



## **Code of Conduct for OCC Directors**

### **I. INTRODUCTION**

The Code of Conduct for OCC Directors (the “Code”) applies to all directors of the Options Clearing Corporation (“OCC”) and describes the duties and responsibilities of directors, provides guidance on ethical issues, establishes mechanisms to report unethical conduct, and helps foster a culture of honesty and accountability. In addition to this Code, directors must comply with the OCC Board of Directors Charter and Corporate Governance Principles (the “Board of Directors Charter”).

Directors are encouraged to bring questions about this Code or circumstances that may implicate a provision of this Code to the attention of OCC’s General Counsel.

### **II. GENERAL**

Key responsibilities of individual directors under this Code include:

- Acting with due care honestly, in good faith, and in the best interests of OCC;
- Following guidelines agreed on by the Board of Directors (“Board”) regarding how it will govern and conduct itself;
- Not speaking as an individual on behalf of the Board unless authorized to do so;
- Complying with all applicable laws, regulations, and OCC policies;
- Appropriately addressing actual, potential, or apparent conflicts of interest;
- Seeking guidance when necessary; and
- Promptly reporting any violations of this Code to the Chairman or to OCC’s General Counsel.

OCC is subject to comprehensive regulation and supervision by the Securities and Exchange Commission (with respect to its clearing agency registration) and regulation by the Commodity Futures Trading Commission (with respect to its derivatives clearing organization registration). As a systemically important financial market utility (“SIFMU”), OCC is also subject to supervision by the Board of Governors of the Federal Reserve System under Title VIII of the Dodd-Frank Act. As a SIFMU, OCC and the Board are expected by OCC’s regulators to have robust policies and procedures that help promote sound governance, operations, and risk management practices, including those identified in the



## Code of Conduct for OCC Directors

Securities and Exchange Commission’s Standards for Covered Clearing Agencies (“Standards”). The Standards require, with respect to governance, “... governance arrangements that are: clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the [Exchange Act] and the objectives of owners and participants; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of participants’ customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.” OCC’s Board shall be mindful of the public interest as it fulfills its duties by complying with the obligations imposed upon the Board by the Delaware General Corporation Law, the federal securities laws and regulations (including Section 17A of the Securities Exchange Act of 1934 and the regulations promulgated thereunder) and the other international, federal, and state laws and regulations applicable to OCC.

Market integrity and market participants are critically dependent upon the risk management, clearing and settlement services provided by OCC. The Board is responsible for the stewardship of OCC, assuring that it continues to have the critical capabilities needed to meet its regulatory obligations and to achieve its business objectives. Individual directors can be held accountable by regulators (and others) for their performance as directors.<sup>1</sup>

### **III. FAIR REPRESENTATION REQUIREMENT**

Applicable law requires that clearing members be fairly represented, both in the selection of directors and in the administration of OCC’s affairs. Accordingly, Member Directors are eligible to hold nine of the seats on OCC’s Board. The other Board seats are held by OCC’s Exchanges Directors, Public Directors, and one Management Director.

Each director is obligated as a matter of corporate law to act with due care, in good faith, and in the best interests of OCC. This duty applies to all directors, including each director elected to the Board because of his or her affiliation with a clearing member or an equity exchange.

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<sup>1</sup> For example, under Section 19(h) of the Securities Exchange Act, a clearing agency director may be removed from office or censured for willful violation of that Act or the rules and regulations thereunder or OCC’s rules, for willful abuse of his or her authority, or for failure, without reasonable justification or excuse, to enforce a participant’s compliance with clearing agency rules.



# Code of Conduct for OCC Directors

## **IV. DUTY OF CARE**

Each director has a responsibility to be reasonably well-informed about the activities of OCC and to exercise independent judgment on all decisions. OCC management is the principal source of such information. Generally, regular meetings of the OCC Board and Board committees are scheduled well in advance and management provides briefing materials to the Board and Board committees before their scheduled meetings. In carrying out their responsibilities, directors may reasonably rely upon information in the briefing materials and reports provided by management, a Board committee, OCC's independent auditors, and other advisors retained by OCC, the Board, or a Board committee. Each director should read the briefing materials and is encouraged to contact management in advance of the meeting if additional information is needed.

