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Page 1 of * 65

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

File No. * SR 2024 - * 005

Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

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

Section 806(e)(1) *

Section 806(e)(2) *

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

Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to its Board Charter and Risk Committee Charter to Align with Recently Adopted CFTC Governance Requirements for Derivatives Clearing Organizations.

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

Date

(Title *)

By

(Name *)

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

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-OCC-2024-005 19b-4 (4.29.2024)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-OCC-2024-005 Exhibit 1A (5.8.20

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-OCC-2024-005 Exhibit 3 FRAC G

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-OCC-2024-005 Ex. 5A Board of D
SR-OCC-2024-005 Ex. 5B_Risk Comr

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

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

Item 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC” or the “Corporation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) this proposed rule change to make modifications to its Board of Directors Charter and Corporate Governance Principles (“Board Charter”) and Risk Committee Charter (“Risk Committee Charter”) to comply with recently adopted governance requirements³ by the Commodity Futures Trading Commission (“CFTC”) for derivatives clearing organizations (“DCOs”) that became effective on July 13, 2023, and with which DCOs, like OCC, must comply by July 12, 2024.

The proposed changes to OCC’s Board Charter are included as Exhibit 5A to File No. SR-OCC-2024-005 and proposed changes to the Risk Committee Charter are included as Exhibit 5B to File No. SR-OCC-2024-005. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

All terms with initial capitalization that are not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See 88 FR 44675 (July 13, 2023)(“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁴ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by OCC’s Board of Directors (“Board”) at a meeting held on October 12, 2023.

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

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a “covered clearing agency”⁵ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a DCO regulated by the CFTC. OCC is also designated as a systemically important financial market utility by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

As a covered clearing agency and DCO, OCC maintains a robust governance structure that is designed to comply with existing requirements of the Commission and the CFTC. Recently, the CFTC adopted new regulations regarding governance requirements for DCOs that supplement the existing governance requirements applicable to OCC as a DCO (“Governance

⁵ The term “covered clearing agency” is defined in Exchange Act Rule 17Ad-22(a)(5) to mean “a registered clearing agency that provides the services of a central counterparty or central securities depository.”

Rules”).⁶ The CFTC Governance Rules require, among other things, that: (i) DCOs establish and consult with a risk management committee on all matters that could materially affect the risk profile of the DCO; (ii) DCOs implement certain composition, rotation, and documentation requirements for the risk management committee; and (iii) DCOs establish a risk advisory working group that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the risk management working group. While OCC’s current governance structure meets many of the requirements of the Governance Rules, OCC is proposing to clarify: (i) a smaller subset of OCC’s existing Financial Risk Advisory Committee (“FRAC”) will serve as a non-Board-level risk management committee described in the Governance Rules; (ii) the entire FRAC will serve as a non-Board-level risk advisory working group described in the Governance Rules; and (iii) governance charters to reflect the requirements in the Governance Rules described above. DCOs, including OCC, are required to comply with these new regulations by July 12, 2024.

A. Purpose

The purpose of this proposed rule change by OCC is to modify its Board Charter and Risk Committee Charter to implement changes that are designed to comply with certain of the Governance Rules. The Governance Rules are found in CFTC Regulation 39.24.⁷ As part of the Governance Rules, DCOs are required to establish one or more risk management committees that

⁶ See 88 FR 44675 (July 13, 2023)(“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁷ 17 CFR 39.24.

meet certain composition requirements and to require the DCO's board of directors to consult with such risk management committee(s) on all matters that could materially affect the risk profile of the DCO and to consider and respond to input from the risk management committee(s) on such matters. In the CFTC Adopting Release, the CFTC clarifies that a DCO may structure the required risk management committee as either a non-Board-level advisory committee or as a Board-level committee.⁸ In this proposed rule change, OCC intends to structure the required risk management committee as a non-Board-level committee. Therefore, OCC is revising its Board Charter and Risk Committee Charter to articulate the role of the non-Board-level committee and its responsibility to provide OCC's existing Board-level Risk Committee with pertinent information to be disseminated, as appropriate, for the Board's review and consideration on all matters that could materially affect OCC's risk profile.

As described below, OCC already maintains a robust governance structure that is designed to promote clear and transparent governance arrangements that, among other things, help effectively manage risks that arise in or are borne by OCC as a covered clearing agency and DCO. This structure is shaped by existing Commission and CFTC requirements, which are also described in part below. Within OCC's existing governance structure, the FRAC serves a similar purpose as the risk management committee and risk advisory working group described in the Governance Rules. OCC intends to make modifications to the FRAC to satisfy both the risk management committee and risk advisory working group Governance Rules requirements by

⁸ See CFTC Adopting Release at 44678.

designating a rotating smaller group of FRAC members to comprise the non-Board-level risk management committee, and the FRAC will function as the risk advisory working group. The changes that OCC is proposing to its Board Charter and Risk Committee Charter to address the Governance Rules for DCOs would become one facet of OCC's larger and overall governance structure. Because OCC treats the Board Charter and Risk Committee Charter as "rules" for purposes of Section 19(b) of the Exchange Act, it is therefore submitting the changes in connection with this proposed rule change.⁹

OCC believes that the material aspects of its operations will appropriately comply with the new Governance Rules by including the proposed provisions in OCC's Board Charter and Risk Committee Charter. As detailed below, these proposed provisions include requiring the Board and the Risk Committee to consult with and respond to input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile.

Existing Governance Structure

As part of OCC's existing governance structure, OCC already maintains a Board-level Risk Committee. Therefore, the new non-Board-level risk management committee is not and will not be the only aspect of OCC's governance structure that is designed to provide appropriate consideration and supervision over matters that could materially affect OCC's risk profile. Rather, such governance structure mechanisms are already in place at OCC and compliance with the new Governance Rules will supplement those existing mechanisms.

⁹ OCC intends to implement written policies and procedures to comply with the remaining requirements in the new CFTC requirements for DCOs, and OCC believes that those written policies and procedures will not require separate rule filings with the Commission or the CFTC.

For example, as specified in the Risk Committee Charter, the duties of the Risk Committee in discharging oversight include, but are not limited to, reviewing the adequacy of OCC's management of risks related to credit exposures (including margin and clearing fund methodologies), overseeing OCC's risk models and risk model validation process, reviewing and approving new products that materially impact OCC's established risk profile (and referring such products to the Board for potential approval), overseeing OCC's framework for membership of Clearing Members, and considering and discussing input and guidance from the FRAC relating to financial risk issues.¹⁰

The Risk Committee is also just one part of the more robust overall governance structure that OCC maintains to promote best practices and to comply with existing Commission and CFTC regulatory requirements that apply to OCC as a covered clearing agency and as a DCO. Certain of these regulatory requirements concerning OCC's governance structure are described in more detail below to provide greater context about the existing regulatory landscape to which the new Governance Rules are being added.

In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board committees, Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"), and a Code of Conduct for OCC Directors ("Code of Conduct"). The charters, Fitness Standards, and Code of Conduct are all publicly available on

¹⁰ As described in more detail below, the participants in the FRAC include members of OCC's management as well as representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing Members, exchanges, and other stakeholders.

OCC's website.¹¹ The Board is composed of directors who are Public Directors,¹² Exchange Directors,¹³ Member Directors,¹⁴ and a Management Director.¹⁵ In this way, the directors serving on the Board represent a range of different stakeholders from the markets that OCC serves. In addition, the Board oversees six Board-level committees that are composed of certain Board directors and that assist the Board in carrying out its supervisory responsibilities. Aside from the Risk Committee, the other committees are the Audit Committee, Compensation and Performance Committee, Governance and Nominating Committee, Regulatory Committee, and Technology Committee. OCC also maintains the FRAC that operates as a forum in which OCC seeks feedback on financial risk initiatives. Members of OCC management participate in the FRAC along with representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing Members, exchanges, and other stakeholders.

Existing Regulatory Requirements Regarding OCC's Governance Structure

¹¹ See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

¹² Terms regarding service by Public Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, a Public Director must have no affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at "Additional Criteria for the Public Directors".

¹³ Terms regarding service by Exchange Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, the exchange nominating the Exchange Director must own common stock of OCC. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at "Additional Criteria for Exchange Directors".

¹⁴ Terms regarding service by Member Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at "Additional Criteria for Member Directors".

¹⁵ Terms regarding service by the Management Director are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7.

OCC’s existing governance structure, as partially described above, is already shaped by significant regulatory requirements under the Exchange Act and the Commodity Exchange Act (“CEA”) that apply to OCC as a covered clearing agency and DCO. Accordingly, the Governance Rules for DCOs are supplementary to these existing regulatory obligations applicable to OCC’s governance structure.

For example, the DCO core principles in the CEA already require OCC to have governance arrangements that are transparent to permit the consideration of the views of owners and participants.¹⁶ Similarly, because OCC is a registered clearing agency its rules must assure a fair representation of its shareholders and participants in the selection of its Directors and the administration of its affairs.¹⁷ Part 39.24 of the CFTC’s regulations for DCOs also requires OCC to have governance arrangements that, among other things, are clear and documented, describe the structure in which the board of directors, committees, and management operate, and clearly specify the roles and responsibilities of the board of directors and its committees.¹⁸ Similarly, Exchange Act Rules 17Ad-22(e)(2) and (3) require OCC as a covered clearing agency to have governance arrangements that, among other things, provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, consider the interests of Clearing Members’ customers and other relevant stakeholders, and that establish a risk management committee of the board of directors and an independent audit committee of the

¹⁶ 7 U.S.C. 7a-1(c)(2)(O)(i)(II).

