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Page 1 of \* 65

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

File No. \* SR 2025 - \* 008

Amendment No. (req. for Amendments \*)

Filing by Options Clearing Corporation

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

Initial \*

☒

Amendment \*

☐

Withdrawal

☐

Section 19(b)(2) \*

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Section 19(b)(3)(A) \*

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Section 19(b)(3)(B) \*

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Pilot

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Extension of Time Period for  
Commission Action \*

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Date Expires \*

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*

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Section 806(e)(2) \*

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Security-Based Swap Submission pursuant to the  
Securities Exchange Act of 1934

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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## Description

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

Proposed Rule Change Concerning an Agreement for Clearing and Settlement Services Between The Options Clearing Corporation and MIAX Futures Exchange, LLC.

## Contact Information

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

First Name \*

[REDACTED]

Last Name \*

[REDACTED]

Title \*

[REDACTED]

E-mail \*

RuleFilings@theocc.com

Telephone \*

[REDACTED]

Fax

[REDACTED]

## Signature

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

Date

06/04/2025

(Title \*)

By

[REDACTED]

(Name \*)

[REDACTED]

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

Digitally signed by [REDACTED]

Date: 2025.06.04 15:09:45  
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549		
For complete Form 19b-4 instructions please refer to the EFFS website.		
<div>Form 19b-4 Information *</div> <div><div>AddRemoveView</div><div>SR-OCC-2025-008 19b-4 (MIAX Futu</div></div> <div>The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.</div>		
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>AddRemoveView</div><div>SR-OCC-2025-008 19b-4 Exhibit 1A (</div></div> <div>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)</div>		
<div>Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *</div> <div><div>AddRemoveView</div></div> <div>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)</div>		
<div>Exhibit 2- Notices, Written Comments, Transcripts, Other Communications</div> <div><div>AddRemoveView</div></div> <div><div>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</div><div><div><input type="checkbox"/></div>Exhibit Sent As Paper Document</div></div>		
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>AddRemoveView</div></div> <div><div>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</div><div><div><input type="checkbox"/></div>Exhibit Sent As Paper Document</div></div>		
<div>Exhibit 4 - Marked Copies</div> <div><div>AddRemoveView</div></div> <div><div>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</div></div>		
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>AddRemoveView</div><div>SR-OCC-2025-008 Exhibit 5 (MIAX Fl</div></div> <div>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change</div>		
<div>Partial Amendment</div> <div><div>AddRemoveView</div></div> <div><div>If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.</div></div>		

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change  
by

**THE OPTIONS CLEARING CORPORATION**

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

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Options Clearing Corporation (“OCC”) is filing with the Securities and Exchange Commission (“Commission”) a proposed Agreement for Clearing and Settlement Services (“Clearing Agreement”) between OCC and MIAX Futures Exchange, LLC (“MIAX”) in connection with MIAX’s status as a designated contract market (“DCM”) regulated by the Commodity Futures Trading Commission (“CFTC”). There are no proposed changes to OCC’s By-Laws or Rules.

OCC filed as Exhibit 5 to File No. SR-OCC-2025-008 the text of the proposed Clearing Agreement. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>3</sup>

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

The proposed change was approved for filing with the Commission by OCC’s Technology Committee on February 27, 2025, and OCC’s Board of Directors on February 28, 2025.

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

This proposed rule is to adopt a new Clearing Agreement that would permit OCC to provide clearing and settlement services to MIAX subject to all requisite regulatory approvals

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

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

<sup>3</sup> OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

being received. OCC proposes to provide clearance and settlement services for commodity futures (“Futures”) including commodity futures of an underlying interest that are a broad-based security index (“Broad-Based Index Futures”), together with options on Futures (“Futures Options”), collectively referred to within the Clearing Agreement as (“Cleared Contracts”), to MIAX pursuant to the terms set forth in the Clearing Agreement. MIAX already has a DCM designation from the CFTC.<sup>4</sup> The terms of the proposed Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services executed with Small Exchange, Inc. (“Small Agreement”), which was approved by the Commission.<sup>5</sup> The Clearing Agreement is similar to the Small Agreement with several differences discussed in more detail below.

### **Clearing Agreement Proposal**

OCC proposes to provide the clearance and settlement services as described in the Clearing Agreement that includes new provisions designed to protect OCC and the holders of outstanding contracts listed on MIAX. These provisions would enable OCC to effectively manage the risks borne from a clearing relationship with a DCM such as the one OCC proposes to establish with MIAX. More specifically, the following provisions would be added:

- A new recital paragraph within the preamble, which acknowledges a separate “Data Agreement” related to the use and distribution of data and other information that would be entered into concurrently with the Clearing Agreement. This recital reflects the parties’ intent that the provision of clearing services would be subject to the terms of both agreements in addition to OCC’s By-Laws and Rules and any applicable

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<sup>4</sup> See <https://www.cftc.gov/sites/default/files/stellent/groups/public/@otherif/documents/ifdocs/mgexsubpartcelection.pdf>.

<sup>5</sup> See Securities Exchange Act Release No. 87774 (December 17, 2019), 84 FR 70602 (December 23, 2019) (SR-OCC-2019-011).

- regulatory requirements. Accordingly, both Section 6, “Clearance of Transaction in Cleared Contracts,” and Section 7, “Acceptance and Rejection of Transactions in Cleared Contracts”, would also be revised to include statements to that effect.
- Section 16 “Information Technology and Security,” would require OCC and MIAX to share their respective contact information, and setup mutual notification requirements for cybersecurity incidents to assist with the resolution of information technology and security matters. This section would also mandate that MIAX maintain a comprehensive cybersecurity program as well as a written business continuity and disaster recovery program and meet certain connectivity requirements set by OCC, which may include connectivity through point to point and redundant connections. This term would align with standard practices and guidelines generally accepted in the industry to detail each party’s obligations as a separate section within the Clearing Agreement.
  - Section 17 “Access to Books and Records of the Corporation,” would provide MIAX with a limited right subject to certain security and confidentiality requirements to review OCC’s books and records, as related to the provision of services envisioned by the Clearing Agreement. The substance of this term was moved from Schedule B to memorialize MIAX’s right as a separate term within the Clearing Agreement, which aligns with current best practices.
  - Section 18 “Confidentiality,” would introduce provisions that establish certain obligations between both OCC and MIAX in relation to certain information sharing and intellectual property rights, designed to align the Clearing Agreement in line with current best practices. More specifically, Section 18(a), would provide for the

definition of “Confidential Information” that would include the type and scope of information considered material to each of the parties and over which the rights and obligations described in the remaining paragraphs of Section 18 would apply.

- Section 28 “Marks,” would provide that both MIAX and OCC would grant each other non-exclusive, royalty free license to use their name, tradename, logos and trademarks in connection with OCC’s clearance services and MIAX’s listing activities to align the Clearing Agreement in line with current best practices in relation to intellectual property rights.

In addition to the above, the Clearing Agreement would include several other differences from the Small Agreement. Within Section 3 “Selection of Underlying Interests; Classes and Series of Cleared Contracts,” the changes would enhance the management of new product risks, introduce defined terms, and make conforming or clarifying changes that include:

- Paragraph 3(a)(i) with respect to Underlying Interests for Commodity Futures would be revised to reflect that in addition to existing conditions, OCC’s prior written approval would be required for any underlying interest or Cleared Contract that would materially impact OCC’s established risk profile or that would introduce new or unique financial risk, risk model or third-party risks (each a “New Products Risk”).<sup>6</sup> This Paragraph would also define the “types” of underlying interests as those interests in respect of Futures including broad-based security indices.
- Paragraph 3(a)(ii) with respect to Underlying Interests for Futures Options would be revised to reflect that in addition to existing conditions, OCC’s prior written approval

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<sup>6</sup> The term “New Product Risk” refers to the risk that arises from products that introduce novel or unique financial, risk model, or third-party risks.

- would be required for any Futures Options or underlying Futures contracts that present New Product Risk, and would also require that the underlying Futures contract be open for trading for a reasonable period of time specified by OCC prior to the date and time that the underlying Futures Options is opened for trading.
- Paragraph 3(a)(iii) would be added that specifies any extra steps that OCC would carry out under circumstances when OCC may refuse to clear and settle Cleared Contracts that present New Product Risk to OCC, including notifications to MIAX, undertaking commercially reasonable efforts, including in consultation with MIAX, to address the New Product Risk, and notification to MIAX when the issues have been satisfactorily addressed so that OC may approve the new Cleared Contract.
  - Paragraph 3(a)(iv) would be added to detail any extra steps MIAX would carry out under circumstances when OCC may request additional supporting documentation. This Paragraph would also provide OCC with the discretion to defer the trading of new Cleared Contracts and specify the circumstances under which it may not be able to clear such contracts.
  - Paragraph 3(b) “Nomenclature,” would be removed and the remaining paragraphs renumbered. Renumbered Paragraph 3(b) “Procedures for Selection of Underlying Interests,” would be modified to clarify that any new product proposal by MIAX would also be subject to the requirement of Paragraph 3(a).

Within Section 5 “Comparison of Transactions in Cleared Contracts; Settlement Prices,” changes would include the following:



- Paragraph 5(b) would be revised to include reference to the Data Agreement between OCC and MIAX, and an explicit statement on MIAX's obligation to cooperate at the request of OCC on determining settlement prices.
- Paragraph 5(d) would be added to specify certain information sharing obligations between OCC and MIAX further detailed in Schedule B of the Clearing Agreement.

The parties would also revise Section 10 of the Clearing Agreement in relation to margin obligations of Clearing Members for Cleared trades in the same account, to include an additional step for risk management review before the provision of any reductions in margin. This additional step provides OCC with another layer of risk management review of the exposure presented by a Clearing Member before the application of any reductions in margin obligation, thus enhancing OCC's ability to manage its risk and margin resources appropriately. In addition, Section 12 would be renamed to "Reporting Obligations by Market," and substantially revised and expanded to organize and memorialize MIAX's reporting obligations within the Clearing Agreement to include:

- Paragraph 12(a) would be added to provide for ongoing information sharing by MIAX to OCC, including providing annual and quarterly financials, and the reporting of any losses. The paragraph would also establish the right for OCC to examine MIAX's books and records and request other information when needed.
- Paragraph 12(b) would be added to specify additional reporting obligations of certain material events by MIAX, such as changes in good standing in the jurisdiction of incorporation, any delisting of Cleared Contracts, any material changes to risk controls, or any regulatory or other material changes.

In addition, Section 13 "Fees," of the Clearing Agreement, would be reorganized to

clarify that fee structures for the services OCC performs would be established by OCC's By-Laws and Rules, as well as filings with the SEC or CFTC, and obligate MIAX to pay fees consistent with such established provisions. In addition, Section 15 "Indemnification," would be reorganized by renumbering Paragraph 15(c) to 15(b)(iii). Paragraph 15(b)(iii) would then be revised to expand the intellectual property indemnity to include allegations in circumstances when MIAX would have no right to use, reference, or distribute the underlying interest. The remaining paragraphs 15(d) to 15(e) would then be renumbered chronologically in alphabetical order as 15(c) to 15(d). Other changes to the Clearing Agreement include the renumbering of Section 16 "Notices," to Section 29 and Section 17 "Miscellaneous," to Section 27. Section 29 would remain substantially unchanged, while Section 27 would be substantially reorganized and enhanced to add new standard terms and provisions used in other OCC agreements to conform with best practices.<sup>7</sup> The added provisions would in general clarify how the Clearing Agreement should be interpreted such as, for example, paragraph (a) that specifies that the Clearing Agreement should be construed in accordance with the governing laws of Illinois, or paragraphs (c) that describes the rights and obligations of the parties as related to the assignment of the Clearing Agreement, or paragraph (e) that makes it clear that the headings contained within the Clearing Agreement are for the purposes of reference only and are not meant to affect the meaning of the sections, among others.

As described above, due to the addition of new sections and other modifications Sections 18 to 25 would be renumbered as Sections 19 to 26 respectively. The Clearing Agreement would then be further amended and include such changes as:

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<sup>7</sup> OCC is committed to updating the interpretative provisions of its agreements generally to bring them in line with current best market practices.

