



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103106; File No. SR-OCC-2025-006]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change 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.**

May 22, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 13, 2025, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change is designed to replace the current Restated Participant Exchange Agreement (“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intervening amendments and changes to relevant law and/or OCC By-Laws and Rules, and (3) eliminate provisions that are out-of-date.

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

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

The proposed changes are included as Exhibit 5 to File No. SR-OCC-2025-006.

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.<sup>3</sup>

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

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

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

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. 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 agreement was last amended in 2007, and 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.

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<sup>3</sup> 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>.

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.

1. Purpose

Pursuant to Article VIIA, Section 4 and Article VIIB, Section 4 of the OCC By-Laws,<sup>4</sup> prior to clearing through OCC, each Exchange must enter into an agreement with OCC and each of the other Exchanges.<sup>5</sup> This agreement is referred to as the “participant exchange agreement” within 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

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<sup>4</sup> See note 1 *supra*.

<sup>5</sup> 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 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”).

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 Commission's 2016 covered clearing agency rules ("CCA's"),<sup>6</sup> 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 link<sup>7</sup> the covered clearing agency establishes with one or more . . . trading markets.<sup>8</sup>

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.

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<sup>6</sup> 17 CFR 240.17Ad-22(e).

<sup>7</sup> 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."

<sup>8</sup> 17 C.F.R. § 240.17Ad-22(e)(20).

This proposed rule change would amend and update the Existing RPEA to (1) reflect current, enhanced, or implied but 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.<sup>9</sup>

#### 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.

#### 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.<sup>10</sup> In addition, the provisions in Section 2(g) of

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<sup>9</sup> See note 3 *supra*.

<sup>10</sup> 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

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 Act<sup>11</sup>. Section 18, as amended, exempts “covered securities” from state regulation.<sup>12</sup> The term “covered securities” includes listed options.<sup>13</sup>

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.<sup>14</sup> 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

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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).

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C 77r(a).

<sup>13</sup> 15 U.S.C 77r(b)(1).

<sup>14</sup> 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>;

permitted Underlying Interests: U.S. Treasury bonds, notes, or bills; top tier bank 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 Depository Receipts; American Depository 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.<sup>15</sup> 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.

### 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,<sup>16</sup> is

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<sup>15</sup> 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.

<sup>16</sup> 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.

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.<sup>17</sup> 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,”

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<sup>17</sup> 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)

“underlying securities,” 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."<sup>18</sup> 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

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<sup>18</sup> 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.

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 Member 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.<sup>19</sup>

#### 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

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<sup>19</sup> 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 capability, trade premiums were settled by the morning of the next business day. Consequently, payment of premiums was not a prerequisite to trade acceptance.

“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.<sup>20</sup> 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 propose 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.<sup>21</sup>

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<sup>20</sup> See OCC Information Memo #19050.

<sup>21</sup> 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.”<sup>22</sup> 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

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<sup>22</sup> 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.

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.”

#### 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.<sup>23</sup> 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.

### Section 18 – Financials

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<sup>23</sup> 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.

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.<sup>24</sup> 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. 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

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<sup>24</sup> 17 C.F.R. § 242.1000 – 242.1007.

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.<sup>25</sup> 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

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<sup>25</sup> 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.

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.

#### 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.<sup>26</sup>

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

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<sup>26</sup> The Existing RPEA already allows for assignment without written consent in the case of a corporate reorganization or sale of an Exchange.

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.<sup>27</sup> 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.

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

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<sup>27</sup> 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.

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.<sup>28</sup> 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.<sup>29</sup> OCC also 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.<sup>30</sup>

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<sup>29</sup> 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.

<sup>30</sup> 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.

Proposed changes to Section 31 also include removal of the statement that OCC will pay costs associated with the meeting of the LODC. Such a provision is out of date because the LODC 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 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.

#### 2. Statutory Basis

OCC believes the proposed changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.<sup>31</sup> 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

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<sup>31</sup> 15 U.S.C. 78q-1(B)(3)(F).

