the Corporation shall net the mark-to-market payments, if any, owed by and to each Hedge-Clearing Member in respect of its stock loan and borrow positions resulting from StockHedge Loans. At or before the settlement time on each business day, each Hedge-Clearing Member shall be obligated to pay to the Corporation any net mark-to-market payment amount owed to the Corporation in respect of such positions carried in the Clearing Member's accounts, and the Corporation shall be authorized to withdraw from the Clearing Member's bank account established in respect of the account identified by the Clearing Member as its account from and to which mark-to-market payments are to be made an amount equal to such net amount, provided that the Corporation may, but shall not be required to, offset against any such net amount any credit balance which may be due from the Corporation in the same account.

(ed) Netting; Credits. Subject to Rule 505, at or before the settlement time on each business day, the Corporation shall be obligated to deposit in the designated bank account of each Hedge-Clearing Member (provided the Clearing Member has deposited all margin required to be deposited pursuant to Chapter VI of the Rules and has deposited the full amount of any net daily premium due to the Corporation under Rule 502) any net mark-to-market payment amount owed by the Corporation to the Hedge-Clearing Member on such day in respect of its stock loan and stock borrow positions resulting from StockHedge Loans. From and after such time, full settlement shall be deemed to have been made in respect of mark-to-market payments for such day, and the Corporation shall have no further obligation in respect thereof.

#### **RULE 221005 – Daily Reports**

Prior to such time on each business day as the Corporation may from time to time establish, the Corporation shall make available to each Hedge-Clearing Member one or more reports listing all stock loan positions and stock borrow positions resulting from StockHedge Loans carried by the Clearing Member, including new positions, transfers of positions, reclaim notifications, and returns. A Hedge-Clearing Member must have adequate policies and procedures in place to perform a reconciliation of its stock loan position balances between the records of the Hedge-Clearing Member and any report or reports provided by the Corporation at least once per stock

loan business day and resolve any discrepancies based on such report(s) for a given stock loan business day by 9:30 A.M. Central Time on the following stock loan business day.

#### **RULE 221106 – Dividends and Distributions**

(a) *Right to Receive Dividends and Distributions; Payment Thereof.* The Lending Clearing Member shall be entitled to receive all dividends and distributions made on or in respect of Loaned Stock the record dates for which are during the term of the **StockHedge** Loan of such Loaned Stock, to the full extent it would have been so entitled if the **StockHedge** Loan had not been made, and the Borrowing Clearing Member shall be obligated to pay or deliver all such dividends and distributions. Such dividends and distributions shall include, but not be limited to: (i) all property, (ii) all cash dividends and distributions, (iii) all stock dividends, (iv) all securities received as a result of split-ups of the Loaned Stock and distributions in respect thereof, (v) all rights to purchase additional securities, and any cash or other considerations paid or provided by the issuer of such security in exchange for any vote, consent or the taking of any similar action in respect of such security (regardless whether the record date for such vote, consent or other action falls during the term of the **StockHedge** Loan). Each cash dividend or distribution shall be paid by the Borrowing Clearing Member directly to the Lending Clearing Member promptly following the payment date of such cash dividend or distribution. Non-cash dividends and distributions received by the Borrowing Clearing Member shall be added to the Loaned Stock, shall be considered such for all purposes, and shall be delivered to the Corporation by the Borrowing Clearing Member and by the Corporation to the Lending Clearing Member upon any termination of the **StockHedge** Loan.

(b) *Failure to Pay Dividends or Distributions; Resolution Thereof.* If a Borrowing Clearing Member fails to pay a cash dividend or distribution in respect of Loaned Stock to the Lending Clearing Member promptly following the payment date for such cash dividend or distribution, the Lending Clearing Member may so notify the Corporation. Following its confirmation that a cash dividend or distribution was in fact made in respect of the Loaned Stock, the Corporation shall withdraw the amount of the cash dividend or distribution from the Borrowing Clearing Member's bank account established in respect of the account in which the stock borrow position resulting from the **StockHedge** Loan is maintained and pay such amount to the Lending Clearing Member.

#### **RULE 221207 – Indemnification by Borrowing Clearing Member**

The Borrowing Clearing Member in respect of a **StockHedge** Loan agrees to indemnify, defend, hold and save harmless the Corporation and the Lending Clearing Member from any claims, actions, demands, or lawsuits of any kind whatsoever arising in any way out of any use that the Borrowing Clearing Member makes of the Loaned Stock.

**RULE 221308 – ~~Settlement Date~~ Termination of Hedge Loans**(a) Termination by Clearing Member.

(1) Initiating a Termination. The termination of a ~~Stock~~Hedge Loan, or any portion thereof, may be initiated by either:

(i) ~~A~~ the Borrowing Clearing Member by giving the Depository instructions (including the appropriate “reason code”) to transfer a specified quantity of the Loaned Stock to the specified account of the Lending Clearing Member at the Depository, against payment of the settlement price in respect thereof (which shall be specified in such instructions) by the Lending Clearing Member to the specified account of the Borrowing Clearing Member at the Depository; or

(ii) ~~B~~ the Lending Clearing Member, by giving an irrevocable notice to the Borrowing Clearing Member, in such manner as the Corporation may specify from time to time and prior to a time established by the Corporation from time to time, that the Lending Clearing Member is terminating the ~~Stock~~Hedge Loan, or a portion thereof, and specifying in such notice the number of shares of the Loaned Stock in respect of which the Lending Clearing Member is terminating the ~~Stock~~Hedge Loan (the quantity of the Loaned Stock that the Borrowing Clearing Member wishes to return or that the Lending Clearing Member wishes to recall shall be referred to herein as the “Specified Quantity”).

(2) Settlement Date. The settlement date for any such termination shall be the earlier of: (1) the date on which the Borrowing Clearing Member initiates the termination or (2) the date that is one stock loan business day after the date on which the Lending Clearing Member initiates the termination. The fact that a Lending Clearing Member has initiated the termination of a ~~Stock~~Hedge Loan, or a portion thereof, shall not preclude the Borrowing Clearing Member from terminating such ~~Stock~~Hedge Loan, or a portion thereof, before the date that would otherwise have been the settlement date.

(b) Instructions to Depository.

(1) If the Lending Clearing Member initiated the termination of a ~~Stock~~Hedge Loan, or a portion thereof, then on the settlement date the Borrowing Clearing Member shall, prior to a time established by the Corporation from time to time, give the Depository instructions (including the appropriate “reason code”) to transfer a quantity of the Loaned Stock equal to or greater than the Specified Quantity, but not greater than the total amount of the Loaned Stock then in the Lending Clearing Member’s stock loan position with respect to the Borrowing Clearing Member, to the appropriate account of the Lending Clearing Member at the Depository, against payment of the settlement price in respect thereof (which shall be specified in such instructions) by the Lending Clearing Member to the specified account of the Borrowing Clearing Member at the Depository.

(e) ~~2~~ Notwithstanding that the Lending Clearing Member or the Borrowing Clearing Member initiated the termination of a ~~Stock~~Hedge Loan, the actions of the Borrowing Clearing Member on the settlement date to cause the Depository to transfer the Loaned Stock to the account of the Lending Clearing Member and the settlement price to the account of the borrowing Clearing

Member shall be undertaken as the Corporation's agent, and the Corporation shall have the authority to instruct the Borrowing Clearing Member to proceed in another manner in the event that the Lending Clearing Member has been suspended pursuant to Chapter XI of the Rules.

~~(d)~~ Mark-to-Market Payments Pending Termination. Notwithstanding that the Lending Clearing Member or the Borrowing Clearing Member has initiated the termination of a ~~Stock~~Hedge Loan, the Lending Clearing Member and the Borrowing Clearing Member shall continue to make and receive daily mark-to-market payments in accordance with Rule 22049, and to deposit margin with the Corporation in accordance with Rule 22038, up to and including the date on which settlement of the termination of the ~~Stock~~Hedge Loan is actually accomplished.

~~(e)~~ Termination by Offset and Re-Matching of Matched-Book Positions.

(1) Notwithstanding any other provision of the By-Laws or Rules, and subject to such requirements and limitations described in this Rule 220813, a ~~Hedge~~-Clearing Member may submit a written request to the Corporation to effect one or more position adjustments to terminate by offset all or some of its Matched Book Positions with respect to Hedge Loans if the following conditions are met:

~~(i)~~(A) the requesting ~~Hedge~~-Clearing Member, its Matched-Book Lending Clearing Member, and its Matched Book Borrowing Clearing Member have furnished to the Corporation their written agreement to ~~(A)~~(i) the termination by offset of such Matched-Book Positions maintained in the requesting ~~Hedge~~-Clearing Member's account and ~~(B)~~(ii) the Corporation's re-matching the stock borrow position for the same number of shares in the same Eligible Stock maintained in a designated account of the Matched-Book Borrowing Clearing Member against the stock loan position for the same number of shares in the same Eligible Stock maintained in a designated account of the Matched-Book Lending Clearing Member;

~~(ii)~~(B) The written agreement furnished by the requesting ~~Hedge~~-Clearing Member, the Matched-Book Borrowing Clearing Member, and the Matched-Book Lending Clearing Member must be in a form satisfactory to the Corporation in its sole discretion; and

~~(iii)~~(C) The written request to terminate by offset and to re-match stock loan and borrow positions may be for less than the total number of shares of the Eligible Stock that is the subject of the stock loan and borrow positions maintained, as applicable, by the requesting ~~Hedge~~ Clearing Member, the Matched-Book Borrowing Clearing Member, and Matched-Book Lending Clearing Member, but must be for an equal number of shares.

(2) In the event the Corporation, in its sole discretion, approves the requested termination by offset and re-matching of positions, the requesting ~~Hedge~~-Clearing Member, the Matched-Book Borrowing Clearing Member, and the Matched-Book Lending Clearing Member are not required to issue instructions to the Depository in accordance with Rules 2202(a) and 220813(a) to terminate such stock loan and stock borrow positions maintained in the Stock Loan/Hedge Program or to initiate new stock loan transactions for inclusion in the Stock Loan/Hedge Program.

(3) From and after the time the Corporation has completed the requested position adjustments to terminate by offset and re-match the Matched-Book Positions maintained in the requesting ~~Hedge~~-Clearing Member's account as set forth in Rule 220914(hd), the requesting ~~Hedge~~ Clearing Member shall have no further obligation under the By-Laws and Rules with respect to such positions.

(4) From and after the time the Corporation has completed the termination by offset and re-matching as set forth in Rule 220914(hd), the Borrowing Clearing Member with re-matched stock borrow positions remains obligated as a Borrowing Clearing Member and the Lending Clearing Member with re-matched stock loan positions remains obligated as a Lending Clearing Member with respect to the re-matched positions as specified in the By-Laws and Rules applicable to the Stock Loan/Hedge Program.

(5) Upon notification that the Corporation has completed the termination by offset and re-matching of stock loan and borrow positions as set forth in Rule 220914(hd), the requesting ~~Hedge~~-Clearing Member and the Borrowing Clearing Member and Lending Clearing Member with re-matched stock loan and borrow positions shall make any necessary bookkeeping entries at the Depository necessitated by the termination by offset and re-matching.

(e) Termination by the Corporation.

(1) The Corporation may at any time terminate the outstanding ~~Stock Hedge~~ Loans relating to one or more particular Eligible Stocks upon a determination by the Corporation, in its sole discretion, that such action is warranted by reason of the lack of substantial volume in such ~~Stock Hedge~~ Loans, the impending termination of business on the part of the Corporation, the inability of the Corporation from time to time to maintain in effect satisfactory arrangements with the Depository, or other circumstances in which the Corporation in its sole discretion determines that such action is necessary or appropriate for the protection of the Corporation, its Clearing Members or the public. The Corporation may effect a termination pursuant to this paragraph ~~(e)~~ by giving written notice thereof to all affected Clearing Members specifying the date on which such termination is to become effective, which date shall be a stock loan business day at least one stock loan business day after the date of such notice.<sup>[38]</sup>

(2) Upon approval by the Chief Executive Officer or Chief Operating Officer and notice to Clearing Members, the Corporation may cease to accept the initiation of new Hedge Loans. The determination will be made based upon factors including, but not limited to, the number of participants that are able to conduct business under the Market Loan Program, the amount of transactions flowing through the Market Loan Program, the proportion of loan balances between the two Stock Loan/Hedge Program and the Market Loan Program, and feedback from members about when they expect to be ready to migrate fully to the Market Loan Program. Following the date the Corporation ceases to accept new Hedge Loans, Clearing Members may maintain existing Hedge Loans until returned or recalled.

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<sup>[38]</sup> By-Law Article XXI, Sec. 2(c) is deleted and relocated here with changes as marked.]

**RULE 221409 – Settlement**

(a) Termination of Hedge Loans; When Complete. Termination of a StockHedge Loan, or a portion thereof, shall be complete when:

(1)(A) the Depository has made final entries on its books showing the transfer to the Lending Clearing Member's account of the amount of Loaned Stock specified in the Borrowing Clearing Member's transfer instructions and the transfer of the settlement price in respect thereof to the Borrowing Clearing Member's account and the Corporation has been effectively notified of such entries; or

(B) the Lending Clearing Member and the Borrowing Clearing Member have certified to the Corporation in such manner as the Corporation shall from time to time prescribe that the StockHedge Loan (or designated portion thereof) has been terminated between the Clearing Members and any transfer of the settlement price has occurred between the Clearing Members; and

(2) the records of the Corporation reflect the termination of such StockHedge Loan. From and after the time when termination of a StockHedge Loan, or a portion thereof, is complete in accordance with this Rule, the Corporation shall be discharged from its obligations as borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member, and the Corporation shall have no further obligation in respect of the terminated StockHedge Loan, or such portion.

(b) Buy-In.

(1) If the Lending Clearing Member initiates the termination of a StockHedge Loan and the Lending Clearing Member does not receive the Specified Quantity in its designated account with the Depository on the settlement date at or before such time (the "Settlement Time") as may be specified by the Corporation from time to time, the Borrowing Clearing Member shall nevertheless be entitled to receive from the Lending Clearing Member the settlement price in respect of the number of shares (if any) of the Loaned Stock actually transferred by the Borrowing Clearing Member to the Lending Clearing Member, and the termination of the StockHedge Loan shall be complete ~~at the time thereafter~~when:

(A) ~~when~~ the Borrowing Clearing Member has caused the quantity of the Loaned Stock necessary to complete the return of the Specified Quantity (the "Delinquent Quantity") to be transferred to the Lending Clearing Member's designated account at the Depository, and the Lending Clearing Member has caused the settlement price in respect of the Delinquent Quantity to be transferred to the account of the Borrowing Clearing Member at the Depository; or

(B) ~~when~~ the Lending Clearing Member has executed such buy-in prior to actually receiving the Delinquent Quantity in its designated account at the Depository from the Borrowing Clearing Member.



(2) The Lending Clearing Member may execute a buy-in of the Delinquent Quantity pursuant to this paragraph at any time after the Settlement Time on the settlement date, provided that the Lending Clearing Member has not actually received the Delinquent Quantity in its designated account with the Depository from the Borrowing Clearing Member prior to executing the buy-in.

(3) After execution of a buy-in, the Lending Clearing Member shall immediately give written notice to the Corporation and the Borrowing Clearing Member of such buy-in, including the quantity of the Loaned Stock purchased (which shall not be greater than, and should ordinarily be equal to, the Delinquent Quantity) and the price paid (including any transactional costs, fees or interest incurred in connection with such buy-in, the “Buy-In Costs”). Such notice shall be in a form specified by the Corporation from time to time. The Lending Clearing Member shall execute the buy-in in a commercially reasonable manner and must be prepared to defend the timing of the buy-in and the Buy-In Costs. Any objections by the Borrowing Clearing Member with respect to the timeliness of the buy-in and the reasonableness of the Buy-In Costs shall be matters to be resolved as between the Lending Clearing Member and the Borrowing Clearing Member, and the Corporation shall have no responsibility in respect thereof.