- Section 19, titled “Breach of Agreement – Termination,” would be retitled as “Suspension; Breach of Agreement; Termination.” In addition, Paragraph 19(a) “Suspension,” would be added to protect OCC and provides it with the right to suspend any of its obligations to MIAX in order to comply with any waiver or suspension of OCC’s By-Laws, Rules policies and procedures, or any other rules issued by OCC, or in case of a material breach of the Clearing Agreement by MIAX, or under circumstance where OCC believes that provision of services would result in a violation of the Commodity Exchange Act. The remaining paragraphs in this section would be renumbered chronologically in alphabetical order.
- Section 20, “Survival of Obligations,” would introduce a change that preserves the parties’ mutual obligations of confidentiality upon the termination of the Clearing Agreement.
- Section 21, “Dispute Resolution,” would be modified to replace all references to “Chief Executive Officer” with “senior management” to provide both parties’ with the ability to leverage other senior management personnel under such circumstances to quickly resolve disputes.
- Section 23, “System Redundancy, Disaster Recovery,” would add a new term to the Clearing Agreement that memorializes OCC’s existing obligation to maintain a written business continuity and disaster recovery program with annual testing for recovery point objectives and real-time objectives.
- Section 26, “Nonexclusive Agreement,” would be revised to clearly assert that OCC services would be provided on a non-exclusive basis and that the Clearing Agreement

would not prevent OCC from providing its services to any other parties both during and after termination.

With respect to Schedule B of the Clearing Agreement, certain terms of the schedule would be modified to include the following changes:

- Paragraph (1)(A) related to the sharing of “Information provided each trading day,” from OCC to MIAX, would be revised to include a limitation on the use of the Data Distribution Service (“DDS”) for Authorized Purposes only and a prohibition on the redistribution of DDS data to any third party, absent OCC’s prior written consent.
- Paragraph (1)(B) related to the sharing of “Information provided on an occurrence basis,” from OCC to MIAX, would be revised to simplify OCC’s notification obligations to MIAX to only include the default of any Clearing Member, or the suspension, termination, ceasing to act for, or liquidation of any Clearing Member by OCC if also a member of MIAX.
- Paragraph (2)(A) related to the sharing of “Information regarding Clearing Members,” from MIAX to OCC, would be revised to remove the obligation to determine whether to report a Clearing Member that is not in compliance with OCC’s financial responsibility standards, since that obligation would naturally rest with OCC.

In addition to the foregoing, various other minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties, clean-up of outdated terms and typographical errors, and other clarifying or conforming revisions.

A. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act<sup>8</sup> and Rule 17Ad-22(e)(20)<sup>9</sup> thereunder. Section 17A(b)(3)(F) of the Act<sup>10</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of derivatives contracts traded on MIAX by providing that such Cleared Contracts will be cleared through OCC's existing clearance and settlement processes for cleared contracts, which have functioned efficiently for many years with regard to other markets for which OCC provides clearance and settlement services. Similarly, OCC believes that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency by bringing Cleared Contracts traded on MIAX and funds associated with those contracts within the scope of OCC's existing custody and control arrangements, which have effectively served OCC's Clearing Members and their customers for many years. Finally, OCC believes the proposed rule change is designed to protect investors and the public interest. By providing that Cleared Contracts traded on MIAX and cleared by OCC are risk managed under OCC's risk management framework, which is designed to offer protection to customers and other market participants in the event of a Clearing Member default, OCC believes the proposed rule change

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<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 240.17Ad-22(e)(20).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

contributes to the protection of investors and the public interest. For these reasons, the proposed changes to OCC's rules are reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>11</sup>

Rule 17Ad-22(e)(20)<sup>12</sup> requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.<sup>13</sup> OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(20)<sup>14</sup> because the proposed Clearing Agreement is designed to help OCC identify, monitor, and manage the risks associated with providing clearance and settlement services for MIAX, which is a trading market registered as a DCO with the CFTC. The Clearing Agreement would set certain rights and obligations on MIAX, and for example would require MIAX, to report financial information to OCC, which would enable OCC to monitor for changes in MIAX's financial condition. It also would require MIAX to maintain sufficient financial resources or arrangements with another DCM to mitigate the impact to the marketplace should MIAX become unavailable as a trading venue for its Cleared Contracts.

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<sup>11</sup> Id.

<sup>12</sup> 17 CFR 240.17Ad-22(e)(20).

<sup>13</sup> Id.

<sup>14</sup> Id.

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

Section 17A(b)(3)(I) of the Act<sup>15</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impose any burden on competition. The purpose of the proposed rule change is to adopt a Clearing Agreement between OCC and MIAX. The adoption of such an agreement would not affect Clearing Members' access to OCC's services, nor would it disadvantage or favor any particular user with respect to another user. As such, OCC believes that the proposed rule change would not impose any burden on competition.

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

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

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(i)<sup>16</sup> of the Exchange Act, and Rule 19b-4(f)(4)(ii),<sup>17</sup> the proposed rule change is filed for immediate effectiveness. Rule 19b-4(f)(4)(ii) provides that proposed rule changes may take effect upon filing if the change effects an existing service of OCC that (i) primarily affects the clearing operation of OCC with respect to products that are not

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>17</sup> 17 CFR 240.19b-4(f)(4)(ii).

securities, including futures that are not security futures, swaps that are not security-based swaps, and forwards that are not security forwards, and (ii) does not significantly affect any securities clearing operation of OCC or any rights or obligation of OCC with respect to securities clearing or person s using such securities clearing services. OCC believes the proposed rule change would, as described above, facilitate OCC's ability to provide clearing and settlement services for MIAX pursuant to the Clearing Agreement. The products listed on the exchange that OCC would clear are all futures products subject to the exclusive jurisdiction of the CFTC, to which the proposed rule change would affect the clearing operations of OCC with respect to products that are not securities. Moreover, given that the products proposed to be cleared are futures products subject to the CFTC's jurisdiction and that futures account for a small part of OCC's overall clearing activity,<sup>18</sup> it is anticipated that the proposed rule change would not significantly affect OCC's Clearing Fund, which is designed to support all of OCC's clearing activities in securities and futures products. Therefore, OCC believes that the proposed rule change would not significantly affect the securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.

At any time within 60 days of the filing of the proposed rule change, the SEC may temporarily suspend such rule change if it appears to the SEC that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Notwithstanding its immediate effectiveness, implementation

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<sup>18</sup> In 2024, futures contract volume was approximately 60 million contracts for the year, whereas listed options contract volume was approximately 12.28 billion contracts for the year.



of the rule change will be delayed until deemed certified under Commodity Futures Trading Commission Regulation § 40.6.<sup>19</sup>

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11.      Exhibits**

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

Exhibit 5.     OCC MIAx Agreement for Clearing and Settlement Services.

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<sup>19</sup> 17 CFR 40.6.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_]; File No. SR-OCC-2025-008)

[June \_\_, 2025]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning The Adoption of a New Clearing Agreement That Would Permit OCC to Provide Clearing and Settlement Services to MIAX Subject to All Requisite Regulatory Approvals Being Received.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 4, 2025, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)3 of the Act and paragraph (f) or Rule 19b-44 thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f).

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

This proposed rule change would update an agreement for Clearing and Settlement Services ("Clearing Agreement") between OCC and MIAF Futures Exchange, LLC ("MIAF") in connection with MIAF's status as a designated contract market ("DCM") regulated by the Commodity Futures Trading Commission ("CFTC"). There are no proposed changes to OCC's By-Laws or Rules.

OCC filed as Exhibit 5 to File No. SR-OCC-2025-008 the text of the proposed Clearing Agreement. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

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

This proposed rule is to adopt a new Clearing Agreement that would permit OCC to provide clearing and settlement services to MIAF subject to all requisite regulatory approvals being received. OCC proposes to provide clearing and settlement services for commodity futures ("Futures") including commodity futures of an underlying interest that are a broad-based security index ("Broad-Based Index Futures"), together with

options on Futures (“Futures Options”), collectively referred to within the Clearing Agreement as (“Cleared Contracts”), to MIAX pursuant to the terms set forth in the Clearing Agreement. MIAX already has a DCM designation from the CFTC.<sup>5</sup> The terms of the proposed Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services executed with Small Exchange, Inc. (“Small Agreement”), which was approved by the Commission.<sup>6</sup> The Clearing Agreement is similar to the Small Agreement with several differences discussed in more detail below.

### **Clearing Agreement Proposal**

OCC proposes to provide the clearance and settlement services as described in the Clearing Agreement that includes new provisions designed to protect OCC and the holders of outstanding contracts listed on MIAX. These provisions would enable OCC to effectively manage the risks borne from a clearing relationship with a DCM such as the one OCC proposes to establish with MIAX. More specifically, the following provisions would be added:

- A new recital paragraph within the preamble, which acknowledges a separate “Data Agreement” related to the use and distribution of data and other information that would be entered into concurrently with the Clearing Agreement. This recital reflects the parties’ intent that the provision of clearing services would be subject to the terms of both agreements in addition to OCC’s By-Laws and Rules and any applicable regulatory requirements.

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<sup>5</sup> See <https://www.cftc.gov/sites/default/files/stellent/groups/public/@otherif/documents/ifdocs/mgexsubpartcelection.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 87774 (December 17, 2019), 84 FR 70602 (December 23, 2019) (SR-OCC-2019-011).

Accordingly, both Section 6, “Clearance of Transaction in Cleared Contracts,” and Section 7, “Acceptance and Rejection of Transactions in Cleared Contracts”, would also be revised to include statements to that effect.

- Section 16 “Information Technology and Security,” would require OCC and MIAX to share their respective contact information, and setup mutual notification requirements for cybersecurity incidents to assist with the resolution of information technology and security matters. This section would also mandate that MIAX maintain a comprehensive cybersecurity program as well as a written business continuity and disaster recovery program and meet certain connectivity requirements set by OCC, which may include connectivity through point to point and redundant connections. This term would align with standard practices and guidelines generally accepted in the industry to detail each party’s obligations as a separate section within the Clearing Agreement.
- Section 17 “Access to Books and Records of the Corporation,” would provide MIAX with a limited right subject to certain security and confidentiality requirements to review OCC’s books and records, as related to the provision of services envisioned by the Clearing Agreement. The substance of this term was moved from Schedule B to memorialize MIAX’s right as a separate term within the Clearing Agreement, which aligns with current best practices.
- Section 18 “Confidentiality,” would introduce provisions that establish certain obligations between both OCC and MIAX in relation to certain information sharing and intellectual property rights, designed to align the Clearing

Agreement in line with current best practices. More specifically, Section 18(a), would provide for the definition of “Confidential Information” that would include the type and scope of information considered material to each of the parties and over which the rights and obligations described in the remaining paragraphs of Section 18 would apply.

- Section 28 “Marks,” would provide that both MIAX and OCC would grant each other non-exclusive, royalty free license to use their name, tradename, logos and trademarks in connection with OCC’s clearance services and MIAX’s listing activities to align the Clearing Agreement in line with current best practices in relation to intellectual property rights.

In addition to the above, the Clearing Agreement would include several other differences from the Small Agreement. Within Section 3 “Selection of Underlying Interests; Classes and Series of Cleared Contracts,” the changes would enhance the management of new product risks, introduce defined terms, and make conforming or clarifying changes that include:

- Paragraph 3(a)(i) with respect to Underlying Interests for Commodity Futures would be revised to reflect that in addition to existing conditions, OCC’s prior written approval would be required for any underlying interest or Cleared Contract that would materially impact OCC’s established risk profile or that would introduce new or unique financial risk, risk model or third-party risks (each a “New Products Risk”).<sup>7</sup> This Paragraph would also define the

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The term “New Product Risk” refers to the risk that arises from products that introduce novel or unique financial, risk model, or third-party risks.

“types” of underlying interests as those interests in respect of Futures including broad-based security indices.

- Paragraph 3(a)(ii) with respect to Underlying Interests for Futures Options would be revised to reflect that in addition to existing conditions, OCC’s prior written approval would be required for any Futures Options or underlying Futures contracts that present New Product Risk, and would also require that the underlying Futures contract be open for trading for a reasonable period of time specified by OCC prior to the date and time that the underlying Futures Options is opened for trading.
- Paragraph 3(a)(iii) would be added that specifies any extra steps that OCC would carry out under circumstances when OCC may refuse to clear and settle Cleared Contracts that present New Product Risk to OCC, including notifications to MIAX, undertaking commercially reasonable efforts, including in consultation with MIAX, to address the New Product Risk, and notification to MIAX when the issues have been satisfactorily addressed so that OC may approve the new Cleared Contract.
- Paragraph 3(a)(iv) would be added to detail any extra steps MIAX would carry out under circumstances when OCC may request additional supporting documentation. This Paragraph would also provide OCC with the discretion to defer the trading of new Cleared Contracts and specify the circumstances under which it may not be able to clear such contracts.
- Paragraph 3(b) “Nomenclature,” would be removed and the remaining paragraphs renumbered. Renumbered Paragraph 3(b) “Procedures for

Selection of Underlying Interests,” would be modified to clarify that any new product proposal by MIAX would also be subject to the requirement of Paragraph 3(a).

