



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78438; File No. SR-OCC-2016-002)

July 28, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Enhancements to The Options Clearing Corporation's Governance Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change by The Options Clearing Corporation ("OCC") concerns modifications and enhancements to OCC's governance arrangements. OCC is proposing to amend its Certificate of Incorporation, By-Laws, and Board of Directors ("Board") Charter to require that only one Management Director serve on OCC's Board (as opposed to the current requirement of two Management Directors). Moreover, OCC is proposing to amend its By-Laws and Rules to delete all references to the title and responsibilities of the Management Vice Chairman. In addition, OCC is proposing to amend its By-Laws to: (i) provide that the Compensation and Performance Committee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“CPC”)³ and the Audit Committee (“AC”) each will be chaired by a Public Director; (ii) modify the composition requirements of the Risk Committee (“RC”) to, among other things, provide that an Exchange Director be a member of the Risk Committee; (iii) provide for action by the OCC Board in the nomination process for Member Directors and Public Directors; (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single section of the By-Laws. Finally, OCC is proposing amendments to the Charters of the Board and the AC, CPC, Governance and Nominating Committee (“GNC”), RC, and Technology Committee (“TC”) (collectively, “Board Committees” or “Committees” and each a “Board Committee” or “Committee”) that stem from scheduled reviews of such documents.

All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

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

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

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

1. Purpose

³ As described below, the Performance Committee would be renamed as the Compensation and Performance Committee.

The purpose of this proposed rule change is to implement a number of modifications and enhancements to OCC's governance arrangements. Specifically, as a result of the Board's continual evaluation of OCC's governance arrangements, OCC is proposing to change the composition requirements of its Board to require that one Management Director serves on OCC's Board (as opposed to two) and to eliminate the role of Management Vice Chairman to provide more clarity and transparency regarding the status of these roles at OCC. In addition, OCC is proposing to amend its By-Laws to, among other things: (i) provide that the CPC and the AC each will be chaired by a Public Director to underscore and reinforce the independence of those committees and align with governance best practices and practices of other self-regulatory organizations; (ii) modify the composition requirements of the RC, including to provide that an Exchange Director be a member of the RC to provide the RC with additional expertise and unique perspective on matters such as market risk and special risks arising from trading practices and strategies, and new products; (iii) provide for Board action in the nomination process for Member Directors and Public Directors of OCC's Board to ensure an appropriate level of oversight and participation by the Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications; (iv) eliminate term limits for Public Directors in the interest of ensuring that OCC has access to the full benefits of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as that knowledge develops over time; and (v) consolidate By-Laws sections that identify the committees of the Board into a single section of the By-Laws to provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is also proposing amendments to the Charters of OCC's Board, AC, CPC, GNC, RC, and TC that stem from scheduled reviews of such documents. The proposed amendments to the Board and Committee Charters are designed, in general, to provide more clarity and transparency around the oversight functions and responsibilities of the Board and each of its Committees and provide for a more comprehensive and robust oversight framework for the financial reporting, audit and compliance, compensation and performance, governance and nomination, risk, and technology functions at OCC.

The proposed amendments to OCC's Certificate of Incorporation, By-Laws, Rules, Board and Committee Charters, and Amended and Restated Stockholders Agreement are described in detail below.

Proposed Amendments to OCC's Certificate of Incorporation

OCC is proposing to amend its Certificate of Incorporation to state that the number of Management Directors serving on OCC's Board shall be such number as shall be fixed by or pursuant to OCC's By-Laws.⁴ The purpose of this proposed change is ultimately to require that only one Management Director shall serve on OCC's Board as OCC is also proposing to amend its By-Laws to state that one Management Director shall serve on OCC's Board (as discussed in more detail below). The proposed amendments would also ensure consistency between all of OCC's governing documents concerning the number of Management Directors on OCC's Board. OCC's Certificate of

⁴ The number of Management Directors required to serve on OCC's Board would be stipulated by Article III, Section 1 of OCC's By-Laws. Article XI, Section 1 of OCC's By-Laws states that Article III of the By-Laws may not be amended by action of the Board without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. Accordingly, any proposed change in the number of Management Directors required to serve on OCC's Board would continue to be subject to stockholder approval.

Incorporation and By-Laws currently state that OCC's Board shall be composed of Members Directors, Exchange Directors, Public Directors, and two Management Directors. Recently, however, there has been a vacancy for one Management Director position and only one Management Director is serving on the Board at this time.⁵ OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience since the vacancy of the second Management Director position, believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Furthermore, OCC notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board.⁶ Accordingly, OCC believes that the proposed amendments would continue to provide for prudent

⁵ In 2014, the Commission approved a proposed rule change providing that OCC's President would not be considered a Management Director and, therefore, only one Management Director (the Executive Chairman) currently serves on the Board. *See* Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

⁶ In 2013, the Commission approved a proposed rule change by OCC to provide for the separation of the powers and duties combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman and President, and to create an additional directorship to be occupied by the President. *See* Securities Exchange Act Release No. 34-[sic]70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09).

governance arrangements at OCC. OCC is also proposing conforming changes to the Board Charter as described below.

Proposed Amendments to OCC's By-Laws and Rules

Number of Management Directors on OCC's Board

OCC is proposing to amend Article III, Section 1 of its By-Laws to state that only one Management Director will serve on OCC's Board (as opposed to the current requirement of two). As noted above, OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. OCC is also proposing conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, would be serving on OCC's Board.

Elimination of Management Vice Chairman Role

OCC proposes to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. During that time, the thought process surrounding leadership roles at OCC has evolved. OCC believes that any of the responsibilities of the Management Vice Chairman are already appropriately handled by other officers of OCC, primarily the Executive Chairman and President (or where applicable, other officers such as the Secretary or Directors such as the Member Vice

Chairman⁷) and as a result, this role is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office, ensure consistency across all of OCC's governing documents, and provide more clarity and transparency regarding OCC's intended governance arrangements.

In particular, OCC is proposing to amend (i) By-Laws Article I.A.(13); Article II, Section 4; Article III, Section 15; Article IV; Article V, Sections 1 and 3; Article VI, Section 17; Article VIII, Section 5; Article IX, Sections 12 and 14 and (ii) Rules 305, 309, 309A, 505, 609A, 801, 804, 805, 901, 903, 1104, 1106, 1309, 1402, 1405, 1604, 1610, 2104, 2110, and 2408 to remove all references to and responsibilities of the role of Management Vice Chairman.

Committee Descriptions and Other Conforming By-Law Amendments

OCC is proposing to amend Article III of its By-Laws in order to provide descriptions of the AC, CPC, GNC, RC, and TC in a single section of the By-Laws. Specifically, OCC is proposing to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III, Section 9 (which concerns the RC,⁸ the TC,⁹

⁷ For example, under proposed revisions to Article IV, Section 7, the Member Vice Chairman would preside over Board and stockholder meetings in the absence of the Executive Chairman.