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 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.

By adopting the New RPEA, the proposed changes would identify, monitor, and manage in an up-to-date manner the risks related to links OCC established with the Exchanges in accordance with 17A(b)(3)(F)<sup>32</sup> of the Exchange Act and Rule 17Ad-22(e)(20) thereunder.<sup>33</sup>

The proposed changes would (i) eliminate provisions that are out of date or update provisions to reflect current industry terminology and/or (ii) 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. The proposed changes serving these purposes would: state that national securities exchanges would not become parties to the New RPEA; update the permitted Underlying Interests on which options could be listed; provide OCC with the authority to disapprove for clearing options that materially impact OCC's risk profile; remove a specified time by which Exchanges may add new series; state that each Exchange is responsible for determining units of trading and communicating this information to OCC and that deviation from the standard unit of trading may not be

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<sup>32</sup> Id.

<sup>33</sup> 17 CFR 240.17Ad-22(e)(20).

permitted; remove the requirement that Exchanges make product lists available; establish conditions for Exchanges to delist options; establish requirements for Exchanges in the listing of and the determination of the settlement process for singly listed options; memorialize the manner in which Exchanges make Exchange Data available to OCC and how OCC may use and redistribute Exchange Data, address intellectual property rights, address changes to Exchange Data, and grant a license to OCC to use the Exchange Data; remove provisions related to OCC performing comparison services; create the defined terms “Matched Trade” and “Trading Day”; require OCC to provide notice for any change to the time by which Exchanges must submit comparisons; and remove the prerequisite that payment of premiums be made prior to OCC’s acceptance of trades.

Additional changes serving these two purposes would: state that OCC can calculate position limits at the request of the Exchanges; note that the general limitation on OCC from opening or restricting trading would not limit OCC’s other rights under the agreement; include references to “Regulatory Services Agreement” for Exchanges that outsource surveillance; remove the obligation for Exchanges to notify OCC when a Clearing Member is not in compliance with OCC’s financial standards; add that Exchanges will notify OCC when a Clearing Member must be reported to SIPC or “any other resolution authority”; remove in person document delivery requirements; remove the requirement that OCC maintain an office in every city where Exchanges are located; remove outdated systems scalability reporting and response protocols; require the Exchanges to provide supporting materials, data, and reports needed to support clearing and to make Exchange representatives available to discuss data and information needs; instead of best efforts, require OCC to use commercially reasonable efforts to maintain capacity and expand operations to clear new options; require the Exchanges to comply with OCC’s operational specifications for options and require advance notice to change the specifications; establish financial reporting requirements for exchanges and related

confidentiality provisions; strengthen information security; require the parties to take commercially reasonable steps to comply with cybersecurity regulations; allow OCC to suspend its obligations to an Exchange if an Exchange disruption materially impacts OCC; require Exchanges to accommodate OCC's connectivity requirements and provide advance notice of any changes; use industry terminology to describe options as cash settled or physically settled; remove requirements related to providing local banking information; allow notices to be delivered via email; clarify the assignment provisions; grant OCC a license to use the Exchanges' trademarks and grant the Exchanges a license to use OCC trademarks; give OCC the right to suspend its obligations to an Exchange to comply with OCC's Rules or By-Laws, or the Securities Act or Exchange Act; provide that both OCC and the Exchanges are responsible for preparing the ODD and would provide for mutual indemnification for the contents of the ODD; clarify and describe the administration of the LOD Committee; and add confidentiality provisions with respect to both OCC's and the Exchanges' information.

The proposed changes also would align the agreement with current law and/or OCC's By-Laws and Rules by: changing "expiration months" to "expiration dates" to reflect the increased number of expiration cycles; requiring Exchanges to provide values for underlying options and to determine Exercise Settlement Values in alignment with OCC By-Laws; changing the use of "Non-Discrimination" to "No Unfair Discrimination," along with By-Laws references; requiring Exchanges to provide materials for Clearing Members that also are members of the Exchange and change the time requirement for Exchange submissions of materials and reporting materials; and change OCC's designated official for financial purposes to the Financial Risk Management officer.