Directors are expected to regularly attend meetings of the Board and of the committees on which the director sits in person. Attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is permissible in the exceptional case where the director cannot attend in person. Nevertheless, such attendance is generally discouraged because the Board or Board committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions. The Chairman may request the voluntary resignation of a person who regularly misses meetings or who regularly participates in meetings that are scheduled for in-person attendance only by telephone or videoconference. Additionally, the Governance and Nominating Committee shall consider a director's OCC Board and Board committee attendance record in determining whether to re-nominate such director for election to the Board.

## **V. DUTY OF LOYALTY**

The duty of loyalty requires OCC directors to act in good faith and in the best interests of OCC and not in their own interests or the interests of another entity or person (including, without limitation, in the interests of their employer). The duty of loyalty requires that directors strictly avoid using OCC assets or opportunities for their own benefit or the benefit of others if such use is not also in OCC's best interests.

## **VI. CONFLICT OF INTEREST POLICY AND RELATED PARTY TRANSACTIONS POLICY**

Conflicts between the best interests of OCC and the direct or indirect personal or financial interests of a director may arise from time to time. Depending on the circumstances, transactions or arrangements involving such conflicts of interest



## Code of Conduct for OCC Directors

may or may not be in the best interests of OCC. In all instances, however, it is important that actual, potential, or apparent conflicts of interest (referred to herein as “conflicts of interest”) be handled with care. This Code –specifically, the Conflict of Interest Policy and the separate Related Party Transactions Policy -- is designed to assist directors and the Board in identifying conflicts and in handling them appropriately.

Neither OCC nor any OCC director shall enter into any transaction or arrangement that involves a conflict of interest, except in compliance with the Related Party Transactions Policy and this Conflict of Interest Policy.

### **A. IDENTIFYING A CONFLICT OF INTEREST**

A conflict of interest is present whenever the interests of OCC compete with the interests of a director, the director’s employer, or any other party with which a director is affiliated, or otherwise whenever a director’s corporate or personal interests are such that they could be reasonably viewed as affecting the director’s objectivity in fulfilling his or her duties to OCC.

While it is not possible to anticipate all possible conflict situations, conflicts of interest typically arise whenever a director, an immediate family member or other close personal associate of a director, directly or through a position at an “affiliated firm” (as a director, officer, employee or beneficial owner of 1% or more of the firm’s equity interests) has an interest in a potential transaction or activity with OCC or in a transaction or other activity that competes with a transaction or activity which OCC is pursuing or conducting.

Given that some directors are elected because of their affiliation with a clearing member or an equity exchange, certain conflicts that relate to OCC Board decisions regarding the administration of OCC affairs, especially with respect to OCC’s relationships with clearing members and/or equity exchanges, are inherent and cannot be avoided. Often, the conflicting interest in the matter is generally shared among clearing member directors or among equity exchange directors.

Situations involving conflicts of interest may also include instances in which a director, an immediate family member or other close personal associate of a director, or an affiliated firm has a direct or indirect personal or financial interest in (or adverse to) an applicant being considered for membership or a clearing member faced with disciplinary action, suspension, or limitation of activities, or a situation where a director has participated in other activities or failed to disclose any circumstances that may, in fact or in appearance, make it difficult for the director to exercise independence, objective judgment, or otherwise perform effectively. When entering into business relationships, directors should consider



## Code of Conduct for OCC Directors

whether a conflict of interest may arise that could be avoided. Public Directors should avoid entering into business relationships, including direct relationships with other directors that could give rise to conflicts of interest or could be perceived to undermine their objectivity or independence. (Relationships between directors should also be considered in the Board's determination with respect to independence assessments, as provided in the Board of Directors Charter.) This limitation on direct business relationships does not extend to arms-length relationships with an entity with which another director is affiliated as an employee, officer, or director (for example, through having a brokerage or banking account at an entity that employs a director) that the Governance and Nominating Committee determines poses an immaterial risk of conflict.

### **B. DISCLOSURE OF A CONFLICT OF INTEREST**

Conflict identification and analysis can be difficult and, therefore, directors are at all times expected to err on the side of caution and immediately bring to the attention of the Chairman and OCC's General Counsel any matters that may involve conflicts of interest or be reasonably perceived by others to raise questions about potential conflicts even if the director does not believe that an actual conflict exists. In addition to disclosing relationships that may arise with OCC due to business affiliations, directors should disclose business and family relationships with OCC's officers, employees and other directors that could give rise to a conflict or the potential perception of a conflict.