(e4) If a buy-in has been completed by a Lending Clearing Member pursuant to paragraph (b), the Corporation shall (i) determine the difference between the amount of Collateral held by the Lending Clearing Member in respect of the bought-in Loaned Stock and the Buy-In Costs, (ii) pay such amount to or collect such amount from, as applicable, the account of the Lending Clearing Member in which the stock loan position was carried, and (iii) collect such amount from or pay such amount to, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried. Such collection and payment having been made, the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of the bought-in Loaned Stock shall be extinguished, and the Corporation shall have no further obligation in respect thereof.

(d5) Notwithstanding the preceding provisions of this Rule, if the Lending Clearing Member is unable to complete the buy-in or if, for any reason, effecting a buy-in is not permitted, the Corporation, in its discretion and upon notice to the Lending Clearing Member, may fix a cash settlement value for the quantity of the Loaned Stock not returned to the Lending Clearing Member. The value fixed by the Corporation shall be final and not subject to review. The Corporation shall (i) determine the difference between the amount of Collateral held by the Lending Clearing Member in respect of such quantity of the Loaned Stock and the cash settlement value fixed by the Corporation, (ii) pay such amount to or collect such amount from, as applicable, the account of the Lending Clearing Member in which the stock loan position was carried, and (iii) collect such amount from or pay such amount to, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried. Such collection and payment having been made, the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of such quantity of the Loaned Stock shall be extinguished, and the Corporation shall have no further obligation in respect thereof. These payments shall be made through the Corporation’s daily cash settlement system and may be netted against other cash settlements due to or from the same account in accordance with the By-Laws and Rules.

(~~e~~6) Notwithstanding any other provision of the By-Laws or Rules, from and after the time at which a buy-in is executed pursuant to paragraph (b)(2) of this Rule or a cash settlement value is determined pursuant to paragraph (~~d~~b)(5) of this Rule, the Borrowing Clearing Member shall have no further obligation to deliver to the Corporation, and the Corporation shall have no further obligation to deliver to the Lending Clearing Member, a quantity of the Loaned Stock equal to the number of shares bought in or cash-settled, the Corporation shall have no further right to receive from the Lending Clearing Member, and the Borrowing Clearing Member shall have no further right to receive from the Corporation, the Collateral in respect of a quantity of the Loaned Stock equal to the number of shares bought in or cash-settled, and no delivery of Loaned Stock by the Borrowing Clearing Member to the Lending Clearing Member shall constitute a return of any of the Loaned Stock in respect of which a buy-in is executed or a cash settlement value is determined.

(~~f~~c) Sell-Out. (1) If the Borrowing Clearing Member initiates the termination of a ~~Stoek~~Hedge Loan and the Borrowing Clearing Member does not receive in its specified account with the Depository, at or before the Settlement Time on the settlement date, the full settlement price in respect of the Specified Quantity of Loaned Stock, the Borrowing Clearing Member shall nevertheless deliver to the Lending Clearing Member the number of shares (if any) of the Loaned Stock in respect of which the settlement price has actually been transferred by the Lending Clearing Member to the Borrowing Clearing Member. The portion of the Specified Quantity of Loaned Stock remaining in the Borrowing Clearing Member's possession shall be referred to herein as the "Remaining Quantity." The termination of the ~~Stoek~~Hedge Loan shall be complete ~~at the time thereafter~~when:

(~~1~~A) ~~when~~ the Lending Clearing Member has caused the settlement price in respect of the Remaining Quantity to be transferred to the Borrowing Clearing Member's designated account at the Depository, and the Borrowing Clearing Member has caused the Remaining Quantity to be transferred to the specified account of the Lending Clearing Member at the Depository; or

(~~2~~B) ~~when~~ the Borrowing Clearing Member has executed a sell-out prior to actually receiving the settlement price in respect of the Remaining Quantity in its specified account at the Depository from the Lending Clearing Member.

(2) The Borrowing Clearing Member may execute a sell-out of the Remaining Quantity pursuant to this paragraph at any time after the Settlement Time on the settlement date, provided that the Borrowing Clearing Member has not actually received the settlement price in respect of the Remaining Quantity in its specified account with the Depository from the Lending Clearing Member prior to executing the sell-out.

(3) After execution of a sell-out, the Borrowing Clearing Member shall immediately give written notice to the Corporation and the Lending Clearing Member of such sell-out, including the quantity of the Loaned Stock sold (which shall not be greater than the Remaining Quantity), the price received, and any transactional costs, fees or interest incurred in connection with such sell-out (such transactional costs, fees and interest, the "Sell-Out Costs"). The Borrowing Clearing Member shall execute the sell-out in a commercially reasonable manner and must be prepared to defend the timing of the sell-out, the sell-out price and the Sell-Out Costs. Any objections by the

Lending Clearing Member with respect to the timeliness of the sell-out and the reasonableness of the sell-out price and the Sell-Out Costs shall be matters to be resolved as between the Lending Clearing Member and the Borrowing Clearing Member, and the Corporation shall have no responsibility in respect thereof.

(g4) If a sell-out has been completed by a Borrowing Clearing Member pursuant to paragraph (fc)(2), the Corporation shall (i) subtract the Sell-Out Costs from the price received on such sell-out, and determine the difference between the remaining amount and the settlement price owed to the Borrowing Clearing Member in respect of the sold-out Loaned Stock, (ii) pay such amount to or collect such amount from, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried, and (iii) collect such amount from or pay such amount to, as applicable, the account of the Lending Clearing Member in which the stock loan position was carried. Such collection and payment having been made, the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of the sold-out Loaned Stock shall be extinguished, and the Corporation shall have no further obligation in respect thereof.

(hd) *Termination by Offset of Matched-Book Positions; When Complete.* In the event of a termination by offset and re-match of a ~~stock loan~~ Hedge Loan under Rule 220813(ed), such termination by offset and re-match shall be complete upon the Corporation completing all position adjustments in the accounts of the requesting Hedge Clearing Member, the Matched-Book Borrowing Clearing Member, and the Matched-Book Lending Clearing Member in accordance with Rule 220813(ed) and the earlier of:

(#1) communicating confirmation of the transaction either in the form of direct written communications with the requesting Hedge Clearing Member, the Matched-Book Borrowing Clearing Member and the Matched-Book Lending Clearing Member; or

(#2) when systems reports are produced and provided to the Clearing Members reflecting the transaction.

(e) Errors.

(1) If a Lending Clearing Member and a Borrowing Clearing Member complete the termination of a ~~Stock~~ Hedge Loan at a price other than the correct settlement price for the termination, the Corporation will treat the termination as having been completed at the correct settlement price. If the records of the Corporation show that a Lending Clearing Member and a Borrowing Clearing Member are party on a particular day to two or more Hedge Loans between them in respect of a particular Eligible Stock but having different termination settlement prices (this might occur because one or more of the ~~Stock~~ Hedge Loans was initiated on that day) and the Lending Clearing Member and the Borrowing Clearing Member complete the termination of a ~~Stock~~ Hedge Loan at a price other than the correct settlement price for the termination of any of the ~~Stock~~ Hedge Loans, the Corporation will determine which of the ~~Stock~~ Hedge Loans will be deemed to have been terminated in accordance with its procedures as in effect from time to time, and will treat the termination as having been completed at the correct settlement price for that ~~Stock~~ Hedge Loan. In any of these events, the records of the Corporation shall be dispositive as

between the Corporation and each of the two ~~Hedge~~ Clearing Members, the Lending Clearing Member and the Borrowing Clearing Member will be responsible for reconciling the discrepancy between the actual price and the settlement price utilized by the Corporation among themselves and, ~~notwithstanding paragraph (a) of this Section,~~ the Corporation shall have no responsibility to either the Borrowing Clearing Member or the Lending Clearing Member to reconcile the discrepancy.<sup>[39]</sup>

(2) If two ~~Hedge~~ Clearing Members complete a transfer of stock from one to the other which is reported to the Corporation by the Depository with a “reason code” indicating that the transfer was intended to effect the termination of a ~~Stock Hedge~~ Loan, but the records of the Corporation do not reflect the existence of a ~~Stock Hedge~~ Loan which is consistent with the quantity of stock shown in the reported transfer, the Corporation will reflect on its records the termination of so much of any ~~Stock Hedge~~ Loan that exists on the records of the Corporation and that is consistent (in terms of the Eligible Stock, the identity of the Lending Clearing Member and the identity of the Borrowing Clearing Member) with the reported transfer. The Corporation will reject the remainder of any such reported transfer. Any such rejected transfer shall remain effective as between the two ~~Hedge~~ Clearing Members, but the Corporation shall have no responsibility in respect thereof. The records of the Corporation shall be dispositive as between the Corporation and each of the two ~~Hedge~~ Clearing Members with respect to any such event.<sup>[40]</sup>

(f) Compliance with Applicable Law. Anything else ~~herein~~ in this Chapter XXI to the contrary notwithstanding, the Corporation shall not be held liable for any Clearing Member’s failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of any exchange or self-regulatory organization.

~~... Interpretations and Policies:~~

~~.01~~ [Relocated to Rule 2214(e)(2) with changes as marked thereto]

**RULE 221510 Suspension of a Hedge Clearing Members – Pending and Open Stock Hedge Loans**

(a) Pending Hedge Loans. If the Depository suspends a ~~Hedge~~ Clearing Member prior to the time at which the Corporation would have otherwise accepted a stock loan to which the ~~Hedge~~ Clearing Member is a party as a Stock Hedge Loan, then, notwithstanding any other provision of the By-Laws and Rules, the Corporation shall have no obligation to accept, and shall not accept, the stock loan. In all other circumstances, the Corporation shall accept any stock loan which satisfies the requirements set forth in Rule 2202(b), even if the Corporation has suspended a Clearing Member

<sup>[39]</sup> By-Law Article XXI, Sec. 2, I&P .01 is deleted and relocated here with changes as marked.]

<sup>[40]</sup> Rule 2209, I&P .01 is deleted and relocated here with changes as marked.]

which is a party to the stock loan prior to the time at which the Corporation accepts the stock loan as a ~~Stock~~Hedge Loan.

(b) Open Hedge Loans. Open stock loan and borrow positions resulting from ~~Stock~~Hedge Loans of a suspended ~~Hedge~~ Clearing Member shall, except as hereinafter provided, be terminated in accordance with the provisions of Rule 22~~11~~16, Rule 22~~12~~17, or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances, including, but not limited to, a private auction, as described in Interpretation and Policy .02 of Rule 1104. Any net proceeds from the termination of such stock loan and borrow positions in the accounts of the suspended Clearing Member shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any termination of stock loan and borrow positions pursuant to this Rule.

(c) Exceptions. Notwithstanding the preceding provisions of this Rule, the Corporation may exercise the authority described in Rules 1106(d) and 1106(e) in respect of open stock loan and borrow positions. For purposes of applying such paragraphs to open stock loan and borrow positions, references to "positions," "unsegregated long positions or short positions," and "underlying interests" therein shall be deemed to be references to "stock loan and borrow positions," "stock loan positions or stock borrow positions," and "Eligible Stock," respectively.

~~...~~ ***Interpretations and Policies:***

~~.01 See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out a suspended Clearing Member's open positions in stock loan and/or borrow positions resulting from Stock Loans.~~

**RULE 22~~16~~11 Suspension of a Hedge Clearing Members – Buy-In and Sell-~~o~~Ut Procedures**

(a) Instruction by the Corporation. If a ~~Hedge~~ Clearing Member shall be suspended by the Corporation, the Corporation may direct the Lending Clearing Member or the Borrowing Clearing Member, as applicable, or, in the Corporation's discretion, may instruct an independent broker, to buy in or sell out, as applicable, the Loaned Stock with respect to each open stock borrow or loan position of the suspended ~~Hedge~~ Clearing Member that originated through the Stock Loan/Hedge Program.

(b) Notification of Buy-In or Sell-Out Price. Such buy in or sell out must be executed by the Lending Clearing Member or Borrowing Clearing Member by the settlement time for a Clearing Member's obligations to OCC on the stock loan business day after the receipt of such instruction by the Corporation. Failure to execute such buy in or sell out, and provide notification of such action by such time will result in the Corporation terminating the ~~Stock~~Hedge Loan and effecting

Settlement based upon the Marking Price used at the close of business on the stock loan business day the original instruction was made by the Corporation.

(c) Settlement Procedures. The buy-in, sell-out or cash settlement process shall be effected in accordance with the applicable procedures set forth in Rule 220914, provided that:

(1) in the case where the Corporation instructs an independent broker to execute a buy-in, the Corporation shall return the bought-in Loaned Stock to the Lending Clearing Member against the payment of settlement price in respect thereof by the Lending Clearing Member;

(2) in the case where the Corporation instructs an independent broker to execute a sell-out, the Corporation shall recall the Loaned Stock from the Borrowing Clearing Member for purpose of the sell-out and transfer the sale proceeds to the Borrowing Clearing Member; and

(3) any amount to be credited to or collected from the suspended Clearing Member shall be credited to or withdrawn from the suspended Clearing Member's Liquidating Settlement Account.

(d) Settlement Price. The Clearing Member executing the buy-in or sell-out, as applicable, must be prepared to defend the reasonableness of the price, transactional costs or cash settlement value, provided that in the case where the Corporation instructs an independent broker to execute a buy-in or sell-out, every determination by the Corporation with respect to any such related matter shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review. A Clearing Member may demonstrate that the price or cash settlement value associated with a buy-in or sell-out is reasonable by demonstrating that the price or cash settlement value fell within the trading range of the Eligible Stock on the date of the buy-in or sell-out. The Corporation has the authority to withdraw the value of any difference between the price reported by the Clearing Member executing the buy-in or sell-out, as applicable, and the price the Corporation, in its sole discretion, determines to be reasonable. This price determined by the Corporation shall be binding and conclusive.

~~Anything else herein to the contrary notwithstanding, the Corporation shall not be held liable for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of any exchange or self-regulatory organization.~~<sup>[41]</sup>

#### **RULE 221712 – Suspension of a Hedge Clearing Members – Re-Matching in Suspension**

~~(a) In the event that a suspended Hedge Clearing Member has Matched-Book Positions within the Stock Loan/Hedge Program, the re-matching of such Matched-Book Positions will be governed by Rule 2219A. Corporation will, upon notice to affected Hedge Clearing Members, close out the suspended Hedge Clearing Member's Matched-Book Positions to the greatest extent possible by (i) the termination by offset of stock loan and stock borrow positions that are~~

<sup>[41]</sup> This paragraph is deleted and consolidated with proposed Rule 2214(f).]