⁸ The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC's existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). *See infra* note 15, and related text.

⁹ The Commission recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. *See* Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR-OCC-2015-018).

and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 and add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws in order to provide a more transparent, centralized, and unified statement describing all of the Board Committees. In addition, OCC proposes to make a non-substantive drafting clarification to existing language being relocated from Article III, Section 9 to the introductory section of Article III, Section 4 to clarify that the Board is required to designate persons to serve on the specifically enumerated Committees therein.

The proposed description of the AC would reflect existing requirements in the AC and GNC Charters that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the Audit Committee. The proposed description of the AC would also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below).

The proposed description of the CPC would reflect the existing requirement that, on an annual basis, the Board of Directors shall appoint a CPC and that the CPC generally consists of the Executive Chairman, the Member Vice Chairman, and at least one Public Director.¹⁰ Consistent with the preceding sentence, all of the CPC members

¹⁰ The proposed description of the CPC in the By-Laws includes the general requirement that CPC shall include the Executive Chairman, the Member Vice Chairman, and at least one Public Director. The proposed description is not intended to change the more specific CPC composition requirements in the CPC Charter that the committee consist of a Public Director chair, the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board.

will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The proposed description would also include a new requirement that the chairman of the CPC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). OCC believes that consolidating the descriptions of all Board Committees into Article III, Section 4 of its By-Laws would provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is proposing amendments to Article IV, Section 1 of the By-Laws to provide that the Board will elect the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elect the President of OCC (in addition to the Secretary and Treasurer). In addition, OCC proposes amendments to Article IV, Section 7 to delete a requirement that the Member Vice Chairman preside at the meetings of any Committee of the Board of Directors charged with the responsibility for evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director. OCC also proposes amendments to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board.¹¹

Compensation and Performance Committee and Audit Committee Independence

In addition to the proposed changes described above, OCC is also proposing changes to the Board Committee descriptions in proposed Article III, Sections 4(a) and

¹¹ See OCC's By-Laws Article IV, Section 8.

(b) of the By-Laws to reflect the requirement that a Public Director¹² chair the AC and the CPC. The GNC recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board-level compensation committees.¹³ The review was undertaken in order to further the Board's oversight of employee compensation and benefits, recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters). The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,¹⁴ which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory organizations. Moreover, such a change would ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities. The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that would require such audit committees to be independent based on facts determined by a given self-regulatory organization's board of directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board

¹² See Article III Section 6A of OCC's By-Laws regarding Public Directors.

¹³ The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

¹⁴ See OCC's By-Laws Article III, Section 3 and Section 5.

agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) would not be eligible to serve on the AC.

Risk Committee Membership

OCC is proposing to amend Article III of its By-Laws to modify the composition requirements of OCC's RC. Existing Article III, Section 9 of OCC's By-Laws currently requires that the RC shall consist of the Executive Chairman, the Member Vice Chairman, at least three other Member Directors selected on a basis that shall not discriminate against any Exchange, and one or more Public Directors. OCC is proposing to replace this description of the RC with new Article III, Section 4(d), which would relocate and modify the RC composition requirements to (i) provide that an Exchange Director¹⁵ be a member of the RC and (ii) require that at least one Member Director serve on the RC (as opposed to the current minimum requirement of four Member Directors) and (iii) remove a specific requirement that one of the Member Directors on the RC be the Member Vice Chairman.

The GNC reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among Clearing Members as well as the fact that Clearing Members are responsible for the contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC

¹⁵ See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

now believes that an Exchange Director should be a member of the RC. Exchange Directors have expertise and unique perspective on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies and new products.

In addition, the GNC recommended, and the Board approved, a reduction in the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. OCC believes that Member Director participation on the RC is vital and would therefore continue to require that at least one Member Director serves on the RC. OCC also believes, however, that it is necessary and appropriate to maintain flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC.

Nomination Process for Member Directors and Public Directors

OCC is proposing to make amendments to Article III, Sections 5 and 6A; Article IV, Section 1; and adopt Amendment No. 1 to Amended and Restated Stockholders Agreement to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman, and Member Vice Chairman in conformance with the process set forth in the GNC Charter.¹⁶ Currently, Board action is not a part of the annual election process for Member Directors and Public Directors as described in the By-Laws and the Amended and Restated Stockholders Agreement. The proposed

¹⁶ The GNC Charter had already been reviewed by OCC in 2014 and approved by the Commission. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

amendments would provide that such persons would be nominated by the GNC for purposes of the Board's annual election process and then confirmed by the Board. OCC believes that the proposed rule change would help ensure an appropriate level of oversight and participation by the full Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications.

Elimination of Public Director Term Limits

OCC is proposing to amend Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter in order to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. It is generally recognized that it often takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations.¹⁷ Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

Proposed Amendments to Board and Board Committee Charters

Amendments to the Board Charter and the Fitness Standards

¹⁷ According to the 2014 Spence Stuart Board Index, among S&P 500 companies, very few boards (only 3% - or 16 companies) specify director term limits. Of these, none imposes a term limit that is less than 10 years. The most common term limit is 15 years, and the longest term limit is 30 years.

OCC proposes amendments to the Board Charter that are intended to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and By-Laws; (iii) reflect recent changes involving Board Committee Charters; (iv) in general, restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the Charter. The proposed amendments are described in more detail below.

Membership and Organization

OCC proposes amendments to Section II of the Board Charter regarding membership and organization requirements to reflect the elimination of the role of Management Vice Chairman as described above. As a result, in the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC also proposes amendments that would allow for additional meetings of the Board being called as the Board deems appropriate (such meetings shall be called by the Executive Chairman or his designee) and to specify that the Executive Chairman shall consult with the Corporate Secretary (in addition to other directors or officers) when establishing Board meeting agendas.

OCC also proposes amendments intended to strengthen the Board's governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. In particular, the

proposed amendments would: (i) require that the Board meet in executive session at each regular meeting of the Board; (ii) allow the Board to determine who will participate in such sessions; (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest; and (iv) require the Board to select a Director to chair executive sessions in the absence of the Executive Chairman. The proposed amendments would also require that Board meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. Specifically, the chair of the executive session would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Board meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed Certificate of Incorporation and By-Laws changes described above. The Board Charter would also be amended to reflect an increase in the number of Public Directors serving on the Board from three to five.¹⁸

Additionally, in order to achieve a balanced representation on the Board among Member Directors, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors should include the volume of business transacted with OCC during the prior year and the mix of

¹⁸ The Commission approved the increase in the minimum number of Public Directors on OCC's Board from three to five in July 2014. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. The proposed amendments reinforce the existing requirement in Article III, Section 5 of OCC's By-Laws that the GNC shall endeavor to achieve balanced representation among Clearing Members on the Board of Directors to assure that: (i) not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. OCC proposes to remove geographic location of Clearing Members as a factor for consideration as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone as currently provided in the Code of Conduct for OCC Directors. Attendance by telephone would be generally discouraged because OCC believes the Board may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Board members were to meet in person.

Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily intended to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules as well as the

Board's Corporate Governance Principles¹⁹ and (ii) restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's position as a designated systemically important financial market utility.

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules, OCC is proposing to remove the obligation from the Board Charter. These charter provisions would be replaced by a general statement that the Board would perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.²⁰

OCC also proposes amendments to Section IV of the Board Charter designed to provide for prudent governance arrangements emphasizing that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility. Specifically, OCC proposes to amend the Charter to state that the responsibilities of the Board include: (i) overseeing management's activities in managing, operating and developing OCC and evaluating OCC management's performance in executing its responsibilities; (ii) selecting,

¹⁹ The purpose of the Board's Corporate Governance Principles is to assist OCC's Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, the Board's Corporate Governance Principles are meant to address OCC's obligations as a systemically important financial market utility to have policies and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

²⁰ The proposed change would remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5C.

overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual directors and Committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.*, directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer) as well as reviewing the annual study and evaluation of OCC's system of internal accounting controls; (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC proposes to modify certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC propose [sic] amendments that would specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital

structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. OCC also proposes amendments to specify that the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance and standards. Additionally, OCC proposes amendments to provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.²¹ The proposed amendments would also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its Charter) with oversight from the Board.

OCC is also proposing non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC proposes amendments that would combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services.

Other Conforming, Administrative and Non-Substantive Changes

²¹ OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

In addition to the changes described above, certain of the proposed amendments to the Board Charter are meant to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the TC²² the GNC, and renaming of the Performance Committee to the CPC, as described herein. In addition OCC is proposing to amend Section I of the Board Charter to more accurately state that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC also proposes amendments that would require an annual (as opposed to the less specific “periodic”) review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

Fitness Standards for Directors, Clearing Members and Others

OCC also proposes to amend the Fitness Standards to remove descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in Article III of OCC’s By-Laws and the relevant Committee Charters. Eliminating these redundant descriptions in the Fitness Standards would promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. The proposed amendments would also underscore that the Fitness Standards are intended to facilitate the performance of OCC’s role as a systemically important financial market utility.

Common Amendments to Each Committee Charter

²² See *supra* note 9.

OCC is proposing to make conforming amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.²³

Specifically, OCC proposes to amend each Committee Charter to confirm that each Board Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities. This amendment to the Committee Charters would make explicit a longstanding principle under which each Committee has operated. Additionally, references to the "Governance Committee" in each Committee Charter would be changed to the "Governance and Nominating Committee" to reflect the formation of the GNC.

Furthermore, OCC proposes to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical. Although this provision also required each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective because it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, historically, each Board Committee has been able to convene when necessary.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the

²³ See *supra* note 16.

enhanced recordation of important meeting events and discussions. Specifically, each Committee Charter would be amended to: (i) require that each Committee meet in executive session at each regular meeting of the Committee; (ii) allow the Committee to determine who will participate in such sessions; and (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest. The proposed amendments would also require that each Committee's meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. In particular, the Chair (or Acting Chair) would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Committee meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval. Generally speaking, Committees must obtain pre-approval from the Board to hire advisors. While not universal, OCC's understanding is that public company board committees frequently are authorized to engage advisors without board pre-approval at the company's expense to preserve autonomy and independence and to assist them in the execution of their responsibilities as deemed necessary. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated

responsibilities while preserving Board oversight via the application of existing reporting mechanisms.

OCC is also proposing amendments to its Committee Charters to specify that that [sic] each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process.

Amendments to the Audit Committee Charter

OCC proposes amendments to the AC Charter intended to, among other things: (i) reinforce the independence of the AC; (ii) more accurately memorialize and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. The proposed changes are described in more detail below.

Purpose, Membership and Authority

OCC proposes changes to Sections I, II and III of the AC Charter related to the purpose, membership and organization, and authority of the AC. In Section I of the AC Charter, OCC proposes to make organizational changes to certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. These changes are non-substantive in nature. OCC is also proposing to make various non-substantive clarifying and textual changes in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which would extend throughout the entire AC Charter. The proposed

amendments to change “independent accountants” to “external auditors” are not intended to signify a change in roles or responsibilities but to more accurately state that the activities described in the AC Charter as being performed by “independent accountants” are actually performed by a party acting in its capacity as OCC’s “external auditor.”

OCC also proposes amendments to Section II of the AC Charter that are intended to reinforce the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC’s management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.²⁴

Additionally OCC proposes an amendment that would clarify that the Management Director, as described in Section 7 of Article III of OCC’s By-Laws, is ineligible to serve on the AC.²⁵ OCC also proposes to revise the AC Charter to state that the AC will meet regularly, and no less than once annually (as opposed to “at least annually”), with management, OCC’s Chief Financial Officer, Chief Audit Executive (“CAE”) and Chief Compliance Officer (“CCO”) in executive sessions to discuss certain private matters. The purpose of this change is to signify that these meetings and interactions occur more than once per year. Section II of the AC Charter would also be amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. Further, OCC proposes an amendment to Section II of the AC Charter under which attendance at an AC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC

²⁴ The change concerning the AC Chair would conform the AC Charter to proposed Article III, Section 4(a) of OCC’s By-Laws, as described above.

²⁵ In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person.

OCC also proposes to amend the AC Charter to provide that the AC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the AC and the Board is in line with requirements in other Committee Charters.

OCC proposes to amend Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to approve the related fee and retention terms.²⁶ In addition to more accurately reflecting current Committee practice, it would conform the AC charter to OCC's other Committee Charters (i.e., the CPC, GNC, RC and TC Charters) with respect their authority to hire advisors and approve related fees and retention terms. As noted above, each of OCC's Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval in order to foster Committee independence as well as timely access to relevant expertise from outside specialists or advisors. The proposed amendments would clarify that this authority also extends to the approval of related fee and retention terms.

Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to reinforce and expand upon the activities of the AC with respect to the

²⁶ OCC is also proposing to remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement would be replaced by a broader expression of the AC's authority to hire advisors.

oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities. These proposed amendments are described in more detail below.

Oversight of External Auditor and Financial Reporting

OCC proposes amendments to the AC Charter regarding the AC's oversight of financial reporting and external auditors. The proposed amendments to the AC Charter are intended to more accurately memorialize and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the proposed amendments explicitly state that the AC is responsible for: (i) discussing with management and external auditors OCC's audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to issuance;²⁷ (iii) reviewing with management, external auditors and OCC's Internal Audit Department significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting principles and financial statement presentation and the effect of regulatory and accounting initiatives; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing with external auditors any audit problems or difficulties, and management's response thereto.