¹⁷ 15 U.S.C. 78q-1(b)(3)(C).

¹⁸ 17 CFR 39.24(b)(1), (3), (5).

board of directors.¹⁹ These obligations work in coordination with a further obligation to maintain a sound risk management framework for managing risks that arise in or are borne by OCC and for Board review and approval of related policies and procedures.²⁰ In addition, provisions in the CEA and CFTC regulations and Commission rules under the Exchange Act obligate OCC to have fitness standards for Board directors, Clearing Members and others.²¹ OCC's governance structure currently reflects all of these requirements.

New CFTC DCO Governance Requirements and Creation of a Non-Board-Level Risk Management Committee

As part of OCC's approach to comply with the Governance Rules, OCC will create a separate, non-Board-level risk management committee. As noted above, OCC already has a Risk Committee that is a Board-level committee. Creation of the new risk management committee as a non-Board-level advisory committee will be consistent with the CFTC Adopting Release guidance that a DCO may structure the required risk management committee as either a non-Board-level advisory committee or as a Board-level committee.

While OCC's existing governance structure, including the consideration of the FRAC's input on risk initiatives, is robust and meets the CFTC's overall objective in requiring governance arrangements that are transparent, fulfill the public interest, and permit the consideration of the views of owners and participants, OCC's existing FRAC requires slight modifications to ensure continued compliance with the Governance Rules. Specifically,

¹⁹ 17 CFR 240.17Ad-(22)(e)(2)(i), (v), (vi), (3)(iv) and (v).

²⁰ 17 CFR 240.17Ad-(22)(e)(3)(i).

²¹ 7 U.S.C. 7a-1(e)(2)(O)(ii); 17 CFR 240.17Ad-22(e)(2)(iv); 17 CFR 240.17Ad-25(c)(3).

modifications are required to OCC's existing FRAC that are important to include within OCC's Risk Committee's delegation. These modifications, as outlined in the proposed Risk Committee Charter, (i) codify the required oversight and consultation between OCC's existing Board-level Risk Committee and the non-Board-level risk management committee, and (ii) establish the responsibility of OCC's existing Board-level Risk Committee to provide the Board with pertinent information for the Board's review and consideration for all matters that could materially affect OCC's risk profile from the non-Board-level risk management committee. Furthermore, modifications to OCC's existing FRAC are required to codify a regular rotation of membership and refine the current membership composition. By proposing modifications to OCC's existing FRAC to create a non-Board-level risk management committee and a risk advisory working group, OCC will satisfy the membership composition and rotation requirements outlined in the Governance Rules.

The operation of the non-Board-level risk management committee will be controlled by written policies and procedures that OCC will design to ensure compliance with the new DCO requirements. For example, the DCO must maintain written policies and procedures to make certain that the risk management committee consultation process is described in detail and to include requirements for the DCO to document the board's consideration of and response to risk management committee input.²² A DCO is also required to have written policies and procedures related to the creation and maintenance of minutes for each risk management committee

²² 17 CFR 39.24(b)(11)(i).

meeting.²³

The changes that OCC is proposing to its Board Charter and Risk Committee Charter to comply with part of the Governance Rules are described below, and they are designed to ensure that the Risk Committee and the Board work in coordination to consult with the new non-Board-level risk management committee and to respond to input from that committee on all matters that could materially affect OCC's risk profile. Consistent with the descriptions above of OCC's existing governance structure and the current Commission and CFTC requirements that already shape it, the proposed changes to the Board Charter and Risk Committee Charter would become part of the larger overall governance structure that OCC maintains to promote clear and transparent governance arrangements and to effectively manage risks that arise within or are borne by OCC as a covered clearing agency and DCO.

Proposed Changes to Board Charter

OCC proposes to modify the Board Charter to provide two new aspects of how the Board fulfills its oversight role. Specifically, the Board Charter would state that the Board would oversee OCC's process for consultation with the new, non-Board-level risk management committee and the consideration of, and responses to, input from the non-Board-level risk management committee by the Board through reports from the Risk Committee. The Board would provide oversight of this process and would review and consider the discussions with the Risk Committee regarding the Risk Committee's consultation with the non-Board-level risk

²³ Id.

management committee.²⁴ The Board would also become more directly involved in the consultation and response process led by the Risk Committee as it determines appropriate in its business judgment.

In addition to the proposed changes described above, OCC proposes to incorporate several non-substantive changes to the Board Charter, including but not limited to, using initial capitalization for the term “Executive Session” consistently throughout the document, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity.

Proposed Changes to Risk Committee Charter

OCC also proposes to modify the Risk Committee Charter in a manner consistent with the proposed changes to the Board Charter. Specifically, the Risk Committee Charter would be revised to state that the Risk Committee would have responsibility for consulting with the non-Board-level risk management committee²⁵ and for considering and responding to input from that committee on all matters that could materially affect OCC’s risk profile. It would also state that the Risk Committee would provide relevant non-Board-level risk management committee input to the Board for its review and consideration.

In addition to the proposed changes described above, OCC proposes to incorporate several non-substantive changes to the Risk Committee Charter, including but not limited to, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity and

²⁴ The oversight process will be documented in OCC’s FRAC Guiding Principles Document.

²⁵ As of the July 12, 2024, CFTC compliance date, OCC’s FRAC will act as the non-Board-level risk management committee. Although not anticipated, changes to the name of the committee serving as the non-Board-level risk committee could happen in the future.

consistency.

B. Statutory Basis

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and, in general, protect investors and the public interest.²⁶ In addition, Rule 17Ad-22(e)(3) requires OCC, as a covered clearing agency, to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.²⁷

OCC believes that the proposed rule changes are consistent with these requirements because the proposed rule change is designed to modify OCC's Board Charter and Risk Committee Charter to reflect how the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. Implementation of these proposed changes would promote OCC's compliance with the new Governance Rules,²⁸ which all DCOs must comply with by July 12, 2024. Compliance with applicable CFTC regulations is

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(3).

²⁸ 17 CFR 39.24.

part of OCC's sound risk management framework to manage legal and regulatory risk. In addition, implementing the proposed duties of the Board and Risk Committee within the Board Charter and Risk Committee Charter would promote management of risk consistent with the requirements in Rule 17Ad-22(e)(3)²⁹ and OCC's prompt and accurate clearance and settlement of securities transactions, safeguarding of securities and funds in its custody or control or for which it is responsible, and the protection of investors consistent with 17A(b)(3)(F) of the Exchange Act³⁰ because it would involve the new, non-Board-level risk management committee in OCC's process of assessing and managing risks that could materially affect OCC's risk profile in a way that supplements OCC existing process for managing such risks, including through oversight by the Risk Committee and the Board.

In addition, OCC believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Specifically, Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency and specify clear and direct lines of responsibility. Modifying the Board Charter and Risk Committee Charter through the proposed changes described above would be consistent with these requirements because the changes would document in a clear, direct and transparent way the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk

²⁹ 17 CFR 240.17Ad-22(e)(3).

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

profile and to consider and respond to input from the non-Board-level risk management committee on such matters.

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

Section 17A(b)(3)(I) of the Exchange Act³¹ 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 proposed rule changes to modify the Board Charter and Risk Committee Charter to comply with the Governance Rules would impact or impose any burden on competition. The proposed changes would promote OCC’s compliance with the Governance Rules that OCC must comply with by July 12, 2024. The proposed changes to the Board Charter and Risk Committee Charter are designed to clearly, directly and transparently document the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC’s risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. These changes to OCC’s governance structure would apply to all Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

³¹ 15 U.S.C. 78q-1(b)(3)(I).

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act³² and Rule 19b-4(f)(6)³³ thereunder. The proposal will not take effect until all regulatory actions required with respect to the proposal are completed.³⁴

(b) OCC designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, OCC has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(6).

³⁴ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

OCC believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it would modify the Board Charter and Risk Committee Charter to address certain of the Governance Rules in a manner that would supplement OCC's existing governance structure. In particular, the proposed changes would clearly specify the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. This process would be part of the larger governance structure that OCC already maintains to promote clear and transparent governance arrangements and to effectively manage risks that arise within or are borne by OCC as a covered clearing agency and DCO, including through oversight by the Board and the Risk Committee as described above. Therefore, OCC believes that the changes would be incremental and would not significantly affect the protection of investors or the public interest.

For the reasons explained in Item 4, OCC also believes that the proposed changes would not impose any significant burden on competition. The proposed changes to the Board Charter and Risk Committee Charter are designed to clearly, directly and transparently document the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. These changes to OCC's governance structure would apply to all Clearing Members equally and would

not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

For the foregoing reasons, this proposed rule change qualifies under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Register.