Within Section 5 “Comparison of Transactions in Cleared Contracts; Settlement Prices,” changes would include the following:

- Paragraph 5(b) would be revised to include reference to the Data Agreement between OCC and MIAX, and an explicit statement on MIAX’s obligation to cooperate at the request of OCC on determining settlement prices.
- Paragraph 5(d) would be added to specify certain information sharing obligations between OCC and MIAX further detailed in Schedule B of the Clearing Agreement.

The parties would also revise Section 10 of the Clearing Agreement in relation to margin obligations of Clearing Members for Cleared trades in the same account, to include an additional step for risk management review before the provision of any reductions in margin. This additional step provides OCC with another layer of risk management review of the exposure presented by a Clearing Member before the application of any reductions in margin obligation, thus enhancing OCC’s ability to manage its risk and margin resources appropriately. In addition, Section 12 would be renamed to “Reporting Obligations by Market,” and substantially revised and expanded to organize and memorialize MIAX’s reporting obligations within the Clearing Agreement to include:

- Paragraph 12(a) would be added to provide for ongoing information sharing by MIAX to OCC, including providing annual and quarterly financials, and



the reporting of any losses. The paragraph would also establish the right for OCC to examine MIAX's books and records and request other information when needed.

- Paragraph 12(b) would be added to specify additional reporting obligations of certain material events by MIAX, such as changes in good standing in the jurisdiction of incorporation, any delisting of Cleared Contracts, any material changes to risk controls, or any regulatory or other material changes.

In addition, Section 13 "Fees," of the Clearing Agreement, would be reorganized to clarify that fee structures for the services OCC performs would be established by OCC's By-Laws and Rules, as well as filings with the SEC or CFTC, and obligate MIAX to pay fees consistent with such established provisions. In addition, Section 15 "Indemnification," would be reorganized by renumbering Paragraph 15(c) to 15(b)(iii). Paragraph 15(b)(iii) would then be revised to expand the intellectual property indemnity to include allegations in circumstances when MIAX would have no right to use, reference, or distribute the underlying interest. The remaining paragraphs 15(d) to 15(e) would then be renumbered chronologically in alphabetical order as 15(c) to 15(d). Other changes to the Clearing Agreement include the renumbering of Section 16 "Notices," to Section 29 and Section 17 "Miscellaneous," to Section 27. Section 29 would remain substantially unchanged, while Section 27 would be substantially reorganized and enhanced to add new standard terms and provisions used in other OCC agreements to conform with best practices.<sup>8</sup> The added provisions would in general clarify how the

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<sup>8</sup> OCC is committed to updating the interpretative provisions of its agreements generally to bring them in line with current best market practices.

Clearing Agreement should be interpreted such as, for example, paragraph (a) that specifies that the Clearing Agreement should be construed in accordance with the governing laws of Illinois, or paragraphs (c) that describes the rights and obligations of the parties as related to the assignment of the Clearing Agreement, or paragraph (e) that makes it clear that the headings contained within the Clearing Agreement are for the purposes of reference only and are not meant to affect the meaning of the sections, among others.

As described above, due to the addition of new sections and other modifications Sections 18 to 25 would be renumbered as Sections 19 to 26 respectively. The Clearing Agreement would then be further amended and include such changes as:

- Section 19, titled “Breach of Agreement – Termination,” would be retitled as “Suspension; Breach of Agreement; Termination.” In addition, Paragraph 19(a) “Suspension,” would be added to protect OCC and provides it with the right to suspend any of its obligations to MIAx in order to comply with any waiver or suspension of OCC’s By-Laws, Rules policies and procedures, or any other rules issued by OCC, or in case of a material breach of the Clearing Agreement by MIAx, or under circumstance where OCC believes that provision of services would result in a violation of the Commodity Exchange Act. The remaining paragraphs in this section would be renumbered chronologically in alphabetical order.
- Section 20, “Survival of Obligations,” would introduce a change that preserves the parties’ mutual obligations of confidentiality upon the termination of the Clearing Agreement.

- Section 21, “Dispute Resolution,” would be modified to replace all references to “Chief Executive Officer” with “senior management” to provide both parties’ with the ability to leverage other senior management personnel under such circumstances to quickly resolve disputes.
- Section 23, “System Redundancy, Disaster Recovery,” would add a new term to the Clearing Agreement that memorializes OCC’s existing obligation to maintain a written business continuity and disaster recovery program with annual testing for recovery point objectives and real-time objectives.
- Section 26, “Nonexclusive Agreement,” would be revised to clearly assert that OCC services would be provided on a non-exclusive basis and that the Clearing Agreement would not prevent OCC from providing its services to any other parties both during and after termination.

With respect to Schedule B of the Clearing Agreement, certain terms of the schedule would be modified to include the following changes:

- Paragraph (1)(A) related to the sharing of “Information provided each trading day,” from OCC to MIAX, would be revised to include a limitation on the use of the Data Distribution Service (“DDS”) for Authorized Purposes only and a prohibition on the redistribution of DDS data to any third party, absent OCC’s prior written consent.
- Paragraph (1)(B) related to the sharing of “Information provided on an occurrence basis,” from OCC to MIAX, would be revised to simplify OCC’s notification obligations to MIAX to only include the default of any Clearing

Member, or the suspension, termination, ceasing to act for, or liquidation of any Clearing Member by OCC if also a member of MIAX.

- Paragraph (2)(A) related to the sharing of “Information regarding Clearing Members,” from MIAX to OCC, would be revised to remove the obligation to determine whether to report a Clearing Member that is not in compliance with OCC’s financial responsibility standards, since that obligation would naturally rest with OCC.

In addition to the foregoing, various other minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties, clean-up of outdated terms and typographical errors, and other clarifying or conforming revisions.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act<sup>9</sup> and Rule 17Ad-22(e)(20)<sup>10</sup> thereunder. Section 17A(b)(3)(F) of the Act<sup>11</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of derivatives contracts traded on MIAX by providing that such

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<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 17 CFR 240.17Ad-22(e)(20).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

Cleared Contracts will be cleared through OCC's existing clearance and settlement processes for cleared contracts, which have functioned efficiently for many years with regard to other markets for which OCC provides clearance and settlement services. Similarly, OCC believes that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency by bringing Cleared Contracts traded on MIAX and funds associated with those contracts within the scope of OCC's existing custody and control arrangements, which have effectively served OCC's Clearing Members and their customers for many years. Finally, OCC believes the proposed rule change is designed to protect investors and the public interest. By providing that Cleared Contracts traded on MIAX and cleared by OCC are risk managed under OCC's risk management framework, which is designed to offer protection to customers and other market participants in the event of a Clearing Member default, OCC believes the proposed rule change contributes to the protection of investors and the public interest. For these reasons, the proposed changes to OCC's rules are reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>12</sup>

Rule 17Ad-22(e)(20)<sup>13</sup> requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to

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<sup>12</sup> Id.

<sup>13</sup> 17 CFR 240.17Ad-22(e)(20).

identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.<sup>14</sup> OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(20)<sup>15</sup> because the proposed Clearing Agreement is designed to help OCC identify, monitor, and manage the risks associated with providing clearance and settlement services for MIAX, which is a trading market registered as a DCO with the CFTC. The Clearing Agreement would set certain rights and obligations on MIAX, and for example would require MIAX, to report financial information to OCC, which would enable OCC to monitor for changes in MIAX's financial condition. It also would require MIAX to maintain sufficient financial resources or arrangements with another DCM to mitigate the impact to the marketplace should MIAX become unavailable as a trading venue for its Cleared Contracts.

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

Section 17A(b)(3)(I) of the Act<sup>16</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impose any burden on competition. The purpose of the proposed rule change is to adopt a Clearing Agreement between OCC and MIAX. The adoption of such an agreement would not affect Clearing Members' access to OCC's services, nor would it disadvantage

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(I).

or favor any particular user with respect to another user. As such, OCC believes that the proposed rule change would not impose any burden on competition.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f) of Rule 19b-4<sup>18</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.<sup>19</sup>

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:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

<sup>19</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2025-008 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2025-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.



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

All submissions should refer to File Number SR-OCC-2025-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Secretary

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17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

**OCC MIA X Agreement for Clearing and Settlement Services.**

## AGREEMENT FOR CLEARING AND SETTLEMENT SERVICES

This Agreement for Clearing and Settlement Services (this “**Agreement**”) is entered into as of [\_\_\_\_] [\_\_\_\_], 20[\_\_\_\_], by and among The Options Clearing Corporation, a Delaware corporation (the “**Corporation**”) and MIAX Futures Exchange, LLC, a Delaware limited liability company (the “**Market**”).

WHEREAS, the Corporation is registered with the Commodity Futures Trading Commission (the “**CFTC**”) as a derivatives clearing organization and, as part of its business, provides clearing and settlement services in respect of commodity futures and options thereon;

WHEREAS, the Market, as of the Effective Date (as defined in Section 25 of this Agreement), is a board of trade that has been designated as a contract market by the CFTC;

WHEREAS, the Market wishes to engage the Corporation to provide clearing and settlement services in respect of (i) commodity futures (“**Futures**”), including, without limitation, commodity futures with an underlying interest that is a broad-based security index (“**Broad-Based Index Futures**”), and (ii) options on Futures (“**Futures Options**”), in each case, on underlying interests that are selected in accordance with Section 3(a) of this Agreement (collectively, the “**Cleared Contracts**”);

WHEREAS, the Market and the Corporation are entering into an agreement on or about the date hereof regarding the provision, use, and distribution of data elements and other information related to the Cleared Contracts and underlying interests thereof by the Corporation (the “**Data Agreement**”); and

WHEREAS, the Corporation is prepared to provide such services to the Market subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, terms and conditions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### Section 1. Market Representations.

The Market represents that, as of the Effective Date and during the term of this Agreement, (a) it is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware, (b) it is a board of trade that has been designated by the CFTC as a contract market pursuant to Section 5 of the Commodity Exchange Act (the Commodity Exchange Act, as amended, the “**CEA**”), (c) it has rules that comply with the provisions of the CEA and regulations of the CFTC thereunder for the trading of any Cleared Contracts that are to be cleared by the Corporation (as amended from time to time, the “**Market Rules**”), (d) it has all governmental and other approvals and consents that are required to have been obtained by it with respect to the Market Rules, (e) the Market Rules are in full force and effect, (f) it has all requisite power and authority to enter into and perform its obligations hereunder and to conduct its business as currently conducted, (g) this Agreement is the legal, valid and binding obligation of the Market, enforceable against the Market in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally, and subject, as to enforceability to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law, (h) its entry into this Agreement and performance of its obligations hereunder do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its

assets or any other agreement binding on or affecting it or any of its assets, (i) it is in compliance with all regulations of the CFTC applicable to a designated contract market, (j) all governmental and other approvals and consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such approvals and consents have been complied with, and (k) all of the information provided by the Market to the Corporation pursuant to Section 12(a) is true and complete in all respects.

## **Section 2. Corporation Representations.**

The Corporation represents that, as of the Effective Date and during the term of this Agreement, (a) it is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, (b) it is a derivatives clearing organization registered under the CEA and is permitted to provide facilities for the clearance and settlement of the Cleared Contracts, subject to applicable regulations of the CFTC, (c) it has all requisite power and authority to enter into and perform its obligations hereunder and to conduct its business as currently conducted, (d) this Agreement is a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally, and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law, (e) its entry into this Agreement and performance of its obligations hereunder do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or any other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets, (f) it is in compliance with all regulations of the CFTC applicable to the clearing of Cleared Contracts, (g) the CFTC has approved or permitted to become effective all By-Laws and Rules of the Corporation relating to Cleared Contracts, (h) all governmental and other approvals and consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such approvals and consents have been complied with, and (i) it is prepared to provide clearing and settlement services for Cleared Contracts.