²⁷ This proposed amendment is intended to restate, clarify, and expand upon an existing statement in the AC Charter regarding the AC's review of annual audited financial statements, which OCC is proposing to delete.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter to state that the AC is required to: (i) discuss with management the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) monitor and evaluate the qualifications of both the external auditor and engagement partner; (iii) consider whether there should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

Oversight of Internal Audit, Compliance and Compliance-Related Matters

OCC is proposing to amend Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC proposes amendments to state that the AC's responsibilities include reviewing and approving the Internal Audit Policy on an annual basis and monitoring ongoing internal audit activities. OCC also proposes amendments to state that the AC is responsible for approving OCC's annual internal audit plan and approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan to explicitly codify these existing AC practices in the AC Charter. OCC believes that the AC, which serves as an independent and objective party tasked with the oversight of OCC's system of internal control, auditing, accounting, and compliance processes, is the appropriate body to approve OCC's internal audit plan and any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan. The proposed amendments would provide more clarity and transparency regarding OCC's governance arrangements by codifying these responsibilities in the AC Charter.

OCC also proposes amendments to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including: (i) annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct; (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO; and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC proposes amendments to clarify the AC's responsibilities with respect to: (i) reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

Oversight of OCC's Chief Audit Executive and Chief Compliance Officer

OCC proposes amendments to Section IV of the AC Charter to provide that the CAE and CCO would each report functionally to the AC and administratively to the

Executive Chairman.²⁸ The proposed amendments would make more explicit the reporting lines for these functions and underscore the independence of the CAE and CCO. In addition OCC proposes to eliminate provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. Specifically, as amended, the AC Charter would state that the AC, in consultation with the Executive Chairman, would review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each. The proposed changes related to the performance and compensation setting regime for the CAE and CCO are intended to reflect the fact that the CAE and CCO report administratively to the Executive Chairman while reporting functionally to the AC.

Amendments to the Compensation and Performance Committee Charter

OCC is proposing changes to its CPC Charter to explicitly describe the Committee's functions and responsibilities with respect to OCC's human resources, compensation and employee benefit programs, and insurance programs. The proposed amendments would also provide for CPC oversight of OCC's Capital Plan in recognition of the importance of providing for Board-level oversight to ensure OCC's capital and

²⁸ This change would explicitly note existing reporting lines in the AC Charter, but would not revise those reporting lines. These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

Capital Plan meet or exceed minimum regulatory standards. The proposed changes are described in more detail below.

Purpose, Membership, and Authority

OCC is proposing to rename the Performance Committee to the CPC in order to more accurately reflect its role. OCC is also proposing to amend Section I of the CPC Charter to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The CPC Charter would further delineate that the CPC is also tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC proposes amendments to Section II of the CPC Charter related to the membership and organization of the CPC. Specifically, OCC proposes amendments to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws to state that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the CPC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation

arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

OCC also proposes administrative amendments to Section II to clarify that the CPC would meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs of the AC and RC would be invited to attend the annual meeting to discuss compensation of key officers, including the Chief Risk Officer (“CRO”) and CAE.²⁹ The CPC Charter would also be amended to require that minutes of Committee meetings be circulated to the Board in conformance with general requirements applicable to all Board Committees.³⁰

OCC also proposes an amendment to the CPC Charter under which attendance at a CPC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. In addition, other clarifying and textual changes would be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

²⁹ These changes are being made to reflect a consultative process as between the Executive Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

³⁰ This requirement is already included in the AC, GNC, RC, and TC Charters.

Additionally, OCC proposes non-substantive organizational changes in Section III regarding the delegation of authority to the Administrative Committee that do not change the meaning of the rule text.

Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide explicit descriptions of the Committee's responsibilities with respect to OCC's capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust framework for the CPC's oversight functions. The proposed changes are described in more detail below.

Additionally, OCC proposes to remove explicit requirements in Section IV that the CPC review the Corporate Plan and Budget and OCC's performance under the Corporate Plan at each regularly scheduled meeting in favor of more general descriptions regarding the CPC's responsibilities for the oversight of the corporate financial planning process, including the corporate budget, and corporate goals and objectives. The proposed amendments are intended to accommodate CPC review of annual Corporate Plans and Budgets and performance thereunder (as currently contemplated by the CPC Charter) as well as consideration of longer-term horizons and implications in the strategic planning process.

Oversight of OCC's Capital Plan

OCC proposes amendments to Section IV of the CPC Charter to explicitly provide for the CPC's responsibilities in connection with overseeing OCC's capital structure, financial planning, and corporate goals and objectives. Specifically, the

proposed amendments would state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,³¹ including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments would also specify that the CPC is responsible for the annual review of OCC's Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC proposes amendments to provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the proposed amendments provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments also provide that the CPC is responsible for the periodic review of OCC's insurance program.

Oversight of Human Resources and Compensation Programs

OCC proposes amendments to Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable, of employee compensation, incentive and benefit programs. This

³¹ See Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12232 [sic] (March 6, 2015) (SR-OCC-2014-813). See also Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

proposed amendment ensures Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is proposing to amend the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is proposing amendments to the CPC Charter that would require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation and seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel. The proposed amendments would also require the CPC to review and approve the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President. Additionally the proposed amendments would require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.

OCC proposes to remove from the CPC Charter certain statements regarding the review of OCC's performance under the Corporate Plan and the oversight of the administration of OCC's compensation plans as these responsibilities would be covered under the newly proposed descriptions contained therein. OCC believes that it is prudent and appropriate to provide for CPC oversight in the areas of human resources,

performance, and compensation and that the proposed amendments will enhance OCC's overall governance arrangements with respect to the oversight and review of performance and compensation at OCC.

Oversight of Employee Benefit Programs and Other Responsibilities

OCC also proposes amendments to Section IV of the CPC Charter related to the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter to specify the CPC's responsibilities for oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The proposed amendments also specify the scope of employee welfare plans that the CPC reviews and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the proposed amendments would provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and performing such other oversight duties as called for in retirement, retirement and savings, and welfare plan documents.

OCC further proposes amendments that state that the CPC is responsible for providing updates to the Board periodically regarding: (i) actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

Amendments to the Risk Committee Charter

OCC is proposing amendments to its RC Charter which are primarily intended to enhance OCC's governance arrangements with respect to the RC's oversight functions and responsibilities. OCC also proposes amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above) and to reflect the adoption of the TC. The proposed changes are described as follows.

Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter to provide that the RC would be responsible for coordinating risk oversight with other Board Committees tasked with overseeing certain risks (e.g., the TC, which assists the Board in overseeing OCC's information technology risks) in order to achieve comprehensive and holistic oversight of OCC's risk-related matters. The proposed amendments would also provide that the RC is responsible for the review of material policies and processes associated with risks related to new initiatives.

