SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97150; File No. SR–OCC–2023–002]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change by the Options Clearing Corporation Concerning the Amendment of Its Clearing Membership Standards

March 15, 2023.

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 March 6, 2023, the Options Clearing Corporation (''OCC'') 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 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 concern proposed changes to OCC's Clearing Membership Standards. The proposed rule change is submitted in Exhibits 5A and 5B to SR–OCC–2023–002. Material proposed to be added to OCC's By-Laws or Rules is marked by underlining and material proposed to be deleted is marked by strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's 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

(1) Purpose

The Options Clearing Corporation (''OCC'') acts as the central counterparty clearing house (''CCP'') for all U.S. option exchanges and certain U.S. futures exchanges. OCC provides clearing services for options on equities, indices, Exchange Traded Funds (''ETFs'') and for certain futures products and options on futures products. 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 novate stock loan transactions by acting as the counterparty to both sides of the transactions, guaranteeing that these obligations are fulfilled.

Over the past two decades, industry best practices as well as financial, operational, and systems/data obligations applicable to market participants and financial entities have continuously evolved. As part of this evolution, OCC was designated in 2012 as a systemically important financial market utility, or ''SIFMU,'' and along with this designation came heightened regulatory expectations. With these heightened expectations, there has been an increased focus on OCC and Clearing Member liquidity resources and uses, the ability to meet obligations during stressed market conditions, the ability to meet larger margin and Clearing Fund obligations due to growth in options trading, and a requirement to have a documented and robust risk management framework. After a comprehensive review of OCC's By-Laws and Rules in conjunction with changes in regulations, member risk practices and processes as well as other CCP Clearing Member standards, OCC determined it was necessary to amend, enhance and reorganize certain Clearing Member requirements to keep pace with these changes and ensure OCC continues to maintain a high level of market stability.

OCC's proposed changes to membership standards comprehensively address the heightened expectations around financial, operational and systems/data obligations. More specifically, the proposed rule changes would amend OCC's By-Laws and Rules addressing OCC's membership standards, including but not limited to regulation and regulatory authorization, governance, financial condition, financial reporting, staffing, third-party arrangements, general operational capabilities, statutory disqualifications, notification requirements and protective measures, as well as the minor rule violation framework. The proposed rule changes would improve OCC's existing financial and operational membership standards to further mitigate counterparty credit risk introduced by Clearing Members.

The proposed rule changes take a holistic review of existing membership standards, as opposed to one-off changes in response to new regulatory requirements. The proposed rule changes will enhance OCC's risk mitigation processes and practices by, for example, requiring Clearing Members to meet higher standards intended to mitigate risk, *e.g.,* through increased minimum capital requirements and heightened requirements around the qualification of financial, operational, and risk management personnel. Additionally, by proposing rules to expand OCC membership to new entity types and in additional jurisdictions, OCC will have the potential to increase the diversity of its Clearing Member population. Furthermore, proposing more robust notification requirements and expanded protective measures will allow more assurance that OCC is able to protect itself, its members, and the general public from emerging counterparty risks. OCC also believes that the proposed rule changes will provide greater clarity to Clearing Members and the broader public through the consolidation and simplification of OCC's membership requirements in OCC's By-Laws and Rules.

In particular, while the membership standards that OCC proposes to change are described in further detail herein, thematically, they consist of the following:

- expanding the list of institutions that may be eligible for membership as a Clearing Member; [4]
- expanding the available regulatory authorizations that may be granted to each type of institution that has been admitted to become a Clearing Member; [5]
- streamlining the membership application review and admission procedures; [6]
- amending the financial responsibility standards by consolidating initial and ongoing standards, raising the capital floor for existing categories of institutions and

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

[2] 17 CFR 240.19b–4.

[3] OCC's current 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.*

[4] *See infra* description of proposed Rule 201.

[5] *Id.*

[6] *See* infra descriptions of proposed Rules 203 and 204.

adopting capital standards for new categories of institutions; [7]

- amending the event-based and periodic reporting requirements for Clearing Members; [8]
- amending Clearing Member staffing requirements; [9]
- amending books and records requirements; [10]
- amending operational capability standards; [11]
- revising the process by which OCC reviews a notification that the Clearing Member is subject to statutory disqualification; [12]
- updating the minor rule violation disciplinary process; [13] and
- providing various other clarifying changes.

The proposed rule change generally would reflect each of these changes in the By-Laws and the Rules by modifying the provisions currently set forth in Article V of the By-Laws and Chapters II and III of the Rules and consolidating such provisions in new Chapters II and III of the Rules.[14] Below is a description of the proposed changes under the section headers reflecting the proposed new rules in Chapters II and III.[15]

Proposed Rule 201—Eligibility

Paragraphs (a) and (b)—Types of Memberships and Activities

Types of Clearing Members. Existing Article V of the By-Laws currently permits three different types of institutions to be eligible for clearing membership: (i) a broker-dealer registered in such capacity under section 15(b)(1) or (2) of the Exchange Act (a ''fully registered broker-dealer''); (ii) a futures commission merchant (an ''FCM'') registered in such capacity under section 4f(a)(1) of the Commodity Exchange Act (the ''CEA'') (a ''fully registered FCM''); and (iii) a Non-U.S. Securities Firm,[16] including but not limited to a Canadian investment dealer authorized and regulated in such capacity by the Investment Industry Regulatory Organization of Canada (''IIROC'').[17]

The proposed rule change would relocate the list of eligible institutions from Article V of the By-Laws to new Rule 201(a)(1) through (a)(3) (including a minor clarification to specifically reference Canadian Investment Dealers in proposed subparagraph (a)(3)) and expand the list of eligible institutions to include certain banks. Specifically with respect to banks, proposed Rule 201(a)(4) would provide that the following banks are eligible to become a Clearing Member: (i) a U.S. national bank registered with the Office of the Comptroller of the Currency for full-service operations; (ii) a U.S. state-chartered bank that is a member of the Federal Reserve System; and (iii) a similar non-U.S. bank registered with its home country national regulatory authority that conducts its activity with OCC through a Federal or State Branch or Agency (as defined in the International Banking Act of 1978) located in the United States (collectively, the ''eligible banks''). In order to be eligible, the bank must provide adequate assurance to OCC that it does not engage in activity that would require registration as a broker-dealer, FCM or any other relevant registration status. Such assurance would help ensure that an eligible bank is not violating applicable laws with respect to failing to register as a financial intermediary or any otherwise. Likewise, the bank must provide adequate assurance to OCC that it is not prohibited from contributing to OCC's Clearing Fund. Additionally, as a result of the relocation of Section 1 of Article V to proposed Rules, removal of reference to the first two sentences of Section 1 of Article V must be moved from Section 1 of Article XI.[18]

Types of Activities. Various provisions in Article V of the By-Laws set forth the categories of products and other regulatory authorizations that each type of institution that is a Clearing Member may engage in. As a general matter, the proposed rule change would incorporate such provisions in new Rule 201(b) (and Rule 302(e) with respect to Stock Loan programs), subject to minor modifications. More specifically:

- proposed Rule 201(b)(1) would provide that transactions in options other than over-the-counter (''OTC'') index options, futures options or commodity options may be cleared by a Clearing Member that is (i) a fully-registered broker-dealer, (ii) a Canadian Investment Dealer or other Non-U.S. Securities Firm, or (iii) an eligible bank;
- proposed Rule 201(b)(2) would provide that transactions in commodity futures, options and commodity futures options may be cleared by a Clearing Member that is (i) a fully registered FCM or (ii) otherwise exempt from such registration under the CEA and regulations of the Commodity Futures Trading Commission (the ''CFTC'');
- proposed Rule 201(b)(3) would provide that security futures transactions may be cleared by a Clearing Member that is (i) a fully registered broker-dealer that is also (A) a fully registered FCM, (B) a notice-registered as an FCM under section 4f(a)(2) of the CEA (a ''notice-registered FCM'') 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 (a ''notice-registered broker-dealer''), (iii) a Canadian Investment Dealer or other Non-U.S. Securities Firm, or (iv) an eligible bank;
- proposed Rule 201(b)(6) would provide that OTC index options transactions may be cleared by a Clearing Member that (i) is a fully registered broker-dealer, a Canadian Investment Dealer or other Non-U.S. Securities Firm or an eligible bank, (ii) executes and maintains in effect the relevant agreements and other

[7] *See infra* description of proposed Rule 301.

[8] *See infra* descriptions of proposed Rules 306, 306A and 306B.

[9] *See infra* descriptions of proposed Rules 302 and 303.

[10] *See infra* description of proposed Rule 208.

[11] *See infra* description of proposed Rule 302 and 303.

[12] *See infra* descriptions of proposed Rules 204, 306A and 308.

[13] *See infra* description of proposed Rule 1203.

[14] In addition, a minor subset of the changes would appear in various other portions of the Rules, including Rules 101, 609, 1006, 1203, and 2201. The proposed rule change would eliminate Article V of the By-Laws.

[15] *Id.*

[16] Existing Article I of the By-Laws presently defines ''Non-U.S. Securities Firm,'' in relevant part, as a ''securities firm: (1) formed and operating under the laws of a country other than the United States; (2) with its principal place of business in that country; and (3) that is subject to the regulatory authority of that country's government or an agency or instrumentality thereof, or subject to the regulatory authority of an independent organization or exchange in that country. The term ''Non-U.S. Securities Firm'' shall not include any broker-dealer registered, or required to be registered, with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934, as amended or any futures commission merchant registered, or required to be registered, as such pursuant to section 4d of the Commodity Exchange Act, as amended.'' Under the proposed rule change, the provisions of this definition would be moved to Rule 101. *See infra* discussion on Additional Proposed Changes to Terms.

[17] The proposed rule change would incorporate in Rule 101 the definition of ''Canadian Investment Dealer'' as a Non-U.S. Securities Firm formed and operating under the laws of Canada or a province or territory thereof that is investment dealer under such laws, that is a dealer member of IIROC, and that has its principal place of business in Canada.

[18] Section 1 of Article XI, which requires approval of holders of OCC Common Stock for amendment to certain By-Law provisions as named in that section, states that stockholder approval is required to amend the first two sentences of Section 1 of Article V of OCC's By-Laws. With the relocation of Section 1 of Article V to proposed OCC Rules, shareholder consent to amend the first two sentences of Section 1 of Article V will no longer be required and therefore Section 1 of Article XI must be amended to remove reference to the first two sentences of Section 1 of Article V.

documents required by OCC, (iii) is a user of or participant in an OTC Trade Source for the purpose of affirming and submitting confirmed trades to OCC for clearance and (iv) meets such other requirements as OCC may specify;

- proposed Rule 201(b)(5) would provide that Stock Loans (which includes both Hedge Loans and Market Loans under the Stock Loan/Hedge Program and the Loan Market program, respectively) may be cleared by a Clearing Member that is (i) a fully-registered broker-dealer, (ii) a Canadian Investment Dealer or other Non-U.S. Securities Firm or (iii) an eligible bank;
- proposed Rule 302(f)(1) would provide that a Clearing Member participating in the Stock Loan/Hedge Program must (i) be a member of The Depository Trust Company (''DTC'') or be a Canadian Clearing Member on behalf of which the CDS Clearing and Depository Services Inc. (''CDS'') maintains an identifiable sub-account in a CDS account at the DTC and (ii) execute such agreements and other documents required by OCC; [19] and
- proposed Rule 302(f)(2) would provide that a Clearing Member participating in the Loan Market program must meet the Stock Loan/Hedge Program participation requirements set forth above and (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 DTC that has provided the DTC with written authorization to honor instructions issued by OCC against such Clearing Member's account at the DTC and (iv) execute such agreements and other documents required by OCC.[20]

Importantly, proposed Rule 201 would provide additional clarifications. In particular, proposed Rule 201(a)(4)(i) and (a)(5)(i) would restrict eligible banks to clear the products and participate in the programs listed above on a proprietary basis only. In addition, proposed Rule 201(b) would continue to require that Clearing Members be in compliance with all registration and other regulatory requirements applicable to clearing particular product types. Similarly, proposed Rule 201(b)(4) would maintain the existing requirement (relocated from Article V, Section 1(b) of the By-Laws) that no notice-registered broker-dealer may clear transactions or carry positions in cleared securities other than security futures. These clarifications are intended, in part, to help prevent a Clearing Member from violating the Exchange Act, the CEA or other applicable laws by acting as an unregistered intermediary on OCC.

Separately, similar to existing Article V, Section 1, paragraph (d) of the By-Laws, proposed Rule 201(b)(2) would require a Clearing Member that holds positions in physically settled futures or futures options other than security futures to be a member of the Exchange on which the products are traded.

Paragraph (c)—Approval Required for Each Type of Product

The proposed rule change would adopt as new Rule 201(c) the provisions currently set forth in existing Article V, Section 1, paragraph (c) of the By-Laws without any changes. Specifically, new Rule 201(c) would provide that the procedures of OCC may provide that a Clearing Member may not 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, OCC has specifically approved the Clearing Member to clear such type of product.

Paragraphs (d) and (e)—Additional Standards

The proposed rule change would adopt as new Rules 201(d) and (e) a portion of the provisions currently set forth in existing Article V, Section 1, paragraph (a) and Interpretation and Policy .04 of the By-Laws with minor changes to reflect that the provisions apply to all Clearing Members (and not simply to applicants). The proposed rule change also would modify the provisions to specifically reference risk management capabilities and other standards as set forth in the Rules or such other qualifications and standards as OCC may promulgate.

Proposed Rule 201(d) would require each Clearing Member to meet such non-discriminatory standards of financial responsibility, operational capability, risk management capability, experience and competence as may from time to time be prescribed in the rules of OCC. Proposed paragraph (e) also would provide that in addition to the standards of financial responsibility, operational capability, risk management capability, and experience and competence, OCC 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 the Rules or such other qualifications and standards as OCC may promulgate.

Proposed Rule 202—Non-U.S. Entities and Foreign Financial Institution (''FFI'') Clearing Members

The proposed rule change would relocate existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d) to new Rule 202 with certain modifications designed to accommodate the admission of Non-U.S. Clearing Members other than Canadian Clearing Members. New Rule 202(a) and (b)(1) would amend existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d)(1) to more generally require that an applicant that, if admitted, would meet the definition of an FFI Clearing Member, must not conduct transactions or activities with or through OCC unless such transaction and activities will not result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and state income taxes imposed on the net income of OCC), and if such taxes or obligations would be imposed with respect to amounts paid or received by OCC but for the qualification of the applicant for a special U.S. or foreign tax status, such as a FATCA Compliant Qualified Intermediary Assuming Primary Withholding Responsibility, then the applicant's initial and ongoing membership will be conditioned on the applicant or Member qualifying for, maintaining, and documenting such status to the satisfaction of OCC. Under appropriate circumstances, where the applicant's regulatory and financial requirements are closely related to U.S. regulations, an applicant meeting the requirements of this section for the purposes of some products, such as stock loan or for give-up execution, but not others, or for transactions or activities in a specific capacity, such as an intermediary, may be admitted to conduct transactions or activities under limitations imposed by OCC. OCC also proposes to relocate existing Rules 310(d)(2)–(5) to new Rules 202(b)(2)–(5) with minor conforming changes. In addition, OCC would remove references to the defined terms Section 871(m) Effective Date and Section 871(m) Implementation Date as these Section 871(m) phase-in dates are no longer required in OCC's Rules.[21]

[19] *See infra* discussion on proposed Rule 302.

[20] *Id.*

[21] IRS Notice 2016–76 provides for staged implementation of Section 871(m). A copy of the Notice can be found here: (*https://www.irs.gov/pub/irs-drop/n-16-76.pdf*). The OCC issued Information Memo #40288 which announces the Section 871(m) Implementation Date as December 23, 2016. The information memo can be found on OCC's website:

OCC also proposes to add new Rule 202(d) to require that OCC will only admit Clearing Members that are non-U.S. entities from foreign jurisdictions that have been approved by the Risk Committee.[22] The proposed rule change would also adopt new paragraph (c) of Rule 202, which would require every Non-U.S. Clearing Member to provide all communications (oral or written), financial reports and other information requested by OCC in English, and to state monetary amounts in U.S. dollar equivalents indicating the conversion rate and date used.

Proposed Rule 203—Admission Procedures

The proposed rule change would consolidate in new Rule 203 the admission procedures and requirements currently set forth in existing Article V, Section 2 and Article V, Section 1, Interpretation and Policy .03, clause (e) of the By-Laws and modify such admission procedures and requirements. More specifically, similar to existing Article V, Section 2, paragraph (a), proposed Rule 203(a) would require Clearing Member applications to be in the form and contain such information as prescribed by OCC. Likewise, similar to existing Article V, Section 2, paragraph (a), proposed Rule 203(a) would authorize the Risk Committee or its designated delegates or agents to examine the books, records and workpapers of an 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.

Proposed Rule 203(a) also would designate the Risk Committee with responsibility to approve or disapprove applications for clearing membership. As set forth in proposed Rule 203(a), the procedures for disapproving an application would be the same as described in existing Article V, Section 2, paragraph (a). Specifically, if the Risk Committee proposes to disapprove an application, then OCC must adhere to the following procedures:

i. the Risk Committee must first furnish the applicant with a written statement of its proposed recommendation and the specific grounds for proposing to disapprove the application;

ii. the Risk Committee must give the applicant an opportunity to be heard and to present evidence on its own behalf;

iii. if the Risk Committee determines to disapprove the application, written notice of its decision, accompanied by a statement of the specific grounds for disapproval, must be mailed or delivered to the applicant;

iv. the applicant must have the right to present evidence as it may deem relevant to its application; and

v. a verbatim record must be kept of any hearing held pursuant hereto.

However, in contrast with existing Article V, Section 2, paragraph (a), the proposed rule change would remove the automatic delegation of authority to the CEO and COO to approve Clearing Member applications. This change is intended to help streamline the application review process and permit the Risk Committee to maintain discretion on which person(s) to delegate authority for purposes of review. The proposed rule change also would remove the requirement in existing Article V, Section 2, paragraph (c) to inform the Board of Directors of all applications for membership at its regularly scheduled meeting as all applications would now be approved by the Risk Committee as opposed to delegation to OCC management.

The proposed rule change also would adopt a new process for approving an applicant on an expedited basis under limited circumstances. Specifically, proposed Rule 203(b) would provide that the Risk Committee may approve an application on an expedited basis as appropriate for the protection of investors and the public interest. In connection with an expedited approval process, certain exceptions may be granted (i) for the applicant's compliance with OCC's membership standards for a reasonable period of time and/or (ii) from the general requirements set forth in OCC's internal policies, procedures and due diligence processes in reviewing Clearing Member applicants. This expedited approval process is intended to grant OCC flexibility under various unforeseen circumstances. Furthermore, because of the infrequent nature of these types of scenarios, OCC cannot envision or describe all events in which expedited approval would be required. Nevertheless, the use of expedited approval would be limited to scenarios in which time is of the essence for the protection of OCC, other OCC Clearing Members, and the public. For example, expedited approval would be appropriate in a circumstance where a suitable non-Clearing Member candidate seeks to take on the entire business of an existing Clearing Member that is in distress. In this example, expedited approval would serve to protect OCC, other OCC Clearing Members, and the public against the ramifications from the likely default of the Clearing Member in distress. In the event there was a significant financial impact in one of these scenarios, the ability to provide expedited approval would make it less likely that OCC would have to employ the resources—OCC's Minimum Contribution and other OCC liquid assets, the Clearing Fund, the EDCP Unvested Balance—that otherwise would have been used in the event the Clearing Member in distress defaulted. Additionally, the customers of the Clearing Member in distress would have certainty around the status and security of their accounts.

In addition, the proposed rule change would modify the provisions applicable to Clearing Members seeking to engage in clearing activities beyond the scope of their current authorizations with OCC. In particular, under proposed Rule 203(c), a Clearing Member's business expansion request may be reviewed and approved or disapproved by the CEO or the COO pursuant to OCC procedures. The Risk Committee must be notified at least ten business days in advance of any such approval/disapproval to determine whether the business expansion request should be reviewed by the Risk Committee.

Proposed Rule 204—Conditions to Admission

The proposed rule change would consolidate in new Rule 204 the conditions to admission provisions currently set forth in existing Article V, Section 3 and various other portions of Article V of the By-Laws. Each paragraph of proposed Rule 204 is described below.

Paragraph (a)—General Statement

Proposed Rule 204(a) would clarify that the Risk Committee will not approve any application for clearing membership if the applicant fails to meet the membership requirements and standards set forth in the Rules. This clarifying statement would replace many of the similar statements currently set forth in Article V of the By-Laws, including Section 1, Interpretations and Policies .01, .02, .03.

Paragraph (b)—Initial Contribution and Agreements

Proposed Rule 204(b) would adopt the provisions currently set forth in Article V, Section 3 of the By-Laws with only minor clarifying changes. Specifically,

(*https://infomemo.theocc.com/infomemo/search-memo*).

[22] Risk Committee review and approval would be based on the recommendation of OCC management after completing a non-U.S. jurisdiction review of regulatory, legal, and tax issues for each jurisdiction and product type.

proposed paragraph (b) would provide that, prior to admission as a Clearing Member, an applicant must deposit with OCC its initial contribution to the Clearing Fund in the amount required by the Risk Committee in accordance with Chapter X of the Rules. As compared to the provisions set forth in existing Article V, Section 3 of the By-Laws, proposed Rule 204(b) would clarify the Risk Committee's role in requiring the initial contribution.

In addition, proposed Rule 204(b) would require the applicant to sign and deliver to OCC an agreement:

i. to clear through OCC, 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 OCC;

ii. to abide by all provisions of the By-Laws and the Rules and by all policies and procedures adopted pursuant thereto;

iii. 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 OCC, or with other Clearing Members in respect of cleared contracts, or which may be cleared or required to be cleared through OCC;

iv. to grant OCC all liens, rights and remedies set forth in the By-Laws and the Rules;

v. to pay to OCC 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 OCC to the applicant while a Clearing Member;

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

vii. to permit inspection of its books, records, and workpapers at all times by the representatives of OCC and to furnish OCC with all information in respect of the applicant's business and transactions as OCC or its officers may require;

viii. to make such payments to or in respect of the Clearing Fund as may be required from time to time;

ix. to comply, in the case of Canadian Investment Dealers and other 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 Exchange Act 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 OCC; and

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

As compared to the provisions set forth in existing Article V, Section 3 of the By-Laws, proposed Rule 204(b) would explicitly reference Canadian Investment Dealers in items ix and x above. In addition, OCC would eliminate the requirement in Article V, Section 3 of the By-Laws that Non-U.S. Securities Firms consent to the jurisdiction of Illinois courts and to the application of United States law in connection with any dispute with OCC arising from membership because this requirement is already addressed in Article IX, Section 10 of the By-Laws.

Paragraph (c)—Statutory Disqualifications

Proposed paragraph (c) would adopt and modify the statutory disqualification membership requirements currently set forth in existing Article V, Section 1(a). Specifically, proposed paragraph (c) would provide that the Risk Committee may disapprove an application of any applicant or person of the applicant subject to a ''Statutory Disqualification.'' In turn, the proposed rule change would revise Rule 101 to define the term ''Statutory Disqualification'' as (i) in the case of a fully registered broker-dealer, a statutory disqualification as defined in section 3 of the Exchange Act, (ii) in the case of a fully registered FCM, the applicant or Clearing Member or a principal thereof, as defined in CEA section 8a(2), is subject to statutory disqualification under CEA section 8a(2)–(4), or (iii) in the case of a Non-U.S. Securities Firm or bank, any similar provision of the laws or regulations applicable to such applicant or Clearing Member. In addition, similar to existing Article V, Section 1, paragraph (a) of the By-Laws, proposed Rule 204(c)(1) would provide that in cases in which the SEC, by order, directs as appropriate in the public interest, OCC will disapprove an application for clearing membership by any applicant or person of the applicant subject to a statutory disqualification. Separately, proposed subparagraph (c)(2) would obligate every applicant to notify OCC in writing if the applicant is or becomes subject to a statutory disqualification in accordance with the requirements of new Rule 306A(c).[23]

[23] *See infra* discussion on proposed Rule 306A.

Paragraph (d)—Just and Equitable Principles of Trade

Proposed paragraph (d) would adopt with no substantive changes the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .03, clause (b). Specifically, proposed paragraph (d) would permit the Risk Committee to disapprove an application 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.

Paragraph (e)—Satisfaction of Conditions

Proposed Rule 204(e) would provide that an 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. As compared to Article V, Section 3, Interpretation and Policy .01, this proposed paragraph (e) would increase the maximum number of months from six months to nine months. The proposed rule change also would eliminate the authority to extend the deadline to no later than one year from the date on which the application originally was approved. These changes are intended to standardize and streamline the application process.

Paragraph (f)—Information From Other Regulators

Proposed paragraph (f) would permit the Risk Committee to take into consideration information provided by an applicant's Designated Examining Authority, designated self-regulatory organization (in the case of an applicant primarily regulated as an FCM), and other self-regulatory organizations to which an applicant is a member or has applied for membership when considering an applicant's compliance with OCC's membership requirements and standards and overall fitness to be a Clearing Member. As compared with existing Article V, Section 1, Interpretation and Policy .02, clause (c) of the By-Laws, proposed paragraph (f) would clarify that the Risk Committee may take such information into consideration irrespective of whether the Designated Examining Authority, designated self-regulatory organization or other self-regulatory organization

objects to the application. Proposed paragraph (f) also would clarify that the Risk Committee may take into consideration information from a self-regulatory organization that is not the applicant's Designated Examining Authority or designated self-regulatory organization, as the case may be.

Paragraph (g)—Additional Temporary Requirements

Proposed paragraph (g) would provide that if the Risk Committee determines 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, temporary requirements for membership including, but not limited to, the imposition of protective measures pursuant to Rule 307.[24] Proposed paragraph (g) also would clarify that additional membership criteria may be imposed until the heightened risk presented by the Clearing Member is sufficiently reduced. In contrast with existing Article V, Section 1, Interpretation and Policy .06, proposed paragraph (g) and proposed Rule 307 [25] would set forth OCC's rights to impose protective measures under a uniform standard applicable to both applicants and existing Clearing Members.

Proposed Rule 205—Evidence of Authority

The proposed rule change would move the provisions set forth in existing Rule 202 to new Rule 205 and modify the language to clarify that OCC may rely on an electronic (or similar means) signature rather than relying on an original signature. Such a signature will have the same effect as a valid and binding original signature. This change is intended to better reflect evolving technology and the means by which signatures generally may be accepted.

Proposed Rule 206—Bank Accounts

The proposed rule change would move the provisions set forth in existing Rule 203 to new Rule 206 with no substantive changes.

Proposed Rule 207—Submission to and Retrieval of Items to the Corporation

The proposed rule change would combine and modify the provisions currently set forth in existing Rules 205 and 206 and move such provisions to new Rule 207. Specifically, the provisions in existing paragraphs (a) and (b) of Rules 205 and 206 would be combined and modified in proposed Rule 207(a), which would require Clearing Members to submit and retrieve instructions, notices, reports, data, and other items to or from OCC in accordance with procedures prescribed or approved by OCC. As compared to existing Rules 205(a)–(b) and 206(a)–(b), proposed Rule 207(a) would apply uniformly to items submitted or retrieved via electronic and non-electronic means. In addition, proposed paragraph (a) would clarify that items submitted to or retrieved by OCC by electronic data entry will be deemed to constitute ''writings'' for purposes of any applicable law. Similar to the changes to the provisions in proposed Rule 205, the changes in this proposed Rule 207(a) are intended to better reflect evolving technology.

Similarly, existing paragraphs (c) and (d) of Rule 205 would be combined and modified in proposed Rule 207(b), which would require timely submissions to OCC and permit OCC to disregard any untimely submission or correction. In addition, proposed paragraph (b) would provide that if unusual or unforeseen conditions prevent a Clearing Member from making a timely submission to OCC, then OCC 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 OCC deems reasonable, practicable, and equitable under the circumstances. As compared to existing Rule 205(d), proposed Rule 207(b) would further clarify that it applies to any unusual or unforeseen conditions that, in fact, prevent a Clearing Member from making a timely submission via electronic or non-electronic means. Proposed paragraph (b) also would clarify that cut-off times for submission of exercise notices at expiration are governed by Rule 805, and by Article VI, Section 18 of the By-Laws.

Finally, existing Rule 206(c) would be modified and moved to proposed Rule 207(c), which would provide that if unusual or unforeseen conditions (including but not limited to power failures or equipment malfunctions) prevent OCC from making any timely submission or other notification to a Clearing Member, then OCC 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 OCC deems reasonable, practicable, and equitable under the circumstances. As compared to existing Rule 206(c), proposed Rule 207(c) would apply to submissions or other notifications via electronic or non-electronic means.

Proposed Rule 208—Records

The proposed rule change would move the provisions set forth in existing Rule 207 to new Rule 208 and streamline such provisions to clarify that the Clearing Member records retention requirements apply to all confirmed trade data required pursuant to the By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401. The remaining provisions currently set forth in existing Rule 207 would remain unchanged (aside from relocating to new Rule 208).

Proposed Rule 209—Security Measures

The proposed rule change would move the provisions set forth in existing Rule 212 to new Rule 209 with modifications to remove references to authorization stamps, including the deletion of existing paragraph (b) and the removal of authorization stamp references in existing paragraph (c) as they are no longer used by OCC. The remaining provisions presently set forth in existing Rule 212 would remain unchanged (aside from relocating to new Rule 209).

Proposed Rule 210—Payment of Fees and Charges

The proposed rule change would move the provisions set forth in existing Rule 209 to new Rule 210 with modifications to clarify that any fine levied by OCC for a minor rule violation that has not been timely contested, as described in new Rule 1203(a), or fine levied pursuant to Chapter XII of the Rules will be due and payable immediately upon notice as opposed to within five business days following the end of each calendar month. The remaining provisions currently set forth in existing Rule 209 would remain unchanged (aside from relocating to new Rule 210).

Proposed Rule 211—Reports and Notices by the Corporation

The proposed rule change would combine and modify the provisions currently set forth in existing Rules 208, 211 and 213 and move such provisions to new Rule 211. Specifically, the provisions set forth in existing Rule 208 would be moved to proposed Rule 211(a) without any changes.

The provisions set forth in existing Rule 211 (including the Interpretation and Policy) would be moved to proposed Rule 211(b) and modified to clarify that OCC will provide all

[24] *See infra* description of proposed Rule 307.

[25] *Id.*

Clearing Members and other registered clearing agencies with the text or a description of any proposed rule change filed with the SEC or the CFTC and a statement of its purpose and effect on Clearing Members by posting proposed rule changes on its website. As compared to existing Rule 211 (including the Interpretation and Policy), proposed Rule 211(b) would eliminate the requirement to post the proposed rule change prior to filing the proposed rule change with the SEC or the CFTC, or as soon as possible thereafter.

Finally, the provisions in existing Rule 213 would be moved to proposed Rule 211(c) and modified to clarify that OCC will make available (rather than furnish) to each Clearing Member the audited financial statements and independent public accountant's report described in proposed paragraph (c). The remaining provisions currently set forth in existing Rules 211 and 213 would remain unchanged (aside from relocating to new Rule 211(b) and (c)).

Proposed Rule 212—Voluntary Termination of Membership

The proposed rule change would adopt new Rule 212 to address circumstances in which a Clearing Member may elect to voluntarily terminate its membership. Proposed paragraph (a) would provide that a Clearing Member may elect to voluntarily terminate its membership by providing written notice to OCC (''Voluntary Termination Notice'') that specifies a desired date for its withdrawal from membership (''Termination Date''). The terminating Clearing Member must close out or transfer all open positions with OCC by the Termination Date. Pursuant to proposed paragraph (c), if the Clearing Member does not close out or transfer all open positions by the specified Termination Date, the terminating Clearing Member must notify OCC of a new Termination Date, unless otherwise agreed upon by OCC.

With respect to the treatment of Clearing Fund deposits, proposed paragraph (b) would provide that OCC will retain the terminating Clearing Member's Clearing Fund contribution at least until final billing is complete during the calendar month immediately following the Termination Date. During this time, OCC may debit from the terminating Clearing Member's Clearing Fund contribution any outstanding payment obligations owed and not paid to OCC.

Proposed paragraph (b) also would clarify that a terminating Clearing Member's Clearing Fund contribution may be subject to a proportionate charge or use for purposes of a borrowing pursuant to Rule 1006 until the next monthly or intra-month sizing of the Clearing Fund. In such instance, OCC may retain the Clearing Member's Clearing Fund contribution until such time as it is no longer needed to satisfy its purpose and use under Rule 1006. However, a terminating Clearing Member will not be subject to replenishment or assessments under Rule 1006(h).

Finally, proposed paragraph (d) would clarify that any Voluntary Termination Notice provided during a cooling-off period implemented pursuant to Rule 1006(h) would be subject to the requirements of Rule 1006(h). Separately, the proposed rule change would revise Rule 1006(h) to specifically refer to ''Voluntary Termination Notice'' and make other administrative clean up changes.

Proposed Rule 301—Financial Responsibility

OCC's capital standards applicable to Clearing Members currently are set forth in existing Chapter III of the Rules. More specifically, existing Rule 301 sets forth the initial capital requirements that must be met by applicants for clearing membership, whereas existing Rule 302 sets forth the ongoing capital requirements that must be met by each Clearing Member.

The proposed rule change would replace existing Rules 301 and 302 with new Rule 301 and eliminate the distinction between initial and ongoing capital requirements. The proposed rule change also would modify the capital requirements for existing types of Clearing Members and introduce capital requirements for the new types of Clearing Members. Below is a description of each of the paragraphs in proposed Rule 301.

Paragraph (a)—General

Paragraph (a) of proposed Rule 301 would adopt a new general statement that clarifies that each Clearing Member, including an applicant for clearing membership, is required to meet the financial resource and responsibility requirements set forth in these Rules and such other qualifications and standards as OCC may promulgate. In addition, proposed paragraph (a) would provide that dollar amounts in Rule 301 refer to U.S. dollars.

Paragraph (b)—Minimum Capital

Proposed paragraph (b) would require Clearing Members to maintain the applicable minimum capital requirements set forth in subparagraphs (b)(1) through (b)(5). Proposed paragraph (b) also would incorporate the language currently set forth in existing Rule 302(a) that prohibits a Clearing Member with capital below its respective minimum capital requirement to clear an opening purchase transaction or opening sale transaction or enter into a Stock Loan. To provide time for existing Clearing Members to meet the proposed changes, OCC will provide a six-month grace period upon approval by the SEC of the proposal.

Below is a description of the minimum capital requirements that would be applicable to each type of Clearing Member. The proposed minimum capital requirements are intended to balance fair and open access to OCC with prudent financial qualifications for members and enhance the overall strength and resiliency of OCC and its ability to mitigate risk as a systemically important financial market utility.

Fully Registered Broker-Dealers. Existing Rule 301 sets forth initial requirements for fully registered broker-dealers to maintain minimum net capital equal to or greater than (i) $2.5 million, (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 12½ percent of its aggregate indebtedness, or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 5 percent of its aggregate debit items. Existing Rule 301 also sets forth an initial requirement that the aggregate principal amount of a Clearing Member's satisfactory subordination agreements (excluding those treated as equity capital) cannot initially exceed 70% of its debt equity total. The initial requirements apply until the later of (1) three months after the firm's admission to as a clearing member, or (2) twelve months after the firm commenced doing business as a broker-dealer. Separately, existing Rule 302 sets forth ongoing requirements for fully registered broker-dealers to maintain minimum net capital equal to or greater than (i) $2 million, (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 6⅔ percent of its aggregate indebtedness, or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 2 percent of its aggregate debit items.

Under proposed Rule 301(b)(1), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide

that every Clearing Member that is a fully registered broker-dealer must maintain minimum net capital at least 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, 6⅔ percent 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 percent of its aggregate debit items. OCC determined that the proposed minimum net capital requirement of $10 million was an appropriate amount based on OCC's clearance and risk management of non-linear products where volatility strongly influences margin and settlement obligation of Clearing Members. OCC selected an amount that provided greater security to ensure that Clearing Members have sufficient capital to meet margin, liquidity, and clearing fund obligations, but that also avoided creating an overly burdensome requirement on the vast majority of the existing OCC Clearing Member population.

Fully Registered FCMs. Existing Rule 301 sets forth initial requirements for fully registered FCMs to maintain minimum net capital at least equal to the greater of (i) $2.5 million, or (ii) any additional minimum financial requirements as are established by CFTC regulations. The initial standards apply until the later of (1) three months after the firm's admission as a clearing member, or (2) twelve months after the firm commenced doing business as an FCM. Separately, existing Rule 302 sets forth ongoing requirements for fully registered FCMs to maintain minimum net capital at least equal to the greater of (i) $2 million, or (ii) any additional minimum financial requirements as are established under the CEA.

Under proposed Rule 301(b)(2), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide that every Clearing Member that is a fully registered FCM must maintain minimum net capital equal to the greater of (i) $10 million or (ii) any other minimum financial requirements established by regulation of the CFTC.

Canadian Investment Dealers. Existing Rule 301 sets forth initial requirements for Canadian Clearing Members to maintain an early warning reserve at least equal to (i) $2.5 million or (ii) such other amount determined by OCC. This initial standard applies until the later of (1) three months after the firm's admission as a clearing member, or (2) twelve months after the firm commenced doing business as a broker or dealer, as applicable. Separately, existing Rule 302 sets forth ongoing requirements for Canadian Clearing Members to maintain an early warning reserve at least equal to the greater of (i) $2 million or (ii) 2% of the Clearing Member's total margin required.

Under proposed Rule 301(b)(3)(i), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide that every Clearing Member that is a Canadian Investment Dealer must maintain risk adjusted capital equal to the greater of (i) $10 million or (ii) 2% of total margin required.

Other Non-U.S. Securities Firms. Existing Rules 301 and 302 provide that each exempt Non-U.S. Clearing Member must comply with initial and ongoing requirements for the ratio of net capital to aggregate indebtedness as OCC may specify.

Proposed Rule 301(b)(3)(ii) would set forth a single standard, applicable on both an initial and ongoing basis, that requires every Non-U.S. Securities Firm that is not a Canadian Investment Dealer to 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 (i) $10 million or (ii) the amount required by the firm's applicable regulatory minimum requirements, including any and all required buffers, established by the regulatory authority of that country's government or an agency or instrumentality thereof. Further, proposed Rule 301(b)(3)(ii) would provide that 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 the Non-U.S. Securities Firm must maintain total equity greater than $25 million.

OCC initially intends to limit the admission of Non-U.S. Clearing Members to entities located in three Group of 7 jurisdictions—the United Kingdom, France, and Germany—because of the robust regulatory frameworks in each of those jurisdictions. However, in the future OCC may reevaluate whether it should consider admitting Non-U.S. Clearing Members from other jurisdictions, provided that if, after conducting a review of any such jurisdiction, OCC determines the jurisdiction supports a rigorous regulatory framework similar to the three countries mentioned above and satisfies any other risk related jurisdiction reviews undertaken during the member application process.

Banks. Existing OCC rules do not have minimum capital requirements for Clearing Members that are banks. Pursuant to the proposed rule change, new Rule 301(b)(4) would require each Clearing Member that is a U.S. bank (i) to maintain Tier 1 Capital of at least $500 million, (ii) to maintain a Tier 1 Capital Ratio greater than 6%, and (iii) be ''adequately-capitalized'' as measured by prompt corrective action (''PCA'') capital category ratios for National Banks and Federal Savings Associations. In addition, 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 (1) Tier 1 Capital of at least $500 million (or its equivalent in the relevant home country currency), (ii) a Tier 1 Capital Ratio greater than 6%, and (iii) 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.

Paragraph (c)—Dually Registered Clearing Members

Proposed paragraph (c) would clarify that if a Clearing Member is registered as a broker-dealer under section 15(b)(1) of the Exchange Act and also as an FCM under CEA section 4f(a)(1), the Clearing Member must comply with all applicable capital requirements.

Paragraph (d)—Extreme but Plausible Events and Contingency Planning

Existing Article V, Section 1, Interpretation and Policy .01 requires an applicant (i) to meet the initial financial requirements set forth in the Rules, (ii) to not have sustained certain pre-tax losses, (iii) to not be listed in a special surveillance list with the Securities Investor Protection Corporation (or not be subject to similar special financial surveillance procedures in accordance with the CEA), and (iv) to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC. Existing Rule 301(d) also requires every Clearing Member to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions and maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise.

Proposed Rule 301(d) would replace existing Article V, Section 1, Interpretation and Policy .01 and Rule 301(d) and set forth a single standard, applicable on both an initial and ongoing basis, that requires every Clearing Member to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC for such purposes, and maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. Proposed Rule 301(d) would also be revised to clarify that contingency planning includes maintaining alternate settlement bank arrangements.

Interpretations and Policies

Existing Rule 307 sets forth definitions for the terms ''net capital,'' ''aggregate indebtedness,'' ''aggregate debit items,'' ''Examining Authority'' and ''customer.'' Proposed Rule 301, Interpretation and Policy .01 would adopt these definitions. Existing Rule 307 also sets forth definitions for the terms ''debt-equity total,'' ''satisfactory subordination agreement,'' and ''alternative net capital.'' Proposed Rule 306A, Interpretation and Policy .01, would adopt the definitions of ''debt-equity total'' and ''satisfactory subordination agreement.'' The term ''alternative net capital'' is not referenced in any OCC Rules and therefore, the definition of ''alternative net capital'' is being removed from OCC Rules due to the lack of any reference to this term.

Separately, proposed Rule 301, Interpretation and Policy .02 would adopt the provisions presently set forth in existing Rule 307, Interpretation and Policy .01 but strike the reference to Clearing Members that were Clearing Members on June 13, 2005 as no longer relevant.

Proposed Rule 302—Operational Capability

Clearing Members currently are subject to operational capability, experience, and competence standards set forth in various provisions in the By-Laws and the Rules, including Article V, Section 1, Interpretations and Policies .02, .07 and .07A of the By-Laws and Rule 201. The proposed rule change would consolidate these provisions in new Rule 302 and modify the provisions as described below.

Paragraph (a)—General

Paragraph (a) of proposed Rule 302 would adopt a new general statement that clarifies that each Clearing Member, including applicants for clearing membership, is required to meet the operational capability, experience, and competence standards set forth in the Rules and such other qualifications and standards as OCC may promulgate.

Paragraph (b)—Offices

Proposed paragraph (b) would incorporate the language currently set forth in existing Rule 201(a) to require each Clearing Member to maintain facilities for conducting business with OCC. Proposed paragraph (b) also would modify the language currently set forth in existing Rule 201(a) to eliminate the requirement that the representative must be at the Clearing Member's facilities and to reference regular and overnight business hours. Taken together, proposed paragraph (b) would require each Clearing Member to make available during hours specified by OCC, a representative of the Clearing Member authorized in the name of the Clearing Member to take all action necessary for conducting business with OCC during regular and overnight business hours. As revised, this provision is intended to reflect the realities and needs of Clearing Members and OCC by permitting the representative to work remotely during regular and overnight business hours.

Paragraph (c)—Books and Records

Proposed paragraph (c) would amend the language currently set forth in existing Article V, Section 1, Interpretation and Policy .02, clause (a) and simplify and standardize (to the extent possible) the recordkeeping requirements applicable to each type of Clearing Member. Under proposed paragraph (c), each Clearing Member would be required to maintain books and records in accordance with the requirements of its applicable regulatory agency, including but not limited to any applicable requirements under the Exchange Act, the CEA, or the requirements of any non-U.S. regulatory agency, and with such additional requirements as OCC may impose. Taken together, this proposed paragraph (c) is intended to prevent unnecessary regulatory burdens by permitting each Clearing Member to maintain applicable records in accordance with its existing regulatory requirements, as applicable.

Paragraph (d)—Ability To Discharge Responsibilities

Proposed paragraph (d) would adopt the language currently set forth in existing Article V, Section 1, Interpretation and Policy .02, clause (b) with minor changes to clarify that the provision applies to the facilities, systems and procedures of each Clearing Member. Proposed paragraph (d) also would clarify that each Clearing Member must be able to participate in applicable operational and default management activities.

Specifically, under proposed paragraph (d), each Clearing Member would be required to maintain facilities, systems and procedures that are operationally sufficient to discharge its functions as a Clearing Member in a timely and efficient manner, including (i) 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; (ii) the ability to fulfill collateral, payment, and delivery obligations as required by OCC; and (iii) the ability to participate in applicable operational and default management activities, including auctions, as may be required by OCC and in accordance with applicable laws and regulations.

Paragraph (e)—Physically-Settled Equity Options and Stock Futures

OCC Rule 901(a) requires that every Stock Clearing Member and every Clearing Member that effects transactions in physically-settled stock futures be a participant in good standing of the correspondent clearing corporation,[26] however this does not apply to (i) an Appointing Clearing Member that has an effective agreement with an Appointed Clearing Member, or (ii) a Canadian Clearing Member on behalf of which CDS maintains an identifiable subaccount in a CDS account at the correspondent clearing corporation. OCC proposes to relocate Rule 901(a) to proposed paragraph (e) with minor modifications. OCC would also make conforming updates throughout the Rules to update cross-references to various provisions of revised Rule 901.

Paragraph (f)—Stock Loan Programs

Proposed paragraph (f) would adopt the language currently set forth in existing Article V, Section 1, Interpretations and Policies .07 and .07A and modify the language to refer to

[26] Article I, Section I.C(33) of the OCC By-Laws defines ''correspondent clearing corporation'' to mean the National Securities Clearing Corporation or any successor thereto which, by agreement with the Corporation, provides facilities for settlements in respect of exercised option contracts or BOUNDs or in respect of delivery obligations arising from physically-settled stock futures.

Clearing Members ''participating in the Stock Loan/Hedge Program'' or ''participating in the Market Loan Program,'' as the case may be, rather than referring to ''Hedge Clearing Members'' and ''Market Loan Clearing Members.'' Proposed paragraph (e) also would clarify that each Clearing Member participating in OCC's Stock Loan programs must meet the additional operational requirements set forth in subparagraph (e)(1) and/or (e)(2), as applicable. The proposed change would also clarify that participants in the Market Loan Program must be either a U.S. Clearing Member or be located in any other foreign country or jurisdiction approved by the Risk Committee. The proposed change would allow OCC to approve Non-U.S. Clearing Members for the Market Loan Program provided that the Risk Committee has completed a comprehensive review of regulatory, legal, and tax issues for the relevant non-U.S. jurisdiction.[27]

Proposed Rule 303—Financial, Operations, and Risk Management Personnel

OCC's financial, operations and risk management personnel requirements currently are set forth in various provisions of the By-Laws and the Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .05 of the By-Laws and Rule 214. The proposed rule change would consolidate and modify these requirements in new Rule 303. Below is a description of each of the paragraphs in proposed Rule 303.

Paragraph (a)—Substantial Experience

Proposed paragraph (a) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretations and Policies .03 and .05 of the By-Laws and modify the provisions to reference both applicants and Clearing Members. In addition, proposed paragraph (a) would contemplate ''third-party service providers'' more generally and eliminate references to facilities management agreements and Managing/Managed Clearing Members.

More specifically, proposed paragraph (a) would provide that every applicant and Clearing Member must employ personnel or maintain contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind(s) of cleared contracts applicable to the applicant or Clearing Member. Proposed paragraph (a) also would require every Clearing Member to maintain supervisory authority over all internal staff conducting business with the Corporation and over the activities and functions performed by third-party vendors.

The elimination of references to facilities management agreements and Managing/Managed Clearing Members is intended to provide greater flexibility on the provision of third-party services. However, notwithstanding this greater flexibility, Clearing Members are required to maintain supervisory authority over any third-party arrangements. In addition, such arrangements would be subject to the additional requirements set forth in proposed paragraph (d) of Rule 303.

Paragraph (b)—FinOps, CFOs and Similar Personnel

Proposed paragraph (b) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .03 and further specify the roles required for each type of Clearing Member. More specifically, proposed paragraph (b) would require each Clearing Member to 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:

- in the case of a fully registered broker-dealer, an individual registered with FINRA as a ''Limited Principal—Financial and Operations'';
- in the case of a fully registered FCM or other registrant registered under CEA section 4f that is not a fully registered broker-dealer, an individual serving as chief financial officer (''CFO'') or otherwise has the appropriate qualifications and is responsible for supervising the preparation of the applicant's financial reports; and
- in the case of a bank, Canadian Investment Dealer or other Non-U.S. Securities Firm, an individual serving as CFO or otherwise has the appropriate qualifications and is responsible for supervising the preparation of the applicant's financial reports.

Relatedly, the proposed rule change would remove the more prescriptive requirements currently set forth in Article V, Section 1, Interpretation and Policy .03, clause (d) relating to associated persons and/or key operations personnel serving as full-time employees. These amendments are intended to provide greater flexibility and reduce administrative burdens for OCC and its Clearing Members.[28]

Paragraph (c)—Clearing Operations Personnel

Proposed paragraph (c) would adopt certain of the provisions currently set forth in existing Rule 214(c) and (d) and modify the provisions to refer to both clearing operations personnel and adequate contractual arrangements with third-party service providers. Proposed paragraph (c) also would clarify that a Clearing Member must be able to discharge its functions in a timely and efficient manner. More specifically, proposed paragraph (c) would require each Clearing Member to 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 OCC, and the ability to participate in applicable operational and default management activities, including auctions, as may be required by OCC and in accordance with applicable laws and regulations. Proposed paragraph (c) also would require that each Clearing Member must submit to the OCC a list of the clearing operations personnel it employs in such form as is acceptable to OCC, including, without limitation, the names, titles, primary offices, email addresses, and business phone numbers for all such personnel.

Paragraph (d)—Contractual Arrangements With Third-Party Personnel

Proposed paragraph (d) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .05 and further provide for ''third-party service providers'' more generally, beyond the facilities management arrangements as currently described in OCC's By-Laws and Rules, and require related arrangements to permit due diligence by OCC. Proposed paragraph (d) also

[27] *See supra* note 20.

[28] For example, the proposed change would eliminate the need for certain staffing exemptions/waivers currently contemplated by Article V, Section 1, Interpretation and Policy .03.

would clarify that it applies to contractual arrangements with third-party service providers used to satisfy the requirements of Rule 302 and this Rule 303. Under proposed paragraph (d), any such arrangement must (1) clearly set forth the specific services to be performed by the third-party service providers on behalf of a Clearing Member and the respective duties and obligations of the third-party service provider and 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 OCC and (3) provide OCC with the authority and ability to perform initial and ongoing due diligence on the service provider.

Paragraph (e)—Replacing Relevant Personnel and Other Arrangements

Proposed paragraph (e) would adopt certain of the provisions currently set forth in existing Rule 214, Interpretation and Policy .02 and clarify that it applies to the separation or termination of personnel and third-party service providers. In particular, proposed paragraph (e) would provide that upon a separation or termination of agreement with a third-party service provider between the only personnel or third-party service provider who meets the requirements of Rule 303(b) and the Clearing Member, then the Clearing Member is granted a grace period of three months to return to compliance with the Rule.

Proposed Rule 304—Operational and Default Management Testing

Existing Rule 218 sets forth various requirements relating to business continuity and disaster recovery testing and default management testing. The proposed rule change would move the provisions in existing Rule 218 to new Rule 304 with only minor changes. Specifically, proposed Rule 304(a) would contain a new introductory sentence that clarifies that OCC will periodically designate Clearing Members required to participate in business continuity and disaster recovery testing. The remaining provisions contained in proposed Rule 304(a) would be substantively identical to the provisions contained in existing Rule 218(a) and (b). Similarly, the provisions contained in proposed Rule 304(b) would be substantively identical to the provisions currently set forth in existing Rule 218(c).

Proposed Rule 304(c) would set forth a new paragraph that provides that OCC may require Clearing Members to participate in other operational and connectivity testing and related reporting requirements (such as reporting the test results to OCC in a manner specified by OCC) that OCC deems necessary to ensure the continuing operational capability of the Clearing Members and the continuing ability of OCC to perform its clearing, settlement, and risk management activities.

Proposed Rule 305—Clearing Member Risk Management

Existing Rule 311 sets forth requirements pertaining to the risk management program obligations of Clearing Members. The proposed rule change would move the provisions in existing Rule 311 to new Rule 305 and modify the provisions consistent with CFTC Rule 39.13(h)(5)(ii).[29] More specifically, similar to existing Rule 311(a), proposed Rule 305(a) would require each Clearing Member to maintain current written risk management policies and procedures that address the risks the Clearing Member may pose to OCC. In addition, proposed Rule 305(a) would contain an additional provision that is not contained in existing Rule 311(a), which clarifies that OCC may review the risk management policies, procedures, and practices of each Clearing Member on a periodic basis and 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. This additional provision would be added to better address the requirements applicable to registered derivatives clearing organizations under CFTC Rule 39.13(h)(5)(ii).

Proposed Rule 305(b) would require each Clearing Member to provide to OCC such information and documentation as may be requested by OCC from time to time regarding such Clearing Member's risk management policies, procedures, and practices. As compared to existing Rule 311(b), the language in proposed Rule 305(b) would be streamlined to not include any examples of such information and documentation addressed by this paragraph.

Proposed Rule 305(c) would be identical to the provisions set forth in existing Rule 311(c).

Proposed Rule 306—Notification and Reporting Requirements

OCC's notification and reporting requirements currently are set forth in various provisions of the By-Laws and the Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .07 of the By-Laws and Rules 201(b), 215, 216, 217(b), 303, 306, 308 and 310(a)–(c). The proposed rule change would consolidate and modify these requirements in new Rules 306, 306A and 306B.

Proposed Rule 306 would set forth a broad statement clarifying that each Clearing Member must provide to OCC such notices, reports, documentation, or other information required in the Rules and any other requirements promulgated by OCC.

Proposed Rules 306A and 306B are described below.

Proposed Rule 306A—Event-Based Reporting

Proposed Rule 306A would set forth the event-based reporting requirements and incorporate and modify the provisions currently set forth in existing Article V, Section 1, Interpretations and Policies .03 (clause (c)) and .07 of the By-Laws and existing Rules 201(b), 215, 217(b) and 303. Each paragraph in proposed Rule 306A is described below.

Paragraph (a)—Early Warning Notices

Proposed paragraph (a) would adopt many of the provisions in existing Rule 303 and set forth the early warning notice requirements for Clearing Members. Under proposed paragraph (a), a Clearing Member would be required to notify an officer of OCC 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 any of the circumstances described in subparagraphs (a)(1) through (a)(6) are met, as applicable. As compared to existing Rule 303(a), proposed Rule 306A(a) would simplify the notification requirement by specifying that one (rather than two) notices must be provided to an officer of OCC prior to the applicable deadline.

Proposed subparagraph (a)(1) would apply broadly to all types of Clearing Members, whereas proposed subparagraphs (a)(2) through (a)(6) would apply to specific types of Clearing Members. Each proposed subparagraph is described in greater detail below.

All Clearing Members. Proposed subparagraph (a)(1) would apply to all Clearing Members and is mostly identical to existing Rule 303(a). Under proposed subparagraph (a)(1), the early warning notice requirement would be triggered if a Clearing Member notifies, is required to notify, or receives notice from, any regulatory organization (as currently defined in the Rule 303, Interpretation and Policy .01 and would be relocated to Chapter I of the Rules) of any financial difficulty affecting the

[29] 17 CFR 39.13(h)(5)(ii).

Clearing Member or of any failure by the Clearing Member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. The new rule would be revised to clarify that it would apply to operational difficulty/responsibilities in addition to financial. Further, proposed subparagraph (a)(1) would clarify that 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 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 this subparagraph. The early warning notification to OCC must include a copy of any written notice provided or received by the Clearing Member from the regulatory organization.

Fully Registered Broker-Dealers

Proposed subparagraph (a)(2) would apply to fully registered broker-dealer Clearing Members and adopt many of the provisions set forth in existing Rule 303(b). Under proposed subparagraph (a)(2)(A), the early warning notice requirement would be triggered if the Clearing Member's net capital becomes less than the greater of (i) $12 million, (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% of net capital), or (iii) in the case of a Clearing Member electing to operate pursuant to the alternative standard, 5% of its aggregate debit items. As compared to existing Rule 303(b)(1), proposed Rule 306A(a)(2)(A)(i) would require early warning notification to the extent that net capital becomes less than $12 million (rather than $2.5 million) to reflect the change in net capital requirements as described in the description of proposed Rule 301 above.

Under proposed subparagraph (a)(2)(B), the early warning notice requirement would be triggered if the aggregate principal amount of such Clearing Member's satisfactory subordination agreements (other than such agreements which qualify as equity capital under SEC Rule 15c3–1(d)) exceeds 70% of such Clearing Member's debt-equity total. This new subparagraph (a)(2)(B) would be substantively identical to existing Rule 303(b)(2).

Under proposed subparagraph (a)(2)(C), the early warning notice requirement would be triggered if the Clearing Member carries accounts of listed options specialists in accordance with SEC Rule 15c3–1(c)(2)(x) or has elected to operate pursuant to SEC Rule 15c3–1(a)(6), and the sum of deductions and required equity, as applicable, exceeds 1000% of such Clearing Member's net capital. This new subparagraph (a)(2)(C) would replace the provisions currently set forth in existing Rule 303(b)(3)–(4).

Under proposed subparagraph (a)(2)(E), the early warning notice requirement would be triggered if the Clearing Member's Examining Authority has granted to such Clearing Member, pursuant to SEC Rule 15c3–1(c)(2)(v)(C), an extension of any time period provided for resolving short securities differences under SEC Rule 15c3–1(c)(2)(v)(A). This new subparagraph (a)(2)(E) would be substantively identical to existing Rule 303(b)(5).

Under proposed subparagraph (a)(2)(F), the early warning notice requirement would be triggered if the Clearing Member has provided any notice as required by SEC Rule 15c3–1(e)(1)(iv). Proposed subparagraph (a)(2)(F) also would require the Clearing Member to provide OCC with a copy of the notice so provided. This new subparagraph (a)(2)(F) would be substantively identical to existing Rule 303(b)(6).

Fully Registered FCMs. Proposed subparagraph (a)(3) would apply to fully registered FCM Clearing Members and replace the provisions set forth in existing Rule 303(c). Under proposed subparagraph (a)(3)(A), the early warning notice requirement would be triggered if the Clearing Member's adjusted net capital becomes less than the greater of $12 million or the early warning adjusted net capital requirements established by CFTC Rule 1.12(b). Under proposed subparagraph (a)(3)(B), the early warning notice requirement would be triggered if the Clearing Member has provided any notice as required by CFTC Rule 1.12(c), (d), (f)(3), (f)(4), (g) or (m). Proposed subparagraph (a)(3)(B) also requires the Clearing Member to provide OCC with a copy of the notice so provided.

Canadian Investment Dealers. Proposed subparagraph (a)(4)(A) would apply to Canadian Investment Dealer Clearing Members and (together with proposed subparagraph (a)(4)(B)) replace the provisions set forth in existing Rule 303(d). Under proposed subparagraph (a)(4)(A), the early warning notice requirement would be triggered if the Clearing Member's risk adjusted capital is less than $12 million or 5% of total margin required or if it subject to an early warning designation under the financial and operational rules established by IIROC.

Other Non-U.S. Securities Firms. Proposed subparagraph (a)(4)(B) would apply to all other Non-U.S. Securities Firm (*i.e.,* non-Canadian Investment Dealer) Clearing Members and (together with proposed subparagraph (a)(4)(A)) replace the provisions set forth in existing Rule 303(d). Under proposed subparagraph (a)(4)(B)(i), the early warning notice requirement would be triggered if the Clearing Member's net capital equivalent is less than the greater of (a) $12 million or (b) 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.

Under proposed subparagraph (a)(4)(B)(ii), the early warning notice requirement would be triggered if the Clearing Member's total equity is less than $30 million and the Risk Committee has prohibited the Clearing Member from using its non-U.S. jurisdiction's regulatory minimum and early warning requirements or otherwise requires the Clearing Member to supplement its non-U.S. jurisdiction's regulatory minimum or early warning requirements.

All Non-U.S. Securities Firms

Under proposed subparagraph (a)(4)(C), the early warning notice requirement would be triggered if the Clearing Member violates any rule or regulation 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).

Under proposed subparagraph (a)(4)(D), the early warning notice requirement would be triggered if the Clearing Member receives any notice (whether written or otherwise) 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.

Finally, proposed subparagraph (a)(4)(D) would permit OCC to specify other events that may trigger an early warning notice requirement.

Banks. Proposed subparagraph (a)(5) would apply to all Clearing Members that are Banks. Under proposed subparagraph (a)(5)(A), the early warning notice requirement would be triggered if the Clearing Member's Tier 1 Capital is less than $600 million. Under proposed subparagraph (a)(5)(B), the early warning notice requirement would be triggered if the 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 if the 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. Under proposed subparagraph (a)(5)(C), the early warning notice requirement would be triggered if the Clearing Member violates any rule or regulation relating to financial responsibility or protection of customer property of its regulatory agency (or any other governmental agency or instrumentality or independent organization or exchange to whose authority it is subject). Under proposed subparagraph (a)(5)(D), the early warning notice requirement would be triggered if the Clearing Member receives any notice (whether written or otherwise) 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. Finally, proposed subparagraph (a)(5)(E) would permit OCC to specify other events that may trigger an early warning notice requirement. In addition, the provisions of existing Rule 303, Interpretation and Policy .01 would be relocated to Chapter I of the Rules. Existing Rule 303, Interpretation and Policy .02 would be removed given that OCC no longer maintains different standards for exempt Non-U.S. Clearing Members.

Paragraph (b)—Notice of Material Changes and Information Requests

Proposed paragraph (b) would adopt many of the provisions in existing Rule 215 and set forth the notice requirements for material changes and other information requests. New subparagraphs (b)(1) through (b)(6) are described in greater detail below.

Subparagraph (b)(1). Proposed subparagraph (b)(1) would adopt the provisions currently set forth in existing Rule 215(a) without any changes. Under proposed subparagraph (b)(1), each Clearing Member would be required to provide OCC with prompt prior written notice of any enumerated material change in its form of organization or ownership structure.

Subparagraph (b)(2). Proposed subparagraph (b)(2) would modify and expand on the provisions currently set forth in existing Rule 215(b). Specifically, proposed subparagraph (b)(2) would require each Clearing Member to give OCC prompt written notice [30] of material operational or financial changes, including: (A) a change in location of clearing operations; [31] (B) a change in location of its facilities or offices maintained pursuant to Rule 302; [32] (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); [33] (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 Non-U.S. Clearing Member's regulatory capital standards; (G) 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.[34]

Subparagraph (b)(3). Proposed subparagraph (b)(3) (together with proposed subparagraph (b)(4)) would replace existing Rule 215(c). Under proposed subparagraph (b)(3), each Clearing Member must give OCC prompt prior written notice of its intention to enter into, terminate, or alter its outsourcing activities.

Subparagraph (b)(4). Proposed subparagraph (b)(4) (together with proposed subparagraph (b)(3)) would replace existing Rule 215(c). Under proposed subparagraph (b)(4), each Clearing Member must give OCC prompt written notice if separation or termination of an agreement occurs between the only personnel, associated person, or third-party provider who performs activities necessary to meet the requirements 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.

Subparagraph (b)(5). Proposed subparagraph (b)(5) would add a new event-based reporting requirement that each Clearing Member notify OCC 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.

Subparagraph (b)(6). Proposed subparagraph (b)(6) would modify existing Rule 215(d) to provide that each Clearing Member must, within the time period reasonably prescribed by OCC, furnish to OCC such documents and information as OCC may from time to time require pursuant to Chapters II and III of the Rules.

Paragraph (c)—Statutory Disqualifications

Proposed paragraph (c) would adopt and modify the provisions in existing Rule 217(b) and set forth the statutory disqualification notification requirements for Clearing Members. Under proposed paragraph (c), a Clearing Member, or applicant for clearing membership, that is or becomes subject to a statutory disqualification

[30] As compared to existing Rule 215(b), proposed Rule 306A(b)(2) would require ''prompt'' written notice (rather than 30-day prior written notice). This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Moreover, OCC believes certain changes that currently require prior notice (*i.e.,* planned changes) generally are not planned so prior notice is not practical.

[31] As compared to existing Rule 215(b)(1), proposed Rule 306A(b)(2)(A) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical.

[32] As compared to existing Rule 215(b)(2), proposed Rule 306A(b)(2)(B) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical. Proposed Rule 306A(b)(2)(B) also would clarify that it applies to both facilities and offices, and therefore would replace existing Rule 201(b) and existing Rule 215(b)(2).

[33] As compared to existing Rule 215(b)(3), proposed Rule 306A(b)(2)(C) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical.

[34] Proposed Rule 306A(b)(2)(L) would modify and replace a portion of existing Article V, Section 1, Interpretation and Policy .07.

must notify OCC in writing as soon as practicable upon learning of such statutory disqualification and in any event within 20 business days thereafter. As compared to existing Rule 217(b), proposed Rule 306A(c) would require notification within 20 business days (rather than 5 business days).

Proposed paragraph (c) also would require the Clearing Member to 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 and clarify that this includes (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, 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 are required to provide OCC 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 Clearing Member or applicant. OCC would eliminate the requirement that the member or applicant provide OCC notification of whether or not the Clearing Member is seeking to continue being a Clearing Member notwithstanding the statutory disqualification as this is assumed in most cases.

Proposed Rule 306B—Periodic Reporting

Proposed Rule 306B would set forth the periodic reporting requirements and incorporate and modify the provisions presently set forth in existing Rules 216, 306, 308 and 310(a)–(c). Each paragraph in new Rule 306B is described below.

Paragraph (a)—Financial Reports

Proposed paragraph (a) would replace existing portions of Rules 306 and 310(a)–(c) with a more concise set of requirements applicable to each type of Clearing Member. Proposed paragraph (a) also would clarify that OCC has broad discretion in requiring each Clearing Member to submit statements of its financial condition at such times and in such manner as shall be prescribed by OCC. Below are the requirements applicable to each type of Clearing Member.

Fully Registered Broker-Dealers. Every Clearing Member that is a fully registered broker-dealer would be required to file with OCC 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). As compared to existing Rule 306, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Fully Registered FCMs. Every Clearing Member that is a fully registered FCM would be required to file with OCC 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). As noted above, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Canadian Investment Dealers. Every Clearing Member that is a Canadian Investment Dealer would be required to file with OCC a true and complete copy of its Form 1 of the International Financial Reporting Standards within the later of (i) 20 business days after the end of each month or (ii) monthly deadlines established by IIROC. As noted above, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Other Non-U.S. Securities Firms. Every Clearing Member that is a Non-U.S. Securities Firm (excluding Canadian Investment Dealers) would be required to file with OCC true and complete copies of such financial reports specified by OCC 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.

U.S. Banks. Every Clearing Member that is a U.S. national bank or state-chartered bank would be required to file with OCC 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, ratios, and requirements 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 OCC 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, ratios, and requirements.

Non-U.S. Banks. Every Clearing Member that is a non-U.S. bank would be required to file with OCC true and complete copies of such financial reports specified by OCC 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 requirements. OCC would also relocate Rule 306, Interpretation and Policy .03, which requires that OCC deliver to the CFTC upon request any financial report provided to OCC pursuant to Rule 306 by a Clearing Member that is not an FCM, to new Rule 306B(a)(8).

Paragraph (b)—Annual Audited Financial Statements

Proposed paragraph (b) would replace existing Rule 308 with an annual requirement that is standardized across types of Clearing Members. Specifically, proposed paragraph (b) would require each Clearing Member to provide to OCC 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.

Paragraph (c)—Early or More Frequent Reporting

Proposed paragraph (c) would replace portions of existing Rule 306 with standardized requirements relating to early and more frequent reporting. Specifically, 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 Rule 306B, then the Clearing Member is required to file with OCC a true and complete copy of each such report at the same time it is filed with its relevant regulatory authority. In addition, proposed paragraph (c) would provide that OCC may, in its discretion, require more frequent financial reporting in such form as OCC may specify or other financial statements in such form or detail as may be prescribed by OCC, including for purposes of assessing

whether the Clearing Member is meeting the financial requirements for clearing membership on an ongoing basis.

Paragraph (d)—Extensions

Proposed paragraph (d) would replace a portion of existing Rule 308(e) with a standardized provision that permits OCC, in its discretion, to recognize an extension or later deadline granted by the Clearing Member's relevant regulatory authority for financial reports required under Rule 306B, provided that such extension is not issued on a permanent basis and a copy of such extension is filed with OCC in a timely manner.

Paragraph (e)—Large Trader Reports

Proposed paragraph (e) would adopt the provisions set forth in existing Rule 216 with no substantive changes.

Proposed Rule 307—Protective Measures

Existing Rules 304 and 305 set forth certain restrictions on distributions, transactions, positions and activities. The proposed rule change would adopt a more comprehensive set of protective measures in proposed Rules 307, 307A, 307B and 307C and incorporate, as appropriate, the provisions presently set forth in existing Rules 304 and 305.

Proposed Rule 307 would grant broad authority to OCC to impose protective measures on any Clearing Member or applicant for clearing membership that (i) is approaching or does not meet OCC's minimum membership standards or fails to provide information required under Chapters II and III of the Rules such that OCC is unable to determine whether it meets the minimum membership standards, (ii) presents increased credit or liquidity risk to OCC, (iii) is subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iv) whose financial condition, operational capability, or risk management capability otherwise makes it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public.

Below is a description of proposed Rules 307A, 307B and 307C.

Rule 307A—Restrictions on Distributions

The provisions in existing Rule 304 have been moved to new Rule 307A and modified to clarify that it applies to all qualified regulatory capital and to eliminate separate distribution restriction requirements for Non-U.S. Clearing Members. Proposed Rule 307A(a) would prohibit a Clearing Member from withdrawing qualified regulatory capital (by dividend, distribution, or otherwise) without the prior written authorization of OCC if, after giving effect to such withdrawal, an early warning 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. In turn, proposed Rule 307A(b) would provide that OCC may prohibit Clearing Members from withdrawing qualified regulatory capital (by dividend, distribution, or otherwise) if such Clearing Member is subject to enhanced monitoring and surveillance under OCC's watch level reporting process or the distribution in question could result in increased credit or liquidity risk to OCC.

Existing Rule 304C(c) and Rule 304, Interpretations and Policies .01 through .03, which set forth provisions applicable to exempt Non-U.S. Clearing Members, have been removed given the broad applicability of new Rule 307B(a) and (b) to all Clearing Members and the elimination of the concept of ''exempt Non-U.S. Clearing Members'' in OCC's Rules. OCC believes that proposed changes would simplify and clarify its Rules concerning restrictions on distributions and ensure that these protective measures are being applied consistently for all Clearing Members.

Rule 307B—Restrictions on Certain Transactions, Positions and Activities

The provisions in existing Rule 305 would be moved to proposed Rule 307B and modified to improve general readability and to further clarify OCC's broad authority to impose protective measures with respect to transactions, open positions and related activities. In particular, the provisions in existing Rule 305(a) and (b) would be combined in proposed Rule 307B(a) and streamlined to provide that if circumstances warrant the imposition of protective measures under Rule 307, then the CEO or COO (or if unavailable, a Designated Officer) may impose the following restrictions on a Clearing Member:

i. prohibit or impose limitations on clearing transactions that increase credit or liquidity risk;

ii. require such Clearing Member to reduce, eliminate, or hedge any existing positions presenting increased credit, liquidity or operational risk to OCC;

iii. require such Clearing Member to transfer any existing positions or accounts maintained or carried by such Clearing Member to another Clearing Member; and/or

iv. 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.

The provisions set forth in existing Rule 305(c) and (d) have been moved to new Rule 307B(b) and (c) with no substantive changes. Separately, existing Rule 305, Interpretations and Policies .01 through .12, which provide a non-exhaustive list of examples of situations in which OCC may take protective measures under existing Rule 305, have been removed to improve general readability of the Rule and to further clarify the breadth of OCC's authority to impose protective measures with respect to transactions, open positions and related activities.

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

The proposed rule change would adopt new Rule 307C to permit OCC to impose protective measures in the form of additional operational, personnel, financial resource or risk management requirements. Proposed Rule 307C also sets forth a non-exclusive list of such protective measures, including:

i. requiring Clearing Members to maintain higher minimum capital amounts than those required by Rule 301;

ii. 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; [35]

iii. 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;

iv. requiring Clearing Members to execute an agreement with a third-party service provider determined to be acceptable to OCC that will be in effect

[35] This proposed change would in part incorporate authority in existing Rule 604(g), which allows OCC to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if such Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. As a result, Rule 604(g) would be deleted from OCC's Rules.

until such time that the Clearing Member is able to comply with OCC's operational, personnel or risk management standards;

v. requiring Clearing Members to enhance its risk management policies, procedures and practices;

vi. requiring alternate methods of electronic connection (*e.g.,* lease line) due to operational risk concerns; and

vii. requiring additional reporting of its financial or operational condition at such intervals and in such detail as determined by OCC.

OCC believes the proposed protective measures are necessary and appropriate to ensure that OCC is able to manage the range of risks (including credit risk, liquidity risk, and operational risk) that may be presented by Clearing Members that do not comply, or are in danger of no longer complying, with OCC's minimum 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.

Rule 308—Statutory Disqualification

Existing Rule 217 sets forth OCC's requirements with respect to Clearing Members (or their principals in the case of CFTC-registered FCMs) subject to a statutory disqualification. The proposed rule change would relocate or otherwise eliminate the provisions set forth in Rule 217 as follows:

• The provisions set forth in existing Rule 217(a) would be moved to proposed Rule 308(a) and revised to further provide that in the event a Clearing Member is or becomes subject to a Statutory Disqualification,[36] OCC may impose protective measures under Rule 307 or conduct a hearing or institute a disciplinary proceeding in accordance with Chapter XII of the Rules to determine whether to no longer permit such Clearing Member to continue its membership. Proposed paragraph (a) also would clarify that OCC will not permit such Clearing Member to continue its membership if so ordered by the SEC.

• As discussed in the description of proposed Rule 306A, the provisions in existing Rule 217(b) would be moved to proposed Rule 306A(c) with modifications.

• The provisions in existing Rule 217(f) would be moved to proposed Rule 308(b) and modified to clarify that OCC may ''delay a final decision regarding a Clearing Member's Statutory Disqualification'' (rather than waiving provisions of existing Rule 217) until any proceeding before another self-regulatory organization is concluded. The remaining portions of existing Rule 217(f) would remain unchanged (aside from relocating to proposed Rule 308(b)).

• The provisions in existing Rule 217(c)–(e) and (g) would be removed as unnecessary for two reasons: (1) proposed paragraph (a) provides broad authority to conduct a hearing or institute a disciplinary proceeding in accordance with Chapter XII of the Rules to determine whether to no longer permit such Clearing Member to continue its membership; and (2) OCC's minor rule violation plan in proposed Rule 1203 would include any failure to timely notify OCC of any Statutory Disqualification under new Rule 306A(c).

Proposed Changes to Rule 609—Intra-Day Margin

OCC proposes minor modifications to Rule 609, including conforming changes to clarify that OCC may require the deposit of intra-day margin in response to changes in a Clearing Member's operational or risk management condition in addition to its financial condition. The proposed change is intended to reflect the more expansive protective measure rules proposed in new Rule 307C. OCC would also remove references to unspecified ''officers'' of OCC as these details are included in OCC's internal policies and procedures.

Proposed Rule 1203—Minor Rule Violations

The rules applicable to minor rule violations currently are set forth primarily in existing Rule 1201(b), Rule 215(f), and Interpretation and Policy .01 of Rule 215(f). Existing Rule 1201(b) sets forth OCC's ''plan'' (within the meaning of Rule 19d–1(c)(2)) for the disposition of ''minor rule violations'' and generally provides that OCC may impose a fine of $2,500 or less for any violation designated in the By-Laws or the Rules as a minor rule violation. Any such fine for a minor rule violation would be in lieu of commencing a disciplinary proceeding pursuant to Rule 1201(a). Existing Rule 1201(b) also sets forth processes for imposing and contesting fines for minor rule violations. The proposed rule change would move the provisions set forth in existing Rule 1201(b) to new Rule 1203(a) with no substantive changes.

The proposed rule change also would remove existing Rule 215, Interpretation and Policy .01 and replace it with new Rule 1203(b) and (c), which modify the list of violations that may constitute a minor rule violation to include the following:

• a violation of Rule 205 (relating to the filing of a certified list of authorized signatories);

• a violation of Rule 208 (relating to maintaining records of confirmed trade data);

• a violation of Rule 210 (relating to the payment of fees and charges);

• a violation of Rule 302(b)–(d) (relating to the operational capability to maintain offices, books and records and the ability to appropriately discharge responsibilities);

• a violation of Rule 303(c) (relating to the timely provision of information concerning personnel);

• a violation of Rule 306A(a)(2)(e) (relating to providing OCC with a copy of any notice required under paragraph (e)(1)(iv) of Rule 15c3–1);

• a violation of Rule 306A(b) (relating to providing notice of material changes and information requests);

• a violation of Rule 306A(c) (relating to providing notice of any statutory disqualification);

• a violation of Rule 306B (relating to the filing of periodic reports); and

• any failure to provide such other requested documents and information in connection with the requirements of Chapters II and III of the Rules, including, but not limited to, financial, regulatory and other information, as OCC may in its discretion require.

In addition, proposed Rule 1203(e) would stipulate that OCC may institute disciplinary proceedings against a Clearing Member pursuant to Chapter XII of the Rules for a violation of any of the requirements listed above.

The proposed rule change also would replace the existing fine schedule with a simplified fine schedule in new Rule 1203(c) that imposes $1,500 for the first minor rule violation and $2,500 for a second violation occurring within a rolling 24-month period. Additionally, three or more violations within a rolling 24-month period would result in a disciplinary proceeding in accordance with Chapter XII of the Rules. Proposed paragraph (d) also would clarify that fines will be levied for offenses within a rolling 24-month period beginning with the first occasion.

[36] As noted above in the description of proposed Rule 204, Rule 101 has been revised to define the term ''Statutory Disqualification'' as (i) in the case of a fully registered broker-dealer, a statutory disqualification as defined in section 3 of the Exchange Act, (ii) in the case of a fully registered FCM, the applicant or Clearing Member or a principal thereof, as defined in CEA section 8a(2), is subject to statutory disqualification under CEA section 8a(2)–(4), or (iii) in the case of a Non-U.S. Securities Firm or bank, any similar provision of the laws or regulations applicable to such applicant or Clearing Member.

Proposed Rule 1204—Discipline by Other Self-Regulatory Organizations

Under the proposed rule change, existing Rule 1203 would be renumbered as Rule 1204 with no other substantive changes.

Proposed Rule 2201—Instructions to the Corporation

Portions of existing Article V, Section 1, Interpretation and Policy .07 currently set forth requirements applicable to Canadian Hedge Clearing Members on behalf of which CDS maintains an identifiable sub-account at DTC. The proposed rule change would move these provisions to new paragraphs (c) and (d) of Rule 2201 and eliminate references to ''Canadian Hedge Clearing Member'' given that term would no longer be defined. There are no other substantive changes to these provisions.

Additional Proposed Changes to Terms

The proposed rule change would move various defined terms from the By-Laws to Chapter I of the Rules, including Canadian Clearing Member, FATCA, FATCA Compliant, FFI Clearing Member, Non-U.S. Regulatory Agency, Non-U.S. Securities Firm, Qualified Intermediary Assuming Primary Withholding Responsibility, Qualified Derivatives Dealer. The defined terms Section 871(m) Effective Date and Section 871(m) Implementation Date would be removed because these dates have passed so the defined terms are no longer necessary.

The proposed rule change also would adopt a new definition for the term Statutory Disqualification.[37]

Finally, the proposed rule change would eliminate various distinct categories of Clearing Members and their respective definitions or other usage from the By-Laws, including, Canadian Hedge Clearing Member, Domestic Clearing Member, exempt Non-U.S. Clearing Member, futures-only affiliated Clearing Member, Hedge Clearing Member, Managed Clearing Member, Managing Clearing Member and Market Loan Clearing Member. References to these terms in the text of the By-Laws or the Rules would be replaced with general references to ''Clearing Member'' and all Clearing Members would be subject to the consistent standards set forth in the proposed rule change.

OCC would continue to maintain the concept of Appointing Clearing Members and Appointed Clearing Members; however, these members would no longer be subject to distinct or different membership standards.

Additional Proposed Deletions

Existing Rule 204

The proposed rule change would remove existing Rule 204, which pertains to designating physical locations as clearing offices of the Clearing Member. As a practical matter, this Rule is no longer relevant to the operations of OCC or its Clearing Members given the migration of trading, clearance and settlement activities to electronic means.

Existing Rule 309

The proposed rule change would remove existing Rule 309, which sets forth certain requirements for Managed Clearing Members and Managing Clearing Members. More generally, the proposed rule change would remove references to facilities management agreements, Managing Clearing Members and Managed Clearing Members. These rules would be replaced by the more general rules proposed for outsourcing to third-party service providers.[38]

Existing Rule 309A

The proposed rule change would remove existing Rule 309A, which sets forth minimum capital and other requirements for Appointed Clearing Members. The concept of Appointing and Appointed Clearing Members would remain in OCC's rules, but they would no longer be a distinct ''membership type.'' Any Clearing Member serving an Appointed Clearing Member capacity would be subject to the same minimum capital requirements as all other Clearing Members (as set forth in proposed Rule 301).[39] OCC would also revise the definition of Appointed Clearing Member to clarify that an Appointed Clearing Member must be authorized to clear physically-settled equity options and stock futures to ensure they have the appropriate operational capability and expertise to settle such transactions on behalf of other Clearing Members.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with section 17A of the Act[40] and the rules thereunder applicable to OCC. Section 17A(b)(3)(B) of Act[41] provides that the rules of a clearing agency may permit, among other things, a registered broker-dealer, bank or other person or class of persons as is appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions to become a participant in such clearing agency. As described in greater detail above, the proposed rule change expands the list of types of entities eligible for clearing membership in proposed Rule 201 to include eligible banks. As described herein, the proposed rule change sets forth robust financial and operational membership standards applicable to eligible banks that are consistent with the financial and operational membership standards applicable to existing types of institutions that are eligible for clearing membership. As such, OCC believes that eligible banks that meet the membership standards do not pose additional risks relative to existing types of institutions that are eligible for clearing membership and may appropriately participate in the prompt and accurate clearance of securities transactions at OCC consistent with section 17A(b)(3)(B) of Act.[42] Moreover, OCC believes that the prudent expansion of types of institutions that are eligible for clearing membership will broaden the clearing membership base and potentially mitigate counterparty concentration risk consistent with the risk-based approach prescribed in Rule 17Ad–22(e)(18)[43] as described below.

Section 17A(b)(4)(B) of Act[44] permits a clearing agency to 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. In addition, section 17A(b)(4)(B) of Act[45] permits a registered clearing agency to 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, the proposed rule change consolidates and modifies the admission procedures and conditions to admission addressed in proposed Rules 203 and 204 to better 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 deny or otherwise condition the participation of any person that does not meet the

[37] *See supra* discussion on proposed Rule 204.

[38] *See supra* discussion on proposed Rule 303.

[39] *See supra* discussion on proposed Rule 301.

[40] 15 U.S.C. 78q–1.

[41] 15 U.S.C. 78q–1(b)(3)(B).

[42] *Id.*

[43] 17 CFR 240.17Ad–22(e)(18).

[44] 15 U.S.C. 78q–1(b)(4)(B).

[45] *Id.*

applicable membership standards. As such, OCC believes that the proposed rule change promotes the purposes of section 17A(b)(4)(B) of Act.[46]

Section 17A(b)(3)(F) of Act[47] requires, among other things, that the rules of a clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. As appropriate, the proposed rule change seeks to consolidate and modify the admission procedures and conditions to admission addressed in proposed Rules 203 and 204. Where appropriate, the proposed rule change adopts uniform standards in Chapters II and III of the Rules that apply to each type of institution that is eligible for clearing membership. This consolidation and uniformity is intended to (among other things) help OCC to continue to promote fair and open access and non-discrimination among Clearing Members and applicants for clearing membership. Likewise, under proposed Rule 201, the proposed rule change seeks to maximize the types of products and other activities that each type of Clearing Member may potentially be eligible. As such, OCC believes that the proposed rule change promotes the purposes of section 17A(b)(3)(F) of Act.[48]

Rule 17Ad–22(b)(7)[49] provides that a clearing agency is required to ''[p]rovide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, provided that such persons are able to comply with other reasonable membership standards, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application.'' As described in greater detail herein, the proposed rule change sets forth in proposed Rule 201 a capital floor of at least $500 million in Tier 1 Capital for eligible banks and at least $10 million for all other types of institutions eligible for clearing membership. With respect to eligible banks, this higher capital floor is intended to account for the larger capital base normally maintained by eligible banks as compared to other types of eligible institutions. Given the nature of the capital base normally maintained by eligible banks, OCC believes that the capital floor of at least $500 million in Tier 1 Capital for eligible banks is necessary to mitigate risks that could not otherwise be effectively managed by other measures in accordance with Rule 17Ad–22(b)(7).[50] In addition, the capital floor of at least $10 million for all other types of institutions eligible for clearing membership is consistent with Rule 17Ad–22(b)(7).[51]

Rule 17Ad–22(e)(18)[52] requires a clearing agency, among other things, 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 purpose of the proposed rule change is to improve upon OCC's existing financial and operational membership standards to continue to permit fair and open access and to further mitigate counterparty credit risk introduced by Clearing Members. With respect to financial resources, the proposed rule change increases the minimum capital requirements for existing types of Clearing Members and introduces minimum capital requirements for each of the new types of Clearing Members in proposed Rule 301. The proposed rule change also enhances and otherwise clarifies OCC's early warning notice and periodic reporting requirements for Clearing Members under proposed Rules 306, 306A and 306B. Likewise, the proposed rule change adopts additional protective measures, including enhancing restrictions on capital distributions by Clearing Members, under proposed Rules 307, 307A, 307B and 307C. With respect to operational capacity, the proposed rule change adopts or otherwise modifies the provisions set forth in proposed Rules 302, 303 and 304 to enhance OCC's operational capability, experience, and competence standards and related resources for Clearing Members, including, among other things, requirements relating to facilities, personnel and third-party arrangements. Importantly, the proposed rule change subjects Clearing Members to each of these financial and operational membership standards in a non-discriminatory manner under the Rules. As such, OCC believes that these enhanced financial and operational membership standards promote the requirements of Rule 17Ad–22(e)(18).[53]

Rule 17Ad–22(e)(18)[54] also requires a clearing agency to monitor for compliance with its participation requirements on an ongoing basis. The proposed rule change amends the notification and reporting requirements in proposed Rules 306, 306A and 306B to enhance the event-based reporting and periodic reporting obligations imposed on Clearing Members. OCC believes that these changes will better assist OCC in monitoring for compliance with its clearing membership requirements consistent with Rule 17Ad–22(e)(18).[55]

Rule 17Ad–22(e)(21)[56] requires a clearing agency, among other things, to be efficient and effective in meeting the requirements of its participants and the markets it serves. In furtherance of this requirement, the proposed rule change sets forth several changes intended to increase efficiency and effectiveness, including but not limited to the following: (i) the allowance of electronic, optical or similar signatures under proposed Rule 205; (ii) enhancements with respect to requirements applicable to submissions to and retrieval of items under proposed Rule 207; and (iii) the removal of authorization stamp references in proposed Rule 209. OCC believes that these changes are consistent with Rule 17Ad–22(e)(21).[57]

Rule 17Ad–22(e)(4)[58] requires, among other things, a clearing agency to manage its credit exposures to participants. The proposed rule change adopts new Rule 212 to address circumstances in which a Clearing Member voluntarily terminates its membership. Among other things, proposed Rule 212 sets forth procedures for the closing out or transfer of all open positions and the treatment of the Clearing Member's Clearing Fund contribution during the withdrawal period. OCC believes that proposed Rule 212 is consistent with its requirement to manage its credit exposures to

[46] *Id.*

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] *Id.*

[49] 17 CFR 240.17Ad–22(b)(7).

[50] *Id.*

[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(18).

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] 17 CFR 240.17Ad–22(e)(21).

[57] *Id.*

[58] 17 CFR 240.17Ad–22(e)(4).

participants under Rule 17Ad–22(e)(4).[59]

Rule 19d–1(c)(2)[60] permits a self-regulatory organization to adopt a plan for minor rule violations that, among other things, result in fines not exceeding $2,500. The proposed rule change amends OCC's minor rule violation plan in proposed Rule 1203. Among other things, the amended plan includes fines not to exceed $2,500 for violations of specified rules that may be deemed minor rule violations under the Rules. OCC believes that these proposed changes are consistent with Rule 19d–1(c)(2),[61] including the designation of Rule 1203 as a ''plan.''

Rule 17Ad–22(e)(1)[62] requires, among other things, a clearing agency to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities. As described in greater detail herein, the proposed rule change makes certain organizational and other clarifying changes to the By-Laws and the Rules in order to prevent unnecessary regulatory burdens, to provide greater clarity and transparency, and to promote efficient administration of the By-Laws and the Rules. OCC believes that these proposed rule changes promote the purposes of Rule 17Ad–22(e)(1).[63]

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

Section 17A(b)(3)(I)[64] of the Act requires that the rules of a clearing agency do 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 change 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. The proposed rule change imposes these enhanced standards uniformly on all Clearing Members within a particular category of institution, and whenever possible, uniformly across all Clearing Members irrespective of category. Furthermore, any differences in the standards applicable to different categories of institutions are a result of OCC's risk-based, objective criteria in accordance with the requirements set forth in Rule 17Ad–22(e)(18)[65] under the Act, and therefore are necessary and appropriate in furtherance of the purposes of the Act.

The proposed increase in minimum capital requirements for broker-dealers, FCMs, Canadian Investment Dealers, and other Non-U.S. Securities Firms may present a burden on competition among certain Clearing Members. OCC believes the proposed increase in minimum capital requirements would impact fewer than ten current Clearing Members; however, several of those impacted Clearing Members at times did maintain sufficient capital to meet the proposed requirements. OCC believes the higher regulatory capital requirements are necessary and appropriate in furtherance of the purposes of the Act. OCC believes that more thinly capitalized members present greater risks to OCC that may impact OCC's ability to comply with the requirements of the Act applicable to clearing agencies. For example, less capitalized Clearing Members may be unable to meet potential Clearing Fund replenishment/assessment obligations or Operational Loss Fee assessments. This could present increased credit and liquidity risk to OCC in times of extreme stress and place additional burdens on other Clearing Members that may need to compensate for the absence of such resources. 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.[66]

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

On February 27, 2023 and March 3, 2023, OCC received an unsolicited draft comment letter and additional comments from Broadridge Business Process Outsourcing LLC (''Broadridge'') on an initial version of the proposal. The draft letter expressed full support for OCC's proposal and suggested certain clarifying word choice changes in connection with the initially proposed text for Rules 303(a), (b) and (c). OCC has addressed these written comments from Broadridge by incorporating them as part of the text of these proposed provisions.

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 self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2023–002 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–2023–002. This file number should be included on the subject line if email is used. To help the

[59] *Id.*
[60] 17 CFR 240.19d–1(c)(2).
[61] *Id.*
[62] 17 CFR 240.17Ad–22(e)(1).
[63] *Id.*
[64] 15 U.S.C. 78q–1(b)(3)(I).
[65] 17 CFR 240.17Ad–22(e)(18).
[66] 15 U.S.C. 78q–1(b)(3)(F).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2023–002 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05689 Filed 3–20–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97146; File No. SR–CboeBZX–2023–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Sponsored Participant Rules 11.3(a) and 11.3(b)(2)

March 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Exchange Rule 11.3(a)–(b) to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of SEC Rule 15c3–5, the Market Access Rule (''MAR'').[5] The text of the proposed rule change is provided below and in Exhibit 5.[6]

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to amend Exchange Rule 11.3(a)–(b) to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of the MAR.

Sponsored Access Definition

Per current Exchange rules a ''Sponsored Participant''[7] may be a Member[8] or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member[9] pursuant to the requirements set forth in Exchange Rule 11.3(b)(1)–(3), ''Sponsored Participants''. The Exchange proposes to amend Rule 11.3(a) to include the following definition, ''Sponsored Access shall mean an arrangement whereby a Member permits its Sponsored Participants to enter orders into the Exchange's System that bypass the Member's trading system and are routed directly to the Exchange, including through a service bureau or other third-party technology provider.'' The Exchange notes that the proposed definition of Sponsored Access

[67] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.15c3–5—Risk management controls for brokers or dealers with market access.

[6] The Exchange proposes to implement the proposed changes to Rule 11.3(a)–(b)(1)–(3) on a date that will be announced via Cboe Trade Desk, notifying both existing and prospective Sponsoring Members and Sponsored Participants, of the new rule language and required contractual provisions.

[7] The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3. *See* Exchange Rule 1.5(x), definition of ''Sponsored Participant''.

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Exchange Rule 1.5(n), definition of ''Member''.

[9] The term ''Sponsoring Member'' shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *See* Exchange Rule 1.5(y), definition of ''Sponsoring Member''.