Lastly, the proposed changes would 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. As part of the New RPEA, OCC and the Exchanges would: agree to remain in compliance with the Exchange Act and each party's own rules; the Exchanges would agree to list options in accordance with their rules and agree that listings must be addressed in the ODD; agree to submit new products to the OCC in accordance with the OLPP; and allow for exercises to be restricted in the case of a government mandated restrictions.

OCC believes amending the Existing RPEA to reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, align the agreement with current law and/or OCC's By-Laws and Rules, eliminate provisions that are out of date or update provisions to reflect current industry terminology, and 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 will ensure the parties rights and obligations are clear and well documented. This, in turn, will serve the public interest by continuing to promote the prompt and accurate clearance and settlement of transactions because both OCC and the Exchanges will have a clear understanding of their rights and obligations in the agreement.

OCC also believes that the proposed changes are consistent with SEC rules that apply to OCC as a covered clearing agency. Specifically, SEC Rule 17Ad-22(e)(20) requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link that OCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.<sup>34</sup> As described in OCC's publicly available disclosure framework for financial market infrastructures, OCC maintains links with the Exchanges that are

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<sup>34</sup> 17 CFR 240.17Ad-22(e)(20).

qualified to participate at OCC. As described above, the Existing RPEA manages the risks associated with OCC's dealings with the Exchanges by establishing the terms and conditions under which OCC will provide clearing services to the Exchanges. The proposed changes to the Existing RPEA are intended to strengthen OCC's links to the Exchanges by reflecting current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, aligning the agreement with current law and/or OCC's By-Laws and Rules, eliminating provisions that are out of date or update provisions to reflect current industry terminology, and acknowledging 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.

For these reasons, OCC believes the proposed rule change is consistent with applicable provisions of Section 17A of the Exchange Act and Rule 17Ad-22 thereunder.

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

Section 17A(b)(3)(I) of the Act<sup>35</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. OCC does not believe that the proposal would impose any burden on competition.<sup>36</sup> The New RPEA applies to Equity and Non-Equity Exchanges alike in satisfaction of the requirements in OCC's By-Laws. Accordingly, OCC does not believe that the New RPEA imposes any added burdens on competition on any one Exchange over another.

The primary purpose of the proposed rule change is to (a) reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, (b) align the agreement with current law and/or OCC's

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<sup>35</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>36</sup> Id.

By-Laws and 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. Because the proposed rule change is intended to reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, OCC anticipates that most, if not all, of the proposed changes related to operational and business practices between OCC and the Exchanges already are in effect, and therefore, will not be overly burdensome on the Exchanges.

The proposed rule change also is intended to align the New RPEA with current law and/or OCC's By-Laws and Rules. OCC anticipates that the Exchanges also are operating in alignment with current law and/or OCC's By-Laws and Rules, and therefore, changes related to this purpose also should not be overly burdensome on the Exchanges.

The proposed rule change would eliminate provisions that are out of date or update provisions to reflect current industry terminology. Changes related to this purpose are intended to ensure that the parties have engaged in good practices regarding principles related to contracting and that the agreement between OCC and the Exchanges is clear and eliminates confusion around the parties' rights and responsibilities.

Finally, the proposed rule change acknowledges the legal and regulatory landscape of the options industry that affects the interactions between OCC and the Exchanges by recognizing such factors within the agreement. As with the changes related to the other purposes described above, OCC anticipates that changes intended to acknowledge the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges serve to memorialize existing industry conditions and practices between the parties.

The proposed rule change would not affect any individual participant Exchange's current rights beyond the description provided above or ability to access OCC services or disadvantage or favor any particular Exchange in relationship to another. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

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

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

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

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

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

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

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

IV. *Solicitation of Comments*

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-OCC-2025-006 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-OCC-2025-006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-OCC-2025-006 and

should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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