In Section II of the RC Charter, OCC proposes amendments to provide that attendance at a RC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to remove from the RC Charter, and by extension its rules, a requirement that a RC member shall recuse himself from any matter in which his firm has an interest, other than a common interest shared with Clearing Members generally or a particular class of Clearing Members. OCC

believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors,³² which governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, OCC notes that, as a corporation incorporated in the state of Delaware, OCC's Directors have a fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders³³ and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director.³⁴

With respect to RC meetings, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters. The purpose of the proposed change is to signify that these meetings occur more frequently than once per year. The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. Moreover, and in order to enhance the independence and functional reporting relationship of the CRO to the RC, OCC proposes revisions to explicitly state that the

³² See Code of Conduct for OCC Directors available at <http://www.optionsclearing.com/components/docs/about/corporate-information/occ-code-of-conduct.pdf>.

³³ See *Cede & Co. v. Technicolor*, 634 A.2d 345, 360-361 (Del. 1993)

³⁴ See *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

CRO is authorized to communicate with the RC Chair outside of regular meetings. OCC also proposes to amend the RC composition requirements in Section II in order to conform to the proposed By-Law changes discussed above. Specifically, the RC Charter would be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also proposing an amendment to Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact that the time allotted for each individual RC meeting has been expanded. Furthermore, OCC proposes to amend Section II of the RC Charter to state that, unless a Chair is elected by the full Board, the members of the RC shall designate a Chair by majority vote. This proposed amendment is in conformance with OCC's current practices for electing Committee Chairs and as described in other Committee Charters.

OCC also proposes to amend Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee. As described herein, the RC is responsible for assisting the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks and for overseeing the overall enterprise risk management framework implemented by management. The proposed amendment would allow the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee to carry out certain tasks and responsibilities in the day-to-day risk management of OCC and to implement proposals that have been approved in concept by the RC where the RC deems such delegation of authority to be appropriate.

Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to enhance its governance arrangements in connection with the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other responsibilities.

Oversight of Membership and Margin Requirements

OCC proposes amendments to the RC Charter to provide a broader description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. In general, these changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework and would continue to encompass the responsibilities currently enumerated in the charter.³⁵ Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues would be replaced with a more general statement that the RC is responsible for the oversight of OCC's framework for clearing membership, including: (i) periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for clearing membership;³⁶ (ii) overseeing the processes established for reviewing and monitoring clearing membership

³⁵ For example, individual provisions related to specific types of membership categories and requirements would be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the deleted provisions.

³⁶ This proposed provision is a restatement of an existing RC responsibility for periodically reviewing and recommending changes to the initial and ongoing requirements for membership and would also replace and encompass the responsibilities in an existing provision of the RC Charter stating that the RC is responsible for recommending to the Board membership requirements for non-broker-dealers.

(including in respect of the continuance of potentially problematic members);³⁷ and (iii) making recommendations to the Board, as applicable, for final determination in respect of the foregoing.

In addition, OCC proposes to modify certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures.

Specifically, OCC proposes to consolidate these provisions to restate that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for Clearing Member failures, including: (i) reviewing Clearing Member surveillance criteria; (ii) overseeing the management processes for managing Clearing Members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on Clearing Members in a manner consistent with the By-Laws and Rules;³⁸ and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to restate the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to the oversight of margin and clearing fund requirements and replace them with a more high

³⁷ This proposed provision would replace and encompass the RC's responsibilities contained in existing RC Charter provisions related to the conducting of hearings for applicants proposed to be disapproved by the RC, the review and approval/disapproval of requests to participate in the Stock Loan Programs, and the approval/disapproval of the continued membership of managed Clearing Members.

³⁸ This proposed provision would replace and encompass the responsibilities in an existing RC Charter provision related to the RC's responsibility for reviewing and modifying or reversing restrictions or additional requirements imposed on Clearing Members pursuant to Rule 305.

level description that would provide that the RC oversees OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) reviewing and modifying OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof;³⁹ (ii) evaluating (including increasing) the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules.⁴⁰ In general, the proposed amendments are not intended to substantively change the RC's responsibilities in the deleted provisions but would instead replace them with a broader description intended to encompass those responsibilities. OCC is proposing, however, to delete an existing RC Charter provision specifically requiring the RC to periodically review the inputs to OCC's margin formula and modify them to the extent it deems such action to be consistent with the protection of OCC, Clearing Members, or the general public. While this specific requirement is being removed from the Charter, OCC believes that the Charter continues to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would

³⁹ This proposed provision would include language from an existing Charter provision stating that the RC will review methodologies used for calculating margin and clearing fund requirements.

⁴⁰ This proposed provision would replace and encompass the RC's responsibilities contained in existing Charter provisions related to the oversight of acceptable margin and clearing fund assets, including the approval of classes of GSE securities for deposit as margin, prescribing intervals for revaluing debt securities deposited as margin of clearing fund, and specifying haircuts for securities provided as margin.

provide the RC with continued authority to modify margin formula inputs if it deems such modification to be appropriate.⁴¹

OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. While the RC is responsible for overseeing standards used to admit non-U.S. institutions, OCC's President and Executive Chairman have general responsibility for approving financial institutions seeking to become non-U.S. letter of credit banks and that meet the requirements of OCC Rule 604, Interpretation and Policy .01 (with the exception of certain "equivalent country" and "equivalent institution" determinations that are required to be made by the RC pursuant to OCC Rule 604, Interpretations and Policies .01(b)(3) and .01(b)(4)(b)).

Oversight of OCC's Enterprise Risk Management Program and Risk Tolerances

OCC proposes amendments to restate and expand upon the RC's responsibility for overseeing OCC's Enterprise Risk Management program. Currently, the RC is responsible for overseeing the structure, staffing and resources of the Enterprise Risk Management program, reviewing periodic reports regarding the Enterprise Risk Management program, and annually reviewing and assessing the overall program. OCC proposes amendments to the RC Charter that would restate these existing responsibilities and add new responsibilities designed to enhance the risk oversight framework for the

⁴¹ As noted above, the proposed amendments to the RC Charter provide that the RC is responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula.

Enterprise Risk Management program. Specifically, the proposed amendments would state that the RC is responsible for overseeing OCC's Enterprise Risk Management program, including (in addition to the existing responsibilities noted above), reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these systems and procedures with management, reviewing with management the interrelated nature of OCC's risks, and annually approving the Enterprise Risk Management program's goals and objectives. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for the Enterprise Risk Management program.

OCC also proposes amendments to restate and expand upon the RC's responsibility for the oversight of OCC's risk appetite and risk tolerances. Currently, the RC Charter provides that the RC is responsible for reviewing and recommending for Board approval the OCC Risk Appetite Statement and reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement. The proposed amendments to the RC Charter would state that, in addition to these responsibilities, the RC would be responsible for reviewing and monitoring determinations regarding appropriate risk tolerances, including reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, and recommending risk tolerance parameters to the Board. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for OCC's risk appetite and risk tolerances.