## **Section 3. Selection of Underlying Interests; Classes and Series of Cleared Contracts.**

### **(a) General Criteria for Underlying Interests.**

- (i) Underlying Interests for Commodity Futures. The Market may select the underlying interests that are the subject of commodity futures to be traded on the Market and cleared by the Corporation (other than security futures), subject to the Corporation's prior written approval for any underlying interest or Cleared Contract that materially impacts the Corporation's established risk profile or introduces novel or unique financial, risk model or third-party risks (each a "**New Product Risk**"). All such underlying interests must meet the following requirements:

- (A) physical delivery of the underlying interests shall not be required;
- (B) the Corporation's counsel is satisfied that the clearance and settlement by the Corporation of commodity futures on the underlying interest would not be (I) unlawful or (II) likely to subject the Corporation to liability based upon claims that

clearing and settling of commodity futures on such interest infringes the intellectual property rights of third parties or otherwise; and

- (C) the Corporation is satisfied that it is able to appropriately process and risk manage the commodity futures using commercially reasonable efforts.

The parties may agree on the types of underlying interests selected by the Market to be the subject of commodity futures to be traded on the Market and cleared by the Corporation by completing and executing a Schedule C in the form attached hereto. The underlying interests in respect of Futures (including broad-based security indexes) are herein referred to as “types” of underlying interests. The Schedules C created pursuant to this Section 3(a)(i) and pursuant to Section 3(a)(ii) shall be numbered in a single sequence as Schedule C-1, Schedule C-2, etc.

- (ii) Underlying Interests for Futures Options. The Market may select the underlying Futures contracts that are the subject of Futures Options to be traded on the Market and cleared by the Corporation, subject to the Corporation’s prior written approval for any Futures Option or underlying Futures contracts that present New Product Risk. All such underlying Futures contracts must meet the following requirements: (A) each underlying Futures contract shall consist solely of a Futures contract (and not a security future); (B) such underlying Futures contract shall be traded on the Market and cleared by the Corporation; (C) each underlying Futures contract shall be open for trading for a reasonable period of time as specified by the Corporation prior to the date and time that the underlying Futures Option is opened for trading; (D) the Corporation’s counsel is satisfied that the clearance and settlement by the Corporation of Futures Options on the underlying Futures contract would not be (I) unlawful or (II) likely to subject the Corporation to liability based upon claims that clearing and settling of Futures Options on such underlying Futures contract infringes the intellectual property rights of third parties or otherwise; and (E) the Corporation is satisfied that it is able to appropriately process and risk manage the Futures Options using commercially reasonable efforts. The parties may agree on types of Futures Options selected by the Market to be traded on the Market and cleared by the Corporation by completing and executing a Schedule C in the form attached hereto.

- (iii) New Product Risk. Notwithstanding anything set forth in paragraphs (i) and (ii) above, if the Corporation concludes that the proposed underlying interest, Futures Option, or underlying Futures contract presents a New Product Risk, the Corporation may refuse to clear and settle such Cleared Contract. In such event, the Corporation shall promptly: (A) make representatives of the Corporation available to explain to representatives of the Market the reasons for the refusal; (B) undertake commercially reasonable efforts, including by consulting with the Market, to address the New Product Risk that caused the Corporation to refuse to clear and settle such Futures Option or Cleared Contract with which efforts the Market will reasonably cooperate; and (C) notify the Market when those issues have been satisfactorily addressed so the Corporation may approve the new Cleared Contract.

(iv) Operations. The Market agrees to respond to reasonable Corporation requests for supporting documentation including Market Rules, policies, and procedures relating to the Cleared Contracts settled and cleared pursuant to the terms of this Agreement. Any supporting documentation the Market provides to the Corporation will be subject to Section 18 of this Agreement. To the extent the Corporation believes it reasonably needs additional or modified data files and reports from the Market to facilitate and enhance the clearance and settlement of Cleared Contracts, (i) the Market shall promptly make representatives of the Market available to consult with the Corporation regarding the Corporation's need for additional or modified data files and reports and the reasons for such need, and (ii) the Market shall undertake commercially reasonable efforts to provide the Corporation with such additional or modified data files and reports. If, upon receiving notification from the Market regarding a Futures or Futures Option that introduces new Corporation business processes, technology modifications, operational modifications, or regulatory impact from Futures and Futures Options currently trading, the Corporation shall determine that it does not then have sufficient operational capacity to add such Futures or Futures Options, it shall so notify the Market promptly, and the Market shall defer the opening of trading of such Futures or Futures Options until the Corporation shall notify the Market that it has the operational capacity to issue and clear such Futures or Futures Options. The Corporation will use commercially reasonable efforts to expand, as soon as reasonably practicable, its facilities and operations capabilities so as to permit the addition of such Futures or Futures Options.

(b) Procedures for Selection of Underlying Interests.

(i) If the Market wishes to list and trade Cleared Contracts of a class not theretofore listed or traded on the Market, the Market shall submit to the Corporation a new product proposal in the form and manner specified by the Corporation from time to time as soon as practicable before the trading day on which the Market wishes to commence trading such Cleared Contracts. Subject to the requirements of Section 3(a), the Corporation shall use commercially reasonable efforts to authorize the clearance and settlement of such Cleared Contracts as soon as practicable. When the Market submits a filing to the CFTC to list the Cleared Contract, the Market shall submit to the Corporation a certificate as described below on a template provided by the Corporation (a "**Certificate**") as soon as practicable, but no later than ten trading days before the trading day on which the Market wishes to commence trading such Cleared Contracts.

(ii) The Certificate shall set forth: (A) the type of Cleared Contract (Future or Futures Option); (B) the complete name of the underlying interest; (C) in the case of a Futures Option, whether it is cash-settled or physically-settled; (D) the expiration or maturity cycle of the class; (E) the series marker, if any; (F) the manner in which the opening and closing settlement price is to be determined; (G) the date on which the Market intends to commence listing and trading Cleared Contracts in the class; and (H) any other material information requested by the Corporation from time-to-time that will assist the Corporation in identifying the characteristics of the Futures Options (for example, including, but not limited to, settle on open/close, American/European style).

- (iii) If the type of underlying interest for a Futures contract is a security index, the Certificate shall also: (A) identify the index, state that it is a broad-based security index and explain the basis for such statement; (B) identify the securities composing the index by complete name, trading symbol and CUSIP number; (C) identify the reporting authority for the index; (D) set out in detail the method and frequency of calculation of the index; (E) identify the owner or owners of the index and, if other than the Market, explain the basis for the right of the Market to list and trade Futures on the index; and (F) in the case of a Futures Option on a broad-based security index future, the series by contract price and maturity date.
  - (iv) If the type of underlying interest for a Futures contract is an index other than a security index, the Certificate shall also (A) identify the index and state that it is not a group or index of securities (including any interest therein or based on the value thereof), (B) identify the constituents of the index, (C) identify the reporting authority for the index; (D) set out in detail the method and frequency of calculation of the index and (E) identify the owner or owners of the index and, if other than the Market, explain the basis for the right of the market to list and trade options on the index.
  - (v) For each other type of underlying interest, the Certificate shall contain the information required for an underlying index to the extent applicable to the underlying interest and/or such other information as may be specified by the Corporation.
  - (vi) The Certificate shall also state that the Market certifies that the specified underlying interest meets the requirements of Section 3(a)(i) or 3(a)(ii) of this Agreement, whichever is applicable, and the Market has approved the listing and trading of Cleared Contracts to be cleared by the Corporation on such underlying interest.
- (c) Notice of Additional Maturity or Expiration Dates. The Market may introduce an additional maturity or expiration date for Cleared Contracts of any class previously certified pursuant to Section 3(b) above, as follows:
- (i) For a maturity or expiration date in the cycle set forth in the Certificate, by providing notice to the Corporation through electronic means specified by the Corporation from time to time. Such notice shall specify the underlying interest, the maturity or expiration date, the last trading date, a contract month date and the series marker (if any), and the exercise price in the case of a series of Futures Options. Such notice shall be provided on or before the trading day immediately preceding the trading day on which trading in the new series is to commence.
  - (ii) For a maturity or expiration date not in the cycle set forth in the Certificate, by providing notice to the Corporation. The Corporation will use commercially reasonable efforts to authorize the clearance and settlement of such new maturity or expiration date as soon as practicable. Once the Corporation has approved the new maturity cycle, notice of such new maturity or expiration date will be submitted through electronic means specified by the

Corporation from time to time. Such notice shall specify the underlying interest, the maturity or expiration date, the last trading date, a contract month date and the series marker (if any), and the exercise price in the case of a series of Futures Options.

- (d) Underlying Interest Ceases to Meet Requirements. In the event that the Corporation shall determine that an underlying interest has ceased to meet any of the requirements set forth in this Section 3 or that it has otherwise become unlawful or likely to subject the Corporation to liability for the Corporation to clear transactions in Cleared Contracts on such underlying interest, the Corporation may give notice to the Market that it is to cease all trading of Cleared Contracts cleared by the Corporation on such underlying interest or, in the alternative, to restrict transactions in such Cleared Contracts on the Market (i) to closing transactions or (ii) to closing transactions for all accounts other than the accounts of members of the Market to the extent such members execute opening transactions to facilitate the closing transactions of public customers pursuant to the crossing rules of the Market. The Corporation shall not be required to accept for clearance any transaction effected in violation of such notice after the Market has had a reasonable time to halt trading. In the event that the Corporation gives any notice pursuant to this Section 3(d), the Market and the Corporation shall promptly consult with one another to determine an appropriate course of action to restore the underlying interest to compliance with the requirements of this Section 3 or to permit the orderly and lawful liquidation of open interest. Any action taken by the Corporation under the foregoing provisions shall be consistent with its By-Laws and Rules and will be substantially similar to action taken in respect of similar products traded on any other futures market or securities exchange.
- (e) Monitoring of Underlying Security Indexes. The Market shall monitor the status of each underlying security index that it has selected for Broad-Based Index Futures contracts in order to confirm that the index remains a broad-based index, and shall promptly notify the Corporation if it determines that the index has ceased, or is likely to cease, to meet the definition of broad-based index. If the index ceases to meet the definition of broad-based index, and in the opinion of the Corporation's counsel there is a significant risk that the clearance of Futures contracts on such index or Futures Options on index Futures on such index by the Corporation would be unlawful or likely to subject the Corporation to liability, then the provisions of Section 3(d) above shall apply.
- (f) Breach by Market of Section 3(b) or 3(c). If the Market, by reason of its actions or its failure to act, shall have breached in any material respect the provisions of Section 3(b) or 3(c) hereof, then the Corporation shall not be obligated to clear transactions in Cleared Contracts deriving from or related to the breach (the "**Affected Transactions**") unless and until the Market has corrected such breach or fulfilled such conditions as the Corporation may set. The Corporation shall, promptly upon determining not to clear Affected Transactions effected on the Market, notify the Market of such determination; provided, however, that the Corporation will continue to accept Affected Transactions for clearance until the Market has had a reasonable opportunity to halt trading, unless acceptance of such transactions for clearance would be unlawful or likely to subject the Corporation to liability. Such determination shall not affect the validity of any previously outstanding Cleared Contracts or any confirmed trade that the Corporation has



previously accepted for clearance, nor relieve the Corporation of its obligations with respect thereto, nor shall such determination affect any other obligation of either party under this Agreement or any remedy which such party may have or any right or obligation of any third party under the By-Laws and Rules of the Corporation.

#### **Section 4. Multiplier; Units of Trading.**

Subject to any applicable limitations prescribed by the Market Rules or the By-Laws and Rules of the Corporation, the multiplier or unit of trading, as the case may be, of each series of the Cleared Contract shall be designated by the Market prior to the time such series is first opened for trading on the Market. Unless the Market specifies otherwise, the unit of trading for Futures Options shall be one contract in the series of Futures underlying such Futures Option.