In addition, each director shall complete an annual Questionnaire for Directors, disclosing relationships that may give rise to conflicts of interest. Responses to the questionnaires shall be reviewed by OCC's General Counsel and any issues shall be discussed with the Chairman. Directors shall also promptly disclose for review any relevant change in circumstances, such as a change in employment or acceptance of a position on another board that could give rise to conflicts of interest.

### **C. EVALUATION AND RESOLUTION OF A CONFLICT OF INTEREST**

OCC's General Counsel and the Chairman shall evaluate conflict disclosures and make other necessary inquiries to determine the extent and nature of any conflict of interest.

It is the general policy of the OCC Board that any director having a conflict of interest in a matter to be acted upon by the Board or a Board committee shall disclose the conflict to the Chairman and OCC's General Counsel prior to the discussion or presentation of such matter, where possible in advance of the meeting. The director should consider whether it is advisable under the



## Code of Conduct for OCC Directors

circumstances to recuse himself or herself from the discussion and/or vote and shall recuse himself or herself if requested by the Chair of the meeting.

The Governance and Nominating Committee shall consider all facts and, in consultation with the Chairman and OCC's General Counsel, shall resolve any questions or disputes regarding a conflict of interest including any question or dispute about whether recusal is appropriate. In addition, the Governance and Nominating Committee has the authority to raise and address any issue related to the identity and handling of a conflict of interest involving a member of the Board whether or not that issue has been raised by the Chairman, OCC's General Counsel, or a director.

OCC shall not enter into or continue to proceed with a transaction giving rise to a conflict of interest unless the transaction has been approved or ratified by the Governance and Nominating Committee. OCC may enter into a transaction or other arrangement, and the Board may otherwise approve any other matter that requires Board approval, in the case where a director has a conflict of interest so long as the nature and relevant facts concerning the conflict that are known at the time are disclosed at a duly held meeting of the Board or Board committee at which a quorum is present (including for purposes of determining whether a quorum is present those directors who have a conflict of interest) and a majority of directors who have no conflict of interest in the transaction or arrangement approve the transaction, arrangement, or other matter. The existence of the conflict and the relevant facts reviewed related thereto, including, for example, any financial interest, as well as the voting processes used to manage the conflict, shall be reflected in the minutes.

## **VII. DUTY OF CONFIDENTIALITY**

As fiduciaries, all OCC directors are required to keep in strict confidence the information they receive in their capacity as directors unless they have express authority from OCC to do otherwise. Before sharing any materials with colleagues within their firm, directors should consider potential harm to OCC from sharing the information, including whether sharing the information presents a risk that the attorney-client privilege may be waived, even where the document is not marked "Privileged and Confidential."

When sharing any information with colleagues at their firm in accordance with Section 7 of this Code, directors should use reasonable care to protect the information from further dissemination and disclosure by: (i) limiting to the smallest number possible the persons with whom they share the information; (ii) only sharing the information with colleagues in their firm who are subject to a duty, due to either an express agreement or a firm policy, to keep the information



## Code of Conduct for OCC Directors

confidential, and (iii) informing such persons of the confidential and protected nature of the information and reminding them of their duty to treat the information as confidential and protected, and to limit their use of the information to assisting the director in serving on the Board on behalf of OCC.

### **A. CONFIDENTIAL INFORMATION**

OCC directors receive a considerable amount of confidential information during the course of their work.

As a matter of proper risk management, OCC requires financial and other confidential and proprietary information to be filed by clearing members and applicants. OCC may also obtain confidential information regarding clearing members and applicants from regulatory agencies and other self-regulatory organizations (“SROs”). The regulators and SROs share this data with OCC in the expectation that such information is to be used by OCC management, and will be provided to directors only when necessary and in confidence.