~~Matched Book Positions in the suspended Hedge Clearing Member's account(s) and (ii) the Corporation's re-matching of stock borrow positions for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched Book Borrowing Clearing Member against a stock loan position for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched Book Lending Clearing Member.~~

~~(b) The Matched Book Borrowing Clearing Member and Matched Book Lending Clearing Member are not required to issue instructions to the Depository in accordance with Rules 2202(a) and 2208(a) to terminate such stock loan and stock borrow positions maintained in the Stock Loan/Hedge Program or to initiate new stock loan transactions for inclusion in the Stock Loan/Hedge Program.~~

~~(c) The Corporation shall make reasonable efforts to re-match Matched Book Borrowing Clearing Members with Matched Book Lending Clearing Members that maintain between them current executed Master Securities Loan Agreements based on information provided by Hedge Clearing Members to the Corporation on an ongoing basis. The Corporation shall be entitled to rely on, and shall have no responsibility to verify in any manner, the Master Securities Loan Agreement records provided by Hedge Clearing Members and on record as of the time of re-matching.~~

~~(d) The termination by offset and re-matching of positions pursuant to this Rule 2212 shall be done by the Corporation using a matching algorithm in which the Matched Book Positions of the suspended Hedge Clearing Member are first terminated by offset and affected Matched Book Borrowing Clearing Members and Matched Book Lending Clearing Members are re-matched in the following order of priority:~~

~~(1) The Corporation will first select the largest stock loan or stock borrow position in a given Eligible Stock from the suspended Hedge Clearing Member's Matched Book Positions.~~

~~(2) The stock loan or stock borrow positions selected in paragraph (d)(1) above are then re-matched with the largest available stock borrow or stock loan positions, as applicable, for the selected Eligible Stock for which a Master Securities Loan Agreement exists between a Matched Book Borrowing Clearing Member and a Matched Book Lending Clearing Member.~~

~~(3) The Corporation will repeat the re-matching process as described in paragraphs (d)(1)–(2) above until all potential re-matching between Matched Book Borrowing Clearing Members and Matched Book Lending Clearing Members with Master Securities Loan Agreements is completed.~~

~~(4) After re-matching among lenders and borrowers with existing Master Securities Loan Agreements, the re-matching process will be repeated for all remaining Matched Book Positions for which Master Securities Loan Agreements do not exist between the Matched Book Borrowing Clearing Members and Matched Book Lending Clearing Members. Positions will be selected for re-matching in order of priority based on largest outstanding position size.~~

~~(e) In the event a Borrowing Clearing Member and Lending Clearing Member are re-matched pursuant to this Rule 2212, the re-matched positions will be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2201. Any change in Collateral requirements arising from the re-matching of stock loan or stock borrow positions pursuant to this Rule 2212 shall be included in the calculation of the mark-to-market payment obligations as provided in Rule 2204 on the stock loan business day following the completion of the positions adjustments as set forth in Rule 2212(f).~~

~~(f) The termination by offset and re-matching of positions pursuant to this Rule 2212 shall be complete upon the Corporation completing all position adjustments in the accounts of the suspended Hedge Clearing Member and the Borrowing Clearing Members and Lending Clearing Members with re-matched positions and the applicable systems reports are produced and provided to the Clearing Members reflecting the completion of the transaction.~~

~~(g) From and after the time the Corporation has completed the position adjustments to terminate by offset and re-match Matched Book Positions maintained in the suspended Hedge Clearing Member's account as set forth in 2212(f), the suspended Hedge Clearing Member shall have no further obligation under the By-Laws and Rules with respect to such positions.~~

~~(h) From and after the time the Corporation has completed the termination by off-set and re-matching as set forth in Rule 2212(f) a Borrowing Clearing Member with re-matched stock borrow positions remains obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions remains obligated as a Lending Clearing Member as specified in the By-Laws and Rules applicable to the Stock Loan/Hedge Program.~~

~~(i) Upon notification that the Corporation has completed the termination by offset and re-matching of stock loan and borrow positions as set forth in Rule 2212(f), the suspended Hedge Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched stock loan and borrow positions shall promptly make any necessary bookkeeping entries at the Depository necessitated by the re-matching.~~

~~(j) Borrowing Clearing Members and Lending Clearing Members that have been re-matched shall work in good faith to reestablish any terms, representations, warranties and covenants not governed by the By-Laws and Rules or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to Rule 2208 as soon as reasonably practicable.~~



## CHAPTER XXIIA Market Loan Program

### Introduction

The Rules in this Chapter are applicable only to the Market Loan Program. In addition, the Rules in Chapters I through XII are also applicable to the Market Loan Program, in some cases supplemented by one or more Rules in this Chapter, except for Rules that have been replaced in respect of the Market Loan Program by one or more Rules in this Chapter and except where the context otherwise requires. Whenever a Rule in this Chapter supplements or, for purposes of this Chapter, replaces one or more of the By-Laws or Rules in Chapters I through XII, that fact is indicated in brackets following the Rule in this Chapter.

#### [RULE 2201A – Eligible Stock](#)<sup>[42]</sup>

[\(a\) Eligibility.](#) A security shall be eligible for lending in the ~~Stock Loan/Hedge Program and the~~ Market Loan Program if and only if:

- (1) the security is an equity security that the Depository has determined is eligible for deposit at the Depository,
- (2) the Corporation has not determined to terminate all outstanding ~~Stock Loans and/or~~ Market Loans in respect of such security pursuant to the By-Laws,
- (3) the security is a “covered security” within the meaning of Section 18(b)(1) of the Securities Act of 1933, and
- (4) in the case of securities which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract, the security is trading at a market price of at least \$3 per share, as determined by the Corporation.

[\(b\) Waiver by the Corporation.](#) The Corporation may waive the requirement in paragraph (a)(4) of this Rule at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. However, should the market price for a security for which the Corporation has not waived the requirement ~~(4)~~ fall below \$3, no new ~~Stock Loan or~~ Market Loan transactions may be submitted for clearance, but existing positions may be maintained.

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<sup>[42]</sup> The second sentence of By-Law Article I, Sec. 1.E.(3) is replicated here with respect to a Market Loan with changes as marked.]

**RULE 2202A – Initiation of Market Loans**

(a) Initiation; Cancellation of Pending Market Loans. ~~(i)~~ A stock loan which is intended for inclusion in the Market Loan Program is initiated when ~~(i) a lender is matched with a borrower through a Loan Platform and~~ the Loan Market sends details of ~~the matched~~ a transaction to the Corporation or (ii) a Lending Clearing Member and Borrowing Clearing Member send details to the Corporation of a stock loan transaction between the two Clearing Members and such details, as applicable, are either matched by the Corporation or affirmed by the Clearing Members. If the ~~matched~~ transaction passes the Corporation's validation process (designed to detect errors in data submitted), the Corporation shall create and send to the Depository a pair of delivery orders – one order instructing the Depository to transfer a specified number of shares of a specified Eligible Stock from ~~a Market Loan~~ the Lending Clearing Member or its Appointed Clearing Member to the Corporation's account against transfer of Collateral from the Corporation's account to such Clearing Member, and the other order instructing the Depository to simultaneously transfer such Eligible Stock from the Corporation's account to ~~a second Market Loan~~ the Borrowing Clearing Member or its Appointed Clearing Member against the transfer of Collateral from such second Clearing Member to the Corporation's account.

~~(i)~~2) A Clearing Member, either directly or through the Loan Market as applicable, may instruct the Corporation to disregard a previously reported ~~matched~~ transaction that is pending settlement at the Depository. In accordance with such instruction, the Corporation shall create and send appropriate instructions to the Depository to cancel the previously issued delivery orders. Upon confirmation that the Depository has processed such cancellation instructions, the related ~~matched~~ transaction shall be deemed null and void and given no effect and the Corporation shall have no obligation to any ~~Market Loan~~ Clearing Member in acting pursuant to a Loan Market's instruction to disregard a previously reported transaction.

(b) Acceptance. (1) Upon receipt of information reported to the Corporation from the Depository showing a completed stock loan that purportedly originated through the Market Loan Program, the Corporation shall (subject to Rule 221017A) accept such stock loans as Market Loans, unless the Corporation determines that a stock loan is not in accordance with the By-Laws and Rules, or that one or both account numbers are invalid for Market Loans, or that the information provided by the Depository contains unresolved errors or omissions, in which case the Corporation shall reject such stock loan.

(2) Upon the Corporation's acceptance of a Market Loan, the following shall automatically occur:

~~(i)~~(A) the ~~matched~~ stock loan transaction ~~submitted by the Loan Market~~ that initiated the Market Loan shall be extinguished and replaced in its entirety by (1) a congruent contract between the lending ~~Market Loan~~ Clearing Member, as stock lender, and the Corporation, as stock borrower, and (2) an identical congruent contract between the Corporation, as stock lender, and the borrowing ~~Market Loan~~ Clearing Member, as stock borrower;

~~(ii)~~(B) such pair of contracts shall constitute the Market Loan;

~~(iii)(C)~~ the lending ~~Market Loan~~-Clearing Member shall be the Lending Clearing Member and the borrowing ~~Market Loan~~-Clearing Member shall be the Borrowing Clearing Member in respect of such Market Loan for all purposes of the By-Laws and Rules, ~~and;~~

~~(iv)(D)~~ the Corporation shall create the stock loan position and the stock borrow position in accordance with ~~Article XXIA, Section 2 of the By-Laws~~ Rule 2207A; and

(E) with respect to Disclosed Market Loans, the terms of the original stock loan (other than terms that establish congruence) and the representations, warranties and covenants made by each of the parties to the original stock loan under the Master Securities Loan Agreement or any other agreements with respect to the original stock loan shall (1) to the extent that they are inconsistent with the By-Laws and Rules of the Corporation, be eliminated from the pair of congruent contracts constituting the Market Loan and replaced by applicable By-Laws and Rules of the Corporation, and (2) to the extent that they are not inconsistent with the By-Laws and Rules of the Corporation, remain in effect as between such parties to the original stock loan, but shall not impose any additional obligations on the Corporation.

(3) For purposes of ~~the foregoing~~ (b)(2), a replacement stock loan contract shall be “congruent” to the stock loan contract replaced if and only if the contracts agree with respect to the identity of the Eligible Stock that is to be lent, the number of shares that are to be lent, the Collateral requirement, the rebate rate and the settlement price.

(c) Rejection. On each stock loan business day, any stock loan transactions ~~originated through a Loan Market~~ that fail to pass the validation process referred to in paragraph (a) ~~of this Rule~~ or are rejected by the Corporation as described in paragraph (b) ~~of this Rule~~ shall be rejected by the Corporation and shall have no further effect as regards the Corporation.

(d) Use of Collateral. Subject only to ~~the provisions of paragraph (f) of this Rule~~ 2202A(f) and such obligations in respect of the Collateral as the Lending Clearing Member may have by agreement with the person for whose account the Loaned Stock is held, the Lending Clearing Member may use or invest the Collateral as it may deem fit at its own risk and for its own account and shall retain any income and profits therefrom and bear all losses therefrom. The sole obligations of the Lending Clearing Member in respect of the Collateral shall be (i) repaying an amount equal to the Collateral (as adjusted from time to time by mark-to-market payments made pursuant to Rule 220409A) as instructed by the Corporation, or otherwise disposing of the Collateral in such other manner as the Corporation may direct, if and when the Market Loan is terminated as provided in the Rules; and (ii) making periodic rebate payments to the Corporation (in the case of a Market Loan with a positive rebate) in accordance with Rule 220611A.

(e) Use of Loaned Stock. Until such time as a Market Loan is terminated as provided in the Rules, the Borrowing Clearing Member shall have all incidents of ownership of the Loaned Stock, including without limitation the right to transfer the Loaned Stock to others; ~~provided, however, that (i) the Borrowing Clearing Member shall be obligated to make mark-to-market payments to the Corporation and receive mark-to-market payments from the Corporation with respect to the Loaned Stock as provided in Rule 2204A; and (ii) the Borrowing Clearing Member shall be obligated to make all dividend equivalent payments and all periodic rebate payments to~~

~~the Corporation (in the case of a Market Loan with a negative rebate) pertaining to the Loaned Stock in accordance with Rule 2206A.~~

(f) *Covenants of Clearing Members.* Each lending of Loaned Stock by a Lending Clearing Member, and each borrowing of Loaned Stock by a Borrowing Clearing Member, shall constitute a representation and covenant by the Clearing Member to the Corporation that its participation in such lending or borrowing is in compliance, and will continue to comply, with all applicable laws and regulations including without limitation Rule 15c3-3 and all other applicable rules and regulations of the Securities and Exchange Commission, any applicable provisions of Regulation T of the Board of Governors of the Federal Reserve System, and the rules of the Financial Industry Regulatory Association and any other regulatory or self-regulatory organization to which the Clearing Member is subject.

(g) *Prohibited Transactions.* ~~(1) Market Loan~~ Clearing Members shall be prohibited from initiating stock loans intended for inclusion in the Market Loan Program that involve the lending of any Eligible Stock issued by such ~~Market Loan~~ Clearing Member or any Member Affiliate of such ~~Market Loan~~ Clearing Member.

*(h) Anonymous Market Loans and Disclosed Market Loans.* A Market Loan may be either an Anonymous Market Loan or a Disclosed Market Loan.

~~---~~ ***Interpretations and Policies:***

~~.01 The Corporation makes available to each Market Loan Clearing Member, during a business day, updated position information that reflects current stock loan and borrow activity, including new positions, transfers of positions, returns and cancels.~~

**RULE 2203A – Role of the Corporation**<sup>[43]</sup>

~~SECTION 2.~~ *(a) In General.* Commencing at the time at which the Corporation accepts a Market Loan as described in Rule 2202A, the role of the Corporation in respect of such Market Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member.

*(b) Rights and Obligations as Against the Corporation.* ~~Without limiting the generality of the foregoing: (1) the rights and/or obligations of a Clearing Member that is party to such Market Loan to receive and/or pay mark-to-market payments, dividend equivalent payments and rebate payments~~ Rights and obligations of Clearing Members that are parties to a Hedge Loan that shall be as against the Corporation, and not as against each other, include:

(1) the right to receive and/or pay mark-to-market payments, dividend equivalent payments and rebate payments; and

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<sup>[43]</sup> By-Law Article XXIA, Sec. 2 is deleted and relocated here with changes as marked.]

(2) in the event of termination of such Market Loan in accordance with the Rules, the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price shall be as against the Corporation.

**RULE 2204A – Agreements of the Borrowing Clearing Member**<sup>[44]</sup>

~~SECTION 3.~~ (a) *Agreements.* The Clearing Member that is the Borrowing Clearing Member in respect of a Market Loan agrees with the Corporation that:

(i)(1) upon the acceptance of the Market Loan by the Corporation, the resulting stock borrow position of the Borrowing Clearing Member shall be created and subsequently maintained in accordance with ~~Section 5 of this Article XXIA~~ Rule 2206A;

(ii)(2) so long as such stock borrow position is thereafter maintained, the Borrowing Clearing Member shall make all required payments to the Corporation including margin deposits, mark-to-market payments, dividend equivalent payments and rebate payments (in the case of a negative rebate), all in accordance with the By-Laws and Rules; and

(iii)(3) in the event that the Market Loan is terminated, the Borrowing Clearing Member shall deliver the Loaned Stock, against payment of the settlement price, in accordance with the By-Laws and Rules.

(b) *Conflicting Records.* In the event of a conflict between the records of the Corporation and any records generated by the Borrowing Clearing Member regarding a ~~Stock Loan~~ Market Loan and resulting stock borrow positions, the records generated by the Corporation will prevail and the Borrowing Clearing Member shall remain liable for all obligations associated with such stock borrow positions maintained on the records of the Corporation.

**RULE 2205A – Agreements of the Lending Clearing Member**<sup>[45]</sup>

~~SECTION 4.~~ (a) *Agreements.* The Clearing Member that is the Lending Clearing Member in respect of a Market Loan agrees with the Corporation that:

(i)(1) upon the acceptance of the Market Loan by the Corporation, the resulting stock loan position of the Lending Clearing Member shall be created and subsequently maintained in accordance with ~~Section 5 of this Article XXIA~~ Rule 2206A;

(ii)(2) so long as such stock loan position is thereafter maintained, the Lending Clearing Member shall make all required payments to the Corporation including margin deposits, mark-to-market

[<sup>44</sup> By-Law Article XXIA, Sec. 3 is deleted and relocated here with changes as marked.]

[<sup>45</sup> By-Law Article XXIA, Sec. 4 is deleted and relocated here with changes as marked.]

payments and rebate payments (in the case of a positive rebate), all in accordance with the By-Laws and Rules;<sup>46</sup> and

~~(iii)~~(3) in the event that the Market Loan is terminated, the Lending Clearing Member shall pay the settlement price, against delivery of the Loaned Stock, in accordance with the By-Laws and Rules.

(b) *Conflicting Records.* In the event of a conflict between the records of the Corporation and any records generated by the Lending Clearing Member regarding a ~~Stock Loan~~Market Loan and resulting stock loan positions, the records generated by the Corporation will prevail and the Lending Clearing Member shall remain liable for all obligations associated with such stock loan positions maintained on the records of the Corporation.