#### **Section 5. Comparison of Transactions in Cleared Contracts; Settlement Prices.**

- (a) Confirmed Trade Reports. The Market agrees that on each business day it will compile a confirmed trade report of all transactions in Cleared Contracts and will furnish such report to the Corporation by such time or times as the Corporation may prescribe, taking into consideration the ability of the Market to provide such information within such time frames on a cost-effective basis.
- (b) Daily Settlement Prices. Each business day, the Market shall, at such time and in such manner as the parties may agree, including in the Data Agreement, notify the Corporation of the settlement price of each Futures contract. The Corporation shall adopt such settlement price as the basis for determining the official settlement price for the business day, except in the case of manifest error or inconsistency with its By-Laws and Rules or in any other case in which the Corporation reasonably believes that such settlement price does not reasonably reflect the value or price of the contract, in which case the Corporation, using its best efforts to consult with the Market, shall determine the official settlement price for such day; provided, however, that in the case of fungible contracts traded on more than one exchange or market, the daily settlement price will be determined by a method mutually agreed among the Corporation and all such exchanges, and in the absence of such agreement, as specified by the Corporation. At the Corporation's request, Market shall reasonably cooperate with the Corporation to arrive at a settlement price. In any case in which the Corporation fixes a daily settlement price other than (i) a price supplied by the Market or (ii) a price determined by a method mutually agreed among the Corporation and all exchanges trading a fungible contract, the Corporation will promptly notify the Market. The Market shall indemnify the Corporation and each of its directors, officers, committee members, agents, and employees from and against any and all liabilities, judgments, claims, damages, expenses and amounts incurred and/or paid in settlement based on the Corporation's use of a settlement price supplied by the Market in determining the official settlement price for such business day; provided, however, that no such indemnification obligation shall exist if the Corporation has not used the settlement price supplied by the Market; and provided further that, where the settlement price is with respect to a fungible contract traded on more than one exchange or market, the Market indemnification shall extend only to the settlement price supplied by it and only to the extent that such price is used to determine the daily settlement price in accordance

with an agreed upon formula. The provisions of Section 15 hereof shall apply to such indemnity as if such indemnity were provided under Section 15(b)(ii) hereof.

- (c) Final Settlement Price. The Corporation shall determine the final settlement price in respect of a series of Futures in accordance with its By-Laws and Rules.
  - (i) With respect to a Futures contract that has an underlying interest (A) traded on one or more organized markets or (B) that is an index derived from constituents traded on one or more organized markets, if the Corporation determines that the primary market(s) (as determined by the Corporation) (I) for the underlying interest in respect of a cash-settled foreign currency Future, or (II) for one or more constituents of an underlying index in respect of a maturing Broad-Based Index Future, did not open or remain open for trading (or that any such foreign currency or constituents did not open or remain open for trading on such market (s)) at or before the time when the settlement price for such Futures would ordinarily be determined, or that a price variance or other value used as, or to determine, the final settlement price (a “**Required Value**”) is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for such use, then the Corporation, using its best efforts to consult with the Market, shall determine the final settlement price in conformity with the By-Laws and Rules of the Corporation and shall promptly notify the Market of its action.
  - (ii) With respect to a Futures contract that has an underlying interest that is not (A) traded on one or more organized markets or (B) an index derived from constituents traded on one or more organized markets, if the Corporation determines that a Required Value for an underlying interest or a constituent of an underlying index for a Futures contract is unreported, inaccurate, unreliable, unavailable or inappropriate for such use, the Corporation, using its best efforts to consult with the Market, shall determine the final settlement price in conformity with the By-Laws and Rules of the Corporation and shall promptly notify the Market of its action.
- (d) Information Sharing. The Corporation and the Market agree to be bound by the provisions set forth in Schedule B attached hereto regarding certain information to be shared between the parties.

## **Section 6. Clearance of Transactions in Cleared Contracts.**

- (a) Provision of Clearing Services. The Corporation will provide, pursuant to and in accordance with the By-Laws and Rules of the Corporation, applicable regulatory requirements, and the terms of this Agreement and the Data Agreement, all services reasonably necessary to perform its obligations under this Agreement, including without limitation the clearing and settlement services identified in Schedule A attached hereto and incorporated herein. The Corporation will have no obligation to any purchaser or seller of a Cleared Contract arising out of any delay or error in the filing by the Market of any report of confirmed trades; provided, however, that nothing in this Section 6(a) will be construed to relieve the Corporation of its obligation to accept and clear such confirmed trades once received. The Market agrees to indemnify and hold

harmless the Corporation and each of its directors, officers, committee members, agents, and employees for any loss or damage incurred resulting from any delay in the filing by the Market of any report of confirmed trades or from any error in the information so filed, other than an error in information submitted to the Market by a member of the Market or delays or errors in the filing of information caused by the Corporation or systems under the control of the Corporation. The provisions of Section 15 hereof shall apply to such indemnity as if such indemnity were provided under Section 15(b)(ii) hereof.

- (b) Clearing Members. For purposes of this Agreement, the term “Clearing Member” has the meaning provided in the By-Laws and Rules of the Corporation. Any Clearing Member that is a member of the Market may clear transactions in Cleared Contracts listed on the Market through the Corporation. Notwithstanding the foregoing, any Clearing Member (whether or not it is a member of the Market) may clear transactions in Cleared Contracts listed on the Market through the Corporation through the Corporation’s “CMTA” and/or allocation procedures.

#### **Section 7. Acceptance and Rejection of Transactions in Cleared Contracts.**

The Corporation agrees to accept, in accordance with and subject to its By-Laws and Rules applicable regulatory requirements, and the terms of this Agreement and the Data Agreement, all confirmed trades in Cleared Contracts that are properly submitted to it by the Market in accordance with procedures and practices of which the Market is informed with reasonable advance notice. Upon submission of a confirmed trade to, and acceptance of such confirmed trade by, the Corporation, the Corporation shall be substituted through contractual novation, as provided in its By-Laws and Rules as the counterparty to each of the Clearing Members that were parties to the confirmed trade. For purposes of the preceding sentence, a Clearing Member to which a trade is given up in accordance with the Corporation’s “CMTA” and/or allocation procedures shall be deemed to have been a party to such trade, and the party giving up such trade shall be deemed not to have been a party to such trade. In accordance with its By-Laws and Rules, the Corporation may reject transactions due to validation errors.

#### **Section 8. Non-Discrimination.**

So long as all conditions on the obligations of the Corporation to clear Cleared Contracts for the Market, as set forth in Article XII of the Corporation’s By-Laws, continue to be satisfied, the Corporation agrees not to unfairly discriminate among markets for Cleared Contracts with regard to the nature or quality of the services that it provides or the priority that it assigns to providing such services.

#### **Section 9. Limitations of Authority and Responsibility.**

The Corporation shall have no authority or responsibility to establish or enforce standards relating to the conduct of trading on the Market by its members or the supervision of any aspect of the conduct of such members with their customers, except (a) as specifically provided in the By-Laws and Rules of the Corporation, or (b) as otherwise reasonably necessary for the Corporation to appropriately risk manage the products being traded on the Market. The Corporation shall have no responsibility for making disclosure to customers of members of the Market or other customers regarding Cleared Contracts or trading therein on the Market except that the Corporation shall furnish to the Market such information regarding the Corporation and the clearance by it of Cleared Contracts as may reasonably be requested by the Market for purposes of disclosure to customers.

**Section 10. Margin Requirements of Corporation.**

The Corporation shall establish in its By-Laws and Rules, and shall have the exclusive responsibility to enforce, requirements as to variation (mark-to-market) payments to be made between the Corporation and its Clearing Members, and the amount and form of margin assets to be deposited or maintained with the Corporation by its Clearing Members, in respect of positions in Cleared Contracts. In establishing such requirements, the Corporation shall not discriminate as to the amount of margin assets to be deposited or maintained: (a) on the basis of the market on which transactions in Cleared Contracts are effected, (b) among markets listing Cleared Contracts on the same underlying interest, or (c) between Cleared Contracts and other products posing substantially equivalent risk to the Corporation that effectively may substitute for Cleared Contracts, but the Corporation may establish higher margin requirements in respect of (A) Cleared Contracts relating to specific underlying interests or types of underlying interests in cases where the distribution or market liquidity of, or other factors relating to, such Cleared Contracts or underlying interests would, in the judgment of the Corporation, increase the risk of the Corporation, its Clearing Members or the public, or (B) particular Clearing Members based on the positions or financial or operational condition of such Clearing Members or otherwise to protect the Corporation, Clearing Members or the public. Subject to (i) any applicable regulatory constraints and (ii) risk management review by the Corporation, the Corporation shall provide for appropriate reductions in margin obligations to reflect the reduced risk of offsetting or partially offsetting positions in Cleared Contracts traded on the Market and contracts traded on securities exchanges or other futures markets cleared by the Corporation that are carried by a Clearing Member in the same account at the Corporation.

While the Market acknowledges the Corporation's responsibility in connection with this Section, the Corporation also acknowledges the Market's interest in maintaining good faith communications with the Corporation concerning the process by which margin requirements are established and communicated.

**Section 11. Financial Requirements for Clearing Members.**

The Corporation shall have the exclusive authority to establish in its By-Laws and Rules standards with which its Clearing Members must comply.

**Section 12. Reporting Obligations by Market.**

(a) Ongoing Information Sharing by Market.

- (i) Annual Financials. The Market shall provide the Corporation with its annual, audited financial statements promptly following completion of the Market's annual audit.
- (ii) Quarterly Financials. Promptly following completion of each quarter, the Market shall provide the Corporation with its quarterly, unaudited financial statements prepared in accordance with U.S. generally accepted accounting principles applied on a basis that is consistent with Market's past practice.
- (iii) Losses. Promptly following completion of each fiscal quarter or completion of its annual audit, the Market shall notify the Corporation if the Market (i) reports a quarterly or fiscal year-end annual decrease in shareholders' equity exceeding twenty-five percent (25%), (ii) reports a quarterly or fiscal year-end annual loss exceeding twenty-five percent (25%) of

shareholders' equity or (iii) experiences quarterly net losses on two or more consecutive fiscal quarters. Following receipt of such notice, the Corporation may request, and the Market shall provide, promptly on an ongoing basis, quarterly, unaudited financial statements to the Corporation prepared in accordance with U.S. generally accepted accounting principles applied on a basis that is consistent with Market's past practice.

- (iv) Books and Records. At the Corporation's request and to the extent the following information is not already provided to the Corporation, the Market shall provide the Corporation, during normal business hours and subject to appropriate security precautions, with the ability to examine the Market's books, accounts, database(s), and other records related to the subject matter of this Agreement. The Market agrees that the Corporation, at the Corporation's own expense, may copy or make extracts from such documents and records and utilize such database(s) for its legitimate business purposes. Any Confidential Information that the Corporation examines, copies, or makes extracts from shall be treated as Confidential Information by the Corporation in accordance with Section 18 herein.
- (v) Other Information. The Market shall provide the Corporation with such other information regarding the Market, including, but not limited to information regarding the owners and affiliates of the Market notice, as the Corporation may reasonably request from time to time during the term of this Agreement; provided, that such information is limited to that which is related to the subject matter of the Agreement or is reasonably necessary for the purposes of the Corporation performing its obligations under this Agreement.

(b) Reporting of Certain Material Events.

- (i) Good Standing. In the event that the Market learns that it is no longer in good standing under the laws of its jurisdiction of incorporation or organization, the Market shall immediately notify the Corporation.
- (ii) Delisting of Cleared Contracts. In the event the Market determines that it will cease trading and delist all Futures or Futures Options on a specific underlying interest, the Market will notify the Corporation a minimum of 60 days prior to the earlier of (1) such delisting or (2) when all trading activity associated with such Futures or Futures Options on the Market has ceased at the Market's direction. In the case of Futures, the delisting shall not occur until after the maturity of all existing Futures positions on the specific underlying interest and the maturity of any Futures positions that may result from the exercise of a Futures Option on the specific underlying interest. In the case of Futures Options, the delisting shall not occur until after the expiration of all existing open interest in Futures Options on the specific underlying interest.
- (iii) Material Changes to Risk Controls. In the event there are any material changes to the Market's risk controls, the Market shall provide immediate notice to the Corporation, including a description of the changes.

- (iv) Regulatory Changes. In the event that there are any material changes to either the regulations to which the Market is subject or the overall regulatory environment in which the Market operates, the Market shall provide notice, including a summary description of the change, to the Corporation within ten business days of such change. The Corporation may reasonably request additional information regarding such change to which the Market shall respond within a reasonable period of time.
- (v) Other Material Changes. In the event that any material changes occur with respect to the Market's corporate structure, trading engines, central limit order book, or overall strategy, the Market shall provide prompt notice of such change.

### **Section 13. Fees.**

The Corporation shall establish fee structures for the services it performs for the Market consistent with the provisions of the By-Laws and Rules of the Corporation and as described in regulatory filings submitted by the Corporation to the CFTC or the Securities and Exchange Commission ("**Filings**"). The Market will be obligated to pay such fees in accordance with the requirements established by the Corporation, including those set forth in the Filings.

### **Section 14. Programs and Projects.**

The Corporation agrees that any program or project designed to assist one or more futures markets which it develops at its own expense or which it originates will be made available for the benefit of the Market.

