



DCO Rules

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

Submitter Information	
Organization Name Options Clearing Corporation	
Organization Type DCO	Organization Acronym OCC
Submitted By [REDACTED]	Email Address [REDACTED]
Cover Sheet	
Submission Number 2506-2010-4939-79	Submission Date 6/20/2025 10:49:39 AM ET
Submission Type 40.6(a) Rule Certification	
Submission Description Rule Certification by The Options Clearing Corporation concerning the adoption of the Amended and Restated Participant Exchange Agreement between OCC and each of the national securities exchanges that list equity options	
<input type="checkbox"/> Request Confidential Treatment	
Registered Entity Identifier Code	
Rule Numbers Amended and Restated Participant Exchange Agreement	
Date of Intended Implementation 7/11/2025	
Documents	
SR-OCC-2025-006 CFTC Self-Certification.pdf Exhibit A (Amended and Restated Participant Exchange Agreement).pdf	
Request For Confidential Treatment - Detailed Written Justification	
N/A	



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June 20, 2025

VIA CFTC PORTAL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Certification by The Options Clearing Corporation Concerning the adoption of the Amended and Restated Participant Exchange Agreement (“New RPEA”) between OCC and each of the national securities exchanges that list equity options

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6, The Options Clearing Corporation (“OCC”) hereby certifies a rule change concerning the adoption of the Amended and Restated Participant Exchange Agreement (“New RPEA”) between OCC and each of the national securities exchanges that list equity options in replacement of the current Restated Participant Exchange Agreement (“Existing RPEA”). The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC. The proposal has also been submitted to the Securities and Exchange Commission (“SEC”) under Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b-4 thereunder. The change will not be implemented until OCC has obtained all necessary regulatory approvals.

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

Explanation and Analysis

The purpose of this rule certification is to replace the Existing RPEA with the New RPEA to (1) enhance the operational and business practices between the parties, (2) account for any intervening amendments and changes to relevant law and/or OCC By-Laws and Rules, and (3) eliminate provisions that are out-of-date.

The proposed changes are included as Exhibit A. This proposed rule change does not require any changes to the text of OCC’s By-Laws or Rules. All terms with initial capitalization that are not

otherwise defined herein have the same meaning as set forth in the New RPEA or OCC's By-Laws and Rules.¹

Overview

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the SEC. With limited exceptions, OCC's Rules and By-Laws largely are directed at (i) establishing guidelines related to OCC's governance and clearing operations and (ii) the rights and obligations of OCC's Clearing Members. In contrast, OCC's relationship with the national securities exchanges that list options (each an "Exchange," and collectively, the "Exchanges") is largely governed by an agreement between OCC and the Exchanges. This agreement sets out the terms and conditions under which OCC will provide clearing services to the Exchanges for the options listed on the Exchanges. The Existing RPEA was originally signed in 1983 and last amended in 2007. As a result, it contains certain provisions that are not current or do not address current interactions between OCC and the Exchanges and are no longer appropriate to include in the agreement governing OCC's clearance and settlement services for the Exchanges. Consequently, OCC proposes to update the agreement to (a) reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, which may address technology or industry changes or developments that necessitate new or updated agreement terms or incorporate adopted best practices for contract terms, (b) align the agreement with current law and/or OCC's rules, (c) eliminate provisions that are out of date or update provisions to reflect current industry terminology, (d) acknowledge the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges by recognizing such factors within the agreement, and (e) improve overall readability of the document through the incorporation of intervening amendments and changes into the agreement. This proposal is not intended to affect the rights or obligations of Clearing Members or other market participants.

Proposed Changes

Pursuant to Article VIIA, Section 4 and Article VIIB, Section 4 of the OCC By-Laws,² prior to clearing through OCC, each Exchange must enter into an agreement with OCC and each of the other Exchanges.³ This agreement is referred to as the "participant exchange agreement" within

¹ OCC's By-Laws and Rules can be found on OCC's public website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

² See note 1 *supra*.

³ Article VIIA, Section 4 of OCC's By-Laws applies to "Equity Exchanges," which are Exchanges that are OCC shareholders. Article VIIB, Section 4 of OCC's By-Laws applies to "Non-Equity Exchanges," which do not own shares in OCC, but rather, have purchased a promissory note of OCC. See OCC's By-Laws *supra* note 1. Both types of Exchanges are

OCC By-Laws and Rules. The participant exchange agreement establishes the terms and conditions pursuant to which OCC provides clearing services to the Exchanges. More specifically, among other things, the participant exchange agreement: (i) governs the business relationships between the Exchanges and OCC, and the relationships among the Exchanges themselves, in respect of such matters as the listing, registration, clearance, issuance, and exercise of option contracts traded on the respective Exchanges and the preparation of options disclosure documents; (ii) provides for indemnification by each Exchange of OCC, its officers and directors and the other Exchanges and their respective governors, directors, and officers with respect to information about an Exchange contained in any registration statement of OCC or other document required to be filed by OCC with any regulatory authority, or in any options disclosure document; (iii) provides for indemnification by OCC of the Exchanges and their respective governors, directors, and officers with respect to information contained in any registration statement of OCC or other document required to be filed by OCC with any regulatory authority, or in any options disclosure document; and (iv) specifies certain areas of authority reserved to OCC and the Exchanges, respectively.

In addition to OCC's By-Laws, OCC is subject to the SEC's 2016 covered clearing agency rules ("CCA's"),⁴ which establish additional standards that OCC must meet as a clearing agency designated as a Systemically Important Financial Market Utility. Among other things, these rules require OCC to establish, implement, maintain, and enforce policies and procedures reasonably designed to:

identify, monitor, and manage risks related to any link⁵ the covered clearing agency establishes with one or more . . . trading markets.⁶

OCC initially entered into a participant exchange agreement in January 1975. The participant exchange agreement was restated in July 1983 and five stand-alone amendments subsequently were executed through 2007, establishing the Existing RPEA. This proposed rule change would amend and update the Existing RPEA to (1) reflect current, enhanced, or implied but

required to enter into a participant exchange agreement with OCC and the other Exchanges prior to becoming an OCC participant Exchange. The participant exchange agreement for Non-Equity Exchanges is required to be of substantially the same tenor as the participant exchange agreement entered into by each of the Equity Exchanges. Accordingly, OCC has entered into one participant exchange agreement with both the Equity Exchanges and the Non-Equity Exchanges (collectively, the "participant exchanges").

⁴ 17 CFR 240.17Ad-22(e).

⁵ 17 C.F.R. § 240.17Ad-22(a)(8). A "link" for purposes of SEC Rule 17Ad-22(e)(20) means "a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business."

⁶ 17 C.F.R. § 240.17Ad-22(e)(20).

not specifically stated practices between OCC and the Exchanges, (2) align the agreement with current law and/or OCC's rules, (3) eliminate provisions that are out of date or update terms to reflect current industry terminology, (4) acknowledge the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges by recognizing such factors within the agreement, thereby aligning legal and regulatory requirements with the New RPEA, and (5) improve overall readability of the document through the incorporation of intervening amendments and changes into the agreement.

Proposed Changes to the Existing RPEA

General changes throughout the New RPEA include (i) changing references from "the Corporation" to "OCC" to align the New RPEA with OCC's current brand identity and (ii) changing references to exchanges from "Participating Exchange" to "Exchange." The remaining changes are described below.

Introductory Paragraphs

The introductory paragraphs of the Existing RPEA are changed to note that the New RPEA amends and supersedes the Existing RPEA and subsequent amendments. The Existing RPEA also sets forth the parties to the RPEA as of July 1983, which was the last time the Existing RPEA was restated in its entirety. OCC proposes to remove the names of the specific Exchanges that are parties to the participant exchange agreement so that new Exchanges may be added to the agreement without necessitating a change to the introductory paragraphs.

Lastly, OCC intends to incorporate references to OCC's By-Laws to clarify that the New RPEA applies to Equity and Non-Equity Exchanges in satisfaction of the requirements in both Article VIIA and Article VIIB of OCC's By-Laws.⁷

Section 1 – Exchange Authority to Trade Options

OCC proposes to amend Section 1 to remove the provision allowing national securities associations to become parties to the New RPEA. No parties to the Existing RPEA are national securities associations and the parties do not anticipate that any such entity will become a party to the agreement in the future. OCC also proposes to add a threshold representation from both OCC and the Exchanges that OCC and each Exchange is and will remain in compliance with the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and its own Exchange rules, and each party will use reasonable efforts to come back into compliance in the event a party can no longer make the representation. Lastly, OCC proposes to (i) clarify that, in addition to its By-Laws, OCC issues options pursuant to its Rules and (ii) add a defined term for the OCC Rules and By-Laws.

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See note 3 *supra*.

Section 2 – Registration and Qualification of Options to be Renamed “Selection of Underlying Interests”

OCC proposes to delete Section 2 of the Existing RPEA in its entirety as the provisions are out of date and no longer necessary. Section 2 of the Existing RPEA describes OCC’s obligations to register options listed for trading by the Exchanges pursuant to the Exchange Act and the Securities Act of 1933, as amended (the “Securities Act”). However, the Commission’s 2003 adoption of Securities Act Rule 238 and Exchange Act Rule 12a-9, provided that Securities Act and Exchange Act registrations are not required for standardized options.⁸ In addition, the provisions in Section 2(g) of the Existing RPEA related to registration of listed options under state blue sky laws are no longer necessary due to 1996 amendments to Section 18 of the Securities Act⁹. Section 18, as amended, exempts “covered securities” from state regulation.¹⁰ The term “covered securities” includes listed options.¹¹

Section 3 of the Existing RPEA, which relates to the selection of underlying securities on which the Exchanges may list options for trading, would be renumbered as Section 2 in the New RPEA. OCC proposes to clarify in subsection (a) that an (i) Exchange must list options in accordance with the relevant Exchange’s rules, and (ii) that such options also must be addressed in the Options Disclosure Document.¹² Such clarifications incorporate into the agreement the legal and regulatory basis of requirements Exchanges must meet before OCC may issue and clear specific products. Subsection (a) also defines the term “Underlying Interests” for those underlying securities on which the Exchanges may list options. OCC proposes to update the list of permitted Underlying Interests to (i) add types of underlying interests not explicitly listed in the Existing RPEA because such interests, some of which did not exist at the time when the Existing RPEA was first executed such as exchange traded funds, were not contemplated for listed options at that time but have since become acceptable underlying securities to listed options, and (ii) remove from the list those interests which currently do not underlie listed options because such interests do not align with interest types OCC is prepared to clear. Specifically, OCC proposes to remove the following from the list of permitted Underlying Interests: U.S. Treasury bonds, notes, or bills; top tier bank

⁸ See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934, Release Nos. 33-8171 and 34-47082, 68 FR 188 (Jan. 2, 2003) (File No. S7-29-02) (exemption for standardized options from provisions of the Securities Act and from the registration requirements of the Exchange Act).

⁹ See Securities Exchange Act Release Nos. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) and 54071 (June 29, 2006), 71 FR 38922 (July 10, 2006).

¹⁰ 15 U.S.C 77r(a).

¹¹ 15 U.S.C 77r(b)(1).

¹² The June 2024 version of *Characteristics and Risks of Standardized Options*, also referred to as the “Options Disclosure Document” (“ODD”), is located at: <https://www.theocc.com/getmedia/a151a9ae-d784-4a15-bdeb-23a029f50b70/riskstoc.pdf>.

certificates of deposit; mortgage pass-through securities guaranteed by the Government National Mortgage Association; and corporate debt securities listed on national securities exchanges. Further, OCC proposes to add the following to the list of permitted Underlying Interests: exchange traded funds; American Depositary Receipts; American Depositary Shares; exchange traded notes; and securities indexes. The Existing RPEA allows OCC to expand the list of permitted Underlying Interests. OCC proposes to require that such expansion be only to securities or financial instruments conforming to the requirements of the RPEA. The purpose of this change is to eliminate provisions that are out of date while also reflecting the current operational and business practices between OCC and the Exchanges to address industry developments, such as new underlying interests that were not available in 1983. This will modernize the list of underlying interests and provide greater certainty to the Exchanges concerning the types of options contracts OCC has the authority to clear and settle. These updated terms retain the flexibility found in the Existing RPEA by allowing for other underlying interests when approved by the Board of Directors of the OCC pursuant to Section 3(a)(viii)

OCC proposes to delete and replace existing subparagraph (b). OCC proposes to delete subparagraph (b) because it is out of date as it relates to OCC's former obligation to register options for trading. OCC proposes to add a new subsection (b) to specifically articulate that OCC has the authority to disapprove for clearing purposes any new options an Exchange proposes to list that materially impacts OCC's risk profile, that presents new risk, impacts OCC's risk models, or creates third party risks (defined as "New Product Risk"). New subparagraph (b) requires OCC to work with the Exchange to mitigate any such risk, if feasible, and to otherwise notify an Exchange of a disapproval of a new product. These proposed changes reflect current and enhanced operational and business practices between OCC and the Exchanges to address industry changes in terms of risk assessment and management of new products. Finally, OCC proposes to add a provision in new Section 2 to recognize that Exchanges must submit new products to OCC in accordance with the Options Listing Procedure Plan.¹³ This proposed change acknowledges the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges because the OLPP serves as the national market plan that establishes the requirements Exchanges must follow when they submitting a new option class to OCC. OCC also proposes minor conforming changes to the remainder of new Section 2.

¹³ OCC and the Exchanges have entered into the 'PLAN FOR THE PURPOSE OF DEVELOPING AND IMPLEMENTING PROCEDURES DESIGNED TO FACILITATE THE LISTING AND TRADING OF STANDARDIZED OPTIONS SUBMITTED PURSUANT TO SECTION 11A(a)(3)(B) OF THE SECURITIES EXCHANGE ACT OF 1934,' which also is referred to as "The Options Listing Procedure Plan" or "OLPP." The OLPP generally describes (i) the process related to the selection of option classes and new option series, (ii) Exchanges' rights to review the eligibility of a new option class, (iii) the process related to selecting option classes for the Penny Interval Program, (iv) the process related to adjustments to option classes, (v) the admission of Exchanges as "Plan Sponsors" of the OLPP, and (vi) the loss of eligibility for an Exchange as a Plan Sponsor of the OLPP.

Section 3 – Expiration Dates, Exercise Prices and Units of Trading

Section 4 of the Existing RPEA, which describes the process related to establishing expiration dates, exercise prices, and units of trading will be renumbered to Section 3. OCC proposes to remove references to specific times by which Exchanges must notify OCC when opening new series of options for trading because such timeframes were necessary decades prior when adding new series and notifying other exchanges of newly added series was a much more manual process but are now no longer needed. Technology advancements now allow for an ease and quickness to the series adds process with Exchanges utilizing OCC system functionality to add or view new series. These removals eliminate provisions that are out of date. Additionally, the New RPEA will state that each Exchange, rather than the Securities Committee,¹⁴ is responsible for determining units of trading and that each Exchange must communicate this information to OCC. Prior to 2018, panels of the Securities Committee were convened to make contract adjustment determinations for option contracts whose underlying securities were subject to a corporate action event, for example a merger or stock split. These panels voted to create non-standard option deliverables in response to certain corporate actions. As a result, these panels determined the unit of trading in certain situations, and the inclusion of this provision in the current RPEA was an acknowledgement of the role of the Securities Committee established in Article VI, Section 11 of the OCC By-Laws. With the implementation of an OCC rule change in 2018, the authority to make contract adjustment determination transferred from panels of the Securities Committee to the OCC.¹⁵ Consequently, the removal of the reference to the Securities Committee removes a provision that is out dated. OCC proposes to replace Securities Committee with the Exchanges because Section 3 of the New RPEA will address those option characteristics that are determined by Exchanges at the time an option is opened for trading, and unit of trade is one such characteristic. Consequently, the proposed change reflects the current business practice between OCC and the Exchanges. The proposed change also acknowledges that, as the standard for the industry, the unit of trading will ordinarily be 100 at the time an option is opened for trading, and that a deviation from the standard may not necessarily be permissible under the OCC's Rules and By-Laws absent an amendment.

Section 4 – List of Options

Existing Section 5 will be renumbered to Section 4, along with minor clarifying and conforming changes related to the defined terms "Participating Exchange," "underlying securities,"

¹⁴ The Securities Committee is established under Article VI, Section 11 of the By-Laws to make certain recommendations with respect to cleared contracts, such as statements of policy or interpretations having general application to specified types of contract adjustments.

¹⁵ See Securities Exchange Act Release No. 34-69977 (July 11, 2013), 78 FR 42815 (July 17, 2013). Although the amendment to the OCC By-Laws was approved in 2013, its implementation was delayed until an amendment to the Options Disclosure Document (ODD) reflecting the change to the adjustment determination authority was made. The ODD amendment was effective on October 31, 2018, as referenced in OCC Information Memo [43927.pdf \(theocc.com\)](https://www.theocc.com/43927.pdf)

and “the Clearing Corporation.” Additionally, with the expansion of the number of expirations available outside of the standard monthly expiration cycle, the reference to “expiration months” has been changed to “expiration dates.” Finally, the requirement that Exchanges make available product lists “in reasonable quantities” upon request has been removed as out of date because of the electronic manner in which the Exchanges currently provide such information to OCC. These proposed changes will remove provisions of the Existing RPEA that are out-of-date and will support intervening amendments and changes to relevant OCC By-Laws and Rules.

Section 5 – Delisting of Options.

OCC proposes to add a new Section 5 to set forth conditions the Exchanges will establish before seeking to delist an option. Other than as required in the OLPP, each Exchange will agree to continue to list and make trading for that option available until all open interest is closed out at OCC for those options. This provision will enhance the operational and business practices between OCC and the Exchanges by reducing the risk that Clearing Members could have open interest in options with no mechanism to close out those positions.

Section 6 – Singly Listed Options

OCC proposes to add a new Section 6 to set forth the conditions for options that are listed on only one Exchange. This proposed addition will reflect enhanced operational and business practices between OCC and the Exchanges to address the situation in which an underlying price may not be available or accurate. Such situations may be disruptive to the functioning of the options industry, and the proposed language will allow OCC to seek the help of the listing exchange to determine an accurate settlement price. As a result, where only one Exchange is the listing entity for an option and the settlement price for such a singly listed option is deemed by OCC to be inaccurate, unreliable, unavailable, or inappropriate, that Exchange agrees to work with OCC to determine reliable settlement prices in accordance with OCC By-Laws and Rules. Such Exchanges may seek out additional information about the underlying security from the primary listing market. Finally, in new Section 6 the Exchanges will agree to use commercially reasonable efforts to list a singly listed options until all open interest is closed out at OCC. Under the proposed RPEA, an Exchange would be required to notify OCC when it concludes that it can no longer list a singly listed option that has open interest and must take reasonable steps to permit listing and trading on an alternate Exchange.

Section 7 – Exchange Data

The amount and speed of the flow of data between OCC and the Exchanges has grown substantially since the Existing RPEA was first executed due to technological advancements and the growth of the industry. As a result, OCC receives a substantial amount of data from Exchanges currently. OCC also processes and sends out data based on data received from Exchanges. Consequently, OCC proposes adding new Section 7 to govern the use of “Exchange Data” because such new language will reflect current operational and business practices between OCC and the

Exchanges. Proposed Exhibit A to the New RPEA contains a description of such Exchange Data, which includes real time and daily values of options and Underlying Interests, and the final settlement value of Underlying Interests. New Section 7 would grant OCC a license in Exchange Data for purposes of (i) performing clearing services for the Exchanges, (ii) performing investor education activities, and (iii) complying with OCC's regulatory obligations. The Exchanges also agree to provide OCC with a final settlement value when OCC is not able to determine the value.