#### **Rule 2206A – Maintaining Stock Loan and Stock Borrow Positions in Accounts**<sup>[46]</sup>

~~SECTION 5.~~(a) *Establishment of Positions.* Each Market Loan will be maintained on the books and records of the Corporation as a unique matched pair of contracts with one such contract being between the Lending Clearing Member and the Corporation as borrower and the second such contract being between the Corporation as Lender and the Borrowing Clearing Member. Upon acceptance of a Market Loan, the Corporation shall ~~as described in the Rules~~ in connection with each unique pair of contracts:

(1) create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Stock that is the subject of the Market Loan, the number of shares loaned ~~and~~ the amount of Collateral received, the identities of the Lending Clearing Member and Borrowing Clearing Member if the Market Loan is a Disclosed Market Loan, and such other terms that the Corporation receives from the Loan Market or Clearing Members; and

(2) ~~shall~~ create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Security that is the subject of the Market Loan, the number of shares borrowed ~~and~~, the amount of Collateral delivered, the identities of the Lending Clearing Member and Borrowing Clearing Member if the Market Loan is a Disclosed Market Loan, and such other terms that the Corporation receives from the Loan Market or Clearing Members. ~~The Corporation shall identify stock loan and stock borrow positions resulting from Market Loans separately from stock loan and stock borrow positions resulting from Hedge Loans. In addition to the foregoing:~~

#### (b) *Position Netting.*

(1) stock loan positions of a Clearing Member established as a result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member ~~shall be aggregated (separately for Market Loans effected through each Loan Market) for position~~

<sup>[46]</sup> By-Law Article XXIA, Sec. 5 is deleted and relocated here with changes as marked.]

~~reporting purposes, but~~ shall not be netted against any stock borrow position which the Clearing Member may be carrying relating to the same Eligible Stock for any purposes other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members; ~~and~~.

(2) stock borrow positions of a Clearing Member established as the result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing Member ~~shall be aggregated (separately for Market Loans effected through each Loan Market) for position reporting purposes, but~~ shall not be netted against any stock loan position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members.

~~(b)~~(c) *Maintenance in Accounts.* Notwithstanding the provisions of Section 3 of Article VI of the By-Laws, stock loan and stock borrow positions resulting from Market Loans may be maintained in any of a ~~Market Loan~~ Clearing Member's accounts with the Corporation except those excluded by Rule 2207A(e). For the purposes of Section 3 of Article VI of the By-Laws, stock loan positions resulting from Market Loans shall be deemed to be "securities" and stock borrow positions resulting from Market Loans shall be deemed to be "funds," and the authority of the Corporation to close out "positions" in any account shall include the authority to close out such stock loan and stock borrow positions.

*(d) Transfer Among Accounts.* At any time on any business day prior to the deadline specified by the Corporation, an ~~eligible Mark Loan~~ Clearing Member may transfer ~~all or any portion of~~ an existing stock loan or stock borrow position (including positions resulting from that day's activity) in respect of a Market Loan among its accounts by submitting an appropriate transfer instruction to the Corporation that designates the accounts and/or sub-accounts from and to which the positions shall be transferred; provided, that any such transfer will result in the transfer of all shares related to the relevant stock loan position or stock borrow position. ~~If a Mark Loan Clearing Member's request for transfer exceeds the number of stock loan or stock borrow shares available in the account from which the shares will be transferred, then the transfer instruction will be rejected.~~<sup>[47]</sup>

*(e) Satisfying Return Instructions.* In respect of stock loan and stock borrow positions resulting from Market Loans, returns of shares shall be reflected in the ~~Market Loan~~ Clearing Member's account or sub-account designated on a delivery order submitted to the Corporation by the Depository. ~~If there are insufficient shares in the designated account to fulfill the return instruction, or if there is no account designated in the Depository delivery order, the excess shares to be returned shall be taken from the Clearing Member's default account. If there are insufficient shares in the designated account or default account, as applicable, to fulfill the return~~

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<sup>[47]</sup> Rule 2201A, I&P .01 is deleted and relocated here with changes as marked.]

instruction, the ~~remaining shares~~ return instruction shall be rejected and the return instruction will be void to that extent.<sup>[48]</sup>

~~...~~ ***Interpretations and Policies:***

~~.01~~ (f) *Ineligible Accounts.* Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from Market Loans to any proprietary X-M account, non-proprietary X-M account, internal non-proprietary cross-margining account or segregated futures account.

[~~Section 5 of this Article~~ Rule 2206A supplements Section 3 of Article VI of the By-Laws.]

**RULE 22017A – Instructions to the Corporation**

(a) *Standing Instructions.*

(1) In respect of stock loan and stock borrow transactions initiated as a Market Loan ~~originated through a Loan Market~~ and stock loan and stock borrow positions resulting from such transactions, a ~~Market Loan~~ Clearing Member shall provide standing instructions to the Corporation with respect to matters identified by the Corporation from time to time, including but not limited to:

(i) (A) the account number of each account with the Depository in which such stock loan and stock borrow transactions are to be effected;

(ii) (B) the default account with the Corporation, which may be any of the ~~Market Loan~~ Clearing Member's accounts or sub-accounts thereof that are not ineligible under ~~Article XXI, Section 5, Interpretation .01 of the By-Laws~~ Rule 2206A(f), to which new stock loan and stock borrow positions are to be allocated in the absence of executable instructions of the Clearing Member to allocate the positions to a different account; and

(C) (iii) ~~the account with the Corporation (which may be the Market Loan Clearing Member's firm account or its combined Market Makers' account) from and to which mark-to-market payments, dividend equivalent payments and rebate payments are to be made~~ in the case of a Market Loan initiated directly through the Corporation rather than a Loan Market, the default value (e.g., penny, quarter, dollar) to which mark-to-market payments will be rounded with respect to Market Loans for which the Clearing Member is the Lending Clearing Member.

(2) The Corporation may also permit a ~~Market Loan~~ Clearing Member to provide standing instructions with respect to other aspects of the Clearing Member's participation in the Market Loan Program.

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<sup>[48]</sup> Rule 2201A, I&P .02 is deleted and relocated here with changes as marked.]



(3) A ~~Market Loan~~-Clearing Member may revise its standing instructions, subject to the Corporation's notice requirements as in effect from time to time.

(b) *Specific Instructions.* A ~~Market Loan~~-Clearing Member may give the Corporation specific instructions from time to time which are contrary to its standing instructions with respect to the account (or sub-account thereof) to which a particular stock loan or stock borrow position (either a new position or an existing position which the Clearing Member wishes to transfer to a different account) is to be allocated. With respect to a new position, in the absence of such specific instructions, or if the specific instruction is invalid for any reason, the position will be allocated to the ~~Market Loan~~-Clearing Member's default account.

(c) *Appointment of CDS as Agent.* A Canadian Clearing Member on behalf of which CDS maintains an identifiable sub-account in a CDS account at the Depository may appoint, in such manner as the Corporation will from time to time prescribe, CDS to act on its behalf with respect to effecting delivery orders for stock loan and stock borrow transactions in the accounts of such Clearing Member through the Depository. An appointment pursuant to this paragraph will become effective as of the second business day following the day on which the Corporation shall receive written notice of the appointment from the Clearing Member, or such later date as may be specified by the Clearing Member, and (unless the Corporation shall terminate the appointment at an earlier time) will remain effective until the close of business on the thirtieth calendar day after the Corporation receives, from either the Clearing Member or CDS, written notice of revocation of the appointment, and remains effective thereafter, with respect to each obligation of the Clearing Member to close out open stock loan and borrow positions directed to CDS prior to the effective date of the revocation, until the close out of all such positions is completed. If, for any reason, CDS ceases to act on behalf of the Clearing Member with respect to effecting delivery orders for stock loan and stock borrow transactions, the Corporation may require the Clearing Member to close out open stock loan and borrow positions through buy-in and sell-out procedures, or any other procedures provided in the By-Laws or Rules, as necessary.

(d) *Appointment of Appointed Clearing Member.* An Appointing Clearing Member may, in lieu of being a participant of the Depository, appoint, in such manner as the Corporation will from time to time prescribe, an Appointed Clearing Member to act on its behalf with respect to effecting delivery orders for stock loan and stock borrow transactions in the accounts of the Appointing Clearing Member. An appointment pursuant to this paragraph will become effective as of the first business day following the day on which the Corporation receives written notice, in such form as the Corporation will from time to time prescribe, from the Appointed Clearing Member of its acceptance of the appointment, or such later date as may be specified by the Appointed Clearing Member, and (unless the Corporation terminates the appointment at an earlier time) will remain effective until the close of business on the thirtieth calendar day after the Corporation receives, from either the Appointing Clearing Member or the Appointed Clearing Member, written notice of revocation of the appointment, and will remain effective thereafter, with respect to each obligation to close out open stock loan and borrow positions directed to the Appointed Clearing Member for settlement prior to the effective date of the revocation, until close out of all such positions is completed. For purposes of Rule 2210A, any report made available to an Appointed Clearing Member is deemed to have been made available

to the Appointing Clearing Member at the time that it is made available to the Appointed Clearing Member.

~~...~~ ***Interpretations and Policies:***

~~.01~~ [Relocated to OCC Rule 2206A(d) with changes as marked thereto]

~~.02~~ [Relocated to OCC Rule 2206A(e) with changes as marked thereto]

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**RULE 22083A – Margin Deposited with the Corporation**

Each ~~Market Loan~~ Clearing Member shall be required to maintain margin with the Corporation in respect of its stock loan and stock borrow positions resulting from Market Loans, including any dividend equivalent payments and accrued rebate payments that the Clearing Member is obligated to make in accordance with the Rules. The amount of margin assets required to be deposited shall be as determined pursuant to Rule 601.

**RULE 22049A – Mark-to-Market Payments**

(a) *In General.* In order to adjust the amount of the Collateral securing a Market Loan for changes in the market value of the Eligible Stock that is the subject of the Market Loan, Borrowing and Lending Clearing Members shall be required to make mark-to-market payments to the Corporation, and the Corporation shall be required to make mark-to-market payments to such Clearing Members, on each business day with respect to each Market Loan until such Market Loan has been terminated in accordance with the Rules. Any mark-to-market payment shall be made in the account in which the Market Loan is held. No mark-to-market payment shall be required in respect of any stock loan or stock borrow position on and after the business day following the day on which such position was extinguished.

(b) *Mark-to-Market Payment Amount.* The amount of any mark-to-market payment to be made on any business day will be the amount necessary to cause the amount of Collateral to be equal to the Collateral requirement applicable to a Market Loan. The Collateral requirement will be 102% of the mark-to-market value of the Loaned Stock, rounded up to the nearest default value. The default value for a Market Loan initiated through a Loan Market shall be specified by the Loan Market. The default value for a Market Loan initiated directly through the Corporation shall be the default value in the standing instructions of the Lending Clearing Member, as provided by Rule 2207A(a)(1)(C)~~shall represent the increase or decrease, as applicable, in the value of the stock loan position and stock borrow position relating to such Market Loan. The increase or decrease in value of a stock borrow position shall be deemed to be equal to: (i) in the case of a stock borrow position that was established on the preceding business day, the result of subtracting the marking price on such day from the settlement price; and (ii) in the case of any other stock borrow position, the result of subtracting the marking price on the preceding business day from the marking price on the second preceding business day, in each case multiplied by a percentage specified by the relevant Loan Market. The increase or decrease in value of a stock~~

~~loan position shall be deemed to be equal to: (1) in the case of a stock loan position that was established on the preceding business day, the result of subtracting the settlement price from the marking price on such day; and (2) in the case of any other stock loan position, the result of subtracting the marking price on the second preceding business day from the marking price on the preceding business day, in each case multiplied by a percentage specified by the relevant Loan Market. No mark-to-market payment shall be required in respect of any stock loan or stock borrow position on and after the business day following the day on which such position was extinguished.~~

(~~b~~c) Netting: Debits. On each business day, the Corporation shall net the mark-to-market payments, if any, owed by and to each ~~Market Loan~~ Clearing Member in respect of its stock loan and borrow positions resulting from Market Loans. At or before the settlement time on each business day, each ~~Market Loan~~ Clearing Member shall be obligated to pay to the Corporation any net mark-to-market payment amount owed to the Corporation in respect of such positions carried in the ~~Market Loan~~ Clearing Member's accounts, and the Corporation shall be authorized to withdraw from the ~~Market Loan~~ Clearing Member's bank account established in respect of the account from and to which mark-to-market payments are to be made an amount equal to such net amount, provided that the Corporation may, but shall not be required to, offset against any such net amount any credit balance which may be due from the Corporation in the same account.

(~~e~~d) Netting: Credits. Subject to Rule 505, at or before the settlement time on each business day, the Corporation shall be obligated to deposit in the designated bank account established in respect of each account of each ~~Market Loan~~ Clearing Member (provided the ~~Market Loan~~ Clearing Member has deposited all margin required to be deposited pursuant to Chapter VI of the Rules and has deposited the full amount of any net daily premium due to the Corporation under Rule 502) any net mark-to-market payment amount owed by the Corporation to the ~~Market Loan~~ Clearing Member on such day in respect of its stock loan and borrow positions resulting from Market Loans. From and after such time, full settlement shall be deemed to have been made in respect of mark-to-market payments for such day, and the Corporation shall have no further obligation in respect thereof.

#### **RULE 221005A – Daily Reports**

Prior to such time on each business day as the Corporation may from time to time establish, the Corporation shall make available to each ~~Market Loan~~ Clearing Member one or more reports listing all stock loan positions and stock borrow positions resulting from ~~StockMarket~~ Loans carried by the Clearing Member, including new positions, transfers of positions, returns and cancels. A ~~Market Loan~~ Clearing Member must have adequate policies and procedures in place to perform a reconciliation of its stock loan position balances between the records of the ~~Market Loan~~ Clearing Member and any report or reports provided by the Corporation at least once per stock loan business day and resolve any discrepancies based on such report(s) for a given stock loan business day by 9:30 A.M. Central Time on the following stock loan business day.

**RULE 221106A – Dividends and Distributions; Rebates**

(a) *Rights and Obligations.* ~~(i)~~ Subject to the provisions of paragraph ~~(a)(ii)(b)~~ of this Rule, the Lending Clearing Member shall be entitled to receive all dividends and distributions made in respect of Loaned Stock on the record dates that occur during the term of a Market Loan, to the full extent it would have been so entitled if the Market Loan had not been made, and the Borrowing Clearing Member shall be obligated to pay or deliver all such dividends and distributions. Such dividends and distributions shall include, but not be limited to: cash and all other property; stock dividends; securities received as a result of split-ups of the Loaned Stock and distributions in respect thereof; interest payments; all rights to purchase additional securities; and any cash or other considerations paid or provided by the issuer of such security in exchange for any vote, consent or the taking of any similar action in respect of such security (regardless whether the record date for such vote, consent or other action falls during the term of the Market Loan).