Other Oversight Responsibilities

Section I of the RC Charter currently provides that the RC is responsible for the oversight and review of material policies and processes relating to member and other counterparty risk exposure assessments. OCC proposes amendments to Section IV that would further specify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, financial market utilities and trade sources. OCC believes that the oversight of such risk exposures is critical to ensuring the safety and soundness of OCC and that specifically including this responsibility in the RC Charter will provide for greater clarity and transparency regarding the RC's role in overseeing these risks.

Section I of the RC Charter also currently provides that the RC is responsible for the oversight and review of material policies and processes (i) for identifying liquidity risks and (ii) relating to liquidity requirements and the maintenance of financial resources. The proposed amendments to Section IV would further specify that the RC oversees the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. OCC believes that comprehensive oversight of liquidity risks and liquidity risk management is critical to ensuring the safety, soundness, and resilience of OCC and that providing more specificity regarding the RC's responsibilities with respect to liquidity risk will provide for greater clarity and transparency regarding the RC's role in such oversight. In addition, the RC Charter would be amended to provide that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a Clearing Member, and the development of

strategies to mitigate these effects. OCC believes it is prudent for management and the RC to engage in regular discussions concerning OCC's actions in extreme market events and the potential impacts on systemic stability given OCC's role as a systemically important financial market utility.

OCC also proposes to elaborate on the statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules by specifying that this would include the authorization of the filing of regulatory submissions pursuant to such delegation. Additionally, OCC proposes amendments to state that the RC would oversee management's responsibility for handling financial (i.e., credit, market, liquidity and systemic) risks, including the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes amendments to state that the RC's oversight responsibilities include: (i) identifying issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action and (ii) reviewing, approving and reassessing reporting metrics reflecting the risks for which the RC has oversight.

Further, the proposed amendments would specify that the RC oversees OCC's model risk management process, policies and controls, including: (i) overseeing model risk governance; (ii) reviewing the findings of any third party engaged by management to evaluate OCC's risk models; and (iii) annually reviewing and approving the Model Validation Plan and receiving periodic reports thereunder. Moreover, the amendments would provide that the RC is responsible for reviewing the results of any audits (internal and external), regulatory examinations and supervisory examination reports as to significant risk items or any other matter relating to the areas that the RC oversees, as

well as management's responses pertaining to matters that are subject to the oversight of the RC.

Conforming, Administrative and Non-Substantive Changes

In order to conform the RC Charter to the GNC Charter and AC Charter, OCC proposes amendments to the RC Charter that would eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, under the proposed amended RC Charter, the RC, in consultation with the Executive Chairman, would review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for the CRO.⁴² This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

Further, the proposed amendments confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products. Moreover, OCC proposes amendments to the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

Amendments to the Governance and Nominating Committee Charter

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above and to state that attendance of GNC

⁴² This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

meetings by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee because OCC believes that experience has shown that designating a formal role for a liaison was unnecessary. Deleting this requirement would also maintain uniformity across all Committee Charters, as no other Committee has a formally designated liaison.

OCC also proposes amendments to the GNC Charter to specify that the Chair (or the Chair's designee) shall consult with the Corporate Secretary, in addition to management, to prepare an agenda in advance of each GNC meeting as the Corporate Secretary is responsible for coordinating the preparation and distribution of Board and Board Committee meeting agendas. In addition, OCC is proposing non-substantive drafting changes regarding: (i) the numbering of certain provisions in Section I of the GNC Charter and (ii) the requirements for GNC Committee reports to the Board in Section II of the Charter.

Amendments to the Technology Committee Charter

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's Chief Security Officer ("CSO") and to provide that the CSO is authorized to communicate with directly with [sic] the Chair of the TC in between meetings of the Committee in order to strengthen the autonomy and independence of the CSO role at OCC. OCC also proposes to amend the

TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the TC and the Board is in line with requirements in other Committee Charters. OCC also proposes non-substantive amendments to Section III of the TC Charter to eliminate a provision that referenced approval of non-audit services which appeared to be an inadvertent carry-over from the Audit Committee Charter and to Section IV of the Charter to change the term “the Company” to “OCC” and “Board of Directors” to “Board.”

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁴³ and the rules thereunder applicable to OCC. OCC’s governance arrangements, which include, but are not limited to, OCC’s Certificate of Incorporation, By-Laws, the Board Charter, and the Committee Charters promote the effectiveness of OCC’s Board and Board Committees’ oversight on OCC’s business, risk management, and operational processes. OCC believes that the proposed changes to its governance arrangements would enhance the effectiveness of the Board and Board Committees’ oversight on such matters and are designed to provide more clarity and transparency with respect to OCC’s governance arrangements, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and in general, protecting investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁴ and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)⁴⁵

⁴³ 15 U.S.C. 78q-1.

⁴⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁵ 17 CFR 240.17Ad-22(d)(8).

thereunder. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended. The statutory basis for the proposed amendments is discussed in more detail below.

Amendments to OCC's Certificate of Incorporation, By-Laws, and Rules

OCC is proposing to amend its Certificate of Incorporation and By-Laws to modify the composition requirements for OCC's Board to require that only one Management Director shall serve on OCC's board. Currently, there is a vacancy for one Management Director position on the Board (OCC also notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board). OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience with the current Management Director vacancy, the Board believes that amending the Board composition to require one Management Director would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Accordingly, OCC believes that the proposed amendments to OCC's governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁶ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the

⁴⁶ 15 U.S.C. 78q-1(b)(3)(F).

Act⁴⁷ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁴⁸ thereunder.

OCC is also proposing to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. OCC believes that the responsibilities of the Management Vice Chairman are appropriately handled by other officers of OCC (and are currently handled by such officers), primarily the Executive Chairman and President, or where applicable, other officers such as the Secretary or directors such as the Member Vice Chairman, and as a result, the title is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office of Member Vice Chairman, ensure consistency across all of OCC's governing documents, provide more clarity and transparency regarding OCC's intended governance arrangements, and continue to provide for appropriate and prudent governance arrangements at OCC. Accordingly, OCC believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁹ and are reasonably designed to be clear and transparent to fulfill the public interest requirements

⁴⁷ 15 U.S.C. 78q-1.

⁴⁸ 17 CFR 240.17Ad-22(d)(8).

⁴⁹ 15 U.S.C. 78q-1(b)(3)(F).

in Section 17A of the Act⁵⁰ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁵¹ thereunder.

The proposed amendments to OCC's By-Laws also would require that the CPC and AC each be chaired by a Public Director, which will help to ensure the objectiveness and independence of those committees. It would also eliminate term limits for Public Directors, allowing OCC's Public Directors the time necessary to develop the particularized degree of knowledge and understanding of OCC's business to ensure that they are able to provide significant value in the governance process. OCC therefore believes that the proposed changes are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁵² and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁵³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁵⁴ thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC and would reduce the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. The addition of an Exchange Director to the RC will enhance the RC's oversight capabilities by providing additional expertise and unique perspectives on matters such as market risk

⁵⁰ 15 U.S.C. 78q-1.

⁵¹ 17 CFR 240.17Ad-22(d)(8).