The proposed language also establishes the term Derived Data and defines the ways in which OCC may use Derived Data based on data received from the Exchanges. Additionally, the Reporting Authority will be those entities identified in the OCC By-Laws and Rules. The proposed language also states that Exchanges will provide the Daily Values of Underlying Interests and Options and that such values are transferred to OCC on each Trading Day. Reference to Exercise Settlement Amount is included in the agreement and the requirement that Exchanges determine such amount aligns with the process established in the OCC By-Laws. These proposed additions reflect current operational and business practices between OCC and the Exchanges while also acknowledging the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges, namely the pricing structure and requirements established in the OCC By-Laws and Rules.

New Section 7 adds the requirement that an Exchange will make Exchange Data available to OCC for Options while open interest exists for a specific option listed by the Exchange. This requirement will reflect enhanced operational and business practices between OCC and the Exchanges and help ensure the continued proper functioning of the market for an option by requiring that the Exchanges that list an option continue to provide the pricing needed to support an option while open interest exists on the option.

New Section 7 places certain limitations on OCC's use of Exchange Data. More specifically, OCC may not use Exchange Data to create or calculate any index or other financial instrument, investment product, or investment strategy without an Exchange's prior consent. OCC may redistribute Exchange Data to third parties (as described in proposed Exhibit B to the New RPEA), but only pursuant to a written market data agreement that is consistent with the provisions of new Section 7. Market data agreements must contain a disclaimer of warranties, waivers of liability for the contents of the Exchange Data, and indemnification provisions. Under the proposed RPEA OCC would be limited to certain third parties to whom OCC can redistribute data (e.g., Clearing Members) and the kind of data that OCC would be permitted to redistribute (e.g., no real-time data). OCC would be obligated to stop redistributing Exchange Data to third parties that fail to comply with the limitations of new Section 7. The Exchanges also would retain the right to audit OCC's use and redistribution of Exchange Data.

New Section 7 provides that Exchange Data, including intellectual property rights therein, remains the property of the Exchanges. OCC will acknowledge the proprietary nature of the Exchange Data and that the Exchange Data remains the property of the Exchanges. New Section 7 also states that the New RPEA will not modify any existing data agreements between OCC and an Exchange. To incorporate adopted best practices for contract terms, new Section 7 states that

Exchanges may make changes to Exchange Data and establishes that an Exchange will give OCC at least 60 days notice in advance of such change, in most cases. The notice period will provide OCC with the time to prepare for the change, and OCC will cooperate with an Exchange in addressing any such change.

Section 8 – Comparison of Options Transactions

OCC proposes to renumber Section 6 to Section 8 in the New RPEA. OCC also proposes to delete the option for an Exchange to retain OCC to provide comparison services as out of date because OCC has not been retained by the Exchanges to perform such services. Since the Exchanges have not previously requested this service, OCC proposes to remove this provision. Section 8 also creates a defined terms for “Trading Day,” i.e., a day on which an Exchange is open for trading, and “Matched Trade(s),” which replaces the previously used term, “matched trades.”¹⁶ Although the change to “Matched Trade(s)” is stylistic, the addition of “Trading Day” is intended to reflect current industry terminology for clarification purposes. OCC also proposes to add a new provision to Section 8 that would require OCC to provide at least 60 days’ prior notice to the Exchanges of a change to the time by which an Exchange must report comparisons to OCC in order to enhance operational practices between OCC and the Exchanges by providing the Exchanges with sufficient notice to prepare for the change. OCC also proposes minor clarifying and conforming changes to Section 8 with respect to use of the terms “the Clearing Corporation” and “underlying security.”

Section 9 – Clearance of Options Transactions

OCC proposes to renumber Section 7 to Section 9 in the New RPEA, along with minor clarifying and conforming changes related to use of the terms “the Clearing Corporation,” “underlying security,” “matched trades,” and “Clearing Member.”

Section 10 – Acceptance of Options Transactions

OCC proposes to renumber Section 8 to Section 10 in the New RPEA. OCC also proposes to remove the condition, “provided it shall have received payment of the premiums due,” in respect of which options transactions OCC clears because the provision is out of date. OCC accepts all transactions for clearance until such time as a Clearing Members terminates its membership or OCC declares a Clearing Member to be in default. Payment of an options premium is not a prerequisite for OCC’s acceptance of transactions.¹⁷

¹⁶ The meaning of “Matched Trades” under the New RPEA would be the same as the meaning of “matched trades” under the Existing RPEA. Only the capitalization of the term would change.

¹⁷ With the implementation of Encore as OCC’s clearing system in 2002, OCC began receiving and processing trades at various times throughout the day. With this technological

Section 11 – Issuance of Options

OCC proposes to renumber Section 9 to Section 11, along with one minor conforming change related to use of the term “the Clearing Corporation.”

Section 12 – No Unfair Discrimination.

OCC proposes to renumber Section 10 to Section 12, along with minor conforming and clarifying changes, which include changing the title of Section 12 from “Non-Discrimination” to “No Unfair Discrimination” and a change in the reference to Article VII of the By-Laws to Articles VIIA and VIIB. OCC proposes the use of “No Unfair Discrimination” as a stylistic change to avoid any indication that OCC is prohibited from amending its By-Laws and Rules in a way that may permit different treatment of an Exchange that may no longer meet the requirements to be a participant at OCC.

Section 13 – Limitations of Authority.

OCC proposes to renumber Section 11 to Section 13 in the New RPEA, along with minor changes, which include conforming references to other sections of the RPEA and OCC By-Laws. Similarly, OCC proposes to add cross references within new Section 13 to other sections within the new RPEA to improve readability without changing the terms of the RPEA. Separately OCC proposes to add a new provision stating that OCC may calculate position limits at the request of the Exchanges even though OCC is generally precluded from establishing or enforcing position limits or exercise limits. OCC began calculating position limits in 2003 at the request of the Exchanges and continues to provide position limits on the OCC website.¹⁸ This new provision is not designed to change OCC’s rights or obligations but is merely included for the avoidance of doubt and reflects the current business practice between OCC and the Exchanges. Similarly, OCC proposes to add a parenthetical noting that the general limit precluding OCC from determining when to open or restrict trading would not limit OCC’s other rights and obligations under the RPEA.¹⁹

capability, trade premiums were settled by the morning of the next business day. Consequently, payment of premiums was not a prerequisite to trade acceptance.

¹⁸ See OCC Information Memo [#19050](#).

¹⁹ Such rights and obligations are reflected in Sections 9, 10, and 11 in the New RPEA through references to provisions in the OCC By-Laws and Rules in general. For example, in concert with the clearance of trades, OCC Rule 401(a)(1) provides the required information that an Exchange must send to OCC for a trade to be accepted. The parenthetical addition to Section 13 (g) of the New RPEA is included to ensure that OCC’s authority regarding the acceptance of trades from Exchanges is not diminished.

Section 14 – Margin Requirements of OCC

OCC proposes to renumber Section 12 to Section 14 in the New RPEA, along with minor conforming changes related to the use of the terms “the Clearing Corporation” and “underlying security.”

Section 15 – Financial Requirements for Clearing Members

OCC proposes to renumber Section 13 to Section 15 in the New RPEA. OCC proposes change the defined term “management authority” to “Management Authority.”²⁰ OCC also proposes to update the currently outdated text of the Existing RPEA to include a reference to “Regulatory Services Agreement” to recognize that some Exchanges now outsource surveillance of Clearing Member financial responsibility standards to third parties. OCC proposes to remove language that requires Exchanges to notify OCC when a Clearing Member is not in compliance with OCC’s financial responsibility standards because the Exchanges have indicated that they do not incorporate OCC’s financial responsibility standards into their Exchange monitoring processes. OCC also proposed to add to the statement that Exchanges will notify OCC of a financial condition of a Clearing Member that must be reported to the Securities Investor Protection Corporation by including the phrase “or any other resolution authority”. This proposed addition acknowledges that other authorities may require reporting of such financial conditions. Separately, OCC proposes to remove reference to in-person delivery of documents and telephone calls as out of date because electronic communications are the primary method currently used to transfer information between OCC and the Exchanges. OCC also proposes to add clarifying language that an Exchange is required to furnish materials to OCC with respect to a Clearing Member that is also a member of the Exchange. This addition is for clarification purposes. OCC further proposes to change the time requirement for submission of material from 2:00 p.m. Central Time to 3:00 p.m. Central Time to reflect enhanced business practices between OCC and the Exchanges. Additionally, OCC proposes to change the requirement of reporting materials from “immediately” to “promptly” to incorporate adopted best practices for contract terms. Finally, OCC proposes to replace the outdated reference to OCC’s Chairman or any Vice President to a “Financial Risk Management officer” to reflect OCC’s current designation of authority.

Section 16 – Customer Accounts.

OCC proposes to renumber Section 14 to Section 16 in the New RPEA, along with one minor conforming change related to use of the term “the Clearing Corporation.”

²⁰ The meaning of “Management Authority” under the New RPEA would be the same as the meaning of “management authority” under the Existing RPEA. Only the capitalization of the term would change.

Existing RPEA Section 16 – Maintenance of Offices

OCC proposes to delete Section 16 in the Existing RPEA in its entirety as outdated. Existing RPEA Section 16 requires OCC to maintain an office in each of the cities in which the Exchanges are located. Given the widespread use of electronic communications in financial services, the increase in the number and various locations of Exchanges over time, and the ability for Exchanges and OCC to send and receive information quickly via electronic means, the requirement for OCC to maintain an office in such locations is outdated.

Section 17 – Operations

OCC proposes to renumber Section 15 to Section 17 and retitle Section 17 “Operations.” OCC proposes amendments to Section 17 to remove outdated systems scalability reporting and OCC response protocols. Instead, the New RPEA would require the Exchanges to agree to provide OCC with supporting documentation, data files, and reports to OCC as needed in support of its clearing activities. The New RPEA would also require Exchanges to make representatives available to discuss any additional OCC information and data needs and to use commercially reasonable efforts to provide the same.

Under the current RPEA, OCC is obligated to use its best efforts to maintain sufficient operational capacity to clear new options on behalf of the Exchanges. OCC proposes to remove details related to interactions regarding lack of operational capacity to clear a new underlying and replace the requirement to use best efforts with a requirement to use commercially reasonable efforts which would allow OCC to conduct its operations in a manner that is economically justified and in accordance with commonly accepted commercial practices. OCC also proposes to change the timing requirement from “as expeditiously as possible” to “as soon as reasonably practicable” and to incorporate adopted best practices for contract terms. OCC also will agree to use commercially reasonable efforts, as opposed to best efforts as required by the Existing RPEA, to expand operations capabilities as warranted to facilitate an Exchange’s ability to clear new options which serves to enhance operational and business practices between OCC and the Exchanges.²¹ Finally, the Exchanges will agree to comply with OCC operational specifications for options, including during extended trading hours, which would address the current state of the industry in which certain trading in extended and overnight trading hours occurs. By acknowledging that Exchanges will comply with the OCC’s operational specifications for options, the New RPEA will reflect the current operational practice between OCC and the Exchanges. OCC also proposes to add a 60-day notice requirement in advance of implementation or changes to specifications for such trading to enhance the business practices between OCC and the Exchanges by incorporating adopted best practices for contract terms.

²¹ Consistent with the Existing RPEA, the New RPEA will not permit OCC to clear new options for another Exchange until it has the capacity to clear options on behalf of the Exchange that made the first request.

Section 18 – Financials

OCC proposes to add a new Section 18 to the New RPEA to enhance the operational and business practices between OCC and the Exchanges by establishing certain financial requirements for Exchanges and to allow OCC to monitor for going concern risk. Exchanges that are a party to the New RPEA as of the effective date will be required to provide to OCC annual audited financial reports, Form 10K, and Form 10Q, as applicable. Any Exchange that becomes a party to the New RPEA after the effective date will be required to provide to OCC quarterly unaudited financial statements, or Form 10K and Form 10Q, as the case may be, for a period of three years from the date the Exchange becomes a party to the New RPEA.

Under the New RPEA, Exchanges would be required to notify OCC if they experience a 25% or more decrease in shareholder equity or losses exceeding 25% of shareholder equity. Following such a loss, OCC would be authorized to request that any such Exchange provide OCC with quarterly financial reports. Additionally, given the sensitivity of the information involved, OCC proposes to add confidentiality provisions in this section that references Section 32 for clarity purposes.

Section 19 – Information Technology and Security

Given the widespread use of ever evolving and improving electronic systems, along with related security concerns since the time the Existing RPEA became effective, OCC proposes to enhance the operational and business practices between OCC and the Exchanges by adding a new Section 19 in the New RPEA to strengthen information security. The New RPEA requires Exchanges to provide to OCC, and requires OCC to provide to the Exchanges, contact information, including emergency contact information, for Exchange and OCC operational and technology personnel, respectively, to support information technology issues. OCC and the Exchanges will be obligated to notify the other party of incidents that could impact a party's ability to provide (i.e., OCC) or receive (i.e., an Exchange) services.

Section 19 of the New RPEA would also require the parties' to take commercially reasonable steps to comply with applicable cybersecurity regulations, including Regulation SCI.²² If an Exchange notifies OCC of a cyber-related disruption or intrusion to a SCI System that could reasonably be expected to materially affect OCC's ability to perform the services for the Exchange, or if OCC has a reasonable basis to believe that any such disruption is occurring that could materially impact OCC's ability to perform services for the Exchange, under the terms of the New RPEA, OCC is permitted to take steps to mitigate any effects to OCC's operations, including suspending its obligations for that Exchange under the New RPEA, until OCC determines the incident has been resolved. Any OCC suspension would not impact trades accepted by OCC prior to the time of the suspension. OCC and an Exchange experiencing such a disruption are obligated to consult with each other to determine an appropriate course of action that could resolve the incident.

²² 17 C.F.R. § 242.1000 – 242.1007.

OCC also proposes to include that it will use commercially reasonable efforts to maintain performance of its obligations when addressing an incident to reflect implied business practices between the parties whereby OCC would make efforts to continue to support clearance and settlement.

Lastly, under Section 19, the Exchanges agree to accommodate OCC's connectivity requirements. This includes the maintenance of point-to-point connections to OCC and redundant connectivity. The parties also will agree to provide at least 60 days' notice to each other if connectivity or related requirements change.

Section 20 – Exercise Restrictions

OCC proposes to renumber section 17 to Section 20 in the New RPEA, along with minor clarifying changes. OCC proposes to replace “index options” with “Options that are cash settled” and “other options” with “Options that are physically settled” to utilize industry terminology that is broader and more descriptive of the products subject to the provisions. OCC also proposes to add a provision to allow for an Exchange or OCC to restrict exercises in the case of government mandated restrictions, such as in the case of a sanctioned entity or underlying security.

Section 21 – Deadlines for Exercise of Options

OCC proposes to renumber Section 18 to Section 21 in the New RPEA, along with minor conforming changes to use of the terms “Participating Exchange” and “the Clearing Corporation.”

Section 22 – Allocation of Exercise Notices

OCC proposes to renumber Section 19 to Section 22 in the New RPEA, along with one minor conforming change related to use of the term “Participating Exchange.”

Section 23 – Financial Arrangements

OCC proposes to renumber Section 20 to Section 23 in the New RPEA. OCC also proposes to remove the requirements for local banking relationships as of out date in light of the current electronic and global nature of banking.

Section 24 – Services, Programs and Projects

OCC proposes to renumber Section 21 to Section 24 in the New RPEA. OCC proposes changes to Section 24 to clarify that services OCC develops for any Clearing Member or group of Clearing Members, or programs or projects developed at OCC's own cost will be offered to all Clearing Members on the same terms and conditions and at the same cost. The terms of the New RPEA would grant sole and absolute discretion to OCC for determining whether to undertake

programs or projects for a particular Exchange. These changes reflect the current or enhanced operational and business practices between OCC and the Exchanges. Additionally, OCC proposes language to provide further detail on development costs. The Existing RPEA requires that the Exchange must pay all associated costs for such programs or projects. OCC proposes to include new language to clarify that such costs include staffing to reflect enhanced business practices between OCC and the Exchanges.

Section 25 – Access to Books and Records of OCC

OCC proposes to renumber Section 22 to Section 25 in the New RPEA, along with minor conforming and clarifying changes to use of the term “the Clearing Corporation” and “Participating Exchange.” Additionally, the New RPEA would state that an Exchange will not have a right to view another Exchange’s Confidential Information so as to reflect current business practices between OCC and the Exchanges.

Section 26 – Indemnification

OCC proposes to renumber Section 23 to Section 26 in the New RPEA, along with minor conforming and clarifying changes related to use of the terms “the Clearing Corporation,” “participating Exchange,” “Clearing Fund,” “Clearing Member.” OCC also proposed to add “or noteholder agreement” to occurrences of “stockholders agreement” in this section since certain exchanges are subject to the shareholders agreement while other are subject to the noteholders agreement.²³ The proposed changes all update references to OCC Rules and references to section in the New RPEA.

Section 27 – Additional Parties

OCC proposes to renumber Section 24 to Section 27 in the New RPEA, along with one minor conforming change to the title of the New RPEA.

Section 28 – Notices

OCC proposes to renumber Section 25 to Section 28 in the New RPEA, along with other minor conforming and clarifying changes related to the contact information of the parties to the New RPEA. OCC also proposes to remove the address information of each party because such information, as contained in the Existing RPEA, is out of date, such information can change over time, and notices may be given via email. Consequently, the New RPEA excludes providing physical addresses of each party.

²³ Pursuant to Article VIIA of the OCC By-Laws, Equity Exchanges are party to the stockholders agreement. Pursuant to Article VIIB, Non-Equity Exchanges are party to the noteholders agreement. Non-Equity Exchanges and the noteholders agreement did not exist when the Existing RPEA was originally executed.

Section 29 – Miscellaneous

OCC proposes to renumber Section 26 to Section 29 in the New RPEA. The proposed changes to new Section 29 are intended to reflect either current or implied business practices between OCC and the Exchanges to incorporate adopted best practices for contract terms. OCC proposes to clarify in Section 29 that the New RPEA may be assigned by a party only with the prior written consent of OCC in the case of assignment by an Exchange or all Exchanges in the case of assignment by OCC. OCC proposes to remove references to assignment in Section 29(b) and update assignment provision in Section 29(c). The New RPEA would also allow for assignment without written consent in the case of a corporate reorganization or sale of OCC.²⁴

OCC also proposes to add a new provision related to the use of the parties' names, tradenames, logos, and trademarks (collectively, "Marks"). More specifically, OCC proposes to add a provision granting the Exchanges a license to use OCC's Marks and granting OCC a license to use the Exchanges' Marks. By signing the New RPEA, the parties would acknowledge the other parties' ownership in their Marks. Licenses will remain in effect until the termination of the New RPEA, or sooner if a party notifies the other party that they elect to terminate a license. The Marks are licensed "as-is" and without warranties and must bear the appropriate trademark symbols where required. Lastly, use of Marks must comply with applicable laws and regulations and must not be used for objectionable purposes.