### **Section 15. Indemnification.**

#### **(a) By the Corporation.**

- (i) The Corporation agrees to indemnify and hold harmless the Market and each of its directors, officers, committee members, agents and employees (each a "**Market Indemnified Party**") and collectively referred to as the "**Market Indemnified Parties**") from and against any and all loss, damage and expense arising out of or based on any violation or alleged violation by the Corporation of any of the terms of this Agreement. This indemnity agreement shall be in addition to any liability which the Corporation may otherwise have.
- (ii) The Corporation agrees to indemnify and hold harmless each Market Indemnified Party from and against any and all liabilities, judgments, claims, damages, expenses and amounts incurred and/or paid in settlement (collectively referred to as "**Losses**") in connection with any action, suit, litigation, claim or proceeding commenced by any person to which any such Market Indemnified Party is made a party defendant, or is threatened to be made such a party, arising out of or based upon any violation or alleged violation by the Corporation of any terms of this Agreement, any alleged default by the Corporation in performing its obligations in accordance with its By-Laws and Rules in respect of any transaction in Cleared Contracts it accepts for clearing, and any violation or alleged violation by the Corporation of any law or governmental regulation. This indemnity agreement shall be in

addition to any liability to any Market Indemnified Party which the Corporation may otherwise have.

(b) By the Market.

- (i) The Market agrees to indemnify and hold harmless the Corporation and each of its directors, officers, committee members, agents and employees (each a “**Corporation Indemnified Party**” and collectively referred to as the “**Corporation Indemnified Parties**”) from and against any and all loss, damage and expense (whether or not such loss, damage or expense is reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) arising out of or based on any violation or alleged violation by the Market of any of the terms of this Agreement. This indemnity agreement shall be in addition to any liability which the Market may otherwise have.
- (ii) The Market agrees to indemnify and hold harmless each Corporation Indemnified Party from and against any and all Losses (whether or not such Losses are reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) in connection with any action, suit, litigation, claim or proceeding commenced by any person, to which any such Corporation Indemnified Party is made a party defendant or is threatened to be made such a party, arising out of or based on any violation or alleged violation by the Market of any of the terms of this Agreement or any violation or alleged violation by the Market of any law or governmental regulation. This indemnity agreement shall be in addition to any liability to any Corporation Indemnified Party which the Market may otherwise have.
- (iii) Without limiting the generality of subsection (b) above: (i) the Market specifically agrees to indemnify and hold harmless each Corporation Indemnified Party, from and against any and all Losses in connection with any claim or cause of action for patent infringement or other intellectual property law violation, where such claim or cause of action relates to intellectual property that is developed or used by the indemnifying party in connection with the activities to be engaged in hereunder; and (ii) without limiting the generality of clause (i) above, the Market specifically agrees to indemnify and hold harmless each Corporation Indemnified Party from and against any and all Losses (whether or not such Losses are reimbursable by *pro rata* charges to the Clearing Fund contributions of Clearing Members) in connection with any action, suit, litigation, claim or proceeding commenced by any person, asserted against a Corporation Indemnified Party or to which a Corporation Indemnified Party is made a party defendant or is threatened to be made such a party, or is subjected to discovery or testimonial obligations, arising out of or based on (A) any allegation that the Market does not have the right for any reason to list and trade a Cleared Contract traded or proposed to be traded on the Market, including, without limitation, not having the right to use, reference or distribute the underlying interest, or (B) any allegation that the listing and trading of a Cleared Contract by the Market, the issuance by the Corporation of the Cleared Contract so listed and traded, the clearance and settlement of such trades by the Corporation, or the use, reference or distribution of the underlying interest constitutes unfair competition or unjust enrichment or infringes, interferes with or misappropriates the intellectual property, contract, common law or other rights of a third

party, including without limitation the owner of any proprietary index or any licensee of such index or derivative products based thereon. For the avoidance of doubt, the indemnification obligations of the Market under this Section 15 shall include Losses in connection with any claim or cause of action that may be asserted against the Corporation Indemnified Parties related to or arising out of any legal theory that the Market does not have the right to trade any commodity contract for which the final settlement price is based on the final settlement price for a commodity contract listed on another Designated Contract Market, or that the trading in such contracts (and not in contracts generally) or the clearing of any such contracts (and not of contracts generally) by the Corporation, infringes on the intellectual property, contract or other rights of a third party.

- (c) Limitation on Rights Conferred. The provisions of this Section 15 are not intended to confer any rights upon any person other than Corporation Indemnified Parties, the Market Indemnified Parties and each person, if any, who controls the Market within the meaning of the CEA.
- (d) Rights and Duties When Action Commenced. Promptly after receipt by an indemnified party under Section 15(a)(ii), 15(b)(ii) or 15(b)(iii) hereof of notice of commencement of any action, suit, litigation, claim or proceeding in which such indemnified party is made a party defendant, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under such Section, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under such Section. In case any such action is brought against any indemnified party, and it promptly notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume and control the defense thereof, with counsel chosen by it, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under such Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, but the indemnified party may, at its own expense, participate in such defense by counsel chosen by it, without however, impairing the indemnifying party's control of the defense. The indemnifying party may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified party or have a material adverse impact on the business of the indemnified party. As used in this Section 15, the words "party defendant" shall include a counter-defendant, cross-defendant, respondent, and any other capacity in which a claim is asserted against an indemnified party.

#### **Section 16. Information Technology and Security.**

- (a) Market Contacts. The Market shall provide the Corporation with the current name(s) and contact information for Market employee(s) who shall have the requisite expertise and authority (each a "**Market Designated Contact**") to assist the Corporation in the resolution of operational, technology or information security matters related to the provision of services to the Market under this Agreement. The Market shall make a Market Designated Contact available during (i) the



Market's trading hours, (ii) the Corporation's applicable processing times (e.g., evening and expiration processing, etc.) as communicated by Corporation from time to time, and (iii) any Market Cyber-Related Incident (as defined in paragraph (f) below).

- (b) Corporation Contacts. The Corporation shall provide the Market with the current name(s) and contact information for the Corporation employee(s) who shall have the requisite expertise and authority (each a "**Corporation Designated Contact**") to assist the Market in the resolution of operational, technology or information security matters related to the provision of services to the Market under this Agreement. The Corporation shall make a Corporation Designated Contact available during (i) the Market's trading hours, (ii) the Corporation's applicable processing times (e.g., evening and expiration processing, etc.) as communicated by Corporation from time to time, and (iii) any Market Cyber-Related Incident (as defined in paragraph (f) below).
- (c) Corporation Services. The Market shall promptly notify the Corporation and provide ongoing updates of any incident related to the Market that could reasonably be expected to affect the Corporation's ability to perform the services for the Market outlined in this Agreement. The Market agrees to provide the Corporation with information relating to such incident promptly upon the Corporation's reasonable request.
- (d) Cybersecurity Program. The Market shall define and maintain a comprehensive cybersecurity program and framework which:
  - (i) considers and accounts for reasonably foreseeable cybersecurity threats that could impact the Market and its business;
  - (ii) protects the confidentiality, integrity and availability requirements of the Market's systems and information;
  - (iii) includes an implemented and actively maintained written enterprise cybersecurity policy approved by the Market's senior management or the Market's board of directors (or other equivalent body);
  - (iv) is in alignment with standard industry best practices and guidelines;
  - (v) if the Market uses a third-party service provider to connect or transact business or to manage its connection with the Corporation, maintains an appropriate program to evaluate the cybersecurity risks and impact of these third parties and to review the third-party assurance reports;
  - (vi) protects the segment of the exchange system that connects to and/or interacts with the Corporation; and
  - (vii) has an established process to remediate cybersecurity issues identified to fulfill regulatory and/or statutory requirements.

- (e) Regulations. The Market agrees to take reasonable steps to comply with applicable cybersecurity regulations, and to promptly contain and remedy any incident arising under Section 16(c) in accordance with applicable law.
- (f) Cyber-Related Incidents. Upon notification by the Market pursuant to paragraph (c) of this Section 16 of an incident involving a cyber-related disruption or intrusion of the Market that could reasonably be expected to materially affect the Corporation's ability to perform the services for the Market described in this Agreement (a "**Market Cyber-Related Incident**") or if the Corporation has a reasonable basis to believe that a Market Cyber-Related Incident is occurring that could reasonably be expected to materially affect the Corporation's ability to perform the services for the Market describe in this Agreement, the Corporation shall be permitted to take actions reasonably necessary to mitigate the effects to the operations of the Corporation, including the right to suspend its obligations to the Market under this Agreement (to the extent such obligations are or could reasonably be expected to be impacted by the Market Cyber-Related Incident), including disconnecting connectivity required pursuant to paragraph (g) below, until such time as the Corporation is able to reasonably determine that the Market Cyber-Related Incident is resolved and the mitigating actions are no longer reasonably necessary. The Corporation shall not suspend its obligations to the Market without prior approval from the Corporation's senior management, and the Corporation shall promptly notify the Market of its determination pursuant to the foregoing provisions of this Section to suspend its obligations under this Agreement. Notwithstanding the foregoing, the Market and the Corporation shall promptly consult with one another to determine an appropriate course of action that would resolve the Market Cyber-Related Incident to the Corporation's satisfaction, which shall not be unreasonably withheld, and work together in good faith to limit the duration of any suspension. In the event of a suspension under this Section, the Corporation shall undertake commercially reasonable efforts to maintain performance of its obligations with which efforts the Market will reasonably cooperate.
- (g) Connectivity. The Market shall meet the connectivity requirements set from time to time by the Corporation and provided to the Market. Such connectivity requirements may include the maintenance of point-to-point connections to the Corporation and the use of redundant connectivity to support all transmissions of any data required to be provided by the Market to the Corporation under this Agreement. The Corporation and the Market will provide the other with reasonable advance notice of changes to such requirements, which may be no less than 60 days.
- (h) Business Continuity and Disaster Recovery. The Market shall maintain (a) a written business continuity and disaster recovery program which includes annual testing for, without limitation, recovery point objectives and real-time objectives; and (b) appropriate facilities for system redundancy and disaster recovery, subject to the general oversight of the CFTC, as appropriate.

#### **Section 17. Access to Books and Records of the Corporation.**

To the extent the following information is not already provided to the Market, the Corporation agrees that the Market shall have the right, during normal business hours and subject to appropriate security

precautions, to examine the Corporation's books, accounts, database(s) and other records related to the subject matter of this Agreement, and, at the Market's own expense, to copy or make extracts from such documents and records and to utilize such database(s); provided, however, that the Market shall have no such right with regard to transactions on any other futures market, security futures market or securities exchange or which is otherwise competitive information of another futures market, or security futures market or securities exchange except insofar as (a) such transactions are entered into by members of the Market and are relevant to the Market's assessment of the financial condition of such member or (b) is necessary to protect the integrity of the Market. Any Confidential Information that the Market examines, copies, or makes extracts from shall be treated as Confidential Information by the Market in accordance with Section 18 herein.

#### **Section 18. Confidentiality.**

- (a) Definition of "Confidential Information". "Confidential Information" includes, but is not limited to, information which relates or refers to a disclosing party's products and services, operations, customers, members, prospects, know-how, design rights, trade secrets, market information, business affairs, and information provided to the receiving party pursuant to this Agreement. All such information disclosed to the receiving party (the "Recipient") by the disclosing party (the "Disclosing Party"), whether orally, in writing or electronically, or whether directly or indirectly, shall be deemed to be Confidential Information. Notes, documents, summaries, and reports which are prepared from Confidential Information, to the extent specifically referring to Confidential Information, are themselves Confidential Information.
- (b) Obligations of the Recipient. Subject to subsection (d) and (e) below, the Recipient shall (i) treat all Confidential Information as strictly confidential and shall exercise the same degree of care in the protection of the Confidential Information as it exercises with respect to its own confidential information, but in no event shall it be less than a reasonable degree of care, given the nature of the Confidential Information, (ii) not use the Confidential Information of the Disclosing Party for any purpose other than fulfilling its obligations under this Agreement or its legitimate business purposes and (iii) not disclose Confidential Information received from a Disclosing Party to any person or entity, except its employees, officers, directors, governors, independent consultants and other agents involved in the performance of the obligations under this Agreement who have a legal obligation to the Disclosing Party that prohibits the disclosure or unauthorized use of information deemed confidential by the Disclosing Party (such persons, the "**Authorized Persons**").
- (c) Intellectual Property Rights. All intellectual property rights associated with any Confidential Information, including, without limitation, patent, trademark, copyright, and trade secret rights, shall remain with the party possessed of such rights.
- (d) Limitation of Obligations. The Recipient's obligations hereunder shall not extend to (i) information that is already in the possession of the Recipient not under a duty of non-disclosure, (ii) information which is generally known or revealed to the public, (iii) information which is revealed to the Recipient by a third party, unless such party is known by the Recipient to be under a duty of non-disclosure, (iv) information which the Recipient develops independently of the

disclosure, or (v) incorporating Confidential Information relating to the trades, positions and/or financial condition of the disclosing party into statistical information related to groups of unnamed members of the Recipient or members of the Recipient generally.