⁵² 15 U.S.C. 78q-1(b)(3)(F).

⁵³ 15 U.S.C. 78q-1.

⁵⁴ 17 CFR 240.17Ad-22(d)(8).

as well as sophistication as to special risks arising from trading practices, strategies, and new products. Moreover, the reduction in the minimum number of Member Directors serving on the RC would provide OCC with greater flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC. It would also continue to ensure the fair representation of Member Directors on OCC's RC as the minimum number Member Directors would be consistent with requirements that the Executive Chairman (as the lone Management Director), one Exchange Director, and at least one Public Director serve on the RC. OCC therefore believes that the proposed amendments are designed, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act,⁵⁵ are reasonably designed to be clear and transparent to promote the effectiveness of OCC's risk management procedures in accordance with Rule 17Ad-22(d)(8)⁵⁶ thereunder, and are designed to ensure a fair representation of OCC's members and participants in the administration of its affairs (as they pertain to the oversight of risk matters at OCC) in accordance with Section 17A(b)(3)(C) of the Act.⁵⁷

OCC is also proposing a number of other amendments to better align its By-Laws and Board and Board Committee Charters and to provide more clarity and transparency with respect to OCC's governance arrangements. In particular, OCC proposes amendments to Article IV, Section 7 to: (i) delete a requirement that the Member Vice Chairman preside at the meetings of any committee of the Board charged with reviewing

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁶ 17 CFR 240.17Ad-22(d)(8).

⁵⁷ 15 U.S.C. 78q-1(b)(3)(C).

and evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director and (ii) clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board. OCC believes that the proposed changes would provide more clarity, transparency, and accuracy regarding its governance arrangements with respect to the responsibilities of the Member Vice Chairman and President and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁵⁸ in accordance with Rule 17Ad-22(d)(8).⁵⁹

Amendments to the Board Charter and the Fitness Standards

The proposed rule change would amend the Board Charter, as described in detail above, to: (i) harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) reflect recent changes involving Board Committee Charters; (iii) reflect recent changes to the Board's composition; and (iv) in general, restate the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility. The proposed amendments would provide more clarity around the responsibilities of the Board, specifically with respect to its role in: (i) overseeing management's activities in managing, operating and developing OCC, including the selection, oversight and replacement of key positions (i.e., Executive Chairman, CEO, and the President) as well as evaluating their performance and compensation awards; (ii) setting expectations about the tone and ethical culture at OCC

⁵⁸ 15 U.S.C. 78q-1.

⁵⁹ 17 CFR 240.17Ad-22(d)(8).

and its ability to ensure compliance with applicable laws and regulations; (iii) reviewing and approving financial objectives and strategies, capital plan and capital structure, fee structure, capital expenditures and budgets; (iv) the oversight of governance processes, including performing annual self-evaluations on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. OCC believes the proposed changes would provide for prudent governance arrangements with respect to the Board's oversight role over OCC as a systemically important financial market utility and are therefore reasonably designed to ensure that OCC has governance arrangements that, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act⁶⁰ and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁶¹ applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8) thereunder.⁶²

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed amendments to the Certificate of Incorporation and By-Laws described above. OCC also proposes amendments to the Fitness Standards to remove redundant descriptions of Board composition and the nomination process and to underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility. OCC believes that the proposed changes provide additional clarity and transparency regarding its governance arrangements and are therefore designed to ensure that OCC's governance arrangements

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁶¹ 15 U.S.C. 78q-1.

⁶² 17 CFR 240.17Ad-22(d)(8).

are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁶³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8).⁶⁴

Additionally, OCC proposes amendments that would allow for additional meetings of the Board to be called as the Board deems appropriate (such meetings being called by the Executive Chairman or his designee), which will provide the Board with increased flexibility in performing its oversight functions. Accordingly, OCC believes the proposed amendments to its governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁶⁵ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁶⁶ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁶⁷ thereunder.

Common Amendments to the Committee Charters

OCC is proposing to make a number of common amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.⁶⁸ Specifically, OCC proposes to amend each Committee Charter to confirm that each Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities and to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations

⁶³ 15 U.S.C. 78q-1.

⁶⁴ 17 CFR 240.17Ad-22(d)(8).

⁶⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶⁶ 15 U.S.C. 78q-1.

⁶⁷ 17 CFR 240.17Ad-22(d)(8).

⁶⁸ *See supra* note 16.

in which immediate action was required and convening a Board Committee meeting was impractical. The proposed amendments would ensure that each Committee has access to all books, records, facilities and personnel of OCC in carrying out its respective responsibilities and would support deliberation and action by a Board Committee as a whole, rather than action by solely its Chair, and as a result, would help to ensure that each Committee is able to make fully informed, collective decisions regarding the governance of OCC. OCC therefore believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁶⁹ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷⁰ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷¹ thereunder.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions (and specifically requiring that each Committee meet in executive session at each regular meeting of the Committee) and by promoting the enhanced recordation of important meeting events and discussions by requiring that each Committee's meeting minutes reflect, at a minimum, that an executive session was convened and broadly describe the topic(s) discussed. OCC believes that meetings in executive session are an important tool for Board Committees to discuss matters of a sensitive nature or for which certain persons may have conflicts of

⁶⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁰ 15 U.S.C. 78q-1.

⁷¹ 17 CFR 240.17Ad-22(d)(8).

interest; however, OCC also believes that it is important that these sessions be documented, at least in summary fashion, in the interest of transparency. OCC therefore believes the proposed amendments providing for added structure regarding the convening, attendance, and recordation of executive sessions are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁷² and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁴ thereunder.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without requiring pre-approval from the Board. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms. Accordingly, OCC believes that the proposed amendments are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁷⁵ and are reasonably designed to be clear and transparent to fulfill the public interest requirements

⁷² 15 U.S.C. 78q-1(b)(3)(F).

⁷³ 15 U.S.C. 78q-1.

⁷⁴ 17 CFR 240.17Ad-22(d)(8).

⁷⁵ 15 U.S.C. 78q-1(b)(3)(F).

in Section 17A of the Act⁷⁶ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁷ thereunder.

OCC is also proposing amendments to its Committee Charters to specify that that [sic] each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process. OCC believes the proposed amendments are therefore reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷⁸ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁹ thereunder.

Amendments to the Audit Committee Charter

The proposed amendments to the AC Charter are designed to: (i) underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; (iii) promote effective communication between the CAE, CCO, CFO and the AC and between the AC and the Board; and (iv) in general, provide more explicit descriptions of the AC's functions and responsibilities. Specifically, the proposed changes would underscore the independence of the AC by providing that all members of the AC be independent from OCC's management, as determined by the Board from time to time; that the Chair of the AC be a Public Director; and clarify that the Management Director is ineligible to serve on the

⁷⁶ 15 U.S.C. 78q-1.

⁷⁷ 17 CFR 240.17Ad-22(d)(8).

⁷⁸ 15 U.S.C. 78q-1.