- Exhibit 3. OCC's FRAC Guiding Principles. [REDACTED]. Confidential treatment is requested for Exhibit 3 pursuant to Exchange Act Rule 24b-2.
- Exhibit 5A. Proposed changes to Board of Directors Charter and Corporate Governance Principles.
- Exhibit 5B. Proposed changes to Risk Committee Charter.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2024-005)

[May __, 2024]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to its Board Charter and Risk Committee Charter to Align With Recently Adopted CFTC Governance Requirements for Derivatives Clearing Organizations.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 8, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. 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 would make modifications to its Board of Directors Charter and Corporate Governance Principles (“Board Charter”) and Risk Committee Charter (“Risk Committee Charter”) to comply with recently adopted governance

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

requirements⁵ by the Commodity Futures Trading Commission (“CFTC”) for derivatives clearing organizations (“DCOs”) that became effective on July 13, 2023, and with which DCOs, like OCC, must comply by July 12, 2024.

The proposed changes to OCC’s Board Charter are included as Exhibit 5A to File No. SR-OCC-2024-005 and proposed changes to the Risk Committee Charter are included as Exhibit 5B to File No. SR-OCC-2024-005. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

All terms with initial capitalization that are not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁶

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 registered with the Commission for standardized equity options listed on national securities exchanges. OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection

⁵ See 88 FR 44675 (July 13, 2023)(“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁶ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

with its clearance and settlement of transactions in securities, OCC is a “covered clearing agency”⁷ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a DCO regulated by the CFTC. OCC is also designated as a systemically important financial market utility by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

As a covered clearing agency and DCO, OCC maintains a robust governance structure that is designed to comply with existing requirements of the Commission and the CFTC. Recently, the CFTC adopted new regulations regarding governance requirements for DCOs that supplement the existing governance requirements applicable to OCC as a DCO (“Governance Rules”).⁸ The CFTC Governance Rules require, among other things, that: (i) DCOs establish and consult with a risk management committee on all matters that could materially affect the risk profile of the DCO; (ii) DCOs implement certain composition, rotation, and documentation requirements for the risk management committee; and (iii) DCOs establish a risk advisory working group that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the risk management working group. While OCC’s current governance structure meets many of the requirements of the Governance Rules, OCC is proposing to clarify: (i) a smaller subset of OCC’s existing Financial Risk Advisory Committee (“FRAC”) will serve as a non-Board-level risk management committee

⁷ The term “covered clearing agency” is defined in Exchange Act Rule 17Ad-22(a)(5) to mean “a registered clearing agency that provides the services of a central counterparty or central securities depository.”

⁸ See 88 FR 44675 (July 13, 2023)(“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

described in the Governance Rules; (ii) the entire FRAC will serve as a non-Board-level risk advisory working group described in the Governance Rules; and (iii) governance charters to reflect the requirements in the Governance Rules described above. DCOs, including OCC, are required to comply with these new regulations by July 12, 2024.

1. Purpose

The purpose of this proposed rule change by OCC is to modify its Board Charter and Risk Committee Charter to implement changes that are designed to comply with certain of the Governance Rules. The Governance Rules are found in CFTC Regulation 39.24.⁹ As part of the Governance Rules, DCOs are required to establish one or more risk management committees that meet certain composition requirements and to require the DCO's board of directors to consult with such risk management committee(s) on all matters that could materially affect the risk profile of the DCO and to consider and respond to input from the risk management committee(s) on such matters. In the CFTC Adopting Release, the CFTC clarifies that a DCO may structure the required risk management committee as either a non-Board-level advisory committee or as a Board-level committee.¹⁰ In this proposed rule change, OCC intends to structure the required risk management committee as a non-Board-level committee. Therefore, OCC is revising its Board Charter and Risk Committee Charter to articulate the role of the non-Board-level committee and its responsibility to provide OCC's existing Board-level Risk Committee with pertinent information to be disseminated, as appropriate, for the Board's review and consideration on all matters that could materially affect OCC's risk profile.

As described below, OCC already maintains a robust governance structure that is

⁹ 17 CFR 39.24.

¹⁰ See CFTC Adopting Release at 44678.

designed to promote clear and transparent governance arrangements that, among other things, help effectively manage risks that arise in or are borne by OCC as a covered clearing agency and DCO. This structure is shaped by existing Commission and CFTC requirements, which are also described in part below. Within OCC's existing governance structure, the FRAC serves a similar purpose as the risk management committee and risk advisory working group described in the Governance Rules. OCC intends to make modifications to the FRAC to satisfy both the risk management committee and risk advisory working group Governance Rules requirements by designating a rotating smaller group of FRAC members to comprise the non-Board-level risk management committee, and the FRAC will function as the risk advisory working group. The changes that OCC is proposing to its Board Charter and Risk Committee Charter to address the Governance Rules for DCOs would become one facet of OCC's larger and overall governance structure. Because OCC treats the Board Charter and Risk Committee Charter as "rules" for purposes of Section 19(b) of the Exchange Act, it is therefore submitting the changes in connection with this proposed rule change.¹¹

OCC believes that the material aspects of its operations will appropriately comply with the new Governance Rules by including the proposed provisions in OCC's Board Charter and Risk Committee Charter. As detailed below, these proposed provisions include requiring the Board and the Risk Committee to consult with and respond to input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile.

Existing Governance Structure

¹¹ OCC intends to implement written policies and procedures to comply with the remaining requirements in the new CFTC requirements for DCOs, and OCC believes that those written policies and procedures will not require separate rule filings with the Commission or the CFTC.

As part of OCC's existing governance structure, OCC already maintains a Board-level Risk Committee. Therefore, the new non-Board-level risk management committee is not and will not be the only aspect of OCC's governance structure that is designed to provide appropriate consideration and supervision over matters that could materially affect OCC's risk profile. Rather, such governance structure mechanisms are already in place at OCC and compliance with the new Governance Rules will supplement those existing mechanisms.

For example, as specified in the Risk Committee Charter, the duties of the Risk Committee in discharging oversight include, but are not limited to, reviewing the adequacy of OCC's management of risks related to credit exposures (including margin and clearing fund methodologies), overseeing OCC's risk models and risk model validation process, reviewing and approving new products that materially impact OCC's established risk profile (and referring such products to the Board for potential approval), overseeing OCC's framework for membership of Clearing Members, and considering and discussing input and guidance from the FRAC relating to financial risk issues.¹²

The Risk Committee is also just one part of the more robust overall governance structure that OCC maintains to promote best practices and to comply with existing Commission and CFTC regulatory requirements that apply to OCC as a covered clearing agency and as a DCO. Certain of these regulatory requirements concerning OCC's governance structure are described in more detail below to provide greater context about the existing regulatory landscape to which the new Governance Rules are being added.

In connection with OCC's existing Board and Board committee structure, OCC

¹² As described in more detail below, the participants in the FRAC include members of OCC's management as well as representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing Members, exchanges, and other stakeholders.

maintains charters for the Board and all Board committees, Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”), and a Code of Conduct for OCC Directors (“Code of Conduct”). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC’s website.¹³ The Board is composed of directors who are Public Directors,¹⁴ Exchange Directors,¹⁵ Member Directors,¹⁶ and a Management Director.¹⁷ In this way, the directors serving on the Board represent a range of different stakeholders from the markets that OCC serves. In addition, the Board oversees six Board-level committees that are composed of certain Board directors and that assist the Board in carrying out its supervisory responsibilities. Aside from the Risk Committee, the other committees are the Audit Committee, Compensation and Performance Committee, Governance and Nominating Committee, Regulatory Committee, and Technology Committee. OCC also maintains the FRAC that operates as a forum in which OCC seeks feedback on financial risk initiatives. Members of OCC management participate in the FRAC along with representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing

¹³ See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

¹⁴ Terms regarding service by Public Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. For example, a Public Director must have no affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at “Additional Criteria for the Public Directors”.

¹⁵ Terms regarding service by Exchange Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. For example, the exchange nominating the Exchange Director must own common stock of OCC. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at “Additional Criteria for Exchange Directors”.

¹⁶ Terms regarding service by Member Directors are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at “Additional Criteria for Member Directors”.

¹⁷ Terms regarding service by the Management Director are set forth in OCC’s By-Laws and in OCC’s Fitness Standards. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7.

Members, exchanges, and other stakeholders.

Existing Regulatory Requirements Regarding OCC's Governance Structure

OCC's existing governance structure, as partially described above, is already shaped by significant regulatory requirements under the Exchange Act and the Commodity Exchange Act ("CEA") that apply to OCC as a covered clearing agency and DCO. Accordingly, the Governance Rules for DCOs are supplementary to these existing regulatory obligations applicable to OCC's governance structure.

For example, the DCO core principles in the CEA already require OCC to have governance arrangements that are transparent to permit the consideration of the views of owners and participants.¹⁸ Similarly, because OCC is a registered clearing agency its rules must assure a fair representation of its shareholders and participants in the selection of its Directors and the administration of its affairs.¹⁹ Part 39.24 of the CFTC's regulations for DCOs also requires OCC to have governance arrangements that, among other things, are clear and documented, describe the structure in which the board of directors, committees, and management operate, and clearly specify the roles and responsibilities of the board of directors and its committees.²⁰ Similarly, Exchange Act Rules 17Ad-22(e)(2) and (3) require OCC as a covered clearing agency to have governance arrangements that, among other things, provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, consider the interests of Clearing Members' customers and other relevant stakeholders, and that establish a risk management committee of the board of directors and an independent audit

¹⁸ 7 U.S.C. 7a-1(c)(2)(O)(i)(II).