~~(ii)~~ *Settlement of Dividend Equivalent Payments.* Dividend equivalent payments shall be effected primarily through the facilities of the Depository, utilizing its Dividend Service. However, dividend equivalent payments in respect of a Market Loan shall be effected through the Corporation's cash settlement system on the business day following the expected dividend or distribution payment date if:

(1) ~~the Loan Market has advised the Corporation that~~ the dividend or distribution for such Market Loan is not tracked by the Depository's Dividend Service; or

(2) the Corporation, in its discretion, has determined to remove a Market Loan from the Depository's Dividend Service and/or void and nullify any obligation to effect dividend equivalent payments through the Depository's facilities. ~~Notwithstanding the preceding provisions of this Rule, the Corporation shall guarantee a dividend equivalent payment only to the extent that the Corporation has collected margin equal to such dividend equivalent payment from the responsible Borrowing Clearing Member(s) prior to the time that any such Borrowing Clearing Member defaults. The amount of margin that the Corporation collects in respect of dividend equivalent payments shall be solely based on calculations provided by the Loan Market. The Corporation shall have no responsibility to verify the accuracy of the Loan Market's calculations and shall not be liable to Clearing Members for any errors in such calculations. In the event that the Loan Market subsequently confirms that dividend equivalent payments were not distributed on the expected payment date, the Loan Market shall instruct the Corporation to reverse the payments.~~

~~(iii)~~ *Non-Cash Dividends and Distributions.* If the Corporation determines that ~~the~~ non-cash dividends and distributions ~~received by the Borrowing Clearing Member~~ are legally transferable and the transfers can be effected through the Depository, then such non-cash dividends and distributions shall be added to the Loaned Stock (as reflected by appropriate adjustments to the Corporation's records), shall be considered such for all purposes, and shall be delivered to the Corporation by the Borrowing Clearing Member and by the Corporation to the Lending Clearing Member upon any termination of the Market Loan. Every such determination by the Corporation shall be within the sole discretion of the Corporation and shall be conclusive and binding on all

Clearing Members and not subject to review. In the event that the ~~Loan Market~~ Corporation determines in its discretion to fix a cash settlement value with respect to any non-cash dividends and/or distributions that are not added to the Loaned Stock as provided in the preceding sentence, the ~~Loan Market may instruct the~~ Corporation ~~will to~~ effect collection and payment of such cash settlement as provided in paragraph (b)(ii) of this Rule. With respect to a non-cash dividend or distribution that is not added to the Loaned Stock and for which the ~~Loan Market~~ Corporation does not fix a cash settlement value ~~pursuant to the provisions of paragraph (b)(iii) of this Rule~~, the Lending Clearing Member will receive the benefit of such dividend or distribution only if it recalls the Loaned Stock in time to receive the dividend or distribution directly.<sup>[49]</sup>

(d) Optional Dividends. With respect to an optional dividend (i.e., a dividend the shareholder can elect to receive in cash, stock, or some combination of the two), the Lending Clearing Member will have the right to elect an option only if it recalls the Loaned Stock in time to make such election. Otherwise, the Lending Clearing Member will be entitled to receive the default option set by the issuer of the Loaned Stock.

(be) Settlement of Rebate Payments. On each business day ~~a monthly basis~~, or on ~~at~~ such other ~~basismore frequent intervals not to exceed monthly~~ as may be specified by the Corporation, the Corporation shall calculate and effect collection and payment of rebate payments ~~as instructed by a Loan Market from Market Loan Clearing Members~~, provided that the Corporation shall guarantee the payment of accrued rebate payments only up to the amount for which the Corporation has collected margin from the responsible ~~Market Loan~~ Clearing Member(s) prior to the specified settlement date. ~~The Loan Market shall be solely responsible for calculating, in respect of Market Loans originated through such Loan Market, the amount of rebate payments that each Market Loan Clearing Member is entitled to receive or obligated to pay on each settlement date. The Corporation shall have no responsibility to verify the accuracy of the Loan Market's calculations and shall not be liable to Clearing Members for any errors in such calculations.~~ In the event the Corporation suspends a Clearing Member, the Corporation shall be entitled to settle rebate payments with respect to such suspended Clearing Member at an earlier settlement time to be determined by the Corporation in its discretion.

*~~... Interpretations and Policies:~~*

~~.01~~ [Relocated as the last sentence of proposed Rule 2211A(c) with changes as marked]

**RULE 221207A – Erroneous Transactions Through a Loan Market**

(a) If a Clearing Member believes that a Market Loan was executed through a Loan Market on the Clearing Member's behalf in error or that a material term of such Market Loan is erroneous, the Clearing Member should contact the relevant Loan Market and seek to have such transaction voided in accordance with the terms of such Loan Market's error transaction correction policy.

<sup>[49]</sup> Rule 2207A, I&P .01 is deleted and relocated here as the last sentence of the paragraph, with changes as marked.]

Every determination as to whether a Market Loan was entered into in error shall be within the sole discretion of the relevant Loan Market and shall not be subject to review by the Corporation.

(b) In the event that the Loan Market determines to void a Market Loan, it shall notify the Corporation and the Corporation shall instruct the Depository to return the Loaned Stock to the Lending Clearing Member and the Collateral to the Borrowing Clearing Member. Upon confirmation that the Depository has effected the returns as instructed, the Corporation shall extinguish in its records the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of the voided Market Loan.

~~...~~ ***Interpretations and Policies:***

~~.01 The Corporation's role with respect to Market Loans requires it to act on information that it receives from a Loan Market and from the Depository, including, without limitation, information regarding the identities of lenders and borrowers, dividend equivalent payment amounts, rebate rates, status of transactions submitted to the Depository, etc.~~ (c) The Corporation shall not be liable to Clearing Members for any acts or omissions taken or made in reliance on ~~such~~ information it receives from a Loan Market or the Depository, including, without limitation, information regarding the identities of lenders and borrowers, dividend equivalent payment amounts, rebate rates, and status of transactions submitted to the Depository.

**RULE 220813A – Indemnification by Borrowing Clearing Members**

The Borrowing Clearing Member in respect of a Market Loan agrees to indemnify, defend, hold, and save harmless the Corporation from any claims, actions, demands, or lawsuits of any kind whatsoever arising in any way out of any use that the Borrowing Clearing Member makes of the Loaned Stock.

**RULE 2214A – Modifications**

(a) Permissible Modifications. In connection with any Market Loan, the Borrowing Clearing Member and Lending Clearing Member may agree to modifications regarding any of the following: rebate rate; interest rate benchmark; or loan term.

(b) Submission to the Corporation. Modification requests must be submitted to:

(1) the Loan Market through which the Market Loan was initiated, in the case of Anonymous Market Loans;

(2) the Corporation, in the case of Disclosed Market Loans initiated directly with the Corporation; or

(3) either the Loan Market or the Corporation, in the case of Disclosed Market Loans initiated through a Loan Market.

(c) Acceptance by the Corporation. The Corporation will update the stock loan position and stock borrow position on the Corporation's books and records if, as applicable:

(1) the Loan Market notifies the Corporation that the Lending Clearing Member and Borrowing Clearing Member have agreed to the modification; or

(2) the Borrowing Clearing Member and Lending Clearing Member each provide to the Corporation matching instructions regarding the modification or otherwise cause the modification to be affirmed through the facilities of the Corporation.

(d) Notice of Modifications. Notice of the modified terms will be provided to the relevant Clearing Members through the reports described in Rule 2210A.

(e) Partial Modifications. If the Borrowing and Clearing Member and Lending Clearing Member agree to a modification with respect to less than all the shares of a Market Loan, the Borrowing Clearing Member and Lending Clearing Member must submit the quantity of shares to which the modification applies by the means provided under Rule 2214A(b). Upon receiving the applicable notice or affirmation for that modification under Rule 2214A(c), the Corporation will record a new stock loan position and a new stock borrow position reflecting the modification and reduce the quantity of shares for the original stock loan position and stock borrow position.

#### **RULE 2215A – Cancellation of Pending Instructions**

A Clearing Member may instruct the Corporation to cancel any prior instruction provided by the Clearing Member in respect of a Market Loan. If the Corporation determines the prior instruction from the Clearing Member remains pending, the Corporation will disregard such prior instruction and treat it as cancelled.

#### **RULE 221609A – Termination of Market Loans**

(a) Returns and Recalls.

(1) Initiation of Returns and Recalls. The termination of a Market Loan, or any portion thereof, may be initiated by (i) the Borrowing Clearing Member, ~~by giving a return notice to the relevant Loan Market~~ indicating its intention to return a specified quantity of the Loaned Stock (i.e., a "return"), or (ii) the Lending Clearing Member, ~~by giving a recall notice to the relevant Loan Market~~ calling for the return of a specified quantity of the Loaned Stock (i.e., a "recall"). In either case, the relevant Clearing Member will initiate a termination either directly with the Corporation or by giving a notice to the relevant Loan Market as follows:

(A) Anonymous Market Loans. The Clearing Member may initiate a return or recall of an Anonymous Market Loan by giving notice to the Loan Market through which the Market Loan was initiated. The Loan Market shall send details of the matched return/recall transactions to the Corporation.

(B) Disclosed Market Loans Initiated through the Corporation. For a Disclosed Market Loan initiated directly with the Corporation, a Clearing Member may initiate a return or recall by giving notice to the Corporation by such time as the Corporation may from time to time prescribe.

(C) Disclosed Market Loans Initiated through a Loan Market. For a Disclosed Market Loan initiated through a Loan Market, a Clearing Member may initiate a return or recall by giving notice either to that Loan Market or to the Corporation.

(2) Affirmation of Returns. A Lending Clearing Member shall have the opportunity to affirm or reject the initiation of a return for a Market Loan initiated directly with the Corporation. Upon a rejection of a return by the Lending Clearing Member, the Corporation will give no further effect to the initiation by the Borrowing Clearing Member. If a Lending Clearing Member either affirms the return to the Corporation or fails on the stock loan business day to affirm or reject the return to the Corporation by a cut-off time that prescribed by the Corporation from time to time, then the Lending Clearing Member will be deemed to have affirmed the return by the Borrowing Clearing Member.

(3) Recalls Deemed Affirmed. A Borrowing Clearing Member shall be deemed to have affirmed the initiation of a recall provided that the Lending Clearing Member requested the return of the specified quantity of Loaned Stock no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Stock in the principal market of such Loaned Stock.

~~(14) Delivery Orders to the Depository. Upon matching a return request with an open stock loan position, or a recall request with an open stock borrow position, the Loan Market shall send details of the matched return/recall transaction to the Corporation.~~ If a ~~matched~~ return/recall transaction regarding any Market Loan passes the Corporation's validation process, the Corporation shall create and send to the Depository a pair of delivery orders – one order instructing the Depository to transfer a specific quantity of the Loaned Stock from the Borrowing Clearing Member or its Appointed Clearing Member to the Corporation's account against transfer of the settlement price in respect thereof from the Corporation's account to the Borrowing Clearing Member or its Appointed Clearing Member, and the other order instructing the Depository to simultaneously transfer such Loaned Stock from the Corporation's account to the Lending Clearing Member or its Appointed Clearing Member against the transfer of the settlement price in respect thereof from the Lending Clearing Member or its Appointed Clearing Member to the Corporation's account.

~~(25) Termination Deemed Complete.~~ Upon receipt of ~~the end of the day~~ a stock loan activity file from the Depository showing that return/recall delivery orders have been completed, the Corporation shall treat those Market Loans as terminated ~~and reduce the respective Clearing Members' open stock loan and stock borrow positions accordingly.~~ The termination of a Market Loan shall be deemed to be complete when the records of the Corporation accurately reflect the termination of such Market Loan.

~~(36) Failed Delivery Orders.~~ On each stock loan business day, any return/recall transactions originated through a Loan Market or directly by the Clearing Members with the Corporation that



are not settled by the Depository and confirmed by the Corporation shall have no further effect as to the Corporation; provided, however, that [for a Market Loan for which termination is initiated through a Loan Market](#), the Loan Market shall resubmit to the Corporation any return/recall transaction that was not completed, and the Corporation in turn shall resubmit its instructions to the Depository on the next stock loan business day. [The Lending Borrowing or Borrowing Clearing Member, as applicable, may initiate a “buy-in” or “sell-out” process under paragraphs \(b\) or \(c\), as applicable, at any time after:](#) ~~If~~

~~(i)(A)~~ a recall transaction fails to settle by the Settlement Time on the first stock loan business day following the day that the transaction was first submitted; or

~~(ii)(B)~~ a return transaction fails to settle by the Settlement Time on the stock loan business day on which it was submitted, ~~the Lending Clearing Member or Borrowing Clearing, as applicable, may initiate at any time thereafter the “buy-in” or sell-out” process, as applicable, set forth in paragraphs (b) and (c) of this Rule, respectively.~~ For purposes of ~~clause (ii) of the preceding sentence,~~ a return transaction submitted after a cutoff time specified by the Loan Market [or the Corporation, as applicable](#), shall be deemed to have been submitted on the following stock loan business day.

(b) *Buy-In.* ~~(1)~~ Where the Borrowing Clearing Member fails to return the specified quantity of Loaned Stock, the Lending Clearing Member may execute a buy-in of the Loaned Stock [subject to the following procedures depending on whether the Lending Clearing Member initiated the recall through a Loan Market or the Corporation under Rule 2216A\(a\)\(1\):](#)

[\(1\) Recalls Initiated Through a Loan Market.](#)

[\(A\) Upon receipt of timely notice of a buy-in from the Loan Market, the Corporation will prevent the Borrowing Clearing Member from returning the specified quantity of Loaned Stock until the Lending Clearing Member completes the buy-in. If the Loan Market does not give prior written notice to the Corporation of the intent of the Lending Clearing Member to execute a buy-in of the specified quantity of Loaned Stock but the Lending Clearing Member proceeds with a buy-in nonetheless, the stock loan position and stock borrow position will remain open and the Corporation will process notice of a return transaction from the Loan Market in the manner described in paragraph \(a\) above.](#)

[\(B\) After execution of a buy-in regarding a Market Loan initiated through a Loan Market, the Lending Clearing Member shall immediately give written notice to the Loan Market of such buy-in. After receipt of such notice, the Loan Market shall immediately give written notice to the Borrowing Clearing Member and the Corporation of such buy-in, including the quantity of the Loaned Stock purchased \(which shall not be greater than, and should ordinarily be equal to, the quantity of the Loaned Stock that the Borrowing Clearing Member has failed to return to the Lending Clearing Member\) and the price paid \(including any transactional costs, fees or interest incurred in connection with such buy-in, the “Buy-In Costs”\). The Loan Market shall also provide the Corporation with such other information as it may reasonably require with respect to the executed buy-in. The Lending Clearing Member shall execute the buy-in in a commercially reasonable manner and must be prepared to defend the timing of the buy-in and the Buy-In](#)

Costs. Any objections by the Borrowing Clearing Member with respect to the timeliness of the buy-in and the reasonableness of the Buy-In Costs shall be matters to be resolved by the Loan Market, and the Corporation shall have no responsibility in respect thereof.

(2) Recalls Initiated Through the Corporation.

(A) The Lending Clearing Member may give prior written notice to the Corporation and the Borrowing Clearing Member that it intends to execute a buy-in of the specified quantity of Loaned Stock for a Market Loan initiated directly through the Corporation. Upon receipt of timely notice from the Lending Clearing Member the Corporation will prevent the Borrowing Clearing Member from returning the specified quantity of Loaned Stock until the Lending Clearing Member completes the buy-in. If the Lending Clearing Member does not give prior written notice to the Corporation that it intends to execute a buy-in of the specified quantity of Loaned Stock but proceeds with a buy-in nonetheless, the stock loan position and stock borrow position will remain open and the Borrowing Clearing Member shall be entitled to deliver to the Lending Clearing Member the quantity of Loaned Stock specified by the Lending Clearing Member, until such time as the Lending Clearing Member provides notice to the Corporation that it has executed a buy-in.

(B) After execution of a buy-in regarding a Market Loan initiated directly through the Corporation, the Lending Clearing Member shall immediately give written notice to the Corporation of such buy-in, including the quantity of the Loaned Stock purchased (which shall not be greater than, and should ordinarily be equal to, the quantity of the Loaned Stock that the Borrowing Clearing Member has failed to return to the Lending Clearing Member) and the price paid (including any transactional costs, fees or interest incurred in connection with such buy-in, the "Buy-In Costs"). After receipt of such notice, the Corporation shall immediately give corresponding written notice to the Borrowing Clearing Member on that stock loan business day. If the Borrowing Clearing Member affirms the buy-in, the buy-in will be deemed complete. If the Borrowing Clearing Member fails on the stock loan business day to affirm or reject the buy-in to the Corporation by a cut-off time prescribed by the Corporation from time to time then the Corporation will deem the buy-in to be complete if the Corporation determines that that the price per share paid by the Lending Clearing Member for the Loaned Stock is more than the lowest market price and less than the highest market price for the Loaned Stock on that stock loan business day. Otherwise, the Corporation will reject the buy-in. Upon rejection of a buy-in, the Corporation will give no further effect to the buy-in by the Lending Clearing Member. Any objections by the Borrowing Clearing Member with respect to the timeliness of the buy-in and the reasonableness of the Buy-In Costs shall be matters to be resolved between the Lending Clearing Member and Borrowing Clearing Member and the Corporation shall have no responsibility in respect thereof.

