



Craig S. Donohue  
Executive Chairman

March 31, 2014

**Delivered via e-mail**

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Board of Governors of the Federal Reserve System  
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**Re: Board Proposal Regarding Financial Market Utilities (Docket No. R-1477;  
RIN No. 7100 AE-09);**

**Board Proposal Regarding Policy on Payment System Risk (Docket No. OP-  
1478).**

Ladies and Gentlemen:

This letter is submitted by The Options Clearing Corporation (“OCC”) in response to the publication by the Board of Governors of the Federal Reserve System (the “Board”) of (a) proposed standards for Financial Market Utilities (the “Reg. HH Proposal”)<sup>1</sup> and (b) proposed revisions to part 1 of the Federal Reserve Policy on Payment System Risk (the “PSR Policy Proposal” and with the Reg. HH Proposal, the “Proposals”).<sup>2</sup>

Under the Reg. HH Proposal, the Board seeks to prescribe risk-management standards governing the operations related to payment, clearing and settlement activities of financial market utilities (“FMUs”) that have been designated by the Financial Stability Oversight Council as systemically important and for which the Board is the “Supervisory Agency,” pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).<sup>3</sup> These risk management standards are based on the Principles for Financial Market Infrastructures (“PFMIs”) developed jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions.<sup>4</sup>

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<sup>1</sup> Federal Reserve System, Financial Market Utilities; 79 Fed. Reg. 3666 (January 22, 2014).

<sup>2</sup> Federal Reserve System, Policy on Payment System Risk, 79 Fed. Reg. 2838 (January 16, 2014).

<sup>3</sup> Public Law 111-203, 124 Stat. 1376 (July 21, 2010).

<sup>4</sup> Published April 2012. On July 29, 2011, OCC submitted a comment letter on the proposed PFMIs.

Under the PSR Policy Proposal, the Board is, among other things, proposing to revise its existing risk-management standards in the Policy on Payment System Risk (the “PSR Policy”) to reflect the PFMI, include all central counterparties within the scope of part 1 of the PSR Policy, clarify the Board’s risk-management expectations for categories of financial market infrastructures, including designated financial market utilities (“DFMUs”) for which the Board is not the Supervisory Agency under Title VIII of Dodd-Frank (a category that includes OCC), and replace the existing self-assessment framework with a broader disclosure expectation. We recognize that the PSR Policy is important to the Board’s overall oversight of DFMUs, including OCC, and is likely to influence how other U.S. regulators view the PFMI.

As described in further detail below, OCC is an FMU and a DFMU. The SEC is OCC’s Supervisory Agency for purposes of Title VIII. Final Board rules resulting from the Reg. HH Proposal would not be directly binding on OCC, and the PSR Policy Proposal would only apply to OCC to the extent that OCC and the SEC are encouraged, pursuant to the PSR Policy, “to take the standards in [the PSR Policy] into consideration in the design, operation, monitoring, and assessment of [its clearing systems.]”<sup>5</sup> However, OCC will ultimately be subject to the SEC’s version of the PFMI as embodied in regulations recently proposed by the SEC pursuant to Title VIII of Dodd-Frank (the “SEC Proposal”).<sup>6</sup> Furthermore, as a DFMU, we recognize our critical role in promoting financial stability and integrity in every market we serve. That is why OCC continually strives to achieve the highest standards possible in everything that we do, including with respect to the risk-management solutions that we provide to market participants. Accordingly, OCC has always treated the PFMI themselves as reflecting best practices by which we should be guided.

When the PFMI were proposed in March, 2011,<sup>7</sup> OCC submitted a lengthy and detailed comment letter. CPSS and IOSCO addressed many of our comments in the final PFMI release that was published in April, 2012, but a number of our concerns about the PFMI, as applied to OCC’s circumstances, remain. We appreciate this opportunity to raise those concerns as our regulators propose the form in which compliance with the PFMI will be made mandatory.<sup>8</sup> We intend to submit comments on the SEC Proposal through which the PFMI will become binding on OCC, but we also appreciate the opportunity to provide our comments to the Board and we encourage the Board and SEC to adopt a consistent view as to how the PFMI should be interpreted and applied to OCC in light of OCC’s unique characteristics and structure (as discussed below).