**Any information received by directors from OCC management regarding a clearing member’s or applicant’s financial position or operational capability must not be used or disclosed outside the Board or Board committee context. This nondisclosure obligation includes, specifically, a prohibition against acting on such information for the benefit of the director’s own firm or sharing it with others associated with the director’s firm, and shall continue in effect even after the director leaves the Board.**

A director should immediately notify OCC’s General Counsel of any legal or regulatory request from third parties calling for the director to disclose any information received by a director in his or her role as a director or committee member, unless legally prohibited, so that OCC may seek a protective order or other remedy, and the director shall reasonably assist OCC. If the director remains legally compelled to make such disclosure, he or she shall: (i) only disclose that portion of the information that is required to be disclosed; and (ii) use reasonable efforts to ensure that such information is treated confidentially.

All disclosures of proprietary know-how, financial information, or other confidential information made to any director shall be received and maintained in strict confidence, provided that this obligation shall not apply to information that (i) is in the public domain or in the possession of the director without restriction at the time of disclosure to the director or receipt under this Code, (ii) is independently developed by the director or the director’s own firm (such that the information belongs to the director or the director’s firm), (iii) becomes known to the director from a source other than OCC without breach of this Code by the



## Code of Conduct for OCC Directors

receiving party, or (iv) the OCC General Counsel has pre-approved the disclosure in writing.

### **B. NON-CONFIDENTIAL INFORMATION**

With respect to other kinds of written information provided by management in advance of a meeting, unless the information is marked as “confidential,” it is permissible for a director to consult with a limited number of persons in his or her firm who have expertise on the matter to be considered by the Board if the director believes such sharing of information would not harm OCC and the colleague with whom such information is shared agrees to protect it from further disclosure.

### **C. BOARD AND COMMITTEE DELIBERATIONS**

It is the duty of directors to treat as confidential, discussions at Board or Board committee meetings, including expressions of opinion and how others vote. Board and Board committee decisions should be kept confidential, even after the director leaves the Board, until publicly disclosed by OCC.

## **VIII. DEVELOPMENTS**

OCC shall own all rights, title, and interest related to all inventions, improvements, discoveries, methods, developments, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by the director or jointly with others in the course of the director’s performance of its duties (collectively, “Developments”). Directors hereby assign to OCC of their right, title, and interest in and to any during and after the director’s tenure on the Board, with respect to the procurement, maintenance and enforcement of intellectual property rights (both in the United States and foreign countries) related to any Developments.

## **IX. COMPLIANCE WITH THIS CODE**

Directors should communicate any suspected violations of the Code promptly to the Chairman or to OCC’s General Counsel. Violations will be investigated by the Board or by a person or persons designated by the Board, and appropriate action will be taken in the event of any violations of this Code. OCC encourages the reporting of bona fide concerns relating to the lawful and ethical conduct of its business. No retaliation will be taken against any individual reporting violations of this Code.

Directors periodically will be asked to certify their compliance with the Code.





# Code of Conduct for OCC Directors

## **X. INQUIRIES FROM THE MEDIA AND OTHERS**

The Chairman and his or her designees, and not individual directors, are authorized in most circumstances to speak for or on behalf of OCC. OCC is committed to providing full, fair, and accurate disclosure in all public communications and in compliance with all applicable law, regulations, and rules. Inquiries from the media and others regarding topics or issues specific to OCC should be immediately directed to the Chairman or OCC’s General Counsel and directors should refrain from responding to any inquiries unless compelled to do so by valid legal process. Nothing in this Section 10 shall prohibit or limit in any way (i) a director’s ability to respond to inquiries from the media and others regarding the options industry generally, or (ii) a director’s ability to respond to inquiries from OCC’s regulators. If a director does respond to an inquiry from the media or others (including regulators) about a topic or issue specific to OCC, he or she shall promptly advise the Chairman or OCC’s General Counsel so that OCC can ensure that any such response is accurate, complete, and in context with other communications by OCC to the media or others (including regulators).

## **XI. COMPLIANCE WITH APPLICABLE LAWS AND REGULATION**

Each director must comply with all applicable laws and regulations as violations of laws and regulations may subject directors and OCC to civil or criminal penalties. In the event there is any question about the lawfulness or appropriateness of any proposed activity, directors should consult with OCC’s General Counsel.

## **XII. AMENDMENTS AND WAIVERS OF CODE**

This Code will be periodically reviewed by the Board. Any amendment or waiver of the Code must be approved by the Board.

## **XIII. ATTESTATION**

I have received, read, and agree to abide by the provisions of the Code of Conduct for OCC Directors.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_