~~(23)~~ If a buy-in has been completed by a Lending Clearing Member pursuant to ~~sub~~paragraph (b)(1) or (2) above, the Corporation shall (i) determine the difference between the amount of Collateral held by the Lending Clearing Member in respect of the bought-in Loaned Stock and the Buy-In Costs, (ii) pay such amount to or collect such amount from, as applicable, the account of the Lending Clearing Member in which the stock loan position was carried, and (iii) collect

such amount from or pay such amount to, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried.

(34) Notwithstanding the preceding provisions of this Rule, if the Lending Clearing Member is unable to complete the buy-in or if, for any reason, effecting a buy-in is not permitted, the Corporation, in its discretion and upon notice to the Lending Clearing Member, may fix a cash settlement value for the quantity of the Loaned Stock not returned to the Lending Clearing Member. The value fixed by the Corporation shall be final and not subject to review. The Corporation shall (i) determine the difference between the amount of Collateral held by the Lending Clearing Member in respect of such quantity of the Loaned Stock and the cash settlement value fixed by the Corporation, (ii) pay such amount to or collect such amount from, as applicable, the account of the Lending Clearing Member in which the stock loan position was carried, and (iii) collect such amount from or pay such amount to, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried. These payments shall be made through the Corporation's daily cash settlement system and may be netted against other cash settlements due to or from the same account in accordance with the By-Laws and Rules.

(45) Notwithstanding any other provision of the By-Laws or Rules, from and after the time that a buy-in is executed pursuant to ~~sub~~paragraph (b)(1) ~~or~~ (2) of this Rule or a cash settlement value is determined pursuant to ~~sub~~paragraph (b)(34) of this Rule, the Borrowing Clearing Member shall have no further right or obligation to deliver to the Corporation the Loaned Stock, and no delivery of Loaned Stock by the Borrowing Clearing Member shall satisfy the obligation of the Borrowing Clearing Member under this paragraph (b).

(c) *Sell-Out.* (4) Where the Lending Clearing Member fails to pay the settlement price in respect of the Loaned Stock, the Borrowing Clearing Member may execute a sell-out of the Loaned Stock where it has not actually received the settlement price prior to executing the sell-out subject to the following procedures depending on whether the Borrowing Clearing Member initiated the return through a Loan Market or the Corporation under Rule 2216A(a)(1):

(1) Returns Initiated Through a Loan Market. After execution of a sell-out regarding a Market Loan initiated through Loan Market, the Borrowing Clearing Member shall immediately give written notice to the Loan Market of such sell-out. After receipt of such notice, the Loan Market shall immediately give written notice to the Lending Clearing Member and the Corporation of such sell-out, including the quantity of the Loaned Stock sold (which shall not be greater than the quantity of the Loaned Stock in respect of which the Lending Clearing Member has failed to return the settlement price to the Borrowing Clearing Member), the price received, and any transactional costs, fees or interest incurred in connection with such sell-out (such transactional costs, fees and interest, the "Sell-Out Costs"). The Loan Market shall also provide the Corporation with such other information as it may reasonably require with respect to the executed sell-out. The Borrowing Clearing Member shall execute the sell-out in a commercially reasonable manner and must be prepared to defend the timing of the sell-out, the sell-out price and the Sell-Out Costs. Any objections by the Lending Clearing Member with respect to the timeliness of the sell-out and the reasonableness of the sell-out price and/or the Sell-out Costs

shall be matters to be resolved by the Loan Market, and the Corporation shall have no responsibility in respect thereof.

(2) Returns Initiated Through the Corporation. After execution of a sell-out regarding a Market Loan initiated directly through the Corporation, the Borrowing Clearing Member shall immediately give written notice to the Corporation of such sell-out, including the quantity of the Loaned Stock sold (which shall not be greater than the quantity of the Loaned Stock in respect of which the Lending Clearing Member has failed to return the settlement price to the Borrowing Clearing Member), the price received, and any transactional costs, fees or interest incurred in connection with such sell-out (such transactional costs, fees and interest, the “Sell-Out Costs”). After receipt of such notice, the Corporation shall immediately give corresponding written notice to the Lending Clearing Member on that stock loan business day. If the Lending Clearing Member affirms the buy-in, the buy-in will be deemed complete. If the Lending Clearing Member fails on the stock loan business day to affirm or reject the sell-out to the Corporation by a cut-off time prescribed by the Corporation from time to time then the Corporation will deem the sell-out to be complete if the Corporation determines that that the price per share received by the Borrowing Clearing Member for the Loaned Stock is more than the lowest market price and less than the highest market price for the Loaned Stock on that stock loan business day. Otherwise, the Corporation will reject the sell-out. Upon rejection of a sell-out, the Corporation will give no further effect to the sell-out by the Borrowing Clearing Member. Any objections by the Lending Clearing Member with respect to the timeliness of the sell-out and the reasonableness of the Sell-Out Costs shall be matters to be resolved between the Lending Clearing Member and Borrowing Clearing Member and the Corporation shall have no responsibility in respect thereof.

(23) If a sell-out has been completed by a Borrowing Clearing Member pursuant to ~~sub~~paragraph (c)(1) or (2), the Corporation shall (i) subtract the Sell-Out Costs from the price received on such sell-out, and determine the difference between the remaining amount and the settlement price owed to the Borrowing Clearing Member in respect of the sold-out Loaned Stock, (ii) pay such amount to or collect such amount from, as applicable, the account of the Borrowing Clearing Member in which the stock borrow position was carried, and (iii) collect such amount from or pay such amount to, as applicable, the account of the Lending Clearing Member in which the stock borrow position was carried.

(d) Termination by Loan Market or the Corporation. (1) The relevant Loan Market may issue return/recall instructions to the Corporation to terminate all or a portion of the outstanding Market Loans carried in the account(s) of a ~~Market Loan~~ Clearing Member. If any such termination fails to settle on the specified termination date, the relevant Loan Market may direct the Lending Clearing Member or the Borrowing Clearing Member, as applicable, to initiate the buy-in or sell-out process described in this Rule, as applicable, in accordance with any instructions the Loan Market may provide.

(2) The Corporation may also at any time terminate the outstanding Market Loans relating to one or more particular Eligible Stocks upon a determination by the Corporation, in its sole discretion, that such action is warranted by reason of the lack of substantial volume in such Market Loans, the impending termination of business on the part of the Corporation, the inability of the

Corporation from time to time to maintain in effect satisfactory arrangements with the Depository, or other circumstances in which the Corporation in its sole discretion determines that such action is necessary or appropriate for the protection of the Corporation, its Clearing Members or the public. For Market Loans terminated at the election of the Corporation, the Corporation shall provide written notice thereof to all affected ~~Market Loan~~ Clearing Members specifying the date on which such termination is to become effective, which date shall be a stock loan business day at least one stock loan business day after the date of such notice. If any such termination fails to settle on the specified termination date, the relevant ~~Market Loan~~ Clearing Members may initiate on the morning of the next stock loan business day the “buy-in” or “sell-out” process described in this Rule, as applicable.

(e) *Extinguished Positions.* From and after the time when termination of a Market Loan, or a portion thereof, is completed in accordance with this Rule, the Corporation shall extinguish the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of the terminated Market Loan, or such portion thereof. The Corporation shall be discharged from its obligations as borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member, and shall have no further obligation in respect of the terminated Market Loan, or such portion thereof.

(f) *Mark-to-Market Payments Pending Termination.* Notwithstanding that the termination of a Market Loan, or a portion thereof, has been initiated, the Lending Clearing Member and the Borrowing Clearing Member shall continue to make and receive daily mark-to-market payments, dividend equivalent payments and rebate payments and to deposit margins with the Corporation, all in accordance with the Rules, up to and including the date on which settlement of the termination of the Market Loan is completed.

(g) *Compliance With Applicable Law.* Anything else ~~herein~~ in this Chapter XXIA to the contrary notwithstanding, the Corporation shall not be held liable for any Clearing Member’s failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of the relevant Loan Market or any exchange or self-regulatory organization.

#### **RULE 221710A – Suspension of ~~a Market Loan~~ Clearing Members – Pending and Open Market Loans**

(a) *Pending Market Loans.* If the Corporation, a Loan Market or the Depository suspends a ~~Market Loan~~ Clearing Member prior to the time at which the Corporation otherwise would have accepted a stock loan to which the suspended Clearing Member is a party as a Market Loan, then, notwithstanding any other provision of the By-Laws and Rules, the Corporation shall have no obligation to accept, and shall not accept, the stock loan. In such situation, the Corporation shall notify the Depository and the Loan Market that the Corporation has rejected such stock loan as a Market Loan.

(b) *Open Market Loans.* If a ~~Market Loan~~ Clearing Member is suspended by the Corporation, a Loan Market or the Depository, open stock loan and borrow positions of such Clearing Member that originated through the Market Loan Program shall, except as hereinafter provided, be

terminated in accordance with the provisions of Rule 22118A, [Rule 2219A](#), or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances, including, but not limited to, a private auction, [as described by Interpretation and Policy .02 of Rule 1104](#). Any net proceeds from the termination of such stock loan and borrow positions in any of the accounts of the suspended Clearing Member (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is entitled to receive in accordance with the Rules) shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is obligated to pay in accordance with the Rules) in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any termination of stock loan and borrow positions pursuant to this Rule.

(c) *Exceptions.* Notwithstanding the preceding provisions of this Rule, the Corporation may exercise the authority described in Rules 1106(d) and 1106(e) in respect of open stock loan and borrow positions resulting from Market Loans. For purposes of applying such paragraphs to open stock loan and borrow positions, references to "positions," "unsegregated long positions or short positions," and "underlying interests" therein shall be deemed to be references to "stock loan and borrow positions," "stock loan positions or stock borrow positions," and "Eligible Stock," respectively.

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

~~.01 See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out a suspended Clearing Member's open positions in stock loan and/or borrow positions that originated through the Market Loan Program.~~

**RULE 221811A – Suspension of a ~~Market Loan~~ Clearing Members – Buy-In and Sell-Out Procedures**

(a) *Instruction by the Corporation.* If a ~~Market Loan~~ Clearing Member shall be suspended by the Corporation, the Corporation may direct the Lending Clearing Member or the Borrowing Clearing Member, as applicable, or, in the Corporation's discretion, may instruct an independent broker (such broker shall be a ~~Market Loan~~ Clearing Member) to buy in or sell out, as applicable, the Loaned Stock with respect to each open stock borrow or loan position of the suspended Clearing Member that originated through the Market Loan Program.

(b) *Notification of Buy-In or Sell-Out Price.* Such buy in or sell out must be executed by the Lending Clearing Member or Borrowing Clearing Member by the settlement time for a Clearing Member's obligations to OCC on the stock loan business day after the receipt of such instruction by the Corporation. Failure to execute such buy in or sell out, and provide notification of such action by such time will result in the Corporation terminating the ~~StockMarket~~ Loan and

effecting Settlement based upon the Marking Price used at the close of business on the stock loan business day the original instruction was made by the Corporation.

(c) Settlement Procedures. The buy-in or sell-out shall be effected in accordance with the applicable procedures set forth in Rule 220916A, provided that (i) in the case where the Corporation instructs an independent broker to execute a buy-in, the Corporation shall return the bought-in Loaned Stock to the Lending Clearing Member against the payment of settlement price in respect thereof by the Lending Clearing Member, (ii) in the case where the Corporation instructs an independent broker to execute a sell-out, the Corporation shall recall the Loaned Stock from the Borrowing Clearing Member for purpose of the sell-out and transfer the sale proceeds to the Borrowing Clearing Member, and (iii) any amount to be credited to or collected from the suspended Clearing Member shall be credited to or withdrawn from the suspended Clearing Member's Liquidating Settlement Account.

(d) Settlement Price. The Clearing Member executing the buy-in or sell-out, as applicable, shall be prepared to defend the reasonableness of the price, the transactional costs or cash settlement value, provided that in the case where the Corporation instructs an independent broker to execute a buy-in or sell-out, every determination by the Corporation with respect to any such related matter shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review. A Clearing Member may demonstrate that the price or cash settlement value associated with a buy-in or sell-out is reasonable by demonstrating that the price or cash settlement value fell within the trading range of the Eligible Stock on the date of the buy-in or sell-out. The Corporation has the authority to withdraw the value of any difference between the price reported by the Clearing Member executing the buy-in or sell-out, as applicable, and the price the Corporation, in its sole discretion, determines to be reasonable. This price determined by the Corporation shall be binding and conclusive.

~~Anything else herein to the contrary notwithstanding, the Corporation shall not be held liable for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of the relevant Loan Market or any exchange or self-regulatory organization.~~<sup>[50]</sup>

#### **RULE 2219A – Suspension of Clearing Member – Re-Matching in Suspension**

(a) In the event that a suspended Clearing Member has Matched-Book Positions that are either Hedge Loans or Market Loans, as applicable, the Corporation will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible by (1) the termination by offset of stock loan and stock borrow positions that are Matched-Book Positions in respect of Hedge Loans or Market Loans, as applicable, in the suspended Clearing Member's account(s) and (2) the Corporation's re-matching in the order of priority in paragraph (c) below of stock borrow positions for the same number of shares in the same Eligible Stock maintained in respect of a Hedge Loan or a Market Loan in a designated account of a Matched-Book Borrowing Clearing Member against a stock loan position for the

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<sup>[50]</sup> This paragraph is deleted and consolidated with proposed Rule 2216A(g).]

same number of shares in the same Eligible Stock maintained in respect of a Hedge Loan or a Market Loan in a designated account of a Matched-Book Lending Clearing Member.

(b) The Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member are not required, as applicable, to issue instructions to the Depository to terminate such stock loan and stock borrow positions maintained in the Market Loan Program or Stock Loan/Hedge Program or to initiate new stock loan transactions for inclusion in the Market Loan Program or Stock Loan/Hedge Program.

(c) *Termination by Offset of Matched-Book Positions.* The termination by offset and re-matching of positions pursuant to this Rule 2219A shall be done by the Corporation using a matching algorithm in which the Matched-Book Positions of the suspended Clearing Member are first terminated by offset and affected Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members are then re-matched in the order of priority described below. Where it is stated below that the Corporation will re-match Matched-Book Borrowing Clearing Members with Matched-Book Lending Clearing Members that maintain between them current executed Master Securities Loan Agreements, the Corporation shall make reasonable efforts to do so based on information provided by Clearing Members to the Corporation on an ongoing basis. The Corporation shall be entitled to rely on, and shall have no responsibility to verify in any manner, the Master Securities Loan Agreement records provided by Clearing Members and on record as of the time of re-matching.

(1) The Corporation will first select the largest stock loan or stock borrow position regarding a Disclosed Market Loan for a given Eligible Stock from the suspended Clearing Member's Matched-Book Positions.

(2) The stock loan or stock borrow position selected in paragraph (c)(1) above is then re-matched with the largest available stock borrow or stock loan position regarding a Disclosed Market Loan for the selected Eligible Stock for which a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member.

(3) The Corporation will repeat the re-matching process as described in paragraphs (c)(1) – (2) above for Disclosed Market Loans of the suspended Clearing Member that are Matched-Book Positions until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with Master Securities Loan Agreements is completed.

(4) Contemporaneous with carrying out the steps described in paragraphs (c)(1) – (3), the Corporation will carry out all of the same steps in respect of Anonymous Market Loans of the suspended Clearing Member that are Matched-Book Positions, re-matching such positions with the largest available stock borrow or stock loan position regarding an Anonymous Market Loan initiated through the same Loan Market, regardless of whether a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member.

(5) Contemporaneous with carrying out the steps described in paragraph (c)(1) – (3), the Corporation will carry out all of the same steps in respect of Hedge Loans of the suspended



Clearing Member that are Matched-Book Positions, re-matching such positions with the largest available stock borrow or stock loan position regarding a Disclosed Market Loan for which a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member.

(6) After completion of the steps described in paragraphs (c)(1) – (5), the Corporation, the Corporation will carry out all of the same steps in respect of Market Loans of the suspended Clearing Member that are Matched-Book Positions, re-matching such positions with the largest available stock borrow or stock loan position regarding a Market Loan for which a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, regardless of whether the Market Loans are Disclosed Market Loans or Anonymous Market Loans.