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<sup>5</sup> 79 Fed. Reg. at 2839.

<sup>6</sup> Securities and Exchange Commission, Standards for Covered Clearing Agencies, 79 Fed. Reg. 16866 (March 26, 2014).

<sup>7</sup> Committee on Payment and Settlement Systems of the Bank for International Settlements, and the Technical Committee of the International Organization of Securities Commissions, Principles for Financial Market Infrastructures, April 2012 (the “Final PFMI Report”); *available at* <http://www.bis.org/publ/cpss101a.pdf>.

<sup>8</sup> We note that the Commodity Futures Trading Commission (“CFTC”) has already implemented the PFMI for DFMUs for which the CFTC is the Supervisory Agency. *See* Commodity Futures Trading Commission, Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72476 (December 2, 2013). However, because the CFTC is not OCC’s Supervisory Agency for purposes of Title VIII of Dodd-Frank, and OCC has not otherwise elected to “opt in” to being governed by those rules, OCC will not be subject to the CFTC’s rules.

## OCC Background

Founded in 1973, OCC is currently the world's largest equity derivatives clearing organization. We are dedicated to promoting stability and financial integrity in the marketplaces that we serve by focusing on sound risk management principles. As the marketplace evolves, so do our clearing capabilities. OCC operates under the jurisdiction of both the SEC and the CFTC. Under SEC jurisdiction, OCC clears transactions for put and call options on common stocks and other equity issues, stock indexes, treasury securities, foreign currencies, interest rate composites and single-stock futures. As a registered derivatives clearing organization under CFTC jurisdiction, we offer clearing and settlement services for transactions in futures and options on futures. OCC provides central counterparty clearing and settlement services for securities lending transactions and OCC will begin clearing over-the-counter options on securities indices in the near future.

OCC was the first clearing organization in the United States to be dually registered with the SEC as a securities clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 and with the CFTC as a derivatives clearing organization pursuant to Section 5b of the Commodity Exchange Act. On July 18, 2012, OCC was designated as a systemically important financial market utility pursuant to Title VIII of Dodd-Frank.

## General Comments

We thank the Board for the thought and effort that went into the Proposals and the ongoing efforts of the Board and other regulators in modernizing the risk management standards for FMUs. We recognize the difficulty of developing consistent and manageable risk management standards that balance the regulatory need for measurable and consistent standards with the needs of central counterparties ("CCPs") to manage risk in a manner appropriate to their respective business models and the markets in which they participate. While black letter rules foster uniformity, they do not always promote high-quality CCP risk management, which may in certain instances best be served through flexible rules that encourage innovation among the CCPs. We believe the PFMI's embrace the concept of flexibility in a number of respects, and we read the Proposals as similarly embracing flexibility in implementing robust risk management practices.

While we have an interest in all aspects of the Proposals, we have limited our comments below to those aspects of the Proposals on which we believe OCC has a unique perspective or a particularly central interest at stake.

## Overall Comment on PSR Policy Proposal

In the PSR Policy Proposal, the Board is proposing to include only the "headline standards" from the PFMI's in the PSR Policy. However, the Board specifically requested comment on whether it should also incorporate the "key considerations" from the PFMI's. We do not believe doing so is necessary. The Board has indicated that it "anticipates that it will be guided by the key considerations and explanatory notes of the PFMI."<sup>9</sup> We believe treating the key considerations

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<sup>9</sup> 79 Fed. Reg. at 2841.

and explanatory notes as guidance in interpreting the headline standards is the appropriate approach and that the Board should not formally adopt either the key considerations or explanatory notes in the PSR Policy. Taking this less prescriptive approach is consistent with the goal of flexible, yet high-quality, risk management that we have often espoused.

The remainder of our comments are focused on those specific PFMI on which we have strongly held views as to their appropriate application to OCC. We are fully supportive of the headline principles in each case, and believe they should be interpreted in a manner consistent with certain long-standing features of OCC's structure and function that we believe contribute to OCC's strengths and continued success as a clearing organization.

## Principle 2: Governance

Section 234.3(a)(2)(iii) of the Reg. HH Proposal would require each Board-supervised DFMU to have "governance arrangements that . . . [s]upport the stability of the broader financial system, other relevant public interest considerations such as fostering fair and efficient markets, and the *legitimate interests of relevant stakeholders*, including the designated financial market utility's . . . participants' customers[.]"<sup>10</sup> Principle 2 of the PSR Policy Proposal would require each FMI to "have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and *support* the stability of the broader financial system, other relevant public interest considerations, and *the objectives of relevant stakeholders*."<sup>11</sup>

OCC has a unique governance structure due to its role as a non-profit market utility. OCC's Board of Directors currently has 19 members consisting of nine clearing member directors ("Member Directors"), five directors nominated by the stockholder exchanges ("Exchange Directors"), three directors who are not affiliated with any national securities exchange, national securities association, or broker or dealer in securities ("Public Directors") and the two persons who serve as the Executive Chairman of OCC and the President, Chief Executive Officer and Treasurer of OCC, respectively ("Management Directors"). OCC rules require OCC's Nominating Committee to "endeavor to achieve balanced representation among Clearing Members on the Board of Directors and the next year's Nominating Committee, giving due consideration to the various business activities of different categories of Clearing Members[.]"<sup>12</sup> We believe this helps to ensure that Member Directors include representatives of both large and small member firms, including a mix of clearing brokers, retail brokers, full-service brokers, discount brokers and proprietary trading firms.<sup>13</sup>

We have previously expressed a view that mandatory representation of customers of clearing members on the boards of directors of CCPs is not necessary and that the interests of those "relevant stakeholders" were adequately served by the participation of a sufficient number of

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<sup>10</sup> 79 Fed. Reg. at 3689 (emphasis added).

<sup>11</sup> 79 Fed. Reg. at 2849 (emphasis added).

<sup>12</sup> By-Law Article III, Section 5.

<sup>13</sup> A representative of one such proprietary trading firm is currently among the nominees to serve as a Member Director.

independent public directors. In fact we have recently proposed changes to our By-Laws that would increase the number of Public Directors on OCC's Board of Directors from three to five. We have also proposed changes to the By-Laws that would make explicit that, when selecting Member Directors, the Governance and Nominating Committee of OCC's Board is to endeavor to assure that the mix of Member Directors includes representatives of clearing member organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. We believe this is an appropriate way to ensure that OCC's governance arrangements support the interests and objectives of our clearing members' customers. We support the overall flexibility the Board has retained in the proposed governance standards with respect to customer representation on governing boards.

#### Principle 4: Credit Risk

##### *Cover 1 versus Cover 2*

Principle 4 requires each FMI “that is *involved in activities with a more-complex risk profile . . .* [to] maintain additional financial resources sufficient to cover . . . the default of the *two participants* and their affiliates that would potentially cause the largest aggregate credit exposure to the central counterparty in extreme but plausible market conditions.”<sup>14</sup> Proposed Section 234.3(a)(4) of Reg. HH would similarly allow the Board to direct a DFMU acting as a central counterparty to meet such “Cover 2” standard if the DFMU “[i]s *involved in activities with a more-complex risk profile*, such as clearing financial instruments characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults.”<sup>15</sup>

Without challenging the principle that CCPs that face greater risk of simultaneous defaults because of the overall risk profile of the products they clear may reasonably be required to meet a Cover 2 standard, we believe that it is necessary to take a number of factors into consideration in making a determination as to whether a CCP's clearing activity should trigger this requirement. These factors should include the *proportion* of the CCP's clearing activities involving products with complex risk profiles as well as the manner in which the CCP manages those risks.

For example, a CCP that clears financial instruments characterized by discrete jump-to-default price changes should not be treated as automatically subject to a Cover 2 standard without regard to the relative amount of such activity in which it is involved. Furthermore, we believe a CCP may have other ways of addressing the added risk incurred in “more complex risk” instruments (for example, through enhanced margin systems) that would make moving to a Cover 2 standard unnecessary for that CCP.

The vast majority of OCC's clearing activities relates to plain vanilla put and call options on stocks, indices and other underlying interests of a type that OCC has been clearing for many years subject to SEC oversight. However, OCC clears one product—credit default options—for which OCC's payment obligations may be triggered suddenly and automatically upon the occurrence of a credit event on the reference obligation of the relevant reference entity. We do not believe

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<sup>14</sup> 79 Fed. Reg. at 2849 (emphasis added).

<sup>15</sup> 79 Fed. Reg. at 3690 (emphasis added).

clearing *any amount* of such options should trigger a Cover 2 standard. For example, OCC's cleared volume in credit default options is currently trivial in comparison to OCC's clearing of listed options on single securities and securities indices. (As of the date of this letter, OCC has total open interest in credit default options of 16 contracts.) Requiring a CCP to move from Cover 1 to Cover 2 on the basis of such trivial volume of "jump to default" instruments strikes us as the wrong approach. We suggest that the Board clarify that it is not the intention to interpret the rules in a manner that, in our view, would yield such an unreasonable result.

#### Principle 5: Collateral

Principle 5 requires that collateral accepted by a CCP should have "low credit, liquidity, and market risks" and that a CCP should "set and enforce appropriately conservative haircuts and concentration limits." We appreciate the flexibility that has been retained in Principle 5, and urge that it not be interpreted in too narrow a fashion. As stated in our comment letter on the proposed PFMI Report, we believe that it is essential in setting standards for collateral to take into consideration the nature of the risk being collateralized. OCC clears primarily equity-based derivatives. To arbitrarily limit or exclude the use of equity securities as collateral would be entirely inappropriate for a clearing agency such as OCC. The unique margin methodology employed by OCC's STANS system treats most types of collateral, including equity securities, as simply another risk factor to be modeled and included in the overall risk profile presented by a particular portfolio. Equity securities underlying options on individual equity securities or included in underlying indexes of securities may be the highest quality collateral for such options due to the high degree of positive correlation between price fluctuations in the underlying security and the derivative. To categorically exclude such securities as collateral in favor of cash or fixed income securities whose value is not correlated with the potential risk of the derivative will tend to increase rather than decrease systemic risk.

#### Principle 8: Settlement Finality

Principle 8 requires a CCP to "provide clear and certain final settlement, at a minimum by the end of the value date."<sup>16</sup> Proposed Reg. HH Section 234.3(a)(8) includes the same language. The Reg. HH Proposal defines "value date" as "the day on which the payment, transfer instruction, or other obligation is due and the associated funds and securities are typically available to the receiving participant."<sup>17</sup> OCC clears certain non-competitive transactions (*e.g.*, back-loaded OTC options) for which OCC's novation of the trade is delayed until the business day following the trade date in order to ensure that the trade is not novated until the clearing members have made their first settlement payment on the business day following the trade date. This is done as a risk-mitigating measure because the trade may not have been entered into at a current market price and could therefore result in greater loss to OCC if it must be closed out before the clearing member has met its initial margin requirement for the transaction. We do not read Principle 8 or Section 234.3(a)(8) as requiring that OCC accelerate its novation in such instances, and we urge the Board to avoid making any contrary interpretation of the Proposals.

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<sup>16</sup> 79 Fed. Reg. at 2849.

<sup>17</sup> 79 Fed. Reg. at 3678.

## Principle 9: Money Settlements

Principle 9 requires a CCP to “conduct its money settlements in central bank money where practical and available.” It also requires that CCPs using commercial bank money for settlement should minimize and strictly control the credit and liquidity risk arising from the use of commercial bank money. OCC supports the use of central bank money—*i.e.*, settlement via accounts held at a Federal Reserve Bank—and looks forward to working actively with the Board to ensure that OCC is able to establish appropriate accounts for this purpose in the near future. We want to particularly emphasize that, in order to comply with applicable customer protection rules, including the segregation requirements of Section 4d of the Commodity Exchange Act, it is necessary for OCC to maintain multiple accounts for settlement purposes. Both for purposes of legal compliance and efficiency, OCC urges that it be permitted to maintain multiple accounts at a Federal Reserve Bank as needed to preserve the benefits that it currently receives by maintaining multiple accounts for different purposes at its current settlement banks.

## Principle 14: Segregation and Portability

Proposed Reg. HH Section 234.3(a)(14) and Principle 14 both require a DFMU/CCP to “have rules and procedures that enable the segregation and portability of positions of a participant’s customers and the collateral provided to the [DFMU/CCP] with respect to those positions.” OCC recognizes the importance of segregation of customer assets and maintenance of rules and procedures that facilitate portability in the event of a clearing member default. However, these objectives must be considered in the context of other, sometimes competing, objectives, as described below.

*Portability.* OCC recently worked with the Securities Investor Protection Corporation (“SIPC”) in seeking to amend SIPC Rule 400 to eliminate an existing provision of the rule that appeared to impose a formidable barrier to portability by requiring the immediate liquidation of all positions in standardized options in a SIPC member default.<sup>18</sup> While we agree that porting positions is a highly desirable result where doing so is feasible, OCC urges the Board to explicitly acknowledge that other factors must be considered in crafting rules and procedures for handling customer defaults. Portability depends upon the ability to identify a solvent clearing member that is willing to accept the positions and collateral to be ported, and this cannot always be achieved in a timely fashion. Because options are both relatively volatile and also wasting assets whose value decays, *ceteris paribus*, with the passage of time, it is extremely important that OCC retain broad discretion to liquidate options positions promptly when OCC determines that timely transfer is not feasible. Delay in liquidation substantially increases the risk of loss in closing out the positions for OCC, the estate of the defaulting clearing member, and the clearing member’s customers and other creditors. Accordingly, systemic risk is also increased.

*Segregation.* Segregation of customer assets is important, and OCC’s rules provide for such segregation in compliance with the requirements of the Securities Exchange Act of 1934 and SEC rules thereunder, as well as the Commodity Exchange Act and CFTC regulations, as applicable. However, the segregation requirements of the two regulatory regimes, while intended to achieve similar goals, are different, and the differences reflect fundamental

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<sup>18</sup> See Exchange Act Release No. SIPA-172, 79 Fed. Reg. 2779 (January 16, 2014).

differences in the way in which the securities and futures markets have traditionally operated. We encourage the Board to retain the flexibility to continue to permit different segregation regimes that are appropriate in different markets and for different classes of market participants. For example, we believe that it is appropriate to recognize that requiring full segregation of customer positions and collateral on a customer-by-customer basis would be substantially more expensive to operate and would impose costs on customers irrespective of whether a particular customer believes the benefits of full segregation and independent portability are worth the added cost. We observe that Explanatory Note 3.14.5 to the PFMI recognizes the possibility that a CCP may use individual or omnibus accounts and collect margin on either a gross or net basis. We encourage the Board to permit a similarly flexible approach to segregation and portability.

### Principle 15: General Business Risk

#### *Liquid Net Asset Requirement*

Principle 15 would require each FMI to “hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise.” These liquid net assets would need to “at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.” Proposed Reg. HH Section 234.3(a)(15) would require a DFMU to “[m]aintain[ ] liquid net assets funded by equity that are at all times sufficient to ensure a recovery or orderly wind-down of critical operations and services such that it—(A) Holds unencumbered liquid financial assets, such as cash or highly liquid securities, that are sufficient to cover the greater of—(1) The cost to implement the recovery or wind down plan to address general business losses . . . and (2) Six months of current operating expenses or as otherwise determined by the Board[.]”

We believe that a DFMU, in calculating whether it holds unencumbered liquid financial assets sufficient to cover six months of operating expenses under Section 234.3(a)(15)(A)(2), should be allowed to include in this calculation revenues that are projected to be received by the DFMU over the same six month period, subject to an appropriate haircut. In either a wind-down or a recovery scenario, OCC would expect to continue to generate revenues. OCC has a built-in income stream, because the revenue generated with respect to each open option position cleared by OCC represents only a portion of the revenue OCC ultimately expects to generate from that position. In a recovery or wind-down, OCC would expect to continue to generate fees, as existing positions are closed out. In a recovery, OCC would expect to set its fees (and/or adjust its refund policy) at the level necessary to generate the revenue necessary to allow OCC to continue to operate. Given that OCC is the sole clearing organization for all securities options exchanges in the United States that clears exchange-traded equity options, OCC believes it will be in a position to adjust its fees to permit it to recover, and therefore that OCC should be permitted to include this revenue component in its recovery plans. Furthermore, in calculating the six months of operating expenses, we do not believe the DFMU should be required to consider all of its “current” operating expenses. Instead, we believe a DFMU should be allowed to estimate operating expenses on the basis that certain expenses could be decreased below their current levels over such six month period by curtailing non-essential expenditures not expected to be incurred during a recovery or wind-down scenario. Each CCP is uniquely situated and should retain the flexibility to determine which expenses should be included in this calculation.



### *Equity Requirement*

Principle 15 requires that the liquid net assets held in satisfaction of that principle should be funded by equity. Proposed Reg. HH Section 234.3(a)(15)(i)(B) also require a DFMU to “[hold] equity, such as common stock, disclosed reserves, and other retained earnings, that is at all times greater than or equal to the amount of [required] unencumbered liquid financial assets[.]”

We urge the Board not to take a narrow view of the “funded by equity” requirement in Principle 15. The impact and significance of this requirement may be very different for different clearing organizations, depending upon the ownership and governance structure of the organization. OCC operates under a unique “market utility” model whereby it is required by its By-Laws to set its fees at a level designed to cover its operating expenses and to maintain such reserves as are deemed reasonably necessary by OCC’s Board of Directors to provide facilities for the conduct of OCC’s business in connection with the services it provides to its exchanges, its clearing members and the general public.<sup>19</sup> Fees received in excess of that amount have typically been refunded to clearing members based on the fees each clearing member paid during the relevant period, although for 2014, OCC’s Board has recognized that OCC’s current funding needs might result in refunds, if any, which are significantly lower in 2014 than in past years. The Board has not yet made an affirmative decision with respect to 2014 refunds.

The options exchanges that are OCC’s stockholders have *de minimis* equity investments (\$1 million), and OCC does not pay them dividends. The options exchanges therefore are not likely sources of additional capital contributions, absent a change in this policy. While OCC can increase its capital through increasing its retained earnings (by increasing fees paid by clearing members), that can only occur over time and would result in clearing members and their customers effectively funding the entire amount of the increase. Raising additional funds through the issuance of common stock to third parties, with voting rights and an expectation of profit-sharing, would be inconsistent with OCC’s market utility model. The ability to raise additional capital through the issuance of preferred stock would be an important additional means for a clearing organization operating on a market utility model, such as OCC, to satisfy the “funded by equity” requirement. While Principle 15 does not expressly prohibit this, we note that the non-exclusive list of sources of equity capital mentions “common stock,” but not preferred stock. We urge the Board to make clear that the issuance of preferred stock may be used to satisfy the “funded by equity” requirement, subject to approval of the terms of such preferred stock by the DFMU’s Supervisory Agency. For example, OCC believes that the issuance of non-cumulative preferred stock that is redeemable at the discretion of the financial market utility after five years should be deemed to be an acceptable source of equity capital.

### *Plan for Raising Additional Equity*

Proposed Reg. HH Section 234.3(a)(15)(ii) would require each DFMU to “[m]aintain[] a viable plan, approved by the board of directors and updated at least annually, for raising additional equity before the designated financial market utility’s equity falls below the [required] amount[.]” We believe that a committed contingent funding plan, in which exchanges, clearing members or other financially sound third parties agree to contribute additional funds should be

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<sup>19</sup> OCC By-Laws, Article IX, Section 9.

sufficient, if a DFMU needs to raise additional equity. Similar to preferred stock (as discussed above), the terms of any such plan would be subject to the approval of the DFMU's Supervisory Agency. An alternative approach that we believe should be permitted would be for the DFMU's board of directors to determine an acceptable "cushion" over and above the required minimum equity requirement so that, if the DFMU were to maintain equity at or above this amount (for example, through maintaining "excess" retained earnings), it would satisfy the "viable capital plan" requirement.

Finally, we believe that, when determining what constitutes a "viable plan," a DFMU's board of directors should be permitted to consider the probability of an event occurring that could cause the DFMU's equity to fall below the required amount, and the time period over which such an event is likely to occur. For example, a judgment against a DFMU that is large enough to cause its equity to fall below the minimum amount is likely to take years to wind its way through the court system before the judgment would need to be paid. If this were to occur to OCC, we would take the opportunity during the appeal process to adjust our fees to permit us to replenish our retained earnings before our equity fell below the minimum amount. While the discussion of capital plans in the Reg. HH Proposal could be read to permit such an approach, we urge the Board to explicitly recognize that such an approach would be permissible.

#### Principle 19: Tiered Participation Arrangements

Proposed Reg. HH Section 234.3(a)(19) would require a DFMU to identify, monitor and manage the material risks to the DFMU "arising from arrangements in which firms that are not members in the designated financial market utility rely on the services provided by direct participants to access the designated financial market utility's payment, clearing, or settlement facilities."<sup>20</sup> On its face, this rule does not appear to require a CCP to collect and monitor customer-by-customer information with respect to cleared transactions or to manage risks on a customer-by-customer basis. However, in the narrative accompanying the Reg. HH Proposal, the Board makes a number of statements that indicate such collection and management may be expected as a routine matter.

We remain concerned that the Proposals could be interpreted as requiring a CCP to obtain information from its clearing members identifying each of the specific customers attached to specific cleared transactions and to routinely monitor customer-level risks with respect to each such customer. While we agree that a CCP should have the ability to gather certain information from its direct participants (*i.e.*, its clearing members), we do not believe it is appropriate for a CCP to routinely police the systemic risks created by each and every indirect participant in the CCP. We acknowledge, however, that circumstances may make it necessary or appropriate for a CCP to monitor the systemic risk created by one or more significant indirect participants on a case-by-case basis, as conditions warrant. However, CCPs are not generally in the position to track, analyze and regulate the various interdependencies that arise under the current clearing framework for all indirect participants. For CCPs to fulfill this role would be both extremely costly to the CCPs (as they lack the information or infrastructure to perform this function at present) and largely duplicative of, and potentially in conflict with, activities already being undertaken by the relevant regulators and self-regulatory organizations. The existing approach has worked well and we believe it to be the appropriate approach. The direct participants are also

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<sup>20</sup> 79 Fed. Reg. at 3693.

better-placed to monitor these risks posed by indirect participants, and it is those direct participants who should be required to routinely monitor customer-level risks, and not the CCP, which is a step removed and not well placed to monitor all customers of clearing members.

### Compliance Dates

The Reg. HH Proposal would provide that all requirements of Rule § 234.3(a) would become effective 30 days from the date final rules are published in the Federal Register, except establishing plans for recovery or orderly wind-down (§ 234.3(a)(3)(iii)); addressing uncovered credit losses (§ 234.3(a)(4)(vi)); addressing liquidity shortfalls (§ 234.3(a)(7)(viii)); maintaining sufficient liquid net assets funded by equity and a viable capital plan (§ 234.3(a)(15)(i) and (ii)); managing risks arising in tiered participation arrangements (§ 234.3(a)(19)); and providing comprehensive public disclosure (§ 234.3(a)(23)(iv)). Compliance with each of these other requirements would be required within six months of the publication of final rules. Under the PSR Policy Proposal, the Board is proposing that the revisions described therein would become effective when a final version is published in the Federal Reserve, excluding those revisions that constitute new or heightened expectations that require additional time for implementation. The Board is also proposing an implementation period of up to six months for those revisions.

We agree that certain requirements, including those listed in the Proposals, will take longer to implement. In addition to the specific requirements listed above, for which an implementation period of up to six months has been proposed, we also believe that implementation of Proposed Reg. HH § 234.3(a)(20) should also be extended for at least six months because implementation of that rule will require extensive cooperation and coordination between FMUs. A somewhat longer compliance period will allow FMUs to implement the rule in an orderly manner.

We appreciate this opportunity to comment on the Proposals and the Board's thought and consideration in these matters.

Sincerely,



Craig S. Donohue  
Executive Chairman

cc: Michael E. Cahill, The Options Clearing Corporation  
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