⁷⁹ 17 CFR 240.17Ad-22(d)(8).

AC. The proposed changes would also require the AC to meet regularly, and no less than once annually, (as opposed to at least annually) with management, the CAE, CCO, and CFO in executive sessions to discuss certain private matters and provide the authority for the CAE and CCO to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC outside of regular meetings to further underscore the independence these roles at OCC. In addition, the proposed changes underscore and expand upon the AC's oversight role in connection with OCC's financial reporting processes, enhance the independence and objectivity in connection therewith, and more explicitly describe the AC's functions and responsibilities with respect to its oversight of external auditors as well as OCC's internal audit and compliance functions (as described in detail above). The proposed amendments would also provide that the AC shall make such reports to the Board as deemed necessary or advisable.

OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework, promoting effective communication between certain officers, the AC, and the Board, and providing further clarity around the AC's functions and responsibilities, the proposed changes are reasonably designed to ensure that OCC's governance arrangements with respect to the role of the AC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸⁰ and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁸¹ applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁸²

⁸⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁸¹ 15 U.S.C. 78q-1.

⁸² 17 CFR 240.17Ad-22(d)(8).

Amendments to the Compensation and Performance Committee Charter

OCC proposes amendments to the CPC Charter intended to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The proposed amendments would provide a more robust framework for the CPC's oversight functions by clearly stating the CPC's role in: (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan, capital structure, financial planning and corporate goals and objectives; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning. Accordingly, OCC believes that the proposed changes to the CPC Charter are reasonably deigned [sic] to ensure that OCC's governance arrangements with respect to the CPC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸³ and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁸⁴

Amendments to the Risk Committee Charter

OCC proposes amendments to its RC Charter primarily intended to better align

⁸³ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁴ 17 CFR 240.17Ad-22(d)(8).

the RC Charter with the OCC By-Laws (including, for example, changes in the composition requirements of the RC and to reflect the adoption of the TC), to restate and elaborate on the responsibilities of the RC, and to replace more granular descriptions with general statements regarding the RC's functions and responsibilities, as described in detail above. In particular, the amendments would restate and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and OCC's risk appetite and risk tolerances. The proposed amendments also elaborate on the RC's role in overseeing the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties and the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. Additionally, in recognition of OCC's role as a systemically important financial market utility, the RC Charter would provide that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects. OCC believes that the proposed amendments to the RC Charter provide for comprehensive and robust governance arrangements with respect to the RC's oversight role at OCC and are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, and in general, to protect investors and

the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸⁵ and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁸⁶ applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).⁸⁷

Additionally, OCC proposes to delete an existing RC Charter provision specifically requiring the RC to periodically review and modify the inputs to OCC's margin formula and would amend the RC Charter to state that the RC is generally responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula. OCC believes that the proposed amendments continue to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would provide the RC with the continued authority to modify margin formula inputs if it deems such modification to be appropriate. OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding the approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. Accordingly, OCC believes that the proposed changes are reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as

⁸⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁶ 15 U.S.C. 78q-1.

⁸⁷ 17 CFR 240.17Ad-22(d)(8).

required under Rule 17Ad-22(d)(8).⁸⁸

In addition, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than “at least annually”) with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters to provide more specificity regarding the frequency of these meetings (i.e., that these meetings occur more frequently than once per year). The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. OCC believes that the proposed amendments provide more clarity and transparency with respect to RC meetings in executive session and are therefore reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).⁸⁹

Finally, OCC proposes to remove from the RC Charter certain mandatory recusal requirements designed to apply to Member Directors of the RC. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors, which is a publicly available document that governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, as discussed above, OCC’s Directors have a fiduciary duty under Delaware law to protect the interests of the corporation and to act in the best interests of its shareholders and are bound by a duty of loyalty to OCC, which demands

⁸⁸ *Id.*

⁸⁹ *Id.*

that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director. OCC believes that this specific recusal requirement contained in the RC charter is unnecessary in light of the existing requirements under Delaware law and OCC's Code of Conduct for OCC Directors. Accordingly, OCC believes that its governance arrangements with respect to conflicts of interest for RC members continue to be designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁹⁰ and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹¹ applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).⁹²

Amendments to the Governance and Nominating Committee Charter

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above, to state that attendance of GNC meetings by telephone is discouraged, and to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee. The proposed amendments are primarily intended to conform the GNC Charter with proposed changes to the By-Laws and existing practices contained in other Committee Charters and would continue to provide for appropriate governance arrangements with respect to the GNC's oversight role. OCC therefore believes the

⁹⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁹¹ 15 U.S.C. 78q-1.

⁹² 17 CFR 240.17Ad-22(d)(8).

proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹³ applicable to clearing agencies as required under Rule 17Ad-22(d)(8).⁹⁴

Amendments to the Technology Committee Charter

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's CSO and to provide that the CSO is authorized to communicate with directly with [sic] the Chair of the TC in between meetings of the Committee. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. The proposed amendments are designed to strengthen the autonomy and independence of the CSO role at OCC and to promote effective communication between the CSO and the TC and between TC and the Board and are in line with requirements in other Committee Charters. OCC therefore believes the proposed amendments are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁹⁵ and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁹⁶

Amendment No. 1 to Amended and Restated Stockholders Agreement

⁹³ 15 U.S.C. 78q-1.

⁹⁴ 17 CFR 240.17Ad-22(d)(8).

⁹⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁹⁶ 17 CFR 240.17Ad-22(d)(8).

OCC also proposes to adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman in conformance with the process set forth in the GNC Charter. The proposed change would ensure an appropriate level of Board oversight and participation in the nomination process and provide consistency between the processes described in the GNC Charter and Amended and Restated Stockholders Agreement thereby ensuring that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹⁷ applicable to clearing agencies as required under Rule 17Ad-22(d)(8).⁹⁸

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

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.⁹⁹ The proposed changes to OCC's By-Laws, the Board Charter, and the Committee Charters would promote the effectiveness of OCC's Board and Board Committees' oversight on OCC's business, risk management, and operational processes and provide more clarity and transparency with respect to OCC's governance arrangements. The proposed rule change would also enhance the descriptions of the duties and functions of the Board and its members as well as the AC, the CPC, and the RC. The proposed rule change also promotes more effective governance arrangements for OCC, for example, by removing term limits for Public Directors and requiring the Chair of the AC and the CPC to be Public Directors. As a

⁹⁷ 15 U.S.C. 78q-1.

⁹⁸ 17 CFR 240.17Ad-22(d)(8).

⁹⁹ 15 U.S.C. 78q-1(b)(3)(I).

result, OCC does not believe that the proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants. The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not have any impact or impose a burden on competition.

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

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2016-002 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2016-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_002.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2016-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁰

Robert W. Errett
Deputy Secretary

¹⁰⁰ 17 CFR 200.30-3(a)(12).

[FR Doc. 2016-18320 Filed: 8/2/2016 8:45 am; Publication Date: 8/3/2016]