(7) After completion of the steps described in paragraphs (c)(1)-(6), the Corporation will select the largest remaining stock loan or stock borrow position for a given Eligible Stock from the suspended Clearing Member's Matched-Book Positions, regardless of whether the position is with respect to a Hedge Loan or a Market Loan.

(8) The stock loan or stock borrow position selected in paragraph (c)(7) is then re-matched with the largest available stock borrow or stock loan position for the selected Eligible Stock from the suspended Clearing Members' Matched-Book Positions from the other Stock Loan program (i.e., a Market Loan where the loan or borrow position selected in paragraph (c)(5) is a Hedge Loan or a Hedge Loan where the loan or borrow position selected in paragraph (c)(5) is a Market Loan) and for which a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member.

(9) The Corporation will repeat the re-matching process as described in paragraphs (c)(7) – (8) above for stock loan or stock borrow positions of the suspended Clearing Member that are Matched-Book Positions until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with Master Securities Loan Agreements is completed.

(10) After completion of the steps described in paragraphs (c)(1) – (9), the Corporation shall repeat the re-matching process described in paragraph (c)(6) for all remaining stock loan or stock borrow positions regarding Market Loans that are Matched-Book Positions for which Master Securities Loan Agreements do not exist between the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member. Positions will be selected for re-matching in order of priority based on largest outstanding position size and regardless of whether a Market Loan is a Disclosed Market Loan or Anonymous Market Loan.

(11) Contemporaneous with carrying out the steps described in paragraph (c)(10), the Corporation shall repeat the re-matching process described in paragraphs (c)(5) for all remaining stock loan or stock borrow positions regarding Hedge Loans that are Matched-Book Positions for which Master Securities Loan Agreements do not exist between the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member.

(12) After completion of the steps described in paragraphs (c)(1) – (11), the Corporation shall repeat the re-matching process described in paragraphs (c)(7) – (9) for all remaining stock loan or stock borrow positions that are Matched-Book Positions for which Master Securities Loan Agreements do not exist between the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member.

(13) After completion of the steps described in paragraphs (c)(1) – (12), any remaining stock loan or stock borrow position that is a Matched-Book Position and that is not able to be re-matched pursuant to this Rule 2219A will be closed out pursuant to the rules governing the close-out of a Hedge Loan or Market Loan position, as applicable.

(d) In the event a Borrowing Clearing Member and Lending Clearing Member are re-matched pursuant to this Rule 2219A in respect of stock loan and stock borrow positions, the resulting re-matched positions will be as follows:

(1) Where the positions are Hedge Loans, the re-matched positions will be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2207.

(2) Where the positions are Anonymous Market Loans initiated through the same Loan Market, the re-matched positions will be an Anonymous Market Loan under Rule 2202A(h) governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2208A.

(3) Where one of the positions is a Disclosed Market Loan, or the positions are Anonymous Market Loans initiated through different Loan Markets, the re-matched position will be a Disclosed Market Loan under Rule 2202A(h) governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2208A. For purposes of Rule 2214A, Rule 2216A, and this Rule, the resulting Disclosed Market Loan will be deemed to have been initiated directly through the Corporation.

(4) Where one of the positions is a Market Loan and the other is a Hedge Loan, the re-matched position will be a Hedge Loan governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2207.

(e) Any change in Collateral requirements arising from the re-matching of stock loan or stock borrow positions pursuant to this Rule 2219A shall be included in the calculation of the mark-to-market payment obligations on the stock loan business day following the completion of the positions adjustments as set forth in Rule 2219A(f).

(f) The termination by offset and re-matching of positions pursuant to this Rule 2219A shall be complete upon the Corporation completing all position adjustments in the accounts of the suspended Clearing Member and the Borrowing Clearing Members and Lending Clearing Members with re-matched positions and when the applicable systems reports are produced and provided to the Clearing Members reflecting the completion of the transaction.

(g) From and after the time the Corporation has completed the position adjustments to terminate by offset and re-match Matched-Book Positions maintained in the suspended Clearing Member's account as set forth in 2219A(f), the suspended Clearing Member shall have no further obligation under the By-Laws and Rules with respect to such positions.

(h) From and after the time the Corporation has completed the termination by offset and re-matching as set forth in Rule 2219A(f), a Borrowing Clearing Member with re-matched stock borrow positions remains obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions remains obligated as a Lending Clearing Member as specified in the By-Laws and Rules governing the Stock Loan/Hedge Program or Market Loan Program, as applicable.

(i) Upon notification that the Corporation has completed the termination by offset and re-matching of stock loan and borrow positions as set forth in Rule 2218A(f), the suspended Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched stock loan and borrow positions shall promptly make any necessary bookkeeping entries at the Depository necessitated by the re-matching.

(j) Borrowing Clearing Members and Lending Clearing Members that have been re-matched where the re-matched position is a Hedge Loan shall work in good faith to re-establish any terms, representations, warranties and covenants not governed by the By-Laws and Rules or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to Rule 2213 or Rule 2216A, as applicable, as soon as reasonably practicable.

**EXHIBIT 5B**



**OCC BY-LAWS**

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

THE OPTIONS CLEARING CORPORATION

BY-LAWS

\* \* \*

Article I
Definitions

\* \* \*

B.

\* \* \*

Borrowing Clearing Member

(4) The term "Borrowing Clearing Member" means any Hedge Clearing Member or Market Loan Clearing Member that borrows Eligible Stock in a Stock Loan.

(5) – (8) [Renumbered (4) – (7). Otherwise, no change.]

\* \* \*

E.

\* \* \*

Eligible Stock

(3) The term "Eligible Stock" means any security that is eligible for lending in the Stock Loan/Hedge Program and the Market Loan Program. A security shall be eligible for lending in the Stock Loan/Hedge Program and the Market Loan Program if and only if (i) the security is an equity security that the Depository has determined is eligible for deposit at the Depository, (ii) the Corporation has not determined to terminate all outstanding Stock Loans and/or Market Loans in respect of such security pursuant to the By-Laws, (iii) the security is a "covered security" within the meaning of Section 18(b)(1) of the Securities Act of 1933, (iv) in the case of securities which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract, the security is trading at a market price of at least \$3 per share, as determined by the Corporation. The Corporation may waive requirement (iv) at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. However, should the market price for a security for which the Corporation has not waived requirement (iv) fall below \$3, no new Stock Loan or Market Loan transactions may be submitted for clearance, but existing positions may be maintained.

(4) – (23) [Renumbered (3) – (22). Otherwise, no change.]

\* \* \*

**H.**

\* \* \*

**Hedge Loan**

~~(1) The term “Hedge Loan” means a matched pair of securities contracts for the loan of Eligible Stock made through the Stock Loan/Hedge Program, with one such securities contract being between the Lending Clearing Member and the Corporation as the borrower and the second such securities contract being between the Corporation as the lender and the Borrowing Clearing Member.~~

**Holder**

(2) [Renumbered (1). Otherwise, no change.]

**L.**

\* \* \*

**Lending Clearing Member**

~~(2) The term “Lending Clearing Member” means any Hedge Clearing Member or Market Loan Clearing Member that lends Eligible Stock in a Stock Loan.~~

**Lien**

(3) [Renumbered (2). Otherwise, no change.]

**Limited Cross-Guaranty Agreement**

(4) [Renumbered (3). Otherwise, no change.]

**Loan Market**

~~(5) The term “Loan Market” means an electronic platform included in the Corporation’s Market Loan Program that supports securities lending and borrowing transactions by matching lenders and borrowers based on loan terms that each party is willing to accept.~~

**Long Position**

(6) [Renumbered (4). Otherwise, no change.]

\* \* \*

**M.**

(1) – (2) [No change]

**Market Loan**

~~(3) The term “Market Loan” means a loan of Eligible Stock that was effected through a Loan Market and accepted by the Corporation in accordance with the By Laws and Rules.~~

**Market Loan Program**

~~(4) The term “Market Loan Program” means the Corporation's program for processing and maintaining stock loan positions originated through a Loan Market and effecting required payments in respect of such positions, all as further described in the By Laws and Rules.~~

**Margin Assets**

(5) [Renumbered (3). Otherwise, no change.]

**Margin Requirement**

(6) [Renumbered (4). Otherwise, no change.]

**Matched Book Borrowing Clearing Member**

~~(7) The term “Matched Book Borrowing Clearing Member” shall mean, with respect to any Matched Book Positions, the Hedge Clearing Member that borrows Eligible Stock from a Hedge Clearing Member maintaining Matched Book Positions in that Eligible Stock.~~

**Matched Book Lending Clearing Member**

~~(8) The term “Matched Book Lending Clearing Member” shall mean, with respect to any Matched Book Positions, the Hedge Clearing Member that lends Eligible Stock to a Hedge Clearing Member maintaining Matched Book Positions in that Eligible Stock.~~

**Matched Book Positions**

~~(9) The term “Matched Book Positions” shall mean Hedge Loan positions in which a single Hedge Clearing Member borrows Eligible Stock from a Matched Book Lending Clearing Member and lends an equal or lesser amount of the same Eligible Stock to a Matched Book Borrowing Clearing Member.~~

(10) – (15) [Renumbered (5) – (10). Otherwise, no change.]

\* \* \*

**S.**

\* \* \*

**Stock Borrow Position**

(19) The term "stock borrow position" ~~means the position of a Borrowing Clearing Member in respect of a Stock Loan.~~ [has the same meaning as defined in Rule 101.](#)

**Stock Future**

(20) [No change.]

**Stock Loan**

~~(21) The term “Stock Loan” means either a “Hedge Loan” or a “Market Loan” or both as the context requires.~~

**Stock Loan/Hedge Program**

~~(22) The term “Stock Loan/Hedge Program” means the Corporation’s program for processing and monitoring Stock Loans and hedging stock loan positions and stock borrow positions against stock option positions, all as further described in the By-Laws and Rules.~~

**Stock Loan Position**

~~(23)~~(21) The term "stock loan position" ~~means the position of a Lending Clearing Member in respect of a Stock Loan.~~ has the same meaning as defined in Rule 101.

(24) – (25) [Renumbered (22) – (23). Otherwise, no change.]

\* \* \*

**Article XI**

**Amendment of the By-Laws and the Rules**

\* \* \*

**Amendment of the By-Laws**

SECTION 1. [No change]

**Amendment of the Rules**

SECTION 2. The Rules may be amended at any time by the Board of Directors; provided that any amendment of the introduction to Chapter X of the Rules, Rule 1002, Rule 1006, Rule 1009, ~~and~~ Rule 1010, Rule 2201, Rule 2203, Rules 2204, Rule 2205, Rule 2206(a) and (d), Rule 2213(e)(1), Rule 2214(e)(1), Rule 2201A, Rule 2203A, Rule 2204A, Rule 2205A, and Rule 2206A(a)-(c) and (f) shall require the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by these By-Laws).

\* \* \*

**Article XXI**

~~Stock Loan/Hedge Program~~[Reserved]

**Introduction**



~~By-Laws in this Article are applicable only to the Stock Loan/Hedge Program. In addition, the By-Laws in Articles I-XI are also applicable to the Stock Loan/Hedge Program, in some cases supplemented by one or more By-Laws in this Article, except for By-Laws that have been replaced in respect of the Stock Loan/Hedge Program by one or more By-Laws in this Article and except where the context otherwise requires. Whenever a By-Law in this Article supplements or, for purposes of this Article, replaces one or more By-Laws in Articles I-XI, that fact is indicated in brackets following the By-Law in this Article.~~

#### ~~Definitions—SECTION 1.~~

##### ~~A.—B.~~

~~Reserved.~~

##### ~~C.~~

#### ~~Collateral~~

~~(1) The term "Collateral" means the amount in U.S. dollars deposited by a Borrowing Clearing Member with a Lending Clearing Member upon initiation of a Stock Loan as security for the obligations of the Borrowing Clearing Member in respect of the Stock Loan, as such amount may be adjusted from time to time through mark-to-market payments made by the Borrowing Clearing Member and the Lending Clearing Member pursuant to Rule 2204.~~

##### ~~D.~~

#### ~~Depository~~

~~(1) The term "Depository" means The Depository Trust Company.~~

##### ~~E.—K.~~

~~Reserved.~~

##### ~~L.~~

#### ~~Loaned Stock~~

~~(1) The term "Loaned Stock" means Eligible Stock transferred by a Lending Clearing Member to a Borrowing Clearing Member upon initiation of a Stock Loan, and any securities issued in exchange for such securities by reason of a reorganization, recapitalization, merger, consolidation or other corporate action of the issuer, and non-cash distributions described in Rule 2206 in respect of all such securities.~~

##### ~~M.~~

### **Marking Price**

~~(1) The term "marking price", as used in respect of any Loaned Stock shall have the meaning given to it in Article I of the By-Laws~~

### **Mark-To-Market Payment**

~~(2) The term "mark-to-market payment," as used in respect of any Stock Loan, means a payment made by a Lending Clearing Member or Borrowing Clearing Member to the Corporation or by the Corporation to a Lending Clearing Member or Borrowing Clearing Member pursuant to Rule 2204.~~

### **N.—R.**

~~Reserved.~~

### **S.**

### **Settlement Date**

~~(1) The term "settlement date" in respect of the termination of Stock Loans has the meaning set forth in Rule 2208.~~

### **Settlement Price**

~~(2) The term "settlement price" in respect of a Stock Loan means the amount of Collateral specified by the Lending Clearing Member in its instructions to initiate the Stock Loan as described in Rule 2202. The term "settlement price," in respect of the termination by either a Lending Clearing Member or a Borrowing Clearing Member of a Stock Loan or portion thereof, means the amount of Collateral required to be returned by the Lending Clearing Member on the settlement date.~~

### **Stock Loan**

~~(3) The term "Stock Loan" as used in this Article XXI of the By-Laws and in Chapter XXII of the Rules refers only to "Hedge Loans" and not to "Market Loans" (as those terms are defined in Article I of the By-Laws).~~

### **Stock Loan Business Day**

~~(4) The term "stock loan business day" means any day on which the Corporation and the Depository are open for business.~~

### **T.—Z.**

~~Reserved.~~

~~[Section 1 of this Article adds certain definitions relevant to the Stock Loan/Hedge Program.]~~

### ~~Role of the Corporation~~

~~SECTION 2 (a) Commencing at the time at which the Corporation accepts a Stock Loan as described in Rule 2202, the role of the Corporation in respect of the Stock Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member. Without limiting the generality of the foregoing: (i) the rights of the two Clearing Members that are parties to a Stock Loan to receive mark to market payments, and their obligations to make mark to market payments, shall be as against the Corporation, and not as against each other; and (ii) in the event of a termination of a Stock Loan in accordance with the Rules (with the exception of a termination by offset as provided in Rule 2208(e) or Rule 2212), the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price shall be as against the Corporation, and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price shall be as against the Corporation. In addition to the foregoing:~~

~~(1) stock loan positions of a Clearing Member established as a result of Stock Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member shall be aggregated for position reporting purposes, but shall not be netted against any stock borrow position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members or the voluntary termination by offset and re-matching of Matched-Book Positions in accordance with Rule 2208(e); and~~

~~(2) stock borrow positions of a Clearing Member established as the result of Stock Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing Member shall be aggregated for position reporting purposes, but shall not be netted against any stock loan position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members or the voluntary termination by offset and re-matching of Matched-Book Positions in accordance with Rule 2208(e);~~

~~(b) Upon acceptance of a Stock Loan, the Corporation shall create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Stock that is the subject of the Stock Loan, the number of shares loaned, the amount of Collateral received from the Borrowing Clearing Member and the identity of the Borrowing Clearing Member, and shall create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Stock that is the subject of the Stock Loan, the number of shares borrowed, the amount of Collateral delivered to the Lending Clearing Member and the identity of the Lending Clearing Member. The Corporation shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans.~~

~~(c) The Corporation may at any time terminate the outstanding Stock Loans relating to one or more particular Eligible Stocks upon a determination by the Corporation, in its sole discretion, that such action is warranted by reason of the lack of substantial volume in such Stock Loans, the impending termination of business on the part of the Corporation, the inability of the Corporation from time to time to maintain in effect satisfactory arrangements with the Depository, or other circumstances in which the Corporation in its sole discretion determines that such action is necessary or appropriate for the protection of the Corporation, its Clearing Members or the public. The Corporation may effect a termination pursuant to this paragraph (c) by giving written notice thereof to all affected Hedge Clearing Members specifying the date on which such termination is to become effective, which date shall be a stock loan business day at least one stock loan business day after the date of such notice.~~

### ~~--- Interpretations and Policies:~~

~~.01 If a Lending Clearing Member and a Borrowing Clearing Member complete the termination of a Stock Loan at a price other than the correct settlement price for the termination, the Corporation will treat the termination as having been completed at the correct settlement price. If the records of the Corporation show that a Lending Clearing Member and a Borrowing Clearing Member are party on a particular day to two or more Stock Loans between them in respect of a particular Eligible Stock but having different termination settlement prices (this might occur because one or more of the Stock Loans was initiated on that day) and the Lending Clearing Member and the Borrowing Clearing Member complete the termination of a Stock Loan at a price other than the correct settlement price for the termination of any of the Stock Loans, the Corporation will determine which of the Stock Loans will be deemed to have been terminated in accordance with its procedures as in effect from time to time, and will treat the termination as having been completed at the correct settlement price for that Stock Loan. In any of these events, the records of the Corporation shall be dispositive as between the Corporation and each of the two Hedge Clearing Members, the Lending Clearing Member and the Borrowing Clearing Member will be responsible for reconciling the discrepancy between the actual price and the settlement price utilized by the Corporation among themselves and, notwithstanding paragraph (a) of this Section, the Corporation shall have no responsibility to either the Borrowing Clearing Member or the Lending Clearing Member to reconcile the discrepancy.~~

### ~~Agreements of Borrowing Clearing Member~~

~~SECTION 3. The Clearing Member that is the Borrowing Clearing Member in respect of a Stock Loan agrees with the Corporation that: (a) upon the acceptance of the Stock Loan by the Corporation, the resulting stock borrow position of the Borrowing Clearing Member shall be created and subsequently maintained in accordance with Section 2 of this Article XXI, (b) so long as such stock borrow position is thereafter maintained, the Borrowing Clearing Member shall make all required margin deposits with the Corporation in accordance with Rule 2203 and all required mark-to-market payments to the Corporation in accordance with Rule 2204, and (c) with the exception of a termination by offset as provided in Rule 2208(e) or Rule 2212, in the event that the Lending Clearing Member, the Borrowing Clearing Member or the Corporation terminates the Stock Loan, the Borrowing Clearing Member shall deliver the Loaned Stock,~~

~~against payment of the settlement price, in accordance with the By Laws and the Rules. In the event of a conflict between the records of the Corporation and any records generated by the Borrowing Clearing Member regarding a Stock Loan and resulting stock borrow positions, the records generated by the Corporation will prevail and the Borrowing Clearing Member shall remain liable for all obligations associated with such stock borrow positions maintained on the records of the Corporation.~~

### ~~Agreements of Lending Clearing Member~~

~~SECTION 4. The Clearing Member that is the Lending Clearing Member in respect of a Stock Loan agrees with the Corporation that: (a) upon the acceptance of the Stock Loan by the Corporation, the resulting stock loan position of the Lending Clearing Member shall be created and subsequently maintained in accordance with Section 2 of this Article XXI, (b) so long as such stock loan position is thereafter maintained, the Lending Clearing Member shall make all required margin deposits with the Corporation in accordance with Rule 2203 and all required mark-to-market payments to the Corporation in accordance with Rule 2204, and (c) with the exception of a termination by offset as provided in Rule 2208(e) or Rule 2212, in the event that the Borrowing Clearing Member, the Lending Clearing Member or the Corporation terminates the Stock Loan, the Lending Clearing Member shall pay the settlement price, against delivery of the Loaned Stock, in accordance with the By Laws and the Rules. In the event of a conflict between the records of the Corporation and any records generated by the Lending Clearing Member regarding a Stock Loan and resulting stock loan positions, the records generated by the Corporation will prevail and the Lending Clearing Member shall remain liable for all obligations associated with such stock loan positions maintained on the records of the Corporation.~~

### ~~Maintaining Stock Loan and Stock Borrow Positions in Accounts~~

~~SECTION 5. Notwithstanding the provisions of Section 3 of Article VI of the By Laws, stock loan positions and stock borrow positions resulting from Stock Loans may be maintained in any of a Hedge Clearing Member's accounts with the Corporation. For the purposes of Section 3 of Article VI of the By Laws, stock loan positions resulting from Stock Loans shall be deemed to be "securities" and stock borrow positions resulting from Stock Loans shall be deemed to be "funds," and the authority of the Corporation to close out "positions" in any account shall include the authority to close out such stock loan positions and stock borrow positions.~~

~~[Section 5 of this Article supplements Section 3 of Article VI of the By Laws.]~~

### ~~... Interpretations and Policies:~~

~~.01 Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a Hedge Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from Stock Loans to any proprietary X-M account, non-proprietary X-M account, internal nonproprietary cross-margining account or segregated futures account.~~

## **Article XXIA Market Loan Program**

## **Introduction**

~~By-Laws in this Article are applicable only to the Market Loan Program. In addition, the By-Laws in Articles I-XI are also applicable to the Market Loan Program, in some cases supplemented by one or more By-Laws in this Article, except for By-Laws that have been replaced in respect of the Market Loan Program by one or more By-Laws in this Article and except where the context otherwise requires. Whenever a By-Law in this Article supplements or, for purposes of this Article, replaces one or more By-Laws in Articles I-XI and Section I of Article XXI, that fact is indicated in brackets following the By-Law in this Article.~~

## **Definitions**

### ~~SECTION 1:~~

#### ~~A.—B.~~

~~Reserved.~~

#### ~~C.~~

### **Collateral**

~~(1) The term "Collateral" means, in respect of a Market Loan, the amount in U.S. dollars a Borrowing Clearing Member is required to transfer to the Corporation's account at the Depository, which the Corporation in turn instructs the Depository to transfer to the Lending Clearing Member, as security for the obligations of the Borrowing Clearing Member in respect of the Market Loan, as such amount may be adjusted from time to time through mark-to-market payments made by the Borrowing Clearing Member and the Lending Clearing Member pursuant to Rule 2204A. The Collateral requirement applicable to a Market Loan shall be the mark-to-market value of the Loaned Stock multiplied by a percentage (no less than 100%) specified by the relevant Loan Market.~~

#### ~~D.~~

### **Depository**

~~(1) The term "Depository" shall have the meaning given to it in Article XXI of the By-Laws.~~

### **Dividend Equivalent Payment**

~~(2) The term "dividend equivalent payment" means, in respect of a Market Loan, a payment to be made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of a Market Loan.~~

#### ~~E.—K.~~

~~Reserved.~~

**~~L.~~**

**~~Loaned Stock~~**

~~(1) The term "Loaned Stock" means, in respect of a Market Loan, Eligible Stock that is the subject of the Market Loan and any securities issued in exchange for such Eligible Stock by reason of a reorganization, recapitalization, merger, consolidation or other corporate action of the issuer, and any non-cash distributions described in Rule 2206A in respect of the Loaned Stock.~~

**~~M.~~**

**~~Mark-to-Market Payment~~**

~~(1) The term "mark-to-market payment," as used in respect of any Market Loan, means a payment made by a Lending Clearing Member or Borrowing Clearing Member to the Corporation or by the Corporation to a Lending Clearing Member or Borrowing Clearing Member pursuant to Rule 2204A.~~

**~~Marking Price~~**

~~(2) The term "marking price" shall have the meaning given to it in Article XXI of the By-Laws.~~

**~~N.—Q.~~**

~~Reserved.~~

**~~R.~~**

**~~Rebate~~**

~~(1) The term "rebate," as used in respect of any Market Loan, means a fee payable from the Lending Clearing Member to the Borrowing Clearing Member (or, if the rebate rate is negative, from the Borrowing Clearing Member to the Lending Clearing Member), expressed as a rate based on the amount of cash Collateral held by the Lending Clearing Member.~~

**~~Recall~~**

~~(2) The term "recall," as used in respect of any Market Loan, means the process by which the Lending Clearing Member may initiate the termination of the Market Loan, or any portion thereof, by submitting a notice to the applicable Loan Market calling for the return of all or any portion of the Loaned Stock.~~

**~~Return~~**

~~(3) The term "return," as used in respect of any Market Loan, means the process by which the Borrowing Clearing Member may initiate the termination of the Market Loan, or any portion thereof, by submitting a notice to the Loan Market indicating its intention to return all or any portion of the Loaned Stock.~~

**~~S.~~**

**Settlement Price**

(1) The term "settlement price," as used in respect of a Market Loan, means the amount of Collateral specified in the instructions submitted by the Corporation to the Depository to effect such Market Loan. The term "settlement price," in respect of the termination of a Market Loan or portion thereof, means the amount of Collateral required to be returned by the Lending Clearing Member on the settlement date.

**Stock Loan Business Day**

(2) The term "stock loan business day" shall have the meaning given to it in Article XXI of the By-Laws.

**T.—Z.**

Reserved

[Section 1 of this Article adds certain new definitions relevant to the Market Loan Program and replaces, for purposes of Market Loans, the definitions of the same terms in Article I, Section 1 and Article XXI, Section I of the By-Laws.]

**Role of the Corporation**

SECTION 2. Commencing at the time at which the Corporation accepts a Market Loan as described in Rule 2202A, the role of the Corporation in respect of such Market Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member. Without limiting the generality of the foregoing: (i) the rights and/or obligations of a Clearing Member that is party to such Market Loan to receive and/or pay mark-to-market payments, dividend equivalent payments and rebate payments shall be as against the Corporation; and (ii) in the event of termination of such Market Loan in accordance with the Rules, the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price shall be as against the Corporation, and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price shall be as against the Corporation.

**Agreement of Borrowing Clearing Member**

SECTION 3. The Clearing Member that is the Borrowing Clearing Member in respect of a Market Loan agrees with the Corporation that: (i) upon the acceptance of the Market Loan by the Corporation, the resulting stock borrow position of the Borrowing Clearing Member shall be created and subsequently maintained in accordance with Section 5 of this Article XXIA, (ii) so long as such stock borrow position is thereafter maintained, the Borrowing Clearing Member shall make all required payments to the Corporation including margin deposits, mark-to-market payments, dividend equivalent payments and rebate payments (in the case of a negative rebate), all in accordance with the By-Laws and Rules, and (iii) in the event that the Market Loan is terminated, the Borrowing Clearing Member shall deliver the Loaned Stock, against payment of the settlement price, in accordance with the By-Laws and Rules. In the event of a conflict



~~between the records of the Corporation and any records generated by the Borrowing Clearing Member regarding a Stock Loan and resulting stock borrow positions, the records generated by the Corporation will prevail and the Borrowing Clearing Member shall remain liable for all obligations associated with such stock borrow positions maintained on the records of the Corporation.~~

#### **Agreement of Lending Clearing Member**

~~SECTION 4. The Clearing Member that is the Lending Clearing Member in respect of a Market Loan agrees with the Corporation that: (i) upon the acceptance of the Market Loan by the Corporation, the resulting stock loan position of the Lending Clearing Member shall be created and subsequently maintained in accordance with Section 5 of this Article XXIA, (ii) so long as such stock loan position is thereafter maintained, the Lending Clearing Member shall make all required payments to the Corporation including margin deposits, mark-to-market payments and rebate payments (in the case of a positive rebate), all in accordance with the By-Laws and Rules, and (iii) in the event that the Market Loan is terminated, the Lending Clearing Member shall pay the settlement price, against delivery of the Loaned Stock, in accordance with the By-Laws and Rules. In the event of a conflict between the records of the Corporation and any records generated by the Lending Clearing Member regarding a Stock Loan and resulting stock loan positions, the records generated by the Corporation will prevail and the Lending Clearing Member shall remain liable for all obligations associated with such stock loan positions maintained on the records of the Corporation.~~

#### **Maintaining Stock Loan and Borrow Positions in Accounts**

~~SECTION 5. (a) Upon acceptance of a Market Loan as described in the Rules, the Corporation shall create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Stock that is the subject of the Market Loan, the number of shares loaned and the amount of Collateral received, and shall create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Security that is the subject of the Market Loan, the number of shares borrowed and the amount of Collateral delivered. The Corporation shall identify stock loan and stock borrow positions resulting from Market Loans separately from stock loan and stock borrow positions resulting from Hedge Loans. In addition to the foregoing:~~

~~(1) stock loan positions of a Clearing Member established as a result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member shall be aggregated (separately for Market Loans effected through each Loan Market) for position reporting purposes, but shall not be netted against any stock borrow position which the Clearing Member may be carrying relating to the same Eligible Stock for any purposes other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members; and~~

~~(2) stock borrow positions of a Clearing Member established as the result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing~~

~~Member shall be aggregated (separately for Market Loans effected through each Loan Market) for position reporting purposes, but shall not be netted against any stock loan position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members.~~

~~(b) Notwithstanding the provisions of Section 3 of Article VI of the By-Laws, stock loan and stock borrow positions resulting from Market Loans may be maintained in any of a Market Loan Clearing Member's accounts with the Corporation. For the purposes of Section 3 of Article VI of the By-Laws, stock loan positions resulting from Market Loans shall be deemed to be "securities" and stock borrow positions resulting from Market Loans shall be deemed to be "funds," and the authority of the Corporation to close out "positions" in any account shall include the authority to close out such stock loan and stock borrow positions.~~

~~[Section 5 of this Article supplements Section 3 of Article VI of the By-Laws.]~~

~~***... Interpretations and Policies:***~~

~~01 Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a Market Loan Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from Market Loans to any proprietary X-M account, non-proprietary X-M account, internal non-proprietary cross-margining account or segregated futures account.~~

**Exhibit 5C**

This Exhibit contains one electronic file embedded in this cover page for filing efficiency, as identified below. OCC has omitted the embedded file pursuant to 17 CFR 240.24b-2. OCC has separately filed and requested confidential treatment of the cover page containing the embedded file as protected from public disclosure by Exemptions 4 and 8 of the Freedom of Information Act (“FOIA”), 5 U.S.C. 552(b)(4), (b)(8), and 15 U.S.C. 78x(e) because the information it contains concerns (i) OCC’s trade secrets and commercial information not customarily released to the public and is, and always has been, treated as the private information of OCC, the release of which is likely to cause foreseeable harm to OCC’s commercial or financial interests; and (ii) the supervision of OCC, a financial institution regulated by the Commission. OCC believes the Form 19b-4 Information and Exhibit 1A provide a clear and adequate description of the relevant substance of the embedded file to facilitate meaningful public comment.

Embedded Files: **[Redacted Pursuant to Rule 24b-2]**

Exhibit 5C Proposed conforming changes to OCC’s Margin Policy; 1 page.

**Exhibit 5D**

This Exhibit contains one electronic file embedded in this cover page for filing efficiency, as identified below. OCC has omitted the embedded file pursuant to 17 CFR 240.24b-2. OCC has separately filed and requested confidential treatment of the cover page containing the embedded file as protected from public disclosure by Exemptions 4 and 8 of the Freedom of Information Act (“FOIA”), 5 U.S.C. 552(b)(4), (b)(8), and 15 U.S.C. 78x(e) because the information it contains concerns (i) OCC’s trade secrets and commercial information not customarily released to the public and is, and always has been, treated as the private information of OCC, the release of which is likely to cause foreseeable harm to OCC’s commercial or financial interests; and (ii) the supervision of OCC, a financial institution regulated by the Commission. OCC believes the Form 19b-4 Information and Exhibit 1A provide a clear and adequate description of the relevant substance of the embedded file to facilitate meaningful public comment.

Embedded Files: **[Redacted Pursuant to Rule 24b-2]**

Exhibit 5D Proposed conforming changes to OCC’s RWD Plan; 2 pages.