Section 30 – Breach of Agreement – Termination

OCC proposes to renumber Section 27 to Section 30 in the New RPEA. OCC also proposes to add a provision permitting OCC to suspend its obligations to an Exchange whenever, in OCC's judgment, a suspension is necessary to comply with, or give full effect to, any waiver or suspension of OCC's By-Laws, Rules, policies and procedures, or any other rules issued by OCC.²⁵ OCC is obligated to notify the SEC if OCC takes any such action. The New RPEA would also require OCC to provide notice to each Exchange of such a suspension. The proposed additions will acknowledge the regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges by recognizing such factors within the agreement, thereby aligning legal and regulatory requirements contained in the OCC By-Laws and Rules with the New RPEA.

²⁴ The Existing RPEA already allows for assignment without written consent in the case of a corporate reorganization or sale of an Exchange.

²⁵ See note 1 *supra*. Article IX, Section 14 of the OCC By-Laws gives OCC the authority to waive or suspend its By-Laws or Rules if (i) an emergency exists and (ii) such suspension, waiver or extension is necessary or advisable for the protection of OCC or otherwise in the public interest for OCC to continue to facilitate the prompt and accurate clearance and settlement of confirmed trades or other transactions and to provide its services in a safe and sound manner.

Proposed changes to Section 30 would provide additional clarification as to whom at OCC shall approve a suspension by naming the Chief Executive Officer (“OCC CEO”) as the individual with this authority or in the event that the OCC CEO is unavailable, the Chief Operating Officer (“OCC COO”) would have this authority. In the event that neither the OCC CEO nor the OCC COO are available, the Chief Security Officer would have this authority. OCC also proposes to include a statement that the parties will work together in good faith to minimize a suspension. These changes are intended to enhance the operational and business practices between the parties by incorporating best practices for contract terms for clarity purposes.

OCC further proposes to update which provisions of the New RPEA an Exchange must breach for OCC to cease providing clearing services to that Exchange to conform to any renumbering required by the changes described above. OCC also proposes to include a catch-all provision to allow termination in those circumstances where OCC has a reasonable basis to believe the issuance, clearance, or settlement of options of an Exchange or the continued performance of services for the Exchange would cause OCC to be in breach of the Securities Act or Exchange Act.

OCC also proposes to state that OCC will not be obligated to clear transactions for an Exchange if the Exchange ceases to (i) be registered as an exchange, (ii) materially abide by the Securities Act or the Exchange Act, or (iii) be an OCC noteholder or stockholder until such breach is corrected. OCC proposes this change to acknowledge the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges to ensure that the New RPEA will align the Securities Act or the Exchange Act and OCC’s By-Laws and Rules. Additionally, OCC proposes to remove, as outdated, a provision allowing it to terminate the RPEA with an Exchange that ceases to be registered as a national securities association because, as noted above, OCC is proposing to remove the provision allowing national securities associations to become parties to the RPEA. Further, OCC also proposes to specify that termination requires delivery of a written notice to the Exchange to reflect enhanced business practices between OCC and the Exchanges by incorporate adopted best practices for contract terms.

Section 31 – Options Disclosure Document

OCC proposes to renumber Section 28 to Section 31 in the New RPEA. Consistent with the changes described above, OCC proposes to delete, as outdated, references to text related to OCC’s prior obligation to register options for trading.²⁶ Currently, the RPEA establishes the Listed Options Disclosure Committee (“LDOC”) to oversee amendments to and administration of the ODD and that the LDOC is composed of the Chairman and the Exchange Directors on OCC’s Board.²⁷ OCC also

²⁶ See note 9 *supra*.

²⁷ See note 11 *supra*. The ODD explains the characteristics and risks of exchange traded options. Investors must read the ODD prior to buying or selling an option. The Commission’s Rules require that disclosures about listed options must be furnished to investors in the form of the ODD. See Exchange Act Rule 9b-1.

proposes to change the responsibility for chairing the LDOC from OCC's Chairman of the Board to a designated OCC officer and to replace participation on the LDOC by Exchange Directors of OCC's Board to representatives of each Exchange. These proposed changes reflect the current business practices between OCC and the Exchanges to address industry developments, namely the addition of exchanges, some of which do not have a representative on the OCC Board of Directors. As a result, OCC and the Exchanges have adopted the practice of utilizing an authorized representative from each Exchange to serve on the LDOC. In an effort to reflect modernized processes already in use around the manner in which the LDOC operates, OCC proposes to include provisions allowing LDOC matters to be addressed using electronic correspondence, unless this method of communication would be insufficient, in which case, the Chair of the LDOC or two other members of the LDOC can call a meeting of the LDOC.

Additional proposed changes in Section 31 are intended to restate that an Exchange will notify OCC of proposed changes to an Exchange's rules that would cause information in the ODD to become materially inaccurate, incomplete, or misleading due to the delisting or change in the specifications of certain options products. New text proposed to be included in Section 31 would also require the relevant Exchanges to provide input and feedback when OCC is drafting amendments to the ODD. Changes to Section 31 would further highlight OCC's responsibility to provide drafts of proposed ODD amendments to the Commission for review and feedback prior to final submission to the Commission.²⁸

Proposed changes to Section 31 also include removal of the statement that OCC will pay costs associated with the meeting of the LDOC. Such a provision is out of date because the LDOC does not meet in person. OCC also proposes to revise the indemnification provisions in Section 31 to update the provisions such that they apply to the ODD to reflect enhanced business practices between OCC and the Exchanges to incorporate adopted practices for contract terms by relocating certain language to Section 31 and applying it specifically to the ODD.

The Existing RPEA establishes that an Exchange will indemnify OCC and other Exchanges for omissions or alleged omissions in the ODD and the indemnification provisions contained in Section 2(g) of the Existing RPEA will govern such indemnification. OCC proposes language that extracts much of the language in Section 2(g) and applies it specifically to the circumstances and requirements of the ODD. OCC will agree to indemnify the Exchanges for untrue statements or omissions of material fact unless such statements are made in writing by an Exchange for use in the ODD or in a case where an Exchange omits a material fact that would make the ODD misleading. Each Exchange will agree to indemnify OCC and the other Exchanges for omissions or written untrue statements of material fact for use in the ODD or in a case where an Exchange omits a material fact that would make the ODD misleading. Section 31 also details the notice obligations for a party seeking indemnification, allows indemnifying parties to participate in any legal

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While OCC would coordinate communications with the Commission, the proposed changes would not remove the right of an Exchange to communicate directly with the Commission on any issues that might arise.

proceedings, allows indemnifying parties to assume the defense of any claims, describes which parties are responsible for legal fees under certain circumstances, and allows an indemnifying party to settle a claim as long as the settlement would not require a contribution by an indemnified party.

Section 32 – Confidentiality

OCC proposes to add a new Section 32 related to confidential information to explain how this term is defined for purposes of the New RPEA and to provide certainty that confidential information shared among the Exchanges and OCC, orally or in writing, may not be released to third-parties or the public. Such proposed change is intended to reflect current business practices between OCC and the Exchanges and to adopt best practices for contract terms. OCC proposes to define “Confidential Information” as information, that relates to a 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 any requirements in the New RPEA. Any documents created using Confidential Information also are considered Confidential Information. Confidential Information will not include information already in the possession of a receiving party, information already known to the public, information revealed by a third party, information developed independently, and anonymized statistical information compiled by a receiving party using Confidential Information. Recipients of Confidential Information are obligated to exercise the same degree of care over a disclosing party’s Confidential Information as is does for its own Confidential Information. Additionally, parties are limited to using Confidential Information solely for purposes of fulfilling their obligations under the New RPEA and are only permitted to disclose Confidential Information to employees and agents who need to know the information.

Section 32 makes clear that a disclosing party retains all intellectual property rights in its Confidential Information. Section 32 also contains a provision prohibiting OCC’s disclosure of Exchange Data that identifies an Exchange member except as required by law or regulation, or as part of post-trade processing. A receiving party may disclose Confidential Information to a government entity with jurisdiction over a party, as part of a party’s responsibilities to share information with other regulatory bodies, or in response to a valid subpoena.

Section 32 highlights that the parties are required to acknowledge that a disclosing party could suffer harm in the event of a breach of the confidentiality provisions, and that a disclosing party is entitled to seek an injunction, specific performance, and other equitable relief in court against a threatened or continuation of a material breach of the confidentiality provisions in the New RPEA.

Lastly, new Section 32 provides that the receipt of Confidential Information does not restrict a receiving party from providing services to other parties as long as it does not use a disclosing party’s Confidential Information to provide services to third parties.

Final Paragraph

OCC removed “The 1975 Agreement is hereby terminated, effective as of the date of this Agreement” because it no longer is necessary because the 1975 agreement was terminated by the 1983 agreement. OCC also removed language allowing the agreement to be executed in several counterparts because the language is out of date.

Consistency with DCO Core Principles

OCC reviewed the DCO core principles (“Core Principles”) as set forth in the Act, the regulations thereunder, and the provisions applicable to a DCO that elects to be subject to the provisions of 17 CFR Subpart C (“Subpart C DCO”). During this review, OCC identified the following as potentially being impacted:

Participant and Product Eligibility. OCC believes that implementing the proposed rule change will be consistent with Core Principle C,²⁹ governing participant and product eligibility in DCOs. CFTC Regulation 39.12(b)(1) provides that, “[a] derivatives clearing organization shall establish appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization’s ability to manage the risks associated with such agreements, contracts, or transactions.”³⁰ The terms of the New RPEA address product eligible for clearance and proposes to update the list of permitted Underlying Interests to (i) add types of underlying interests not explicitly listed in the Existing RPEA, and (ii) remove from the list those interests which currently do not underlie listed options because such interests do not align with interest types OCC is prepared to clear.

Legal Risk. OCC believes that implementing the proposed rule change will be aligned with Core Principle R,³¹ which requires that each DCO have a well-founded, transparent, and enforceable legal framework for each aspect of its activities. CFTC Regulation 39.27 further provides that such framework must, among other things, provide for the DCO to act as a counterparty, including novation, and other significant aspects of the DCO’s operations, risk management procedures, and related requirements.³² OCC’s relationship with the Exchanges is largely governed by the Existing RPEA, which sets out the terms and conditions under which OCC will provide clearing services to the Exchanges for the options listed on the Exchanges. The agreement was last amended 17 years ago, and the proposed changes would bring up to date the agreement and would serve to ensure that the relationship between OCC and the Exchanges is accurately documented to reflect current practices between the parties. Updating the Existing RPEA to reflect current practices will add clarity and eliminate confusion about the roles and responsibilities of the parties to the agreement by integrating amendments into

²⁹ 7 U.S.C. 7a-1(c)(2)(C).

³⁰ 7 CFR 39.12(b)(1).

³¹ 7 U.S.C. 7a-1(c)(2)(R).

³² 7 CFR 39.27(b)(1), (6).

the New RPEA to make one cohesive, more readable document and incorporating existing and modernized practices into the document as well, thereby promoting the prompt and accurate clearance and settlement of securities transactions and, in general, protecting investors and the public interest.

For these reasons, OCC believes that the proposed changes are consistent with the requirements of the DCO Core Principles and the CFTC Regulations thereunder.

Opposing Views

No substantive opposing views were expressed related to the rule amendments by OCC's Board members, Clearing Members or market participants. Public comments on the proposed rule change filed with the SEC, if any, and any OCC response to such comments may be viewed on the SEC's public website.³³

Notice of Pending Rule Certification

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

Certification

OCC hereby certifies that the rule set forth at Exhibit A of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

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

Sincerely,

/s/ Karen Bilek

Karen Bilek
Associate General Counsel
The Options Clearing Corporation

Enclosure: Exhibit A

³³ See Options Clearing Corporation (OCC) Rulemaking, <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/occ>.

EXHIBIT A

AMENDED AND RESTATED PARTICIPANT EXCHANGE AGREEMENT

Blue underlined text indicates additions

~~Red strikethrough~~ text indicates deletions

AMENDED AND RESTATED PARTICIPANT EXCHANGE AGREEMENT

~~AGREEMENT, dated this 26th day of July, 1983 among THE OPTIONS CLEARING CORPORATION, a Delaware corporation (the “Clearing Corporation”), NYSE MKT LLC (the “AMEX”), NASDAQ OMX BX, Inc. (“BSE”), CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED, a Delaware corporation (the “CBOE”), INTERNATIONAL SECURITIES EXCHANGE, LLC (“ISE”), NYSE ARCA, INC. (“NYSE Area”), and NASDAQ OMX PHLX, LLC, a Delaware corporation (the “PHLX”), and such other national securities exchanges as shall become parties hereto in the manner hereinafter provided (AMEX, BSE, CBOE, ISE, NYSE Area, PHLX and such new participant exchanges being herein sometimes individually called a “Participating Exchange” or “Exchange”, and sometimes collectively called the “Participating Exchanges” or “Exchanges”);~~

WITNESSETH:

This Agreement amends and restates the Restated Participant Exchange Agreement dated as of the 26th day of July 1983, as amended, among THE OPTIONS CLEARING CORPORATION, a Delaware corporation (“OCC”), and the parties thereto (the “Agreement”). As of __ day of [_____, 2025], this Agreement shall be effective as between OCC, the parties hereto, and such other national securities exchanges as shall become parties hereto in the manner hereinafter provided (such participants herein sometimes individually called an “Exchange,” and sometimes collectively called the “Exchanges”);

WITNESSETH:

~~WHEREAS, the Clearing Corporation~~OCC and the Exchanges ~~named above~~ are parties to a Restated Participant Exchange Agreement dated as of ~~January 3~~July 26, 19751983, as amended (the “~~1975~~1983 Agreement”);

~~WHEREAS, the Clearing Corporation~~OCC and said Exchanges desire to amend and restate the ~~1975~~1983 Agreement to provide as set forth below; and

WHEREAS, it is the mutual purpose of ~~the Clearing Corporation,~~OCC and said Exchanges, ~~and such other Participating Exchanges as may become parties hereto after the date hereof~~ to enter into this ~~Amended and Restated Participant Exchange~~ Agreement in satisfaction of the requirements of Article ~~VH~~VIIA, Section 4 and Article VIIB, Section 4 of the By-Laws of ~~the Clearing Corporation;~~OCC, as applicable.

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

~~Section 1-. Participating~~Section 1. Exchange Authority to Trade Options.

Each ~~Participating~~ Exchange represents that it is registered as a national securities exchange ~~or a national securities association~~ under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and has effective rules in accordance with the provisions of the Exchange Act and the rules and regulations of the Securities and Exchange Commission (the "SEC") thereunder for the trading of options which may be issued by ~~the Clearing Corporation~~OCC in accordance with its By-Laws and Rules (the "Options"). During the term of this Agreement, OCC and each Exchange represents that it is in and shall remain in substantial compliance with the Exchange Act, all rules and regulations promulgated thereunder, and all rules of the Exchange (with respect to each Exchange) or the By-Laws and Rules (with respect to OCC). During the term of the Agreement, upon becoming aware of any material changes to the foregoing, OCC and each Exchange shall use reasonable efforts to achieve compliance with the applicable rule or regulation without undue delay. Such rules of each such Exchange, as the same may be amended from time to time in accordance with applicable SEC rules and regulations, are hereinafter referred to as "Options Rules²²." The By-Laws and Rules of OCC, as the same may be amended from time to time in accordance with applicable SEC rules and regulations, are hereinafter referred to as the "By-Laws and Rules."

~~Section 2-. Registration and Qualification of Options.~~

~~The Clearing Corporation agrees with each of the Participating Exchanges, and each of the Participating Exchanges, severally and not jointly, agrees with the Clearing~~

Corporation and each other Participating Exchange, as follows:

~~(a) Registration Under Securities Act. The Clearing Corporation shall use its best efforts duly to effect the registration under the Securities Act of 1933, as amended (the “Securities Act”), of all the Options to the extent requisite to permit the public sale of the Options in transactions on the Participating Exchanges. The Clearing Corporation shall further use its best efforts to maintain such registration continuously in effect so long as any Exchange shall continue the trading of Options, and during such period shall effect such amendments to such registration and such amendments and supplements to the prospectuses used in connection therewith as may be necessary to keep such registration current in compliance with the provisions of the Securities Act so as to permit the continuous public sale of the Options in transactions on the Participating Exchanges.~~

~~The obligations of the Clearing Corporation pursuant to the provisions of this subsection (a) to use its best efforts to effect and maintain the registration of the Options under the Securities Act shall require the Clearing Corporation, as expeditiously as possible, to:~~

~~(1) prepare and file with the SEC all necessary registration statements under the Securities Act with respect to the Options, and to use its best efforts to cause each such registration statement to become effective and to remain effective for any period during which the effectiveness thereof is necessary in order to permit the continuous public sale of Options on the Participating Exchanges; and~~

~~(2) prepare and file with the SEC all such amendments to each such registration statement and all such amendments and supplements to each prospectus used in connection therewith, and use its best efforts to cause such amendments and supplements to become effective and to be cleared and available for use at the earliest practicable date, as may be necessary to keep each such~~

~~registration statement current so as to permit continuous public sale of the Options in transactions on the Participating Exchanges;~~

~~provided, however, that the Clearing Corporation shall not be required to keep such registration effective, or to prepare and file any amendments or supplements thereto, if the public sale of the Options in transactions on the Participating Exchanges no longer requires registration under the Securities Act as then in force, or any similar Federal statute then in force, and the Clearing Corporation has delivered to each Exchange a “no action” letter of the staff of the SEC or an opinion of counsel to the Clearing Corporation, acceptable to the Exchanges, to such effect.~~

~~Each Participating Exchange agrees to notify the Clearing Corporation of any material change it proposes in its Options Rules prior to such change becoming effective. In the event the Clearing Corporation advises such Exchange that in its judgment (or the judgment of its counsel) such change requires an amendment to the registration of the Options or an amendment or supplement to the then current prospectus used in connection therewith, or if such Exchange advises the Clearing Corporation that in its judgment such an amendment or supplement is required, the Clearing Corporation shall, as expeditiously as possible, use its best efforts to amend its registration under the Securities Act or amend or supplement the then current prospectus used in connection therewith, as the case may be, in accordance with the requirements specified above in this subsection (a), and the Clearing Corporation agrees to afford high priority to discharging its obligations with respect thereto and in each instance to take all reasonable measures to avoid delays or inconvenience to any Exchange. Each Exchange agrees that whenever a proposed change in its Options Rules requires an amendment or supplement as herein above provided, it will defer the effectiveness of such change until the Clearing Corporation shall have amended its registration under the Securities Act or amended or~~

~~supplemented the then current prospectus used in connection therewith and the new current prospectus or supplement has been delivered or has been made available for delivery in accordance with applicable SEC rules and regulations.~~

~~Each Participating Exchange agrees with the Clearing Corporation that it will not permit opening transactions in Options whenever the Clearing Corporation shall have advised such Exchange that a required registration statement under the Securities Act in respect of such Options is not then in effect or is subject to a stop order issued by the SEC.~~