- (e) Right to Disclose Confidential Information in Certain Circumstances. Notwithstanding any other provision of this Agreement or the By-Laws and Rules of the Corporation, the Recipient may disclose Confidential Information (i) to a government agency with jurisdiction over the Recipient, (ii) in the course of fulfilling any of the Recipient's regulatory responsibilities, including responsibilities to share information with other regulatory or self-regulatory bodies, (iii) subject to the following sentence, in response to a subpoena or other validly issued judicial process. In the event that the Recipient receives such a subpoena or other validly issued judicial process requesting disclosure of Confidential Information received from a Disclosing Party, the Recipient shall, to the extent permitted by law or applicable regulation, provide as much advance actual notice of such receipt as is practicable in the circumstances to the Disclosing Party, in order to provide the Disclosing Party with a reasonable opportunity to intervene in the proceeding before the time that the Recipient is required to comply with such subpoena or other process, and shall use its reasonable efforts to limit the extent of any such disclosure. Any Confidential Information disclosed pursuant to this Section shall remain subject to all restrictions hereunder except to the extent of such permitted disclosure.
- (f) Equitable Relief. The Recipient acknowledges that the Disclosing Party providing Confidential Information, because of the nature of such Confidential Information, may suffer irreparable harm in the event of a material breach of the provisions of this Section 18 in that monetary damages may be inadequate to compensate for such a breach, and that, in the event of any material breach or threatened material breach of any such provisions by the Recipient, the Disclosing Party shall be entitled to seek, in addition to such other legal or equitable remedies which might be available, the remedies of injunction, specific performance and other equitable relief in any court of competent jurisdiction against the threatened material breach or constitution of any such material breach without showing or providing any actual damages sustained by it.

## **Section 19. Suspension; Breach of Agreement; Termination.**

- (a) Suspension.
  - (i) The Corporation may suspend any of its obligations to the Market under this Agreement whenever, in the Corporation's judgment, such suspension is necessary to comply with, or give full effect to, any waiver or suspension of the Corporation's By-Laws, Rules, policies and procedures, or any other rules issued by the Corporation, in each case, as permitted by the Corporation's By-Laws and Rules or as set forth in Section 19(a)(ii) below. The Corporation shall notify the Market of such suspension as soon as reasonably practicable. The suspension may continue in effect for no more than the time period outlined in the By-Laws and Rules.
  - (ii) Without limiting the Corporation's suspension rights set forth in the Corporation's By-Laws and Rules or in Section 16(f), if the Market, by reason of its actions or its failure to act, may have breached in any material respect any provision of this Agreement and if, as

a result of such breach, the Corporation has a reasonable basis to believe the clearance or settlement of Cleared Contracts by the Corporation with respect to transactions effected on the Market or the Corporation's continued performance of services for the Market will likely result in a violation by Corporation of any provision of the CEA, then the Corporation shall not be obligated to clear or settle Cleared Contracts with respect to transactions effected on the Market unless and until such breach has been corrected; provided, however, that Corporation shall obtain senior management approval of such suspension of clearance or settlement and shall promptly notify the Market of its determination not to clear or settle Cleared Contracts with respect to transactions effected on the Market; and provided further that such determination shall not affect any other obligation of any party under this Agreement or any remedy which any such party may have or any right or obligation of any third party under the By-Laws and Rules. The parties shall work together in good faith to seek to minimize the duration of any suspension. The Corporation shall have no obligation under this Agreement to clear or settle any Cleared Contract in respect of an underlying interest which has been selected by the Market in violation of the requirements of Section 3 of this Agreement.

- (b) Breach by Corporation of Section 6 or Section 7. If the Corporation, by reason of its actions or its failure to act, shall have breached in any material respect the provisions of Section 6 or Section 7 hereof, and if, as a result of such breach, transactions in Cleared Contracts effected on the Market and submitted to the Corporation for clearing are not timely cleared, then the Market may terminate this Agreement upon written notice to the Corporation.
- (c) Other Grounds for Termination. The Corporation shall cease clearing Cleared Contracts for the Market and this Agreement shall terminate forthwith if (i)(A) the Market ceases to meet any legal or regulatory requirement necessary to list and trade Cleared Contracts following the Effective Date, (B) the Market terminates the trading of all Cleared Contracts, or (C) the representations of the Market in clause (a), (c), (d) or (e) of Section 1 hereof cease to be accurate at any time, or (ii)(A) the Corporation ceases to be registered as a derivatives clearing organization, or (B) its By-Laws or Rules cease to be in full force and effect in a material respect. The Corporation may cease clearing Cleared Contracts for the Market and terminate this Agreement upon at least 30 days prior written notice if the Market is in violation of this Agreement in any material respect, the Corporation provides the Market with written notice of the violation, and the Market fails to cure the violation within 30 days of receipt of the written notice describing the violation. The Market may voluntarily terminate this Agreement at any time by giving the Corporation at least 365 days prior written notice; provided, however, that the Market shall, to the best of its ability, ensure that a secondary market is maintained in each series of Cleared Contracts that it has previously opened for trading until the expiration date of each such series, so that it remains possible for Clearing Members to clear through the Corporation transactions closing out positions in each such series that were open at the time of termination hereof. In addition, the Corporation may voluntarily terminate this Agreement at any time by giving the Market at least 365 days (i.e., one year) prior written notice. In the event of such a voluntary termination by the Market or the Corporation, the Corporation in its sole discretion shall have the ability to terminate this Agreement sooner than 365 days from the date on which the termination notice is provided if

there is no outstanding open interest on the Market or if such open interest has been transferred to a successor clearing organization (the “**Successor**”) pursuant to Section 19(d) of this Agreement.

- (d) Transfer of Open Positions to Successor Clearing Organization. If this Agreement is terminated and the Market makes alternative clearing arrangements for transactions in Cleared Contracts executed on the Market thereafter, the Corporation, at the request of any Clearing Member and upon payment of a per contract clearing fee as determined by the Corporation, shall enter into an assignment and assumption agreement satisfactory in form and substance to the Corporation wherein (i) the Corporation assigns to the Market’s Successor all of the Corporation’s right, title and interest in and to such of the Clearing Member’s open positions in Cleared Contracts traded on the Market as the Clearing Member may specify, (ii) the Successor assumes all of the Corporation’s obligations in respect of such open positions, and (iii) the Successor and such Clearing Member agree to indemnify the Corporation and hold the Corporation harmless against any liability or obligation in respect of such open positions arising from and after the effective time of such assignment and assumption.
- (e) Financial Resources or Agreement with Another Exchange. The Market agrees to either (i) maintain at all times financial resources equal to one year’s worth of projected operating expenses for the Market as updated on an annual basis, or (ii) establish and maintain at all times an arrangement with another designated contract market registered with the CFTC to provide a listing and trading venue for Commodity Contracts listed and traded on the Market and cleared by the Corporation pursuant to this Agreement should the Market become unavailable or no longer able to provide a trading venue for such contracts.

## **Section 20. Survival of Obligations.**

Notwithstanding the termination of this Agreement, (a) the Corporation shall continue to be obligated with respect to any confirmed trade that it shall have accepted for clearance as a result of transactions effected on the Market before the date of termination, and (b) the obligation of the Market to indemnify the Corporation pursuant to Section 15(b) hereof, the parties’ mutual obligations of confidentiality under Section 18 and the obligation of the Corporation to indemnify the Market pursuant to Section 15(a) hereof shall survive such termination.

## **Section 21. Dispute Resolution.**

If a dispute arises between employees of the Market and employees of the Corporation relating to the clearing services that are the subject of this Agreement, and the most senior employee actively involved in the dispute on behalf of a party (in either case, the “**Senior Disputant**”) believes that the Corporation’s timely and unimpeded conduct of clearing services for the Market is threatened by the unresolved dispute, the Senior Disputant may notify the other party that a dispute exists. Such notice having been given, the Senior Disputant of each party shall without delay notify the senior management of such party, or if the senior management is not immediately available, the most senior officer of such party that is immediately available (in either case, the “**Responsible Officer**”), that a dispute exists between the parties. The Responsible Officers of the two parties shall thereupon endeavor in good faith to resolve the dispute and to mitigate its deleterious effects and shall confer with each other to those ends. For the judicial resolution of

disputes the parties consent to the exclusive jurisdiction of the United States District Court in Chicago, Illinois if such court has subject matter jurisdiction over the dispute; otherwise, the courts of Illinois situated in Chicago shall have exclusive jurisdiction. Each party waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such party.

**Section 22. Notice of Regulatory Action.**

Each of the Corporation and the Market shall notify the other party of any action taken by a regulatory body or agency that, in the judgment of the party subject to such action, has or will have a material adverse effect on such party's performance of its obligations under this Agreement.

**Section 23. System Redundancy, Disaster Recovery.**

The Corporation shall maintain (a) a written business continuity and disaster recovery program which includes annual testing for, without limitation, recovery point objectives and real-time objectives; and (b) appropriate facilities for system redundancy and disaster recovery, subject to the general oversight of the SEC and CFTC, as appropriate.

**Section 24. Limitation of Liability.**

- (a) Neither party shall be liable under any circumstances for incidental, consequential or special damages sustained by the other party under this Agreement, whether or not such damages relate to services covered by this Agreement, even if the party against which an award of damages is sought has been advised of the possibility of such damages; provided, however, that this Section 24 is not intended to limit the indemnification provisions of Section 15 or any other indemnification provisions in this Agreement to the extent that such provisions would otherwise cover incidental, consequential or special damages asserted by third parties against an indemnified party.
- (b) Neither party shall be liable for its inability to perform its obligations under this Agreement when such inability arises out of causes beyond its control, including, without limitation, any act of God, act of war or terrorism, accident, labor dispute, or the failure of any third party to provide any electronic, telecommunication or other service used in connection with the services covered by this Agreement. Each party agrees to notify the other promptly upon learning that any such event has occurred and shall cooperate with the other, upon request, in arranging alternative procedures and in otherwise taking reasonable steps to mitigate the effects of any inability to perform or any delay in performing.

**Section 25. Effectiveness of Agreement.**

On the Effective Date, and as conditions to the effectiveness of this Agreement, the CFTC and, with respect to the Corporation, the SEC shall have approved the rule change filed in respect of this Agreement or allowed such rule change to become effective; the Market shall deliver to the Corporation a certificate of a senior officer, in form and substance satisfactory to the Corporation, to the effect that the representations of the Market set forth in Section 1 hereof are true and accurate on such date, and the Corporation shall deliver to the Market a certificate of a senior officer, in form and substance satisfactory

to the Market, to the effect that the representations of the Corporation set forth in Section 2 hereof are true and accurate on such date. The "Effective Date" of this Agreement shall be [\_\_\_\_\_] [\_\_\_\_], 20[\_\_\_\_], or, if later, the date when the Market begins trading Cleared Contracts, but shall in no event be earlier than the first date on which all conditions exist such that the representations to be made under Sections 1 and 2 would be true and the payment pursuant to Article XII, Section 1 of the By-Laws of the Corporation is made.

**Section 26. Nonexclusive Agreement.**

This Agreement is nonexclusive and nothing in this Agreement shall prevent (i) the Market from obtaining clearing arrangements from another party during the term of this Agreement or thereafter for Cleared Contracts traded on the Market or (ii) the Corporation from providing any services, including clearing and settlement services, to any other party during the term of this Agreement or thereafter.

**Section 27. Miscellaneous.**

- (a) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Illinois.
- (b) Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
- (c) This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that prior written consent shall not be required in the event of a merger, consolidation, reorganization or reincorporation by, or sale of all or substantially all of the assets of: (i) the Corporation; or (ii) the Market so long as the successor entity or transferee is qualified under the By-Laws and Rules of the Corporation and satisfies all of the representations set forth in Section 1 as of the date of the assignment. In the event of an authorized or permissible assignment under this Section 27(c), all of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. Any purported assignment in violation of this Section 27(c) shall be null and void.
- (d) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- (e) The headings of this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof.
- (f) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but both of which together constitute one and the same instrument.