¹⁹ 15 U.S.C. 78q-1(b)(3)(C).

²⁰ 17 CFR 39.24(b)(1), (3), (5).

committee of the board of directors.²¹ These obligations work in coordination with a further obligation to maintain a sound risk management framework for managing risks that arise in or are borne by OCC and for Board review and approval of related policies and procedures.²² In addition, provisions in the CEA and CFTC regulations and Commission rules under the Exchange Act obligate OCC to have fitness standards for Board directors, Clearing Members and others.²³ OCC's governance structure currently reflects all of these requirements.

New CFTC DCO Governance Requirements and Creation of a Non-Board-Level Risk Management Committee

As part of OCC's approach to comply with the Governance Rules, OCC will create a separate, non-Board-level risk management committee. As noted above, OCC already has a Risk Committee that is a Board-level committee. Creation of the new risk management committee as a non-Board-level advisory committee will be consistent with the CFTC Adopting Release guidance that a DCO may structure the required risk management committee as either a non-Board-level advisory committee or as a Board-level committee.

While OCC's existing governance structure, including the consideration of the FRAC's input on risk initiatives, is robust and meets the CFTC's overall objective in requiring governance arrangements that are transparent, fulfill the public interest, and permit the consideration of the views of owners and participants, OCC's existing FRAC requires slight modifications to ensure continued compliance with the Governance Rules.

²¹ 17 CFR 240.17Ad-(22)(e)(2)(i), (v), (vi), (3)(iv) and (v).

²² 17 CFR 240.17Ad-(22)(e)(3)(i).

²³ 7 U.S.C. 7a-1(c)(2)(O)(ii); 17 CFR 240.17Ad-22(e)(2)(iv); 17 CFR 240.17Ad-25(c)(3).

Specifically, modifications are required to OCC's existing FRAC that are important to include within OCC's Risk Committee's delegation. These modifications, as outlined in the proposed Risk Committee Charter, (i) codify the required oversight and consultation between OCC's existing Board-level Risk Committee and the non-Board-level risk management committee, and (ii) establish the responsibility of OCC's existing Board-level Risk Committee to provide the Board with pertinent information for the Board's review and consideration for all matters that could materially affect OCC's risk profile from the non-Board-level risk management committee. Furthermore, modifications to OCC's existing FRAC are required to codify a regular rotation of membership and refine the current membership composition. By proposing modifications to OCC's existing FRAC to create a non-Board-level risk management committee and a risk advisory working group, OCC will satisfy the membership composition and rotation requirements outlined in the Governance Rules.

The operation of the non-Board-level risk management committee will be controlled by written policies and procedures that OCC will design to ensure compliance with the new DCO requirements. For example, the DCO must maintain written policies and procedures to make certain that the risk management committee consultation process is described in detail and to include requirements for the DCO to document the board's consideration of and response to risk management committee input.²⁴ A DCO is also required to have written policies and procedures related to the creation and maintenance of minutes for each risk management committee meeting.²⁵

The changes that OCC is proposing to its Board Charter and Risk Committee

²⁴ 17 CFR 39.24(b)(11)(i).

²⁵ Id.

Charter to comply with part of the Governance Rules are described below, and they are designed to ensure that the Risk Committee and the Board work in coordination to consult with the new non-Board-level risk management committee and to respond to input from that committee on all matters that could materially affect OCC's risk profile. Consistent with the descriptions above of OCC's existing governance structure and the current Commission and CFTC requirements that already shape it, the proposed changes to the Board Charter and Risk Committee Charter would become part of the larger overall governance structure that OCC maintains to promote clear and transparent governance arrangements and to effectively manage risks that arise within or are borne by OCC as a covered clearing agency and DCO.

Proposed Changes to Board Charter

OCC proposes to modify the Board Charter to provide two new aspects of how the Board fulfills its oversight role. Specifically, the Board Charter would state that the Board would oversee OCC's process for consultation with the new, non-Board-level risk management committee and the consideration of, and responses to, input from the non-Board-level risk management committee by the Board through reports from the Risk Committee. The Board would provide oversight of this process and would review and consider the discussions with the Risk Committee regarding the Risk Committee's consultation with the non-Board-level risk management committee.²⁶ The Board would also become more directly involved in the consultation and response process led by the Risk Committee as it determines appropriate in its business judgment.

In addition to the proposed changes described above, OCC proposes to

²⁶ The oversight process will be documented in OCC's FRAC Guiding Principles Document.

incorporate several non-substantive changes to the Board Charter, including but not limited to, using initial capitalization for the term “Executive Session” consistently throughout the document, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity.

Proposed Changes to Risk Committee Charter

OCC also proposes to modify the Risk Committee Charter in a manner consistent with the proposed changes to the Board Charter. Specifically, the Risk Committee Charter would be revised to state that the Risk Committee would have responsibility for consulting with the non-Board-level risk management committee²⁷ and for considering and responding to input from that committee on all matters that could materially affect OCC’s risk profile. It would also state that the Risk Committee would provide relevant non-Board-level risk management committee input to the Board for its review and consideration.

In addition to the proposed changes described above, OCC proposes to incorporate several non-substantive changes to the Risk Committee Charter, including but not limited to, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity and consistency.

2. Statutory Basis

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and, in general, protect investors and the public

²⁷ As of the July 12, 2024, CFTC compliance date, OCC’s FRAC will act as the non-Board-level risk management committee. Although not anticipated, changes to the name of the committee serving as the non-Board-level risk committee could happen in the future.

interest.²⁸ In addition, Rule 17Ad-22(e)(3) requires OCC, as a covered clearing agency, to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.²⁹

OCC believes that the proposed rule changes are consistent with these requirements because the proposed rule change is designed to modify OCC's Board Charter and Risk Committee Charter to reflect how the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. Implementation of these proposed changes would promote OCC's compliance with the new Governance Rules,³⁰ which all DCOs must comply with by July 12, 2024. Compliance with applicable CFTC regulations is part of OCC's sound risk management framework to manage legal and regulatory risk. In addition, implementing the proposed duties of the Board and Risk Committee within the Board Charter and Risk Committee Charter would promote management of risk consistent with the requirements in Rule 17Ad-22(e)(3)³¹ and OCC's prompt and accurate clearance and settlement of securities transactions, safeguarding of securities and funds in its custody or control or for which it is responsible, and the protection of investors consistent with 17A(b)(3)(F) of the Exchange Act³² because it would involve the new, non-Board-level

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ 17 CFR 240.17Ad-22(e)(3).

³⁰ 17 CFR 39.24.

³¹ 17 CFR 240.17Ad-22(e)(3).

³² 15 U.S.C. 78q-1(b)(3)(F).

risk management committee in OCC's process of assessing and managing risks that could materially affect OCC's risk profile in a way that supplements OCC existing process for managing such risks, including through oversight by the Risk Committee and the Board.

In addition, OCC believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Specifically, Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency and specify clear and direct lines of responsibility. Modifying the Board Charter and Risk Committee Charter through the proposed changes described above would be consistent with these requirements because the changes would document in a clear, direct and transparent way the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters.

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

Section 17A(b)(3)(I) of the Exchange Act³³ 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 proposed rule changes to modify the Board Charter and Risk Committee Charter to comply with the Governance Rules would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the Governance Rules that OCC must comply with by July 12, 2024. The proposed changes to the Board Charter and Risk

³³ 15 U.S.C. 78q-1(b)(3)(I).

Committee Charter are designed to clearly, directly and transparently document the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. These changes to OCC's governance structure would apply to all Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

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

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

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁴ and Rule 19b-4(f)(6)³⁵ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁶

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2024-005 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-2024-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

³⁶ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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

All submissions should refer to File Number SR-OCC-2024-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Secretary

³⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

[Redacted pursuant to Exchange Act Rule 24b-2 and filed separately with the Commission]

[Redacted pursuant to Exchange Act Rule 24b-2 and filed separately with the Commission]

[Redacted pursuant to Exchange Act Rule 24b-2 and filed separately with the Commission]

[Redacted pursuant to Exchange Act Rule 24b-2 and filed separately with the Commission]

EXHIBIT 5A



Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

**THE OPTIONS CLEARING CORPORATION
BOARD OF DIRECTORS
CHARTER
AND
CORPORATE GOVERNANCE PRINCIPLES**

The following Board of Directors Charter and Corporate Governance Principles (“Principles”) have been adopted by the Board of Directors (the “Board”) of The Options Clearing Corporation (“OCC”) to assist the Board in the exercise of its responsibilities.

The Board is responsible for advising the Management Committee and overseeing the management of the business and affairs of OCC (except as may otherwise be provided in OCC’s Amended and Restated Certificate of Incorporation or its By-Laws and Rules). The Board discharges its responsibilities in a manner consistent with legal and regulatory requirements applicable to OCC and the expectations of all relevant stakeholders of OCC. In doing so, the Board exercises its authority to provide for governance arrangements that: are clear and transparent; clearly prioritize the safety and efficiency of OCC; support applicable public interest requirements and the objectives of owners and participants; establish that the Board and the Management Committee have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of clearing members’ customers, securities issuers and holders, and other relevant stakeholders. The Board additionally seeks to: promote the safe and efficient operation of OCC; maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC in light of OCC’s role as a systemically important financial market utility (“SIFMU”); and pursue objectives that are consistent with the interests of its stakeholders and support the public interest. In consideration of its responsibility to maintain a sound risk management framework for comprehensively managing the risks that arise in or are borne by OCC, the Board has explicitly delegated the oversight of specific risks to the Board committees. To the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the Risk Committee. Accordingly, the Board is mindful of the public interest as it fulfills its duties by complying with the obligations imposed upon the Board by federal and state laws and regulations applicable to OCC and ensures that major decisions of OCC are appropriately disclosed to relevant stakeholders and to the public. Where the Board is authorized to approve reports or proposals provided to it by the Management Committee or a committee, the Board may or may not approve such matters in its business judgment. If the Board does not approve such a report or proposal, it shall report to the Management Committee or the relevant committee(s) that it has not approved such matter and may provide direction as to the revisions or alternative courses of action as appropriate.

These Principles set forth the shared vision of the Board and the Management Committee regarding the governance, management, and oversight practices to be followed at OCC, and reflect the Board’s commitment to monitor the effectiveness of policy and decision-making both at the Board and management level. The Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC. However, in all

Board of Directors Charter and Corporate Governance Principles.

Last Revised Date: ~~May 26, 2022~~ TBD

instances, the Board retains the obligation to oversee such delegated activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

These Principles are not intended to change or interpret any Federal or state law or regulation, including the Delaware General Corporation Law, or the OCC Amended and Restated Certificate of Incorporation, the OCC By-Laws, or the Rules of OCC.¹ These Principles are subject to modification from time to time by the Board.

THE MISSION OF THE BOARD

The Board performs an oversight role (either directly or indirectly through delegating certain authority to its committees) to ensure that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities as a SIFMU in connection with providing its services to the industry, and that OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe and efficient manner. The Board fulfills its oversight role by:

- Overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with these Principles and regulatory requirements, including through regular assessments of Board and individual director performance;
- Ensuring that the Board and the Management Committee have appropriate experience and skills to discharge their respective responsibilities and have established clear and direct lines of responsibility between the Board and the Management Committee;
- Ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, and access to the Board;
- Ensuring that risk management, compliance, and internal audit personnel have a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board, respectively;
- Ensuring that the Audit Committee of the Board is independent as determined by the Board;
- Periodically reviewing and approving the amount of compensation for Public Directors;
- Setting expectations about the tone and ethical culture of OCC, and reviewing the Management Committee's efforts to instill and appropriate

¹ OCC is subject to comprehensive regulation and supervision by the Securities and Exchange Commission (with respect to its clearing agency registration) and by the Commodity Futures Trading Commission (with respect to its derivatives clearing organization registration). As a 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. Capitalized terms used in these Principles shall have the meanings set forth in OCC's By-Laws and Rules unless otherwise indicated.

- tone and culture throughout OCC;
- Overseeing the Management Committee's activities in managing and operating OCC and evaluating the Management Committee's performance in executing its responsibilities;
 - Selecting and overseeing and, where appropriate, replacing the Chairman², Chief Executive Officer, and the Chief Operating Officer, as well as counseling and advising such officers in the management of OCC's business and affairs;
 - Overseeing the development and design of employee compensation, incentive, and benefit programs and evaluating the performance of any Executive Chairman, the Chief Executive Officer, and the Chief Operating Officer and approving the compensation of each;
 - Overseeing management succession planning and talent management processes;
 - Overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest;
 - Monitoring OCC's performance in delivering clearance and settlement services;
 - Reviewing and approving major corporate plans and actions, including capital expenditures, financial objectives, operating capital and capital structure, and fee structure, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearance and settlement services;
 - Overseeing OCC's processes and framework for comprehensively managing the range of risks that arise in or are borne by OCC, including the risk management policies, procedures, and systems designed to identify, measure, monitor, and manage such risks consistent within the risk appetite and risk tolerances approved by the Board;
 - Assigning responsibility and accountability for risk decisions and overseeing the establishment of policies addressing decision-making in crises and emergencies;
 - Overseeing and approving OCC's Recovery and Orderly Wind-Down Plan;
 - Overseeing OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of

²Or the Executive Chairman, if applicable.

- material changes in auditing and accounting principles and practices;
- Overseeing OCC's processes designed to ensure compliance with applicable laws and regulations, including banking, securities, and corporation laws and other applicable regulatory guidance and standards, and overseeing OCC's processes designed to conduct business in a legal and ethical manner;
 - Overseeing OCC's system of internal controls, including review of the annual study and evaluation of OCC's system of internal accounting controls;
 - Overseeing OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services; ~~and~~
 - Overseeing OCC's process for consultation with a non-Board-level risk management committee and the consideration of, and responses to, input from the non-Board-level risk management committee by the Board through reports from the Risk Committee;
 - Reviewing and considering the discussions with the Risk Committee regarding the Risk Committee's consultation with a non-Board-level risk management committee; and
 - Performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, or other policies.

BOARD ISSUES

Membership

1. **Size of Board; Composition.** OCC's By-Laws currently provide that the Board shall be comprised of:
 - Nine directors who represent OCC clearing members ("Member Directors");
 - Five directors designated by and representing each of OCC's Equity Exchanges ("Exchange Directors");
 - No less than five directors who are not affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities ("Public Directors"); and
 - At the discretion of the Board, one Management Director, who may be chosen from the employees of the Corporation ("Management Director").

It is the policy of the Board that the Board at all times reflect the following characteristics:

- Each director shall at all times be committed to discharging effectively OCC's regulatory responsibilities in connection with its provision of clearance and

Board of Directors Charter and Corporate Governance Principles.

Last Revised Date: ~~May 26, 2022~~ TBD

- settlement services as a SIFMU;
- Each director shall at all times exhibit high standards of integrity and commitment;
 - Each director shall dedicate sufficient time, energy, and attention to ensure the diligent performance of his or her duties, including by attending meetings of the Board and committees of which he or she is a member, and by reviewing in advance all meeting materials;
 - The Board shall encompass a range of talent, skill, industry knowledge, and expertise sufficient to provide sound and prudent guidance with respect to all of OCC's business, operations and interests;
 - The Board shall reflect the diversity of OCC's employees and the employees of the market participants that OCC serves; and
 - A substantial portion of directors shall be "independent" of OCC and OCC's management as defined by applicable regulatory requirements and the judgment of the Board.

The Governance and Nominating Committee is responsible for making recommendations to the Board regarding the composition of the Board as a whole, including whether the Board reflects: the appropriate balance of Member Directors, Exchange Directors, Public Directors and any Management Director; business specialization, technical skills, diversity (including diverse professional backgrounds); and other desired qualities such as sound judgment and a reputation for integrity.

2. **Board Membership Criteria.** The Board seeks directors from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity. In making their nominations, the Governance and Nominating Committee and the Board shall take into consideration applicable board of directors composition requirements of the Securities and Exchange Commission (as well as the Commodity Futures Trading Commission, to the extent applicable to OCC). The Governance and Nominating Committee and the Board shall also take into consideration the desire to obtain input from a broad array of market participants on risk management issues. As provided in OCC's By-Laws, the Governance and Nominating Committee and the Board also shall use the criteria of the Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards") in considering nominees for election to the Board. In addition, Board members should have the highest professional and personal ethics and values, the relevant expertise and experience required to offer advice and guidance to the Chairman, Chief Executive Officer, and Chief Operating Officer, and other members of the Management Committee, the ability to make independent analytical inquiries, a commitment to discharging effectively OCC's regulatory responsibilities and an understanding of OCC's business, and should be willing to devote adequate time and effort to Board responsibilities. Each Board member is expected to ensure that his or her other commitments do not materially interfere with his or her service overall as a director. The Governance and Nominating Committee shall take the foregoing criteria into account in connection with its recommendations for nomination of the Member Directors and Public Directors, as well as other considerations discussed in Section 4 below. In addition, in determining whether to recommend a Member Director or a Public Director for re-election, the Governance and Nominating Committee shall also consider the director's past performance, including attendance at

Board of Directors Charter and Corporate Governance Principles.

Last Revised Date: ~~May 26, 2022~~ TBD

meetings and participation and contributions to the activities of the Board.

Resignations and disqualifications from the Board shall be addressed as provided in the By-Laws.

3. **Appointment of Governance and Nominating Committee.** On an annual basis, the Board shall appoint a Governance and Nominating Committee having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. All of the Governance and Nominating Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. The Chair of the Governance and Nominating Committee shall be designated by the Board, after consultation with the Chairman, from among the Public Director members of the Governance and Nominating Committee.
4. **Selection of Member Directors and Public Directors.** As provided in its Charter, the Governance and Nominating Committee conducts periodic assessments of the overall composition of the Board in light of OCC's current and expected business needs and, as a result of such assessments, the Governance and Nominating Committee shall recommend to the Board specific qualifications that it determines would be desirable to seek in candidates for Member Directors and Public Directors. In light of such assessments, the Governance and Nominating Committee may seek to identify new candidates for the Board who possess the specific qualifications approved by the Board and satisfy the other requirements for Board service, including those set forth in OCC's By-Laws. It is acknowledged that, over time, different skill sets are likely to be determined to be desirable, so that the specific qualifications are likely to change. Moreover, it is acknowledged that it is not expected that the Board will necessarily include all identified skill sets at all times in light of the pool of candidates available to the Governance and Nominating Committee and other considerations such as re-nominating incumbent directors to maintain continuity and particular skills that they may have. In identifying new director candidates, the Governance and Nominating Committee seeks advice and names of candidates from Governance and Nominating Committee members, other members of the Board, members of management, and other public and private sources. The Governance and Nominating Committee may also, but need not, retain a search firm to assist it in these efforts.
5. As provided in the By-Laws, prior to each annual meeting of stockholders, the Governance and Nominating Committee shall nominate for approval by the Board one person for each directorship among the Member Directors and the Public Directors to be filled at the annual meeting. In selecting such nominees, the Governance and Nominating Committee shall follow the Director Nomination Procedure. With respect to Public Directors, the Governance and Nominating Committee shall consider whether the candidate lacks material relationships to OCC, OCC's the Management Committee, and other directors such that the Public Director may be considered to be "independent" by the Board. In order to achieve a balanced representation on the Board among Member Directors, the Board has determined that other considerations are to be taken into account in the nomination of Member Directors, including the volume of business transacted with OCC during the prior year and the mix of Member Directors that

are primarily engaged in agency trading on behalf of retail customers or individual investors. As further provided in the By-Laws, the Board shall be responsible for filling vacancies on the Board among the Member Directors or the Public Directors that may occur between annual meetings of stockholders, in each case with a nominee recommended by the Governance and Nominating Committee.

5. **Selection of Exchange Directors.** As provided in the By-Laws, each Exchange Director shall be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders. An individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange. As further provided in the By-Laws, a vacancy occurring for any reason among the Exchange Directors shall be filled by the Equity Exchange entitled to elect such Exchange Director.
6. **Selection of Management Director.** As provided in the By-Laws, a Management Director may be elected by the stockholders at each annual meeting of the stockholders. If a Management Director shall cease to hold the office by virtue of which he or she was elected as a Management Director, he or she shall simultaneously be disqualified to serve as a Management Director.
7. **Extending Invitation to New Board Members.** The Chairman shall extend the invitation to potential candidates to stand for election to the Board.
8. **Retirement.**

Term Limits. As provided in the By-Laws, Member Directors are limited to serving three consecutive three-year terms; Exchange Directors, Public Directors, and any Management Director do not have term limits. As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee is responsible for reviewing periodically the continued appropriateness of the term limits applicable to Member Directors set forth in the By-Laws and for recommending to the Board, where appropriate, changes to such provisions.

Retirement Policy. The Board does not favor a mandatory retirement age for directors, therefore no age limitations are imposed with respect to any category of director.

Retirement Policy – Management Director. As provided in the By-Laws, a Management Director is no longer eligible to serve if he or she ceases to hold a senior officer position at OCC by virtue of which he was elected as a Management Director.

Member Directors Changing Their Employment. If a Member Director ceases to be employed by the Clearing Member Organization that employed him or her at the time of his or her election as a Member Director, the director shall notify the Chairman. As provided in the Charter for the Governance and Nominating Committee, the Governance and Nominating Committee shall assess the appropriateness of such Member Director continuing to serve on the Board, and shall recommend to the Board any action to be taken, consistent with the By-

Laws concerning the continued eligibility of such person to remain a Member Director. The affected director is expected to act in accordance with the Board's decision following such review. The Governance and Nominating Committee, in accordance with the By-Laws, is responsible for recommending a replacement in the event that any such resignation is accepted by the Board.

Other Board Commitments. It is the policy of the Board that non-employee directors shall disclose to the Chairman information regarding each other board of directors on which a non-employee director serves at the time of his or her election to the Board, and after election shall advise the Chairman in advance of accepting an invitation to serve on another board, in each case to ensure that such additional board service will not impact such director's ability to serve on OCC's Board and does not create a conflict of interest. Any Management Director should not accept an invitation to serve on another board without prior approval of the Governance and Nominating Committee.

The Chairman may request the voluntary resignation of a director whose other board service (i) interferes with the director's ability to dedicate sufficient time, energy and attention to the performance of his or her duties as a director of OCC, or (ii) results in the need for the director to recuse himself or herself regularly as a result of conflicts of interest.

Conduct

Conduct

1. Board Meetings.

Selection of Agenda Items. The Chairman, in consultation with the Chief Executive Officer and Chief Operating Officer, other directors or officers of OCC, and the Corporate Secretary, shall establish the agenda for Board meetings. Any director may request that an item be included on any meeting agenda.

Calling Board Meetings. Meetings of the Board shall be called by the Chairman, the Chairman's designee, or as provided in the By-Laws.

Attendance. Directors are expected to prepare for, attend, and participate in all Board and applicable committee meetings. Directors should use their best efforts to attend Board and committee meetings in person. When necessary, a director who is unable to attend in person may attend by telephone or other means of communication that allows all participants to hear and speak to each other if appropriate under the circumstances. A director who is unable to attend a meeting (which it is understood will occur on occasion) or who wishes to participate telephonically or use other communications equipment is expected to notify the Corporate Secretary or the Chairman in advance of such meeting. As provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged.

Distribution of Materials; Board Presentations. It is important for directors to have materials on topics to be discussed sufficiently in advance of a meeting

date and for directors to be kept abreast of developments between Board meetings. OCC regularly informs directors of internal and competitive developments between such meetings.

Directors can generally expect to receive materials at least a week in advance of a meeting to permit meaningful review and enable them to prepare for the meeting. Directors should review material distributed in advance of such meetings. In the event of a pressing need for the Board to meet on short notice or if such materials would otherwise contain highly confidential or sensitive information, it is recognized that written materials may not be available in advance of the meeting. OCC operates a board portal for the general dissemination of meeting and other written material to directors.

Attendance of Non-Directors. The Board believes that attendance of key executive officers relevant for the topic being discussed augments the meeting process. Members of OCC's and other employees may attend Board meetings at the invitation of the Chairman, Chief Executive Officer, or Chief Operating Officer, and provide pertinent information as is necessary. Such persons may be excluded from Executive Sessions either of the Board or any committee thereof.

The Chairman, Chief Executive Officer, and Chief Operating Officer encourage members of the Management Committee to respond to questions posed by directors relating to their areas of expertise. The Board also believes that members of the Management Committee can assist the Board with its deliberations and provide critical insights and analyses, particularly when the Board hears presentations on the business plan for the upcoming year. Attendance of such officers allows the most knowledgeable and accountable executives to communicate directly with the Board. It also provides the Board direct access to individuals critical to OCC's succession planning.

Participation in Strategic Issues Discussions. To facilitate the Board's oversight of OCC's major strategic, financial, and business activities, OCC will hold a meeting of the Board and the Management Committee focused on the overall strategic objectives of OCC each calendar year.

Number of Meetings. The Board shall hold a minimum of four meetings per year with additional meetings called as the Board deems appropriate.

Quorum. Except as may otherwise be provided in the By-Laws, a majority of the directors then in office, but not less than six (6) directors, shall constitute a quorum for the transaction of business.

Minutes. The Board shall maintain minutes of all Board meetings, which shall be furnished to the directors for review.

- 2. Executive Sessions.** The Board and each Board committee may call Executive Sessions from which members of management and invited guests may be excluded. While it is up to the Board and each committee to decide when to call an Executive Session and who will participate in such sessions, it is expected that management will be excluded from Executive Sessions or

portions thereof at which the discussion concerns management's performance and other matters of interest that non-management Directors wish to discuss outside of management's presence. Individual members of the Board and of a committee also may be excluded from Executive Sessions or portions thereof at which the discussion concerns a matter as to which that member has an actual or potential conflict of interest. The Board shall select a director to chair Executive Sessions in the absence of the Chairman. The Chair or Acting Chair of each committee shall chair an Executive Session of the committee. The chair of the Executive Session shall determine if separate minutes of an Executive Session are to be recorded as well as determine the level of detail to be included in such minutes, taking into account the sensitivity of the matters to be discussed and the possibility that candor may be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an Executive Session was convened and broadly describe the topic(s) discussed in Executive Session.

3. **Ethics and Conflicts of Interest.** Each director is required to act in good faith in the best interests of OCC and with due regard to the fiduciary responsibilities owed to OCC as a business and a SIFMU. The Board has adopted a Code of Conduct for OCC.

Directors that includes a Conflict of Interest Policy. The Conflict of Interest Policy incorporates various provisions of applicable corporate law and other standards adopted by OCC to ensure that actual, potential or apparent conflicts of interests (referred to herein as "conflicts of interest") are handled with care. Directors are expected to avoid any action, position or interest that conflicts with an interest of OCC, or gives the appearance of a conflict, in accordance with the Conflict of Interest Policy. Each calendar year, OCC solicits information from directors in order to monitor conflicts of interest and directors are expected to be mindful of their fiduciary obligations to OCC as set forth in the Code of Conduct for OCC Directors. Public Directors are expected to refrain from entering into material business relationships with other directors.

When faced with a situation involving a conflict of interest, 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 Chief Legal Officer any matters that may involve conflicts of interest even if the director does not believe that an actual conflict exists.

Each director is required to comply with the provisions of the Code of Conduct for OCC Directors, including, without limitation, the provisions relating to conflicts of interest and confidentiality. Directors are required to confirm each calendar year their compliance with the Code of Conduct for OCC Directors.

3. **Board Compensation.** A Management Director shall not receive additional compensation for service as a director. Because OCC is an industry utility that benefits both clearing members and participant exchanges, Member Directors and Exchange Directors are not paid an annual retainer, but instead are each entitled to be paid \$100 for each meeting attended.

OCC believes that compensation for Public Directors should be competitive. The

Compensation and Performance Committee will periodically review the level of the compensation for Public Directors, including how such compensation relates to director compensation of companies of comparable size and complexity. Changes to the compensation for Public Directors will be proposed to the full Board for consideration and approval.

4. **Board Access to the Management Committee and Independent Advisors.** In discharging its oversight role, the Board may inquire into any matter it considers appropriate to carry out its duties and responsibilities. Directors should have complete and open access to members of the Management Committee and, as appropriate, to OCC's outside advisors. Directors shall coordinate such access through the Chairman, Chief Executive Officer, or Chief Operating Officer. Directors will use their judgment to assure that this access is not distracting to the business operation of OCC.

The Board shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Board also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Board shall have the right at any time to retain independent outside financial, legal, or other advisors. The Board committees may retain independent outside financial, legal, or other advisors, and OCC will provide appropriate funding, as determined by the relevant committee, for the payment of reasonable compensation to such advisors. When providing the annual report of its activities to the Board, the relevant committee will include information concerning any engagement of outside advisors and the associated fees and expenses.

5. **Board Interaction with Media and Others.** The Code of Conduct for OCC Directors includes provisions related to inquiries made to directors from media and others (including regulators). Directors are expected to comply with these provisions.
6. **Confidentiality of Information.** In order to facilitate open discussion, confidentiality of information and deliberations is an imperative. As provided in the Code of Conduct for OCC Directors, each director has an affirmative duty to safeguard the confidentiality of information provided to the Board as well as the nature of Board room deliberations.
7. **Board Orientation and Continuing Education.** OCC shall provide new directors with a director orientation program to familiarize such directors with, among other things, OCC's business, strategic plans, significant financial, accounting and risk management issues, compliance programs, conflicts policies, the Code of Conduct for OCC Directors, the OCC By-Laws and Rules, the Principles, principal officers, internal auditors, and external auditors. Each director is encouraged to participate in continuing education programs as necessary or appropriate to assist him or her in performing his or her responsibilities as a director. The Corporate Secretary will periodically advise directors of available educational opportunities.
8. **Board and Committee Evaluations.** The Governance and Nominating Committee is responsible for developing and administering an annual self-

evaluation of the Board and its committees. The Governance and Nominating Committee shall be responsible for establishing the evaluation criteria, implementing the process for such evaluation, as well as making appropriate recommendations for improving performance. These self-evaluations will focus primarily on the performance of the Board and each committee as a whole and shall concentrate on areas where performance might be improved.

COMMITTEES

1. **Board Committees.** The Board shall establish any standing and other committees that it deems necessary or appropriate to discharge its responsibilities. The Board has established Board-level committees including: Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk, and Technology. The Board may form a new committee or disband a current committee depending on circumstances. The Board may form such other committees, including subcommittees, as it from time to time deems appropriate, and may delegate authority to one or more designated members of such committees. In addition, the Board may determine to form ad hoc committees or groups from time to time, and determine the composition and areas of responsibility of such committees or groups.
2. **Independence Criteria for Audit Committee Service.** The Board has adopted the following independence criteria with respect to the Audit Committee. A Management Director does not qualify as independent for Audit Committee purposes provided that any Non-Executive Chairman of OCC shall not be deemed to be a Management Director for this purpose. Exchange Directors, Member Directors, and Public Directors may qualify as independent for Audit Committee purposes, subject to an assessment by the Board (through the Governance and Nominating Committee) of individual directors for other disqualifying material relationships with OCC, the Management Committee and other directors.
3. **Committee Assignments and Chairs.** The Chairs of the committees shall be determined in accordance with the terms of the applicable Committee Charter and, if applicable, the By-Laws. The Board shall have the authority to approve and shall each calendar year review committee assignments.

The Governance and Nominating Committee, after consultation with the Chairman, shall be responsible for making recommendations to the Board with respect to the assignment of directors to various committees, including the designation of Chair. After reviewing the recommendations, the Board shall be responsible for appointing the members to the committees.

Committee assignments and the designation of committee Chairs should be based on the director's knowledge, interests and areas of expertise. The Board does not favor mandatory rotation of committee assignments or Chairs. The Board believes experience and continuity are more important than rotation and that directors and Chairs should be rotated only if a change is likely to increase committee performance or facilitate committee work.

4. **Frequency and Length of Board Committee Meetings.** Committee Chairs

should regularly consult with the Chairman, Chief Executive Officer, or Chief Operating Officer to obtain their insights and to optimize committee performance. The committee Chairs, in consultation with the Chairman, Chief Executive Officer, or Chief Operating Officer, as necessary, should establish the frequency and length of committee meetings. The Board agendas shall include regular reports from the Chairs of each of the Board committees.

5. **Development of Committee Agendas.** The committee Chairs, working with the Chairman, should establish committee agendas for the year. All standing committees should meet regularly during the year and receive reports from OCC personnel on developments affecting the committee's work.
6. **Attendance at and Preparation for Committee Meetings.** Directors are expected to attend all meetings of committees to which they are appointed, review all materials in advance and be prepared to participate fully in the committee's meetings.
7. **Charters.** For each standing committee the Board shall establish a written charter which shall set forth the responsibilities of that committee, as well as committee structure and operations, and any required reporting to the full Board.

For each of the Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk, and Technology Committees the charter shall set forth the purposes, goals, and responsibilities of such committee, the qualifications for committee membership, and committee reporting to the Board (which shall include a requirement that each committee provide the Board with an annual report summarizing the committee's activities over the prior year). Current versions of these charters shall be available on OCC's website.

MANAGEMENT STRUCTURE, EVALUATION AND SUCCESSION

1. **Management Structure.** OCC's By-Laws provide the Board with the flexibility to select the appropriate management leadership structure for OCC. OCC's management leadership may be comprised of an Executive Chairman, a Chief Executive Officer, and a Chief Operating Officer, as the Board determines necessary. In making leadership determinations, the Board considers many factors, including the specific needs of the business and the best interests of OCC and the market participants that it serves.
2. **Selection and Evaluation of Management.** As required by the By-Laws, the Board annually elects certain corporate officers including any Executive Chairman (if applicable), and the Chief Executive Officer, Chief Operating Officer, Secretary, and Treasurer. Each of these officers has the authorities, responsibilities and duties allocated to them as set forth in the By-Laws and Rules and such other duties as may be delegated to them as provided in the By-Laws or otherwise. Factors the Board considers in delegating authority to an officer to authorize a regulatory filing include, but are not limited to, the responsibilities and expertise of the officer and any limitations on the scope of the delegated authority that the Board determines are appropriate, including limitations to the subject matter, materiality of the changes, the regulatory

process required to implement the changes, and the manner in which the officer must notify the Board or a committee about filings approved pursuant to such authority.

The Compensation and Performance Committee shall conduct an annual evaluation of the performance of each of any Executive Chairman and the Chief Executive Officer and Chief Operating Officer, including performance against his or her established goals. The Compensation and Performance Committee shall take such evaluations into consideration in recommending to the Board each such officer's compensation. After reviewing the recommendations of the Compensation and Performance Committee, the Board shall be responsible for establishing each such officer's compensation.

3. **Management Succession Planning.** Succession planning for OCC's senior management, including any Executive Chairman, the Chief Executive Officer, and the Chief Operating Officer, is critical to OCC's long-term success. To assist the Board, such officers shall provide an annual succession planning report to the Compensation and Performance Committee. There should also be available, on a continuing basis, the recommendations of any Executive Chairman, Chief Executive Officer, and Chief Operating Officer as a successor should any of them unexpectedly become unable to serve.
4. **Review Cycle.** These Principles, along with the Fitness Standards, shall be reviewed by the Board at least once every twelve months.

EXHIBIT 5B



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THE OPTIONS CLEARING CORPORATION RISK COMMITTEE CHARTER

I. Purpose

The Board of Directors (~~the~~ “Board”) of The Options Clearing Corporation (“OCC”) has established a Risk Committee (~~the~~ “Committee”) to assist the Board in overseeing OCC’s financial, collateral, risk model, and third party risk management processes. The purpose of the Committee is also to advise management regarding these aspects of OCC’s operation. Additionally, the Committee is responsible for performing those functions delegated to the Committee under OCC’s By-Laws and Rules. In fulfilling its responsibilities, the Committee shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

II. Membership and Organization

- A. Composition. The Committee shall consist of (i) the ~~Executive~~ Chairman¹, (ii) at least one Exchange Director, (iii) at least one Member Director, and (iii) at least one Public Director, each of whom shall be appointed each calendar year by the Board. Committee members will be selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and shall serve at the pleasure of the Board. In making their nominations, the Governance and Nominating Committee and the Board take into consideration the desire to obtain input from a broad array of market participants on risk management issues. The Board may remove or replace any member of the Committee at any time. The Committee shall be chaired by a Public Director. Unless ~~the~~ a Chair is elected by the full Board, the members of the Committee shall designate a Chair by majority vote of the full Committee membership. In the absence of the Chair at any meeting of the Committee, those members of the Committee present shall designate a Committee member to serve as the Acting Chair.

In the event of a vacancy on the Committee, the Committee will continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

Meetings. The Committee will meet at least four times a year, inclusive of joint meetings with other Board committees. Other meetings may be called by the Chair as circumstances dictate. The Committee Chair or its designee, in consultation with management, as well as the Corporate

¹ Or “Executive Chairman” in the event this role is filled by an Executive Chairman.

Secretary, shall establish the agenda for Committee meetings. The members of the Committee may ask members of management or others to attend the meeting and provide pertinent information as is necessary. The Committee may call executive sessions from which members of management and invited guests of the Committee may be excluded. Individual Committee members also may be excluded from executive sessions or portions thereof at which the discussion involves a matter as to which that member has an actual or potential conflict of interest. The Committee will meet in executive session at each regular Committee meeting and will determine who will participate in such session. The Committee Chair or the Acting Chair, as applicable, will serve as eChair for the executive session. Members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other. However, as provided in the Code of Conduct for OCC Directors, attendance by telephone or videoconference for meetings that are scheduled for in-person attendance is discouraged. The Committee shall meet regularly, and at least once each calendar year, with members of management and the Chief Risk Officer in separate executive sessions to discuss any matters that either side believes should be discussed privately. Between meetings of the Committee, the Chief Risk Officer is authorized to communicate directly with the Chair with respect to any of the responsibilities of the Committee.

- B. Quorum. A majority of the Committee members shall constitute a quorum for the transaction of business.
- C. Minutes and Reports. The Committee shall maintain minutes of all Committee meetings. The Chair or Acting Chair, as applicable, shall determine whether separate minutes of an executive session are to be recorded as well as determine the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. It is expected that meeting minutes will reflect that an executive session was convened and broadly describe the topic(s) discussed. Minutes of Committee meetings shall be circulated to the Board.

The Committee shall make such reports to the Board as deemed necessary or advisable. The Committee Chair is responsible for ensuring that important issues discussed at the Committee meetings are reported timely to the full Board. Each calendar year, the Committee shall provide a report to the Board summarizing its activities during the previous year.

III. Authority

- A. Scope. Subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or

appropriate to the accomplishment of the purpose and responsibilities set forth in this Charter. In discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC. The Committee shall confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties. Where the Committee is authorized to approve reports or proposals provided to it by management, the Committee may or may not approve such matters in its business judgment. If the Committee does not approve such a report or proposal, it shall report to management that it has not approved such matter and may provide direction as to revisions or alternative courses of action as appropriate. The Committee shall report to the Board in the event that it does not approve a report or proposal provided to it by management, including the reasons for non-approval.

~~From time to time, t~~ The Committee may shall consult with OCC's non-Board-level risk management committee to receive input reports and guidance relating to all matters that could materially affect OCC's risk profile financial risk issues from, among others, the OCC Financial Risk Advisory Council and, in the exercise of its fiduciary judgment, shall take provide relevant non-Board-level risk management committee input to the Board for its review and consideration. such guidance into account in the performance of its functions and responsibilities

The Committee shall have the authority to hire specialists or rely upon other outside advisors or specialists to assist it in carrying out its activities. The Committee also shall have the authority to approve the fees and retention terms applicable to such advisors and specialists. The Committee's annual report to the Board will reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

The Committee shall perform its responsibilities in accordance with this Charter and applicable regulatory requirements.

- B. Delegation. The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee and to one or more designated officers. The Committee may refer a risk under its oversight to another committee or the Board as advisable or appropriate. However, in all instances, the Committee retains the obligation to oversee such delegated or referred activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.

IV. Functions and Responsibilities

The Committee's role is one of oversight. It remains the responsibility of OCC

management to identify, measure, manage, monitor and report on financial, collateral, risk model and third party risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility.

The Committee shall have the following functions and responsibilities in discharging its oversight role:

- The Committee shall review at least once every twelve months the adequacy of OCC's management of risks related to credit exposures, including its margin and clearing fund methodologies. The Committee shall have the authority to approve all material changes to written policies with respect to the management of risks related to credit exposures. The Committee shall receive a monthly report from management that provides information on the effectiveness of the management of risks related to credit exposures, including the results of (i) a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin model and a review of the margin model's parameters and assumptions for back testing.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of collateral risks. The Committee shall have the authority to approve all material changes to written policies related to the management of collateral risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of collateral risks.
- The Committee shall review at least once every twelve months the adequacy of OCC's management of liquidity risks, including the adequacy of any committed liquidity facilities. The Committee shall have the authority to approve all material changes to written policies with respect to the management of liquidity risks. The Committee shall receive a monthly report from management that provides information on the effectiveness of OCC's management of liquidity risks, including the results of a comprehensive analysis of existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs.
- The Committee shall oversee OCC's risk models and risk model validation process. The Committee shall have the authority to approve all material changes to written policies with respect to risk model management. The Committee shall review and have the authority to approve all new risk models and recommend such changes to the Board for approval. The Committee shall review and have the authority to approve material changes to existing risk models. Additionally, the Committee shall review and have the authority to approve the annual risk model validation plan and plan deviations, and any Chief Risk Officer recommendations for removing or deferring any risk model validation from a previously approved risk model validation plan. The Committee shall receive a quarterly report from the Chief Risk Officer that provides information on progress

against the annual risk model validation plan and measures being taken by management regarding findings made. The Committee also shall review the results of any third party validations of OCC's risk models and, if any, recommended actions and remediation plans.

- The Committee shall review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances.
- The Committee shall review and have the authority to approve new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model and third party risks and shall refer such products to the Board for approval.
- The Committee shall oversee OCC's Recovery and Orderly Wind-Down Plan. The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board for approval.
- ~~The Committee shall consider and discuss reports and guidance from the Financial Risk Advisory Council relating to financial risk issues that may impact the options and futures industries, including the potential impact on the businesses of OCC, linked relationships and participants.~~
- The Committee shall consult with OCC's non-Board-level risk management committee and consider and respond to input from that non-Board-level risk management committee on all matters that could materially affect OCC's risk profile, and provide such information to the Board for its consideration.
- The Committee shall oversee the framework for Clearing Membership, including (i) periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for Clearing Membership, (ii) overseeing the processes established for reviewing and monitoring Clearing Membership (including in respect of the continuance of potentially problematic members), and (iii) making recommendations to the Board, as applicable, for final determination in respect of the foregoing. At least once each calendar year, the Committee shall review the investigation and enforcement outcomes of disciplinary actions taken by the OCC against Clearing Members through its established processes.
- The Committee shall at least once every twelve months review the adequacy of OCC's management of third-party risks. The Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third-party risks, including key linked and vendor relationships.
- The Committee shall have the authority to approve management's recommendation to appoint or replace the Chief Risk Officer. The Chief Risk Officer shall report functionally to the Committee and administratively to a

member of the Management Committee designated by the Committee. The Committee shall at least once every twelve months review and have the authority to approve the Chief Risk Officer's goals and objectives and any material changes thereto. The Committee shall at least once every twelve months review the performance of the Chief Risk Officer with respect to performance assessment and annual compensation for the Chief Risk Officer.

- The Committee shall at least once every twelve months review the structure and staffing of OCC's financial risk management and corporate risk management functions.
- The Committee shall review the results of any audits (internal and external) as to financial, collateral, risk model and third-party risk management processes or any other matter relating to the areas that the Committee oversees, as well as management's responses pertaining to such audits.
- The Committee shall identify risk issues relating to the areas that the Committee oversees that should be escalated to the Board for its review and consideration.
- Each calendar year, the Committee shall confirm to the Board that all responsibilities outlined in this Charter have been carried out.
- Each calendar year, the Committee shall assess its and its individual members' performance and provide results of such assessment to the Governance and Nominating Committee for review.
- The Committee shall perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies or delegated to it by the Board, including authorizing the filing of regulatory submissions pursuant to such delegation.
- The Committee shall perform any other duties consistent with this Charter as the Committee deems necessary or appropriate, or as the Board shall further delegate to the Committee.

V. Review Cycle

The Committee will review this Charter at least once every twelve months. The Committee shall submit this Charter to the Governance and Nominating Committee and the Board for approval, with such changes, if any, as the Committee deems advisable.