~~(b) Communications with SEC. With respect to the registration of the Options under the Securities Act, the Clearing Corporation agrees to advise each Participating Exchange promptly of (i) the receipt of any material comments from the SEC regarding such registration of the Options; (ii) any request by the SEC for any amendment to such registration or any amendment or supplement to the prospectuses used in connection therewith or for additional information; and (iii) the issuance by the SEC of any stop order suspending the effectiveness of such registration or the initiation or threatened initiation of any proceedings for that purpose of which the Clearing Corporation has knowledge; and to provide to any Participating Exchange, upon request, copies of any written communications received from the SEC in connection therewith. As to any statement or information relating to a particular Exchange which is to be included in any registration statement under the Securities Act with respect to the Options or any amendment thereto or any amendment or supplement to any prospectus used in connection therewith, the Clearing Corporation shall consult with the representatives of such Exchange or its counsel, and the content of such information or statement must be mutually satisfactory to the Exchange, the Clearing Corporation and their respective counsel; provided, however, that nothing herein shall prohibit the Clearing Corporation from including in any registration statement, amendment or~~

~~supplement any information with respect to Exchange which the Clearing Corporation reasonably determines to be required to be stated therein pursuant to the provisions of the Securities Act or is necessary to make the statements therein not misleading but if any statement or information relating to a particular Exchange is included in a registration statement, amendment or supplement over the written objection of such Exchange to the effect that such statement or information contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading, then the undertakings of such Exchange pursuant to this Agreement to indemnify the Clearing Corporation and the other Exchanges shall not apply, and the undertaking of the Clearing Corporation pursuant to this Agreement to indemnify the Exchanges shall apply, to any loss, liability, claim, damage or expense whatsoever arising out of or based upon the inclusion of such statement or information in a registration statement, amendment or supplement.~~

~~(c) Registration Under Exchange Act. The Clearing Corporation shall use its best efforts duly to effect the registration under the Exchange Act for trading on a Participating Exchange of such of the Options as such Exchange shall certify to the SEC are approved by such Exchange for listing and registration on such Exchange and shall use its best efforts to maintain such registration continuously in full force and effect so long as such Exchange shall continue the trading of such Options.~~

~~The obligations of the Clearing Corporation pursuant to the provisions of this subsection (c) to use its best efforts to effect and maintain the registration of the Options under the Exchange Act shall require the Clearing Corporation, as expeditiously as possible, to:~~

~~(1) prepare and file with the SEC and the applicable Exchange all necessary registration statements under the Exchange Act with respect to the Options to be traded on such Exchange~~

~~and use its best efforts to cause each such registration statement to become effective at the earliest practicable date and to remain effective for any period during which the effectiveness thereof is necessary in order to permit the continuous trading of such Options on such Exchange; and~~

~~(2) prepare and file with the SEC and the applicable Exchange all such amendments to each such registration statement, and use its best efforts to cause such amendments to become effective at the earliest practicable date, and prepare and file with the SEC and the applicable Exchange all such reports as may be necessary to keep such registration statement continuously effective and to comply with the provisions of the Exchange Act;~~

~~provided, however, that the Clearing Corporation shall not be required to keep such registration effective, or to prepare and file any amendments thereto, if the Options are no longer required to be registered under the Exchange Act as then in force, or any similar Federal statute then in force, and the Clearing Corporation has delivered to such Exchange an opinion of counsel to the Clearing Corporation, acceptable to such Exchange, to such effect; and provided, further, that the obligations of the Clearing Corporation under this subsection (c) to register Options under the Exchange Act for listing on an Exchange shall be subject to such Exchange having furnished the SEC the certification and other documents, if any, required of such Exchange in connection therewith.~~

~~Each Participating Exchange agrees with the Clearing Corporation that (i) it will not permit transactions in any Option to be effected on such Exchange at any time when there is not an effective registration statement under the Exchange Act for such Option and (ii) such Exchange shall not require the Clearing Corporation to file or to maintain any listing application or agreement or any regular or special reports in respect of any Option traded on such Exchange;~~

~~or to pay any fee to the Exchange in respect of the listing of any Option.~~

~~(d) Registration Under Blue Sky Laws. The Clearing Corporation agrees to use every reasonable effort to register or qualify all the Options covered by the registration under the Securities Act for offering and sale to the public under the “blue sky” or securities laws of each of the States of the United States and the District of Columbia, and of such foreign jurisdictions as a majority of the Participating Exchanges may designate, and to use every reasonable effort to continue such registrations and qualifications in effect so long as any Participating Exchange shall continue the trading of Options required to be so registered or qualified; provided, however, the Clearing Corporation shall not be required to register or qualify any Options for offering and sale to the public (A) in any such foreign jurisdiction (i) if the Clearing Corporation would be required to qualify to do business as a foreign corporation in such jurisdiction or to execute or file a general consent to service of process in such jurisdiction or to prepare a separate prospectus or other disclosure document for distribution in such jurisdiction; or (ii) if the estimated filing fees and expenses for such registration or qualification exceed \$5,000 or if the filing fees and expenses for all registrations and qualifications in such foreign jurisdictions during the preceding twelve months (including the estimated filing fees and expenses for such registration or qualification) exceed \$25,000, unless, in each instance, the Exchanges requesting such registration or qualification agree to reimburse the Clearing Corporation for any such filing fees or expenses in excess of such amounts; or (B) in any jurisdiction in which such registration or qualification either (i) is not required in order that such Options may be offered and sold to the public therein in transactions on the Participating Exchanges, or (ii) is waived by a majority of the Exchanges on which such Options are traded. In each jurisdiction where Options shall be registered or qualified as above provided the Clearing Corporation will (subject to the limitations set forth in~~

~~clause (A) above in respect of foreign jurisdictions) make and file such statements and reports in each year as are required by the laws thereof.~~

~~(e) Information Concerning Exchanges. Each Participating Exchange agrees to provide the Clearing Corporation for inclusion in each registration statement of the Clearing Corporation under the Securities Act with respect to the Options, each amendment thereto and each prospectus included therein (and each amendment thereto and supplement thereof) such information concerning such Exchange as is required to be included therein or necessary to make the information therein concerning such Exchange not misleading, and to provide the Clearing Corporation for inclusion in each registration statement under the Exchange Act with respect to the Options and each amendment thereto and for inclusion in the applications or documents filed under the “blue sky” or securities laws of the States and other jurisdictions referred to in subsection (d) of this Section 2 such information concerning such Exchange as may reasonably be requested by the Clearing Corporation or its counsel.~~

~~(f) Costs and Expenses. The Clearing Corporation agrees to pay all costs and expenses (other than attorneys’ and accountants’ fees and other costs hereafter incurred by the Exchanges) incident to (i) the registration of Options under the Securities Act, including all amendments and supplements thereto; (ii) the registration of Options under the Exchange Act, including all amendments thereto; and (iii) the qualification of Options for offering and sale under the “blue sky” or securities laws of the States and (subject to the provisions of subsection (d) of this Section 2) the other jurisdictions referred to in subsection (d) of this Section 2, including all amendments thereto. The Clearing Corporation agrees to furnish, upon reasonable notice, any Participating Exchange or member thereof with copies of each current final prospectus forming a part of the registration of the Options under the Securities Act and of each current supplement~~

~~thereto in such quantities as such Exchange or member may reasonably request. The Clearing Corporation may charge a fee sufficient to permit the Clearing Corporation to recover its estimated costs of printing, handling and distributing prospectuses and supplements.~~

~~(g) Indemnification.~~

~~(1) By the Clearing Corporation. The Clearing Corporation agrees to indemnify and hold harmless each Participating Exchange, its governors, directors and officers and each person, if any, who controls such Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all loss, liability, claim, damage and expense whatsoever arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Clearing Corporation under the Securities Act or the Exchange Act with respect to the Options or any amendment thereto or in any prospectus included therein (or any amendment thereto or supplement thereof) or in any application or document filed by the Clearing Corporation in any state or other jurisdiction in order to qualify or register the Options under the "blue sky" or securities laws thereof, or arising out of or based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading. The foregoing shall not cover any such loss, liability, claim, damage or expense, however, (i) arising out of or based upon an untrue statement or alleged untrue statement of a material fact contained in information furnished in writing by any Exchange to the Clearing Corporation expressly for use with reference to such Exchange in any registration statement of the Clearing Corporation under the Securities Act or the Exchange Act with respect to the Options or in any amendment thereto or in any prospectus included therein (or any amendment thereto or supplement thereof) or in any application or document filed by the Clearing Corporation in any state or other jurisdiction in order to qualify or register the Options under the~~

~~“blue sky” or securities laws thereof, or (ii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact in connection with such information required to be stated in such registration statement or in such amendment or in such prospectus (or amendment thereto or supplement thereof) or in such application or document or necessary to make such information not misleading, or (iii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact concerning such Exchange required to be stated in any registration statement of the Clearing Corporation under the Securities Act with respect to the Options or in any amendment thereto or in any prospectus included therein (or any amendment thereto or supplement thereof) or necessary to make the information concerning such Exchange included therein not misleading. This indemnity agreement shall be in addition to any liability which the Clearing Corporation may otherwise have.~~

~~(2) By the Participating Exchanges. Each Participating Exchange agrees, severally and not jointly, to indemnify and hold harmless the Clearing Corporation, its directors and officers and to indemnify and hold harmless each other Participating Exchange, its governors, directors and officers and each person, if any, who controls any such other Exchange within this meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all loss, liability, claim, damage and expense whatsoever (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in information furnished in writing by such Exchange to the Clearing Corporation expressly for use with reference to such Exchange in any registration statement of the Clearing Corporation under the Securities Act or the Exchange Act with respect to the Options, or in any amendment thereto or in any prospectus included therein (or any amendment thereto or supplement thereof) or in any application or document filed by the Clearing Corporation in any state or other jurisdiction in order to qualify~~

~~or register the Options under the “blue sky” or securities laws thereof, or (ii) arising out of or based upon the omission or alleged omission by such Exchange to state a material fact in connection with such information required to be stated therein or necessary to make such information not misleading, or (iii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact concerning such Exchange required to be stated in any registration statement of the Clearing Corporation under the Securities Act with respect to the Options or in any amendment thereto or in any prospectus included therein (or any amendment thereto or supplement thereof) or necessary to make the information concerning such Exchange included therein not misleading. This indemnity agreement shall be in addition to any liability which the Participating Exchanges may otherwise have.~~

~~(3) Notice; Control of Action Etc. Promptly after receipt by an indemnified party under subparagraph (1) or (2) of this subsection 2(g) of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under such subparagraph, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify will not relieve it from any liability which it may have to any indemnified party except for liabilities that it would not have incurred but for such omission. 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 subparagraph 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.~~

~~Section 3~~ Section 2. Selection of Underlying Securities Interests.

(a) ~~(a)~~ Each ~~Participating~~ Exchange shall be free to select the securities or other financial instruments which may be the subject of Options trading on such Exchange in accordance with Options Rules, provided that such options on such securities or financial instruments are listed on a national securities exchange and permitted in the Options Disclosure Document (referred to ~~collectively~~ herein as "~~underlying securities~~" Underlying Interest(s)"). The Underlying Interest(s) consist of:

- (i) common stocks ~~listed on national securities exchanges~~ (or groups thereof);
- (ii) ~~groups of such common stocks~~ exchange traded funds;
- (iii) ~~United States Treasury bonds, notes, or bills~~ American Depository Receipts;
- (iv) ~~"top tier" bank certificates of deposit~~ American Depository Shares;
- (v) ~~mortgage pass-through securities guaranteed by the Government National Mortgage Association~~ exchange traded notes;
- (vi) ~~corporate debt~~ securities ~~listed on national securities exchanges~~ indexes;
- ~~(vii) — securities indices;~~
- (vii) ~~(viii)~~ foreign currencies; ~~or~~
- (viii) ~~(ix)~~ or other securities or financial instruments approved by the Board of Directors of ~~the Clearing Corporation~~ OCC (which approval shall not unreasonably be withheld provided such

securities or financial instruments conform to the requirements set forth in this Agreement).

(b) OCC shall review and have the authority to approve new Options that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks (each a "New Product Risk"). OCC shall consider SEC approval of an Option for listing on an Exchange as a mitigating factor for the aggregate risk profile of a new Option. If OCC concludes that the proposed option presents a New Product Risk, OCC may refuse to issue such option on the Underlying Interest. In such event, OCC shall promptly (i) make representatives of OCC available to explain to representatives of the Exchange the reasons for the refusal; (ii) undertake commercially reasonable efforts to address the New Product Risk that caused OCC to refuse to issue such option with which efforts the Exchange will reasonably cooperate; and (iii) notify the Exchange when those issues have been satisfactorily addressed so OCC may approve the new Option.

~~(Common stocks, stock groups, Treasury bonds, Treasury notes, Treasury bills, mortgage pass-through securities, corporate debt securities, securities indices, foreign currencies, and such additional kinds of securities and financial instruments as may from time to time be approved pursuant to (ix) above are sometimes referred to herein as "types" of underlying securities.)~~

~~(b) Notwithstanding the provisions of subsection (a) hereof, no Participating Exchange shall select an underlying security for Options trading thereon if at the time of such selection the Clearing Corporation has been advised by the SEC that the issuance of Options in respect of such underlying security will require the Clearing Corporation to make special disclosures concerning the organization, business or financial condition of the issuer thereof in any document filed by the Clearing Corporation under any federal securities law.~~

(c) (e) If a Participating If an Exchange shall determine to trade ~~Options~~options on a type of ~~underlying security~~Underlying Interest permitted under subsection (a) above but not then provided for in the By-Laws and Rules ~~of the Clearing Corporation~~, and shall so advise ~~the Clearing Corporation, the Clearing Corporation~~OCC, OCC shall promptly take such actions as shall be necessary to enable it to issue such Options and to clear and settle

transactions therein and exercises thereof. Such Exchange shall defer the trading of such Options until it is advised by ~~the Clearing Corporation~~OCC that it may lawfully issue such Options, and that it has the operational capacity to clear and settle transactions therein and exercises thereof.

(d) ~~(d)~~ Each ~~Participating~~ Exchange agrees to adopt guidelines for the selection of ~~underlying securities~~Underlying Interests designed to assure that they are widely held and actively traded. Each Exchange shall be free to make exceptions to one or more of such guidelines in particular cases, and shall be free to change its guidelines from time to time, subject to any necessary action of the SEC. Notwithstanding the foregoing, the Exchanges will submit selections of a new Option class to OCC pursuant to the requirements of the Options Listing Procedures Plan.

Section 43. Expiration ~~Months~~Dates, Exercise Prices, and Units of Trading.

(a) ~~(a)~~ ~~The Clearing Corporation~~OCC agrees that the expiration ~~month~~date and exercise price of Options of each series shall be determined by each Exchange at the time such series is first opened for trading on that Exchange. ~~Each Exchange agrees not to open any new series of Options for trading thereon without first notifying the Clearing Corporation thereof not later than 5:00 P.M. Central Time on the second business day prior to the commencement of such trading, unless the Clearing Corporation shall in any particular instance have consented to a shorter notice period.~~

(b) OCC agrees that subject to any applicable limitations prescribed by the Options Rules or the By-Laws and Rules, the unit of trading of Options of each series shall be designated by the relevant Exchange prior to the time such series is first opened for trading on an Exchange and shall be communicated to OCC, and in the absence of such designation for a series in which the Underlying Interest is common stock, that the unit of trading shall be 100 shares.

~~(b) The Clearing Corporation agrees that subject to any applicable limitations prescribed by the Options Rules of the Exchanges or the By-Laws and Rules of the Clearing Corporation, the unit of trading of Options of each series shall be designated by the Securities Committee of the Clearing Corporation prior to the time such series is first opened for trading on an Exchange, and in the absence of such designation for a series in which the underlying security is a common stock that the unit of trading shall be 100 shares. The Securities Committee, in exercising its~~

~~functions of designating the unit of trading of particular series of Options in an underlying security, shall consist of two designated representatives of each Exchange on which Options in that underlying security are open for trading and the President of the Clearing Corporation. The vote of a majority of the voting members of the Securities Committee shall constitute the action of the Committee. The President of the Clearing Corporation shall not be a voting member of the Committee except in the case of a tie vote, in which case the President shall have the right to cast a vote to break the tie and shall, for such purpose, be deemed to be a voting member. The members of the Securities Committee need not be clearing members or officers or directors of the Clearing Corporation. The Securities Committee may transact its business by telephone.~~

Section 54. List of Options.

Each ~~Participating~~ Exchange agrees to prepare a list of the ~~underlying securities~~Underlying Interests, expiration ~~months~~dates and exercise prices of Options which are traded on such Exchange and to make such list available ~~in reasonable quantities~~ to its members and to ~~the Clearing Corporation~~OCC for distribution, ~~upon request,~~ to the public. Such lists shall be supplemented from time to time as new classes or series of Options are opened for trading on such Exchange.

Section 5. Delisting of Options.

Except as otherwise provided by the Options Rules or prohibited by law or regulation, each Exchange agrees to list and trade an Option series which the Exchange has added unless and until all open interest is closed out at OCC for such Option series; provided however that such listing is in accordance with Options Rules.

Section 6. Singly Listed Options.

(a) Settlement Price. In the event that the primary means of arriving at the settlement price for Options singly listed on the Exchange is deemed inaccurate, unreliable, unavailable, or inappropriate for purposes of calculating the exercise settlement amount, each Exchange shall reasonably cooperate with OCC to arrive at a reliable settlement price for such Options in accordance with the By-Laws and Rules. Such Exchange cooperation may include using commercially reasonable efforts to secure additional information regarding the value of the Underlying Interest from the primary

source of such Underlying Interest.

(b) Inability to Remain a Listing Exchange for a Singly Listed Option.

For Options that are singly listed on an Exchange, except as otherwise provided by the Options Rules or prohibited by law or regulation, the Exchange agrees to use commercially reasonable efforts to list and trade such Option until all open interest is closed out at OCC for such Option. The Exchange shall promptly notify OCC in the event the Exchange has concluded it will not be able to list and trade an Option singly listed on such Exchange where there is open interest at OCC for that Option. In such circumstances the Exchange will endeavor to take all steps reasonably necessary to permit listing and trading on an alternate Exchange.

Section 7. Exchange Data.

(a) Each Exchange grants to OCC a worldwide, non-exclusive, perpetual, sublicensable (as set forth in Section 7(h) herein), non-transferable (except in the case of a permitted assignment pursuant to Section 29 hereof) royalty-free license to reproduce, display, distribute, publish and use the data set forth in Exhibit A (“Exchange Data”) pursuant to Section 32(e) solely for the purpose of (i) OCC performing issuance, clearance, settlement, valuation, market surveillance, and risk management activities, (ii) performing investor derivatives education activities for OCC’s investor education division, (iii) complying with OCC’s regulatory obligations as a registered clearing agency, and (iv) as otherwise set forth in this Section 7. OCC may create and use Derived Data for any purpose without restriction. “Derived Data” means data derived by OCC in whole or in part from non-real-time Exchange Data by combining, processing, changing, converting, or calculating some or all of the non-real-time Exchange Data, with or without other data, that (A) is not an index, and (B) cannot be readily reverse engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Furthermore, each Exchange represents and warrants that at all times during the term of this Agreement each Exchange has all necessary rights to grant the licenses to OCC described in this Agreement.

(b) Notwithstanding anything to the contrary herein, OCC shall not use, or permit any third party to use, any Exchange Data (1) as input data (e.g., as a constituent or signal) in the creation or calculation of any index or to create input data for use in the creation or

calculation of any index , or (2) to create any financial instrument, investment product, or investment strategy that is based on, or seeks to match the performance of, values included in the Exchange Data, except as otherwise authorized in writing by the Exchange or an affiliate of the Exchange or, with respect to any Exchange Data owned by a third party, the applicable provider of such Exchange Data. For the avoidance of doubt, OCC shall be permitted to use and distribute the Exchange Data in the manner set forth herein including, but not limited to, as a part of the data files listed on Exhibit B.

(c) Reporting Authority. The reporting source for the Exchange Data shall be identified in accordance with the By-Laws and Rules (the “Reporting Authority”).

(d) Daily Values. Each Exchange shall provide or authorize the transfer to OCC on each Trading Day for an Option listed on the Exchange the values for the Underlying Interest and Option as specified on Exhibit A.

(e) Final Settlement Value. Each Exchange shall provide or authorize the transfer of the final settlement value of the Underlying Interest of all expiring Options listed by the Exchange (the “Final Settlement Value”) to OCC in the manner specified on Exhibit A. Consistent with the By-Laws and Rules, OCC shall adopt such Final Settlement Value as the basis for determining the final settlement amount for expiring Options.

(f) Exercise Settlement Amount. In the event that an Underlying Interest value identified in the By-Laws and Rules is unreported, inaccurate, unreliable, or otherwise inappropriate for calculating the difference between the exercise price and the underlying value (such difference is the “Exercise Settlement Amount”), the Exchange(s) on which the affected series of the Option is open for trading will determine the final settlement amount for expiring Options in accordance with the By-Laws and Rules.

(g) Data Transmission for Options. Each Exchange agrees to make available to OCC the Exchange Data for the Options listed on such Exchange in the manner specified in this Section unless and until there is no open interest at OCC for such Options.

(h) Market Data Distribution. OCC may distribute to clearing members and non-clearing members the data files specified on Exhibit B (“Licensed Data”). The Licensed Data that contains Exchange Data shall be subject to the terms of this Section 7(h) (the “Exchange Licensed Data”). Any Licensed Data that does not contain Exchange Data may be

used, licensed and distributed by OCC without restriction. Further, OCC may distribute Exchange Data to clearing members and non-clearing members for a period of seven (7) years from the date OCC received such Exchange Data from the applicable Exchange. OCC shall not have the right to license, distribute or otherwise provide any real time Exchange Data to either clearing members or non-clearing members unless otherwise agreed to by the Exchange in writing. Each Exchange acknowledges that the Exchange Licensed Data may include Derived Data and non-real time Exchange Data.

(i) OCC may license the Exchange Licensed Data to clearing members solely pursuant to a written market data agreement that contains data license terms consistent with the terms of this Agreement, including using reasonable efforts to include terms substantially similar to those set forth in Section 7(h)(iv). Clearing members may license the Exchange Licensed Data solely to (A) their service providers engaged for the sole purpose of acting as a third party agent for clearing members to receive, transmit, and modify the Exchange Licensed Data to clearing member specifications (“Service Providers”) and (B) customers of their clearing services. Customers of clearing members shall be prohibited from redistributing the Exchange Licensed Data to third parties that are not such customers’ authorized agents. OCC may license Derived Data to clearing members and customers of clearing members without restriction. The clearing member market data agreement will require that the restrictions on use and distribution of Exchange Licensed Data and Exchange Data outlined in this Section 7(h) be imposed on all customers of clearing member, Service Providers, and authorized agents of customers of clearing members.

(ii) OCC shall require all non-clearing member market data licensees to license the Exchange Data directly from the Exchange in order to receive Exchange Licensed Data from OCC, including using reasonable efforts to include terms substantially similar to those set forth in Section 7(h)(iv). OCC may license Derived Data to non-clearing members without restriction. Such Exchange Data licensees may be subject to applicable Exchange Data license fees in addition to any fees assessed by OCC for Exchange Licensed Data. The Exchange will not be liable to OCC for damages or claims arising from OCC distribution of Exchange Licensed Data to non-clearing members.

(iii) OCC's market data agreement to distribute Exchange Licensed Data to clearing members and non-clearing members shall include terms substantially similar to the following:

- i. A disclaimer of all warranties, express or implied, including warranties of merchantability, non-infringement, title, or fitness for a particular purpose.
- ii. An agreement that OCC and its third party data providers will have no responsibility or liability for: any fault, inaccuracy, omission, delay, or any other failure in the Exchange Licensed Data.
- iii. Indemnification for third party claims against OCC and its third party data providers arising out of the use of the Exchange Licensed Data.

(iv) If any clearing member or non-clearing member Exchange Licensed Data licensee fails to comply with any of the terms or conditions of this Section 7(h) applicable to such licensee or its agreement with the Exchange for Exchange Data, then OCC shall, within ten (10) business days after receipt of notice from the Exchange of such failure, cease providing Exchange Data from such Exchange to such licensee and shall, within thirty (30) business days following the receipt of such notice, confirm such cessation by notice to the Exchange.

(i) Exchange and Third Party Market Data. For the avoidance of doubt, this Agreement will not modify existing data agreements between OCC and an Exchange.

(j) Exchange or its designee, upon thirty (30) days' advance written request, shall have the right to audit use of the Exchange Data by OCC. OCC shall allow Exchange or its designee access to any of the premises, computers (including, but not limited to, hardware, software, and network services) and personnel of OCC at reasonable times for the purpose of such audits. Such audit request shall not occur more than once per year unless necessary due to a reasonable suspicion of non-compliance with any material provision of this Section 7. Exchange or its designee shall comply with all OCC policies and procedures (to the extent made known by OCC to the Exchange or its appointed designee) when conducting audits at the OCC facilities. All information collected as part of the audit shall be deemed OCC Confidential Information as defined in Section 32.

(k) Proprietary Nature of Exchange Data. The Exchange Data constitutes valuable property of the Exchange and its affiliates. OCC expressly acknowledges and agrees that the Exchange Data, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the Exchange and OCC, be and remain the sole and exclusive property of the Exchange.

(l) The Exchange, in its sole discretion, may make modifications, additions, and/or deletions to Exchange Data. The Exchange will use commercially reasonable efforts to provide OCC with at least 60 days' notice of any material modification, addition, or deletion, except to the extent a shorter period is: (i) required due to any situation that necessitates such modifications, additions, or deletions on an accelerated basis or otherwise precludes such advance notice, or (ii) required pursuant to an order of a court or an arbitrator or by a regulatory agency.

(m) In the event that a value submitted by the Exchange requires modifications, additions or deletions, OCC will cooperate with the Exchange as reasonably necessary to rectify such modification, addition, or deletion.

Section 68. Comparison of Options Transactions.

Each ~~of the Participating Exchanges~~ Exchange agrees that ~~it will~~ on each ~~business day~~ Trading Day the Exchange will effect comparisons of the trade information submitted to it on that day with respect to Options transactions effected on such Exchange, and, at or prior to such time as may be prescribed by ~~the Clearing Corporation (not earlier than 7:00 P.M. Central Time)~~ OCC, will furnish ~~the Clearing Corporation~~ OCC a report of all such transactions which compare as to (a) the identity of the parties to the transaction, (b) whether the Option is a put or a call, (c) the variable terms (the name of the ~~underlying security~~ Underlying Interest, the exercise price and the expiration ~~month~~ date) of the Option, (d) the amount of the premium, (e) the number of Options and (f) the description of the parties as purchaser and writer (~~"matched trades"~~). ~~Notwithstanding the foregoing any Participating Exchange may enter into an agreement with the Clearing Corporation to perform such comparison service for the members of such Exchange; provided, however, that the Clearing Corporation shall establish a separate fee structure for performing such services. The Clearing Corporation agrees that its fee structure for performing such comparison services shall be the~~

~~same for each Exchange electing to use the Clearing Corporation to perform such services. The Clearing Corporation also agrees that it will, upon the request of any Exchange which provides its own comparison service to its members, collect from the clearing members utilizing such service the amount of the fees therefor established by such Exchange from time to time and remit the same to such Exchange.~~Matched Trade(s)”). For purposes of this Agreement, the term “Trading Day” means any day on which the Exchange is open for trading.

To the extent OCC has prescribed a certain time by when such comparisons must be reported by each Exchange and OCC later determines to modify such time, OCC will provide the Exchanges with reasonable advance notice of such changes, which must be at least sixty (60) days prior to any change to such time.

Section 79. Clearance of Options Transactions.

~~The Clearing Corporation~~OCC agrees to clear all ~~matched trades~~Matched Trades accepted by OCC (in accordance with the By-Laws and Rules) reported to it by the ~~Participating~~ Exchanges. The clearance of such transactions shall be effected in accordance with the provisions of the By-Laws and Rules ~~of the Clearing Corporation. The Clearing Corporation.~~OCC agrees that it will not, without the consent of each Exchange, amend or waive the provisions of its By-Laws and Rules requiring the settlement of Options transactions on the business day of ~~the Clearing Corporation~~OCC immediately following the trade date for such transactions; provided, however, that if Options on a particular type of ~~underlying security~~Underlying Interest are traded on fewer than all of the Exchanges, ~~the Clearing Corporation~~OCC may amend or waive such provisions, but only as to Options on that type of ~~underlying security~~Underlying Interest, with the consent of each Exchange on which such Options are traded. ~~The Clearing Corporation~~OCC will have no obligation to any purchaser or writer of an Option arising out of any delay or error in the filing by an Exchange of any report of ~~matched trades~~Matched Trades, and each ~~Participating~~ Exchange agrees, severally and not jointly, to indemnify and hold harmless ~~the Clearing Corporation~~OCC for any loss or damage ~~the Clearing Corporation~~OCC may incur resulting from any delay in the filing by such Exchange of any report of ~~matched trades~~Matched Trades or from any error (other than to the extent an error is caused by a ~~Clearing Member~~clearing member in the filing of trade

information with such Exchange) in the information so filed.

Section 810. Acceptance of Options Transactions.

~~The Clearing Corporation~~OCC agrees to accept all Options transactions it clears ~~provided it shall have received payment of the premiums due in respect thereof~~ in accordance with the By-Laws and Rules ~~of the Clearing Corporation~~. Upon the acceptance of each such transaction, ~~the Clearing Corporation~~OCC shall be obligated in respect thereof in accordance with the provisions of its By-Laws and Rules.

Section 911. Issuance of Options.

~~The Clearing Corporation~~OCC agrees to issue an Option in each opening purchase transaction which it accepts, ~~and to be obligated in accordance with the provisions of~~ its By-Laws and Rules in respect of each Option it issues.

Section 1012. Non-Discrimination No Unfair Discrimination.

~~The Clearing Corporation~~OCC agrees not to amend its By-Laws or Rules in any manner so as to limit its obligations hereunder to clear and accept Options transactions effected on a particular Exchange, and to issue Options in respect thereof, so long as such Exchange is qualified to be a participant in ~~the Clearing Corporation~~OCC pursuant to ~~Article VII~~Articles VIIA and VIIB of the By-Laws of ~~the Clearing Corporation~~OCC, as applicable.

Section 1113. Limitations of Authority.

~~The Clearing Corporation~~OCC agrees that it shall have no authority or responsibility to:

(i) ~~(a)~~ establish standards or regulate procedures relating to the opening of customer accounts, the supervision of customer accounts, customer suitability requirements, distribution of prospectuses or other disclosure documents by Exchange members, or other matters relating to the handling of customer accounts;

(ii) ~~(b)~~ establish or enforce margin requirements ~~of Exchange members~~ ~~(although~~ (the foregoing shall not affect the right of ~~the Clearing Corporation~~OCC to require ~~Clearing Members~~clearing members to deposit margin with ~~the Clearing~~

~~Corporation~~OCC in accordance with its By-Laws and Rules and in conformity with Section 14 below);

~~(iii)~~(c) establish or enforce financial responsibility standards for Exchange membership (although the foregoing shall not affect the right of ~~the Clearing Corporation~~OCC to establish or enforce financial responsibility standards for clearing membership in accordance with its By-Laws and Rules and in conformity with Section 15 below);

~~(iv)~~(d) dictate the nature of banking relationships of Exchange members (except to the extent necessary to handle collections and payments provided for in the By-Laws and Rules ~~of the Clearing Corporation~~ and in conformity with Section ~~20~~23 below);

~~(v)~~(e) establish or enforce position limits or exercise limits in respect of Options (this Section shall not preclude OCC from calculating position limits at the request of the Exchanges);

~~(vi)~~(f) establish Exchange listing standards for Options to be traded thereon, provided such standards must be in conformity with the provisions of Section ~~3~~2 of this Agreement;

~~(vii)~~(g) determine when to open or restrict trading in a particular series of Options (this Section shall not limit OCC from performing its rights and obligations under this Agreement);

~~(viii)~~(h) establish trading rules or floor procedures of the ~~Participating~~Exchanges; or

~~(ix)~~(i) establish standards with respect to, or supervise, advertising by members of the ~~Participating~~Exchanges.

Section ~~12~~14. Margin Requirements of ~~Clearing Corporation~~OCC.

~~The Clearing Corporation~~OCC shall establish in its By-Laws and Rules, and shall have the responsibility to enforce, requirements as to the amount and form of margin to be deposited or maintained with ~~the Clearing Corporation~~OCC by its clearing members in respect of Options positions and positions resulting from the exercise of Options. In establishing such requirements, ~~the Clearing Corporation~~OCC shall not discriminate as to the amount of such margin to be deposited or maintained on the basis of the Exchange on which

Options transactions are effected, but ~~the Clearing Corporation~~ OCC may establish higher margin requirements in respect of (a) Options positions relating to specific ~~underlying securities or types of underlying securities~~ Underlying Interests in cases where the distribution or market liquidity of, or other factors relating to, such Options or ~~underlying securities~~ Underlying Interests would in the judgment of ~~the Clearing Corporation~~ OCC increase the risk of ~~the Clearing Corporation~~ OCC, clearing members or the public, or (b) particular clearing members based on the securities positions or financial positions of such clearing members.

Section ~~13~~15. Financial Requirements for Clearing Members.

~~The Clearing Corporation~~ OCC shall establish in its By-Laws and Rules financial responsibility standards with which its clearing members must comply ~~with~~. Each Exchange agrees that whenever, in the performance of its functions of monitoring compliance by its members with the financial responsibility standards established by such Exchange or the financial responsibility standards established by the SEC, ~~it~~ the Exchange, or a third party on behalf of an Exchange pursuant to a Regulatory Services Agreement, shall determine that (i) a clearing member of OCC is not in compliance with such standards, or (ii) ~~a clearing member is not in compliance with the financial responsibility standards established by the Clearing Corporation for its clearing members, or (iii)~~ the financial condition of a clearing member is such that special restrictions should be imposed on such clearing member, or (~~iv~~ viii) the financial condition of a clearing member should be reported to the Securities Investor Protection Corporation or any other resolution authority, such Exchange shall notify ~~the Clearing Corporation~~ OCC thereof ~~by telephone~~ promptly following the making of such determination and shall continue to keep ~~the Clearing Corporation~~ OCC reasonably informed of the results of the Exchange's financial surveillance activities in respect of such clearing member so long as the clearing member is subject to any such special restrictions whether performed directly by the Exchange or on behalf of the Exchange by a third party.

Each Exchange further agrees to furnish to ~~the Clearing Corporation~~ OCC a copy of all written materials that are furnished to the financial surveillance committee of the Exchange (the "Committee") respecting a clearing member that is also a member of the Exchange; provided that any Exchange that does not have a Committee hereby agrees to furnish ~~the~~

~~Clearing Corporation~~OCC with a copy of all written materials respecting the financial condition of a clearing member relating to information described in clauses (i) through (~~iviii~~) of the preceding paragraph prepared for the management authority of the Exchange exercising financial surveillance or similar functions (the “~~management authority~~Management Authority”).

Such written materials shall be delivered to ~~the Clearing Corporation~~OCC as promptly as practicable, but in no event later than ~~2:00 p.m. (Chicago time)~~3:00 p.m. Central Time of the business day ~~next following~~after the ~~day~~date on which such materials are furnished to the Committee or the ~~management authority; provided that upon the verbal request of the Clearing Corporation, the Exchange shall make such materials available for pick up by the Clearing Corporation at the same time as they are furnished to the Committee or management authority~~Management Authority. Each Exchange having a ~~committee~~Committee also agrees (i) to notify ~~the Clearing Corporation by telephone~~OCC 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 prior to the commencement of such meeting, (ii) to advise ~~the Clearing Corporation~~OCC at the time of such notification as to the reasons for and purposes of such meeting, and (iii) to report ~~by telephone to the Clearing Corporation immediately~~to OCC promptly 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 and the reasons therefor. Each Exchange not having a Committee also agrees to notify ~~the Clearing Corporation~~OCC of any action or proposed action concerning the financial condition of a clearing member to be taken by the ~~management authority~~Management Authority and the reasons therefor immediately upon making a determination concerning such clearing member.

Notwithstanding the provisions of Section ~~25~~28 of this Agreement, any ~~notice, written notices or materials or telephone communication~~ required to be furnished to ~~the Clearing Corporation~~OCC by this Section ~~13~~15 shall be delivered or made to ~~the Chairman of the Clearing Corporation or to such person as he may designate, or in case of the absence or nonavailability of both of them, then to any Vice President of the Clearing Corporation~~a Financial Risk Management officer of OCC.

Section ~~14~~16. Customer Accounts.

The Options Rules of each Exchange shall include rules establishing standards and regulating the activities of its members with respect to the opening of customer accounts, the supervision of customer accounts, customer suitability requirements, distribution of option disclosure documents by Exchange members, and other matters relating to the handling of customer accounts. Such rules shall specifically provide that the rights and obligations of holders and writers of Options shall be as set forth in the By-Laws and Rules ~~of the Clearing Corporation.~~

Section 15. ~~Operational Capacity~~ **17.** Operations.

Each Exchange agrees to respond to reasonable OCC requests for supporting documentation including Options Rules, policies, and procedures relating to the Options issued, settled, and cleared pursuant to the terms of this Agreement. Any supporting documentation the Exchange provides to OCC will be subject to Section 32 of this Agreement.

To the extent OCC reasonably believes it needs additional or modified data files and reports from an Exchange to facilitate and enhance the issuance, clearance, and settlement of Options, (i) each Exchange shall promptly make representatives of the Exchange available to consult with OCC regarding OCC's need for additional or modified data files and reports and the reasons for such need, and (ii) each Exchange shall undertake commercially reasonable efforts to provide OCC with such additional or modified data files and reports.

~~On or before March 31 and September 30 of each year, each Participating Exchange shall furnish the Clearing Corporation with forecasts of (i) its estimated maximum trading volume per day in Options on each type of underlying security during the twelve months immediately following the date of such forecast, and (ii) where applicable, the number of different underlying securities of each type which such Exchange anticipates will be the subject of Options trading on such Exchange during such twelve month period. Based on such forecasts, the Clearing Corporation~~ OCC agrees to use ~~its best~~ commercially reasonable efforts to maintain sufficient operational capacity to permit each Exchange, in its discretion, to list from ~~time to time~~ time-to-time Options on new ~~underlying securities of types~~ Underlying Interests on which Options are then being traded.

If, upon receiving notification from an Exchange ~~pursuant to Section 4 hereof~~ regarding the addition of Options in respect of a new ~~underlying security that is included~~

~~within the number forecast by such Exchange for such period, the Clearing Corporation~~Underlying Interest, Options that introduce new OCC business processes, technology modifications, operational modifications, or regulatory impact from Options currently trading, OCC shall determine that it does not then have sufficient operational capacity to add such Options, it shall so notify the Exchange promptly, and the Exchange shall defer the opening of trading of ~~any series of Options in respect of such underlying security until the Clearing Corporation shall notify the Exchange that it has the operational capacity to issue and clear Options with respect to such new underlying security, and during the interim the Clearing Corporation shall not add Options in respect of new underlying securities of the same type on any other Exchange. If upon receiving notification from an Exchange pursuant to Section 4 hereof regarding the addition of Options in respect of a new underlying security that is beyond the number included in such Exchange's forecast for such period, the Clearing Corporation shall determine that it does not then have sufficient operational capacity to add such Options (after taking into account the number of underlying securities proposed to be added during such period in the forecasts of the other Exchanges), it shall so notify the Exchange, and the Exchange shall defer the opening of trading of any series of such Options until the Clearing Corporation~~OCC shall notify the Exchange that it has the operational capacity to issue and clear such Options, ~~and during the interim the Clearing Corporation shall not add any new underlying securities of the same type for Options trading on any other Exchange (except Exchanges that have theretofore deferred the trading of Options pursuant to this sentence) beyond the number forecast for such period by the other Exchanges. Whenever the Clearing Corporation gives notice to an Exchange that it does not then have sufficient operational capacity to add new underlying securities, whether or not included within the forecasts of the Exchange for the period, the Clearing Corporation will use its best.~~ OCC will use commercially reasonable efforts to expand, as ~~expeditiously as possible~~soon as reasonably practicable, its facilities and ~~operational~~operations capabilities so as to permit the addition of ~~new underlying securities at the earliest practicable date~~such Options. During the interim, OCC shall not add Options in respect of new Underlying Interests of the same type on any other Exchange.

Furthermore, each Exchange shall comply with operational specifications for Options including for extended and overnight trading hours specified by OCC and supported by

OCC's By-Laws and Rules. OCC shall promptly notify each Exchange at least sixty (60) days in advance of implementation of or changes to such specifications.

Section 16. ~~Maintenance of Offices~~**18.** Financials.

(a) Annual Financials. Each Exchange shall provide OCC with annual, audited financial statements from the annual Form 1 Amendment once published on the SEC website. Exchanges that are public companies or wholly owned subsidiaries of public companies may provide the annual Form 10-K and quarterly Form 10-Q filings and amendments for such public company to satisfy the terms of this Section.

(b) Quarterly Financials. Each Exchange that becomes a party to this Agreement following the effective date of this Agreement shall provide quarterly, unaudited financial statements prepared in accordance with U.S. generally accepted accounting principles applied on a basis that is consistent with such Exchange's past practice, or, if such unaudited financial statements are not available, such other reports consistent with such Exchange's past practice that fairly present in all material respects the financial condition of such Exchange as of the respective dates they were prepared and the results of such Exchange's operations for the periods indicated, to OCC promptly following completion of each quarter for a period of three years from the date of becoming a party to this Agreement. Exchanges that are public companies or wholly owned subsidiaries of public companies may provide the annual Form 10-K and quarterly Form 10-Q filings and amendments for such public company to satisfy the terms of this Section.

(c) Losses. Promptly following completion of each quarter or completion of the annual audit, each Exchange shall notify OCC if such Exchange (i) reports or incurs a quarterly or fiscal year-end annual decrease in shareholders' equity (or, if such Exchange is not a corporation, the equivalent of shareholders' equity) exceeding 25% or (ii) reports or incurs a quarterly or fiscal year-end annual loss exceeding 25% of shareholders' equity (or, if such Exchange is not a corporation, the equivalent of shareholders' equity). Following receipt of such notice, OCC may request, and such Exchange shall provide quarterly, unaudited financial statements prepared in accordance with U.S. generally accepted accounting principles applied on a basis that is consistent with such Exchange's past practice, or, if such unaudited financial statements are not available, such other reports consistent with such Exchange's past practice

that fairly present in all material respects the financial condition of such Exchange as of the respective dates they were prepared and the results of such Exchange's operations for the periods indicated to OCC. In accordance with paragraph (a), if an Exchange provides Forms 10-K and 10-Q filings to satisfy the terms of this Section, this paragraph will apply at the public company level.

(d) Confidentiality. For the avoidance of doubt, all information provided by an Exchange under this Section 18, with the exception of all information that is publicly available, (i) is subject to the confidentiality obligations under Section 32, and (ii) is provided as-is for informational purposes only and without warranty or representation by the Exchange.

~~The Clearing Corporation agrees to maintain an office in the principal city in which each of the Participating Exchanges is located; provided, however, that if Options transactions on a particular Exchange do not exceed 10% or more of the total volume of transactions cleared through the Clearing Corporation during a given year^{*} and Options transactions cleared by clearing members through the office in the principal city where such Exchange is located do not account for 10% or more of the total volume of transactions cleared through the Clearing Corporation during such year^{*}, then the Clearing Corporation shall be required to continue to maintain such office only if the Exchange located in that city guarantees in writing to cover any difference between the fees collected in respect of such Exchange's Options transactions or the fees collected in respect of transactions cleared through such office, whichever is greater, and the actual expenses of maintaining that office, determined in accordance with generally accepted accounting practices; and provided, further, that the Clearing Corporation shall not be required to maintain more than one office in any city nor more than one office in respect of any Participating Exchange. For the purposes of this Section 16, New York City shall be deemed to be the principal city where the National Association of Securities Dealers, Inc. is located. The Clearing Corporation agrees adequately to staff and equip each of its offices so as to enable clearing members electing to use such office to clear all their Options transactions~~

~~through that facility, and to place in charge of each of its offices which is responsible for 20% or more of the volume of transactions cleared through the Clearing Corporation or which is located in the same city as an Exchange on whose floor 20% or more of the volume of transactions cleared through the Clearing Corporation occur, an officer of the Clearing Corporation having senior management responsibilities. Each clearing member shall be permitted to designate the office of the Clearing Corporation through which it wishes to clear its Options transactions and otherwise conduct business with the Clearing Corporation, and it shall clear all its Options transactions (no matter on which Exchange such transaction was effected) and otherwise conduct all of its business with the Clearing Corporation through the office of the Clearing Corporation it so designates. Notwithstanding the foregoing, the Clearing Corporation may from time to time permit one or more clearing members to utilize services of the Clearing Corporation through more than one office of the Clearing Corporation, and clearing members may designate a different office as the one through which they will file exercise notices, receive assignments of exercise notices or any delivery of certificates for underlying securities, or any of the foregoing.~~

Section 19. Information Technology and Security.

(a) Each Exchange shall provide OCC with the current name(s) and contact information for Exchange employee(s) who shall have the requisite expertise and authority (each an “Exchange Designated Contact”) to assist OCC in the resolution of operational, technology and information security matters related to the provision of services to such Exchange under this Agreement. The Exchange shall make an Exchange Designated Contact available during Exchange trading hours and applicable OCC processing times (e.g., evening and expiration processing, etc.) as communicated by OCC from time to time.

(b) OCC shall provide each Exchange with the current name(s) and contact information for OCC’s employee(s) who shall have the requisite expertise and authority (each an “OCC Designated Contact”) to assist each Exchange in the resolution of operational, technology and information security matters related to the provision of services to such Exchange under this Agreement. OCC shall make an OCC Designated Contact available during Exchange trading

hours and applicable OCC processing times (e.g., evening and expiration processing, etc.) as communicated to each Exchange from time to time.

(c) Each Exchange shall promptly notify OCC and provide ongoing updates of an incident related to the Exchange that could reasonably be expected to affect OCC's ability to perform the services for such Exchange outlined in this Agreement. Exchange agrees to provide OCC information relating to the incident upon OCC's reasonable request.

(d) OCC shall promptly notify each Exchange and provide ongoing updates of an incident related to OCC that could reasonably be expected to affect the Exchange's ability to receive the services for such Exchange outlined in this Agreement. OCC agrees to provide each Exchange information relating to the incident upon an Exchange's reasonable request.

(e) OCC and each Exchange agree to take reasonable steps to comply with applicable cybersecurity regulations, including Regulation Systems Compliance and Integrity ("Regulation SCI"), and to promptly contain and remedy any incident arising under subsection 19(c) and 19(d) in accordance with applicable law.

(f) Cyber-Related Incidents. Upon notification by an Exchange pursuant to paragraph (c) of this Section 19 of an incident involving a cyber-related disruption or intrusion of the Exchange, including but not limited to any "systems intrusion", "systems disruption" or "systems compliance issue" regarding an "SCI system" or "indirect SCI system" of the Exchange as such terms are defined in Regulation SCI, that could reasonably be expected to materially affect OCC's ability to perform the services for the Exchange described in this Agreement ("Exchange Cyber-Related Incident") or if OCC has a reasonable basis to believe that an Exchange Cyber-Related Incident is occurring that could reasonably be expected to materially affect OCC's ability to perform the services for the Exchange describe in this Agreement, OCC shall be permitted to take actions reasonably necessary to mitigate the effects to the operations of OCC, including the right to suspend its obligations to the Exchange under this Agreement (to the extent such obligations are or could reasonably be expected to be impacted by the Exchange Cyber-Related Incident) until such time as OCC is able to reasonably determine that the Exchange Cyber-Related Incident is resolved and the mitigating actions are no longer reasonably necessary. OCC shall not suspend its obligations to the Exchange without prior approval from OCC's Chief Executive Officer ("OCC CEO "), or in the event that the OCC CEO is unavailable, OCC's Chief Operating Officer ("OCC COO"), or in the event that neither

the OCC CEO nor the OCC COO is available, OCC's Chief Security Officer. OCC shall undertake reasonable efforts to contact the applicable individual in the preceding sentence to make this decision before determining that the individual is unavailable. OCC shall promptly notify the Exchange of its determination pursuant to the foregoing provisions of this Section to suspend its obligations under this Agreement, but such determination shall not affect the validity of any Matched Trade accepted by OCC prior to such suspension; 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. Notwithstanding the foregoing, the Exchange and OCC shall promptly consult with one another to determine an appropriate course of action consistent with applicable law that would resolve the Exchange Cyber-Related Incident to OCC'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, OCC shall undertake commercially reasonable efforts to maintain performance of its obligations with which efforts the Exchange will reasonably cooperate.

(g) Connectivity. Each Exchange shall meet the mutually agreed upon OCC connectivity requirements set from time to time by OCC and the Exchange and provided to each Exchange. Each Exchange agrees to use reasonable efforts to accommodate the OCC connectivity requirements and to notify OCC in the event that it cannot meet the OCC connectivity requirements. Such connectivity includes the maintenance of point-to-point connections to OCC and the use of redundant connectivity to support all transmissions of trade data and Exchange Data, which is not provided under a separate license agreement, to OCC required under this Agreement. OCC and each Exchange will provide the other with reasonable advance notice of changes to such requirements, which may be no less than 60 (sixty) days.

Section 17.20. Exercise Restrictions.

Each ~~Participating~~ Exchange agrees that during the business day (in the case of ~~index options~~ Options that are cash settled) or the ten (10) business days (in the case of ~~other options~~ Options that are physically settled) prior to the expiration date of a given series of Options traded on such Exchange, it will not restrict, ~~or~~ nor allow to remain in effect any restriction with respect to, the exercise of that series of Options; provided that 1) an Exchange

may restrict the exercise of Options at any time by persons found by such Exchange to be in violation of applicable position limits or 2) an Exchange or OCC may restrict the exercise of Options to comply with the applicable government imposed restriction which would have the effect of restricting the exercise of the Option.

Section 1821. Deadlines for Exercise of Options.

Each ~~Participating~~ Exchange agrees to direct its members to establish time limits for customers to instruct its members to exercise Options traded on such Exchange. Such time limits shall be sufficiently in advance of the applicable deadline specified in the By-Laws and Rules ~~of the Clearing Corporation~~ for receipt by ~~the Clearing Corporation~~ OCC of exercise notices tendered by its clearing members to enable such clearing members to comply with such deadline.

Section 1922. Allocation of Exercise Notices.

Each ~~Participating~~ Exchange agrees to maintain rules or procedures specifying permissible methods for the allocation of exercise notices by its members.

Section 2023. Financial Arrangements.

OCC shall establish a fee structure under its By-Laws and Rules for the services it performs for clearing members.

(a) ~~Fees for Clearing Services. The Clearing Corporation shall establish a fee structure for the services it performs for clearing members consistent with the provisions of Section 9 of Article IX of the By-Laws of the Clearing Corporation.~~

(b) ~~Banking Arrangements. The Clearing Corporation shall establish bank accounts in each principal city in which it maintains an office and will approve one or more local banks through which clearing members may settle all premium and margin payments with it. Such banking arrangements shall be established so as to assure that clearing members are not placed at any disadvantage because of banking practices in the particular city in which they elect to clear their Options transactions.~~

Section 24. Services, Programs and Projects.

~~The Clearing Corporation~~OCC agrees that the following services, programs, or projects will be offered to all clearing members at substantially the same time, on the same terms and conditions and at the same costs (after completion of testing); (i) any service it develops or offers to any clearing member or group of clearing members ~~will (after completion of testing) be offered to all clearing members clearing through any of its offices at substantially the same time, on the same terms and conditions and at the same costs;~~ or (ii) any program or project aimed at servicing clearing members which it develops at its own expense or which it originates ~~will be for the benefit of all clearing members; and (iii).~~ Further, OCC agrees that any program or project designed to assist one or more ~~Participating~~ Exchanges which it develops at its own expense or which it originates will be for the benefit of and will be made available to all Exchanges. ~~The Clearing Corporation~~

OCC may in its sole and absolute discretion undertake programs or projects for a particular Exchange provided such Exchange pays all costs associated therewith ~~and such undertaking does,~~ including but not limited to staffing costs. All projects and programs undertaken by OCC pursuant to this Section may not interfere with the ability of ~~the Clearing Corporation~~OCC to perform its functions as set forth in this Agreement and in the By-Laws and Rules ~~of the Clearing Corporation, and provided, further, that the Clearing Corporation is.~~ Further, in the event that OCC agrees to undertake a program or project for a particular Exchange, OCC shall be prepared to undertake comparable programs and projects for each other Exchange which requests it to do so, without discrimination as to schedules, costs or other terms and conditions thereof.

Section 25. Access to Books and Records of ~~Clearing Corporation~~OCC.

~~The Clearing Corporation~~OCC agrees that each ~~Participating~~ Exchange shall have the right during normal business hours to examine ~~the Clearing Corporation's~~OCC's books, accounts, ~~data-base~~database(s) and other records, and at ~~its own~~the Exchange's expense to copy or make extracts from such documents and records and to utilize such ~~data base~~database(s); provided, however, that an Exchange shall have no such right with regard to transactions on any other Exchange or transactions of another Exchange's sole members or which is otherwise competitive information or Confidential Information of another

Exchange.

Section 2326. Indemnification.

(a) By OCC.

(a) ~~By the Clearing Corporation.~~ (i) ~~The Clearing Corporation~~(i)

OCC agrees to indemnify and hold harmless each ~~Participating~~ Exchange, its governors, directors and officers and each person, if any, who controls such Exchange within the meaning of Section 15 of the Securities Act of 1933 (“Securities Act”) or Section 20 of the Exchange Act, from and against any and all loss, damage and expenses whatsoever arising out of or based upon any violation or alleged violation by ~~the Clearing Corporation~~OCC of any of the terms of this Agreement or of the stockholders agreement or noteholders agreement, as applicable, referred to in ~~Article VII~~ of the By-Laws of the Clearing Corporation and Rules of OCC. This indemnity ~~agreement~~ shall be in addition to any liability which ~~the Clearing Corporation~~OCC may otherwise have.

(ii) ~~The Clearing Corporation~~OCC agrees to indemnify and hold harmless each ~~Participating~~ Exchange, its governors, directors and officers and each person, if any, who controls such Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all liabilities, judgments, claims, damages, expenses and amounts paid in settlement in connection with any action, suit, litigation, claim or proceeding to which any such 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 Clearing Corporation~~OCC of any terms of this Agreement or of the stockholders agreement or noteholders agreement, as applicable, referred to in ~~Article VII~~ of the By-Laws of the Clearing Corporation and Rules of OCC, any alleged default by ~~the Clearing Corporation~~OCC in performing its obligations, in accordance with its By-Laws and Rules, in respect of any Option transaction it accepts or Option it issues, any violation or alleged violation by ~~the Clearing Corporation~~OCC of any provisions of the Exchange Act or of any Rule or Regulation promulgated thereunder or any violation or alleged violation by the Clearing Corporation of any securities laws, fraud statutes or

similar laws of any state. This indemnity ~~agreement~~ shall be in addition to any liability to any indemnified party which ~~the Clearing Corporation~~OCC may otherwise have.

(b) By the Exchange.

~~(b) By the Participating Exchange.~~ (i) Each ~~Participating~~ Exchange agrees, severally and not jointly, to indemnify and hold harmless ~~the Clearing Corporation~~OCC, its directors and officers, each other ~~Participating~~ Exchange, its governors, directors and officers and each person, if any, who controls any such other Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all loss, damage and expenses whatsoever (whether or not such loss, damage or expenses are reimbursable by pro rata charges to the ~~Clearing Fund~~clearing fund contributions of clearing members) arising out of or based upon any violation or alleged violation by such Exchange of any of the terms of this Agreement or the stockholders agreement or noteholders agreement, as applicable, referred to in ~~Article VII of the By-Laws of the Clearing Corporation~~and Rules of OCC. This indemnity ~~agreement~~ shall be in addition to any liability which the ~~Participating~~ Exchange may otherwise have.

(ii) Each ~~Participating~~ Exchange agrees, severally and not jointly, to indemnify and hold harmless ~~the Clearing Corporation~~OCC, its directors and officers, and to indemnify and hold harmless each other ~~Participating~~ Exchange, its governors, directors and officers and each person, if any, who controls any such other Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all liabilities, judgments, claims, damages, expenses and amounts paid in settlement (whether or not such liabilities, judgments, claims, damages, expenses or amounts paid in settlement are reimbursable by pro rata charges to the ~~Clearing Fund~~clearing fund contributions of clearing members) in connection with any action, suit, litigation, claim or proceeding (commenced by any person other than ~~the Clearing Corporation~~OCC, any ~~Participating~~ Exchange or any ~~Clearing Member~~clearing member who seeks to recover a pro rata charge to ~~his Clearing Fund~~their clearing fund contribution) to which any such 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 such Exchange of any of the terms of

this Agreement or of the stockholders agreement or noteholders agreement, as applicable, referred to in ~~Article VII of the By-Laws of the Clearing Corporation and Rules of OCC,~~ any violation or alleged violation by such Exchange of any provisions of the Exchange Act or of any Rule or Regulation promulgated thereunder, any allegation of any knowing or negligent failure by such Exchange to enforce compliance by its members with its Options Rules, or any violation or alleged violation by such Exchange of any securities laws, fraud statutes or similar laws of any State. This indemnity ~~agreement~~ shall be in addition to any liability to any indemnified party which the ~~Participating~~ Exchange may otherwise have.

(c) Procedures in Respect of Indemnification Claims under Subsections (a)(ii), and (b)(ii). Promptly after receipt by an indemnified party under subsection (a)(ii), or (b)(ii) of this Section 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 subsection, 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 except for liabilities that it would not have incurred but for such omission. 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 subsection 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. As used in this Section ~~23~~26, 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.

(d) Indemnification in Respect of Options. Without limiting the generality of subsection (b) above, each ~~Participating~~ Exchange specifically agrees, severally and not jointly, to indemnify and hold harmless ~~the Clearing Corporation~~ OCC, and its directors, officers, employees and agents to the extent acting as such (each ~~an~~ “~~Clearing Corporation~~ OCC Indemnified Party” and collectively referred to as the “~~Clearing Corporation~~ OCC Indemnified Parties”) from and against any and all liabilities, judgments, damages, expenses and amounts paid in settlement (collectively referred to as “Losses”) incurred by ~~a Clearing Corporation~~ an OCC Indemnified Party (whether or not, in the case of ~~the Clearing Corporation~~ OCC, Losses are reimbursable by pro rata charges to the ~~Clearing Fund~~ clearing fund contributions of clearing members of ~~the Clearing Corporation~~ OCC) in connection with any action, suit, litigation, claim or proceeding commenced by any person, asserted against ~~a Clearing Corporation~~ an OCC Indemnified Party or to which ~~a Clearing Corporation~~ an OCC 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 (i) any allegation that such ~~Participating~~ Exchange does not have the right for any reason to list and trade an Option, or (ii) any allegation that the listing and trading of such Option by such ~~Participating~~ Exchange, the issuance of such Option by ~~the Clearing Corporation~~ OCC or the clearance and settlement of trades in or exercises of such Option by ~~the Clearing Corporation~~ OCC constitutes or would constitute unfair competition or unjust enrichment or infringes, interferes with or misappropriates, or would infringe, interfere with or misappropriate, 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 (any such action, suit, claim, litigation or proceeding being referred to as an “Option Claim”). Notwithstanding the foregoing, ~~a Participating~~ an Exchange shall have no indemnification obligations with respect to Losses incurred in connection with an Option Claim in respect of (i) technology used by ~~the Clearing Corporation~~ OCC (A) with respect to Options generally and not solely with respect to such Option or (B) for which a non-infringing alternative exists that ~~the Clearing Corporation~~ OCC could reasonably use to perform the required services with respect to such Option, or (ii)

conduct of ~~the Clearing Corporation~~OCC (A) that is performed with respect to Options generally and not solely with respect to such Option or (B) that ~~the Clearing Corporation~~OCC could reasonably perform in an alternative and non-infringing manner with respect to such Option. ~~A Clearing Corporation~~An OCC Indemnified Party shall cooperate with each indemnifying ~~Participating~~ Exchange with respect to the Option Claim.

(e) Procedures ~~In~~In Respect of Indemnification ~~For~~for Option Claims.

Promptly after receipt by ~~a Clearing Corporation~~an OCC Indemnified Party of notice of the assertion or commencement of an Option Claim, ~~the Clearing Corporation~~OCC Indemnified Party shall give written notice of such claim or obligation to the ~~Participating~~ Exchange or Exchanges obligated to indemnify ~~the Clearing Corporation~~OCC Indemnified Party in respect thereof, but the omission so to notify will not relieve ~~a Participating~~an Exchange from any liability which it may have to ~~the Clearing Corporation~~OCC Indemnified Parties except for liabilities that it would not have incurred but for such omission. ~~A Participating~~An Exchange may negotiate a compromise or settlement of any Option Claim without the consent of ~~the Clearing Corporation~~OCC Indemnified Parties provided that such compromise or settlement does not (A*i*) require a contribution by any ~~Clearing Corporation~~OCC Indemnified Party, (B*ii*) involve injunctive or equitable relief against ~~a Clearing Corporation~~an OCC Indemnified Party, or (C*iii*) otherwise impair the rights of ~~a Clearing Corporation~~an OCC Indemnified Party or include any admission of fault, culpability, or failure to act by or on behalf of ~~a Clearing Corporation~~an OCC Indemnified Party. ~~A Clearing Corporation~~An OCC Indemnified Party may negotiate a compromise or settlement of any Option Claim without the consent of ~~a Participating~~an Exchange obligated to indemnify in respect of such Option Claim provided that such compromise or settlement does not (W*i*) create or otherwise give rise to any Loss for which said ~~Participating~~ Exchange would be obligated to indemnify by the terms of this Agreement; (X*ii*) involve injunctive or equitable relief against the ~~Participating~~ Exchange, (Y*iii*) otherwise impair the rights of said ~~Participating~~ Exchange or include any admission of fault, culpability, or failure to act by or on behalf of said ~~Participating~~ Exchange, or (Z*iv*) require ~~the Clearing Corporation~~OCC to act, or refrain from acting, in a manner that may reasonably be considered to the detriment of said ~~Participating~~ Exchange. ~~A Participating~~An Exchange having an indemnity obligation under subsection (d) of this Section ~~23~~ with respect to an Option Claim shall not have the right to assume and control the defense or representation of ~~the Clearing Corporation~~OCC

Indemnified Parties, and ~~the Clearing Corporation~~OCC Indemnified Parties shall have the right to retain for the matter counsel of their choice, and the ~~Participating~~-Exchange shall be obligated to pay the reasonable costs (including attorneys' fees and expenses) of the defense or representation of counsel selected by such Indemnified Party; provided, however, the selection by ~~the Clearing Corporation~~OCC of any counsel other than counsel that is regularly retained by the Corporation to represent it in other matters shall require the consent, which shall not be unreasonably withheld, of each ~~Participating~~-Exchange that has an indemnification obligation at the time such counsel is retained. For the avoidance of doubt, this ~~agreement~~Agreement shall not create an obligation on the part of an indemnifying ~~Participating~~-Exchange to waive a conflict of interest on the part of any counsel selected by ~~the Clearing Corporation~~OCC that also represents such ~~Participating~~-Exchange in order to permit such counsel to represent ~~the Clearing Corporation~~OCC; but this provision shall not override any agreement between such counsel and such ~~Participating~~-Exchange with respect to conflicts. ~~The Clearing Corporation~~OCC Indemnified Parties shall select a single law firm to represent all of them except to the extent that (i) such law firm notifies ~~the Clearing Corporation~~OCC Indemnified Parties in writing that conflicts of interest among them will prevent it, as a matter of professional ethics, from representing all of them or (ii) other extraordinary circumstances require the use of one or more additional law firms. Engagement of one or more additional law firms pursuant to clause (ii) of the preceding sentence shall require the consent of each ~~Participating~~-Exchange that has an indemnification obligation at the time such additional counsel is retained, but such consent shall not be withheld if to do so would materially prejudice the defense of an Indemnified Party.

(f) Payment of Losses for Option Claims. Upon receipt of a demand for payment or reimbursement of Losses arising from an Option Claim, whether in the form of an invoice or other appropriate written documentation, ~~the Clearing Corporation~~OCC Indemnified Parties may issue a corresponding demand for payment to the relevant ~~Participating~~-Exchange for the Losses indemnified hereunder. The ~~Participating~~-Exchange shall pay the amount demanded in each such demand for payment within thirty (30) days of the issuance thereof. Any undisputed amount that remains overdue on any such demand for payment for more than fifteen (15) days after the ~~Participating~~-Exchange receives notice that such amount is overdue shall bear interest at a daily interest rate equal to one percent (1%) above the prime interest rate (as published-in the Wall Street Journal, National Edition) divided by three hundred ~~sixty five~~sixty-

five (365). If the ~~Participating~~ Exchange disputes any demand for payment or any portion thereof, it shall (i) so advise ~~the Clearing Corporation~~ OCC Indemnified Parties within thirty (30) days of receipt of such demand, (ii) pay the undisputed portion thereof (if any) as provided above notwithstanding the dispute, (iii) endeavor in good faith to resolve the dispute as promptly as possible, and (iv) remit any additional amount agreed or otherwise determined to be due promptly, and in any event within thirty (30) days, following determination of the amount due.

(g) Option Claim Losses in Multiple Exchange Situations. With respect to a matter where an Option Claim arises from trading or proposed trading in the Option on more than one ~~Participating~~ Exchange, the indemnification obligations of the ~~Participating~~ Exchanges shall be divided as follows:

(~~1~~i) ~~with~~ With respect to Losses sustained by a ~~Clearing Corporation~~ OCC Indemnified Party in respect of an Option Claim at a time when no ~~Participating~~ Exchange has yet commenced trading the subject Option under circumstances that would be within the scope of such Option Claim, each ~~Participating~~ Exchange that has announced or has communicated to ~~the Clearing Corporation~~ OCC an intent to trade the subject Option under circumstances that would be within the scope of such Option Claim shall be liable to indemnify such ~~Clearing Corporation~~ OCC Indemnified Party for that percentage of such Losses, including costs of defense and representation of counsel, that is equal to a fraction, the numerator of which is one and the denominator of which is the aggregate number of ~~Participating~~ Exchanges that have announced such intent or communicated such intent to ~~the Clearing Corporation~~ OCC;

(~~2~~ii) ~~with~~ With respect to Losses sustained by ~~a Clearing Corporation~~ an OCC Indemnified Party in respect of an Option Claim at any time after one or more ~~Participating~~ Exchanges has commenced trading the subject Option under circumstances that would be within the scope of such Option Claim, each ~~Participating~~ Exchange that has commenced trading the subject Option under circumstances that would be within the scope of such Option Claim shall be liable to indemnify such ~~Clearing Corporation~~ OCC Indemnified Party for that percentage of such Losses, including costs of defense and representation of counsel, that is equal to the percentage of the total number of contracts in such Option cleared by ~~the Clearing Corporation~~ OCC under circumstances that would be within the scope of such Option Claim that are purchased and sold in transactions on

such ~~Participating~~ Exchange (determined cumulatively from the time trading in such Option under circumstances that would be within the scope of such Option Claim commenced through the last trading day of the month immediately prior to the month in which ~~the Clearing Corporation~~ OCC Indemnified Party demands payment from the ~~Participating~~ Exchanges). If at the conclusion of any proceeding that is the subject of the indemnification obligation, the total of all amounts previously paid by ~~a Participating~~ an Exchange under ~~this Section 23~~(g)(~~2~~ii) of this Section exceeds its cumulative percentage for the entire period of the proceeding as determined under the preceding sentence, such ~~Participating~~ Exchange shall be entitled to reimbursement of the excess from ~~the Clearing Corporation~~ OCC.

(h) Persons Having Rights Hereunder. The provisions of this Section ~~23~~ are not intended to confer any rights upon any person other than ~~the Clearing Corporation~~ OCC, its directors and officers, ~~the Clearing Corporation~~ OCC Indemnified Parties, each ~~Participating~~ Exchange, its governors, directors and officers and each person, if any, who controls any such Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

(i) Notice; Control of Action, Etc. Promptly after receipt by an indemnified party under subsection (~~ad~~), ~~(e)~~, ~~(g)(i)~~, or ~~(g)(ii)~~ ~~or (b)(ii)~~ of this Section 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 subsection, 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 subsection. 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 subsection 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. As used in this Section ~~23~~, 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 ~~24~~27. Additional Parties.

Any national securities exchange in addition to the undersigned may become a party to this Agreement by executing a Declaration of Endorsement and Adoption of the Amended and Restated Participant Exchange Agreement, substantially in the form of Exhibit AC hereto.

Section ~~25~~28. Notices.

All notices, requests, demands and other communications hereunder must be in writing and shall be deemed to have been duly given if delivered by email, hand or mailed by first-class registered mail, return receipt requested, postage and registry fees prepaid and addressed ~~as follows:~~

to such (a) ~~If to the Clearing Corporation:~~

~~The Options Clearing Corporation
Suite 2700
200 South Wacker Drive
Chicago, Illinois 60606~~

~~Attention: Secretary~~

(b) ~~If to the CBOE:~~

~~Chicago Board Options Exchange, Incorporated
141 West Jackson Boulevard
Chicago, Illinois 60604~~

~~Attention: Secretary~~

(c) ~~If to AMEX:~~

~~American Stock Exchange, Inc.
86 Trinity Place
New York, New York 10006~~

~~Attention: Secretary~~

(d) ~~If to PHLX:~~

~~Philadelphia Stock Exchange, Inc.
1900 Market Street
Philadelphia, Pennsylvania 19103~~

~~Attention: Secretary~~

(e) ~~If to PSE:~~

~~Pacific Stock Exchange, Inc.
301 Pine Street
San Francisco, California 94104~~

~~Attention: Secretary~~

~~If to any other Participating Exchange, to its~~ address set forth in ~~its~~ each
Exchange's Declaration of Endorsement and Adoption of this Agreement. Addresses may be
changed by notice to OCC in writing ~~signed by the addressee~~.

Section ~~26~~29. 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. ~~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; provided, however, that this~~

(c) This Agreement may not be assigned by any ~~party hereto~~ Exchange
without the prior written consent of ~~the other parties, but~~ OCC (if proposed assignment by an

Exchange) or by OCC without the prior written consent of all Exchanges (if proposed assignment by OCC); 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) OCC; or (ii) an Exchange shall not require the prior written consent of the other parties to this Agreement~~ so long as the successor entity or transferee is qualified under ~~Section 1 of Article VII of the By-Laws of the Clearing Corporation~~ and Rules for participation in the Clearing Corporation. OCC.

(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 purposes 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 all of which together constitute one and the same instrument.

(g) Each Exchange hereby grants to OCC 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 OCC's issuance, clearance, settlement, and investor education services ("Exchange TM License"). The Exchange TM License is coterminous with this term of this Agreement, unless earlier terminated by the Exchange. The Exchange may elect to terminate the Exchange TM License, in its sole discretion, at any time with notice. Upon termination of the Exchange TM License, OCC shall immediately cease using the Marks. THE MARKS ARE LICENSED "AS-IS" AND THE EXCHANGE 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 Exchange from time to time, and shall otherwise conform to the Exchange's trademark usage and notification policies as communicated to OCC in writing. OCC recognizes and agrees that the Exchange is the rightful owner of the Marks and all associated goodwill. OCC 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 Exchange shall have the right to review and approve all use of the Marks by OCC prior to release. OCC hereby grants to each Exchange a non-exclusive, royalty-free, non-transferable (except as provided herein) non-sublicensable license to use OCC's name, tradename, logos, and trademarks (collectively, the "OCC Marks") in connection with each Exchange's issuance, clearance, and settlement activities ("OCC TM License"). The OCC TM License is coterminous with this term of this Agreement, unless earlier terminated by OCC. OCC may elect to terminate the OCC TM License, in its sole discretion, at any time with notice. Upon termination of the OCC TM License, each Exchange shall immediately cease using the OCC Marks. THE OCC MARKS ARE LICENSED "AS-IS" AND OCC DISCLAIMS WITH RESPECT TO THE MARKS ALL INDEMNITIES AND WARRANTIES WHATSOEVER. All uses of the OCC Marks, including within any written materials shall include the appropriate trademark symbol ("®" or "TM") as communicated by OCC from time to time, and shall otherwise conform to OCC's trademark usage and notification policies as communicated to the Exchange in writing. Each Exchange recognizes and agrees that OCC is the rightful owner of the OCC Marks and all associated goodwill. Each Exchange agrees that its use and display of the OCC 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. OCC shall have the right to review and approve all use of the OCC Marks by each Exchange prior to release.

Section 2730. Breach of Agreement — Termination.

OCC may suspend any of its obligations to the Exchange under this Agreement whenever, in OCC's judgment, such suspension is necessary to comply with, or give full effect to, any waiver or suspension of OCC's By-Laws, Rules, policies and procedures, or any other rules issued by OCC, in each case, as permitted by the Suspension of Rules in Emergency Circumstances section of OCC's By-Laws and Rules. OCC shall notify the SEC in accordance with the requirements set forth in the By-Laws and Rules. OCC shall notify each Exchange 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.

If ~~Without limiting OCC's suspension rights set forth in OCC's By-Laws and Rules or in Section 19(f), if~~ an Exchange, by reason of its actions or its failure to act, ~~shall~~may have breached in any material respect any of the following provisions of this Agreement:

- (a) ~~(a)~~ ~~the last two paragraphs of~~ Section ~~2(a)~~1;
- (b) ~~(b)~~ ~~clause (i) of the last paragraph of~~ Section 2(c);
- (c) ~~(c)~~ Section 2(~~e~~d);
- (d) ~~(d)~~ Section ~~3(b)~~4;
- (e) ~~(e)~~ Section ~~3(e)~~7;
- (f) ~~Section 5~~

(f) Section 19; or

(g) ~~(g)~~ the first and ~~fourth~~seventh sentences of Section ~~28~~31(c); ~~or,~~

(h) ~~the first sentence of Section 28(d);~~

and if, as a result of such breach, OCC has a reasonable basis to believe the issuance, clearance, or settlement of Options by ~~the Clearing Corporation~~OCC with respect to transactions effected on such Exchange ~~would~~or OCC's continued performance of services for an Exchange will likely result in a violation by ~~the Clearing Corporation~~OCC of any provision of the Securities Act or the Exchange Act, then ~~the Clearing Corporation~~OCC shall not be obligated to issue, clear, or settle Options with respect to, ~~nor to clear,~~ transactions effected on such Exchange unless and until such breach has been corrected; provided, however, that ~~the Clearing Corporation~~OCC shall obtain Chief Executive Officer approval of such suspension of issuance, clearance, or settlement and shall promptly notify the Exchange of its determination pursuant to the foregoing provisions of this Section not to issue or clear Options with respect to transactions effected on an Exchange, but such determination shall not affect the validity of any ~~previously outstanding Option or any matched trade not involving the issuance of an Option which the Clearing Corporation has previously accepted for clearance nor relieve the Clearing Corporation of its obligations with respect thereto~~Matched Trade accepted by OCC prior to such suspension; 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 ~~of the Clearing Corporation. The Clearing Corporation.~~ The parties shall work together in good faith to seek to minimize the duration of any suspension. OCC shall have no obligation under this Agreement to issue or to clear any Option in respect of an ~~underlying~~

~~security~~Underlying Interest which has been selected by an Exchange in violation of the requirements of Section ~~3~~2 of this Agreement.

~~This Agreement shall terminate forthwith as to any~~OCC shall not be obligated to issue Options with respect to, nor to clear, transactions effected on such Exchange in the event such Exchange ceases to (i) be registered as a national securities exchange ~~or~~under the Exchange Act, (ii) materially abide by any provision of the Securities Act or the Exchange Act, or (iii) be a stockholder or noteholder of OCC, as applicable, unless and until such breach has been corrected. Notwithstanding the foregoing, OCC may terminate this Agreement in the event such Exchange ceases to (i) be registered as a national securities ~~association~~exchange under the Exchange Act, (ii) have effective Options Rules, or (iii) be a stockholder ~~of the Clearing Corporation~~or noteholder of OCC, as applicable, upon the delivery of written notice to the Exchange. Any Exchange may terminate this Agreement as to it by giving ~~the Clearing Corporation~~OCC and each of the other Exchanges at least sixty ~~(60)~~days prior written notice thereof; provided, however, that such Exchange shall to the best of its ability ensure that a secondary market is maintained in each series of Options which it has previously opened for trading until the expiration date of each such series, and it shall be solely liable for and shall indemnify ~~the Clearing Corporation~~OCC and each of the other Exchanges in accordance with Sections ~~2(g)(2), 23~~26(b), 26(d) and ~~28~~31(~~f~~e) hereof for any and all loss, liability, claim, damage and expense whatsoever arising out of or based upon its failure to provide a secondary market in each series of outstanding Options traded on such Exchange. Notwithstanding the termination of this Agreement as to any Exchange, (i) ~~the Clearing Corporation~~OCC shall continue to be obligated with respect to any outstanding Option it shall have issued and with respect to any ~~matched trade not involving the issuance of an Option which it shall have~~Matched Trade accepted ~~for clearance as a result of transactions effected on such Exchange by~~ OCC prior to the date of termination~~and~~, (ii) the obligations of such Exchange to indemnify ~~the Clearing Corporation~~OCC and the other Exchanges pursuant to Sections ~~2(g)(2), 23~~26(b), 26(d) and ~~28~~31(~~f~~e) hereof, and the obligations of ~~the Clearing Corporation~~OCC to indemnify such Exchange pursuant to Sections ~~2(g)(1), 23~~26(a), 26(d) and ~~28~~31(~~f~~e) hereof, shall survive such termination, and (iii) the obligations of OCC under Sections 7(a), 7(b), 7(h), 7(j), 25, 28, and 32 shall survive such termination.

Section 28. ~~Exchange Act~~**31.** ~~Options Disclosure Documents~~**Document.**

(a) Formation of Listed Options Disclosure Committee. ~~Any disclosure material relating to Options in addition to or in lieu of Securities Act registration statements and prospectuses that is now or hereafter required to be furnished to investors pursuant to SEC rules adopted~~**The Options Disclosure Document (“ODD”) required** under the Exchange Act ~~(hereinafter referred to as “Disclosure Documents”)~~ shall be jointly prepared by ~~the Clearing Corporation~~**OCC** and the ~~Participating~~ Exchanges as provided in this Section. For purposes of coordinating the preparation of ~~Disclosure Documents~~**the ODD** and related matters, including the adoption by the ~~Participating~~ Exchanges of uniform rules pertaining to ~~Disclosure Documents~~**the ODD**, there is hereby established a committee of ~~the Clearing Corporation~~**OCC** and the ~~Participating~~ Exchanges, which shall be known as the Listed Options Disclosure Committee (“LOD Committee”), consisting of ~~the Chairman of the Board and~~**an officer of OCC and an authorized representative from** each Exchange ~~Director of the Clearing Corporation.~~

(b) Organization and Administration of LOD Committee. The ~~Chairman of the Board of the Clearing Corporation~~**designated officer of OCC** shall serve as ~~Chairman~~**Chair** of the LOD Committee ~~and shall preside at all meetings. The Chairman shall designate a person to act as Secretary of each meeting. Meetings of the LOD.~~ **Matters of the LOD Committee may be conducted via electronic correspondence. In the event that electronic correspondence is insufficient to address the preparation of ODD or related matters, meetings of the LOD** Committee may be called by the ~~Chairman~~**Chair** or by any two other ~~members of the Committee.~~ ~~The location of meetings shall generally be rotated among the locations of the principal offices of the~~ members of the Committee. Each member of the LOD Committee shall have one vote on all matters that come before the Committee, and all such matters shall be decided by a majority vote, except that the contents of ~~a Disclosure Document~~**the ODD** or portion thereof pertaining to **specific** Options ~~on a particular type of underlying security (an “Options Product” or “Product”)~~ shall be determined by a majority vote of those ~~Participating~~ Exchanges on which such Options are traded; provided, however, that if the vote concerning ~~the contents of a Disclosure Document as to a particular item of~~**a specific ODD** disclosure results in a tie, then as to that ~~item of~~ disclosure the ~~contents~~**final disclosure** shall be ~~as~~ determined by ~~the Clearing Corporation~~**OCC**.

(c) Preparation of Disclosure Documents. ~~Each of the Participating Exchanges agrees to notify the Clearing Corporation of each Options Product traded in its market~~

that is required to be described in a Disclosure Document, and to furnish the Clearing Corporation with copies of all Exchange rules and procedures and other relevant Amendments to the ODD. Each Exchange whose Options are described in the ODD agrees to notify OCC of all material changes it proposes in its Options Rules prior to such changes becoming effective any time it believes that such changes would cause the information contained in the ODD pertaining to each such Options Product in order to enable the Clearing Corporation to prepare an initial draft of a Disclosure Document for that Product. Upon receipt of such notice and information, the Clearing Corporation, as promptly as practicable, shall prepare a draft Disclosure Document describing that Options Product and shall circulate the same for review to all other members of the LOD Committee. A single Disclosure Document may describe a single Options Product (traded on one or more Exchanges) or it may describe several different Options Products, as determined by the LOD Committee. Each Participating its Options to be incomplete or inaccurate in any material respect causing the ODD to be misleading. If, either as a result of information it receives from an Exchange or for any other reason OCC determines that an ODD amendment is necessary, it shall promptly prepare a draft amendment. OCC will circulate the draft ODD amendment to the Exchange proposing such changes. The Exchange shall provide additional modifications to the draft ODD amendment if reasonable and appropriate. Once the Exchange agrees to the language in the ODD amendment as drafted, OCC will provide the draft ODD amendment to the SEC for initial review. In response to any input received by the SEC, OCC will work with such Exchange to arrive at final ODD language that is acceptable to the SEC. OCC will circulate the draft ODD amendment containing the final ODD language to all members of the LOD Committee prior to final submission to the SEC. Each Exchange whose Options Products are described in a draft Disclosure Document ODD amendment shall advise the Clearing Corporation OCC as to the completeness and accuracy of the Disclosure Document draft content insofar as it pertains to that Exchange, and its Products Options, and each such Exchange may request that specific disclosure concerning its rules, procedures or Products Options be included in the Disclosure Document ODD by furnishing the Clearing Corporation OCC with a written statement of such requested disclosure. The Clearing Corporation and proposed disclosure language. OCC shall coordinate subsequent communications with the SEC concerning each Disclosure Document, without limiting the right of any Exchange to the ODD and final submission of the ODD amendment. Any Exchange may communicate directly with

the SEC on any issues that might arise. ~~All Disclosure Documents shall be identified as having been jointly prepared by the Clearing Corporation and those Participating Exchanges whose Options Products are described therein~~ pertaining to the ODD.

(d) ~~Amendments to Disclosure Documents.~~ Each of the Participating Exchanges whose Options Products are described in one or more Disclosure Documents agrees to furnish the Clearing Corporation with copies of all material changes it proposes in its rules or procedures, relating to Options prior to such changes becoming effective, and to notify the Clearing Corporation promptly at any time it believes that the information contained in a Disclosure Document pertaining to its Options Products is incomplete or inaccurate in any material respect. If, either as a result of information it receives from an Exchange or for any other reason, the Clearing Corporation determines that one or more Disclosure Documents require amendment, it shall promptly prepare an initial draft of the amendment and circulate the same for review to all other members of the LOD Committee.

(e) Costs and Expenses. ~~The Clearing Corporation~~ OCC agrees to pay all costs and expenses (other than ~~the Participating Exchanges' each Exchange's~~ attorneys' fees and other costs incurred by the ~~Participating Exchanges~~ in reviewing drafts of ~~Disclosure Documents~~ ODD content or drafting portions thereof) incident to the preparation, printing, and distribution of ~~Disclosure Documents~~ the ODD, including any costs associated with obtaining necessary governmental approvals thereof. ~~The Clearing Corporation shall also pay all costs incurred in connection with the meetings of the LOD Committee, including the travel costs of Committee members.~~ ~~The Clearing Corporation~~ OCC may charge a fee for copies of ~~Disclosure Documents~~ the ODD sufficient to permit ~~the Clearing Corporation~~ OCC to recover its costs incurred pursuant to this paragraph.

(e) Indemnification.

(i) By OCC. OCC agrees to indemnify and hold harmless each Exchange, its governors, directors and officers and each person, if any, who controls such Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all loss, liability, claim, damage and expense

whatsoever arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the ODD (or any amendment thereto or supplement thereof) or arising out of or based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading. The foregoing shall not cover any such loss, liability, claim, damage or expense, however, (i) arising out of or based upon an untrue statement or alleged untrue statement of a material fact contained in information furnished in writing by any Exchange to OCC expressly for use with reference to such Exchange in the ODD (or any amendment thereto or supplement thereof), or (ii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact in connection with such information required to be stated in the ODD (or amendment thereto or supplement thereof) or necessary to make such information not misleading, or (iii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact concerning such Exchange or information contained in the ODD pertaining to Options traded by such Exchange required to be stated in the ODD (or any amendment thereto or supplement thereof) or necessary to make the information included therein not misleading. This indemnity shall be in addition to any liability which OCC may otherwise have.

(ii) (f) ~~Indemnification.~~ The provisions contained in Section 2(g) of this Agreement governing indemnification of the Participating Exchanges by the Clearing Corporation, indemnification of the Clearing Corporation by the Participating Exchanges, and indemnification among the Participating Exchanges, shall apply to information contained in or omissions or alleged omissions from Disclosure Documents to the same extent as to information, omissions, or alleged omissions in registration statements and prospectuses of the Clearing Corporation, except that a ParticipatingBy the Exchanges. Each Exchange agrees, severally and not jointly, to indemnify and hold harmless OCC, its directors and officers and to indemnify and hold harmless each other participating Exchange, its governors, directors and officers and each person, if any, who controls any such other participating Exchange within this meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all loss, liability, claim, damage and expense whatsoever (i) arising out of or based upon any

untrue statement or alleged untrue statement of a material fact contained in information furnished in writing by such Exchange to OCC expressly for use with reference to such Exchange or the Options traded on such Exchange in the ODD (or amendment thereto or supplement thereof), or (ii) arising out of or based upon the omission or alleged omission by such Exchange to state a material fact in connection with such information required to be stated therein or necessary to make such information not misleading, or (iii) arising out of or based upon any omission or alleged omission by such Exchange to state a material fact concerning such Exchange or the Options traded on such Exchange required to be stated in the ODD (or any amendment thereto or supplement thereof) or necessary to make the information provided by the Exchange included therein not misleading. This indemnity shall be in addition to any liability which the Exchanges may otherwise have. Notwithstanding the foregoing, an Exchange shall not be liable to indemnify ~~the Clearing Corporation~~OCC or the other ~~Participating~~participating Exchanges on account of the omission from ~~a Disclosure Document~~the ODD of information that such ~~Participating~~ Exchange requested in writing be included in the ~~Disclosure Document~~ODD. As to any such omitted information, the ~~other Participating~~ Exchange ~~or Exchanges~~(s) responsible for the omission of the requested disclosure (and ~~the Clearing Corporation~~OCC, to the extent it may have exercised its tie-breaking authority under subsection (b) above to approve the omission) shall indemnify such ~~Participating Exchange~~. ~~As used in this paragraph (f) with respect to an indemnified party, the term "Clearing Corporation" shall include the Clearing Corporation, its directors and officers, and the term "Participating Exchange" shall include such Exchange, its governors, directors and officers and each person, if any, who controls such Exchange within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.~~Exchange.

(iii) Notice; Control of Action Etc. Promptly after receipt by an indemnified party under subsection (e)(i) or (e)(ii) of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify will not relieve the indemnifying party from any liability which it may have to any indemnified party except for liabilities that it would not have incurred but for such omission. 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 subparagraph 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.

Section 29. ~~Termination of 1975 Agreement~~**32.** 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 by 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 Receiving Party. Subject to Section 7 and subsections (d), (e) and (f) below, the receiving party (i) will 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) shall not use the Confidential Information of the disclosing party for any purpose other than fulfilling its obligations or exercising its rights under this Agreement or its internal business

purposes; and (iii) shall not disclose Confidential Information received from a disclosing party to any person or entity, except its and its affiliates' 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 ("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. This subsection shall not affect the rights granted to OCC in Section 7.

(d) Limitations of Obligations. The receiving party's obligations hereunder shall not extend to (i) information that is already in the possession of the receiving party or its Authorized Persons 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 receiving party or its Authorized Persons by a third party, unless such party is known by the receiving party to be under a duty of non-disclosure; (iv) information which the receiving party or its Authorized Persons develop independently of the disclosure; or (v) incorporating Confidential Information relating to the trades, positions and/or financial condition of the disclosing party or members of the disclosing party into statistical information related to groups of unnamed members of the receiving party or members of the receiving party generally.

(e) Market Data. OCC shall not disclose data including Exchange Data that directly or indirectly identifies Exchange members except: (i) when OCC has received the Exchange's prior written consent; (ii) when permitted by OCC By-Laws and Rules or required by law, regulation, or government rule; or (iii) as a part of post-trade information provided to clearing members who provide Options trading information to OCC with appropriate attribution to the disclosing party.

(f) Right to Disclose Confidential Information in Certain Circumstances. Notwithstanding any other provision of this Agreement, the Options Rules, or the By-Laws and Rules, the receiving party may disclose Confidential Information (i) to a government agency with jurisdiction over the receiving party, (ii) in the course of fulfilling any of the receiving party's regulatory responsibilities, including responsibilities to share information with other

regulatory or self-regulatory bodies, or (iii) subject to the following sentence, in response to a subpoena or other validly issued judicial process. In the event that the receiving party receives such a subpoena or other validly issued judicial process requesting disclosure of Confidential Information received from a disclosing party, the receiving party 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 receiving party 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.

(g) Equitable Relief. The receiving party 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 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 receiving party, the disclosing party shall be entitled to seek, in addition to such other legal or equitable remedies which might be available, to the remedies of injunction, specific performance and other equitable relief in any court of competent jurisdiction against the threatened material breach or continuation of any such material breach without showing or providing any actual damages sustained by it.

(h) The obligations of the receiving party hereunder to any disclosing party shall not restrict the receiving party from providing services to the other parties, provided that the receiving party shall neither make use of the Confidential Information of such disclosing party in connection with such other services except as permitted herein, nor otherwise violate any of the provisions of this Section. Mere possession of Confidential Information by the receiving party shall not be deemed to constitute “use” for purposes of this Section.

{Signatures follow on the next page}

~~The 1975 Agreement is hereby terminated, effective as of the date of this Agreement.
IT IS FURTHER AGREED that this Agreement may be executed in several
counterparts, each of which shall be deemed an original, but all of which together shall constitute
one and the same instrument.~~

IN WITNESS WHEREOF, the parties hereto have duly executed this
Agreement on the day first above written.

THE OPTIONS CLEARING CORPORATION

~~By:_____~~

By:_____

BOX OPTIONS EXCHANGE LLC

By:_____

CBOE BZX EXCHANGE, INC.

By:_____

CBOE EXCHANGE, INC.

~~NYSE MKT LLC~~

By: _____

~~NASDAQ OMX BX~~CBOE C2 EXCHANGE, INC.

~~By:_____~~

By:_____

~~CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED~~

~~By:~~ _____

CBOE EDGX EXCHANGE, INC.

By: _____

MIAX EMERALD, LLC

By: _____

MIAMI INTERNATIONAL SECURITIES
EXCHANGE, LLC

~~By:~~ _____

By: _____

~~NYSE ARCA, INC.~~

~~By:~~ _____

MIAX PEARL, LLC

By: _____

NASDAQ BX, INC.

By: _____

NASDAQ GEMX, LLC

By: _____

NASDAQ ISE, LLC

By: _____

NASDAQ ~~OMX PHLX~~ MRX, LLC

~~By:~~ _____

By: _____

THE NASDAQ OPTIONS MARKET LLC

By: _____

NASDAQ PHLX LLC

By: _____

NYSE AMERICAN OPTIONS

By: _____

NYSE ARCA OPTIONS

By: _____

Exhibit A

Daily Values

Each Exchange shall provide or authorize the transfer to OCC on each Trading Day for an Option listed on the Exchange (W) the real-time values of the Underlying Interest of the Option, (X) real-time values of the Option, (Y) the daily value of the Underlying Interest of the Option, and (Z) the daily value of such Option ((W), (X), (Y), and (Z) collectively, the “Daily Values Set”). The parties acknowledge that W and X are currently provided via OCC agreements with the administrators of the Securities Information Processors or their redistributors.

(i) Options on an Underlying Interest that is Common Stock, Exchange Traded Fund, American Depositary Receipt, American Depositary Share, or Exchange Traded Note. For Options on an Underlying Interest that is common stock, exchange traded fund, American Depositary Receipt, American Depositary Share, or exchange traded note, the Exchange shall authorize the transfer of the Daily Values Set from the Reporting Authority to OCC at no charge to OCC.

(ii) Options on an Underlying Interest that is not Common Stock, Exchange Traded Fund, American Depositary Receipt, American Depositary Share, or Exchange Traded Note. Except if inaccurate or unavailable, the Exchange shall (i) provide the Daily Values Set of the Underlying Interest for Options where the Underlying Interest is not common stock, exchange traded fund, or exchange traded note directly to OCC at such time and in the manner and format reasonably specified by OCC and (ii) provide or authorize the transfer of the Daily Values Set of the Option from the Reporting Authority to OCC at no charge to OCC.

Final Settlement Value

Each Exchange shall provide or authorize the transfer of the final settlement value of the Underlying Interest of all expiring Options listed by the Exchange (the “Final Settlement Value”) to OCC in the following manner.

(i) Options on an Underlying Interest that is Common Stock, Exchange Traded Fund, American Depositary Receipt, American Depositary Share, or Exchange Traded Note. For Options on an Underlying Interest that is common stock, an exchange traded fund, American Depositary Receipt, American Depositary Share, or an exchange traded note, the Exchange shall authorize the transfer of the Final Settlement Value for expiring Options directly to OCC from the Reporting Authority at no charge to OCC.

(ii) Options on an Underlying Interest that is not Common Stock, Exchange Traded Fund, American Depositary Receipt, American Depositary Share, or Exchange Traded Note. Except if inaccurate or unavailable, the Exchange shall provide such Final Settlement Values where the Underlying Interest is not common stock, an exchange traded fund, American Depositary Receipt, American Depositary Share, or an exchange traded note directly to OCC from the Reporting Authority at such time and in the manner and format reasonably specified by OCC at no charge to OCC. In the event that the final settlement amount is inaccurate or unavailable, the Exchange(s) on which the affected series of the Option is open for trading will determine the final settlement amount for expiring Options in accordance with the By-Laws and Rules.

Exhibit B

Licensed Data

The Licensed Data shall be outlined on the Schedule of Fees posted theocc.com under Clearing Member, Ancillary Services and Non-Clearing Member.

Exhibit C**DECLARATION OF ENDORSEMENT AND ADOPTION
OF RESTATED PARTICIPANT EXCHANGE AGREEMENT**

The undersigned, in order to induce The Options Clearing Corporation, a Delaware corporation (the “Clearing Corporation”), to approve the admission of the undersigned as a ~~Participant~~participant Exchange of the Clearing Corporation, by its execution and delivery of this Declaration of Endorsement and Adoption of Restated Participant Exchange Agreement hereby assents to and agrees, as of the date of execution hereof as shown below, to be bound by all of the provisions of the Amended Restated Participant Exchange Agreement ~~dated as of July 26, 1983~~ among the Clearing Corporation and the other parties therein, a copy of which is attached as Exhibit 1 hereto.

Dated: _____

[Name and Address of Exchange]

By: _____

[Title]

~~EXHIBIT A~~