- (g) Terms used in this Agreement (whether or not initially capitalized) that are defined in the By-Laws and Rules of the Corporation have the meanings given to them in the By-Laws and Rules of the Corporation, unless expressly defined otherwise in this Agreement or unless the context requires a different meaning.
- (h) This Agreement, together with any amendments thereto entered into by the parties, constitutes the sole and entire agreement of the parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

## Section 28. Marks.

- (a) The Market hereby grants to the Corporation a non-exclusive, royalty-free, non-transferable (except as provided herein) non-sublicensable license to use each party's respective name, tradename, logos, and trademarks (collectively, the "**Marks**") in connection with the Corporation's clearance, settlement, and investor education services (the "**Market TM License**"). The Market TM License is coterminous with this term of this Agreement, unless earlier terminated by the Market. The Market may elect to terminate the Market TM License, in its sole discretion, at any time with notice. Upon termination of the Market TM License, the Corporation shall immediately cease using the Marks. THE MARKS ARE LICENSED "AS-IS" AND THE MARKET DISCLAIMS WITH RESPECT TO THE MARKS ALL INDEMNITIES AND WARRANTIES WHATSOEVER. All uses of the Marks, including within any written materials shall include the appropriate trademark symbol ("®" or "TM") as communicated by the Market from time to time, and shall otherwise conform to the Market's trademark usage and notification policies as communicated to the Corporation in writing. The Corporation recognizes and agrees that the Market is the rightful owner of the Marks and all associated goodwill. The Corporation agrees that its use and display of the Marks shall comply with all applicable laws and regulations, and in no way shall be derogatory, negative, unlawful, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, obscene, tortious, or otherwise objectionable in any manner. The Market shall have the right to review and approve all use of the Marks by the Corporation prior to release.
- (b) The Corporation hereby grants to the Market a non-exclusive, royalty-free, non-transferable (except as provided herein) non-sublicensable license to use the Corporation's name, tradename, logos, and trademarks (collectively, the "**Corporation Marks**") in connection with the Market's listing activities (the "**Corporation TM License**"). The Corporation TM License is coterminous with this term of this Agreement, unless earlier terminated by the Corporation. The Corporation may elect to terminate the Corporation TM License, in its sole discretion, at any time with notice. Upon termination of the Corporation TM License, the Market shall immediately cease using the Corporation Marks. THE CORPORATION MARKS ARE LICENSED "AS-IS" AND THE CORPORATION DISCLAIMS WITH RESPECT TO THE MARKS ALL INDEMNITIES AND WARRANTIES WHATSOEVER. All uses of the Corporation Marks, including within any written materials shall include the appropriate trademark symbol ("®" or "TM") as communicated by the Corporation from time to time, and shall otherwise conform to the Corporation's trademark usage and notification policies as communicated to the Market in

writing. The Market recognizes and agrees that the Corporation is the rightful owner of the Corporation Marks and all associated goodwill. The Market agrees that its use and display of the Corporation Marks shall comply with all applicable laws and regulations, and in no way shall be derogatory, negative, unlawful, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, obscene, tortious, or otherwise objectionable in any manner. The Corporation shall have the right to review and approve all use of the Corporation Marks by the Market prior to release.

## **Section 29. Notices.**

All notices, requests, demands and other communications hereunder must be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) three business days after having been mailed by first class registered mail, return receipt requested, postage and registry fees prepaid to the address set forth below, (c) under Section 3(d), when sent by e-mail without notice to the sender from a server that delivery of the e-mail has been delayed or has failed, and if such notice is received, then notice shall not be deemed duly given until the e-mail is sent without such notice, or (d) when sent by facsimile transmission to the facsimile number set forth below, provided that the burden of proving receipt of a facsimile will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine.

(a) If to the Corporation:

[ ]

[ ]

Attn: [ ]

Facsimile Number: [ ]

Telephone Number: [ ]

e-mail address for purposes of notices required  
to be sent by e-mail pursuant to Section 3(e):

[ ]

(b) If to the Market:

[ ]

[ ]

Attn: [ ]

Facsimile Number: [ ]

Telephone Number: [ ]

e-mail address for purposes of notices required  
to be sent by e-mail pursuant to Section 3(d):

[ ]

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

THE OPTIONS CLEARING CORPORATION

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

Name:

Title:

[\_\_\_\_\_]

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

Name:

Title:

## SCHEDULE A

### DESCRIPTION OF CLEARING AND SETTLEMENT SERVICES

In accordance with the terms of this Agreement, the Corporation shall perform the following clearing functions:

- (1) Trade Acceptance. The Corporation shall receive confirmed trade submissions from the Market in accordance with the By-Laws, Rules, and procedures of the Corporation as in effect from time to time. The Market acknowledges that, as of the Effective Date, the procedures of the Corporation require that trade submissions on any business day be received no later than 5:00 pm Central Time, so that receipt of confirmed trade submissions after such time will require the further agreement of the Corporation, which may be withheld by the Corporation for any reason.
- (2) Transfers. The Corporation shall affect the transfer of positions between Clearing Members in accordance with the By-Laws, Rules and procedures of the Corporation as in effect from time to time.
- (3) Position Maintenance and Settlement. On a daily basis the Corporation shall calculate and collect original margin and variation margin on Cleared Contract trades and positions, and margin on positions in Futures Options, in the accounts of Clearing Members. The Corporation shall settle the gains and losses associated with Cleared Contract trades and positions in the accounts of members at least once each business day.
- (4) Information for Clearing Members. The Corporation will make available to each Clearing Member on every business day with respect to Cleared Contracts in each account of such Clearing Member with the Corporation information in accordance with the Corporation's By-Laws and Rules as currently in effect.
- (5) Pay/Collect. The Corporation will determine every Clearing Member's financial obligations to the Corporation each business day and require or make such payments as are necessary to discharge any balance owing in accordance with the Corporation's By-Laws and Rules.
- (6) CMTA and/or Allocation Transactions. The Corporation will make its clearing and settlement system available to Clearing Members that are members of the Market for processing of CMTA and/or allocation transactions.

**SCHEDULE B**  
**INFORMATION SHARING**

1. Information Provided by the Corporation to the Market

**A. Information provided each trading day**

The Corporation will provide the Market with its Data Distribution Service information in respect of Cleared Contracts (“DDS Data”) on each trading day for regulatory and financial surveillance purposes and for purposes of reporting under CFTC Regulations 16.00 and 16.01 (the “Authorized Purpose”). The Market may not use the DDS Data for any purpose other than the Authorized Purpose or distribute the DDS Data to any third party without the Corporation’s prior written consent.

**B. Information provided on an occurrence basis:**

Notice of (a) any Clearing Member default or (b) any suspension of, termination of, ceasing to act for, or liquidation of, any Clearing Member by the Corporation, if, in either case, the Clearing Member is a member of the Market; provided, the Corporation shall be deemed to have satisfied its notification obligation by posting the requisite notice on its public website.

2. Information to be provided by the Market to the Corporation

**A. Information regarding Clearing Members**

1. The Market agrees that whenever, in the performance of its functions of monitoring compliance by its members with the financial responsibility standards established by the Market or the financial responsibility standards established by the CFTC, it shall determine that (A) a Clearing Member that is a member of the Market is not in compliance with such standards, (B) the financial condition of a Clearing Member that is a member of the Market is such that special restrictions should be imposed on such Clearing Member, or (C) the financial condition of a Clearing Member that is a member of the Market should be reported to the Securities Investor Protection Corporation, the SEC, the CFTC or any other regulatory body, the Market shall notify the Corporation thereof by telephone promptly following the making of such determination and shall continue to keep the Corporation reasonably informed of the results of the Market’s financial surveillance activities in respect of such Clearing Member so long as the Clearing Member is subject to any such special restrictions.
2. The Market further agrees to furnish to the Corporation a copy of all written materials that are furnished to the financial surveillance committee of the Market (the “**Committee**”) respecting a Clearing Member that is a member of the Market, provided that if the Market does not have such a Committee, it hereby agrees to furnish the Corporation with a copy of all written materials respecting the financial condition of a Clearing Member that is a member of the Market relating to circumstances described in clauses (A) through (D) of the preceding sentence prepared for the management authority of the Market exercising financial surveillance or similar functions (“**Management Authority**”).

- a. Such written material shall be delivered to the Corporation as promptly as practicable, but in no event later than 2:00 p.m. Central Time on the business day next following the day on which such materials are furnished to the Committee or the Management Authority; provided that upon the oral or written request of the Corporation, the Market shall make such materials available for pickup by the Corporation at the same time as they are furnished to the Committee or Management Authority.
  - b. If the Market has such a Committee, it also agrees (i) to notify the Corporation by telephone of each special or emergency meeting of the Committee (or regular meeting of the Committee called on less than 48 hours' notice) concerning a Clearing Member that is a member of the Market prior to the commencement of such meeting, (ii) to advise the Corporation at the time of such notification as to the reasons for and purposes of such meeting, and (iii) to report by telephone to the Corporation immediately following the end of each meeting of the Committee (whether a regular or special or emergency meeting) as to the conclusions (if any) reached at such meeting concerning any Clearing Member that is a member of the Market and the reasons therefor.
  - c. If the Market does not have a Committee, it also agrees to notify the Corporation of any action or proposed action concerning the financial condition of a Clearing Member that is a member of the Market to be taken by the Management Authority and the reasons therefor promptly upon making a determination concerning such Clearing Member.
3. Notwithstanding the provisions of Section 29 of this Agreement, any notice, written materials or telephone communication required to be furnished to the Corporation by this provision shall be delivered or made to any one of the Executive Chairman or the Chief Executive Officer of the Corporation, or in case of the absence or unavailability of all of them, then to any member of the Management Committee of the Corporation.

**SCHEDULE C**

Form of Schedule C

Schedule C-[insert number]

**INTRODUCTION OF UNDERLYING INTEREST: [NEW FUTURES PRODUCT CLASS]**

[Insert Date]

1. This is one of the Schedules C referred to in Section 3(a)(i) and (ii) of the Agreement for Clearing and Settlement Services dated as of [Insert Date] (the “**Agreement**”) between the [ ] (the “**Market**”) and The Options Clearing Corporation (the “**Corporation**”). When completed and duly executed by the parties, this Schedule C shall be incorporated into the Agreement and become a part thereof. Terms used herein and defined in the Agreement shall have the meanings they are given in the Agreement.
2. Pursuant to Section 3(a)(i) of the Agreement, the Market may select the underlying interests for Futures (other than securities futures) to be traded on the Market and cleared by the Corporation, subject to certain conditions, including the condition that the Corporation’s counsel is satisfied that the clearance and settlement by the Corporation of Futures on the underlying interest would not be (i) unlawful or (ii) likely to subject the Corporation to liability based upon claims that clearing and settling of Futures on such interest infringes the intellectual property rights of third parties or otherwise. The Market has selected and may select certain [new Futures product class] as underlying interests for Futures. For purposes of this Schedule C-[ ], a [name of Futures product] is a Futures contract on a [new Futures product class].
3. Pursuant to Section 3(a)(ii) of the Agreement, the Market may select the underlying Futures contracts that are the subject of options to be traded on the Market and cleared by the Corporation, subject to certain conditions, including the condition that the Corporation’s counsel is satisfied that the clearance and settlement by the Corporation of options on the underlying Futures contracts would not be (i) unlawful or (ii) likely to subject the Corporation to liability based upon claims that clearing and settling of options on such Futures contracts infringes the intellectual property rights of third parties or otherwise. The Market may select certain individual [name of Futures product] that are listed on the Market as underlying interests for options. For purposes of this Schedule C-[ ], a [name of option on Futures product] is an option on a [name of Futures product].
4. The Market will submit a new product proposal in the form and manner specified by the Corporation from time to time and a Certificate with respect to any class of [name of Futures product] or [name of option on Futures product] as soon as practicable before the trading day on which the Market wishes to commence trading such Futures or Futures Options on such Futures. The Market may begin listing and trading Futures in such class or options on such Futures upon approval by the Corporation. The Corporation will use commercially reasonable efforts to authorize the clearance and settlement of such contracts as soon as practicable.



IN WITNESS WHEREOF, the parties hereto have duly executed this Schedule as of the date first above written.

[\_\_\_\_\_]

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

Name:

Title:

THE OPTIONS CLEARING CORPORATION

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

Name:

Title: