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

File No. * SR 2026 - * 009
Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
✓	☐	☐	✓	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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 Amendments to its Clearing Membership Standards.

Contact Information

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

First Name * [redacted] Last Name * [redacted]

Title * [redacted]

E-mail * rulefilings@theocc.com

Telephone * [redacted] Fax

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 08/19/2026

By [redacted] (Name *)

(Title *) [redacted]

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

[redacted] Digitally signed by [redacted]
Date: 2026.08.19 16:22:02 -05'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View SR-OCC-2026-009 19b-4_Clearing M	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 * Add Remove View SR-OCC-2026-009 Exhibit 1A_Clearir	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 * Add Remove View	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 Add Remove View	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 Add Remove View SR-OCC-2026-009 Exhibit 3 Cover Pa	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 Add Remove View	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-2026-009 Exhibit 5_Clearing	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 Add Remove View	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 ("the Corporation" or "OCC") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its clearing membership standards as outlined in OCC's Rules.

The proposed changes to OCC's Rules are contained in Exhibit 5 to SR-OCC-2026-009. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

Item 2. Procedures of the Self-Regulatory Organization

The proposed changes to OCC's Rules were approved for filing with the Commission by OCC's Board of Directors ("Board") at a meeting held on December 12, 2024 and on June 18, 2026, and by OCC's Risk Committee on December 11, 2024 and June 17, 2026.

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

OCC acts as the central counterparty clearing house ("CCP") for all U.S. options exchanges and certain U.S. futures exchanges. OCC provides clearing services for options on equities, indices, Exchange Traded Funds ("ETFs") and for certain transactions in futures and options on futures. Organizations become OCC Clearing Members to facilitate the clearing and

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 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.

settlement of their customer transactions or proprietary transactions through OCC. OCC also provides certain Clearing Members with the ability to submit stock loan transactions for novation, after which, OCC becomes the counterparty to both sides of the transactions, guaranteeing that these obligations will be fulfilled. In 2012, OCC was designated as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). With this designation came heightened regulatory expectations around financial, operational, and systems/data obligations. To keep pace with those expectations and ensure OCC continues to maintain a high level of market stability, OCC completed a review of its By-Laws and Rules in conjunction with changes in regulations and Clearing Member risk practices and processes. From this review, OCC modified its membership standards in a proposed rule filing approved by the Commission in 2023.[4] The modifications, among other things, (i) expanded OCC membership to new entity types and in additional jurisdictions and updated its membership requirements and associated processes, including on-boarding and off-boarding procedures, (ii) amended the financial responsibility standards by increasing the minimum capital requirements for Clearing Members, (iii) amended operational requirements for Clearing Members, and (iv) changed rules governing disciplinary actions. The proposed rule filing also reorganized and consolidated certain Clearing Member requirements to improve existing practices.

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4 See Order Granting Approval of Proposed Rule Change by the Options Clearing Corporation Concerning the Amendment of its Clearing Membership Standards, Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373 (May 11, 2023) (SR-OCC-2023-002) ("Clearing Membership Standards").

To build on the enhancements made to OCC's membership standards in 2023 and continue to align with industry best practices[5] and evolving technology[6], OCC recently conducted an in-depth review of its membership standards with a strategic focus on mitigating counterparty credit risk introduced by Clearing Members. From this review, OCC determined it was necessary to further enhance certain Clearing Member requirements to improve OCC's risk mitigation processes and practices. OCC's proposed changes to its clearing membership standards address, in part, (i) new onboarding requirements for eligible applicants for clearing membership at OCC ("applicants"), (ii) risk mitigation requirements for existing Clearing Members and specifically for Clearing Members that OCC determines may present a heightened risk profile, (iii) factors or circumstances that may result in an applicant's denial of membership or a Clearing Member's suspension of membership, (iv) the expansion of delegated authority to the designated delegates or agents of the Risk Committee as it pertains to the approval or denial of applicants on a risk-based approach, and (v) the expansion of the use of protective measures that OCC may impose on an applicant or Clearing Member.

OCC's proposed changes will enhance OCC's risk mitigation processes and practices by requiring, in part, that applicants: (i) maintain a minimum operating history, (ii) maintain a physical office facility to conduct business with OCC, and (iii) provide, upon request by OCC, a business plan, assessed by an independent third-party, that demonstrates the applicant can meet and sustain financial and operational responsibility standards and financial obligations. Among

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5 See Bank for International Settlements, "Guidelines for Counterparty Credit Risk Management" (December2024) ISBN 978-92-9259-823-5; McKinsey& Company, "Moving from Crisis to Reform: Examining the State of Counterparty Credit Risk" October 27, 2023; FINRA Rules and Guidance for Funding & Liquidity https://www.finra.org/rules-guidance/key-topics/funding-liquidity.

6 Evolving technology refers to trends or events driving technology changes in the financial services industry, including but not limited to: (i) an organization's increased reliance on technology to operate and deliver services, (ii) the adoption and use of digital banking services, and (iii) the rise in a remote work environment as more organizations allow their employees to work outside of a traditional office space.

other things, OCC's proposed changes also broaden the scope of required disclosures that applicants must provide during the onboarding process, such as information related to internal stress tests, credit agreements or audited financial statements. By proposing these changes, OCC is strengthening its holistic approach to reviewing and analyzing applicants that may present a heightened risk profile, which further mitigates counterparty credit risk. Additionally, OCC believes its proposed change that delegates certain authority to the designated delegates or agents of the Risk Committee will streamline the decision process and allow for applications and business expansion requests to be reviewed and acted upon in a shorter amount of time, providing a substantial benefit to the industry. OCC's proposed changes also clarify and expand upon the basis for denial of an applicant and the suspension of an existing Clearing Member, providing enhanced transparency to the industry. OCC's proposed changes address updated financial responsibility obligations for existing Clearing Members, which is intended to mitigate risk to OCC through the establishment of enhanced risk-based capital levels. Furthermore, OCC's proposed changes expand upon the use of protective measures, which will allow more assurance that OCC is able to protect itself and its members from emerging counterparty risks.

Overall, OCC believes these proposed changes will strengthen OCC's onboarding requirements and provide OCC with the appropriate resources to ensure that applicants onboarded as Clearing Members present an acceptable risk profile such that they are likely to continue to meet OCC's membership standards in the future. The proposed changes will also allow OCC to more effectively risk manage existing Clearing Members that may pose a heightened risk profile and take measures to reduce that risk.

While the membership standards that OCC proposes to change are described in further detail below, generally, they consist of the following:

- Amending eligibility standards by requiring applicants to maintain a minimum operating history of one year;[7]
- Amending admission procedures and conditions to admission to expand the delegation of authority to the Risk Committee's designated delegates or agents;[8]
- Amending admission procedures to codify the processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures, or in hearings on denials of Clearing Member applications or reapplications;[9]
- Adopting requirements for applicants and Clearing Members related to confidential treatment of non-public information;[10]
- Amending the conditions to admission to, among other things:[11]
  - Clarify and expand upon the basis for OCC's denial of membership;
  - Require more robust notification requirements from applicants that are subject to a formal investigation by a regulatory organization;
  - Restrict applicants that have been denied membership from reapplying for membership until the applicant has demonstrated, to OCC's satisfaction, that they have addressed the specific reason(s) for their denial;
  - Require certain applicants to provide OCC with a business plan demonstrating the applicant has a viable plan to meet and sustain financial and operational responsibility standards and financial obligations at OCC;

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7 See infra description of proposed Rule 201.

8 See infra description of proposed Rules 203 and 204.

9 See infra description of proposed Rules 203 and 307B.

10 See infra description of proposed Rules 203, 207, 306.

11 See infra description of proposed Rule 204.

  - Incorporate a probationary period for certain applicants approved by OCC with contingencies to membership;

- Amending requirements such that applicants and Clearing Members are required to maintain a physical office facility to conduct business with OCC, unless an applicant or Clearing Member utilizes a remote office model that OCC determines does not present heightened risk to OCC;[12]
- Amending reporting requirements such that, upon OCC's request, an applicant or Clearing Member must furnish their parent or affiliate's audited financial statements to OCC;[13]
- Amending financial responsibility requirements by establishing risk-based minimum capital levels;[14]
- Amending operational capability obligations related to a Clearing Member's books and records;[15]
- Amending financial, operations, and risk management personnel requirements related to a Clearing Member's employment of individuals;[16]
- Amending event-based reporting requirements specific to Early Warning Notices;[17]
- Amending requirements related to OCC's ability to impose protective measures on Clearing Members or applicants;[18] and

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[12] See infra description of proposed Rule 204 and 302.

[13] See infra description of proposed Rules 204 and 306B.

[14] See infra description of proposed Rule 301.

[15] See infra description of proposed Rule 302.

[16] See infra description of proposed Rule 303.

[17] See infra description of proposed Rule 306A.

[18] See infra description of proposed Rule 307.

- Clarifying and expanding upon the basis for OCC's suspension of an existing Clearing Member.[19]

The proposed rule change generally would reflect each of these changes in the Rules by modifying the provisions currently set forth in Chapter I, II, III XI and XII of the Rules. OCC's proposed changes also include various clarifying, non-substantive updates to its Rules, including formatting and grammatical changes, and updates to section numbering as necessary to reflect proposed rules. OCC's proposed changes are described in more detail below under the section headers reflecting the proposed new Rules.

A. Purpose

The purpose of this proposed rule change by OCC is to modify its existing Rules to implement changes that are designed to strengthen its onboarding process for applicants and enhance its monitoring of current Clearing Members through updated financial, operational, and reporting requirements. OCC believes these proposed changes will help to mitigate counterparty credit risk and improve OCC's risk mitigation processes and practices.

CHAPTER I – DEFINITIONS

Proposed Rule 101 – Definitions

OCC proposes to adopt a definition for the term "anti-money laundering ("AML")" as it is utilized in proposed Rule 204(e)[20] and proposed Rule 307C.[21] In Rule 101, OCC defines "AML" to mean, when used in respect of an applicant or Clearing Member's AML controls,

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[19] See infra description of proposed Rule 1201(a).

[20] See infra description of proposed Rule 204(e).

[21] See infra description of proposed Rule 307C.

compliance with anti-money laundering requirements imposed under U.S. law or comparable requirements in the Clearing Member's home jurisdiction.

OCC also proposes to adopt a key person clause by defining the term "Key Person" as it is utilized in proposed Rule 204(c)[22] and proposed Rule 307C.[23] The definition would provide that "Key Person" means any person associated with a Clearing Member or applicant that the Corporation deems is critical to the Clearing Member or applicant's operations or risk management, including, but not limited to, the Clearing Member's President, Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Risk Officer ("CRO"), and Chief Compliance Officer ("CCO"), or equivalent positions, or a major shareholder or partner of the Clearing Member. The purpose of adopting a definition for Key Person is to promote resiliency for OCC in the event an individual deemed to be a Key Person is unable to fulfill their position within a Clearing Member or applicant's management team. OCC's proposed definition of Key Person incorporates the provision "any person associated with a Clearing Member or applicant" to consider Clearing Members or applicants with legal structures that encompass multiple legal entities. The purpose of including the phrase "associated with" is to encompass positions beyond direct employment or control of the Clearing Member or applicant. For example, a director or partner level position may not be a direct employee of a Clearing Member or applicant, however, they may constitute a critical part of such Clearing Member or applicant's operations or risk management functions. As such, OCC believes it is necessary that the definition of Key Person extend to such individuals outside of direct employment, but who are still associated with the

22 See infra description of proposed Rules 204(c), 204(c)(1), and 204(c)(2).

23 See infra description of proposed Rule 307C.

Clearing Member or applicant. As described in more detail in proposed Rule 307C,[24] if a Key Person's departure has a material impact on the Clearing Member's operations or financial profile, OCC believes it is necessary to maintain the ability to impose restrictions on the impacted Clearing Member. For example, a Key Person may control the day-to-day decisions, maintain key client relationships, or have extensive knowledge of the company such that their position is critical to the operation of the business. If that person's inability to fulfill such position would likely impact the business's operations or profitability, it could pose additional risk to OCC. Therefore, OCC believes that adopting a definition for Key Person will strengthen its risk mitigation practices and promote resiliency for OCC.

To align with OCC's proposed rules concerning the protection of OCC's non-public information,[25] OCC proposes to add a definition of the term "OCC Confidential Information" to Rule 101. The definition would provide that "OCC Confidential Information" means all non-public information provided by OCC that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as "confidential" or "business sensitive,"[26] (ii) is designated by the Corporation as confidential, or (iii) the recipient knows or under the circumstances surrounding disclosure, ought to reasonably know is confidential.

OCC's proposed rules incorporate a reference to the term "OFAC" as it relates to an applicant's or Clearing Member's compliance with OFAC. For clarification, OCC proposes to define the term "OFAC" to mean the United States Department of the Treasury's Office of Foreign Assets Control as defined in Title 31, Chapter V of the Federal Regulations.[27]

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24 Id.

25 See infra description of proposed Rules 203, 207, 306.

26 These classifications correspond to OCC's internal procedures for classifying and marking records.

27 31 CFR 509.309.

Lastly, OCC proposes to update the rule reference in the definition of the term "Office" in Rule 101. OCC proposes to eliminate reference to Rule 201 within the description and replace it with reference to Rule 302. OCC believes this proposed change aligns more closely with the new proposed edits to Rule 302 as it relates to requirements around maintaining a physical office space.

CHAPTER II – CLEARING MEMBERSHIP

Proposed Rule 201 – Eligibility

OCC proposes to modify its eligibility standards for applicants to ensure that, in OCC's discretion, such applicants reflect a sound financial and operational profile. Specifically, OCC proposes to adopt a new subsection (b) to current OCC Rule 201[28] that would provide that Clearing Members must maintain a minimum operating history of one year in the same or substantially same business activities as being applied for, or in the alternative, must maintain senior personnel with sufficient financial, risk, and operational background and experience, in the sole opinion of OCC, to conduct the business of the Clearing Member.

The proposed change requiring a minimum operating history of one year is designed to ensure that there is sufficient information for OCC to formulate a holistic view of the applicant's background to help determine, based on the applicant's history, whether the applicant could meet OCC's existing membership standards and whether the applicant is likely to continue to meet OCC's membership standards for the foreseeable future. The proposed change also provides OCC with flexibility to, in the event the applicant does not maintain an operating history of one year, evaluate the applicant's senior personnel to determine whether such personnel have

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[28] Current OCC Rule 201(b) would be renumbered as OCC Rule 201(c), and current OCC Rules 201(c) – 201(e) would be renumbered as OCC Rules 201(d) – 201(f), respectively.

sufficient background experience to conduct the business of the Clearing Member. By requiring a minimum operating history of one year, OCC believes this proposed change will allow applicants to demonstrate their continued capacity to operate their business. OCC believes this information will strengthen its onboarding process by eliminating at an early-stage applicants that do not maintain a sufficient operating history or sufficient personnel, in OCC's discretion, therefore mitigating potential risk to OCC.

Proposed Rule 203 – Admission Procedures

OCC proposes to make substantive and organizational changes to proposed Rule 203 – Admission Procedures. OCC's proposed changes would reorganize Rule 203 into six separate subsections, outlined in proposed subsections (a) through (f) of proposed Rule 203. OCC also proposes adding titles that label each subsection, enhancing clarity and ease of readability throughout the document. OCC's proposed changes adopt new rule text in its entirety in proposed subsections (b)(4) through (b)(6), (b)(8), (e) and (f) of proposed Rule 203, while proposed subsections (a), (b)(1) through (b)(3), (b)(7), (c), and (d) reorganize existing text and incorporate new text. The purpose of each substantive change is discussed below.

i. Proposed Rule 203(a)

OCC's proposed changes would reorganize existing Rule 203(a) into proposed Rules 203(a) and 203(b)(1) through (b)(3). The first sentence of current Rule 203(a) provides that applicants for clearing membership must be in such form and contain such information as OCC will from time to time require. Proposed Rule 203(a) would be titled "Form of Application." In addition, Proposed Rule 203(a) would extend this provision to include reapplications under Rule 309. As described in more detail in below with respect to proposed Rule 309, OCC may determine that a Clearing Member must reapply for membership due to an event described in

Rule 306A(b)(1) that causes a material impact on the Clearing Member's operational condition. If OCC makes such determination, the Clearing Member would be required to reapply for membership pursuant to the admission procedures described in Rule 203, and the reapplying Clearing Member would be afforded the same rights under Rule 203 as any new applicant of OCC.

ii. Proposed Rule 203(b)

OCC's proposed Rule 203(b) would be titled "Review by the Risk Committee or its Delegates" and would be organized into eight subparts, as outlined in proposed Rule 203(b)(1) through (b)(8). OCC's proposed changes reorganize rule text from existing Rule 203(a) into new proposed Rules 203(b)(1) through (b)(3) while also proposing additional provisions in those subsections. Proposed Rule 203(b)(7) contains certain text that was relocated from existing Rule 203(a) while also proposing new rule text. Lastly, OCC proposes to adopt Rule 203(b)(4) through (b)(6), and (b)(8) as entirely new rule text.

a. Proposed Rule 203(b)(1)

OCC proposes to modify its admission procedures to expand the delegation authority of the Risk Committee, specifically in their decision to approve or deny an applicant. OCC's existing Rule 203(a) provides, in part, that the Risk Committee must approve or deny an applicant for clearing membership, and that the Risk Committee may also approve, under certain circumstances, an applicant on an expedited basis.[29] OCC proposes to expand the Risk Committee's authority such that the Risk Committee may delegate, to its designated delegates or agents, the ability to approve or deny new applications or reapplications, and approve an applicant on an expedited basis. Specifically, proposed Rule 203(b)(1) would provide that the

29 See supra note 3 at Rule 203(a), (b).

Risk Committee, or its designated delegates or agents, determine whether to approve or deny applications or reapplications for clearing membership. OCC proposes to reflect this change on the delegation of authority from the Risk Committee to its designated delegates or agents throughout Rule 203 and Rule 204, as described in further detail below.

OCC believes the proposed change to delegate certain authority of the Risk Committee to its delegates or agents will streamline and accelerate the decision-making process and approval, while continuing to utilize a risk-based decision-making approach within OCC. New Clearing Member applicants are currently reviewed and decided upon by the Risk Committee at the regular Risk Committee meetings, which are scheduled approximately every quarter. OCC believes this delegation of authority will also benefit applicants that may require a more urgent response based on their business activity, because such applicants would not need to wait for a regularly scheduled Risk Committee meeting for their application to be presented to the Risk Committee and approved or denied by the Risk Committee. Given various dependencies in the application review process, such as receiving documentation from applicants and working through the required internal approvals, it can be challenging from a timing perspective to align such dependencies with the regularly scheduled Risk Committee meeting date. By expanding the potential delegation of authority to approve or deny applications outside of the regular scheduled Risk Committee meetings, OCC believes this will accelerate the decision-making process and reduce delays for applicants.

OCC’s proposed changes in proposed Rule 203(b)(1) also incorporate “reapplications” into this provision to align with proposed Rule 309. As described in proposed Rule 309 and outlined in the description of proposed Rule 203(a) above, if OCC determines that a Clearing Member must reapply for membership, the process for reapplication would follow the same admission procedures for new applicants described in Rule 203. As such, the reapplying Clearing Member would be afforded the same rights as new applicants under existing Rule 203, and the Risk Committee, or its designated delegates or agents, would determine whether to approve or deny the reapplications, as it would for new applicants.

Furthermore, OCC also proposes to update existing language in proposed Rule 203(b)(1) to promote clarity and consistency on the Risk Committee's responsibility related to approval or denial of an applicant. OCC's existing Rule 203(a), which is reorganized, in part, to proposed Rule 203(b)(1), provides that the Risk Committee must review and approve or disapprove such applicants for clearing membership.[30] OCC's proposed changes in proposed Rule 203(b)(1) update this language to state that the Risk Committee, or its designated delegates or agents, "determine whether to approve or deny" applications or reapplications for clearing membership. OCC believes the proposed language "determine whether to approve or deny" provides a more precise description of the Risk Committee's responsibilities, intended to promote transparency for Clearing Members and the general public.

b. Proposed Rule 203(b)(2)

Proposed Rule 203(b)(2) consists entirely of text relocated from the third sentence of existing Rule 203(a), with no substantive changes. Specifically, the sentence provides that the Risk Committee, or its designated delegates or agents, may examine the books and papers of any applicant, take such evidence as they may deem necessary or employ such other means as they may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications. OCC believes relocating this information from existing Rule 203(a) into proposed Rule 203(b)(2) enhances organizational efficiency in the document.

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30 See supra note 3 at Rule 203(a).

c. Proposed Rule 203(b)(3)

OCC's proposed changes reorganize and restate the fourth sentence of existing Rule 203(a) into proposed Rule 203(b)(3). That sentence currently provides that if the Risk Committee proposes to disapprove an application for clearing membership, it must first furnish the applicant with a written statement of its proposed recommendation and the specific grounds therefor, and afford the applicant an opportunity to be heard and to present evidence on its own behalf. Proposed Rule 203(b)(3) would incorporate the proposed expansion of the delegation authority of the Risk Committee in their decision to approve or deny an applicant by extending this obligation to the Risk Committee's designated delegates or agents. Proposed Rule 203(b)(3) would also incorporate "reapplications" of Clearing Members to align with proposed Rule 309, as described below. Proposed Rule 203(b)(3) would provide that the written statement informing the applicant or Clearing Member of the specific grounds of the proposed denial would be furnished by OCC's Corporate Secretary. As such, proposed Rule 203(b)(3) would provide clarity regarding whose responsibility it would be to transmit the written statement, clarifying it would be OCC's Corporate Secretary, not the Risk Committee. In addition, this change would provide transparency concerning the point at which the proposed process for Risk Committee review of such proposed denial would begin, as discussed below with respect to proposed Rule 203(b)(4) through (8). Proposed Rule 203(b)(3) would also use the terms "deny" or "denial," instead of "disapprove" and "recommendation," respectively, to align with the changes to Proposed Rule 203(a).

d. Proposed Rules 203(b)(4) – (b)(6)

OCC proposes to adopt subsections (b)(4) through (b)(6) of proposed Rule 203 as new rule text. The purpose in adopting subsections (b)(4) through (b)(6) is to codify within OCC's rules the processes that OCC would undertake in hearings before the Risk Committee on denials of Clearing Member applications or reapplications.[31] OCC believes this detailed process set forth in (b)(4) through (b)6) of proposed Rule 203 will promote greater transparency for Clearing Members and applicants with respect to denial of participation and the procedures afforded to them.

First, proposed Rule 203(b)(4) establishes the process by which a Clearing Member or applicant may request a hearing, and the notice requirements OCC must provide before that hearing takes place. Specifically, proposed Rule 203(b)(4) would provide that a Clearing Member or applicant may request a hearing by filing with the Secretary of OCC within five (5) business days from the date on which the Secretary of OCC furnished the applicant with a written statement under paragraph (b)(3) setting forth the name of the representative of the Clearing Member or applicant who may be contacted with respect to the hearing. Furthermore, the proposed change would provide that the Secretary of OCC will give the Clearing Member or applicant not less than ten (10) business days' prior written notice of the place and time of the hearing.

Next, proposed Rule 203(b)(5) outlines the requirements that a Clearing Member or applicant must fulfill after requesting a hearing, including submitting a detailed written statement of objections and indicating their intent to attend the hearing and whether they will have legal representation. Specifically, proposed Rule 203(b)(5) would provide that within seven (7) business days after the Clearing Member or applicant files such written request with OCC, the Clearing Member or applicant must submit to the Secretary of OCC a clear and concise

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[31] OCC also proposes to codify these same procedures for appeals of certain protective measures, as described in proposed Rule 307B.

statement setting forth with particularity the basis for its objection to the denial, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. Additionally, proposed Rule 203(b)(5) would include that the Secretary of OCC may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

Finally, proposed Rule 203(b)(6) establishes the formal procedures governing how a hearing before the Risk Committee would be conducted, covering attendance, representation, recordkeeping, evidence submission and objections, hearing order, and post-hearing follow-up. OCC had previously developed and the Risk Committee had deployed these procedures for challenges to limitations on membership under OCC Rule 307B. OCC now proposes to codify them in Rule 203(b)(6) for transparency. Specifically, proposed Rule 203(b)(6) would provide that a hearing will proceed before the Risk Committee pursuant to the procedures set forth in (A) through (I) of proposed Rule 203(b)(6). Sections (A) through (I) of proposed Rule 203(b)(6) would establish the below procedures:[32]

- If the applicant fails to appear at the hearing, it may be deemed to have waived the right to review.
- The Clearing Member or applicant may be represented by counsel, but such representation is not required.
- OCC will keep a verbatim record of the hearing, which shall be the official record of the hearing. The applicant must refrain from making audio or video recordings or transmission of the hearing. The verbatim record of the hearing shall constitute

[32] The bullet points set forth correspond to subsections (A) through (I) of Section (b)(6), presented in sequential order.

OCC Confidential Information.

- OCC and the Clearing Member or applicant (each a "Party") may offer evidence through documentary evidence entered as exhibits in the proceeding.
- Parties must provide copies of any documents or other materials that they plan to use at the hearing as evidence. Such evidence must be exchanged no later than the date established by the Risk Committee.
- The formal rules of evidence, including the Federal Rules of Evidence, do not apply to hearings held under this Rule. Parties may argue that any documentary evidence presented by the opposing party should not be considered by the Risk Committee by objecting orally at the hearing on the basis that the evidence is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. After considering the objecting party's reasons for excluding the evidence, the Risk Committee members will determine if the document will be admitted into evidence and into the record.
- Following the presentation of each document, members of the Risk Committee may pose questions to the presenter of the document about the evidence offered.
- Subject to the Risk Committee's authority to change the order, the hearing will be conducted in the following order: (i) open of record; (ii) presentation of the facts of the case, including documents, by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (iii) the applicant's presentation of facts of the case, including documents; (iv) rebuttal by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (v) the applicant's rebuttal; and (vi) the close of record.

- Following the hearing, if necessary, the Risk Committee may submit questions in writing to either Party, with copies of all communication provided to each Party.

e. Proposed Rule 203(b)(7)

Proposed Rule 203(b)(7) establishes the notice requirements and finality of the Risk Committee's decision to deny an application or reapplication. From an organizational standpoint, proposed Rule 203(b)(7) incorporates certain rule text that was relocated from existing Rule 203(a) into proposed Rule 203(b)(7), while also introducing new rule text.

Specifically, proposed Rule 203(b)(7) provides that if the Risk Committee, or its designated delegates or agents, denies an application or reapplication, OCC will provide the applicant or Clearing Member a written notice of the decision, accompanied by a statement of the specific grounds on which the denial is based. Furthermore, the proposed changes would state that any decision made under this Rule will be final upon the date OCC's Corporate Secretary provides a copy of the written notice of the decision to the Party. Proposed Rule 203(b)(7) would incorporate the concept of reapplication as described under proposed Rule 309 such that Clearing Members would be afforded the same rights under proposed Rule 203 as new applicants. OCC's proposed changes also replace the word "disapproves" with "denies" to remain consistent with the word choice in proposed Rule 203(b)(1) through (b)(3). In addition, OCC's proposed changes eliminate existing rule text that requires the decision must be "mailed or delivered to the applicant." OCC proposes this change for efficiency and will amend its processes accordingly if the change is approved. Finally, proposed Rule 203(b)(7) would make other non-substantive changes, such as (i) replacing "its" with "the" in reference to the Risk Committee's written notice of decision, and (ii) eliminating the word "therefore" because this was relocated text that OCC believes it is no longer necessary.

f. Proposed Rule 203(b)(8)

Proposed Rule 203(b)(8) establishes that a final denial of a Clearing Member's reapplication, pursuant to proposed Rule 309, will constitute grounds for summary suspension under Rule 1102. Specifically, proposed Rule 203(b)(8) would provide that a final decision to deny a reapplication of a Clearing Member pursuant to Rule 309 and this Rule will constitute a suspension or expulsion from a self-regulatory organization and therefore grounds for summary suspension under Rule 1102. Proposed Rule 203(b)(8) mirrors existing Interpretation and Policy .01 to Rule 1201 (i.e., proposed Rule 1201(b)), which provides the same with respect to a suspension or expulsion following disciplinary proceedings. In effect, these proposed rules provide that following a determination to expel a member—whether upon a denial of a reapplication under proposed Rule 309 after affording the Clearing Member the process described above or as a sanction for a violation of OCC's By-Laws and Rules under existing Chapter XII of the Rules—suspension of the Clearing Member may proceed in accordance with Chapter XI of the Rules (Suspension of a Clearing Member).

iii. Proposed Rule 203(c)

OCC's proposed changes reorganize existing Rule 203(b) to become proposed Rule 203(c), and add the title "Expediated Approvals." OCC believes these proposed changes will help to improve readability and ease of navigation throughout OCC's rules. OCC's proposed changes also incorporate the expansion of the delegation authority of the Risk Committee in their decision to approve or deny an applicant on an expediated basis, as discussed above in the description of proposed Rule 203(b)(1). Specifically, OCC's proposed changes provide that the Risk Committee, "or its designated delegates or agents," may approve an applicant on an expedited basis if approval of such applicant is appropriate for the protection of investors and the public interest.

iv. Proposed Rule 203(d)

OCC's proposed changes would also modify the provisions applicable to Clearing Members seeking to engage in clearing activities beyond the scope of their current authorizations. Specifically, OCC's proposed changes would reorganize existing Rule 203(c) to become new Rule 203(d) – "Business Expansion Requests." OCC believes the proposed addition of a title will improve readability and ease of navigation throughout OCC's rules. Proposed Rule 203(d) would provide that Clearing Members' business expansion requests may be reviewed and approved or disapproved "by the Risk Committee, or its designated delegates or agents" pursuant to the procedures of OCC.

OCC's proposed changes eliminate the specific reference to the CEO and COO[33] and eliminate the provision requiring that the Risk Committee must be given not less than ten business days from the date it is notified of any such approval/disapproval to determine whether the business expansion request should be reviewed by the Risk Committee. Because the parties seeking to engage in business expansion requests are existing Clearing Members that have already gone through enhanced due diligence in the application process, OCC believes it is not necessary that all business expansion requests be considered for review by the Risk Committee. Rather, OCC proposes a new risk-based framework pursuant to OCC's procedures such that only

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33 The revised rule text would authorize the Risk Committee, or its designated delegates or agents, as the decision makers. As a confidential Exhibit 3a to File No. SR-OCC-2026-009, OCC provided a copy of its Clearing Member On-Boarding and Off-Boarding Procedure which includes the Proposed Decision Authority Framework for New Clearing Member Applicants and Business Expansions ("Decision Authority Framework"). OCC's Decision Authority Framework outlines the designated delegates or agents of the Risk Committee and their level or review or decision, based on the Clearing Member applicant and business expansion.

business expansion requests that have been escalated by OCC's CEO or COO ("OCEO") would be subject to the review and approval of the Risk Committee. Furthermore, pursuant to OCC's Decision Authority Framework, it would be up to the discretion of the OCEO to determine, based on the specific business expansion request, whether it would be necessary to involve the Risk Committee in the decision-making process.[34]

As mentioned above, OCC's current process for business expansion requests entails that business expansion requests are approved or disapproved by the CEO or COO, provided the Risk Committee will be given not less than ten business days from the date it is notified of such approval or disapproval to determine whether the business expansion request should be reviewed by the Risk Committee.[35] OCC's current process allows the Risk Committee a 10-day negative consent period upon being notified of such approval or disapproval. If there is no objection from the Risk Committee during that timeframe, the business expansion request is approved or disapproved depending on the determination of the CEO or COO. Based on the information available to OCC at this time, OCC is not aware of a specific instance in which the Risk Committee exercised its authority to review or object to business expansion requests in the past. The purpose of proposed Rule 203(d) is to eliminate the requirement that every business expansion request be required to be reviewed by the Risk Committee. OCC believes the proposed change will streamline business expansion requests by eliminating the 10-day negative consent period and promoting a clear decision-making approach for either the Clearing and Liquidity Risk Working Group ("CLRWG") or the OCEO.

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34 Per OCC's Decision Authority Framework, which is included in the Clearing Member On-Boarding and Off-Boarding Procedure as confidential Exhibit 3a to SR-OCC-2026-009, business expansion requests will not require Risk Committee approval, however the OCEO may escalate any business expansion request to the Risk Committee at its discretion.

35 See supra note 3 at Rule 203(c).

v. Proposed Rule 203(e)

OCC proposes to adopt subsection (e) of proposed Rule 203 to codify within OCC's Rules its intent to inform the Risk Committee of all decisions related to applicants or business expansion requests. Specifically, Proposed Rule 203(e) would provide that OCC will provide notice to the Risk Committee of all decisions made by the Risk Committee's designated delegates or agents related to the approval or denial of any applicant or business expansion request. As described in more detail above, OCC proposes to expand the Risk Committee's authority so that the Risk Committee may delegate, to its designated delegates or agents, the authority to approve or deny new applicants and business expansion requests. The purpose of the proposed Rule 203(e) is to align with the proposed delegated authority framework and provide transparency to the Risk Committee of all decisions being made by the Risk Committee's designated delegates or agents as it relates to the approval or disapproval of applicants or business expansion requests.

vi. Proposed Rule 203(f)(1) though (2)

OCC also proposes to establish rules related to the confidential treatment of non-public information and proposes to adopt Rule 203(f) "Confidential Information." In its capacity as a self-regulatory organization, OCC collects non-public information from its applicants to assess whether each applicant meets OCC's membership standards. In addition, OCC collects non-public information from its Clearing Members as part of its ongoing monitoring of their continued adherence to those standards. Such non-public information includes, but is not limited to, information on the applicant or Clearing Members financial and operational condition, agreements with other counterparties, and written policies and procedures. OCC may also provide non-public information to its Clearing Members and applicants to support its participants' risk management and operations with respect to their participation in OCC. Examples of non-public information OCC may share with participants include, but are not limited to, the detailed methodology descriptions for OCC's proprietary margin and stress testing methodologies,[36] and operation manuals providing participants with detailed instructions about how to use OCC's clearance and settlement systems.

With respect to non-public information that an applicant shares with OCC, assurance of confidentiality would be provided through the addition of paragraph (f)(1) to OCC Rule 203. Proposed Rule 203(f)(1) provides, in part, that any non-public information furnished to OCC pursuant to this Chapter will be held in confidence as may be required under the laws, rules and regulations applicable to OCC that relate to the confidentiality of records. For the avoidance of doubt, the proposed change would also provide that nothing in this Rule would prevent OCC from releasing such non-public information, in its sole discretion, to (i) any governmental or regulatory authority (e.g., the SEC of CFTC); or (ii) any regulatory organization to which the applicant is a member or participant (e.g., Financial Industry Regulatory Authority ("FINRA") with respect to a broker dealer, or other registered clearing agencies in which the applicant or Clearing Member is a common member).[37]

OCC would also add a paragraph (2) to Rule 203(f), which would require that each

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[36] The Commission has reviewed such documents and has concluded that they are appropriately withheld from OCC's public filings under Section 23(a)(3) of the Exchange Act, 15 U.S.C. 78w(a)(3), under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(b)(4). See, e.g., Exchange Act Release No. 95319 (July 19, 2022), 87 FR 44167, 44171 n.49 (July 25, 2022) (SR-OCC-2022-001) (concluding that FOIA Exemption 4 applied to OCC's STANS Methodology Description).

[37] For purposes of these Rules, "regulatory organization" is already defined in OCC Rule 101 to include, among other organizations, (i) any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act, 15 U.S.C. 78c(a)(26)) of which the Clearing Member is a member or participant, and (ii) any clearing organization (as defined in Regulation 1.3 under the Commodity Exchange Act, 17 CFR 1.3), board of trade, contract market and registered futures association of which the Clearing Member is a member or participant.

applicant must maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and that the applicant must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such applicant's obligations under the By-Laws and Rules or as otherwise required by applicable law. Furthermore, proposed Rule 203(f)(2) would entitle OCC to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages related to the disclosure of OCC Confidential Information. Specifically, proposed Rule 203(f)(2) would state that each applicant acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to OCC for which there is no adequate remedy at law, and in the event of such a breach by the applicant, OCC will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. In addition, by promulgating Rule 203(f)(2), OCC would be entitled to impose disciplinary proceedings for an applicant's violation of the confidentiality requirements, consistent with existing Chapter XII of OCC's Rules. Finally, proposed Rule 203(f)(2) would state that nothing in this Rule will prevent OCC or the applicant from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

Proposed Rule 204 – Conditions to Admission

OCC proposes to enhance its conditions to admission to provide OCC with the appropriate resources to thoroughly evaluate each applicant, based on specific conditions described in the Rules, to determine if such applicant currently meets OCC's membership standards and if such applicant is likely to continue to meet OCC's membership standards in the future. OCC's proposed modifications expand upon its basis for denial of an applicant and strengthen the financial and reporting requirements for applicants to ensure applicants reflect an acceptable risk profile, based on OCC's discretion.

i. Proposed Rules 204(a), 204(c), and 204(d)

Consistent with the proposed changes to proposed Rule 203 described above, OCC proposes to modify Rule 204 to expand the delegation of authority of the Risk Committee to the Risk Committee's designated delegates or agents. Specifically, OCC proposes to modify Rule 204(a) to provide that the Risk Committee, "or its designated delegates or agents, may approve any application for clearing membership if the applicant meets the membership requirements and standards set for in the Rules." To eliminate ambiguity and promote more concise and direct language, OCC's proposed changes update the structure of the sentence to reflect the affirmative tone by replacing the phrase "will not" with "may," and "fails to meet" with "meets."

OCC also proposes to modify 204(c) and 204(d), respectively, to provide that: (i) the Risk Committee, "or its designated delegates or agents," may disapprove the application for clearing membership of any applicant or person of the applicant who is subject to a Statutory Disqualification, and (ii) that the Risk Committee, "or its designated delegates or agents," may disapprove an application for clearing membership if the applicant or any natural person associated with the applicant has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. OCC believes the proposed changes to delegate certain authority to the Risk Committee's designated delegates or agents will streamline and accelerate the decision-making process using a risk-based decision-making approach.

ii. Proposed Rules 204(c), 204(c)(1), and 204(c)(2)

OCC proposes to expand the statutory disqualification provision in proposed Rules 204(c), 204(c)(1) and 204(c)(2) to include the statutory disqualification of a Key Person, as the term is defined in Rule 101. OCC's proposed changes to Rules 204(c) and 204(c)(1) also intended to clarify that the provision applies not only to applicants who are subject to a Statutory Disqualification at the time of application, but also to applicants who become subject to a Statutory Disqualification over the course of the application period itself.

Existing Rule 204(c) provides that the Risk Committee may disapprove the application for clearing membership of any applicant or person of the applicant who is subject to a Statutory Disqualification. To promote clear construction of the rule and strengthen OCC's grounds for denial of an applicant, OCC proposes to modify Rule 204(c) to state that the Risk Committee, or its designated delegates or agents, may disapprove "an" application for clearing membership if any applicant, or "Key Person" of the applicant, is "or becomes" subject to a Statutory Disqualification. The purpose of this proposed change is to strengthen OCC's basis for denial of an applicant if the applicant presents heightened risk to OCC at the initial time of application, or over the course the application period itself. As mentioned above under proposed Rule 101, a Key Person is, in part, a person associated with a Clearing Member or applicant that OCC deems is critical to the Clearing Member or applicant's operations or risk management. For example, a Key Person may control the day-to-day decisions, maintain key client relationships, or have extensive knowledge of the company such that their position is critical to the operation of the business. OCC's proposed changes narrow the grounds from statutory disqualification of a "person" of the applicant to statutory disqualification of a "Key Person" of the applicant to focus on those individuals that maintain critical and supervisory responsibilities within the organization. In contrast to the more general reference to a "person" of the applicant, OCC believes that a “Key Person” of the applicant has a role within the organization that may have a stronger impact on the organization’s operations and processes. If an applicant or a Key Person of the applicant is subject to a Statutory Disqualification at the time of application, or if an applicant or Key Person of the applicant becomes subject to a Statutory Disqualification over the course of the application period, OCC believes this may present heightened risk to OCC. Therefore, OCC proposes to expand authority to deny an applicant if such applicant or a Key Person of the applicant is or becomes subject to a Statutory Disqualification. OCC’s proposed changes would also make other grammatical and conforming changes in proposed Rule 204(c).

For the same reasons described above, OCC proposes to revise Rule 204(c)(1) to incorporate the statutory disqualification of a Key Person. Proposed Rule 204(c)(1) would provide that in cases in which the SEC, by order, directs as appropriate in the public interest, the Corporation will disapprove an application for clearing membership by any applicant or “Key Person” of the applicant who is “or becomes” subject to a Statutory Disqualification.

OCC also proposes to modify Rule 204(c)(2) to expand upon the circumstances and specify the timeframe for which an applicant must provide notification to OCC. Specifically, OCC proposes to modify Rule 204(c)(2) to provide that every applicant must notify OCC in writing “within two business days” if the applicant “or a Key Person” is or becomes subject to a statutory disqualification in accordance with the requirements of Rule 306A(c), “or if the applicant learns that it or a Key Person is the subject of a formal investigation by a regulatory organization.”

Existing Rule 306A(c) provides, in part, that a Clearing Member or any applicant for clearing membership must notify OCC within 20 business days upon learning of becoming subject to a statutory disqualification.[38] OCC believes the proposed change to shorten the notification timeframe requirement for applicants from 20 business days, as provided in 306A(c), to two business days, as provided in proposed Rule 204(c)(2), provides OCC with important information at an earlier stage in the decision-making process. By receiving such information from an applicant within two business days of the applicant becoming aware, rather than within 20 business days, OCC will be able to evaluate this information earlier in the applicant review process and take next steps to address how the Statutory Disqualification may impact the applicant. OCC believes this information may be a factor in determining whether the applicant, in OCC's discretion, presents an acceptable risk profile to OCC. Therefore, OCC believes the proposed change to shorten the notification period will promote efficiencies and help to accelerate the decision-making process.

In addition, proposed Rule 204(c)(2) requires that, if an applicant learns that it or a Key Person is the subject of a formal investigation by a regulatory organization, the applicant must notify OCC within two business days of learning of such investigation, so that OCC can evaluate the applicant, and the information provided, as soon as possible and in its entirety. OCC believes that such information may be a factor in determining whether the applicant may present an acceptable risk profile to OCC. OCC believes that if an applicant is the subject of a formal investigation by a regulatory organization, the applicant may, among other things, present a heightened risk profile. Therefore, it would be of concern to OCC if OCC learned of such investigation after approving the applicant for membership, rather than before approval. Furthermore, should OCC learn of such an investigation towards the end of the onboarding process, but before presenting the firm for approval, this may require a postponement of such

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[38] See supra note 3 at Rule 306A(c).

presentation until OCC can complete its due diligence on that matter, thereby leading to a prolonged onboarding process and an inefficient approach to decision-making.

iii. Proposed Rule 204(e)

OCC's proposed Rule 204(e) expands upon the basis for OCC's denial of membership by providing examples of factors or circumstances, under OCC's existing authority, that articulate OCC's denial of membership. Proposed Rule 204(e) would provide that the Risk Committee, or its designated delegates or agents, may disapprove any application for clearing membership if OCC becomes aware of any factor or circumstance about the applicant, or a Key Person of the applicant, that may pose elevated risk to OCC or impact the suitability of the applicant as a Clearing Member. OCC proposes to include the reference to the Key Person of the applicant, as defined in Rule 101, to capture certain situations when, for example, a CEO steps down from the CEO role, but still represents a critical role in the Clearing Member's or applicant's management team. The proposed change would also provide that factors or circumstances that may pose elevated risk to OCC include, but are not limited to: (i) concerns relating to an applicant's liquidity profile; (ii) concerns with the results of an independent assessment, performed in the last 12-18 months,[39] of an applicant's AML program's compliance with the Banking Secrecy Act requirements or OFAC Sanctions List and Sanctions list data; (iii) concerns relating to the amount or degree of financial leverage maintained or proposed to be maintained by the applicant; (iv) concerns relating to pending, adjudicated or settled regulatory or other legal actions

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[39] OCC's rationale for proposing that the independent assessment be performed in the last 12-18 months is based on consideration from NFA Compliance Rule 2-9(c), which requires that FCMs provide for independent testing, conducted at least every 12 months, of the adequacy of their anti-money laundering compliance programs. See National Futures Association. (2022). *NFA Interpretive Notice 9045 - NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program*. Retrieved from https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9045#:~:text=2%20including%20FCMs.-,3,maintain%20and%20update%20customer%20information.

involving the applicant or its management, including the applicant or a Key Person of the applicant being subject to a Statutory Disqualification, as such term is defined in Rule 101; (v) if an applicant does not conduct its business from a physical office facility such that OCC determines this represents an unacceptable level of operational risk to OCC, or (vi) concerns related to an applicant's profitability.

Although OCC does not specify in proposed Rule 204(e)(ii) who must perform an independent assessment of an applicant's AML program's compliance with the Banking Secrecy Act requirements or OFAC Sanctions List and Sanctions list data, OCC would expect such assessment to be conducted by an applicant's internal audit department, consultants, or other qualified independent third parties to help to ensure the information is accurate and as unbiased as possible. OCC believes it is also reasonable to require that the assessment be conducted by an independent third-party to align with other self-regulatory organizations, such as FINRA and the National Futures Association ("NFA"), both of which also maintain provisions in their rules requiring independent testing of their AML compliance program.[40]

OCC believes the provisions set forth in this proposed rule are necessary and appropriate for OCC to take into consideration when evaluating whether an applicant presents a heightened risk profile. OCC believes proposed Rule 204(e) will provide greater transparency to applicants and the general public at an earlier stage in the application process because the considerations listed in the proposed rule are part of OCC's existing application review process. Proposed Rule 204(e) is not intended to represent an exhaustive list of all circumstances in which OCC may disapprove an application, nor is proposed Rule 204(e) intended to seek new authority for OCC. Rather, proposed Rule 204(e) is intended to articulate OCC's current authority to deny an

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[40] FINRA Rule 3110(c) and NFA Rule 2-9(c) Interpretation 9045.

application based on certain circumstances that, in OCC's discretion, may reflect an unacceptable risk profile. Furthermore, OCC believes the proposed provision strengthens OCC's risk mitigation practices by articulating in OCC's Rules examples of circumstances that OCC may rely on to disapprove an applicant in the event an applicant presents a heightened risk profile.

iv. Proposed Rule 204(f)

OCC proposes to adopt Rule 204(f) to establish a requirement related to reapplication for those applicants that have been denied membership. Specifically, proposed Rule 204(f) provides that if an applicant is denied membership, the applicant is restricted from reapplying for membership until the applicant has demonstrated to the satisfaction of the Corporation that the applicant has adequately addressed the specific grounds upon which the applicant was denied. OCC believes this proposed rule would require applicants to make meaningful changes to their risk profile after being denied membership and demonstrate, based on their changes, that they have addressed the underlying reason for their denial. OCC believes this proposed rule would reduce the possibility that an applicant will immediately reapply for membership without taking action to adjust their risk profile and address the reason for denial, which would promote an effective use of OCC's and an applicant's time and resources.

v. Proposed Rule 204(g)

OCC's proposed new Rule 204(g) would outline OCC's requirements related to an applicant's office model. The proposed rule provides that every applicant must maintain physical office facilities for conducting business with OCC, unless the applicant utilizes a remote office model that OCC determines, in its sole discretion, does not present heightened risk to OCC.[41] In addition, the proposed rule provides that every applicant may be subject to an on-site visit from OCC at the applicant's physical office facility as part of OCC's onboarding process. The proposed rule also states that applicants will be provided with no less than 24 hours' notice prior to OCC's on-site visit.

Evolving technology has introduced the ability for employees to work remotely outside of a traditional office space, and more organizations are allowing for the ability of remote work. OCC believes the use of a fully remote, non-hybrid, office model may introduce challenges for OCC to communicate with the applicant and perform an on-site examination of the applicant, therefore posing heightened risk to OCC. The purpose of proposed Rule 204(g) is to minimize risk for OCC, by providing for a more fixed location for communication and on-site examination performed by OCC. OCC believes that an applicant's lack of maintaining any physical office facility presents risks that would not exist in a hybrid office model where an applicant may have some form of physical office to allow for in-person communication. OCC believes the risks posed by an applicant that is fully remote include, but are not limited to, challenges in communication between the applicant's staff and OCC, and the lack of visibility that OCC may have into the applicant's operational stability that could be mitigated during an on-site visit or in-person meeting. OCC also proposes to adopt 204(g) and to align with FINRA's Rules related to designating a physical office space.[42] For applicants that are also members of FINRA, OCC expects those applicants would already adhere to FINRA's Rules on designation of office facilities and supervision of such facilities, so OCC believes it is reasonable that such applicants

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41 OCC intends for such discretionary review to rest with OCC generally, and not to a particular committee or OCC officer.

42 FINRA Rule 3110(a)(3) and 3110(f).

must maintain a physical office facility under OCC's Rules. OCC intends to apply such standards of maintaining a physical office facility not just to all applicants, but to all existing Clearing Members as well, as described in proposed Rule 302(b). Although OCC is not aware of any current Clearing Member that utilizes a fully remote business model, OCC considers the use of a fully remote business model to be a part of OCC's operational risk management. OCC would consider, on a case-by-case basis, whether an applicant or Clearing Member's risk profile would be impacted if such applicant or Clearing Member utilized a remote business model. OCC believes this proposed requirement that applicants and Clearing Members maintain a physical office facility to conduct business with OCC, unless OCC determines that the use of a remote office model does not pose additional risk for OCC, would strengthen OCC's operational risk management.

vi. Proposed Rule 204(h)[43]

OCC proposes to renumber existing Rule 204(e) to Rule 204(h). Proposed Rule 204(h) describes the nine-month timeframe requirement in which an applicant must meet all conditions applicable to admission. In proposed Rule 204(h), OCC proposes to provide examples of such conditions that are applicable to an applicant's admission. OCC's proposed changes provide that such referenced conditions shall include, but are not limited to, clearing fund deposits and operational testing requirements. By providing illustrative examples of conditions that may be applicable to an applicant's admission, OCC believes this proposed change helps to promote transparency for applicants.

vii. Proposed Rule 204(j)

[43] Existing Rule 204(h) would be renumbered to Rule 204(q).

OCC proposes to adopt Rule 204(j), which provides that if an applicant fails to respond fully to OCC's requests for information after a period of 90 days from the inception of the application process, or for any subsequent 90-day period thereafter, OCC may deny the applicant. This proposed change is intended to ensure applicants are engaged in the application process, to help streamline the process and promote productive business practices and processes for OCC. OCC believes it is an inefficient use of its time and resources to continue waiting for responsiveness or complete information longer than 90 days following an OCC request, or any subsequent 90-day period, as this time can be more efficiently allocated to processing other new applicants which have provided the information requested by OCC in a timely fashion.

viii. Proposed Rule 204(k)

OCC's proposed changes would adopt new Rule 204(k). In proposed Rule 204(k), OCC's proposed change specifies that OCC may share with such Designated Examining Authority or designated SRO any information provided by the applicant to OCC in connection with the application process. OCC believes this proposed change promotes enhanced transparency to other industry regulatory authorities.

ix. Proposed Rule 204(l)

OCC's proposed changes would renumber existing Rule 204(g) to proposed Rule 204(l). The proposed change also expands the delegation authority of the Risk Committee, as described in further detail above, and clarifies OCC's existing authority to impose additional requirements for clearing membership pursuant to Rule 307. Specifically, the proposed change provides, in part, that if the Risk Committee, "or its designated delegates or agents," determines that an applicant's financial condition, operational capability, risk management capability or experience and competence, in relation to the business that the applicant is expected to transact with OCC, makes it necessary or advisable, for the protection of OCC, Clearing Members, or the general public, the Risk Committee may impose additional requirements for membership including, but not limited to, the imposition of protective measures pursuant to Rule 307. OCC proposes removing the term "temporary" before "requirements" to articulate that this provision was never intended to limit OCC's existing authority under Rule 307 to impose requirements on Clearing Members that may be permanent. For example, a permanent requirement that OCC may impose is the requirement that the new Clearing Member must hire personnel on a full-time basis to help demonstrate that such Clearing Member maintains sound risk management and operational controls. In this example, the requirement that the Clearing Member hire new personnel on a full-time basis, rather than on a part-time basis, is intended to be a permanent requirement. OCC believes the removal of the term "temporary" will align more closely with OCC's existing authority under Rule 307 and help strengthen OCC's resiliency in the event an applicant may present, in OCC's discretion, a heightened risk profile. For additional clarification, OCC's proposed change to proposed Rule 204(l) also includes the provision that states "any contingencies that the Risk Committee, or its designated delegates or agents, designates as temporary will remain in effect" until the heightened risk presented by the Clearing Member is sufficiently reduced, "based on the judgment of the Corporation, or if applicable, the maturity date of such contingency as specified by the Corporation."

x. Proposed Rule 204(m)

OCC proposes to adopt new Rule 204(m), which provides, in part, that applicants, upon OCC's request, must provide OCC with a business plan, supported by financial projections and assumptions that includes the applicant's proposed use of OCC's services that demonstrates, to the satisfaction of OCC, that the applicant has a viable plan to meet and sustain the financial and operational responsibility standards and financial obligations under OCC's Rules. In addition, the proposed change states that the applicant must provide, upon OCC's request, an assessment of the applicant's business plan by an independent third-party consultant deemed acceptable by OCC, at the expense of the applicant, to evaluate the reasonableness and viability of the plan, including its assumptions and projections, and that failure to provide such a plan, when requested by OCC, may result in denial of the application.

This proposed change is intended to strengthen OCC's basis for determining whether to approve or deny an applicant. OCC believes this proposed change will provide OCC with accurate, relevant information to consider when evaluating an applicant's background, operational and business history, and future projections, to determine if the applicant presents an acceptable risk profile. In addition, OCC believes that requiring the applicant's business plan to be assessed by an independent third-party provides additional comfort to OCC that the information provided to OCC is as accurate and as unbiased as possible.

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, OCC holds a significant responsibility in managing risk to the U.S. listed-options marketplace. Therefore, OCC believes it is essential that when requested, applicants provide OCC with a business plan, vetted by an independent third-party consultant, to allow OCC to perform its due diligence and thoroughly evaluate each applicant in its entirety to determine whether such applicant presents an acceptable risk profile. Additionally, it is critical for OCC's review that the information received from an applicant is as accurate and as unbiased as possible. OCC expects that applicants will leverage their existing third-party relationships to undertake an independent review of the applicant's business plan. By leveraging existing relationships, OCC believes that an applicant can minimize additional costs and limit the risk of any potential confidentiality issues from sharing information because such relationships already exist and there is, presumably, a level of trust in existence with such relationships. OCC believes that the requirement to provide OCC, upon its request, with a business plan, assessed by an independent third-party consultant is appropriate to further strengthen OCC's risk management practices.

xi. Proposed Rule 204(n)

OCC proposes to adopt new Rule 204(n), which provides, in part, that if OCC determines to apply a limitation or restriction on an applicant in lieu of applying a membership standard, as OCC is currently authorized to do as outlined in Rule 307, such limitations and restrictions may also include contingencies. Furthermore, OCC's proposed changes explain that such limitations, restrictions, and contingencies may include, in addition to the examples already provided in Rule 307, increased or adjusted ongoing membership financial requirements or an ongoing requirement to provide additional information or reports to OCC. Proposed Rule 204(n) also provides that any such financial requirements will be risk-based.

This proposed change is intended to provide OCC with the flexibility to approve an applicant for Clearing Membership with contingencies attached to its membership. The proposed change articulates specific circumstances in which an applicant's approval for membership may be contingent upon, such as the requirement for an applicant to provide ongoing reporting to OCC. OCC believes this proposed change to apply contingencies to an applicant's membership will equip OCC with the necessary tools and resources to address each individual applicant based on the specific scenario of the applicant, and apply, for example, adjusted financial or reporting requirements to a newly approved Clearing Member if OCC believes such applicant may present a heightened risk profile.

xii. Proposed Rule 204(o)

OCC proposes to adopt new Rule 204(o), which provides, in part, that if an applicant is approved by OCC with contingences attached to its membership, such applicant's membership will be deemed to be in a probationary period for twelve months following the date of the approval as a Clearing Member. In addition, the proposed rule provides that if a Clearing Member subject to a probationary period violates any contingency, or any OCC Rule, the Clearing Member is subject to suspension by OCC pursuant to Chapter XII of OCC's Rules. OCC believes this proposed change provides OCC with the necessary resources to manage an applicant that presents a heightened risk profile. The purpose of proposed Rule 204(o), in contrast to existing Rule 1201(a)(2), is to introduce a probationary period of twelve months for new Clearing Members that have been recently approved with contingencies attached to their membership due to their heightened risk profile as an applicant. The probationary period introduced in proposed Rule 204(o) applies to those Clearing Members that have been approved with certain contingencies attached to their membership. The probationary period is not intended to apply to existing Clearing Member that have been members at OCC for a period of time and do not have contingencies attached to their membership. Proposed Rule 204(o) broadens OCC's authority to suspend a newly approved Clearing Member that, but for the contingencies attached to their membership, OCC may not have approved their application for clearing membership.

xiii. Proposed Rule 204(p)

OCC proposes to adopt new Rule 204(p) which provides, in part, that upon OCC's request, the applicant must provide to OCC the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. The proposed change also provides that if the annual audited financial statements of the applicant's parent or affiliate are not available, the applicant must provide, upon OCC's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the applicant's parent or affiliate, as applicable.

This proposed rule is intended to enhance OCC's reporting requirements, so that OCC has the necessary information available to fully review an applicant and address their risk profile. OCC believes it is necessary and appropriate to require, in certain circumstances, that an applicant, regardless of the applicant entity type, provide OCC with their parent or affiliate's audited financial statements for OCC's review so that OCC can take into consideration, from a broader perspective, the data that is provided and complete an extensive review to determine if the applicant presents an acceptable risk profile. In addition, by requiring, upon request, that an applicant provide OCC with their parent or affiliate's audited financial statements, OCC may gain a deeper understanding of the overall applicant's financial health and performance, which would assist OCC in determining the applicant's risk profile.

<u>Proposed Rule 207 – Submission to and Retrieval of Items to and from the Corporation</u>

OCC describes in proposed Rule 203(f) the requirement for applicants to maintain OCC Confidential Information in confidence. Similarly, OCC proposes to apply the same standard of maintaining OCC Confidential information in confidence to existing Clearing Members. To clearly differentiate which proposed rules apply to applicants and which proposed rules apply to Clearing Members, OCC proposes to introduce Rule 207(d) to describe requirements as applicable to existing Clearing Members.

Proposed Rule 207(d) would require each Clearing Member to maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and that the Clearing Member must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such Clearing Member's obligations under the By-Laws and Rules or as otherwise required by applicable law. Furthermore, proposed Rule 207(d) would entitle OCC to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages related to the disclosure of OCC Confidential Information. Specifically, proposed Rule 207(d) would state that each Clearing Member acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to OCC for which there is no adequate remedy at law, and in the event of such a breach by the Clearing Member, OCC will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. In addition, by promulgating Rule 307, OCC would be entitled to impose disciplinary proceedings for a Clearing Member's violation of the confidentiality requirements, consistent with existing Chapter XII of OCC's Rules. Finally, proposed Rule 207(d) would state that nothing in this Rule will prevent OCC or the Clearing Member from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

CHAPTER III – CLEARING MEMBERSHIP

Proposed Rule 301 – Financial Responsibility

OCC proposes to modify its existing Rule 301(b) and 301(d) to strengthen financial responsibility obligations for existing Clearing Members.

i. Proposed Rule 301(b)

OCC proposes to modify Rule 301(b) to address OCC's ability to implement, in certain circumstances, risk-based minimum capital levels. Specifically, OCC's proposed changes provide that OCC, in its sole discretion, may, pursuant to Rule 307C(a), establish risk-based minimum capital levels, higher than those specified in Rule 301 to mitigate risk to OCC. The proposed change would state that examples of such risks giving rise to a higher capital requirement include, but are not limited to, Clearing Members that may, as determined by OCC, present: (i) a short operating history, (ii) an inadequate liquidity profile, (iii) a business strategy that is high risk, (iv) a profile that is highly leveraged, (v) weak internal risk controls, or (vi) insufficient personnel. This proposed change is intended to provide OCC with flexibility to implement different capital levels than the standard capital levels outlined in OCC's existing rules to address the various risk profiles presented by its Clearing Members. OCC's bases for applying risk-based minimum capital levels would be detailed in OCC's Clearing Member On-Boarding and Off-Boarding Procedure.[44] OCC believes this proposed change will help to further strengthen its risk mitigation practices by providing OCC with necessary tools to address Clearing Members that may present elevated risk to OCC and other Clearing Members.

ii. Proposed Rule 301(d)

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[44] As a confidential Exhibit 3a to File No. SR-OCC-2026-009, OCC provided a copy of its Clearing Member On-Boarding and Off-Boarding Procedure (the "Procedure") to the Commission. The Procedure would specify several examples of when OCC may apply risk-based minimum capital levels. Such examples would include, but are not limited to: (i) if the applicant does not maintain any lines of credit or has limited liquidity resources; (ii) if the applicant does not maintain an operating history of one year; (iii) if the applicant consistently reports monthly losses over a 12-month period or losses are projected by the firm over the subsequent 12 month period; (iv) if the applicant's proposed business generates a calculated clearing fund requirement near or greater than the applicant's excess net capital, and (v) if the applicant's financial statements for the past 12 months reveal a pattern of substantial swings in capital levels. The Procedure would also include that risk-based minimum capital levels may be applied depending on the applicant's tail risk when compared to capital or liquidity.

OCC proposes to modify Rule 301(d) to clarify requirements related to a Clearing Member's contingency plans, and the obligation to provide information about such plans. Specifically, OCC's proposed changes to Rule 301(d) include the provision that every Clearing Member must furnish copies of such procedures related to its contingency planning upon the request of OCC. OCC believes this requirement will strengthen its ability to verify that Clearing Members maintain sufficient procedures to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC.

Proposed Rule 302 – Operational Capability

OCC proposes to enhance its operational capability standards for existing Clearing Members in proposed Rule 302(b) and 302(c).

Proposed Rule 302(b) would specify that every Clearing Member must maintain physical office facilities for conducting business with OCC, unless such Clearing Member utilizes a remote office model that OCC determines, in its sole discretion, does not present heightened risk to OCC. OCC also proposes to include the provision that every Clearing Member may be subject to an on-site visit from OCC at the Clearing Member's physical office facility as part of OCC's ongoing monitoring and due diligence of Clearing Members. In addition, OCC proposes that Clearing Members will be provided with no less than 24 hours notice prior to such on-site visit from OCC. As described in proposed Rule 204(g), OCC proposes to apply the same standard to applicants and existing Clearing Members as it relates to the requirement to maintain a physical office facility to conduct business with OCC. To differentiate which proposed requirements apply to applicants and which requirements apply to existing Clearing Members, OCC incorporated this provision in proposed Rule 204(g) in reference to applicants, and proposed Rule 302(b) in reference to existing Clearing Members. OCC believes that Clearing Members that do not maintain any type of physical office facility to conduct business with OCC may present a heightened risk profile. OCC believes the risks posed by a Clearing Member that maintains a fully remote office model include, but are not limited to, challenges in communication between the Clearing Member's staff and OCC, and the lack of visibility that OCC may have into the Clearing Member's operational stability that could be mitigated during an on-site visit or in-person meeting. OCC will determine, in its sole discretion and on a case-by-case basis, if such Clearing Member presents a heightened risk profile based on its use of a remote office model. Through proposed Rule 302(b), OCC intends to strengthen its operational capability standards for Clearing Members to limit potential operational risk posed to OCC by Clearing Members that do not maintain a physical office facility.

To further strengthen its operational requirements and ensure Clearing Members meet and maintain an acceptable risk profile, OCC proposes to update Rule 302(c) to include the provision that every Clearing Member must make its books and records available for inspection by OCC upon request.

Lastly, OCC proposes to correct an error in Rule 302(f), which concerns operational requirements for Clearing Members participating in OCC's Stock Loan Programs. As the titles to the subparagraphs imply, paragraph (f)(1) concerns the Stock Loan/Hedge Program and paragraph (f)(2) was intended to concern the Market Loan Program. OCC proposes to correct an inadvertent reference to the Stock Loan/Hedge Program in paragraph (f)(2), which would instead refer to the Market Loan Program.

<u>Proposed Rule 303 – Financial, Operations, and Risk Management Personnel</u>

OCC proposes to modify Rule 303(a) to establish specific requirements related to staffing of Clearing Member personnel. Proposed Rule 303(a) provides that every Clearing Member must employ individuals with relevant industry experience in senior management roles, or equivalent positions, including: President or Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Chief Compliance Officer. The proposed change also provides that the Clearing Member must maintain a clear division of responsibility between each of the listed roles above, the purpose of which is to reduce conflicts of interest. The proposed change also states that the Clearing Member must maintain a minimum number of total full-time personnel, including a minimum number of four full-time risk management personnel. Lastly, the proposed change provides that a Clearing Member may, with the agreement of OCC, substitute for certain full-time personnel contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind of cleared contracts that the applicant or member proposes to clear. OCC's proposed additions to Rule 303(a) are intended to verify and support, from OCC's perspective, that Clearing Members maintain a sufficient level of staffing in risk management roles with sufficient industry experience to demonstrate that such Clearing Members are operationally reliable. OCC believes it is essential that Clearing Members maintain sufficient staffing of personnel to present an acceptable risk profile, in OCC's judgement.

Proposed Rule 305 – Clearing Member Risk Management

OCC's existing Rule 305 requires, in part, that Clearing Members maintain written risk management policies and procedures that address the risks that Clearing Members pose to OCC.[45] Existing Rule 305 also states that OCC will review the risk management policies, procedures, and practices of each Clearing Member on a periodic basis.[46] OCC proposes to modify existing Rule 305 to add a clarifying provision that states "based on OCC's review of the

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45 See supra note 3 at Rule 305.

46 Id.

policies, procedures and practices, OCC" may take appropriate action to address concerns identified in such reviews, including but not limited to the imposition of protective measures pursuant to Rule 307. OCC believes this proposed change articulates more clearly the basis for OCC to take action to address concerns based on review of the Clearing Member's policies, procedures and practices.

Proposed Rule 306 – Notification and Reporting Requirements

As described in further detail above in proposed Rule 203(f), OCC's proposed changes establish rules related to the confidential treatment of non-public information provided to and received from applicants and Clearing Members. Proposed Rule 203(f) concerns non-public information related to an applicant. To differentiate which proposed requirements apply to applicants and which proposed requirements apply to existing Clearing Members, OCC proposes to adopt Rule 203(f), with respect to applicants, and Rule 306(b) with respect to Clearing Members.

With respect to non-public information that a Clearing Member shares with OCC, assurance of confidentiality would be provided through the addition of paragraph (b) of Rule 306.[47] Proposed Rule 306(b) provides, in part, that any non-public information furnished by a Clearing Member to OCC pursuant to Chapter 3 will be held in confidence as may be required under the laws, rules and regulations applicable to OCC that relate to the confidentiality of records. Furthermore, proposed Rule 306(b) provides that nothing in this Rule will prevent the Corporation from releasing such non-public information, in its sole discretion, to (i) any governmental or regulatory authority (e.g., the SEC or CFTC); or (ii) any regulatory organization to which the applicant is a member or participant (e.g., FINRA with respect to a broker dealer, or

[47] The existing provision of Rule 306 would be numbered Rule 306(a).

other registered clearing agencies in which the applicant or Clearing Member is a common member).[48]

Proposed Rule 306A – Event-Based Reporting

OCC proposes to modify existing Rule 306A(a)(1). Existing Rule 306A(a)(1) requires, in part, that under the Early Warning Notices provision, a Clearing Member must notify OCC prior to 3:00 P.M. CT in writing if the Clearing Member receives notice from any regulatory organization (as defined in this paragraph) of any financial or operational difficulty affecting the Clearing Member or of any failure by the Clearing Member to be in compliance with the financial or operational responsibility rules or capital requirements of any regulatory organization. To align with OCC's definition of "regulatory organization" in existing Rule 101, OCC's proposed change revises the text in Rule 306A(a)(1) that references regulatory organization from "as defined in this paragraph" to "as defined in Rule 101." OCC's proposed change incorporates additional language following this provision that states "to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation." OCC proposes to include this information to articulate that OCC acknowledges that Clearing Members may be subject to confidentiality provisions under certain laws of various regulatory organizations that would prohibit disclosure of such information to OCC.

Furthermore, in relation to the referenced term "regulatory organization" in existing Rule 306A(a)(1), OCC proposes to update the language from "any regulatory organization (as defined this paragraph)" to "any regulatory organization (as defined in Rule 101)." Because the term "regulatory organization" is defined in OCC Rule 101, OCC believes it is more appropriate to

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48 See supra note 37.

include the specific reference to Rule 101. For the same reasons, OCC also proposes to revise the text in Rule 306A(a)(2)(D) from "as defined below" to "as defined in Rule 101."

OCC also proposes to update Rules 306A(a)(2)(A)(i) and 306A(a)(4)(B)(i). In the event OCC determines to implement risk-based minimum capital levels, as described in proposed Rule 301, OCC will adjust its event-based reporting requirements to account for such risk-based minimum capital levels. OCC's proposed change to Rules 306A(a)(2)(A)(i) and 306A(a)(4)(B)(i) provide that a Clearing Member must notify OCC when the Clearing Member's net capital is less than the greater of $12 million, "or amount equal to 20% above the applicable Clearing Member's minimum capital requirement." OCC selected a 20% reporting threshold to account for potential instances where OCC may require that an applicant or Clearing Member maintain a minimum net capital requirement that is higher than the $10 million requirement outlined in Rule 301 or higher than the reporting threshold of $12 million in existing Rule 306A. For example, there may be an instance when OCC establishes a higher minimum net capital requirement for a Clearing Member, such as $15 million, instead of $10 million. In this example, the trigger for when a Clearing Member would be required to notify OCC would be set at a net capital below $18 million, which is $20% above $15 million. If OCC utilized the current $12 million threshold for all situations, it may not have an impact on Clearing Members with minimum net capital requirements greater than existing $10 million.

To promote parallel construction and coherent language for ease of readability throughout OCC's Rules, OCC proposes to update Rules 306A(a)(4)(C), 306A(a)(4)(D), 306A(a)(5)(C) and 306A(a)(5)(D) by incorporating the language "such Clearing Member receives" at the beginning of each referenced provision. OCC also proposes to make conforming changes to proposed Rules 306A(a)(4)(D) and 306A(a)(5)(D) by deleting the term "received."

Similar to proposed provision in Rule 306A(a)(1), OCC proposes to add language at the end of Rule 306A(a)(5)(D) that states "to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation" to articulate that OCC acknowledges that Clearing Members may be prohibited from disclosing certain information to OCC based on laws of their regulatory agency.

OCC also proposes to update Rule 306A(b)(1) to promote clarity, strengthen its notification requirements for Clearing Members, and provide OCC with flexibility and tools to address Clearing Members with a heightened risk profile. OCC's proposed change updates proposed Rule 306A(b)(1) to clarify a specific timeframe in which Clearing Members must notify OCC of any material change in its form of organization. Specifically, OCC's proposed change provides that each Clearing Member must give OCC "a minimum of 30 days" prior written notice, "or prompt written notice where such decision is made less than 30 days prior to taking effect," of any material change in its form of organization or ownership structure.[49]

OCC's existing Rule 306A(c) provides, in part, that a Clearing Member, or applicant for clearing membership, that is or becomes subject to a statutory disqualification, must notify OCC in writing of the statutory disqualification within 20 business days.[50] OCC proposes to apply the same standard to applicants and Clearing Members as it relates to an applicant's or Clearing Member's responsibility to notify OCC upon learning of being subject to a statutory disqualification. To align with proposed Rule 204(c)(2) and promote consistency and transparency to applicants and Clearing Members, OCC proposes to modify Rule 306A(c) to incorporate statutory disqualification of a Key Person, and to reduce the notification requirement

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[49] In contrast, OCC's current Rule 306A(b)(1) requires only "prompt" notification.

[50] See supra note 3 at Rule 306A(c).

for Clearing Members from 20 business days to two business days upon learning of such statutory disqualification. OCC believes this change will allow OCC to better manage and more quickly address such Clearing Members who may present a heightened risk profile to OCC. Lastly, because Rules in Chapter III apply to existing Clearing Members, while Rules in Chapter II primarily concern applicants for clearing membership, OCC also proposes to remove the reference to applicants in proposed Rule 306A(c) by eliminating the phrase "or any applicant for clearing membership." The purpose of this proposed change is to promote clarity and organizational consistency within the Rules.

Proposed Rule 306B – Periodic Reporting

i. Proposed Rule 306B(b)

OCC proposes to update Rule 306B(b) as it relates to reporting requirements for existing Clearing Members. Specifically, OCC proposes to require that upon OCC's request, the Clearing Member must provide to OCC the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. The proposed provision would also provide that if the annual audited financial statements of the Clearing Member's parent or affiliate are not available, the Clearing Member must provide, upon the Corporation's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the Clearing Member's parent or affiliate, as applicable.

OCC proposes to apply the same reporting standard for Clearing Members and applicants, regardless of Clearing Member or applicant type, as it relates to requiring that the applicant or Clearing Member provide OCC with the annual audited financial statements from such an entity's parent or affiliate. To differentiate which proposed requirements apply to applicants and which requirements apply to existing Clearing Members, OCC incorporated the above provision in proposed Rule 204(p) in reference to applicants, and proposed Rule 306B(b) in reference to existing Clearing Members. The proposed change to Rule 306B(b) is intended to enhance OCC's reporting requirements, so that OCC has the necessary information available to fully review a Clearing Member and address their risk profile. OCC believes it is necessary and appropriate to require, in certain circumstances, that the Clearing Member provide to OCC their parent or affiliate's audited financial statements so that OCC can complete an extensive review to determine if the Clearing Member presents an acceptable risk profile. As mentioned above as it relates to applicants, OCC believes it is necessary and appropriate to require, in certain circumstances, that a Clearing Member provide their parent or affiliate's audited financial statements for OCC's review so that OCC can take into consideration, from a broader perspective, the data that is provided and complete an extensive review to determine if the Clearing Member presents an acceptable risk profile. In addition, by requiring, upon request, that a Clearing Member provide to OCC their parent or affiliate's audited financial statements, OCC may gain a deeper understanding of the overall Clearing Member's financial health and performance, which would assist OCC in determining the applicant's risk profile.

ii. <u>Proposed Rule 306B(f)</u>

OCC proposes to adopt Rule 306B(f) to strengthen its reporting requirements for Clearing Members. Proposed Rule 306B(f) would require that Clearing Members provide accurate, complete and timely responses to OCC's annual and periodic due diligence information requests, including any supplemental or follow-up requests thereto. This proposed change is intended to promote efficient and timely delivery of information to OCC. OCC's annual and periodic due diligence information requests include, but are not limited to, annual and periodic attestations requesting Clearing Members to confirm, for example, their current office address, back-up internet provider, and list of senior level leaders employed at the Clearing Member's organization. OCC believes this proposed provision requiring Clearing Members to provide accurate, complete and timely responses to OCC's requests is necessary to ensure successful ongoing monitoring of Clearing Members.

Proposed Rule 307 – Protective Measures

OCC proposes to update Rule 307 to provide enhanced transparency to Clearing Members, applicants, and the public on OCC's existing authority to impose protective measures. OCC's proposed changes renumber existing Rule 307 to Rule 307(a), and provide that OCC may impose protective measures on any Clearing Member or applicant for clearing membership that: (i) presents increased credit, "market" or liquidity risk to OCC, (ii) is "or will be, in the case of a new Clearing Member," subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iii) whose financial condition, operational capability, risk management capability, "regulatory or compliance risk profile" otherwise make it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public. The purpose of these proposed changes in proposed Rule 307(a) is to articulate OCC's existing practices and provide clarifying language as a means of providing transparency to applicants, Clearing Members and the public.

OCC proposes to adopt Rule 307(b), which provides that OCC may impose protective measures on any Clearing Member or applicant regardless of whether the Clearing Member or applicant is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. Furthermore, OCC proposes to adopt Rule 307(c), which provides that OCC determines protective measures on a case-by-case basis depending on factors such as the Clearing Member or applicant's financial and operational risk profile or the current or anticipated nature or level of the Clearing Member's or applicant's activity. The purpose of adopting proposed Rules 307(b) and 307(c) is to codify OCC's existing authority to impose protective measures within OCC's Rules. OCC believes it is important to articulate these provisions in its Rules to provide applicants, Clearing Members, and the public with readily available information on how OCC determines to impose protective measures to promote transparency and improve the clarity of its Rules.

Proposed Rule 307B – Restrictions on Certain Transactions, Positions and Activities

OCC's proposed changes to Rule 307B codify the processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures. The proposed changes to Rule 307B mirror the provisions in proposed Rule 203 for the process OCC would undertake in hearings on denials of Clearing Member applications or reapplications. OCC's proposed changes revise Rule 307B(b) by introducing new rule text in proposed Rule 307B(b)(1) and (b)(3) and revising existing rule text in proposed Rule 307B(b)(2).

Section (b) of Rule 307B provides a Clearing Member with a formal process to appeal any action taken under section (a) of Rule 307B. OCC's proposed changes to Rule 307B(b) specify that the Clearing Member must submit a "written" request for review to the Secretary of OCC within five business days of the date such action is taken. The addition of the word "written" clarifies the form the request must take, which OCC believes will help to ensure there is a documented record of the submission. OCC also proposes to relocate the existing requirement that the Risk Committee schedule an early hearing, with not less than one day's notice to the Clearing Member, to proposed Rule 307B(b)(2). In doing so, OCC would clarify that the notice period is one business day.

Similar to proposed Rule 203(b)(5), proposed Rule 307B(b)(1) outlines the requirements that a Clearing Member must fulfill after requesting a hearing for appeals of certain protective measures, including submitting a detailed written statement of objections and indicating their intent to attend the hearing and whether they will have legal representation. Specifically, proposed Rule 307B(b)(1) would provide that within seven (7) business days after the Clearing Member files such written request with OCC, the Clearing Member must submit to the Secretary of OCC a clear and concise statement setting forth with particularity the basis for its objection to the action, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. Additionally, proposed Rule 307B(b)(1) would include that OCC may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

The process OCC would undertake in hearings on denials of Clearing Member applications or reapplications would be the same process for hearings on appeals of certain protective measures. As such, the provisions in proposed Rule 307B(b)(2) outline the procedural requirements for the hearing before the Risk Committee on appeals of certain protective measures. Proposed Rule 307B(b)(2) ensures the Clearing Member receives at least one business day's notice of the hearing's time and place and establishes that the hearing will follow the procedures already set forth in Rule 203(b)(6), rather than restating those same procedures here. Specifically, OCC's changes to proposed Rule 307B(b)(2) would provide that the Clearing Member will be given not less than one "business" day's notice of the place and time of such hear. OCC proposes to include the addition of one "business" day to clarify that the notice period cannot fall on a weekend or holiday. OCC's proposed changes also provide that "the hearing before the Risk Committee will proceed pursuant to the procedures set forth in Rule 203(b)(6)." OCC's proposed changes eliminate the remaining rule text in proposed Rule 307B(b)(2). OCC believes the stricken text is no longer necessary as the procedures it previously outlined, including the conduct of the hearing, representation by counsel, record-keeping, and written notification of the outcome, are now covered by the provisions set forth in proposed Rule 203(b)(6), which governs the hearing process.

Lastly, OCC proposes to incorporate proposed Rule 307B(b)(3), which establishes when a decision made under this Rule becomes final and requires OCC to provide the Clearing Member with a written notice of decision stating the grounds for the decision. Proposed Rule 307B(b)(3) states that OCC will provide the Clearing Member a notice of decision setting forth the specific grounds upon which the decision is based. In addition, proposed Rule 307B(b)(3) would provide that any decision made under this Rule will be final (i) when the Clearing Member stipulates to the taking of such action by OCC, at which time OCC will furnish the Clearing Member with its notice of decision, or (ii) upon the expiration of the applicable time period provided in these Rules for the filing of a written request for a hearing or a written statement, at which time OCC will furnish the Clearing Member with its notice of decision, or (iii) if a hearing is held, the date the Secretary of OCC provides a copy of the written notice of the decision to the Clearing Member. OCC believes that codifying these processes in its Rules helps to ensure clarity and transparency to Clearing Members by providing a defined framework for when a decision is considered final.

Proposed Rule 307C – Additional Operational, Personnel, Financial Resource and Risk Management Requirements

OCC's proposed changes to Rule 307C include five additional examples of protective measures that OCC may impose on a Clearing Member or applicant. The purpose in highlighting these five specific examples within OCC's Rules is to provide transparency to applicants, Clearing Members and the public on protective measures that OCC most commonly uses, or that OCC anticipates may be used in the future.

OCC's proposed changes provide that OCC may impose protective measures in the form of additional operational, personnel, financial resource, or risk management requirements, including, but not limited to: (i) requiring a financial guaranty from a Clearing Member's parent company or affiliate (proposed Rule 307C(b)); (ii) imposing limitations on a Clearing Member's financial leverage (e.g. gross or adjusted leverage caps) (proposed Rule 307C(c)); (iii) requiring Clearing Members to fill a key risk management or operation role created by the loss of a Key Person, as defined in Rule 101 (proposed Rule 307C(f)); (iv) requiring Clearing Members to implement or enhance certain internal controls, procedures or systems (proposed Rule 307C(i)); and (v) requiring Clearing Members provide OCC with an independent assessment of the Clearing Member's financial projections, operational capabilities, AML controls or compliance with OFAC (proposed Rule 307C(l)).[51]

[51] The protective measures described in the above paragraph would be numbered as Rule 307C(b), 307C(c), 307C(f), 307C(i) and 307C(l), respectively. All other provisions in Rule 307C would be renumbered accordingly.

The protective measures described in proposed Rules 307C(b), 307C(c) and 307C(i) constitute OCC's current practices, and are already permissible pursuant to OCC's existing authority under Rule 307. OCC believes it is important to articulate its current practices in proposed Rule 307C to provide transparency to applicants, Clearing Members and the public. The proposed provisions in Rules 307C(f) and 307C(l) expand upon OCC's existing authority to impose protective measures. OCC believes these examples are consistent with the changes to Chapter II and III which enhance requirements for applicants and Clearing Members. Specifically, provision 307C(l) aligns with proposed Rule 204(e), which allows, in part, the Risk Committee, or its designated delegates or agents, to disapprove an application for clearing membership if there are concerns with the results of an independent assessment, performed in the last 12-18 months, of an applicant's (a) AML program's compliance with the Banking Secrecy Act requirements or (b) OFAC Sanctions List and Sanctions list data. In addition, proposed provision 307C(f) introduces an example of protective measure related to a Key Person's departure from the Clearing Member. This provision aligns with proposed Rule 101 in defining the term Key Person in OCC's Rules.

OCC believes the proposed protective measures are necessary and appropriate to help ensure that OCC is able to address the various risks (including credit risk, liquidity risk, and operational risk) that may be presented by applicants or Clearing Members that do not comply, or who may be at risk of not complying in the future, with OCC's membership standards, present increased credit or liquidity risk to OCC, or are otherwise experiencing difficulties in their financial condition, operational capability, or risk management capability. By articulating the examples of protective measures that OCC believes it is already authorized to impose through proposed Rules 307C(b), 307C(c) and 307C(i), OCC is providing enhanced transparency to applicants and Clearing Members. For proposed Rules 307C(f) and 307C(l) that expand OCC's authority to impose a broader set of protective measures, OCC believes such expansion of authority is necessary and appropriate to equip OCC with necessary tools to mitigate risk introduced by applicants or Clearing Members that present a heightened risk profile. Based on OCC's crucial responsibility to provide financial stability and risk management to the U.S. listed-options marketplace, OCC believes it is prudent and reasonable to expand upon its ability to impose protective measures on applicants or Clearing Members that present a heightened risk profile. OCC believes the expansion of OCC's authority to impose such protective measures will provide OCC with the ability to better protect OCC, its Clearing Members, market participants and the public from emerging counterparty risks.

Proposed Rule 309 – Reapplication for Membership

OCC's proposed change establishes new Rule 309 titled Reapplication for Membership. Proposed Rule 309(a) would provide that in connection with above events specified in Rule 306A(b)(1), OCC may: (i) require an existing Clearing Member to reapply for membership if OCC determines, in its sole discretion, that any such event has or is expected to have a material impact on the financial or operational condition or materially change the business strategy of such Clearing Member or (ii) apply protective measures necessary to address any new risks arising from any material change defined in sections A through E of Rule 306A(b)(1). In addition, proposed Rule 309(b) provides that if OCC determines that a Clearing Member must reapply for membership, the Clearing Member's access to OCC's services will remain active during the reapplication period; provided, however, that this Rule would not limit OCC's authority to impose protective measures under Rule 307 through 307C or suspend a Clearing

Member pursuant to Rule 1102. Furthermore, proposed Rule 309(c) provides that any decision to suspend a Clearing Member following reapplication would be made pursuant to Rule 203.

The purpose of proposed Rule 309 is to strengthen OCC's risk mitigation tools by allowing OCC the ability to address Clearing Members' risk profiles that may have materially changed due to an event that occurred during their time of membership and that has impacted the Clearing Member in a material way. For example, if an existing Clearing Member is materially impacted financially or operationally by the sale of a large portion of its business such that the Clearing Member is unable to maintain the minimum capital requirements or the required number of risk management personnel, this may, in OCC's discretion, present a heightened risk profile. Therefore, OCC believes it would strengthen its risk mitigation practices to require, in certain circumstances, that the Clearing Member reapply for membership and allow OCC to re-examine whether the Clearing Member still meets OCC's membership standards based on the material change that has impacted the Clearing Member.

Under proposed Rule 309, the process for review of reapplications would align with the existing process for review of new applications, as described in proposed Rule 203, including the provisions for a hearing before the Risk Committee should the reapplying Clearing Member be denied. If OCC determines that a Clearing Member must reapply for membership, the requirement to reapply would not automatically result in restricting the Clearing Member's access to OCC's services. However, if, for example, a Clearing Member is required to reapply and the Clearing Member can no longer satisfy the minimum margin requirements during the reapplication process, OCC may determine to impose protective measures under Rules 307 through 307C or suspend the Clearing Member pursuant to 1102. In summary, the provisions in proposed Rule 309(a) through 309(c) would not impair OCC's authority to act under Rules 307 through 307C or 1102.

If OCC determines that a Clearing Member must reapply for membership under proposed Rule 309, the Clearing Member would follow the admission procedures for new applicants outlined in proposed Rule 203 and would be afforded the same rights under Rule 203 as any new applicant. As described above with respect to proposed Rule 203, the Risk Committee, or its designated delegates or agents, determines whether to approve or deny the reapplication and the Clearing Member would be given an opportunity to request a hearing before the Risk Committee and may be represented by counsel and present evidence on its behalf. OCC believes the Risk Committee is the appropriate governing body to hear and determine membership reapplication decisions because it is the Risk Committee that hears appeals of initial membership determinations under Rule 203 and limitations to membership under OCC Rule 307B, which present the same questions concerning the risks that an applicant or Clearing Member presents to OCC on a go-forward basis.[52]

CHAPTER XI – SUSPENSION OF A CLEARING MEMBER

Proposed Rule 1101

OCC's existing Rule 1101 outlines, in part, a Clearing Member's obligation to notify OCC if a Clearing Member is unable to meet its obligations, is insolvent, or becomes the subject of a bankruptcy petition, receivership proceeding or the equivalent. OCC proposes to relocate existing Rule 1102(b) to become new Rule 1101(b), which would provide that any Non-U.S. Clearing Member which has been expelled or suspended by its Non-U.S. Regulatory Agency or

[52] In contrast, while a Disciplinary Committee may impose suspension or expulsion as a sanction under Chapter XII of OCC's Rules, the questions presented to the Disciplinary Committee are limited to whether a Clearing Member has violated an OCC Rule and, if so, the appropriate sanction.

any securities exchange of which it is a member shall immediately so notify OCC. OCC does not propose to change the language of the relocated provision. Because Rule 1101 focuses on a Clearing Member's requirement to notify OCC, OCC believes it is more efficient to structure Rule 1101 to also include the notification requirement of a Non-U.S. Clearing Member. Therefore, OCC proposed changes relocate Rule 1102(b) to new Rule 1101(b) to include the requirement for Non-U.S. Clearing Member's to notify OCC. Subsequently, OCC's existing Rule 1101 would be new Rule 1101(a).

Proposed Rule 1102

OCC proposes to modify Rule 1102 to reorganize the existing rule structure to improve clarity and promote efficiency within OCC's Rules. OCC's proposed modifications to Rule 1102 organize the rule text into three separate sections: (i) proposed Rule 1102(a) "Grounds for Suspension," (ii) proposed Rule 1102(b) "Event of Default; Cease to Act," and (iii) proposed Rule 1102(c) "Notice to the Board of Directors." OCC's proposed modifications also include relocating, without substantive revision, the Interpretation and Policies section under existing Rule 1102 as rule text.

Under proposed Rule 1102(a), OCC's proposed changes include the description titled "Grounds for Suspension" and incorporate eight subsections in proposed Rule 1102(a)(1) through (8) that outline OCC's grounds for suspension of a Clearing Member. The text of five of the eight subsections remains unchanged, as shown in proposed Rule 1102(a)(1) through Rule 1102(a)(4) and Rule 1102(a)(6). OCC's proposed changes in Rule 1102(a)(v) (renumbered as proposed rule 1102(a)(5)) reflect a reorganization without substantive changes, and the proposed changes in what would become proposed Rule 1102(a)(7) reflect textual updates to align with

OCC's existing Rules. Lastly OCC proposes to adopt one new ground for summary suspension in proposed Rule 1102(a)(8).

To promote clarity, ease of readability and enhanced transparency to Clearing Members, OCC's proposed changes adopt the provisions in Interpretation and Policy .02 as proposed Rule 1102(a)(5)(A) through proposed Rule 1102(a)(5)(C). OCC's proposed changes to proposed Rule 1102(a)(5) also include subsequent conforming changes and additional grammatical modifications, such as using acronyms for terms already defined in OCC's Rules. To promote consistency and align with existing language in Rule 707 and Article VI, Section 25 of the By-Laws, OCC's proposed changes adopt subsection seven of proposed Rule 1102(a). Proposed Rule 1102(a)(7) provides, in part, that the Board of Directors or a Designated Officer of the Corporation may suspend any Clearing Member which is "in default, or its affiliated CCO Clearing Member is in default, in the payment of funds or any other obligation in respect of sets of X-M accounts under Rule 707 or in respect of an internal non-proprietary cross-margining account under Article VI, Section 25 of the By-Laws." Finally, OCC proposes to adopt subsection eight of proposed Rule 1102(a) to align with the proposed provisions governing suspension of a Clearing Member following reapplication pursuant to proposed Rule 309. As previously described above, if OCC determines that a Clearing Member does not meet OCC's membership standards following the reapplication process under proposed Rule 309, OCC may determine to deny the Clearing Member, and such decision to deny clearing membership following reapplication will be made pursuant to proposed Rule 203. OCC proposes to adopt Rule 1102(a)(8), which provides, in part, that a Clearing Member may be suspended if it does not meet OCC's membership standards following reapplication under Rule 309, as determined by OCC. The purpose of this proposed change is to codify that following a determination to expel a member—whether upon a denial of a reapplication under proposed Rule 309 after affording the Clearing Member the process described in proposed Rule 203 or as a sanction for a violation of OCC's By-Laws and Rules under existing Chapter XII of the Rules—suspension of the Clearing Member may proceed in accordance with Chapter XI of the Rules (Suspension of a Clearing Member).

OCC proposes to adopt Rule 1102(b), titled "Event of Default; Cease to Act." Under proposed Rule 1102(b), OCC proposes to relocate the text of current Interpretation and Policy .01 to new Rule 1102(b)(1) without substantive change.[53] Proposed Rule 1102(b)(1) provides, in part, that each event described in Rule 1102(a) constitutes an event of "default" with respect to a Clearing Member. OCC believes this proposed change is consistent with the proposed reorganization of the rule text and that such change will promote clarity and ease of readability. Furthermore, proposed Rule 1102(b)(2) reorganizes existing rule text and makes additional conforming changes so that Rule 1102(b)(2) provides, in part, that OCC shall cease to act for a suspended Clearing Member except as specified in this Chapter.

Lastly, OCC proposes to adopt Rule 1102(c), titled "Notice to the Corporation," which relocates the existing rule text under 1102 to new Rule 1102(c).

OCC's changes to proposed Rule 1102(a) through 1102(c) also include other non-substantive, conforming changes that include formatting and grammatical modifications.

CHAPTER XII – DISCIPLINARY PROCEEDINGS

53 The proposed Rule 1102(b)(1) would incorporate grammatical changes and updated cross-references to reflect the proposed organizational changes to Rule 1102(a) described above.

Proposed Rule 1201

OCC proposes to update Rule 1201(a) to articulate certain specific examples to Clearing Members and the general public of events that may result in grounds for disciplinary proceedings at OCC. OCC's proposed changes also reorganize existing Rule 1201(a) to provide enhanced transparency and efficiency. OCC proposes to include new subsections two through five of Rule 1201(a) as examples of conduct that may embarrass the operations of OCC, as referenced in existing Rule 1201(a). OCC's proposed changes provide that such examples include but are not limited to: (i) the Clearing Member's failure to comply with a protective measure and failure to cure such failure to OCC's satisfaction within the cure period specified by OCC, (ii) the Clearing Member exhibits a pattern of providing late financial information or other information requested by OCC, (iii) the Clearing Member exhibits a pattern of providing OCC with false or misleading financial information such that, in the sole opinion of OCC, OCC can no longer fully assess or monitor the risk presented by the Clearing Member; or (iv) the Clearing Member or Key Person of the Clearing Member exhibits a pattern of regulatory or legal infraction such that, in the sole opinion of OCC, it creates a significant reputational risk for OCC. The purpose of including these specific examples of conduct that may lead OCC to censure, suspend, expel, fine or otherwise limit the activities, functions, or operations of the Clearing Member is to promote transparency with Clearing Members and to support a sound legal framework. OCC believes the proposed provisions will also foster accountability and promote clear communication with Clearing Members by articulating in OCC's Rules specific examples upon which OCC may rely to act. OCC believes the proposed modifications to Rule 1201(a) will strengthen its grounds for taking disciplinary action against a Clearing Member, improve its risk mitigation practices, and support its responsibility to promote financial stability and integrity to the marketplace. The examples provided in subsections one through five of proposed Rule 1201(a) are not intended to be an exhaustive list of conduct that would violate OCC's By-Laws, Rules or procedures. Rather, OCC believes these referenced examples may be the most frequent violations, and therefore OCC believes it is appropriate to articulate such information.

OCC's proposed changes to Rule 1201(a) also reorganize the rule text to promote clarity and efficiency. OCC's proposed changes provide, in part, that OCC may censure, suspend, expel, "fine" or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules "or procedures of the Corporation." OCC's proposed changes restructure the provision so that OCC's authority to fine a Clearing Member is more clearly described and is more consistent with the description of the other actions that OCC may take under Rule 1201(a). In reference to the provision that outlines OCC's ability to impose a disciplinary sanction on any Clearing Member for violation of OCC's By-Laws and Rules, OCC's proposed changes also encompass that such violation includes that of "other statutory rules of the Corporation" to align more closely with the text of the Exchange Act[54] and provide enhanced transparency to Clearing Members and the general public. The purpose of this change is to encompass a violation of OCC's statutory rules, as defined in OCC's By-Laws, rather than solely those rules memorialized in OCC's By-Laws and Rules. By reorganizing the introductory provision to include the reference to OCC's authority to fine a Clearing Member, OCC's proposed changes also eliminate the phrase that states "The Corporation may, in addition to or in lieu of such sanctions, impose a fine on any Clearing Member for any violation of the By-Laws or Rules or procedures of or its agreements with Corporation or the correspondent clearing corporation." In addition, OCC's proposed changes reorganize the rule text so that subsection one under proposed

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[54] 15 U.S.C. 78c(a)(27).

Rule 1201(a) describes the example provided in existing Rule 1201(a) of a Clearing Member violation. Specifically, OCC's proposed changes adopt subsection one and provide, in part, that examples of conduct embarrassing the operations of OCC include, but are not limited to, the Clearing Member's failure to provide adequate personnel or facilities for its transactions with OCC or the correspondent clearing corporation. OCC's proposed changes to Rule 1201(a) also make other conforming, grammatical and non-substantive changes.

Finally, OCC's proposed changes eliminate the Interpretation and Policy .01 and adopt the same provision as Rule 1201(b) to promote clarity and consistency in Chapter XII. OCC believes it is more appropriate for the information in proposed Rule 1201(b) to be adopted as a separate rule under existing Rule 1201, rather than an interpretation to Rule 1201(a).

<u>Proposed Rule 2212 – Suspension of Clearing Member – Re-Matching in Suspension</u>

OCC's existing Rule 2212 states that in the event a suspended Clearing Member has Matched-Book Positions, OCC will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible.[55] To mitigate risk in this specific scenario, OCC proposes to incorporate a provision in proposed Rule 2212(c) which would require that all Clearing Members that are participants of the Stock Loan/Hedge program must register their existing Master Securities Loan Agreement ("MSLA") relationship within OCC's clearing system.

Under OCC's existing Rule 2212,[56] OCC already has the authority to rematch Stock Loan/Hedge positions in the event a defaulting member is borrowing shares from one Clearing Member and on-lending the same shares to another Clearing Member. OCC's rematching

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55 <u>See</u> <u>supra</u> note 3 at Rule 2212(a).

56 <u>See</u> <u>supra</u> note 3 at Rule 2212(c).

process gives priority to a pair of rematched Clearing Members who have registered with OCC an existing MSLA relationship. Once, and if, all registered MSLA relationships are exhausted in the rematching algorithm, OCC then rematches between a pair of Clearing Members who have not registered an existing MSLA relationship. Those pairings without an existing MSLA relationship recorded in OCC's clearing system are forced to promptly decide between executing a new MSLA (and conducting their processes to onboard a new counterparty) or closing out of the position under the current market conditions. The proposed revision to Rule 2212(c) would require Clearing Members to register their MSLAs with other OCC Clearing Members within OCC's clearing system, as opposed to the optional registration that exists currently, so that the rematching algorithm performs most optimally by pairing Clearing Members who already have existing relationships to mitigate these issues Clearing Members may face.

Lastly, throughout Rule 2212, OCC removed reference to "Hedge" Clearing Member as such term is no longer recognized as a defined term in OCC's Rules, pursuant to the Commission's prior approval.[57]

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act[58] and the rules thereunder applicable to OCC, including Rule 17Ad-22(e)(18),[59] Rule 17Ad-22(e)(2),[60] and Rule 17Ad-22(e)(1)[61] thereunder.

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57 See supra note 4.

58 15 U.S.C. 78q-1.

59 17 CFR 240.17Ad-22(e)(18).

60 17 CFR 240.17Ad-22(e)(2).

61 17 CFR 240.17Ad-22(e)(1).

Section 17A(b)(4)(B) of the Act[62] provides that a clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Additionally, Section 17A(b)(4)(B) of the Act[63] also provides that a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency. As described in greater detail herein, OCC's proposed rule change primarily modifies Chapters II and III of its Rules to strengthen and expand upon its conditions to admission and membership requirements applicable to applicants and existing Clearing Members. OCC's proposed changes in Chapters II and III detail OCC's standards of financial responsibility, operational capability, experience, and competence applicable to applicants and Clearing Members. More specifically, OCC's proposed changes to Chapter II of its Rules address, in part: (i) enhanced membership eligibility standards in proposed Rule 201 by requiring applicants maintain a minimum operating history of one year, (ii) enhanced operational capability requirements by requiring applicants maintain a physical office facility in proposed Rule 204, unless OCC deems the use of a remote office facility does not present heightened risk to OCC, and (iii) expansion on basis for OCC's denial of membership in proposed Rule 204. Additionally, OCC's proposed changes to Chapter III of its Rules address, in part, a Clearing Member's: (i) financial responsibilities related to requiring risk-based minimum capital levels in proposed Rule 301, (ii) operational capability obligations related to maintaining a physical office facility in proposed Rule 302, unless OCC deems the use of a remote office facility does not present heightened risk to OCC, (iii)

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62 15 U.S.C. 78q-1(b)(4)(B).

63 Id.

responsibilities on employment of risk management personnel in proposed Rule 303 and (iv) notification and reporting requirements in proposed Rule 306. OCC's proposed changes to Chapters II and III are intended to assist OCC in reviewing, examining, verifying and ultimately approving or disapproving applications for clearing membership. Under the proposed rule change, OCC retains its authority to suspend, deny or otherwise condition the participation of any applicant or Clearing Member that does not meet the applicable membership standards. Therefore, OCC believes that the proposed rule change promotes the purposes of Section 17A(b)(4)(B) of the Act.[64]

Section 17A(b)(3)(F) of the Act[65] requires, among other things, that the rules of a clearing agency be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. OCC believes its proposed changes to Chapters II and III are consistent with Section 17A(b)(3)(F) of the Act[66] as it relates to confidential treatment of non-public information and the obligations applicable to OCC and its participants. Proposed Rules 203(f) and 306(b) establish a standard relating to OCC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with OCC's membership requirements. OCC believes the proposed change establishes a uniform standard that will help OCC meet its obligations and will also help each participant better understand OCC's obligations for maintaining the confidential information it shares with OCC. OCC believes this will better facilitate the sharing of such

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64 15 U.S.C. 78q-1(b)(4)(B).

65 15 U.S.C. 78q-1(b)(3)(F).

66 Id.

information and improve OCC's ability to evaluate its participants' eligibility to access OCC's clearing and settlement services. Additionally, proposed Rules 203(f) and 207(d) establish a standard relating to an applicant or Clearing Member's obligation to maintain OCC Confidential Information in confidence. By establishing uniform participant confidentiality requirements, OCC believes this will help each participant better understand its rights and obligations for maintaining the confidential information which will help to promote participant compliance. Therefore, OCC believes the proposed changes to establish OCC and participant confidentiality obligations are consistent with the prompt and accurate clearing and settlement of securities specified in Section 17A(b)(3)(F) of the Act.[67]

OCC believes the proposed rule change is consistent with Section 17A(b)(5)(B) of the Act, which provides, in part, that in any proceeding by a registered clearing agency to determine whether a person shall be denied participation with respect to access to services offered by the clearing agency, the clearing agency must notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record.[68] Furthermore, Section 17A(b)(5)(B) of the Act provides, in part, that determination to deny participation must be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.[69] OCC believes the denial of a Clearing Member following reapplication, as described in proposed Rule 309(c), is consistent with Section 17A(b)(5)(B) of the Act. Proposed Rule 309(c) provides that any decision to deny clearing membership following reapplication will be made pursuant to Rule 203. The admission

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67 Id.

68 15 U.S.C. 78q-1(b)(5)(B).

69 Id.

procedures described in Rule 203 already provide for the requirements outlined in Section 17A(b)(5)(B) of the Act, specifically in proposed Rules 203(b)(3) and (4). In the event the Risk Committee, or its designated delegates or agents, deny an application or reapplication for clearing membership, proposed Rule 203(b)(3) states that the Risk Committee must first furnish the applicant with a written statement of its proposed recommendation and the specific grounds therefore, and afford the applicant an opportunity to be heard and to present evidence on its own behalf. Furthermore, proposed Rules 203(b)(4) through (b)(6) codifies the specific processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures, or in hearings on denials of Clearing Member applications or reapplications. OCC believes this detailed process outlined in proposed Rule 203(b)(4) through (b)6) will promote greater transparency for Clearing Members and applicants with respect to denial of participation and the procedures afforded to them. As such, OCC believes proposed Rule 203 aligns with the requirements in Section 17A(b)(5)(B) of the Act. Furthermore, proposed Rule 203(b)(8) mirrors existing Interpretation and Policy .01 to Rule 1201 (i.e., proposed Rule 1201(b)), which provides the same with respect to a suspension or expulsion following disciplinary proceedings in Chapter XII. Because OCC's proposed Rule 309(c) provision to deny a Clearing Member following reapplication will be made pursuant to Rule 203, OCC believes proposed Rule 309(c) is consistent with Section 17A(b)(5)(B) of the Act.

OCC believes the proposed rule change is also consistent with Section 17A(b)(3)(H) of the Act[70] and Section 17A(b)(5) of the Act.[71] Section 17A(b)(3)(H) of the Act requires, in part, that the rules of a clearing agency, in general, provide a fair procedure with respect to denial of

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70 15 U.S.C. 78q-1(b)(3)(H).

71 15 U.S.C. 78q-1(b)(5).

participation to any person seeking participation therein.[72] Section 17A(b)(3)(H) of the Act also requires that the clearing agency's rules are in accordance with Section 17A(b)(5) of the Act, which outlines the procedures to be followed by a clearing agency in disciplining participants.[73] The proposed rule change seeks to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in determining to approve or deny an applicant. OCC is not seeking to change its current appellate process for applicants that have been denied membership. In addition, OCC is not seeking to change the process for disciplining participants. Rather, OCC seeks to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in determining the approval or denial of an applicant. Specifically, proposed Rule 203(b) expands authority so that the Risk Committee, or its designated delegates or agents, must determine whether to approve or deny applications for clearing membership. If an applicant is denied membership, OCC's current practices under existing Rule 203(a) provides, in part, that the applicant, if denied by the Risk Committee, is given a written statement with the specific grounds for denial, and the applicant has the opportunity to be heard by the Risk Committee and to present evidence on its own behalf.[74] OCC is not seeking to change this process. If an applicant is denied membership by the Risk Committee's designated delegates or agents, as proposed Rule 203(b) authorizes the Risk Committee's designated delegates or agents to do so, the applicant would still be given the opportunity to be heard by the Risk Committee. OCC believes its current process provides for a fair procedure with respect to denial of participation. Because OCC is not seeking to change its

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72 15 U.S.C. 78q-1(b)(3)(H).

73 15 U.S.C. 78q-1(b)(5).

74 See supra note 3 at Rule 203(a).

current appellate process for applicants denied membership, OCC believes its proposed changes related to delegated authority process under this proposed rule change are consistent with Section 17A(b)(3)(H) of the Act and Section 17A(b)(5) of the Act. OCC believes the proposed rule change is also consistent with proceedings under Section 17A(b)(5)(B) of the Act,[75] which requires, in part, that "in any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial." OCC believes that proposed Rule 1201(a) is consistent with Section 17A(b)(5)(B) of the Act[76] because proposed Rule 1201(a) articulates explicit examples that may result in grounds for OCC's denial, prohibition or limitation on a Clearing Member's access under OCC's disciplinary proceedings. Proposed Rule 1201(a) describes specific examples, but does not provide an exhaustive list, of potential violations of OCC's By-Laws and Rules, which promotes transparency and specificity to Clearing Members and the general public on possible grounds for such disciplinary proceedings.

OCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(18).[77] Rule 17Ad-22(e)(18)[78] requires a clearing agency, in part, to "[e]stablish objective, risk-based, and publicly disclosed criteria for participation" that "permit fair and open access" and "require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency." The primary purpose of the proposed rule change is to improve OCC's existing financial and operational membership

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75 15 U.S.C. 78q-1(b)(5)(B).

76 Id.

77 17 CFR 240.17Ad-22(e)(18).

78 17 CFR 240.17Ad-22(e)(18)(i)-(ii).

standards and strengthen its reporting requirements to continue to permit fair and open access and to further mitigate counterparty credit risks introduced by Clearing Members. The proposed changes establish requirements to help ensure that applicants and Clearing Members maintain sufficient financial resources and robust operational capacity to meet obligations arising from participation at OCC. With respect to requiring that participants have sufficient financial resources, the proposed rule change establishes in proposed Rule 301 the ability for OCC to, in its sole discretion, implement risk-based minimum capital levels for Clearing Members that are higher than those already specified in OCC's Rules. As described in further detail above, the bases and processes for applying risk-based minimum capital levels would be detailed in the Procedure and such information would be publicly disclosed in OCC's pre-qualification form. The proposed rule change also clarifies and expands upon OCC's existing authority to deny an applicant for clearing membership in proposed Rule 204(e), including but not limited to, if such applicant poses elevated risk due to the amount or degree of financial leverage maintained by the applicant. With respect to requiring that participants maintain robust operational capability, the proposed rule change establishes eligibility criteria for Clearing Members to maintain a one-year minimum operating history in proposed Rule 201. The proposed rule change also establishes new provisions and modifies existing provisions set forth in proposed Rules 204(g), 302 and 303 as it relates to OCC's operational capability, experience, and competence standards and related resources for applicants and Clearing Members. This includes, among other things, the requirement for participants to maintain a minimum total number of personnel and risk management personnel, and the requirement to maintain physical office facilities utilized to conduct business with OCC, unless OCC deems such remote office facility does not pose heightened risk to OCC. OCC believes that an applicant or Clearing Member's use of a fully remote office model, as opposed to a hybrid model, may introduce communication challenges for OCC and the applicant or Clearing Member's staff as well as pose operational risk to OCC that could be mitigated through an in-person office visit or on-site exam. Therefore, OCC believes it is necessary to implement requirements surrounding physical office facilities to promote operational resiliency. OCC believes these proposed changes promote the purposes of Rule 17Ad-22(e)(18).[79]

Rule 17Ad-22(e)(18)[80] also requires a clearing agency to monitor for compliance with its participation requirements on an ongoing basis. OCC believes the proposed rule change is consistent with this requirement because it enhances and otherwise clarifies OCC's ongoing monitoring of Clearing Member's participation requirements by strengthening its early warning notice and periodic reporting requirements for Clearing Members under proposed Rules 306A and 306B. Proposed Rule 309 strengthens OCC's ongoing monitoring of Clearing Members by providing OCC with the ability to require Clearing Members to reapply for membership or to apply protective measures necessary to address risks arising from any material change impacting the financial or operational condition of the Clearing Member. The proposed rule change expands upon OCC's reporting requirements for Clearing Members, including the obligation for Clearing Members, upon OCC's request, to provide OCC with their parent or affiliate's audited financial statements in proposed Rule 306B. Furthermore, the proposed rule change adopts additional protective measures under proposed Rule 307C, including but not limited to, restrictions on a Clearing Member related to the departure of a Key Person from their management team, and requirements to obtain an independent assessment of the Clearing

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[79] 17 CFR 240.17Ad-22(e)(18).

[80] 17 CFR 240.17Ad-22(e)(18)(iii).

Member or applicant's financial projections or operational capabilities. The proposed rule change subjects Clearing Members to each of these financial and operational membership standards in a non-discriminatory manner under OCC's Rules. As such, OCC believes that these enhanced financial, reporting, and operational membership standards promote the requirements of Rule 17Ad-22(e)(18).[81]

OCC believes the proposed rule change is also consistent with Rule 17Ad-22(e)(2).[82] Rule 17Ad-22(e)(2) requires, among other things, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[83] Proposed Rules 203 and 204 provide, in part, changes to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in the approval or denial of applications for clearing membership and business expansions requests at OCC. OCC believes the proposed rule change outlines in a clear, direct, and transparent manner the lines of responsibility in the approval or denial of membership applicants and business expansions. Proposed Rules 203 and 204 describe that new membership decisions and business expansion requests are not required to be presented to the Risk Committee at the regularly scheduled Risk Committee meetings. By vesting the authority to approve or deny certain applicants for clearing membership to the Risk Committee's designated delegates or agents, as described in proposed Rule 203(b), OCC will not subject all applicants for clearing membership to the regular meeting cycle of the Board or Risk Committee. This, in turn, will streamline the

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81 Id.

82 17 CFR 240.17Ad-22(e)(2).

83 17 CFR 240.17Ad-22(e)(2)(i),(v).

decision-making process by eliminating the need to wait until the next quarterly scheduled Risk Committee meeting to determine whether such applicant or business expansion is approved. Similarly, by modifying Rule 203 to provide that business expansion requests may be reviewed and approved or disapproved by the Risk Committee, or its designated delegates or agents, pursuant to the procedures of OCC, OCC believes this sets forth clear governance arrangements while also streamlining the decision process so that not every business expansion request will be required to be presented to the Risk Committee. As such, OCC believes the proposed change promotes the requirements of Rule 17Ad-22(e)(2).[84]

OCC believes the proposed rule change is also consistent with Rule 17Ad-22(e)(1).[85] Rule 17Ad-22(e)(1) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[86] As described in more detail above, the primary reason for the proposed rule change is to enhance OCC's onboarding requirements and surveillance of existing Clearing Members to reduce counterparty credit risk introduced by Clearing Members. In addition, the proposed rule change also makes certain organizational, administrative, and clarifying changes to its Rules to provide greater clarity and transparency, and to promote efficient administration of the Rules. For example, proposed Rule 204(e) articulates examples under OCC's existing authority to deny an applicant for membership if such applicant poses elevated risk to OCC. OCC believes that articulating examples in its Rules provides enhanced transparency to

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84 Id.

85 17 CFR 240.17Ad-22(e)(1).

86 17 CFR 240.17Ad-22(e)(1).

applicants and the general public. As such, OCC believes the proposed rule change promotes the purposes of Rule 17Ad-22(e)(1).[87]

Item 4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

Section 17A(b)(3)(I) of the Act[88] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes would impact or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is generally intended to improve upon OCC's existing financial and operational membership standards to mitigate counterparty credit risk introduced by Clearing Members. With the exception of OCC's proposed change to implement risk-based minimum capital levels, OCC believes the proposed rule change imposes the enhanced financial and operational membership standards uniformly on all applicants and Clearing Members within a particular category of institution, and whenever possible, uniformly across all Clearing Members irrespective of category.

OCC's proposed Rule 301 provides, in part, that OCC may establish and impose risk-based minimum capital levels on Clearing Members to further mitigate risk to OCC. OCC acknowledges that this proposed change establishing the ability for OCC to implement risk-based minimum capital levels, higher than those already specified in its Rules, may present a burden on competition among certain Clearing Members. Specifically, smaller Clearing Members that maintain a smaller level of capital may be impacted more than larger Clearing Members that maintain larger capital pools. While OCC understands that establishing risk-based

87 <u>Id.</u>

88 15 U.S.C. 78q-1(b)(3)(I).

minimum capital levels may impact certain Clearing Members over others, OCC believes the establishment of risk-based minimum capital levels is necessary and appropriate in furtherance of the purposes of the Act. OCC's intention in establishing risk-based minimum capital levels is to strengthen its risk management practices. As the central counterparty for all listed options in the U.S., OCC has an obligation to address and manage risk, including counterparty credit risk introduced by its Clearing Members. OCC believes it is necessary to maintain the ability to impose risk-based minimum capital levels so that OCC can prevent financial risk from impacting other Clearing Members. If, for example, a Clearing Member presents, in OCC's discretion, a highly leveraged profile, short operating history, an inadequate liquidity profile, a business strategy that is high risk, weak profitability, weak internal risk controls, or insufficient personnel, OCC believes that such Clearing Member may present greater credit and liquidity risks to OCC that may impact OCC's ability to comply with the requirements of the Act applicable to clearing agencies. Therefore, OCC believes the burden imposed on certain Clearing Members that may be impacted by risk-based minimum capital levels is outweighed by the critical responsibility that OCC maintains in managing risk to OCC, its Clearing Members, and the U.S. listed options market.

OCC believes the proposed rule change would continue to provide for objective and risk-based standards that balance fair and open access with prudent qualification standards while ensuring its membership base is appropriately capitalized to support the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by OCC, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and the protection of investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.[89]

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

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

Item 8. Advance Notice Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

Not applicable.

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

Not applicable.

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[89] 15 U.S.C. 78q-1(b)(3)(F).

Item 11. Exhibits

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

Exhibit 3a. OCC's Clearing Member On-Boarding and Off-Boarding Procedure [Confidential].

Exhibit 3b. OCC's Credit and Liquidity Risk Working Group Procedure [Confidential].

Exhibit 5. Proposed changes to OCC's Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_______________]; File No. SR-OCC-2026-009)

August __, 2026

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Amendments to its Clearing Membership Standards.

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 August 19, 2026, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change would amend its clearing membership standards as outlined in OCC's Rules. The proposed changes to OCC's Rules are contained in Exhibit 5 to SR-OCC-2026-009. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

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

Background

OCC acts as the central counterparty clearing house ("CCP") for all U.S. options exchanges and certain U.S. futures exchanges. OCC provides clearing services for options on equities, indices, Exchange Traded Funds ("ETFs") and for certain transactions in futures and options on futures. Organizations become OCC Clearing Members to facilitate the clearing and settlement of their customer transactions or proprietary transactions through OCC. OCC also provides certain Clearing Members with the ability to submit stock loan transactions for novation, after which, OCC becomes the counterparty to both sides of the transactions, guaranteeing that these obligations will be fulfilled. In 2012, OCC was designated as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council pursuant to Title VIII of

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[3] 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.

the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). With this designation came heightened regulatory expectations around financial, operational, and systems/data obligations. To keep pace with those expectations and ensure OCC continues to maintain a high level of market stability, OCC completed a review of its By-Laws and Rules in conjunction with changes in regulations and Clearing Member risk practices and processes. From this review, OCC modified its membership standards in a proposed rule filing approved by the Commission in 2023.[4] The modifications, among other things, (i) expanded OCC membership to new entity types and in additional jurisdictions and updated its membership requirements and associated processes, including on-boarding and off-boarding procedures, (ii) amended the financial responsibility standards by increasing the minimum capital requirements for Clearing Members, (iii) amended operational requirements for Clearing Members, and (iv) changed rules governing disciplinary actions. The proposed rule filing also reorganized and consolidated certain Clearing Member requirements to improve existing practices.

To build on the enhancements made to OCC's membership standards in 2023 and continue to align with industry best practices[5] and evolving technology[6], OCC recently

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4 See Order Granting Approval of Proposed Rule Change by the Options Clearing Corporation Concerning the Amendment of its Clearing Membership Standards, Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373 (May 11, 2023) (SR-OCC-2023-002) ("Clearing Membership Standards").

5 See Bank for International Settlements, "Guidelines for Counterparty Credit Risk Management" (December2024) ISBN 978-92-9259-823-5; McKinsey& Company, "Moving from Crisis to Reform: Examining the State of Counterparty Credit Risk" October 27, 2023; FINRA Rules and Guidance for Funding & Liquidity https://www.finra.org/rules-guidance/key-topics/funding-liquidity.

6 Evolving technology refers to trends or events driving technology changes in the financial services industry, including but not limited to: (i) an organization's increased reliance on technology to operate and deliver services, (ii) the adoption and use of digital banking services, and (iii) the rise in a remote work environment as more organizations allow their employees to work outside of a traditional office space.

conducted an in-depth review of its membership standards with a strategic focus on mitigating counterparty credit risk introduced by Clearing Members. From this review, OCC determined it was necessary to further enhance certain Clearing Member requirements to improve OCC's risk mitigation processes and practices. OCC's proposed changes to its clearing membership standards address, in part, (i) new onboarding requirements for eligible applicants for clearing membership at OCC ("applicants"), (ii) risk mitigation requirements for existing Clearing Members and specifically for Clearing Members that OCC determines may present a heightened risk profile, (iii) factors or circumstances that may result in an applicant's denial of membership or a Clearing Member's suspension of membership, (iv) the expansion of delegated authority to the designated delegates or agents of the Risk Committee as it pertains to the approval or denial of applicants on a risk-based approach, and (v) the expansion of the use of protective measures that OCC may impose on an applicant or Clearing Member.

OCC's proposed changes will enhance OCC's risk mitigation processes and practices by requiring, in part, that applicants: (i) maintain a minimum operating history, (ii) maintain a physical office facility to conduct business with OCC, and (iii) provide, upon request by OCC, a business plan, assessed by an independent third-party, that demonstrates the applicant can meet and sustain financial and operational responsibility standards and financial obligations. Among other things, OCC's proposed changes also broaden the scope of required disclosures that applicants must provide during the onboarding process, such as information related to internal stress tests, credit agreements or audited financial statements. By proposing these changes, OCC is strengthening its holistic approach to reviewing and analyzing applicants that may present a heightened risk profile, which further mitigates counterparty credit risk. Additionally, OCC believes its proposed change that delegates certain authority to the designated delegates or agents of the Risk Committee will streamline the decision process and allow for applications and business expansion requests to be reviewed and acted upon in a shorter amount of time, providing a substantial benefit to the industry. OCC's proposed changes also clarify and expand upon the basis for denial of an applicant and the suspension of an existing Clearing Member, providing enhanced transparency to the industry. OCC's proposed changes address updated financial responsibility obligations for existing Clearing Members, which is intended to mitigate risk to OCC through the establishment of enhanced risk-based capital levels. Furthermore, OCC's proposed changes expand upon the use of protective measures, which will allow more assurance that OCC is able to protect itself and its members from emerging counterparty risks.

Overall, OCC believes these proposed changes will strengthen OCC's onboarding requirements and provide OCC with the appropriate resources to ensure that applicants onboarded as Clearing Members present an acceptable risk profile such that they are likely to continue to meet OCC's membership standards in the future. The proposed changes will also allow OCC to more effectively risk manage existing Clearing Members that may pose a heightened risk profile and take measures to reduce that risk.

While the membership standards that OCC proposes to change are described in further detail below, generally, they consist of the following:

- Amending eligibility standards by requiring applicants to maintain a minimum operating history of one year;[7]

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[7] See infra description of proposed Rule 201.

- Amending admission procedures and conditions to admission to expand the delegation of authority to the Risk Committee's designated delegates or agents;[8]
- Amending admission procedures to codify the processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures, or in hearings on denials of Clearing Member applications or reapplications;[9]
- Adopting requirements for applicants and Clearing Members related to confidential treatment of non-public information;[10]
- Amending the conditions to admission to, among other things:[11]
    - Clarify and expand upon the basis for OCC's denial of membership;
    - Require more robust notification requirements from applicants that are subject to a formal investigation by a regulatory organization;
    - Restrict applicants that have been denied membership from reapplying for membership until the applicant has demonstrated, to OCC's satisfaction, that they have addressed the specific reason(s) for their denial;
    - Require certain applicants to provide OCC with a business plan demonstrating the applicant has a viable plan to meet and sustain financial and operational responsibility standards and financial

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8 See infra description of proposed Rules 203 and 204.

9 See infra description of proposed Rules 203 and 307B.

10 See infra description of proposed Rules 203, 207, 306.

11 See infra description of proposed Rule 204.

obligations at OCC;

  - Incorporate a probationary period for certain applicants approved by OCC with contingencies to membership;

- Amending requirements such that applicants and Clearing Members are required to maintain a physical office facility to conduct business with OCC, unless an applicant or Clearing Member utilizes a remote office model that OCC determines does not present heightened risk to OCC;[12]
- Amending reporting requirements such that, upon OCC's request, an applicant or Clearing Member must furnish their parent or affiliate's audited financial statements to OCC;[13]
- Amending financial responsibility requirements by establishing risk-based minimum capital levels;[14]
- Amending operational capability obligations related to a Clearing Member's books and records;[15]
- Amending financial, operations, and risk management personnel requirements related to a Clearing Member's employment of individuals;[16]
- Amending event-based reporting requirements specific to Early Warning Notices;[17]

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[12] See infra description of proposed Rule 204 and 302.

[13] See infra description of proposed Rules 204 and 306B.

[14] See infra description of proposed Rule 301.

[15] See infra description of proposed Rule 302.

[16] See infra description of proposed Rule 303.

[17] See infra description of proposed Rule 306A.

- Amending requirements related to OCC's ability to impose protective measures on Clearing Members or applicants;[18] and
- Clarifying and expanding upon the basis for OCC's suspension of an existing Clearing Member.[19]

The proposed rule change generally would reflect each of these changes in the Rules by modifying the provisions currently set forth in Chapter I, II, III XI and XII of the Rules. OCC's proposed changes also include various clarifying, non-substantive updates to its Rules, including formatting and grammatical changes, and updates to section numbering as necessary to reflect proposed rules. OCC's proposed changes are described in more detail below under the section headers reflecting the proposed new Rules.

1. Purpose

The purpose of this proposed rule change by OCC is to modify its existing Rules to implement changes that are designed to strengthen its onboarding process for applicants and enhance its monitoring of current Clearing Members through updated financial, operational, and reporting requirements. OCC believes these proposed changes will help to mitigate counterparty credit risk and improve OCC's risk mitigation processes and practices.

<u>CHAPTER I – DEFINITIONS</u>

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[18] <u>See</u> <u>infra</u> description of proposed Rule 307.

[19] <u>See</u> <u>infra</u> description of proposed Rule 1201(a).

Proposed Rule 101 – Definitions

OCC proposes to adopt a definition for the term "anti-money laundering ("AML")" as it is utilized in proposed Rule 204(e)[20] and proposed Rule 307C.[21] In Rule 101, OCC defines "AML" to mean, when used in respect of an applicant or Clearing Member's AML controls, compliance with anti-money laundering requirements imposed under U.S. law or comparable requirements in the Clearing Member's home jurisdiction.

OCC also proposes to adopt a key person clause by defining the term "Key Person" as it is utilized in proposed Rule 204(c)[22] and proposed Rule 307C.[23] The definition would provide that "Key Person" means any person associated with a Clearing Member or applicant that the Corporation deems is critical to the Clearing Member or applicant's operations or risk management, including, but not limited to, the Clearing Member's President, Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Risk Officer ("CRO"), and Chief Compliance Officer ("CCO"), or equivalent positions, or a major shareholder or partner of the Clearing Member. The purpose of adopting a definition for Key Person is to promote resiliency for OCC in the event an individual deemed to be a Key Person is unable to fulfill their position within a Clearing Member or applicant's management team. OCC's proposed definition of Key Person incorporates the provision "any person associated with a Clearing Member or applicant" to consider Clearing Members or applicants with legal structures that encompass multiple legal entities. The purpose of including the phrase "associated with" is to encompass

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[20] See infra description of proposed Rule 204(e).

[21] See infra description of proposed Rule 307C.

[22] See infra description of proposed Rules 204(c), 204(c)(1), and 204(c)(2).

[23] See infra description of proposed Rule 307C.

positions beyond direct employment or control of the Clearing Member or applicant. For example, a director or partner level position may not be a direct employee of a Clearing Member or applicant, however, they may constitute a critical part of such Clearing Member or applicant's operations or risk management functions. As such, OCC believes it is necessary that the definition of Key Person extend to such individuals outside of direct employment, but who are still associated with the Clearing Member or applicant. As described in more detail in proposed Rule 307C,[24] if a Key Person's departure has a material impact on the Clearing Member's operations or financial profile, OCC believes it is necessary to maintain the ability to impose restrictions on the impacted Clearing Member. For example, a Key Person may control the day-to-day decisions, maintain key client relationships, or have extensive knowledge of the company such that their position is critical to the operation of the business. If that person's inability to fulfill such position would likely impact the business's operations or profitability, it could pose additional risk to OCC. Therefore, OCC believes that adopting a definition for Key Person will strengthen its risk mitigation practices and promote resiliency for OCC.

To align with OCC's proposed rules concerning the protection of OCC's non-public information,[25] OCC proposes to add a definition of the term "OCC Confidential Information" to Rule 101. The definition would provide that "OCC Confidential Information" means all non-public information provided by OCC that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as "confidential" or

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[24] Id.

[25] See infra description of proposed Rules 203, 207, 306.

"business sensitive,"[26] (ii) is designated by the Corporation as confidential, or (iii) the recipient knows or under the circumstances surrounding disclosure, ought to reasonably know is confidential.

OCC's proposed rules incorporate a reference to the term "OFAC" as it relates to an applicant's or Clearing Member's compliance with OFAC. For clarification, OCC proposes to define the term "OFAC" to mean the United States Department of the Treasury's Office of Foreign Assets Control as defined in Title 31, Chapter V of the Federal Regulations.[27]

Lastly, OCC proposes to update the rule reference in the definition of the term "Office" in Rule 101. OCC proposes to eliminate reference to Rule 201 within the description and replace it with reference to Rule 302. OCC believes this proposed change aligns more closely with the new proposed edits to Rule 302 as it relates to requirements around maintaining a physical office space.

CHAPTER II – CLEARING MEMBERSHIP

Proposed Rule 201 – Eligibility

OCC proposes to modify its eligibility standards for applicants to ensure that, in OCC's discretion, such applicants reflect a sound financial and operational profile. Specifically, OCC proposes to adopt a new subsection (b) to current OCC Rule 201[28] that would provide that Clearing Members must maintain a minimum operating history of one year in the same or substantially same business activities as being applied for, or in the

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[26] These classifications correspond to OCC's internal procedures for classifying and marking records.

[27] 31 CFR 509.309.

[28] Current OCC Rule 201(b) would be renumbered as OCC Rule 201(c), and current OCC Rules 201(c) – 201(e) would be renumbered as OCC Rules 201(d) – 201(f), respectively.

alternative, must maintain senior personnel with sufficient financial, risk, and operational background and experience, in the sole opinion of OCC, to conduct the business of the Clearing Member.

The proposed change requiring a minimum operating history of one year is designed to ensure that there is sufficient information for OCC to formulate a holistic view of the applicant's background to help determine, based on the applicant's history, whether the applicant could meet OCC's existing membership standards and whether the applicant is likely to continue to meet OCC's membership standards for the foreseeable future. The proposed change also provides OCC with flexibility to, in the event the applicant does not maintain an operating history of one year, evaluate the applicant's senior personnel to determine whether such personnel have sufficient background experience to conduct the business of the Clearing Member. By requiring a minimum operating history of one year, OCC believes this proposed change will allow applicants to demonstrate their continued capacity to operate their business. OCC believes this information will strengthen its onboarding process by eliminating at an early-stage applicants that do not maintain a sufficient operating history or sufficient personnel, in OCC's discretion, therefore mitigating potential risk to OCC.

Proposed Rule 203 – Admission Procedures

OCC proposes to make substantive and organizational changes to proposed Rule 203 – Admission Procedures. OCC's proposed changes would reorganize Rule 203 into six separate subsections, outlined in proposed subsections (a) through (f) of proposed Rule 203. OCC also proposes adding titles that label each subsection, enhancing clarity and ease of readability throughout the document. OCC's proposed changes adopt new rule text in its entirety in proposed subsections (b)(4) through (b)(6), (b)(8), (e) and (f) of proposed Rule 203, while proposed subsections (a), (b)(1) through (b)(3), (b)(7), (c), and (d) reorganize existing text and incorporate new text. The purpose of each substantive change is discussed below.

i. Proposed Rule 203(a)

OCC's proposed changes would reorganize existing Rule 203(a) into proposed Rules 203(a) and 203(b)(1) through (b)(3). The first sentence of current Rule 203(a) provides that applicants for clearing membership must be in such form and contain such information as OCC will from time to time require. Proposed Rule 203(a) would be titled "Form of Application." In addition, Proposed Rule 203(a) would extend this provision to include reapplications under Rule 309. As described in more detail in below with respect to proposed Rule 309, OCC may determine that a Clearing Member must reapply for membership due to an event described in Rule 306A(b)(1) that causes a material impact on the Clearing Member's operational condition. If OCC makes such determination, the Clearing Member would be required to reapply for membership pursuant to the admission procedures described in Rule 203, and the reapplying Clearing Member would be afforded the same rights under Rule 203 as any new applicant of OCC.

ii. Proposed Rule 203(b)

OCC's proposed Rule 203(b) would be titled "Review by the Risk Committee or its Delegates" and would be organized into eight subparts, as outlined in proposed Rule 203(b)(1) through (b)(8). OCC's proposed changes reorganize rule text from existing Rule 203(a) into new proposed Rules 203(b)(1) through (b)(3) while also proposing additional provisions in those subsections. Proposed Rule 203(b)(7) contains certain text that was relocated from existing Rule 203(a) while also proposing new rule text. Lastly, OCC proposes to adopt Rule 203(b)(4) through (b)(6), and (b)(8) as entirely new rule text.

a. Proposed Rule 203(b)(1)

OCC proposes to modify its admission procedures to expand the delegation authority of the Risk Committee, specifically in their decision to approve or deny an applicant. OCC's existing Rule 203(a) provides, in part, that the Risk Committee must approve or deny an applicant for clearing membership, and that the Risk Committee may also approve, under certain circumstances, an applicant on an expedited basis.[29] OCC proposes to expand the Risk Committee's authority such that the Risk Committee may delegate, to its designated delegates or agents, the ability to approve or deny new applications or reapplications, and approve an applicant on an expedited basis. Specifically, proposed Rule 203(b)(1) would provide that the Risk Committee, or its designated delegates or agents, determine whether to approve or deny applications or reapplications for clearing membership. OCC proposes to reflect this change on the delegation of authority from the Risk Committee to its designated delegates or agents throughout Rule 203 and Rule 204, as described in further detail below.

OCC believes the proposed change to delegate certain authority of the Risk Committee to its delegates or agents will streamline and accelerate the decision-making process and approval, while continuing to utilize a risk-based decision-making approach within OCC. New Clearing Member applicants are currently reviewed and decided upon by the Risk Committee at the regular Risk Committee meetings, which are scheduled

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[29] See supra note 3 at Rule 203(a), (b).

approximately every quarter. OCC believes this delegation of authority will also benefit applicants that may require a more urgent response based on their business activity, because such applicants would not need to wait for a regularly scheduled Risk Committee meeting for their application to be presented to the Risk Committee and approved or denied by the Risk Committee. Given various dependencies in the application review process, such as receiving documentation from applicants and working through the required internal approvals, it can be challenging from a timing perspective to align such dependencies with the regularly scheduled Risk Committee meeting date. By expanding the potential delegation of authority to approve or deny applications outside of the regular scheduled Risk Committee meetings, OCC believes this will accelerate the decision-making process and reduce delays for applicants.

OCC's proposed changes in proposed Rule 203(b)(1) also incorporate "reapplications" into this provision to align with proposed Rule 309. As described in proposed Rule 309 and outlined in the description of proposed Rule 203(a) above, if OCC determines that a Clearing Member must reapply for membership, the process for reapplication would follow the same admission procedures for new applicants described in Rule 203. As such, the reapplying Clearing Member would be afforded the same rights as new applicants under existing Rule 203, and the Risk Committee, or its designated delegates or agents, would determine whether to approve or deny the reapplications, as it would for new applicants.

Furthermore, OCC also proposes to update existing language in proposed Rule 203(b)(1) to promote clarity and consistency on the Risk Committee's responsibility related to approval or denial of an applicant. OCC's existing Rule 203(a), which is reorganized, in part, to proposed Rule 203(b)(1), provides that the Risk Committee must review and approve or disapprove such applicants for clearing membership.[30] OCC's proposed changes in proposed Rule 203(b)(1) update this language to state that the Risk Committee, or its designated delegates or agents, "determine whether to approve or deny" applications or reapplications for clearing membership. OCC believes the proposed language "determine whether to approve or deny" provides a more precise description of the Risk Committee's responsibilities, intended to promote transparency for Clearing Members and the general public.

b. Proposed Rule 203(b)(2)

Proposed Rule 203(b)(2) consists entirely of text relocated from the third sentence of existing Rule 203(a), with no substantive changes. Specifically, the sentence provides that the Risk Committee, or its designated delegates or agents, may examine the books and papers of any applicant, take such evidence as they may deem necessary or employ such other means as they may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications. OCC believes relocating this information from existing Rule 203(a) into proposed Rule 203(b)(2) enhances organizational efficiency in the document.

c. Proposed Rule 203(b)(3)

OCC's proposed changes reorganize and restate the fourth sentence of existing Rule 203(a) into proposed Rule 203(b)(3). That sentence currently provides that if the Risk Committee proposes to disapprove an application for clearing membership, it must first furnish the applicant with a written statement of its proposed recommendation and

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[30] See supra note 3 at Rule 203(a).

the specific grounds therefor, and afford the applicant an opportunity to be heard and to present evidence on its own behalf. Proposed Rule 203(b)(3) would incorporate the proposed expansion of the delegation authority of the Risk Committee in their decision to approve or deny an applicant by extending this obligation to the Risk Committee's designated delegates or agents. Proposed Rule 203(b)(3) would also incorporate "reapplications" of Clearing Members to align with proposed Rule 309, as described below. Proposed Rule 203(b)(3) would provide that the written statement informing the applicant or Clearing Member of the specific grounds of the proposed denial would be furnished by OCC's Corporate Secretary. As such, proposed Rule 203(b)(3) would provide clarity regarding whose responsibility it would be to transmit the written statement, clarifying it would be OCC's Corporate Secretary, not the Risk Committee. In addition, this change would provide transparency concerning the point at which the proposed process for Risk Committee review of such proposed denial would begin, as discussed below with respect to proposed Rule 203(b)(4) through (8). Proposed Rule 203(b)(3) would also use the terms "deny" or "denial," instead of "disapprove" and "recommendation," respectively, to align with the changes to Proposed Rule 203(a).

d. Proposed Rules 203(b)(4) – (b)(6)

OCC proposes to adopt subsections (b)(4) through (b)(6) of proposed Rule 203 as new rule text. The purpose in adopting subsections (b)(4) through (b)(6) is to codify within OCC's rules the processes that OCC would undertake in hearings before the Risk Committee on denials of Clearing Member applications or reapplications.[31] OCC

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[31] OCC also proposes to codify these same procedures for appeals of certain protective measures, as described in proposed Rule 307B.

believes this detailed process set forth in (b)(4) through (b)6) of proposed Rule 203 will promote greater transparency for Clearing Members and applicants with respect to denial of participation and the procedures afforded to them.

First, proposed Rule 203(b)(4) establishes the process by which a Clearing Member or applicant may request a hearing, and the notice requirements OCC must provide before that hearing takes place. Specifically, proposed Rule 203(b)(4) would provide that a Clearing Member or applicant may request a hearing by filing with the Secretary of OCC within five (5) business days from the date on which the Secretary of OCC furnished the applicant with a written statement under paragraph (b)(3) setting forth the name of the representative of the Clearing Member or applicant who may be contacted with respect to the hearing. Furthermore, the proposed change would provide that the Secretary of OCC will give the Clearing Member or applicant not less than ten (10) business days' prior written notice of the place and time of the hearing.

Next, proposed Rule 203(b)(5) outlines the requirements that a Clearing Member or applicant must fulfill after requesting a hearing, including submitting a detailed written statement of objections and indicating their intent to attend the hearing and whether they will have legal representation. Specifically, proposed Rule 203(b)(5) would provide that within seven (7) business days after the Clearing Member or applicant files such written request with OCC, the Clearing Member or applicant must submit to the Secretary of OCC a clear and concise statement setting forth with particularity the basis for its objection to the denial, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. Additionally, proposed Rule 203(b)(5) would include that the

Secretary of OCC may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

Finally, proposed Rule 203(b)(6) establishes the formal procedures governing how a hearing before the Risk Committee would be conducted, covering attendance, representation, recordkeeping, evidence submission and objections, hearing order, and post-hearing follow-up. OCC had previously developed and the Risk Committee had deployed these procedures for challenges to limitations on membership under OCC Rule 307B. OCC now proposes to codify them in Rule 203(b)(6) for transparency. Specifically, proposed Rule 203(b)(6) would provide that a hearing will proceed before the Risk Committee pursuant to the procedures set forth in (A) through (I) of proposed Rule 203(b)(6). Sections (A) through (I) of proposed Rule 203(b)(6) would establish the below procedures:[32]

- o If the applicant fails to appear at the hearing, it may be deemed to have waived the right to review.
- o The Clearing Member or applicant may be represented by counsel, but such representation is not required.
- o OCC will keep a verbatim record of the hearing, which shall be the official record of the hearing. The applicant must refrain from making audio or video recordings or transmission of the hearing. The verbatim record of the hearing shall constitute OCC Confidential Information.
- o OCC and the Clearing Member or applicant (each a "Party") may offer

[32] The bullet points set forth correspond to subsections (A) through (I) of Section (b)(6), presented in sequential order.

evidence through documentary evidence entered as exhibits in the proceeding.

- Parties must provide copies of any documents or other materials that they plan to use at the hearing as evidence. Such evidence must be exchanged no later than the date established by the Risk Committee.
- The formal rules of evidence, including the Federal Rules of Evidence, do not apply to hearings held under this Rule. Parties may argue that any documentary evidence presented by the opposing party should not be considered by the Risk Committee by objecting orally at the hearing on the basis that the evidence is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. After considering the objecting party's reasons for excluding the evidence, the Risk Committee members will determine if the document will be admitted into evidence and into the record.
- Following the presentation of each document, members of the Risk Committee may pose questions to the presenter of the document about the evidence offered.
- Subject to the Risk Committee's authority to change the order, the hearing will be conducted in the following order: (i) open of record; (ii) presentation of the facts of the case, including documents, by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (iii) the applicant's presentation of facts of the case, including documents; (iv) rebuttal by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (v) the applicant's rebuttal; and (vi) the close of

record.

- Following the hearing, if necessary, the Risk Committee may submit questions in writing to either Party, with copies of all communication provided to each Party.

e. Proposed Rule 203(b)(7)

Proposed Rule 203(b)(7) establishes the notice requirements and finality of the Risk Committee's decision to deny an application or reapplication. From an organizational standpoint, proposed Rule 203(b)(7) incorporates certain rule text that was relocated from existing Rule 203(a) into proposed Rule 203(b)(7), while also introducing new rule text.

Specifically, proposed Rule 203(b)(7) provides that if the Risk Committee, or its designated delegates or agents, denies an application or reapplication, OCC will provide the applicant or Clearing Member a written notice of the decision, accompanied by a statement of the specific grounds on which the denial is based. Furthermore, the proposed changes would state that any decision made under this Rule will be final upon the date OCC's Corporate Secretary provides a copy of the written notice of the decision to the Party. Proposed Rule 203(b)(7) would incorporate the concept of reapplication as described under proposed Rule 309 such that Clearing Members would be afforded the same rights under proposed Rule 203 as new applicants. OCC's proposed changes also replace the word "disapproves" with "denies" to remain consistent with the word choice in proposed Rule 203(b)(1) through (b)(3). In addition, OCC's proposed changes eliminate existing rule text that requires the decision must be "mailed or delivered to the applicant." OCC proposes this change for efficiency and will amend its processes accordingly if the change is approved. Finally, proposed Rule 203(b)(7) would make other non-substantive changes, such as (i) replacing "its" with "the" in reference to the Risk Committee's written notice of decision, and (ii) eliminating the word "therefore" because this was relocated text that OCC believes it is no longer necessary.

f. Proposed Rule 203(b)(8)

Proposed Rule 203(b)(8) establishes that a final denial of a Clearing Member's reapplication, pursuant to proposed Rule 309, will constitute grounds for summary suspension under Rule 1102. Specifically, proposed Rule 203(b)(8) would provide that a final decision to deny a reapplication of a Clearing Member pursuant to Rule 309 and this Rule will constitute a suspension or expulsion from a self-regulatory organization and therefore grounds for summary suspension under Rule 1102. Proposed Rule 203(b)(8) mirrors existing Interpretation and Policy .01 to Rule 1201 (i.e., proposed Rule 1201(b)), which provides the same with respect to a suspension or expulsion following disciplinary proceedings. In effect, these proposed rules provide that following a determination to expel a member—whether upon a denial of a reapplication under proposed Rule 309 after affording the Clearing Member the process described above or as a sanction for a violation of OCC's By-Laws and Rules under existing Chapter XII of the Rules—suspension of the Clearing Member may proceed in accordance with Chapter XI of the Rules (Suspension of a Clearing Member).

iii. Proposed Rule 203(c)

OCC's proposed changes reorganize existing Rule 203(b) to become proposed Rule 203(c), and add the title "Expediated Approvals." OCC believes these proposed changes will help to improve readability and ease of navigation throughout OCC's rules.

OCC's proposed changes also incorporate the expansion of the delegation authority of the Risk Committee in their decision to approve or deny an applicant on an expediated basis, as discussed above in the description of proposed Rule 203(b)(1). Specifically, OCC's proposed changes provide that the Risk Committee, "or its designated delegates or agents," may approve an applicant on an expedited basis if approval of such applicant is appropriate for the protection of investors and the public interest.

iv. Proposed Rule 203(d)

OCC's proposed changes would also modify the provisions applicable to Clearing Members seeking to engage in clearing activities beyond the scope of their current authorizations. Specifically, OCC's proposed changes would reorganize existing Rule 203(c) to become new Rule 203(d) – "Business Expansion Requests." OCC believes the proposed addition of a title will improve readability and ease of navigation throughout OCC's rules. Proposed Rule 203(d) would provide that Clearing Members' business expansion requests may be reviewed and approved or disapproved "by the Risk Committee, or its designated delegates or agents" pursuant to the procedures of OCC.

OCC's proposed changes eliminate the specific reference to the CEO and COO[33] and eliminate the provision requiring that the Risk Committee must be given not less than ten business days from the date it is notified of any such approval/disapproval to determine whether the business expansion request should be reviewed by the Risk

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[33] The revised rule text would authorize the Risk Committee, or its designated delegates or agents, as the decision makers. As a confidential Exhibit 3a to File No. SR-OCC-2026-009, OCC provided a copy of its Clearing Member On-Boarding and Off-Boarding Procedure which includes the Proposed Decision Authority Framework for New Clearing Member Applicants and Business Expansions ("Decision Authority Framework"). OCC's Decision Authority Framework outlines the designated delegates or agents of the Risk Committee and their level or review or decision, based on the Clearing Member applicant and business expansion.

Committee. Because the parties seeking to engage in business expansion requests are existing Clearing Members that have already gone through enhanced due diligence in the application process, OCC believes it is not necessary that all business expansion requests be considered for review by the Risk Committee. Rather, OCC proposes a new risk-based framework pursuant to OCC's procedures such that only business expansion requests that have been escalated by OCC's CEO or COO ("OCEO") would be subject to the review and approval of the Risk Committee. Furthermore, pursuant to OCC's Decision Authority Framework, it would be up to the discretion of the OCEO to determine, based on the specific business expansion request, whether it would be necessary to involve the Risk Committee in the decision-making process.[34]

As mentioned above, OCC's current process for business expansion requests entails that business expansion requests are approved or disapproved by the CEO or COO, provided the Risk Committee will be given not less than ten business days from the date it is notified of such approval or disapproval to determine whether the business expansion request should be reviewed by the Risk Committee.[35] OCC's current process allows the Risk Committee a 10-day negative consent period upon being notified of such approval or disapproval. If there is no objection from the Risk Committee during that timeframe, the business expansion request is approved or disapproved depending on the determination of the CEO or COO. Based on the information available to OCC at this time, OCC is not aware of a specific instance in which the Risk Committee exercised its

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[34] Per OCC's Decision Authority Framework, which is included in the Clearing Member On-Boarding and Off-Boarding Procedure as confidential Exhibit 3a to SR-OCC-2026-009, business expansion requests will not require Risk Committee approval, however the OCEO may escalate any business expansion request to the Risk Committee at its discretion.

[35] See supra note 3 at Rule 203(c).

authority to review or object to business expansion requests in the past. The purpose of proposed Rule 203(d) is to eliminate the requirement that every business expansion request be required to be reviewed by the Risk Committee. OCC believes the proposed change will streamline business expansion requests by eliminating the 10-day negative consent period and promoting a clear decision-making approach for either the Clearing and Liquidity Risk Working Group ("CLRWG") or the OCEO.

v. Proposed Rule 203(e)

OCC proposes to adopt subsection (e) of proposed Rule 203 to codify within OCC's Rules its intent to inform the Risk Committee of all decisions related to applicants or business expansion requests. Specifically, Proposed Rule 203(e) would provide that OCC will provide notice to the Risk Committee of all decisions made by the Risk Committee's designated delegates or agents related to the approval or denial of any applicant or business expansion request. As described in more detail above, OCC proposes to expand the Risk Committee's authority so that the Risk Committee may delegate, to its designated delegates or agents, the authority to approve or deny new applicants and business expansion requests. The purpose of the proposed Rule 203(e) is to align with the proposed delegated authority framework and provide transparency to the Risk Committee of all decisions being made by the Risk Committee's designated delegates or agents as it relates to the approval or disapproval of applicants or business expansion requests.

vi. Proposed Rule 203(f)(1) though (2)

OCC also proposes to establish rules related to the confidential treatment of non-public information and proposes to adopt Rule 203(f) "Confidential Information." In its capacity as a self-regulatory organization, OCC collects non-public information from its applicants to assess whether each applicant meets OCC's membership standards. In addition, OCC collects non-public information from its Clearing Members as part of its ongoing monitoring of their continued adherence to those standards. Such non-public information includes, but is not limited to, information on the applicant or Clearing Members financial and operational condition, agreements with other counterparties, and written policies and procedures. OCC may also provide non-public information to its Clearing Members and applicants to support its participants' risk management and operations with respect to their participation in OCC. Examples of non-public information OCC may share with participants include, but are not limited to, the detailed methodology descriptions for OCC's proprietary margin and stress testing methodologies,[36] and operation manuals providing participants with detailed instructions about how to use OCC's clearance and settlement systems.

With respect to non-public information that an applicant shares with OCC, assurance of confidentiality would be provided through the addition of paragraph (f)(1) to OCC Rule 203. Proposed Rule 203(f)(1) provides, in part, that any non-public information furnished to OCC pursuant to this Chapter will be held in confidence as may be required under the laws, rules and regulations applicable to OCC that relate to the confidentiality of records. For the avoidance of doubt, the proposed change would also provide that nothing in this Rule would prevent OCC from releasing such non-public

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[36] The Commission has reviewed such documents and has concluded that they are appropriately withheld from OCC's public filings under Section 23(a)(3) of the Exchange Act, 15 U.S.C. 78w(a)(3), under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(b)(4). See, e.g., Exchange Act Release No. 95319 (July 19, 2022), 87 FR 44167, 44171 n.49 (July 25, 2022) (SR-OCC-2022-001) (concluding that FOIA Exemption 4 applied to OCC's STANS Methodology Description).

information, in its sole discretion, to (i) any governmental or regulatory authority (e.g., the SEC of CFTC); or (ii) any regulatory organization to which the applicant is a member or participant (e.g., Financial Industry Regulatory Authority ("FINRA") with respect to a broker dealer, or other registered clearing agencies in which the applicant or Clearing Member is a common member).[37]

OCC would also add a paragraph (2) to Rule 203(f), which would require that each applicant must maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and that the applicant must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such applicant's obligations under the By-Laws and Rules or as otherwise required by applicable law. Furthermore, proposed Rule 203(f)(2) would entitle OCC to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages related to the disclosure of OCC Confidential Information. Specifically, proposed Rule 203(f)(2) would state that each applicant acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to OCC for which there is no adequate remedy at law, and in the event of such a breach by the applicant, OCC will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. In addition, by promulgating Rule 203(f)(2), OCC would be entitled to impose disciplinary

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[37] For purposes of these Rules, "regulatory organization" is already defined in OCC Rule 101 to include, among other organizations, (i) any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act, 15 U.S.C. 78c(a)(26)) of which the Clearing Member is a member or participant, and (ii) any clearing organization (as defined in Regulation 1.3 under the Commodity Exchange Act, 17 CFR 1.3), board of trade, contract market and registered futures association of which the Clearing Member is a member or participant.

proceedings for an applicant's violation of the confidentiality requirements, consistent with existing Chapter XII of OCC's Rules. Finally, proposed Rule 203(f)(2) would state that nothing in this Rule will prevent OCC or the applicant from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

<u>Proposed Rule 204 – Conditions to Admission</u>

OCC proposes to enhance its conditions to admission to provide OCC with the appropriate resources to thoroughly evaluate each applicant, based on specific conditions described in the Rules, to determine if such applicant currently meets OCC's membership standards and if such applicant is likely to continue to meet OCC's membership standards in the future. OCC's proposed modifications expand upon its basis for denial of an applicant and strengthen the financial and reporting requirements for applicants to ensure applicants reflect an acceptable risk profile, based on OCC's discretion.

i. <u>Proposed Rules 204(a), 204(c), and 204(d)</u>

Consistent with the proposed changes to proposed Rule 203 described above, OCC proposes to modify Rule 204 to expand the delegation of authority of the Risk Committee to the Risk Committee's designated delegates or agents. Specifically, OCC proposes to modify Rule 204(a) to provide that the Risk Committee, "or its designated delegates or agents, may approve any application for clearing membership if the applicant meets the membership requirements and standards set for in the Rules." To eliminate ambiguity and promote more concise and direct language, OCC's proposed changes update the structure of the sentence to reflect the affirmative tone by replacing the phrase "will not" with "may," and "fails to meet" with "meets."

OCC also proposes to modify 204(c) and 204(d), respectively, to provide that: (i) the Risk Committee, "or its designated delegates or agents," may disapprove the application for clearing membership of any applicant or person of the applicant who is subject to a Statutory Disqualification, and (ii) that the Risk Committee, "or its designated delegates or agents," may disapprove an application for clearing membership if the applicant or any natural person associated with the applicant has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. OCC believes the proposed changes to delegate certain authority to the Risk Committee's designated delegates or agents will streamline and accelerate the decision-making process using a risk-based decision-making approach.

ii. <u>Proposed Rules 204(c), 204(c)(1), and 204(c)(2)</u>

OCC proposes to expand the statutory disqualification provision in proposed Rules 204(c), 204(c)(1) and 204(c)(2) to include the statutory disqualification of a Key Person, as the term is defined in Rule 101. OCC's proposed changes to Rules 204(c) and 204(c)(1) also intended to clarify that the provision applies not only to applicants who are subject to a Statutory Disqualification at the time of application, but also to applicants who become subject to a Statutory Disqualification over the course of the application period itself.

Existing Rule 204(c) provides that the Risk Committee may disapprove the application for clearing membership of any applicant or person of the applicant who is subject to a Statutory Disqualification. To promote clear construction of the rule and strengthen OCC's grounds for denial of an applicant, OCC proposes to modify Rule 204(c) to state that the Risk Committee, or its designated delegates or agents, may disapprove "an" application for clearing membership if any applicant, or "Key Person" of the applicant, is "or becomes" subject to a Statutory Disqualification. The purpose of this proposed change is to strengthen OCC's basis for denial of an applicant if the applicant presents heightened risk to OCC at the initial time of application, or over the course the application period itself. As mentioned above under proposed Rule 101, a Key Person is, in part, a person associated with a Clearing Member or applicant that OCC deems is critical to the Clearing Member or applicant's operations or risk management. For example, a Key Person may control the day-to-day decisions, maintain key client relationships, or have extensive knowledge of the company such that their position is critical to the operation of the business. OCC's proposed changes narrow the grounds from statutory disqualification of a "person" of the applicant to statutory disqualification of a "Key Person" of the applicant to focus on those individuals that maintain critical and supervisory responsibilities within the organization. In contrast to the more general reference to a "person" of the applicant, OCC believes that a "Key Person" of the applicant has a role within the organization that may have a stronger impact on the organization's operations and processes. If an applicant or a Key Person of the applicant is subject to a Statutory Disqualification at the time of application, or if an applicant or Key Person of the applicant becomes subject to a Statutory Disqualification over the course of the application period, OCC believes this may present heightened risk to OCC. Therefore, OCC proposes to expand authority to deny an applicant if such applicant or a Key Person of the applicant is or becomes subject to a Statutory Disqualification. OCC's proposed changes would also make other grammatical and conforming changes in proposed Rule 204(c).

For the same reasons described above, OCC proposes to revise Rule 204(c)(1) to incorporate the statutory disqualification of a Key Person. Proposed Rule 204(c)(1) would provide that in cases in which the SEC, by order, directs as appropriate in the public interest, the Corporation will disapprove an application for clearing membership by any applicant or "Key Person" of the applicant who is "or becomes" subject to a Statutory Disqualification.

OCC also proposes to modify Rule 204(c)(2) to expand upon the circumstances and specify the timeframe for which an applicant must provide notification to OCC. Specifically, OCC proposes to modify Rule 204(c)(2) to provide that every applicant must notify OCC in writing "within two business days" if the applicant "or a Key Person" is or becomes subject to a statutory disqualification in accordance with the requirements of Rule 306A(c), "or if the applicant learns that it or a Key Person is the subject of a formal investigation by a regulatory organization."

Existing Rule 306A(c) provides, in part, that a Clearing Member or any applicant for clearing membership must notify OCC within 20 business days upon learning of becoming subject to a statutory disqualification.[38] OCC believes the proposed change to shorten the notification timeframe requirement for applicants from 20 business days, as provided in 306A(c), to two business days, as provided in proposed Rule 204(c)(2), provides OCC with important information at an earlier stage in the decision-making process. By receiving such information from an applicant within two business days of the applicant becoming aware, rather than within 20 business days, OCC will be able to evaluate this information earlier in the applicant review process and take next steps to

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[38] See supra note 3 at Rule 306A(c).

address how the Statutory Disqualification may impact the applicant. OCC believes this information may be a factor in determining whether the applicant, in OCC's discretion, presents an acceptable risk profile to OCC. Therefore, OCC believes the proposed change to shorten the notification period will promote efficiencies and help to accelerate the decision-making process.

In addition, proposed Rule 204(c)(2) requires that, if an applicant learns that it or a Key Person is the subject of a formal investigation by a regulatory organization, the applicant must notify OCC within two business days of learning of such investigation, so that OCC can evaluate the applicant, and the information provided, as soon as possible and in its entirety. OCC believes that such information may be a factor in determining whether the applicant may present an acceptable risk profile to OCC. OCC believes that if an applicant is the subject of a formal investigation by a regulatory organization, the applicant may, among other things, present a heightened risk profile. Therefore, it would be of concern to OCC if OCC learned of such investigation after approving the applicant for membership, rather than before approval. Furthermore, should OCC learn of such an investigation towards the end of the onboarding process, but before presenting the firm for approval, this may require a postponement of such presentation until OCC can complete its due diligence on that matter, thereby leading to a prolonged onboarding process and an inefficient approach to decision-making.

iii. Proposed Rule 204(e)

OCC's proposed Rule 204(e) expands upon the basis for OCC's denial of membership by providing examples of factors or circumstances, under OCC's existing authority, that articulate OCC's denial of membership. Proposed Rule 204(e) would provide that the Risk Committee, or its designated delegates or agents, may disapprove any application for clearing membership if OCC becomes aware of any factor or circumstance about the applicant, or a Key Person of the applicant, that may pose elevated risk to OCC or impact the suitability of the applicant as a Clearing Member. OCC proposes to include the reference to the Key Person of the applicant, as defined in Rule 101, to capture certain situations when, for example, a CEO steps down from the CEO role, but still represents a critical role in the Clearing Member's or applicant's management team. The proposed change would also provide that factors or circumstances that may pose elevated risk to OCC include, but are not limited to: (i) concerns relating to an applicant's liquidity profile; (ii) concerns with the results of an independent assessment, performed in the last 12-18 months,[39] of an applicant's AML program's compliance with the Banking Secrecy Act requirements or OFAC Sanctions List and Sanctions list data; (iii) concerns relating to the amount or degree of financial leverage maintained or proposed to be maintained by the applicant; (iv) concerns relating to pending, adjudicated or settled regulatory or other legal actions involving the applicant or its management, including the applicant or a Key Person of the applicant being subject to a Statutory Disqualification, as such term is defined in Rule 101; (v) if an applicant does not conduct its business from a physical office facility such that OCC determines this

[39] OCC's rationale for proposing that the independent assessment be performed in the last 12-18 months is based on consideration from NFA Compliance Rule 2-9(c), which requires that FCMs provide for independent testing, conducted at least every 12 months, of the adequacy of their anti-money laundering compliance programs. See National Futures Association. (2022). *NFA Interpretive Notice 9045 - NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program*. Retrieved from https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9045#:~:text=2%20including%20FCMs.-,3,maintain%20and%20update%20customer%20information.

represents an unacceptable level of operational risk to OCC, or (vi) concerns related to an applicant's profitability.

Although OCC does not specify in proposed Rule 204(e)(ii) who must perform an independent assessment of an applicant's AML program's compliance with the Banking Secrecy Act requirements or OFAC Sanctions List and Sanctions list data, OCC would expect such assessment to be conducted by an applicant's internal audit department, consultants, or other qualified independent third parties to help to ensure the information is accurate and as unbiased as possible. OCC believes it is also reasonable to require that the assessment be conducted by an independent third-party to align with other self-regulatory organizations, such as FINRA and the National Futures Association ("NFA"), both of which also maintain provisions in their rules requiring independent testing of their AML compliance program.[40]

OCC believes the provisions set forth in this proposed rule are necessary and appropriate for OCC to take into consideration when evaluating whether an applicant presents a heightened risk profile. OCC believes proposed Rule 204(e) will provide greater transparency to applicants and the general public at an earlier stage in the application process because the considerations listed in the proposed rule are part of OCC's existing application review process. Proposed Rule 204(e) is not intended to represent an exhaustive list of all circumstances in which OCC may disapprove an application, nor is proposed Rule 204(e) intended to seek new authority for OCC. Rather, proposed Rule 204(e) is intended to articulate OCC's current authority to deny an application based on certain circumstances that, in OCC's discretion, may reflect an

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[40] FINRA Rule 3110(c) and NFA Rule 2-9(c) Interpretation 9045.

unacceptable risk profile. Furthermore, OCC believes the proposed provision strengthens OCC's risk mitigation practices by articulating in OCC's Rules examples of circumstances that OCC may rely on to disapprove an applicant in the event an applicant presents a heightened risk profile.

iv. Proposed Rule 204(f)

OCC proposes to adopt Rule 204(f) to establish a requirement related to reapplication for those applicants that have been denied membership. Specifically, proposed Rule 204(f) provides that if an applicant is denied membership, the applicant is restricted from reapplying for membership until the applicant has demonstrated to the satisfaction of the Corporation that the applicant has adequately addressed the specific grounds upon which the applicant was denied. OCC believes this proposed rule would require applicants to make meaningful changes to their risk profile after being denied membership and demonstrate, based on their changes, that they have addressed the underlying reason for their denial. OCC believes this proposed rule would reduce the possibility that an applicant will immediately reapply for membership without taking action to adjust their risk profile and address the reason for denial, which would promote an effective use of OCC's and an applicant's time and resources.

v. Proposed Rule 204(g)

OCC's proposed new Rule 204(g) would outline OCC's requirements related to an applicant's office model. The proposed rule provides that every applicant must maintain physical office facilities for conducting business with OCC, unless the applicant utilizes a remote office model that OCC determines, in its sole discretion, does not present heightened risk to OCC.[41] In addition, the proposed rule provides that every applicant may be subject to an on-site visit from OCC at the applicant's physical office facility as part of OCC's onboarding process. The proposed rule also states that applicants will be provided with no less than 24 hours' notice prior to OCC's on-site visit.

Evolving technology has introduced the ability for employees to work remotely outside of a traditional office space, and more organizations are allowing for the ability of remote work. OCC believes the use of a fully remote, non-hybrid, office model may introduce challenges for OCC to communicate with the applicant and perform an on-site examination of the applicant, therefore posing heightened risk to OCC. The purpose of proposed Rule 204(g) is to minimize risk for OCC, by providing for a more fixed location for communication and on-site examination performed by OCC. OCC believes that an applicant's lack of maintaining any physical office facility presents risks that would not exist in a hybrid office model where an applicant may have some form of physical office to allow for in-person communication. OCC believes the risks posed by an applicant that is fully remote include, but are not limited to, challenges in communication between the applicant's staff and OCC, and the lack of visibility that OCC may have into the applicant's operational stability that could be mitigated during an on-site visit or in-person meeting. OCC also proposes to adopt 204(g) and to align with FINRA's Rules related to designating a physical office space.[42] For applicants that are also members of FINRA, OCC expects those applicants would already adhere to FINRA's Rules on

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[41] OCC intends for such discretionary review to rest with OCC generally, and not to a particular committee or OCC officer.

[42] FINRA Rule 3110(a)(3) and 3110(f).

designation of office facilities and supervision of such facilities, so OCC believes it is reasonable that such applicants must maintain a physical office facility under OCC's Rules. OCC intends to apply such standards of maintaining a physical office facility not just to all applicants, but to all existing Clearing Members as well, as described in proposed Rule 302(b). Although OCC is not aware of any current Clearing Member that utilizes a fully remote business model, OCC considers the use of a fully remote business model to be a part of OCC's operational risk management. OCC would consider, on a case-by-case basis, whether an applicant or Clearing Member's risk profile would be impacted if such applicant or Clearing Member utilized a remote business model. OCC believes this proposed requirement that applicants and Clearing Members maintain a physical office facility to conduct business with OCC, unless OCC determines that the use of a remote office model does not pose additional risk for OCC, would strengthen OCC's operational risk management.

vi. Proposed Rule 204(h)[43]

OCC proposes to renumber existing Rule 204(e) to Rule 204(h). Proposed Rule 204(h) describes the nine-month timeframe requirement in which an applicant must meet all conditions applicable to admission. In proposed Rule 204(h), OCC proposes to provide examples of such conditions that are applicable to an applicant's admission. OCC's proposed changes provide that such referenced conditions shall include, but are not limited to, clearing fund deposits and operational testing requirements. By providing illustrative examples of conditions that may be applicable to an applicant's admission, OCC believes this proposed change helps to promote transparency for applicants.

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[43] Existing Rule 204(h) would be renumbered to Rule 204(q).

vii. Proposed Rule 204(j)

OCC proposes to adopt Rule 204(j), which provides that if an applicant fails to respond fully to OCC's requests for information after a period of 90 days from the inception of the application process, or for any subsequent 90-day period thereafter, OCC may deny the applicant. This proposed change is intended to ensure applicants are engaged in the application process, to help streamline the process and promote productive business practices and processes for OCC. OCC believes it is an inefficient use of its time and resources to continue waiting for responsiveness or complete information longer than 90 days following an OCC request, or any subsequent 90-day period, as this time can be more efficiently allocated to processing other new applicants which have provided the information requested by OCC in a timely fashion.

viii. Proposed Rule 204(k)

OCC's proposed changes would adopt new Rule 204(k). In proposed Rule 204(k), OCC's proposed change specifies that OCC may share with such Designated Examining Authority or designated SRO any information provided by the applicant to OCC in connection with the application process. OCC believes this proposed change promotes enhanced transparency to other industry regulatory authorities.

ix. Proposed Rule 204(l)

OCC's proposed changes would renumber existing Rule 204(g) to proposed Rule 204(l). The proposed change also expands the delegation authority of the Risk Committee, as described in further detail above, and clarifies OCC's existing authority to impose additional requirements for clearing membership pursuant to Rule 307. Specifically, the proposed change provides, in part, that if the Risk Committee, "or its designated delegates or agents," determines that an applicant's financial condition, operational capability, risk management capability or experience and competence, in relation to the business that the applicant is expected to transact with OCC, makes it necessary or advisable, for the protection of OCC, Clearing Members, or the general public, the Risk Committee may impose additional requirements for membership including, but not limited to, the imposition of protective measures pursuant to Rule 307. OCC proposes removing the term "temporary" before "requirements" to articulate that this provision was never intended to limit OCC's existing authority under Rule 307 to impose requirements on Clearing Members that may be permanent. For example, a permanent requirement that OCC may impose is the requirement that the new Clearing Member must hire personnel on a full-time basis to help demonstrate that such Clearing Member maintains sound risk management and operational controls. In this example, the requirement that the Clearing Member hire new personnel on a full-time basis, rather than on a part-time basis, is intended to be a permanent requirement. OCC believes the removal of the term "temporary" will align more closely with OCC's existing authority under Rule 307 and help strengthen OCC's resiliency in the event an applicant may present, in OCC's discretion, a heightened risk profile. For additional clarification, OCC's proposed change to proposed Rule 204(l) also includes the provision that states "any contingencies that the Risk Committee, or its designated delegates or agents, designates as temporary will remain in effect" until the heightened risk presented by the Clearing Member is sufficiently reduced, "based on the judgment of the Corporation, or if applicable, the maturity date of such contingency as specified by the Corporation."

x. <u>Proposed Rule 204(m)</u>

OCC proposes to adopt new Rule 204(m), which provides, in part, that applicants, upon OCC's request, must provide OCC with a business plan, supported by financial projections and assumptions that includes the applicant's proposed use of OCC's services that demonstrates, to the satisfaction of OCC, that the applicant has a viable plan to meet and sustain the financial and operational responsibility standards and financial obligations under OCC's Rules. In addition, the proposed change states that the applicant must provide, upon OCC's request, an assessment of the applicant's business plan by an independent third-party consultant deemed acceptable by OCC, at the expense of the applicant, to evaluate the reasonableness and viability of the plan, including its assumptions and projections, and that failure to provide such a plan, when requested by OCC, may result in denial of the application.

This proposed change is intended to strengthen OCC's basis for determining whether to approve or deny an applicant. OCC believes this proposed change will provide OCC with accurate, relevant information to consider when evaluating an applicant's background, operational and business history, and future projections, to determine if the applicant presents an acceptable risk profile. In addition, OCC believes that requiring the applicant's business plan to be assessed by an independent third-party provides additional comfort to OCC that the information provided to OCC is as accurate and as unbiased as possible.

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, OCC holds a significant responsibility in managing risk to the U.S. listed-options marketplace. Therefore, OCC believes it is essential that when requested, applicants provide OCC with a business plan, vetted by an independent third-party consultant, to allow OCC to perform its due diligence and thoroughly evaluate each applicant in its entirety to determine whether such applicant presents an acceptable risk profile. Additionally, it is critical for OCC's review that the information received from an applicant is as accurate and as unbiased as possible. OCC expects that applicants will leverage their existing third-party relationships to undertake an independent review of the applicant's business plan. By leveraging existing relationships, OCC believes that an applicant can minimize additional costs and limit the risk of any potential confidentiality issues from sharing information because such relationships already exist and there is, presumably, a level of trust in existence with such relationships. OCC believes that the requirement to provide OCC, upon its request, with a business plan, assessed by an independent third-party consultant is appropriate to further strengthen OCC's risk management practices.

xi. <u>Proposed Rule 204(n)</u>

OCC proposes to adopt new Rule 204(n), which provides, in part, that if OCC determines to apply a limitation or restriction on an applicant in lieu of applying a membership standard, as OCC is currently authorized to do as outlined in Rule 307, such limitations and restrictions may also include contingencies. Furthermore, OCC's proposed changes explain that such limitations, restrictions, and contingencies may include, in addition to the examples already provided in Rule 307, increased or adjusted ongoing membership financial requirements or an ongoing requirement to provide additional information or reports to OCC. Proposed Rule 204(n) also provides that any such financial requirements will be risk-based.

This proposed change is intended to provide OCC with the flexibility to approve an applicant for Clearing Membership with contingencies attached to its membership. The proposed change articulates specific circumstances in which an applicant's approval for membership may be contingent upon, such as the requirement for an applicant to provide ongoing reporting to OCC. OCC believes this proposed change to apply contingencies to an applicant's membership will equip OCC with the necessary tools and resources to address each individual applicant based on the specific scenario of the applicant, and apply, for example, adjusted financial or reporting requirements to a newly approved Clearing Member if OCC believes such applicant may present a heightened risk profile.

xii. <u>Proposed Rule 204(o)</u>

OCC proposes to adopt new Rule 204(o), which provides, in part, that if an applicant is approved by OCC with contingences attached to its membership, such applicant's membership will be deemed to be in a probationary period for twelve months following the date of the approval as a Clearing Member. In addition, the proposed rule provides that if a Clearing Member subject to a probationary period violates any contingency, or any OCC Rule, the Clearing Member is subject to suspension by OCC pursuant to Chapter XII of OCC's Rules. OCC believes this proposed change provides OCC with the necessary resources to manage an applicant that presents a heightened risk profile. The purpose of proposed Rule 204(o), in contrast to existing Rule 1201(a)(2), is to introduce a probationary period of twelve months for new Clearing Members that have been recently approved with contingencies attached to their membership due to their heightened risk profile as an applicant. The probationary period introduced in proposed

Rule 204(o) applies to those Clearing Members that have been approved with certain contingencies attached to their membership. The probationary period is not intended to apply to existing Clearing Member that have been members at OCC for a period of time and do not have contingencies attached to their membership. Proposed Rule 204(o) broadens OCC's authority to suspend a newly approved Clearing Member that, but for the contingencies attached to their membership, OCC may not have approved their application for clearing membership.

xiii. <u>Proposed Rule 204(p)</u>

OCC proposes to adopt new Rule 204(p) which provides, in part, that upon OCC's request, the applicant must provide to OCC the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. The proposed change also provides that if the annual audited financial statements of the applicant's parent or affiliate are not available, the applicant must provide, upon OCC's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the applicant's parent or affiliate, as applicable.

This proposed rule is intended to enhance OCC's reporting requirements, so that OCC has the necessary information available to fully review an applicant and address their risk profile. OCC believes it is necessary and appropriate to require, in certain circumstances, that an applicant, regardless of the applicant entity type, provide OCC with their parent or affiliate's audited financial statements for OCC's review so that OCC can take into consideration, from a broader perspective, the data that is provided and complete an extensive review to determine if the applicant presents an acceptable risk profile. In addition, by requiring, upon request, that an applicant provide OCC with their parent or affiliate's audited financial statements, OCC may gain a deeper understanding of the overall applicant's financial health and performance, which would assist OCC in determining the applicant's risk profile.

Proposed Rule 207 – Submission to and Retrieval of Items to and from the Corporation

OCC describes in proposed Rule 203(f) the requirement for applicants to maintain OCC Confidential Information in confidence. Similarly, OCC proposes to apply the same standard of maintaining OCC Confidential information in confidence to existing Clearing Members. To clearly differentiate which proposed rules apply to applicants and which proposed rules apply to Clearing Members, OCC proposes to introduce Rule 207(d) to describe requirements as applicable to existing Clearing Members.

Proposed Rule 207(d) would require each Clearing Member to maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and that the Clearing Member must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such Clearing Member's obligations under the By-Laws and Rules or as otherwise required by applicable law. Furthermore, proposed Rule 207(d) would entitle OCC to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages related to the disclosure of OCC Confidential Information. Specifically, proposed Rule 207(d) would state that each Clearing Member acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to OCC for which there is no adequate remedy at law, and in the event of such a breach by the Clearing Member, OCC will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. In addition, by promulgating Rule 307, OCC would be entitled to impose disciplinary proceedings for a Clearing Member's violation of the confidentiality requirements, consistent with existing Chapter XII of OCC's Rules. Finally, proposed Rule 207(d) would state that nothing in this Rule will prevent OCC or the Clearing Member from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

CHAPTER III – CLEARING MEMBERSHIP

OCC proposes to modify its existing Rule 301(b) and 301(d) to strengthen financial responsibility obligations for existing Clearing Members.

i. Proposed Rule 301(b)

OCC proposes to modify Rule 301(b) to address OCC's ability to implement, in certain circumstances, risk-based minimum capital levels. Specifically, OCC's proposed changes provide that OCC, in its sole discretion, may, pursuant to Rule 307C(a), establish risk-based minimum capital levels, higher than those specified in Rule 301 to mitigate risk to OCC. The proposed change would state that examples of such risks giving rise to a higher capital requirement include, but are not limited to, Clearing Members that may, as determined by OCC, present: (i) a short operating history, (ii) an inadequate liquidity profile, (iii) a business strategy that is high risk, (iv) a profile that is highly leveraged, (v) weak internal risk controls, or (vi) insufficient personnel. This proposed change is intended to provide OCC with flexibility to implement different capital levels than the standard capital levels outlined in OCC's existing rules to address the various risk profiles presented by its Clearing Members. OCC's bases for applying risk-based minimum capital levels would be detailed in OCC's Clearing Member On-Boarding and Off-Boarding Procedure.[44] OCC believes this proposed change will help to further strengthen its risk mitigation practices by providing OCC with necessary tools to address Clearing Members that may present elevated risk to OCC and other Clearing Members.

ii. Proposed Rule 301(d)

OCC proposes to modify Rule 301(d) to clarify requirements related to a Clearing Member's contingency plans, and the obligation to provide information about such plans. Specifically, OCC's proposed changes to Rule 301(d) include the provision that every Clearing Member must furnish copies of such procedures related to its contingency planning upon the request of OCC. OCC believes this requirement will strengthen its ability to verify that Clearing Members maintain sufficient procedures to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC.

Proposed Rule 302 – Operational Capability

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[44] As a confidential Exhibit 3a to File No. SR-OCC-2026-009, OCC provided a copy of its Clearing Member On-Boarding and Off-Boarding Procedure (the "Procedure") to the Commission. The Procedure would specify several examples of when OCC may apply risk-based minimum capital levels. Such examples would include, but are not limited to: (i) if the applicant does not maintain any lines of credit or has limited liquidity resources; (ii) if the applicant does not maintain an operating history of one year; (iii) if the applicant consistently reports monthly losses over a 12-month period or losses are projected by the firm over the subsequent 12 month period; (iv) if the applicant's proposed business generates a calculated clearing fund requirement near or greater than the applicant's excess net capital, and (v) if the applicant's financial statements for the past 12 months reveal a pattern of substantial swings in capital levels. The Procedure would also include that risk-based minimum capital levels may be applied depending on the applicant's tail risk when compared to capital or liquidity.

OCC proposes to enhance its operational capability standards for existing Clearing Members in proposed Rule 302(b) and 302(c).

Proposed Rule 302(b) would specify that every Clearing Member must maintain physical office facilities for conducting business with OCC, unless such Clearing Member utilizes a remote office model that OCC determines, in its sole discretion, does not present heightened risk to OCC. OCC also proposes to include the provision that every Clearing Member may be subject to an on-site visit from OCC at the Clearing Member's physical office facility as part of OCC's ongoing monitoring and due diligence of Clearing Members. In addition, OCC proposes that Clearing Members will be provided with no less than 24 hours notice prior to such on-site visit from OCC. As described in proposed Rule 204(g), OCC proposes to apply the same standard to applicants and existing Clearing Members as it relates to the requirement to maintain a physical office facility to conduct business with OCC. To differentiate which proposed requirements apply to applicants and which requirements apply to existing Clearing Members, OCC incorporated this provision in proposed Rule 204(g) in reference to applicants, and proposed Rule 302(b) in reference to existing Clearing Members. OCC believes that Clearing Members that do not maintain any type of physical office facility to conduct business with OCC may present a heightened risk profile. OCC believes the risks posed by a Clearing Member that maintains a fully remote office model include, but are not limited to, challenges in communication between the Clearing Member's staff and OCC, and the lack of visibility that OCC may have into the Clearing Member's operational stability that could be mitigated during an on-site visit or in-person meeting.

OCC will determine, in its sole discretion and on a case-by-case basis, if such Clearing Member presents a heightened risk profile based on its use of a remote office model. Through proposed Rule 302(b), OCC intends to strengthen its operational capability standards for Clearing Members to limit potential operational risk posed to OCC by Clearing Members that do not maintain a physical office facility.

To further strengthen its operational requirements and ensure Clearing Members meet and maintain an acceptable risk profile, OCC proposes to update Rule 302(c) to include the provision that every Clearing Member must make its books and records available for inspection by OCC upon request.

Lastly, OCC proposes to correct an error in Rule 302(f), which concerns operational requirements for Clearing Members participating in OCC's Stock Loan Programs. As the titles to the subparagraphs imply, paragraph (f)(1) concerns the Stock Loan/Hedge Program and paragraph (f)(2) was intended to concern the Market Loan Program. OCC proposes to correct an inadvertent reference to the Stock Loan/Hedge Program in paragraph (f)(2), which would instead refer to the Market Loan Program.

<u>Proposed Rule 303 – Financial, Operations, and Risk Management Personnel</u>

OCC proposes to modify Rule 303(a) to establish specific requirements related to staffing of Clearing Member personnel. Proposed Rule 303(a) provides that every Clearing Member must employ individuals with relevant industry experience in senior management roles, or equivalent positions, including: President or Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Chief Compliance Officer. The proposed change also provides that the Clearing Member must maintain a clear division of responsibility between each of the listed roles above, the purpose of which is to reduce conflicts of interest. The proposed change also states that the Clearing Member must maintain a minimum number of total full-time personnel, including a minimum number of four full-time risk management personnel. Lastly, the proposed change provides that a Clearing Member may, with the agreement of OCC, substitute for certain full-time personnel contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind of cleared contracts that the applicant or member proposes to clear. OCC's proposed additions to Rule 303(a) are intended to verify and support, from OCC's perspective, that Clearing Members maintain a sufficient level of staffing in risk management roles with sufficient industry experience to demonstrate that such Clearing Members are operationally reliable. OCC believes it is essential that Clearing Members maintain sufficient staffing of personnel to present an acceptable risk profile, in OCC's judgement.

Proposed Rule 305 – Clearing Member Risk Management

OCC's existing Rule 305 requires, in part, that Clearing Members maintain written risk management policies and procedures that address the risks that Clearing Members pose to OCC.[45] Existing Rule 305 also states that OCC will review the risk management policies, procedures, and practices of each Clearing Member on a periodic basis.[46] OCC proposes to modify existing Rule 305 to add a clarifying provision that states "based on OCC's review of the policies, procedures and practices, OCC" may take appropriate action to address concerns identified in such reviews, including but not limited to the imposition of protective measures pursuant to Rule 307. OCC believes this

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45 See supra note 3 at Rule 305.

46 Id.

proposed change articulates more clearly the basis for OCC to take action to address concerns based on review of the Clearing Member's policies, procedures and practices.

Proposed Rule 306 – Notification and Reporting Requirements

As described in further detail above in proposed Rule 203(f), OCC's proposed changes establish rules related to the confidential treatment of non-public information provided to and received from applicants and Clearing Members. Proposed Rule 203(f) concerns non-public information related to an applicant. To differentiate which proposed requirements apply to applicants and which proposed requirements apply to existing Clearing Members, OCC proposes to adopt Rule 203(f), with respect to applicants, and Rule 306(b) with respect to Clearing Members.

With respect to non-public information that a Clearing Member shares with OCC, assurance of confidentiality would be provided through the addition of paragraph (b) of Rule 306.[47] Proposed Rule 306(b) provides, in part, that any non-public information furnished by a Clearing Member to OCC pursuant to Chapter 3 will be held in confidence as may be required under the laws, rules and regulations applicable to OCC that relate to the confidentiality of records. Furthermore, proposed Rule 306(b) provides that nothing in this Rule will prevent the Corporation from releasing such non-public information, in its sole discretion, to (i) any governmental or regulatory authority (e.g., the SEC or CFTC); or (ii) any regulatory organization to which the applicant is a member or participant (e.g., FINRA with respect to a broker dealer, or other registered clearing agencies in which the applicant or Clearing Member is a common member).[48]

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[47] The existing provision of Rule 306 would be numbered Rule 306(a).

[48] See supra note 37.

<u>Proposed Rule 306A – Event-Based Reporting</u>

OCC proposes to modify existing Rule 306A(a)(1). Existing Rule 306A(a)(1) requires, in part, that under the Early Warning Notices provision, a Clearing Member must notify OCC prior to 3:00 P.M. CT in writing if the Clearing Member receives notice from any regulatory organization (as defined in this paragraph) of any financial or operational difficulty affecting the Clearing Member or of any failure by the Clearing Member to be in compliance with the financial or operational responsibility rules or capital requirements of any regulatory organization. To align with OCC's definition of "regulatory organization" in existing Rule 101, OCC's proposed change revises the text in Rule 306A(a)(1) that references regulatory organization from "as defined in this paragraph" to "as defined in Rule 101." OCC's proposed change incorporates additional language following this provision that states "to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation." OCC proposes to include this information to articulate that OCC acknowledges that Clearing Members may be subject to confidentiality provisions under certain laws of various regulatory organizations that would prohibit disclosure of such information to OCC.

Furthermore, in relation to the referenced term "regulatory organization" in existing Rule 306A(a)(1), OCC proposes to update the language from "any regulatory organization (as defined this paragraph)" to "any regulatory organization (as defined in Rule 101)." Because the term "regulatory organization" is defined in OCC Rule 101, OCC believes it is more appropriate to include the specific reference to Rule 101. For the same reasons, OCC also proposes to revise the text in Rule 306A(a)(2)(D) from "as defined below" to "as defined in Rule 101."

OCC also proposes to update Rules 306A(a)(2)(A)(i) and 306A(a)(4)(B)(i). In the event OCC determines to implement risk-based minimum capital levels, as described in proposed Rule 301, OCC will adjust its event-based reporting requirements to account for such risk-based minimum capital levels. OCC's proposed change to Rules 306A(a)(2)(A)(i) and 306A(a)(4)(B)(i) provide that a Clearing Member must notify OCC when the Clearing Member's net capital is less than the greater of $12 million, "or amount equal to 20% above the applicable Clearing Member's minimum capital requirement." OCC selected a 20% reporting threshold to account for potential instances where OCC may require that an applicant or Clearing Member maintain a minimum net capital requirement that is higher than the $10 million requirement outlined in Rule 301 or higher than the reporting threshold of $12 million in existing Rule 306A. For example, there may be an instance when OCC establishes a higher minimum net capital requirement for a Clearing Member, such as $15 million, instead of $10 million. In this example, the trigger for when a Clearing Member would be required to notify OCC would be set at a net capital below $18 million, which is $20% above $15 million. If OCC utilized the current $12 million threshold for all situations, it may not have an impact on Clearing Members with minimum net capital requirements greater than existing $10 million.

To promote parallel construction and coherent language for ease of readability throughout OCC's Rules, OCC proposes to update Rules 306A(a)(4)(C), 306A(a)(4)(D), 306A(a)(5)(C) and 306A(a)(5)(D) by incorporating the language "such Clearing Member receives" at the beginning of each referenced provision. OCC also proposes to make conforming changes to proposed Rules 306A(a)(4)(D) and 306A(a)(5)(D) by deleting the term "received." Similar to proposed provision in Rule 306A(a)(1), OCC proposes to add language at the end of Rule 306A(a)(5)(D) that states "to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation" to articulate that OCC acknowledges that Clearing Members may be prohibited from disclosing certain information to OCC based on laws of their regulatory agency.

OCC also proposes to update Rule 306A(b)(1) to promote clarity, strengthen its notification requirements for Clearing Members, and provide OCC with flexibility and tools to address Clearing Members with a heightened risk profile. OCC's proposed change updates proposed Rule 306A(b)(1) to clarify a specific timeframe in which Clearing Members must notify OCC of any material change in its form of organization. Specifically, OCC's proposed change provides that each Clearing Member must give OCC "a minimum of 30 days" prior written notice, "or prompt written notice where such decision is made less than 30 days prior to taking effect," of any material change in its form of organization or ownership structure.[49]

OCC's existing Rule 306A(c) provides, in part, that a Clearing Member, or applicant for clearing membership, that is or becomes subject to a statutory disqualification, must notify OCC in writing of the statutory disqualification within 20 business days.[50] OCC proposes to apply the same standard to applicants and Clearing Members as it relates to an applicant's or Clearing Member's responsibility to notify OCC upon learning of being subject to a statutory disqualification. To align with proposed Rule 204(c)(2) and promote consistency and transparency to applicants and

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[49] In contrast, OCC's current Rule 306A(b)(1) requires only "prompt" notification.

[50] See supra note 3 at Rule 306A(c).

Clearing Members, OCC proposes to modify Rule 306A(c) to incorporate statutory disqualification of a Key Person, and to reduce the notification requirement for Clearing Members from 20 business days to two business days upon learning of such statutory disqualification. OCC believes this change will allow OCC to better manage and more quickly address such Clearing Members who may present a heightened risk profile to OCC. Lastly, because Rules in Chapter III apply to existing Clearing Members, while Rules in Chapter II primarily concern applicants for clearing membership, OCC also proposes to remove the reference to applicants in proposed Rule 306A(c) by eliminating the phrase "or any applicant for clearing membership." The purpose of this proposed change is to promote clarity and organizational consistency within the Rules.

Proposed Rule 306B – Periodic Reporting

i. Proposed Rule 306B(b)

OCC proposes to update Rule 306B(b) as it relates to reporting requirements for existing Clearing Members. Specifically, OCC proposes to require that upon OCC's request, the Clearing Member must provide to OCC the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. The proposed provision would also provide that if the annual audited financial statements of the Clearing Member's parent or affiliate are not available, the Clearing Member must provide, upon the Corporation's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the Clearing Member's parent or affiliate, as applicable.

OCC proposes to apply the same reporting standard for Clearing Members and applicants, regardless of Clearing Member or applicant type, as it relates to requiring that the applicant or Clearing Member provide OCC with the annual audited financial statements from such an entity's parent or affiliate. To differentiate which proposed requirements apply to applicants and which requirements apply to existing Clearing Members, OCC incorporated the above provision in proposed Rule 204(p) in reference to applicants, and proposed Rule 306B(b) in reference to existing Clearing Members. The proposed change to Rule 306B(b) is intended to enhance OCC's reporting requirements, so that OCC has the necessary information available to fully review a Clearing Member and address their risk profile. OCC believes it is necessary and appropriate to require, in certain circumstances, that the Clearing Member provide to OCC their parent or affiliate's audited financial statements so that OCC can complete an extensive review to determine if the Clearing Member presents an acceptable risk profile. As mentioned above as it relates to applicants, OCC believes it is necessary and appropriate to require, in certain circumstances, that a Clearing Member provide their parent or affiliate's audited financial statements for OCC's review so that OCC can take into consideration, from a broader perspective, the data that is provided and complete an extensive review to determine if the Clearing Member presents an acceptable risk profile. In addition, by requiring, upon request, that a Clearing Member provide to OCC their parent or affiliate's audited financial statements, OCC may gain a deeper understanding of the overall Clearing Member's financial health and performance, which would assist OCC in determining the applicant's risk profile.

ii. <u>Proposed Rule 306B(f)</u>

OCC proposes to adopt Rule 306B(f) to strengthen its reporting requirements for Clearing Members. Proposed Rule 306B(f) would require that Clearing Members provide accurate, complete and timely responses to OCC's annual and periodic due diligence information requests, including any supplemental or follow-up requests thereto. This proposed change is intended to promote efficient and timely delivery of information to OCC. OCC's annual and periodic due diligence information requests include, but are not limited to, annual and periodic attestations requesting Clearing Members to confirm, for example, their current office address, back-up internet provider, and list of senior level leaders employed at the Clearing Member's organization. OCC believes this proposed provision requiring Clearing Members to provide accurate, complete and timely responses to OCC's requests is necessary to ensure successful ongoing monitoring of Clearing Members.

<u>Proposed Rule 307 – Protective Measures</u>

OCC proposes to update Rule 307 to provide enhanced transparency to Clearing Members, applicants, and the public on OCC's existing authority to impose protective measures. OCC's proposed changes renumber existing Rule 307 to Rule 307(a), and provide that OCC may impose protective measures on any Clearing Member or applicant for clearing membership that: (i) presents increased credit, "market" or liquidity risk to OCC, (ii) is "or will be, in the case of a new Clearing Member," subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iii) whose financial condition, operational capability, risk management capability, "regulatory or compliance risk profile" otherwise make it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public. The purpose of these proposed changes in proposed Rule 307(a) is to articulate OCC's existing practices and provide clarifying language as a means of providing transparency to applicants, Clearing Members and the public.

OCC proposes to adopt Rule 307(b), which provides that OCC may impose protective measures on any Clearing Member or applicant regardless of whether the Clearing Member or applicant is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. Furthermore, OCC proposes to adopt Rule 307(c), which provides that OCC determines protective measures on a case-by-case basis depending on factors such as the Clearing Member or applicant's financial and operational risk profile or the current or anticipated nature or level of the Clearing Member's or applicant's activity. The purpose of adopting proposed Rules 307(b) and 307(c) is to codify OCC's existing authority to impose protective measures within OCC's Rules. OCC believes it is important to articulate these provisions in its Rules to provide applicants, Clearing Members, and the public with readily available information on how OCC determines to impose protective measures to promote transparency and improve the clarity of its Rules.

<u>Proposed Rule 307B – Restrictions on Certain Transactions, Positions and Activities</u>

OCC's proposed changes to Rule 307B codify the processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures. The proposed changes to Rule 307B mirror the provisions in proposed Rule 203 for the process OCC would undertake in hearings on denials of Clearing Member applications or reapplications. OCC's proposed changes revise Rule 307B(b) by introducing new rule text in proposed Rule 307B(b)(1) and (b)(3) and revising existing rule text in proposed Rule 307B(b)(2).

Section (b) of Rule 307B provides a Clearing Member with a formal process to appeal any action taken under section (a) of Rule 307B. OCC's proposed changes to Rule 307B(b) specify that the Clearing Member must submit a "written" request for review to the Secretary of OCC within five business days of the date such action is taken. The addition of the word "written" clarifies the form the request must take, which OCC believes will help to ensure there is a documented record of the submission. OCC also proposes to relocate the existing requirement that the Risk Committee schedule an early hearing, with not less than one day's notice to the Clearing Member, to proposed Rule 307B(b)(2). In doing so, OCC would clarify that the notice period is one business day.

Similar to proposed Rule 203(b)(5), proposed Rule 307B(b)(1) outlines the requirements that a Clearing Member must fulfill after requesting a hearing for appeals of certain protective measures, including submitting a detailed written statement of objections and indicating their intent to attend the hearing and whether they will have legal representation. Specifically, proposed Rule 307B(b)(1) would provide that within seven (7) business days after the Clearing Member files such written request with OCC, the Clearing Member must submit to the Secretary of OCC a clear and concise statement setting forth with particularity the basis for its objection to the action, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. Additionally, proposed Rule 307B(b)(1) would include that OCC may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

The process OCC would undertake in hearings on denials of Clearing Member applications or reapplications would be the same process for hearings on appeals of certain protective measures. As such, the provisions in proposed Rule 307B(b)(2) outline the procedural requirements for the hearing before the Risk Committee on appeals of certain protective measures. Proposed Rule 307B(b)(2) ensures the Clearing Member receives at least one business day's notice of the hearing's time and place and establishes that the hearing will follow the procedures already set forth in Rule 203(b)(6), rather than restating those same procedures here. Specifically, OCC's changes to proposed Rule 307B(b)(2) would provide that the Clearing Member will be given not less than one "business" day's notice of the place and time of such hear. OCC proposes to include the addition of one "business" day to clarify that the notice period cannot fall on a weekend or holiday. OCC's proposed changes also provide that "the hearing before the Risk Committee will proceed pursuant to the procedures set forth in Rule 203(b)(6)." OCC's proposed changes eliminate the remaining rule text in proposed Rule 307B(b)(2). OCC believes the stricken text is no longer necessary as the procedures it previously outlined, including the conduct of the hearing, representation by counsel, record-keeping, and written notification of the outcome, are now covered by the provisions set forth in proposed Rule 203(b)(6), which governs the hearing process.

Lastly, OCC proposes to incorporate proposed Rule 307B(b)(3), which establishes when a decision made under this Rule becomes final and requires OCC to provide the Clearing Member with a written notice of decision stating the grounds for the decision. Proposed Rule 307B(b)(3) states that OCC will provide the Clearing Member a notice of decision setting forth the specific grounds upon which the decision is based. In addition, proposed Rule 307B(b)(3) would provide that any decision made under this Rule will be final (i) when the Clearing Member stipulates to the taking of such action by OCC, at which time OCC will furnish the Clearing Member with its notice of decision, or (ii) upon the expiration of the applicable time period provided in these Rules for the filing of a written request for a hearing or a written statement, at which time OCC will furnish the Clearing Member with its notice of decision, or (iii) if a hearing is held, the date the Secretary of OCC provides a copy of the written notice of the decision to the Clearing Member. OCC believes that codifying these processes in its Rules helps to ensure clarity and transparency to Clearing Members by providing a defined framework for when a decision is considered final.

<u>Proposed Rule 307C – Additional Operational, Personnel, Financial Resource and Risk Management Requirements</u>

OCC's proposed changes to Rule 307C include five additional examples of protective measures that OCC may impose on a Clearing Member or applicant. The purpose in highlighting these five specific examples within OCC's Rules is to provide transparency to applicants, Clearing Members and the public on protective measures that OCC most commonly uses, or that OCC anticipates may be used in the future.

OCC's proposed changes provide that OCC may impose protective measures in the form of additional operational, personnel, financial resource, or risk management requirements, including, but not limited to: (i) requiring a financial guaranty from a Clearing Member's parent company or affiliate (proposed Rule 307C(b)); (ii) imposing limitations on a Clearing Member's financial leverage (e.g. gross or adjusted leverage caps) (proposed Rule 307C(c)); (iii) requiring Clearing Members to fill a key risk management or operation role created by the loss of a Key Person, as defined in Rule 101 (proposed Rule 307C(f)); (iv) requiring Clearing Members to implement or enhance certain internal controls, procedures or systems (proposed Rule 307C(i)); and (v) requiring Clearing Members provide OCC with an independent assessment of the Clearing Member's financial projections, operational capabilities, AML controls or compliance with OFAC (proposed Rule 307C(l)).[51]

The protective measures described in proposed Rules 307C(b), 307C(c) and 307C(i) constitute OCC's current practices, and are already permissible pursuant to OCC's existing authority under Rule 307. OCC believes it is important to articulate its current practices in proposed Rule 307C to provide transparency to applicants, Clearing Members and the public. The proposed provisions in Rules 307C(f) and 307C(l) expand upon OCC's existing authority to impose protective measures. OCC believes these examples are consistent with the changes to Chapter II and III which enhance requirements for applicants and Clearing Members. Specifically, provision 307C(l) aligns with proposed Rule 204(e), which allows, in part, the Risk Committee, or its designated delegates or agents, to disapprove an application for clearing membership if there are concerns with the results of an independent assessment, performed in the last 12-18 months, of an applicant's (a) AML program's compliance with the Banking Secrecy Act requirements or (b) OFAC Sanctions List and Sanctions list data. In addition, proposed

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[51] The protective measures described in the above paragraph would be numbered as Rule 307C(b), 307C(c), 307C(f), 307C(i) and 307C(l), respectively. All other provisions in Rule 307C would be renumbered accordingly.

provision 307C(f) introduces an example of protective measure related to a Key Person's departure from the Clearing Member. This provision aligns with proposed Rule 101 in defining the term Key Person in OCC's Rules.

OCC believes the proposed protective measures are necessary and appropriate to help ensure that OCC is able to address the various risks (including credit risk, liquidity risk, and operational risk) that may be presented by applicants or Clearing Members that do not comply, or who may be at risk of not complying in the future, with OCC's membership standards, present increased credit or liquidity risk to OCC, or are otherwise experiencing difficulties in their financial condition, operational capability, or risk management capability. By articulating the examples of protective measures that OCC believes it is already authorized to impose through proposed Rules 307C(b), 307C(c) and 307C(i), OCC is providing enhanced transparency to applicants and Clearing Members. For proposed Rules 307C(f) and 307C(l) that expand OCC's authority to impose a broader set of protective measures, OCC believes such expansion of authority is necessary and appropriate to equip OCC with necessary tools to mitigate risk introduced by applicants or Clearing Members that present a heightened risk profile. Based on OCC's crucial responsibility to provide financial stability and risk management to the U.S. listed-options marketplace, OCC believes it is prudent and reasonable to expand upon its ability to impose protective measures on applicants or Clearing Members that present a heightened risk profile. OCC believes the expansion of OCC's authority to impose such protective measures will provide OCC with the ability to better protect OCC, its Clearing Members, market participants and the public from emerging counterparty risks.

Proposed Rule 309 – Reapplication for Membership

OCC's proposed change establishes new Rule 309 titled Reapplication for Membership. Proposed Rule 309(a) would provide that in connection with above events specified in Rule 306A(b)(1), OCC may: (i) require an existing Clearing Member to reapply for membership if OCC determines, in its sole discretion, that any such event has or is expected to have a material impact on the financial or operational condition or materially change the business strategy of such Clearing Member or (ii) apply protective measures necessary to address any new risks arising from any material change defined in sections A through E of Rule 306A(b)(1). In addition, proposed Rule 309(b) provides that if OCC determines that a Clearing Member must reapply for membership, the Clearing Member's access to OCC's services will remain active during the reapplication period; provided, however, that this Rule would not limit OCC's authority to impose protective measures under Rule 307 through 307C or suspend a Clearing Member pursuant to Rule 1102. Furthermore, proposed Rule 309(c) provides that any decision to suspend a Clearing Member following reapplication would be made pursuant to Rule 203.

The purpose of proposed Rule 309 is to strengthen OCC's risk mitigation tools by allowing OCC the ability to address Clearing Members' risk profiles that may have materially changed due to an event that occurred during their time of membership and that has impacted the Clearing Member in a material way. For example, if an existing Clearing Member is materially impacted financially or operationally by the sale of a large portion of its business such that the Clearing Member is unable to maintain the minimum capital requirements or the required number of risk management personnel, this may, in OCC's discretion, present a heightened risk profile. Therefore, OCC believes it would strengthen its risk mitigation practices to require, in certain circumstances, that the Clearing Member reapply for membership and allow OCC to re-examine whether the Clearing Member still meets OCC's membership standards based on the material change that has impacted the Clearing Member.

Under proposed Rule 309, the process for review of reapplications would align with the existing process for review of new applications, as described in proposed Rule 203, including the provisions for a hearing before the Risk Committee should the reapplying Clearing Member be denied. If OCC determines that a Clearing Member must reapply for membership, the requirement to reapply would not automatically result in restricting the Clearing Member's access to OCC's services. However, if, for example, a Clearing Member is required to reapply and the Clearing Member can no longer satisfy the minimum margin requirements during the reapplication process, OCC may determine to impose protective measures under Rules 307 through 307C or suspend the Clearing Member pursuant to 1102. In summary, the provisions in proposed Rule 309(a) through 309(c) would not impair OCC's authority to act under Rules 307 through 307C or 1102.

If OCC determines that a Clearing Member must reapply for membership under proposed Rule 309, the Clearing Member would follow the admission procedures for new applicants outlined in proposed Rule 203 and would be afforded the same rights under Rule 203 as any new applicant. As described above with respect to proposed Rule 203, the Risk Committee, or its designated delegates or agents, determines whether to approve or deny the reapplication and the Clearing Member would be given an opportunity to request a hearing before the Risk Committee and may be represented by counsel and present evidence on its behalf. OCC believes the Risk Committee is the appropriate governing body to hear and determine membership reapplication decisions because it is the Risk Committee that hears appeals of initial membership determinations under Rule 203 and limitations to membership under OCC Rule 307B, which present the same questions concerning the risks that an applicant or Clearing Member presents to OCC on a go-forward basis.[52]

CHAPTER XI – SUSPENSION OF A CLEARING MEMBER

Proposed Rule 1101

OCC's existing Rule 1101 outlines, in part, a Clearing Member's obligation to notify OCC if a Clearing Member is unable to meet its obligations, is insolvent, or becomes the subject of a bankruptcy petition, receivership proceeding or the equivalent. OCC proposes to relocate existing Rule 1102(b) to become new Rule 1101(b), which would provide that any Non-U.S. Clearing Member which has been expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange of which it is a member shall immediately so notify OCC. OCC does not propose to change the language of the relocated provision. Because Rule 1101 focuses on a Clearing Member's requirement to notify OCC, OCC believes it is more efficient to structure Rule 1101 to also include the notification requirement of a Non-U.S. Clearing Member. Therefore, OCC proposed changes relocate Rule 1102(b) to new Rule 1101(b) to include the requirement for Non-U.S. Clearing Member's to notify OCC. Subsequently, OCC's existing Rule 1101 would be new Rule 1101(a).

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52 In contrast, while a Disciplinary Committee may impose suspension or expulsion as a sanction under Chapter XII of OCC's Rules, the questions presented to the Disciplinary Committee are limited to whether a Clearing Member has violated an OCC Rule and, if so, the appropriate sanction.

Proposed Rule 1102

OCC proposes to modify Rule 1102 to reorganize the existing rule structure to improve clarity and promote efficiency within OCC's Rules. OCC's proposed modifications to Rule 1102 organize the rule text into three separate sections: (i) proposed Rule 1102(a) "Grounds for Suspension," (ii) proposed Rule 1102(b) "Event of Default; Cease to Act," and (iii) proposed Rule 1102(c) "Notice to the Board of Directors." OCC's proposed modifications also include relocating, without substantive revision, the Interpretation and Policies section under existing Rule 1102 as rule text.

Under proposed Rule 1102(a), OCC's proposed changes include the description titled "Grounds for Suspension" and incorporate eight subsections in proposed Rule 1102(a)(1) through (8) that outline OCC's grounds for suspension of a Clearing Member. The text of five of the eight subsections remains unchanged, as shown in proposed Rule 1102(a)(1) through Rule 1102(a)(4) and Rule 1102(a)(6). OCC's proposed changes in Rule 1102(a)(v) (renumbered as proposed rule 1102(a)(5)) reflect a reorganization without substantive changes, and the proposed changes in what would become proposed Rule 1102(a)(7) reflect textual updates to align with OCC's existing Rules. Lastly OCC proposes to adopt one new ground for summary suspension in proposed Rule 1102(a)(8).

To promote clarity, ease of readability and enhanced transparency to Clearing Members, OCC's proposed changes adopt the provisions in Interpretation and Policy .02 as proposed Rule 1102(a)(5)(A) through proposed Rule 1102(a)(5)(C). OCC's proposed changes to proposed Rule 1102(a)(5) also include subsequent conforming changes and additional grammatical modifications, such as using acronyms for terms already defined in OCC's Rules. To promote consistency and align with existing language in Rule 707 and Article VI, Section 25 of the By-Laws, OCC's proposed changes adopt subsection seven of proposed Rule 1102(a). Proposed Rule 1102(a)(7) provides, in part, that the Board of Directors or a Designated Officer of the Corporation may suspend any Clearing Member which is "in default, or its affiliated CCO Clearing Member is in default, in the payment of funds or any other obligation in respect of sets of X-M accounts under Rule 707 or in respect of an internal non-proprietary cross-margining account under Article VI, Section 25 of the By-Laws." Finally, OCC proposes to adopt subsection eight of proposed Rule 1102(a) to align with the proposed provisions governing suspension of a Clearing Member following reapplication pursuant to proposed Rule 309. As previously described above, if OCC determines that a Clearing Member does not meet OCC's membership standards following the reapplication process under proposed Rule 309, OCC may determine to deny the Clearing Member, and such decision to deny clearing membership following reapplication will be made pursuant to proposed Rule 203. OCC proposes to adopt Rule 1102(a)(8), which provides, in part, that a Clearing Member may be suspended if it does not meet OCC's membership standards following reapplication under Rule 309, as determined by OCC. The purpose of this proposed change is to codify that following a determination to expel a member—whether upon a denial of a reapplication under proposed Rule 309 after affording the Clearing Member the process described in proposed Rule 203 or as a sanction for a violation of OCC's By-Laws and Rules under existing Chapter XII of the Rules—suspension of the Clearing Member may proceed in accordance with Chapter XI of the Rules (Suspension of a Clearing Member).

OCC proposes to adopt Rule 1102(b), titled "Event of Default; Cease to Act." Under proposed Rule 1102(b), OCC proposes to relocate the text of current Interpretation and Policy .01 to new Rule 1102(b)(1) without substantive change.[53] Proposed Rule 1102(b)(1) provides, in part, that each event described in Rule 1102(a) constitutes an event of "default" with respect to a Clearing Member. OCC believes this proposed change is consistent with the proposed reorganization of the rule text and that such change will promote clarity and ease of readability. Furthermore, proposed Rule 1102(b)(2) reorganizes existing rule text and makes additional conforming changes so that Rule 1102(b)(2) provides, in part, that OCC shall cease to act for a suspended Clearing Member except as specified in this Chapter.

Lastly, OCC proposes to adopt Rule 1102(c), titled "Notice to the Corporation," which relocates the existing rule text under 1102 to new Rule 1102(c).

OCC's changes to proposed Rule 1102(a) through 1102(c) also include other non-substantive, conforming changes that include formatting and grammatical modifications.

CHAPTER XII – DISCIPLINARY PROCEEDINGS

Proposed Rule 1201

OCC proposes to update Rule 1201(a) to articulate certain specific examples to Clearing Members and the general public of events that may result in grounds for disciplinary proceedings at OCC. OCC's proposed changes also reorganize existing Rule 1201(a) to provide enhanced transparency and efficiency. OCC proposes to include new subsections two through five of Rule 1201(a) as examples of conduct that may embarrass the operations of OCC, as referenced in existing Rule 1201(a). OCC's proposed changes provide that such examples include but are not limited to: (i) the Clearing Member's

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[53] The proposed Rule 1102(b)(1) would incorporate grammatical changes and updated cross-references to reflect the proposed organizational changes to Rule 1102(a) described above.

failure to comply with a protective measure and failure to cure such failure to OCC's satisfaction within the cure period specified by OCC, (ii) the Clearing Member exhibits a pattern of providing late financial information or other information requested by OCC, (iii) the Clearing Member exhibits a pattern of providing OCC with false or misleading financial information such that, in the sole opinion of OCC, OCC can no longer fully assess or monitor the risk presented by the Clearing Member; or (iv) the Clearing Member or Key Person of the Clearing Member exhibits a pattern of regulatory or legal infraction such that, in the sole opinion of OCC, it creates a significant reputational risk for OCC. The purpose of including these specific examples of conduct that may lead OCC to censure, suspend, expel, fine or otherwise limit the activities, functions, or operations of the Clearing Member is to promote transparency with Clearing Members and to support a sound legal framework. OCC believes the proposed provisions will also foster accountability and promote clear communication with Clearing Members by articulating in OCC's Rules specific examples upon which OCC may rely to act. OCC believes the proposed modifications to Rule 1201(a) will strengthen its grounds for taking disciplinary action against a Clearing Member, improve its risk mitigation practices, and support its responsibility to promote financial stability and integrity to the marketplace. The examples provided in subsections one through five of proposed Rule 1201(a) are not intended to be an exhaustive list of conduct that would violate OCC's By-Laws, Rules or procedures. Rather, OCC believes these referenced examples may be the most frequent violations, and therefore OCC believes it is appropriate to articulate such information.

OCC's proposed changes to Rule 1201(a) also reorganize the rule text to promote clarity and efficiency. OCC's proposed changes provide, in part, that OCC may censure, suspend, expel, "fine" or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules "or procedures of the Corporation." OCC's proposed changes restructure the provision so that OCC's authority to fine a Clearing Member is more clearly described and is more consistent with the description of the other actions that OCC may take under Rule 1201(a). In reference to the provision that outlines OCC's ability to impose a disciplinary sanction on any Clearing Member for violation of OCC's By-Laws and Rules, OCC's proposed changes also encompass that such violation includes that of "other statutory rules of the Corporation" to align more closely with the text of the Exchange Act[54] and provide enhanced transparency to Clearing Members and the general public. The purpose of this change is to encompass a violation of OCC's statutory rules, as defined in OCC's By-Laws, rather than solely those rules memorialized in OCC's By-Laws and Rules. By reorganizing the introductory provision to include the reference to OCC's authority to fine a Clearing Member, OCC's proposed changes also eliminate the phrase that states "The Corporation may, in addition to or in lieu of such sanctions, impose a fine on any Clearing Member for any violation of the By-Laws or Rules or procedures of or its agreements with Corporation or the correspondent clearing corporation." In addition, OCC's proposed changes reorganize the rule text so that subsection one under proposed Rule 1201(a) describes the example provided in existing Rule 1201(a) of a Clearing Member violation. Specifically, OCC's proposed changes adopt subsection one and provide, in part, that examples of conduct embarrassing the operations of OCC include, but are not limited to, the Clearing Member's failure to provide adequate personnel or facilities for its transactions with OCC

[54] 15 U.S.C. 78c(a)(27).

or the correspondent clearing corporation. OCC's proposed changes to Rule 1201(a) also make other conforming, grammatical and non-substantive changes.

Finally, OCC's proposed changes eliminate the Interpretation and Policy .01 and adopt the same provision as Rule 1201(b) to promote clarity and consistency in Chapter XII. OCC believes it is more appropriate for the information in proposed Rule 1201(b) to be adopted as a separate rule under existing Rule 1201, rather than an interpretation to Rule 1201(a).

Proposed Rule 2212 – Suspension of Clearing Member – Re-Matching in Suspension

OCC's existing Rule 2212 states that in the event a suspended Clearing Member has Matched-Book Positions, OCC will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible.[55] To mitigate risk in this specific scenario, OCC proposes to incorporate a provision in proposed Rule 2212(c) which would require that all Clearing Members that are participants of the Stock Loan/Hedge program must register their existing Master Securities Loan Agreement ("MSLA") relationship within OCC's clearing system.

Under OCC's existing Rule 2212,[56] OCC already has the authority to rematch Stock Loan/Hedge positions in the event a defaulting member is borrowing shares from one Clearing Member and on-lending the same shares to another Clearing Member. OCC's rematching process gives priority to a pair of rematched Clearing Members who have registered with OCC an existing MSLA relationship. Once, and if, all registered

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55 See supra note 3 at Rule 2212(a).

56 See supra note 3 at Rule 2212(c).

MSLA relationships are exhausted in the rematching algorithm, OCC then rematches between a pair of Clearing Members who have not registered an existing MSLA relationship. Those pairings without an existing MSLA relationship recorded in OCC's clearing system are forced to promptly decide between executing a new MSLA (and conducting their processes to onboard a new counterparty) or closing out of the position under the current market conditions. The proposed revision to Rule 2212(c) would require Clearing Members to register their MSLAs with other OCC Clearing Members within OCC's clearing system, as opposed to the optional registration that exists currently, so that the rematching algorithm performs most optimally by pairing Clearing Members who already have existing relationships to mitigate these issues Clearing Members may face.

Lastly, throughout Rule 2212, OCC removed reference to "Hedge" Clearing Member as such term is no longer recognized as a defined term in OCC's Rules, pursuant to the Commission's prior approval.[57]

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act[58] and the rules thereunder applicable to OCC, including Rule 17Ad-22(e)(18),[59] Rule 17Ad-22(e)(2),[60] and Rule 17Ad-22(e)(1)[61] thereunder.

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57 See supra note 4.

58 15 U.S.C. 78q-1.

59 17 CFR 240.17Ad-22(e)(18).

60 17 CFR 240.17Ad-22(e)(2).

61 17 CFR 240.17Ad-22(e)(1).

Section 17A(b)(4)(B) of the Act[62] provides that a clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Additionally, Section 17A(b)(4)(B) of the Act[63] also provides that a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency. As described in greater detail herein, OCC's proposed rule change primarily modifies Chapters II and III of its Rules to strengthen and expand upon its conditions to admission and membership requirements applicable to applicants and existing Clearing Members. OCC's proposed changes in Chapters II and III detail OCC's standards of financial responsibility, operational capability, experience, and competence applicable to applicants and Clearing Members. More specifically, OCC's proposed changes to Chapter II of its Rules address, in part: (i) enhanced membership eligibility standards in proposed Rule 201 by requiring applicants maintain a minimum operating history of one year, (ii) enhanced operational capability requirements by requiring applicants maintain a physical office facility in proposed Rule 204, unless OCC deems the use of a remote office facility does not present heightened risk to OCC, and (iii) expansion on basis for OCC's denial of membership in proposed Rule 204. Additionally, OCC's proposed changes to Chapter III of its Rules address, in part, a Clearing Member's: (i) financial responsibilities related to requiring risk-based minimum capital levels in proposed Rule 301, (ii) operational capability obligations

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[62] 15 U.S.C. 78q-1(b)(4)(B).

[63] Id.

related to maintaining a physical office facility in proposed Rule 302, unless OCC deems the use of a remote office facility does not present heightened risk to OCC, (iii) responsibilities on employment of risk management personnel in proposed Rule 303 and (iv) notification and reporting requirements in proposed Rule 306. OCC's proposed changes to Chapters II and III are intended to assist OCC in reviewing, examining, verifying and ultimately approving or disapproving applications for clearing membership. Under the proposed rule change, OCC retains its authority to suspend, deny or otherwise condition the participation of any applicant or Clearing Member that does not meet the applicable membership standards. Therefore, OCC believes that the proposed rule change promotes the purposes of Section 17A(b)(4)(B) of the Act.[64]

Section 17A(b)(3)(F) of the Act[65] requires, among other things, that the rules of a clearing agency be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. OCC believes its proposed changes to Chapters II and III are consistent with Section 17A(b)(3)(F) of the Act[66] as it relates to confidential treatment of non-public information and the obligations applicable to OCC and its participants. Proposed Rules 203(f) and 306(b) establish a standard relating to OCC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with OCC's membership requirements. OCC believes the proposed change establishes a

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64 15 U.S.C. 78q-1(b)(4)(B).

65 15 U.S.C. 78q-1(b)(3)(F).

66 Id.

uniform standard that will help OCC meet its obligations and will also help each participant better understand OCC's obligations for maintaining the confidential information it shares with OCC. OCC believes this will better facilitate the sharing of such information and improve OCC's ability to evaluate its participants' eligibility to access OCC's clearing and settlement services. Additionally, proposed Rules 203(f) and 207(d) establish a standard relating to an applicant or Clearing Member's obligation to maintain OCC Confidential Information in confidence. By establishing uniform participant confidentiality requirements, OCC believes this will help each participant better understand its rights and obligations for maintaining the confidential information which will help to promote participant compliance. Therefore, OCC believes the proposed changes to establish OCC and participant confidentiality obligations are consistent with the prompt and accurate clearing and settlement of securities specified in Section 17A(b)(3)(F) of the Act.[67]

OCC believes the proposed rule change is consistent with Section 17A(b)(5)(B) of the Act, which provides, in part, that in any proceeding by a registered clearing agency to determine whether a person shall be denied participation with respect to access to services offered by the clearing agency, the clearing agency must notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record.[68] Furthermore, Section 17A(b)(5)(B) of the Act provides, in part, that determination to deny participation must be supported by a statement setting forth the specific grounds on which the denial or

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67 Id.

68 15 U.S.C. 78q-1(b)(5)(B).

prohibition or limitation is based.[69] OCC believes the denial of a Clearing Member following reapplication, as described in proposed Rule 309(c), is consistent with Section 17A(b)(5)(B) of the Act. Proposed Rule 309(c) provides that any decision to deny clearing membership following reapplication will be made pursuant to Rule 203. The admission procedures described in Rule 203 already provide for the requirements outlined in Section 17A(b)(5)(B) of the Act, specifically in proposed Rules 203(b)(3) and (4). In the event the Risk Committee, or its designated delegates or agents, deny an application or reapplication for clearing membership, proposed Rule 203(b)(3) states that the Risk Committee must first furnish the applicant with a written statement of its proposed recommendation and the specific grounds therefore, and afford the applicant an opportunity to be heard and to present evidence on its own behalf. Furthermore, proposed Rules 203(b)(4) through (b)(6) codifies the specific processes that OCC would undertake in hearings before the Risk Committee for appeals of certain protective measures, or in hearings on denials of Clearing Member applications or reapplications. OCC believes this detailed process outlined in proposed Rule 203(b)(4) through (b)6) will promote greater transparency for Clearing Members and applicants with respect to denial of participation and the procedures afforded to them. As such, OCC believes proposed Rule 203 aligns with the requirements in Section 17A(b)(5)(B) of the Act. Furthermore, proposed Rule 203(b)(8) mirrors existing Interpretation and Policy .01 to Rule 1201 (i.e., proposed Rule 1201(b)), which provides the same with respect to a suspension or expulsion following disciplinary proceedings in Chapter XII. Because OCC's proposed Rule 309(c) provision to deny a Clearing Member following

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[69] Id.

reapplication will be made pursuant to Rule 203, OCC believes proposed Rule 309(c) is consistent with Section 17A(b)(5)(B) of the Act.

OCC believes the proposed rule change is also consistent with Section 17A(b)(3)(H) of the Act[70] and Section 17A(b)(5) of the Act.[71] Section 17A(b)(3)(H) of the Act requires, in part, that the rules of a clearing agency, in general, provide a fair procedure with respect to denial of participation to any person seeking participation therein.[72] Section 17A(b)(3)(H) of the Act also requires that the clearing agency's rules are in accordance with Section 17A(b)(5) of the Act, which outlines the procedures to be followed by a clearing agency in disciplining participants.[73] The proposed rule change seeks to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in determining to approve or deny an applicant. OCC is not seeking to change its current appellate process for applicants that have been denied membership. In addition, OCC is not seeking to change the process for disciplining participants. Rather, OCC seeks to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in determining the approval or denial of an applicant. Specifically, proposed Rule 203(b) expands authority so that the Risk Committee, or its designated delegates or agents, must determine whether to approve or deny applications for clearing membership. If an applicant is denied membership, OCC's current practices under existing Rule 203(a) provides, in part, that the applicant, if denied by the Risk Committee, is given a written

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70 15 U.S.C. 78q-1(b)(3)(H).

71 15 U.S.C. 78q-1(b)(5).

72 15 U.S.C. 78q-1(b)(3)(H).

73 15 U.S.C. 78q-1(b)(5).

statement with the specific grounds for denial, and the applicant has the opportunity to be heard by the Risk Committee and to present evidence on its own behalf.[74] OCC is not seeking to change this process. If an applicant is denied membership by the Risk Committee's designated delegates or agents, as proposed Rule 203(b) authorizes the Risk Committee's designated delegates or agents to do so, the applicant would still be given the opportunity to be heard by the Risk Committee. OCC believes its current process provides for a fair procedure with respect to denial of participation. Because OCC is not seeking to change its current appellate process for applicants denied membership, OCC believes its proposed changes related to delegated authority process under this proposed rule change are consistent with Section 17A(b)(3)(H) of the Act and Section 17A(b)(5) of the Act. OCC believes the proposed rule change is also consistent with proceedings under Section 17A(b)(5)(B) of the Act,[75] which requires, in part, that "in any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial." OCC believes that proposed Rule 1201(a) is consistent with Section 17A(b)(5)(B) of the Act[76] because proposed Rule 1201(a) articulates explicit examples that may result in grounds for OCC's denial, prohibition or limitation on a Clearing Member's access under OCC's disciplinary proceedings. Proposed Rule 1201(a) describes specific examples, but does not provide an exhaustive

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[74] See supra note 3 at Rule 203(a).

[75] 15 U.S.C. 78q-1(b)(5)(B).

[76] Id.

list, of potential violations of OCC's By-Laws and Rules, which promotes transparency and specificity to Clearing Members and the general public on possible grounds for such disciplinary proceedings.

OCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(18).[77] Rule 17Ad-22(e)(18)[78] requires a clearing agency, in part, to "[e]stablish objective, risk-based, and publicly disclosed criteria for participation" that "permit fair and open access" and "require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency." The primary purpose of the proposed rule change is to improve OCC's existing financial and operational membership standards and strengthen its reporting requirements to continue to permit fair and open access and to further mitigate counterparty credit risks introduced by Clearing Members. The proposed changes establish requirements to help ensure that applicants and Clearing Members maintain sufficient financial resources and robust operational capacity to meet obligations arising from participation at OCC. With respect to requiring that participants have sufficient financial resources, the proposed rule change establishes in proposed Rule 301 the ability for OCC to, in its sole discretion, implement risk-based minimum capital levels for Clearing Members that are higher than those already specified in OCC's Rules. As described in further detail above, the bases and processes for applying risk-based minimum capital levels would be detailed in the Procedure and such information would be publicly disclosed in OCC's pre-qualification form. The proposed rule change also clarifies and expands upon OCC's existing authority

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[77] 17 CFR 240.17Ad-22(e)(18).

[78] 17 CFR 240.17Ad-22(e)(18)(i)-(ii).

to deny an applicant for clearing membership in proposed Rule 204(e), including but not limited to, if such applicant poses elevated risk due to the amount or degree of financial leverage maintained by the applicant. With respect to requiring that participants maintain robust operational capability, the proposed rule change establishes eligibility criteria for Clearing Members to maintain a one-year minimum operating history in proposed Rule 201. The proposed rule change also establishes new provisions and modifies existing provisions set forth in proposed Rules 204(g), 302 and 303 as it relates to OCC's operational capability, experience, and competence standards and related resources for applicants and Clearing Members. This includes, among other things, the requirement for participants to maintain a minimum total number of personnel and risk management personnel, and the requirement to maintain physical office facilities utilized to conduct business with OCC, unless OCC deems such remote office facility does not pose heightened risk to OCC. OCC believes that an applicant or Clearing Member's use of a fully remote office model, as opposed to a hybrid model, may introduce communication challenges for OCC and the applicant or Clearing Member's staff as well as pose operational risk to OCC that could be mitigated through an in-person office visit or on-site exam. Therefore, OCC believes it is necessary to implement requirements surrounding physical office facilities to promote operational resiliency. OCC believes these proposed changes promote the purposes of Rule 17Ad-22(e)(18).[79]

Rule 17Ad-22(e)(18)[80] also requires a clearing agency to monitor for compliance with its participation requirements on an ongoing basis. OCC believes the proposed rule

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[79] 17 CFR 240.17Ad-22(e)(18).

[80] 17 CFR 240.17Ad-22(e)(18)(iii).

change is consistent with this requirement because it enhances and otherwise clarifies OCC's ongoing monitoring of Clearing Member's participation requirements by strengthening its early warning notice and periodic reporting requirements for Clearing Members under proposed Rules 306A and 306B. Proposed Rule 309 strengthens OCC's ongoing monitoring of Clearing Members by providing OCC with the ability to require Clearing Members to reapply for membership or to apply protective measures necessary to address risks arising from any material change impacting the financial or operational condition of the Clearing Member. The proposed rule change expands upon OCC's reporting requirements for Clearing Members, including the obligation for Clearing Members, upon OCC's request, to provide OCC with their parent or affiliate's audited financial statements in proposed Rule 306B. Furthermore, the proposed rule change adopts additional protective measures under proposed Rule 307C, including but not limited to, restrictions on a Clearing Member related to the departure of a Key Person from their management team, and requirements to obtain an independent assessment of the Clearing Member or applicant's financial projections or operational capabilities. The proposed rule change subjects Clearing Members to each of these financial and operational membership standards in a non-discriminatory manner under OCC's Rules. As such, OCC believes that these enhanced financial, reporting, and operational membership standards promote the requirements of Rule 17Ad-22(e)(18).[81]

OCC believes the proposed rule change is also consistent with Rule 17Ad-22(e)(2).[82] Rule 17Ad-22(e)(2) requires, among other things, that OCC establish,

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[81] Id.

[82] 17 CFR 240.17Ad-22(e)(2).

implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[83] Proposed Rules 203 and 204 provide, in part, changes to expand certain delegation of authority from the Risk Committee to the Risk Committee's designated delegates or agents in the approval or denial of applications for clearing membership and business expansions requests at OCC. OCC believes the proposed rule change outlines in a clear, direct, and transparent manner the lines of responsibility in the approval or denial of membership applicants and business expansions. Proposed Rules 203 and 204 describe that new membership decisions and business expansion requests are not required to be presented to the Risk Committee at the regularly scheduled Risk Committee meetings. By vesting the authority to approve or deny certain applicants for clearing membership to the Risk Committee's designated delegates or agents, as described in proposed Rule 203(b), OCC will not subject all applicants for clearing membership to the regular meeting cycle of the Board or Risk Committee. This, in turn, will streamline the decision-making process by eliminating the need to wait until the next quarterly scheduled Risk Committee meeting to determine whether such applicant or business expansion is approved. Similarly, by modifying Rule 203 to provide that business expansion requests may be reviewed and approved or disapproved by the Risk Committee, or its designated delegates or agents, pursuant to the procedures of OCC, OCC believes this sets forth clear governance arrangements while also streamlining the decision process so that not every business expansion request will be required to be

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[83] 17 CFR 240.17Ad-22(e)(2)(i),(v).

presented to the Risk Committee. As such, OCC believes the proposed change promotes the requirements of Rule 17Ad-22(e)(2).[84]

OCC believes the proposed rule change is also consistent with Rule 17Ad-22(e)(1).[85] Rule 17Ad-22(e)(1) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[86] As described in more detail above, the primary reason for the proposed rule change is to enhance OCC's onboarding requirements and surveillance of existing Clearing Members to reduce counterparty credit risk introduced by Clearing Members. In addition, the proposed rule change also makes certain organizational, administrative, and clarifying changes to its Rules to provide greater clarity and transparency, and to promote efficient administration of the Rules. For example, proposed Rule 204(e) articulates examples under OCC's existing authority to deny an applicant for membership if such applicant poses elevated risk to OCC. OCC believes that articulating examples in its Rules provides enhanced transparency to applicants and the general public. As such, OCC believes the proposed rule change promotes the purposes of Rule 17Ad-22(e)(1).[87]

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84 Id.

85 17 CFR 240.17Ad-22(e)(1).

86 17 CFR 240.17Ad-22(e)(1).

87 Id.

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

Section 17A(b)(3)(I) of the Act[88] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes would impact or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is generally intended to improve upon OCC's existing financial and operational membership standards to mitigate counterparty credit risk introduced by Clearing Members. With the exception of OCC's proposed change to implement risk-based minimum capital levels, OCC believes the proposed rule change imposes the enhanced financial and operational membership standards uniformly on all applicants and Clearing Members within a particular category of institution, and whenever possible, uniformly across all Clearing Members irrespective of category.

OCC's proposed Rule 301 provides, in part, that OCC may establish and impose risk-based minimum capital levels on Clearing Members to further mitigate risk to OCC. OCC acknowledges that this proposed change establishing the ability for OCC to implement risk-based minimum capital levels, higher than those already specified in its Rules, may present a burden on competition among certain Clearing Members. Specifically, smaller Clearing Members that maintain a smaller level of capital may be impacted more than larger Clearing Members that maintain larger capital pools. While OCC understands that establishing risk-based minimum capital levels may impact certain Clearing Members over others, OCC believes the establishment of risk-based minimum capital levels is necessary and appropriate in furtherance of the purposes of the Act.

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[88] 15 U.S.C. 78q-1(b)(3)(I).

OCC's intention in establishing risk-based minimum capital levels is to strengthen its risk management practices. As the central counterparty for all listed options in the U.S., OCC has an obligation to address and manage risk, including counterparty credit risk introduced by its Clearing Members. OCC believes it is necessary to maintain the ability to impose risk-based minimum capital levels so that OCC can prevent financial risk from impacting other Clearing Members. If, for example, a Clearing Member presents, in OCC's discretion, a highly leveraged profile, short operating history, an inadequate liquidity profile, a business strategy that is high risk, weak profitability, weak internal risk controls, or insufficient personnel, OCC believes that such Clearing Member may present greater credit and liquidity risks to OCC that may impact OCC's ability to comply with the requirements of the Act applicable to clearing agencies. Therefore, OCC believes the burden imposed on certain Clearing Members that may be impacted by risk-based minimum capital levels is outweighed by the critical responsibility that OCC maintains in managing risk to OCC, its Clearing Members, and the U.S. listed options market.

OCC believes the proposed rule change would continue to provide for objective and risk-based standards that balance fair and open access with prudent qualification standards while ensuring its membership base is appropriately capitalized to support the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by OCC, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and the protection of investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.[89]

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

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

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

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

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

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

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[89] 15 U.S.C. 78q-1(b)(3)(F).

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-2026-009 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-2026-009. 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 such filing 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-2026-009 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.[90]

Secretary

[90] 17 CFR 200.30-3(a)(12).

<u>Exhibit 3</u>

This Exhibit contains electronic files embedded in this cover page for filing efficiency, as identified below. OCC has omitted the embedded file pursuant to 17 CFR 240.24b-2. OCC has separately filed and requested confidential treatment of the cover page containing the embedded file as protected from public disclosure by Exemptions 4 and 8 of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(b)(4), (b)(8), and 15 U.S.C. 78x(e) because the information it contains concerns (i) OCC's trade secrets and commercial information not customarily released to the public and is, and always has been, treated as the private information of OCC, the release of which is likely to cause foreseeable harm to OCC's commercial or financial interests; and (ii) the supervision of OCC, a financial institution regulated by the Commission. OCC believes the Form 19b-4 Information and Exhibit 1A provide a clear and adequate description of the relevant substance of the embedded files to facilitate meaningful public comment.

Embedded File: **[Redacted Pursuant to Rule 24b-2]**

- OCC's Clearing Member On-Boarding and Off-Boarding Procedure [Confidential]; 17 pages

Embedded File: **[Redacted Pursuant to Rule 24b-2]**

- OCC's Credit and Liquidity Risk Working Group Procedure [Confidential]; 6 pages

EXHIBIT 5

OCC Rules

Blue underlined text indicates additions

~~Red strikethrough~~ text indicates deletions

~~Green double strikethrough~~ text indicates deletions to existing text that is being relocated within OCC's Rules, as indicated by green underlined text

Table of Contents

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CHAPTER I - DEFINITIONS

RULE 101 – Definitions

A

AML

The term “AML” when used in respect of an applicant or Clearing Member’s AML controls means compliance with anti-money laundering requirements imposed under U.S. law or comparable requirements in the Clearing Member’s home jurisdiction.

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K

Key Person

The term “key person” means any person associated with a Clearing Member or applicant that the Corporation deems is critical to the Clearing Member or applicant’s operations or risk management, including, but not limited to, the Clearing Member's President, Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Chief Compliance Officer, or equivalent positions, or a major shareholder or partner.

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O.

OCC Confidential Information

The term “OCC Confidential Information” means all non-public information provided by the Corporation that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as “confidential” or “business sensitive,” (ii) is designated by the Corporation as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential.

OFAC

The term “OFAC” means the United States Department of the Treasury’s Office of Foreign Assets Control as defined in Title 31, Chapter V of the Code of Federal Regulations.

Office

The term “office” in respect of any Clearing Member means the office established by such Clearing Member pursuant to Rule 302 ~~201~~.

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CHAPTER II – CLEARING MEMBERSHIP

RULE 201 – Eligibility

(a) To be eligible for membership, a Clearing Member must be:

(1) registered as a broker-dealer under Section 15(b)(1) or (2) of the Securities Exchange Act of 1934 (the “Exchange Act”) (a “fully-registered broker-dealer”);

(2) registered as a futures commission merchant (“FCM”) under Section 4f(a)(1) of the Commodity Exchange Act (the “CEA”) (a “fully-registered FCM”);

(3) a Canadian Investment Dealer or other Non-U.S. Securities Firm as defined in the Corporation’s Rules; or

(4) a U.S. national bank registered with the Office of the Comptroller of the Currency for full-service operations, a U.S. state-chartered bank that is a member of the Federal Reserve System, or a U.S. state-licensed or federally-licensed branch of a non-U.S. bank where the non-U.S. bank is registered with its home country national banking regulatory authority that:

(i) maintains membership solely for purposes of clearing products for its own proprietary account(s) and not on behalf of others, including any affiliates or subsidiaries;

(ii) provides adequate assurance, in such form determined by the Corporation, that it does not engage in activity that would require registration as a broker-dealer, FCM, or any other registration status deemed relevant by the Corporation;

(iii) provides adequate assurance, in such form determined by the Corporation, that it is not prohibited from contributing to the Corporation’s Clearing Fund;

(iv) with respect to all of its cleared contracts, stock loans and other transactions subject to the By-Laws and Rules of the Corporation (including without limitation, all “qualified financial contracts”) the Clearing Member must ensure that all such agreements and contracts: (1) are in writing; (2) are executed by the Clearing Member and the Corporation contemporaneously with the relevant transaction; (3) are continually maintained as an official record by the Clearing Member from the time of execution; and (4) are approved by the board of directors of the Clearing Member or its loan committee, which approval shall be reflected in the minutes of said board or committee (for the avoidance of doubt, the provisions of this clause (iv) are intended to give effect to Section 13(e) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(e), and shall be interpreted in accordance with such provisions); and

(v) if it is a U.S. branch of a non-U.S. bank (a) the branch is subject to supervision and regulation by the Office of the Comptroller of the Currency, in the case of a federally-licensed branch, or by the applicable state banking regulator, in the case of a state-licensed branch and (b) the non-U.S. bank is subject to supervision and regulation by the Board of Governors of the Federal Reserve System pursuant to the International Banking Act of 1978, as amended, and other applicable U.S. banking laws.

(b) Clearing Members must maintain a minimum operating history of one year in the same or substantially same business activities as being applied for, or in the alternative, must maintain senior personnel with sufficient financial, risk, and operational background and experience, in the sole opinion of the Corporation, to conduct the business of the Clearing Member.

~~(b)~~ (c) Clearing Members must be in compliance with all registration and other regulatory requirements applicable to clearing a particular product type. In that regard, the following specific requirements will ordinarily apply:

(1) To clear transactions in options other than futures options or commodity options, a Clearing Member must be:

(i) a fully-registered broker-dealer;

(ii) a Canadian Investment Dealer or Non-U.S. Securities Firm; or

(iii) an eligible bank.

(2) To clear transactions in commodity futures, futures options and commodity options, a Clearing Member must:

(i) be a fully-registered FCM; or

(ii) not required by the CEA or the regulations of the CFTC to be registered as an FCM. (An exclusion from the FCM registration requirement under the CEA would ordinarily be available to a firm that clears only transactions that are for a “proprietary account” as defined in the regulations of the CFTC.); and

(iii) any Clearing Member who holds positions in physically-settled futures or futures options other than security futures is required to be a member of the Exchange on which the products are traded.

(3) To clear transactions in security futures products, a Clearing Member must be:

(i) a fully-registered broker-dealer that is also (A) a fully-registered FCM, (B) notice-registered as an FCM under Section 4f(a)(2) of the CEA, or (C) not required to register as an FCM under the CEA and the regulations of the CFTC;

(ii) a fully-registered FCM that is notice-registered as a broker-dealer under Section 15(b)(11)(A) of the Exchange Act;

(iii) a Canadian Investment dealer or other Non-U.S. Securities Firm; or

(iv) an eligible bank.

(4) Notwithstanding any other provision of the By-Laws or Rules, no broker or dealer registered under Section 15(b)(11) of the Securities Exchange Act will clear transactions or carry positions in cleared securities other than security futures.

(5) To clear transactions in Stock Loan, a Clearing Member must be:

(i) a fully-registered broker-dealer;

(ii) Canadian Investment Dealer or other Non-U.S. Securities Firm; or

(iii) an eligible bank.

(6) To clear OTC Index Options, a Clearing Member must:

(i) be a broker-dealer registered under Section 15(b)(1) or (2) of the Securities Exchange Act of 1934, a Canadian Investment Dealer or other Non-U.S. Securities Firm, or an eligible bank;

(ii) execute and maintain in effect such agreements and other documents as the Corporation may prescribe (including, for purposes of clearing OTC index options on indices published by the Standard & Poor's Financial Services LLC ("S&P"), a short-form index license agreement in the form specified from time to time by S&P);

(iii) be a user of or participant in an OTC Trade Source for the purpose of affirming and submitting confirmed trades to the Corporation for clearance; and

(iv) meet such other requirements as the Corporation may specify.

A Clearing Member will continue to comply with all conditions described above until the Clearing Member has closed out all open positions in OTC index options.

~~(c)~~ (d) The procedures of the Corporation may provide that a Clearing Member cannot clear transactions in a particular type of product unless, in addition to satisfying any specific requirements applicable to such type of product set forth in the By-Laws and Rules, the Corporation has specifically approved the Clearing Member to clear such type of product.

~~(d)~~ (e) Each Clearing Member must meet such additional non-discriminatory standards of financial responsibility, operational capability, risk management capability, experience and competence as may from time to time be prescribed in the statutory rules of the Corporation.

~~(e)~~ (f) *Fitness Standards*. In addition to the standards of financial responsibility, operational capability, risk management capability, and experience and competence, the Corporation will consider the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, before approving any application for clearing membership and other standards as set forth in these Rules or such other qualifications and standards as the Corporation may promulgate.

* * * *

RULE 203 – Admission Procedures

(a) *Form of Application*. Applications for clearing membership, including reapplications under Rule 309, must be in such form and contain such information as the Corporation will from time to time prescribe.

(b) *Review by the Risk Committee or its Delegates*.

(1) The Risk Committee, or its designated delegates or agents, ~~must review and approve or disapprove such~~ determine whether to approve or deny applications or reapplications for clearing membership.

(2) The Risk Committee, or its designated delegates or agents, may examine the books and papers of any applicant, take such evidence as they may deem necessary or employ such other means as they may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications.

(3) If the Risk Committee, or its designated delegates or agents, proposes to deny ~~disapprove~~ an application or a reapplication for clearing membership, ~~it must first~~ the Secretary of the Corporation will furnish the Clearing Member or applicant with a written statement of ~~its~~ the proposed ~~recommendation~~ denial and the specific grounds therefor, and afford the Clearing Member or applicant an opportunity to be heard and to present evidence on its own behalf. ~~If the Risk Committee disapproves the application, written notice of its decision, accompanied by a statement of the specific grounds therefor, must be mailed or delivered to the applicant.~~ ~~An applicant will have the right to~~

~~present such evidence as it may deem relevant to its application. A verbatim record must be kept of any hearing held pursuant hereto.~~

(4) A Clearing Member or applicant may request a hearing by filing with the Secretary of the Corporation within five (5) business days from the date on which the Secretary of the Corporation furnished the applicant with a written statement under paragraph (b)(3) setting forth the name of the representative of the Clearing Member or applicant who may be contacted with respect to the hearing. The Secretary of the Corporation will give the Clearing Member or applicant not less than ten (10) business days' prior written notice of the place and time of the hearing.

(5) Within seven (7) business days after the Clearing Member or applicant files such written request with the Corporation, the Clearing Member or applicant must submit to the Secretary of the Corporation a clear and concise statement setting forth with particularity the basis for its objection to the denial, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. The Secretary of the Corporation may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

(6) A hearing will proceed before the Risk Committee pursuant to the procedures set forth below:

(A) If the applicant fails to appear at the hearing, it may be deemed to have waived the right to review;

(B) The Clearing Member or applicant may be represented by counsel, but such representation is not required;

(C) The Corporation will keep a verbatim record of the hearing, which shall be the official record of the hearing. The applicant must refrain from making audio or video recordings or transmission of the hearing. The verbatim record of the hearing shall constitute OCC Confidential Information.

(D) The Corporation and the Clearing Member or applicant (each a "Party") may offer evidence through documentary evidence entered as exhibits in the proceeding.

(E) Parties must provide copies of any documents or other materials that they plan to use at the hearing as evidence. Such evidence must be exchanged no later than the date established by the Risk Committee.

(F) The formal rules of evidence, including the Federal Rules of Evidence, do not apply to hearings held under this Rule. Parties may argue that any documentary evidence presented by the opposing party should not be considered by the Risk Committee by objecting orally at the hearing on the basis that the evidence is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. After considering the objecting party's reasons for excluding the evidence, the Risk Committee members will determine if the document will be admitted into evidence and into the record.

(G) Following the presentation of each document, members of the Risk Committee may pose questions to the presenter of the document about the evidence offered.

(H) Subject to the Risk Committee's authority to change the order, the hearing will be conducted in the following order: (i) open of record; (ii) presentation of the facts of the case, including documents, by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (iii) the applicant's presentation of facts of the case, including documents; (iv) rebuttal by an Officer of the Corporation, or an Officer's delegate or the Corporation's counsel; (v) the applicant's rebuttal; and (vi) the close of record.

(I) Following the hearing, if necessary, the Risk Committee may submit questions in writing to either Party, with copies of all communication provided to each Party.

(7) If the Risk Committee, or its designated delegates or agents, ~~disapproves~~ denies the application or reapplication, the Corporation will provide the applicant or Clearing Member a written notice of ~~its~~ the decision, accompanied by a statement of the specific grounds ~~therefore, must be mailed or delivered to the applicant~~ on which the denial is based. Any decision made under this Rule will be final upon the date the Secretary of the Corporation provides a copy of the written notice of the decision to the Party.

(8) A final decision to deny a reapplication of a Clearing Member pursuant to Rule 309 and this Rule will constitute a suspension or expulsion from a self-regulatory organization and therefore grounds for summary suspension under Rule 1102.

~~(b)~~(c) *Expediated Approvals.* The Risk Committee, or its designated delegates or agents, may approve an applicant on an expedited basis if approval of such applicant is appropriate for the protection of investors and the public interest. The expedited approval process may grant certain exceptions for (i) the applicant's compliance with the Corporation's membership standards for a reasonable duration and (ii) the Corporation's internal policies, procedures, and due diligence processes in reviewing the applicant.

~~(c)~~(d) *Business Expansion Requests.* A Clearing Member that is not authorized to clear all types of transactions (e.g., securities customer transactions, segregated futures customers transactions, proprietary transactions, market-maker and JBO Participant transactions), or all kinds of transactions (e.g., transactions in stock options, cash-settled index options, commodity options and futures, stock loan/borrow) may at any time request authorization from the Corporation to conduct any or all of such activity ("business expansion request"). Business expansion requests may be reviewed and approved or disapproved by the Risk Committee, or its designated delegates or agents, ~~Chief Executive Officer or Chief Operating Officer~~ pursuant to the procedures of the Corporation~~; provided that the Risk Committee will be given not less than ten business days from the date it is notified of such approval or disapproval to determine whether the business expansion request should be reviewed by the Risk Committee~~.

(e) *Notification.* The Corporation will provide notice to the Risk Committee of all decisions made by the Risk Committee's designated delegates or agents related to the approval or denial of any applicant or business expansion request.

(f) *Confidential Information.*

(1) Any non-public information furnished to the Corporation pursuant to this Chapter will be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records. Nothing in this Rule will prevent the Corporation from releasing such non-public information, in its sole discretion, to (i) any governmental or regulatory authority or (ii) any regulatory organization to which the applicant is a member or participant.

(2) Each applicant must maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such applicant's obligations under the By-Laws and Rules or as otherwise required by applicable law. Each applicant acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation for which there is no adequate remedy at law. In the event of such a breach by the applicant, the Corporation will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. Nothing in this Rule will prevent the Corporation or the applicant from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

RULE 204 – Conditions to Admission

(a) The Risk Committee, or its designated delegates or agents, ~~will not~~ may approve any application for clearing membership if the applicant ~~fails to meet~~ meets the membership requirements and standards set forth in the Rules.

(b) No applicant will be admitted as a Clearing Member until the applicant has deposited with the Corporation its initial contribution to the Clearing Fund in the amount required by the Risk Committee in accordance with Chapter X of the Rules, has met all contingencies established by the Risk Committee at the time of approval, and has signed and delivered to the Corporation an agreement in such form as the Corporation will require, including applicant's agreements:

(1) to clear through the Corporation, either directly or through another Clearing Member, all of its confirmed trades and all other transactions which the By-Laws or the Rules may require to be cleared through the Corporation;

(2) to abide by all provisions of the By-Laws and the Rules and by all procedures adopted pursuant thereto;

(3) that the By-Laws and the Rules constitute a part of the terms and conditions of every confirmed trade or other contract or transaction which the applicant, while a Clearing Member, may make or have with the Corporation, or with other Clearing Members in respect of cleared contracts, or which may be cleared or required to be cleared through the Corporation;

(4) to grant the Corporation all liens, rights and remedies set forth in the By-Laws and the Rules;

(5) to pay to the Corporation all fees and other compensation provided by or pursuant to the By-Laws and the Rules for clearance and for all other services rendered by the Corporation to the applicant while a Clearing Member;

(6) to pay such fines as may be imposed on it in accordance with the By-Laws and the Rules;

(7) to permit inspection of its books and records at all times by the representatives of the Corporation and to furnish the Corporation with all information in respect of the applicant's business and transactions as the Corporation or its officers may require;

(8) to make such payments to or in respect of the Clearing Fund as may be required from time to time;

(9) to comply, in the case of Non-U.S. Securities Firms, with the guidelines and restrictions imposed on domestic broker-dealers regarding the extension of credit, as provided by Section 7 of the Securities Exchange Act of 1934 and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, with respect to any customer account that includes cleared contracts issued by the Corporation; and

(10) to comply, in the case of Non-U.S. Securities Firms, with the Rules of the Financial Industry Regulatory Authority governing maintenance margin and cut-off times for the submission of exercise notices by customers.

(c) The Risk Committee, or its designated delegates or agents, may disapprove ~~the~~ an application for clearing membership ~~of~~ if any applicant, or Key P~~p~~erson of the applicant, ~~who~~ is or becomes subject to a Statutory Disqualification.

(1) In cases in which the SEC, by order, directs as appropriate in the public interest, the Corporation will disapprove an application for clearing membership by any applicant or Key P~~p~~erson of the applicant who is or becomes subject to a S~~s~~tatutory D~~d~~isqualification.

(2) Every applicant must notify the Corporation in writing within two business days if the applicant or a Key Person is or becomes subject to a statutory disqualification in accordance with the requirements of Rule 306A(c) or if the applicant learns that it or a Key Person is the subject of a formal investigation by a regulatory organization.

(d) The Risk Committee, or its designated delegates or agents, may disapprove an application for clearing membership if the applicant or any natural person associated with the applicant has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade.

(e) The Risk Committee, or its designated delegates or agents, may disapprove any application for clearing membership if the Corporation becomes aware of any factor or circumstance about the applicant, or a Key Person of the applicant, that may pose elevated risk to the Corporation or impact the suitability of the applicant as a Clearing Member. Factors or circumstances that may pose elevated risk to the Corporation include, but are not limited to:(i) concerns relating to an applicant's liquidity profile; (ii) concerns with the results of an independent assessment, performed in the last 12-18 months, of an applicant's (a) AML program's compliance with the Banking Secrecy Act requirements or (b) OFAC Sanctions List and Sanctions list data; (iii) concerns relating to the amount or degree of financial leverage maintained or proposed to be maintained by the applicant; (iv) concerns relating to pending, adjudicated or settled regulatory or other legal actions involving the applicant or its management, including the applicant or a Key Person of the applicant being subject to a Statutory Disqualification, as such term is defined in Rule 101; (v) if an applicant does not conduct its business from a physical office facility such that the Corporation determines this represents an unacceptable level of operational risk to the Corporation, or (vi) concerns related to an applicant's profitability.

(f) If an applicant is denied membership, the applicant is restricted from reapplying for membership until the applicant has demonstrated to the satisfaction of the Corporation that the applicant has adequately addressed the specific grounds upon which the applicant was denied.

(g) Every applicant must maintain physical office facilities for conducting business with the Corporation, unless such applicant utilizes a remote office model that the Corporation determines, in its sole discretion, does not present heightened risk to the Corporation. Every applicant may be subject to an on-site visit from the Corporation at the applicant's physical office facility as part of the Corporation's onboarding process. Applicants will be provided with no less than 24 hours notice prior to such on-site visit from the Corporation.

~~(e)~~ (h) Each applicant that has been approved for clearing membership subject to satisfaction of specified conditions must meet all conditions applicable to its admission within nine months from the date on which its application was approved, unless the Risk Committee prescribed an earlier date at the time the applicant was approved for clearing membership. Such referenced conditions shall include, but are not limited to, clearing fund deposits and operational testing requirements.

~~(f)~~ (i) The Risk Committee may consider information provided by an applicant's Designated Examining Authority, designated self-regulatory organization (in the case of an applicant primarily regulated as a futures commission merchant) and/or other self-regulatory organizations to which an applicant is a member or has applied for membership when considering an applicant's compliance with the Corporation's membership requirements and standards and overall fitness to be a Clearing Member.

(j) If an applicant fails to respond fully to the Corporation's requests for information after a period of 90 days from the inception of the application process, or for any subsequent 90-day period thereafter, the Corporation may deny the applicant.

(k) The Corporation may share with such Designated Examining Authority or designated self-regulatory organization any information provided by the applicant to the Corporation in connection with the application process.

~~(g)~~ (l) If the Risk Committee, or its designated delegates or agents, determines that an applicant's financial condition, operational capability, risk management capability, or experience and competence in relation to the business that the applicant is expected to transact with the Corporation, makes it necessary or advisable, for the protection of the Corporation, Clearing Members, or the general public, the Risk Committee may impose additional~~, temporary~~ requirements for membership including, but not limited to, the imposition of protective measures pursuant to Rule 307. ~~Additional membership criteria may be imposed~~ Any contingencies that the Risk Committee, or its designated delegates or agents, designates as temporary will remain in effect until the heightened risk presented by the Clearing Member is sufficiently reduced, based on the judgment of the Corporation, or if applicable, the maturity date of such contingency as specified by the Corporation.

(m) Upon the Corporation's request, the applicant must provide to the Corporation its business plan, supported by financial projections and assumptions, that includes the applicant's proposed use of the Corporation's services that demonstrates, to the satisfaction of the Corporation, that the applicant has a viable plan to meet and sustain the financial and operational responsibility standards and financial obligations under the Rules. The applicant must provide, upon the Corporation's request, an assessment of the applicant's business plan by an independent third-party consultant deemed acceptable by the Corporation, and at the expense of the applicant, to evaluate the reasonableness and viability of the plan, including its assumptions and projections. Failure by the applicant to provide such a plan, when requested by the Corporation, may result in denial of applicant from clearing membership.

(n) If the Corporation determines to apply a limitation or restriction on an applicant in lieu of applying a membership standard, as the Corporation is currently authorized to do as outlined in Rule 307, such limitations and restrictions also include contingencies and, in addition to the examples already provided in Rule 307, such limitations, restrictions, and contingencies also may include increased or adjusted ongoing membership financial requirements or an ongoing requirement to provide additional information or reports to the Corporation. Any such financial requirements will be risk-based.

(o) If an applicant is approved by the Corporation with contingencies attached to its membership, such applicant's membership will be deemed to be in a probationary period for twelve months following the date of the approval as a Clearing Member. If a Clearing Member subject to a probationary period violates any contingency, or any of the Corporation's Rules, the Clearing Member is subject to suspension by the Corporation pursuant to Chapter XII of the Corporation's Rules.

(p) Upon the Corporation's request, the applicant must provide to the Corporation the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. If the annual audited financial statements of the applicant's parent or affiliate are not available, the applicant must provide, upon the Corporation's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the applicant's parent or affiliate, as applicable.

~~(h)~~ (g) Each applicant for clearing membership and each Clearing Member must sign and deliver to the Corporation such other instruments in writing as the Corporation may require from time to time, depending on the services that the applicant or Clearing Member selects.

* * * *

RULE 207 – Submission to and Retrieval of Items to and from the Corporation

(a) Clearing Members must submit and retrieve instructions, notices, reports, data, and other items in accordance with procedures prescribed or approved by the Corporation. Items submitted to or retrieved from the Corporation by electronic data entry will be deemed to constitute “writings” for purposes of any applicable law.

(b) Items required or permitted to be submitted to the Corporation must be submitted at or prior to such times as the Corporation will specify. The Corporation may disregard any untimely submission or correction of any such item. If unusual or unforeseen conditions prevent a Clearing Member from submitting any instruction, notice, report, data, or other item to the Corporation on a timely basis, the Corporation may in its discretion (i) require the Clearing Member to submit the item by other means, and/or (ii) extend the applicable cut-off time by such period as the Corporation deems reasonable, practicable, and equitable under the circumstances; provided, however, that cut-off times for submission of exercise notices at expiration are governed by Rule 805, and by Article VI, Sec. 18 of the By-Laws.

(c) If unusual or unforeseen conditions (including but not limited to power failures or equipment malfunctions) prevent the Corporation from making any instruction, notice, report, data, or other item available to a Clearing Member for electronic data retrieval on a timely basis, the Corporation may in its discretion (i) make such item available to such Clearing Member by other means, and/or (ii) extend the applicable time frame by such period as the Corporation deems reasonable, practicable, and equitable under the circumstances.

(d) Each Clearing Member must maintain OCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and must not use OCC Confidential Information or disclose OCC Confidential Information to any third party except as necessary to perform such Clearing Member’s obligations under the By-Laws and Rules or as otherwise required by applicable law. Each Clearing Member acknowledges that breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation for which there is no adequate remedy at law. In the event of such a breach by the Clearing Member, the Corporation will be entitled to seek any temporary or permanent injunction or other equitable relief in addition to any monetary damages. Nothing in this Rule will prevent the Corporation or the Clearing Member from providing such OCC Confidential Information to any governmental or regulatory authority subject to request for confidential treatment.

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CHAPTER III – MEMBERSHIP STANDARDS

RULE 301 – Financial Responsibility

(a) *General.* Each Clearing Member, including applicants for clearing membership, must meet the financial resource and responsibility requirements set forth in these Rules and such other qualifications and standards as the Corporation may promulgate. All dollar amounts in this Rule 301 refer to U.S. dollars.

(b) *Minimum Capital.* Clearing Members must maintain the following minimum capital requirements. The Corporation, in its sole discretion, may, pursuant to Rule 307C(a), establish risk-based minimum capital levels, higher than those specified in Rule 301 to mitigate risk to the Corporation. Examples of such risks giving rise to a higher capital requirement include, but are not limited to, Clearing Members that may, as determined by the Corporation, present a short operating history, an inadequate liquidity profile, a business strategy that is high risk, a profile that is highly leveraged, weak internal risk controls, or insufficient personnel. No opening purchase transaction or opening sale transaction will be cleared by or through any Clearing Member, and no Stock Loan will be entered into by any Clearing Member, at any time when such Clearing Member's capital falls below its respective minimum capital requirement.

(1) *Registered Broker-Dealers*. Every Clearing Member that is a fully-registered broker-dealer must maintain minimum net capital equal to the greater of: (i) $10 million; (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 6 2/3% of its aggregate indebtedness (i.e., aggregate indebtedness cannot exceed 1500% of net capital); or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 2% of its aggregate debit items.

(2) *Registered Futures Commission Merchants.* Every Clearing Member that is a fully-registered FCM must maintain minimum adjusted net capital equal to the greater of $10 million or any other minimum financial requirements established by regulation of the CFTC.

(3) *Canadian Investment Dealers and other Non-U.S. Securities Firms*. Non-U.S. Securities Firms must maintain the following levels of minimum net capital.

(i) *Canadian Investment Dealers.* Every Clearing Member that is a registered investment dealer regulated by the Investment Industry Regulatory Organization of Canada must maintain risk adjusted capital equal to the greater of $10 million or 2% of total margin required.

(ii) *Other Non-U.S. Securities Firms.* Every Non-U.S. Securities Firm that is not a Canadian Investment Dealer must maintain capital substantially similar to (adjusted) net capital required for fully-registered broker-dealers or fully-registered futures commission merchants equal to the greater of $10 million or the amount required by the firm's applicable regulatory minimum requirements established by the regulatory authority of that country's government or an agency or instrumentality thereof. If the Risk Committee prohibits the use of the non-U.S. jurisdiction's regulatory minimum requirements or chooses to supplement a non-U.S. jurisdiction's regulatory minimum requirements, then a Non-U.S. Securities Firm must maintain total equity greater than $25 million.

(4) *Banks*. Every U.S. bank Clearing Member must maintain Tier 1 Capital of at least $500 million, a Tier 1 Capital Ratio greater than 6%, and be either "well-capitalized" or "adequately-capitalized" as measured by prompt corrective action ("PCA") capital category ratios applicable to such U.S. Banks. Every U.S. branch of a non-U.S. bank that is a Clearing Member must be a branch of a non-U.S. bank that maintains Tier 1 Capital of at least $500 million (or its equivalent in the relevant home country currency), maintain a Tier 1 Capital Ratio greater than 6%, and that remains at least adequately capitalized as calculated or defined pursuant to the regulatory capital rules of the applicable banking regulatory authority of its home country.

(c) If a Clearing Member is registered as a broker-dealer under Section 15(b)(1) of the Securities Exchange Act and also as a futures commission merchant under Section 4f(a)(1) of the Commodity Exchange Act, the Clearing Member must comply with all applicable capital requirements.

(d) *Extreme But Plausible Events and Contingency Planning.* Every Clearing Member must have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule. Every Clearing

Member must also maintain adequate procedures, including but not limited to contingency funding and alternate settlement bank arrangements, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. Every Clearing Member must furnish copies of such procedures related to its contingency planning upon the request of the Corporation.

. . . *Interpretations and Policies:*

.01 The terms "net capital," "aggregate indebtedness", and "aggregate debit items" must be computed for a broker-dealer Clearing Member in accordance with SEC Rule 15c3-1 and 15c3-3, as applicable. For the purpose of this Chapter III only, the term "customer" has the meaning set forth in paragraph (c)(6) of SEC Rule 15c3-1.

.02 If a Clearing Member maintains proprietary options positions but carries those positions in an account or accounts with another Clearing Member and is otherwise eligible to calculate its net capital requirement in accordance with the provisions of SEC Rule 15c3-1(a)(6), the Clearing Member must nevertheless take the risk based haircuts associated with proprietary securities positions in determining its compliance with the Corporation's minimum net capital requirements.

RULE 302 – Operational Capability

(a) *General.* Each Clearing Member, including applicants for clearing membership, shall meet the operational capability, experience, and competence standards set forth in these Rules and such other qualifications and standards as the Corporation may promulgate.

(b) *Offices*. Every Clearing Member must maintain physical office facilities for conducting business with the Corporation, unless such Clearing Member utilizes a remote office model that the Corporation determines, in its sole discretion, does not present heightened risk to the Corporation. There must be available, during such hours as may be specified from time to time by the Corporation, a representative of the Clearing Member authorized in the name of the Clearing Member to take all action necessary for conducting business with the Corporation during regular and overnight business hours. Every Clearing Member may be subject to an on-site visit from the Corporation at the Clearing Member's physical office facility as part of the Corporation's ongoing monitoring and due diligence of Clearing Members. Clearing Members will be provided with no less than 24 hours notice prior to such on-site visit from the Corporation.

(c) *Books and Records*. Every Clearing Member must maintain books and records in accordance with the requirements of its applicable regulatory agency, including but not limited to any applicable requirements under the Securities Exchange Act, the Commodity Exchange Act, or the requirements of any non-U.S. regulatory agency, and with such additional requirements as the Corporation may impose. Every Clearing Member must make its books and records available for inspection by the Corporation upon request.

(d) *Ability to Discharge Responsibilities.* Clearing Members must maintain facilities, systems and procedures that are operationally sufficient to discharge its functions as a Clearing Member in a timely and efficient manner, including the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation; and the ability to participate in applicable operational and default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.

(e) *Physically-Settled Equity Options and Stock Futures*. Every Stock Clearing Member and every Clearing Member that effects transactions in physically-settled stock futures shall be and remain a participant in good standing of the correspondent clearing corporation; provided, however, that the foregoing shall not apply to: (i) an Appointing Clearing Member during a period when such Appointing Clearing Member has in effect an appointment of an Appointed Clearing Member pursuant to Rule 901(f);

or (ii) a Canadian Clearing Member on behalf of which CDS maintains an identifiable subaccount in a CDS account at the correspondent clearing corporation, provided that CDS is a participant in good standing of the correspondent clearing corporation during the period when such Canadian Clearing Member has in effect an appointment of CDS pursuant to Rule 901(g).

(f) *Stock Loan Programs*. Clearing Members participating in the Corporation's Stock Loan programs shall meet the following additional operational requirements.

(1) *Stock Loan/Hedge Program*. Every Clearing Member participating in the Stock Loan/Hedge Program must: (i) be a member of the Depository (as defined in Article XXI of the By-Laws) or be a Canadian Clearing Member on behalf of which CDS maintains an identifiable sub-account in a CDS account at the Depository, provided that CDS is a participant of the Depository eligible to perform the necessary functions on behalf of the Canadian Clearing Member during the period when such Canadian Clearing Member has in effect an appointment of CDS pursuant to the provisions set forth in this Interpretation, and (ii) execute such agreements and other documents as the Corporation may prescribe.

(2) *Market Loan Program*. Every Clearing Member participating in the ~~Stock Loan/Hedge~~ Market Loan Program must: (i) be a U.S. Clearing Member or Clearing Member from any foreign country or jurisdiction approved by the Risk Committee, (ii) be a subscriber to such Loan Market with full access to services provided by the Loan Market, (iii) be a member of the Depository that has provided the Depository with written authorization to honor instructions issued by the Corporation against such Clearing Member's account at the Depository, and (iv) execute such agreements and other documents as the Corporation may prescribe. A separate designation is required for each Loan Market in which a Clearing Member participates. A Clearing Member must continue to comply with all conditions referred to in (i) – (iv) above until the Clearing Member has terminated all open stock borrow and loan positions resulting from Market Loans.

RULE 303 – Financial, Operations, and Risk Management Personnel

(a) ~~Every applicant or Clearing Member must employ personnel or maintain~~ Every Clearing Member must employ individuals with relevant industry experience in senior management roles, or equivalent positions, including: President or Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Chief Compliance Officer. The Clearing Member must maintain a clear division of responsibility between each of the listed roles above. The Clearing Member must maintain a minimum number of total full-time personnel, including a minimum of four full-time risk management personnel. The Clearing Member may, with the agreement of the Corporation, substitute for certain full-time personnel contractual arrangements with third-party service providers acceptable to the Corporation with substantial experience in clearing the kind~~(s)~~ of cleared contracts that the applicant or member proposes to clear. Every Clearing Member must maintain supervisory authority over all internal staff conducting business with the Corporation and over the activities and functions performed by third-party vendors.

(b) Every Clearing Member must employ personnel who are responsible for such Clearing Member's compliance with applicable net capital, recordkeeping, and other financial, operational, and risk management rules or maintain contractual arrangements with third-party service providers to perform such activities or functions. The employed personnel are:

(1) in the case of a fully-registered broker-dealer, a registered "Limited Principal Financial and Operations" with the Financial Industry Regulatory Authority;

(2) in the case of a fully-registered FCM or other registrant registered under Section 4f of the Commodity Exchange Act that is not a fully-registered broker-dealer, a chief financial officer or other person with appropriate qualifications who is responsible for supervising the preparation of the applicant's financial reports;

(3) in the case of a bank, Canadian Investment Dealer or other Non-U.S. Securities Firm, a chief financial officer or other person with appropriate qualifications who is responsible for supervising the preparation of the Clearing Member's financial reports.

(c) Each Clearing Member must ensure that it employs an appropriate number of clearing operations personnel or maintains adequate contractual arrangements with third-party service providers with the requisite capability, experience, and competency such that the Clearing Member can reasonably ensure that it is able to discharge its functions as a Clearing Member in a timely and efficient manner, including the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable operational and default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations. Each Clearing Member must submit to the Corporation a list of the clearing operations personnel it employs in such form as is acceptable to the Corporation, including, without limitation, the names, titles, primary offices, email addresses, and business phone numbers for all such personnel.

(d) Any contractual arrangements with third-party service providers used to satisfy the requirements of Rule 302 and this Rule 303 must:

(1) clearly set forth the specific services to be performed by the third-party service provider on behalf of a Clearing Member and the respective duties and obligations of the third-party service provider and the Clearing Member.

(2) provide that the agreement will not be terminated until 30 days after written notice of such termination is provided by the Clearing Member to the Corporation; and

(3) provide the Corporation with the authority and ability to perform initial and ongoing due diligence on the third-party service provider.

(e) Should a separation or termination of an agreement with a third-party service provider occur between the only personnel or third-party service provider who meets the requirements of Rule 303 and the Clearing Member, such Clearing Member will have three months from the effective date of the separation to comply with this Rule.

* * * *

RULE 305 – Clearing Member Risk Management

(a) Each Clearing Member must maintain current written risk management policies and procedures that address the risks the Clearing Member may pose to the Corporation. The Corporation will review the risk management policies, procedures, and practices of each Clearing Member on a periodic basis. ~~and~~ Based on its review of the policies, procedures and practices, the Corporation may take appropriate action to address concerns identified in such reviews, including but not limited to the imposition of protective measures pursuant to Rule 307.

(b) Each Clearing Member must provide to the Corporation such information and documentation as may be requested by the Corporation from time to time regarding such Clearing Member’s risk management policies, procedures, and practices.

(c) Each Clearing Member must provide to the Commodity Futures Trading Commission such information and documentation as requested by the Commodity Futures Trading Commission regarding such Clearing Member’s risk management policies, procedures, and practices.

RULE 306 – Notification and Reporting Requirements

(a) Each Clearing Member shall provide to the Corporation such notices, reports, documentation, or other information required in these Rules and any other requirements the Corporation may promulgate.

(b) Any non-public information furnished by a Clearing Member to the Corporation pursuant to this Chapter will be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records. Nothing in this Rule will prevent the Corporation from releasing such non-public information, in its sole discretion, to (i) any governmental or regulatory authority or (ii) any regulatory organization to which the applicant is a member or participant.

RULE 306A – Event-Based Reporting

(a) *Early Warning Notices.* A Clearing Member shall notify an officer of the Corporation promptly, and in any event, prior to 3:00 P.M. Central Time (4:00 P.M. Eastern Time) of the next business day in writing, if:

(1) The Clearing Member notifies, is required to notify, or receives notice from, any regulatory organization (as defined in ~~this paragraph~~ Rule 101) of any financial or operational difficulty affecting the Clearing Member or of any failure by the Clearing Member to be in compliance with the financial or operational responsibility rules or capital requirements of any regulatory organization, to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation. Any notice, whether written or otherwise, from a regulatory organization informing a Clearing Member that it may fail to be in compliance with the financial or operational responsibility rules or capital requirements of the regulatory organization unless it takes corrective action, or informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation, constitutes a notice for purposes of the preceding sentence. The Clearing Member must include with any written confirmation to the Corporation a copy of any written notice provided or received by the Clearing Member which is referred to in the confirmation.

(2) The Clearing Member is a fully registered broker-dealer and:

(A) such Clearing Member's net capital is less than the greater of:

(i) $12 million~~;~~ or amount equal to 20% above the applicable Clearing Member's minimum capital requirement;

(ii) in the case of a Clearing Member electing to operate pursuant to the aggregate indebtedness standard, 10 percent of its aggregate indebtedness (i.e., aggregate indebtedness exceeds 1000 percent of net capital); or

(iii)in the case of a Clearing Member electing to operate pursuant to the alternative net capital requirements, 5% of its aggregate debit items.

(B) the aggregate principal amount of such Clearing Member's satisfactory subordination agreements (other than such agreements which qualify as equity capital under paragraph (d) of Securities and Exchange Commission Rule 15c3-1) exceeds 70% of such Clearing Member's debt-equity total; or

(C) such Clearing Member is required to provide notice to any regulatory organization pursuant to SEC Rule 15c3-1(a)(6) or (c)(2)(x) regarding carrying of accounts of market-makers or listed options specialists; or

(D) such Clearing Member is required to provide notice to any regulatory organization (as defined in Rule 101 ~~below~~) under SEC Rule 15c3-1(a)(7); or

(E) such Clearing Member's Examining Authority has granted to such Clearing Member, pursuant to paragraph (c)(2)(v)(C) of said Rule 15c3-1, an extension of any time period provided for resolving short securities differences under paragraph (c)(2)(v)(A) of said Rule; or

(F) such Clearing Member has provided any notice as required by paragraph (e)(1)(iv) of Rule 15c3-1. Such Clearing Member shall also furnish the Corporation with a copy of each notice so provided.

(3) The Clearing Member is a fully-registered futures commission merchant:

(A) such Clearing Member's adjusted net capital shall become less than the greater of $12 million or the early warning adjusted net capital requirements established by CFTC Rule 1.12(b); or

(B) such Clearing Member has provided any notice as required by paragraphs (c), (d), (f)(3), (f)(4), (g) or (m) of CEA Rule 1.12. Such Clearing Member shall also furnish the Corporation with a copy of each notice so provided.

(4) The Clearing Member is a Non-U.S. Securities Firms, including if it is a Canadian Investment Dealer and:

(A) in the case of a Canadian Investment Dealer (i) its risk adjusted capital is less than $12 million or 5% of total margin required; or (ii) it is subject to an early warning designation under the financial and operational rules established by the Investment Industry Regulatory Authority of Canada.

(B) in the case of other Non-U.S. Securities Firms:

(i) its net capital equivalent is less than the greater of: (a) $12 million or (b) 20% above the applicable minimum capital requirement assigned to the firm or (c) the early warning amount required by the firm's applicable regulatory requirements established by the regulatory authority of that country's government or an agency or instrumentality thereof;

(ii) if the Risk Committee has prohibited the use of the non-U.S. jurisdiction's regulatory minimum and early warning requirements or chooses to supplement a non-U.S. jurisdiction's regulatory minimum or early warning requirements, its total equity is less than $30 million.

(C) such Clearing Member receives any violation on its part of the rules or regulations relating to financial responsibility or protection of customer property of its Non-U.S. Regulatory Agency (or any other governmental agency or instrumentality or independent organization or exchange to whose authority it is subject);

(D) such Clearing Member receives any notice (whether written or otherwise) ~~received~~ from its Non-U.S. Regulatory Agency (or any other agency, instrumentality, organization or exchange) (a) alleging a violation of any such rule or regulation, (b) informing it that it may violate any such rule or regulation unless it takes corrective action, or (c) informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation; or

(E) such other events as the Corporation may specify.

(5) The Clearing Member is an eligible bank and:

(A) such Clearing Member's Tier 1 Capital is less than $600 million;

(B) such Clearing Member's Tier 1 Capital Ratio is less than the greater of (i) 7% or (ii) its Tier 1 Capital Ratio regulatory requirement plus 1%, or such Clearing Member is deemed undercapitalized as calculated or defined pursuant to the regulatory capital rules of the applicable banking regulatory authority of its home country;

(C) such Clearing Member receives any violation on its part of the rules or regulations relating to financial responsibility of its regulatory agency (or any other governmental agency or instrumentality or independent organization or exchange to whose authority it is subject);

(D) such Clearing Member receives any notice (whether written or otherwise) ~~received~~ from such agency (or any other agency, instrumentality, organization or exchange) (a) alleging a violation of any such rule or regulation, (b) informing it that it may violate any such rule or regulation unless it takes corrective action, or (c) informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation, to the extent that laws applicable to the Clearing Member do not prevent the disclosure of such notice to the Corporation; or

(E) such other events as the Corporation may specify.

. . . *Interpretations and Policies:*

.**01** The term "debt-equity total" shall be computed for a Clearing Member in accordance with Securities and Exchange Commission Rule 15c3-1. The term "satisfactory subordination agreement" shall mean a subordination agreement meeting the requirements of Appendix D to Rule 15c3-1 and any additional requirements, not inconsistent therewith, imposed by a Clearing Member's Examining Authority.

(b) Notice of Material Changes and Information Requests. Each Clearing Member must give the Corporation written notice of any material changes specified in this Rule 306A(b).

(1) Each Clearing Member must give the Corporation ~~prompt~~ a minimum of 30 days prior written notice, or prompt written notice where such decision is made less than 30 days prior to taking effect, of any material change in its form of organization or ownership structure, including:

(A) the merger, combination or consolidation between the Clearing Member and another person or entity;

(B) the assumption or guarantee by the Clearing Member of all or substantially all of the liabilities of another person or entity in connection with the direct or indirect acquisition of all or substantially all of the assets of such person or entity;

(C) the sale of a significant part of the Clearing Members' business or assets to another person or entity;

(D) a change in the name, form of business organization, or jurisdiction of organization or incorporation of the Clearing Member; and

(E) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the Clearing Member.

(2) Each Clearing Member must give the Corporation prompt written notice of material operational or financial changes, including:

(A) a change in location of clearing operations;

(B) a change in location of its offices maintained pursuant to Rule 302(b);

(C) a change in any personnel of the Clearing Member responsible for ensuring that the Clearing Member is able to fulfill its obligations as a Clearing Member pursuant to Rule 303(c);

(D) a new or revoked stock settlement relationship with another Clearing Member or CDS;

(E) a change in the Clearing member's independent public accountant;

(F) a change in any non-U.S. Clearing Member's regulatory capital standards;

(G) if Clearing Member is experiencing operational difficulties or is non-compliant with operational capability requirements;

(H) current or hindsight customer reserve or customer segregation deficiencies;

(I) a change in registration status or regulatory authorization;

(J) current or hindsight net capital deficiencies;

(K) a change in date for its fiscal year-end; or

(L) If a Canadian Clearing Member participating in the Stock Loan/Hedge Program knows or reasonably expects that CDS will cease, or if CDS has ceased, to act on behalf of the Canadian Clearing Member with respect to effecting delivery orders for stock loan and stock borrow transactions.

(3) Each Clearing Member must give the Corporation prompt prior written notice of its intention to enter into, terminate, or alter its outsourcing activities.

(4) Each Clearing Member must give the Corporation prompt written notice if separation or termination of an agreement occurs between the only personnel, associated person, or third-party service provider who performs activities necessary to meet the requirements of Chapter III of the Rules or is otherwise critical to ensuring that the Clearing Member is able to clear and settle confirmed trades in account types for which it is approved.

(5) Each Clearing Member shall notify the Corporation within 30 days (i) of its independent auditor issuing a qualified opinion of its financial statements or (ii) of notification by its independent auditor that the independent auditor has identified a material weakness in an internal control over financial reporting.

(6) Each Clearing Member must, within the time period reasonably prescribed by the Corporation, furnish to the Corporation such documents and information as the Corporation may from time to time require pursuant to Chapters II and III of the Corporation's Rules.

(c) *Statutory Disqualifications*. A Clearing Member~~, or any applicant for clearing membership,~~ that is or becomes subject to, or whose Key Person is or becomes subject to, a statutory disqualification must as soon as practicable upon learning of such statutory disqualification and in any event within ~~20~~ two business days thereafter:

(1) notify the Corporation in writing of the statutory disqualification, and

(2) further accompany such notification with information and forms, including amendments thereto, related to the statutory disqualification received from or provided to the SEC, the CFTC or any self-regulatory organization, including, as applicable: (i) a copy of the order, judgment, letter of acceptance, waiver and consent, or other document evidencing the event that gave rise to the statutory disqualification, and (ii) any amended Form BD, Financial Industry Regulatory Authority ("FINRA") Form MC-400A, any written response to a National Futures Association ("NFA") Rule 504

Notice of Intent or other written request for relief addressed to such self-regulatory organization. Clearing Members that are not members of FINRA or NFA must provide the Corporation with, at a minimum, the information contained in FINRA Form MC-400A in addition to any forms filed with any self-regulatory organization or regulatory agency with respect to a statutory disqualification or similar provision of the laws or regulations applicable to such applicant.

RULE 306B – Periodic Reporting

(a) *Financial Reports*. Each Clearing Member shall submit statements of its financial condition at such times and in such manner as shall be prescribed by the Corporation from time to time.

(1) *Broker-Dealers*. Every Clearing Member that is a fully-registered broker-dealer must file with the Corporation a true and complete copy of Part II, IIA, or any other variation of SEC Form X-17A-5 within 20 business days after the end of each month (regardless of whether or not such Clearing Member is required to prepare or file such report on a monthly basis with another regulatory or self-regulatory organization).

(2) *Futures Commission Merchants*. Every Clearing Member that is a fully-registered FCM must file with the Corporation a true and complete copy of CFTC Form 1-FR-FCM within 20 business days after the end of each month (regardless of whether or not such Clearing Member is required to prepare or file such report on a monthly basis with another regulatory or self-regulatory organization).

(3) *Canadian Investment Dealers*. Every Clearing Member that is a Canadian Investment Dealer must file with the Corporation a true and complete copy of its Form 1 of the International Financial Reporting Standards ("Form 1") within the later of (i) 20 business days of the end of each month or (ii) monthly deadlines established by IIROC.

(4) *Other Non-U.S. Securities Firms*. Every Clearing Member that is a Non-U.S. Securities Firm (excluding Canadian Investment Dealers) must file with the Corporation true and complete copies of such financial reports specified by the Corporation at the same time such report is filed with its primary regulatory authority. The financial reports must be prepared in accordance with its non-U.S. regulatory requirement.

(5) *U.S. Banks*. Every Clearing Member that is a U.S. national bank or state-chartered bank must file with the Corporation a copy of its Consolidated Report of Condition and Income ("Call Report") and (to the extent not contained within such Call Reports) information containing each of its capital levels and ratios due at same time it is filed with primary regulatory authority. If the Clearing Member is not required to file a Call Report, then it must file with the Corporation a copy of its unaudited quarterly financial statements as provided to the state regulatory authority having jurisdiction over the participant, containing each of its capital levels and ratios.

(6) *Non-U.S. Banks*. Every Clearing Member that is a non-U.S. bank must file with the Corporation true and complete copies of such financial reports specified by the Corporation at the same time such report is filed with a primary regulatory authority. The financial reports must be prepared in accordance with its non-U.S. regulatory requirement.

(7) The Corporation will deliver to the CFTC upon request any financial report provided to the Corporation pursuant to Rule 306B(a) by a Clearing Member that is not a futures commission merchant.

(b) *Annual Audited Financial Statements*. Every Clearing Member must provide to the Corporation a complete copy of its annual audited financial statements, including reports on material inadequacies and internal control, prepared in accordance with its regulatory requirements and with generally accepted auditing standards of the country in which such Clearing Member has its principal place of business within 60 calendar days of the end of its fiscal year. Upon the Corporation's request, the Clearing Member must provide to the Corporation the annual audited financial statements of a parent or affiliate for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles applicable to the parent or affiliate. If the annual audited financial statements of the Clearing Member's parent or affiliate are not available, the Clearing Member must provide, upon the Corporation's request, unaudited financial statements, audited consolidated financial statements, or other financial information of the Clearing Member's parent or affiliate, as applicable.

(c) *Early or More Frequent Reporting*. If a Clearing Member is required to file a financial report on an earlier date or on a more frequent basis than is required under this Rule 306B, then such Clearing Member must file with the Corporation a true and complete copy of each such report at the same time it is filed with its relevant regulatory authority. In addition, the Corporation may, in its discretion, require more frequent financial reporting in such form as the Corporation may specify or other financial statements in such form or detail as may be prescribed by the Corporation, including for purposes of assessing whether the Clearing Member is meeting the financial requirements for clearing membership on an ongoing basis.

(d) *Extensions*. The Corporation may, in its discretion, recognize an extension or later deadline granted by the Clearing Member's relevant regulatory authority for financial reports required under this Rule 306B, provided that such extension is not issued on a permanent basis and a copy of such extension is filed with the Corporation in a timely manner.

(e) *Large Trader Reports*. Except to the extent that large trader reports required by the CFTC are filed on behalf of a Clearing Member by a contract market or other CFTC registrant, such reports must be filed by the Clearing Member effecting the transaction(s) subject to such reporting requirements.

(f) *Accurate, Complete and Timely Responses*. The Clearing Member must provide accurate, complete and timely responses to the Corporation's annual and periodic due diligence information requests, including any supplemental or follow-up requests thereto.

RULE 307 – Protective Measures

(a) The Corporation may impose protective measures on any Clearing Member or applicant for clearing membership that: (i) is approaching or does not meet the Corporation's minimum membership standards or fails to provide information required under Chapters II and III of the Rules such that the Corporation is unable to determine whether it meets the minimum membership standards, (ii) presents increased credit, market or liquidity risk to the Corporation, (iii) is or will be, in the case of a new Clearing Member, subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process, or (iv) whose financial condition, operational capability, ~~or~~ risk management capability, regulatory or compliance risk profile otherwise makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public.

(b) The Corporation may impose protective measures on any Clearing Member or applicant regardless of whether the Clearing Member or applicant is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process.

(c) The Corporation determines protective measures on a case-by-case basis depending on factors such as the Clearing Member's or applicant's financial and operational risk profile or the current or anticipated nature or level of the Clearing Member's or applicant's activity.

RULE 307A – Restrictions on Distributions

(a) No Clearing Member shall withdraw qualified regulatory capital (by dividend, distribution, or otherwise) without the prior written authorization of the Corporation if, after giving effect to such withdrawal, a condition specified in Rule 306A(a)(2) through (6) would exist with respect to such Clearing Member, or such withdrawal would be inconsistent with a Clearing Member's regulatory requirements. (b) The Corporation may prohibit Clearing Members from withdrawing qualified regulatory capital (by dividend or distribution or otherwise) if such Clearing Member is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process and the distribution in question could result in increased credit or liquidity risk to the Corporation.

RULE 307B – Restrictions on Certain Transactions, Positions and Activities

(a) The Chief Executive Officer or Chief Operating Officer, or, if it is not feasible for the Chief Executive Officer or Chief Operating Officer to take such action, then a Designated Officer of the Corporation may impose the following restrictions on a Clearing Member's positions in any circumstances that warrant the imposition of protective measures under Rule 307.

(1) Prohibit or impose limitations on the clearance of any transactions that increase credit or liquidity risk;

(2) Require such Clearing Member to reduce, eliminate, or hedge existing positions presenting increased credit, liquidity or operational risk to the Corporation;

(3) Require such Clearing Member to transfer any existing positions or accounts maintained or carried by such Clearing Member to another Clearing Member; and/or

(4) Restrict such Clearing Member's outsourced activities or activities as an Appointed Clearing Member or prohibit such Clearing Member from engaging in such activities or to impose such limitations on such activities as such officer deems necessary or appropriate in the circumstances.

(b) Any action taken pursuant to paragraph (a) will be subject to review by the Risk Committee of the Corporation upon submission by the Clearing Member of a written request for review to the Secretary of the Corporation within five (5) business days of the date such action is taken. ~~The Risk Committee will schedule an early hearing. The Clearing Member will be given not less than one day's notice of the place and time of such hearing.~~

(1) Within seven (7) business days after the Clearing Member files such written request with the Corporation, the Clearing Member must submit to the Secretary of the Corporation a clear and concise statement setting forth with particularity the basis for its objection to the action, whether the Clearing Member or applicant intends to attend the hearing, and whether the Clearing Member or applicant chooses to be represented by counsel at the hearing. The Corporation may extend a Clearing Member's time for submitting a written request for review or a written statement for good cause shown.

(2) The Risk Committee will schedule an early hearing. The Clearing Member will be given not less than one (1) business day's notice of the place and time of such hearing. The hearing before the Risk Committee will proceed pursuant to the procedures set forth in Rule 203(b)(6). ~~At the hearing, the Clearing Member will be afforded an opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A verbatim record of the hearing will be prepared and the cost of the transcript may, in the discretion of the Risk Committee, be charged in whole or in part to the Clearing Member if the Risk Committee does not modify the action of the Chief Executive Officer or Chief Operating Officer, or Designated Officer. The Clearing Member will be notified in writing of the outcome of the Risk Committee's review.~~

(3) The Corporation will provide the Clearing Member a notice of decision setting forth the specific grounds upon which the decision is based. Any decision made under this Rule will be final (i) when

the Clearing Member stipulates to the taking of such action by the Corporation, at which time the Corporation will furnish the Clearing Member with its notice of decision, or (ii) upon the expiration of the applicable time period provided in these Rules for the filing of a written request for a hearing or a written statement, at which time the Corporation will furnish the Clearing Member with its notice of decision, or (iii) if a hearing is held, the date the Secretary of the Corporation provides a copy of the written notice of the decision to the Clearing Member.

(c) The filing of a request for review pursuant to paragraph (b) of this Rule will not impair the validity or stay the effect of the action which the Clearing Member seeks to have reviewed, and the Clearing Member will be obligated to comply with such action without delay notwithstanding the pendency of such request for review. Any modification or reversal by the Risk Committee of any action taken pursuant to paragraph (a) hereof will not invalidate any acts taken by the Corporation prior to such modification or affect any rights of any person arising out of any such acts.

RULE 307C – Additional Operational, Personnel, Financial Resource and Risk Management Requirements

The Corporation may also impose protective measures in the form of additional operational, personnel, financial resource, or risk management requirements, including, but not limited to:

(a) Requiring Clearing Members to maintain higher minimum capital amounts than those required by Rule 301;

(b) Requiring a financial guaranty from a Clearing Member's parent company or affiliate;

(c) Imposing limitations on a Clearing Member's financial leverage (e.g. gross or adjusted leverage caps);

~~(b)~~ (d) Requiring Clearing Members to adjust the amount or composition of margin or Clearing Fund deposits, including but not limited to requiring the deposit of additional margin or requiring Clearing Members to satisfy a specified portion of their margin or Clearing Fund requirements in cash or other assets with comparatively less risk;

~~(c)~~ (e) Requiring Clearing Members to add new personnel or provide additional training to existing personnel to enhance the capability, experience, and competence of operational, financial reporting, or risk management personnel;

(f) Requiring Clearing Members to fill a key risk management or operational role created by the loss of a Key Person, as defined in Rule 101;

~~(d)~~ (g) Requiring Clearing Members to execute an agreement with a third-party service provider determined to be acceptable to the Corporation that will be in effect until such time that the Clearing Member is able to comply with the Corporation's operational, personnel, or risk management standards;

~~(e)~~ (h) Requiring Clearing Members to enhance its risk management policies, procedures, and practices;

(i) Requiring Clearing Members to implement or enhance certain internal controls, procedures or systems;

~~(f)~~ (j) Requiring alternate methods of electronic connection (e.g., lease line) due to operational risk concerns; ~~or~~

~~(g)~~ (k) Requiring additional reporting of its financial or operational condition at such intervals and in such detail as the Corporation may determine~~.~~; or

(l) Requiring Clearing Members provide the Corporation with an independent assessment of the Clearing Member's financial projections, operational capabilities, AML controls or compliance with OFAC.

*   *   *   *

RULE 309 – Reapplication for Membership

(a) In connection with above events specified in Rule 306A(b)(1), the Corporation may: (i) require an existing Clearing Member to reapply for membership if the Corporation determines, in its sole discretion, that any such event has or is expected to have a material impact on the financial or operational condition or materially change the business strategy of such Clearing Member or (ii) apply protective measures necessary to address any new risks arising from any material change defined in sections A through E of Rule 306A(b)(1).

(b) If the Corporation determines that a Clearing Member must reapply for membership, the Clearing Member's access to the Corporation's services will remain active during the reapplication period; provided, however, that this Rule does not limit the Corporation's authority to impose protective measures under Rule 307 through 307C or to suspend a Clearing Member pursuant to Rule 1102.

(c) Any decision to deny clearing membership following reapplication will be made pursuant to Rule 203.

*   *   *   *

CHAPTER XI – SUSPENSION OF A CLEARING MEMBER

RULE 1101 – Notice to Corporation

(a) A Clearing Member that is unable to meet its obligations, is insolvent, or becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent shall immediately notify the Corporation by telephone of such event. Such notice shall be confirmed in writing promptly by said Clearing Member.

(b) Any Non-U.S. Clearing Member which has been expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange of which it is a member shall immediately so notify the Corporation.

RULE 1102 – Suspension

(a) *Grounds for Suspension.* The Board of Directors or a Designated Officer of the Corporation may summarily suspend any Clearing Member which:

(~~i~~1) has been and is expelled or suspended from any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act, but not including the Municipal Securities Rulemaking Board, or as defined in the rules of the CFTC);

(~~ii~~2) fails to make any delivery of cash, securities or other property to the Corporation in a timely manner as required by the By-Laws or Rules;

(~~iii~~3) fails to make any delivery of funds or securities to another Clearing Member required pursuant to the By-Laws or Rules;

(~~iv~~4) fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner, has appointed an Appointed Clearing Member to act on its behalf and such Appointed Clearing Member fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner or effects settlement at the correspondent clearing corporation through an identifiable subaccount in an account of CDS at the correspondent clearing corporation and CDS fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner;

(~~v~~5) is in such financial or operating difficulty that the Board of Directors or a Designated Officer of the Corporation determines and so notifies the appropriate regulatory agency for such Clearing Member (or, in the case of a Non-U.S. Clearing Member, the appropriate Non-U.S. Regulatory Agency) and the ~~Securities and Exchange Commission~~ SEC or the ~~Commodity Futures Trading Commission~~ CFTC that suspension is necessary for the protection of the Corporation, other Clearing Members, or the general public, including, but not limited to, if the Corporation determines that the Clearing Member lacks:

(A) access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule; or

(B) the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation; and

(C) the ability to participate in applicable default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.

(~~vi~~6) in the case of a Non-U.S. Clearing Member, has been and is expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange or clearing organization of which it is a member~~.~~; or

(7) ~~In addition, the Board of Directors or a Designated Officer of the Corporation may summarily suspend any Clearing Member in accordance with Rule 707 or Article VI, Section 25 of the By-Laws.~~is in default, or its affiliated CCO Clearing Member is in default, in the payment of funds or any other obligation in respect of sets of X-M accounts under Rule 707 or in respect of an internal non-proprietary cross-margining account under Article VI, Section 25 of the By-Laws;

(8) does not meet the Corporation's membership standards following reapplication under Rule 309, as determined by the Corporation.

(b) *Event of Default; Cease to Act.*

(1) Each event described in Rule 1102(a) constitutes an event of "default" with respect to a Clearing Member.

(2) ~~In the event any Clearing Member is suspended, the~~ The Corporation shall cease to act for ~~it~~ a suspended Clearing Member except as ~~hereinafter~~ specified in this Chapter.

~~(b) Any Non-U.S. Clearing Member which has been expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange of which it is a member shall immediately so notify the Corporation.~~

(c) *Notice to the Board of Directors*. If the determination to summarily suspend a Clearing Member is made other than by the Board of Directors, then notice of the suspension must be given to the Board of Directors as soon as practicable.

~~***. . . Interpretations and Policies:***~~

~~**.01** The occurrence of any of the events described in Rule 1102 shall constitute an event of "default" with respect to a Clearing Member.~~

~~**.02** The circumstances in which the Board of Directors or a Designated Officer may make a determination pursuant to Rule 1102(a)(v) may include a determination that the Clearing Member lacks (a) access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by the Corporation for purposes of this Rule, or (b) the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by the Corporation, and the ability to participate in applicable default management activities, including auctions, as may be required by the Corporation and in accordance with applicable laws and regulations.~~

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CHAPTER XII – DISCIPLINARY PROCEEDINGS

RULE 1201 – Sanctions

(a) The Corporation may censure, suspend, expel, fine, or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules or other statutory rules of the Corporation or its agreements with the Corporation or the correspondent clearing corporation, ~~. The Corporation may, in addition to or in lieu of such sanctions, impose a fine on any Clearing Member for any violation of the By-Laws or Rules or procedures of or its agreements with the Corporation or the correspondent clearing corporation,~~ or for any neglect or refusal by such person to comply with any applicable order or direction of the Corporation or the correspondent clearing corporation, or for any error, delay or other conduct embarrassing the operations of the Corporation, including but not limited to:

(1) ~~or for not~~ the Clearing Member's failure to provide~~ing~~ adequate personnel or facilities for its transactions with the Corporation or the correspondent clearing corporation;

(2) the Clearing Member's failure to comply with a protective measure and failure to cure such failure to the Corporation's satisfaction within the cure period specified by the Corporation;

(3) the Clearing Member exhibits a pattern of providing late financial information or other information requested by the Corporation;

(4) the Clearing Member exhibits a pattern of providing the Corporation with false or misleading financial information such that, in the sole opinion of the Corporation, the

Corporation can no longer fully assess or monitor the risk presented by the Clearing Member; or

(5) the Clearing Member or Key Person of the Clearing Member exhibits a pattern of regulatory or legal infractions such that, in the sole opinion of the Corporation, it creates a significant reputational risk for the Corporation.

~~***. . . Interpretations and Policies:***~~

~~**.01**~~ (b) A decision to suspend or expel a Clearing Member pursuant to this Chapter XII will constitute a suspension or expulsion from a self-regulatory organization and therefore be grounds for summary suspension under Rule 1102.

RULE 1202 – RULE 1204 [No Change]

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CHAPTER XXII – STOCK LOAN/HEDGE PROGRAM

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RULE 2212 – Suspension of ~~Hedge~~ Clearing Members – Re-Matching in Suspension

(a) In the event that a suspended ~~Hedge~~ Clearing Member has Matched-Book Positions ~~within the Stock Loan/Hedge Program~~, the Corporation will, upon notice to affected ~~Hedge~~ Clearing Members, close out the suspended ~~Hedge~~ Clearing Member's Matched-Book Positions to the greatest extent possible by (i) the termination by offset of stock loan and stock borrow positions that are Matched-Book Positions in the suspended ~~Hedge~~ Clearing Member's account(s) and (ii) the Corporation's re-matching of stock borrow positions for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Borrowing Clearing Member against a stock loan position for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Lending Clearing Member.

(b) The Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member are not required to issue instructions to the Depository in accordance with Rules 2202(a) and 2208(a) to terminate such stock loan and stock borrow positions maintained in the Stock Loan/Hedge Program or to initiate new stock loan transactions for inclusion in the Stock Loan/Hedge Program.

(c) The Corporation shall make reasonable efforts to re-match Matched-Book Borrowing Clearing Members with Matched-Book Lending Clearing Members that maintain between them current executed Master Securities Loan Agreements based on information provided by ~~Hedge~~ Clearing Members to the Corporation on an ongoing basis. All Clearing Members that are participants of the Stock Loan/Hedge program must register their existing Master Securities Loan Agreement relationship within OCC's clearing system. The Corporation shall be entitled to rely on, and shall have no responsibility to verify in any manner, the Master Securities Loan Agreement records provided by ~~Hedge~~ Clearing Members and on record as of the time of re-matching.

(d) The termination by offset and re-matching of positions pursuant to this Rule 2212 shall be done by the Corporation using a matching algorithm in which the Matched-Book Positions of the suspended ~~Hedge~~ Clearing Member are first terminated by offset and affected Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members are re-matched in the following order of priority:

(1) The Corporation will first select the largest stock loan or stock borrow position in a given Eligible Stock from the suspended ~~Hedge~~ Clearing Member's Matched-Book Positions.

(2) The stock loan or stock borrow positions selected in paragraph (d)(1) above are then re-matched with the largest available stock borrow or stock loan positions, as applicable, for the selected Eligible Stock for which a Master Securities Loan Agreement exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member.

(3) The Corporation will repeat the re-matching process as described in paragraphs (d)(1) – (2) above until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with Master Securities Loan Agreements is completed.

(4) After re-matching among lenders and borrowers with existing Master Securities Loan Agreements, the re-matching process will be repeated for all remaining Matched-Book Positions for which Master Securities Loan Agreements do not exist between the Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members. Positions will be selected for re-matching in order of priority based on largest outstanding position size.

(e) In the event a Borrowing Clearing Member and Lending Clearing Member are re-matched pursuant to this Rule 2212, the re-matched positions will be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to Rule 2201. Any change in Collateral requirements arising from the re-matching of stock loan or stock borrow positions pursuant to this Rule 2212 shall be included in the calculation of the mark-to-market payment obligations as provided in Rule 2204 on the stock loan business day following the completion of the positions adjustments as set forth in Rule 2212(f).

(f) The termination by offset and re-matching of positions pursuant to this Rule 2212 shall be complete upon the Corporation completing all position adjustments in the accounts of the suspended ~~Hedge~~ Clearing Member and the Borrowing Clearing Members and Lending Clearing Members with re-matched positions and the applicable systems reports are produced and provided to the Clearing Members reflecting the completion of the transaction.

(g) From and after the time the Corporation has completed the position adjustments to terminate by offset and re-match Matched-Book Positions maintained in the suspended ~~Hedge~~ Clearing Member's account as set forth in 2212(f), the suspended ~~Hedge~~ Clearing Member shall have no further obligation under the By-Laws and Rules with respect to such positions.

(h) From and after the time the Corporation has completed the termination by off-set and re-matching as set forth in Rule 2212(f) a Borrowing Clearing Member with re-matched stock borrow positions remains obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions remains obligated as a Lending Clearing Member as specified in the By-Laws and Rules applicable to the Stock Loan/Hedge Program.

(i) Upon notification that the Corporation has completed the termination by offset and re-matching of stock loan and borrow positions as set forth in Rule 2212(f), the suspended ~~Hedge~~ Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched stock loan and borrow positions shall promptly make any necessary bookkeeping entries at the Depository necessitated by the re-matching.

(j) Borrowing Clearing Members and Lending Clearing Members that have been re-matched shall work in good faith to reestablish any terms, representations, warranties and covenants not governed by the By-Laws and Rules or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to Rule 2208 as soon as reasonably practicable.

* * * *