

**EXHIBIT 5A**



**BY-LAWS**

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

THE OPTIONS CLEARING CORPORATION

BY-LAWS

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ARTICLE I – DEFINITIONS

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A.

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~~Associated Market Maker~~

~~(14) The term “associated Market Maker” means a person maintaining an account with a Clearing Member as a Market Maker, specialist, stock market maker, stock specialist or Registered Trader that is a Related Person of the Clearing Member and shall include any participant, as such, in an account of which 10% or more is owned by an associated Market-Maker, or an aggregate of 10% or more of which is owned by one or more associated Market-Makers.~~

~~Adopted January 19, 1994.~~

B.

~~Backloaded OTC Option~~

~~(1) The term “Backloaded OTC option” means an OTC option for which the premium payment date communicated to the Corporation by the OTC Trade Source is prior to the business day on which such OTC option is submitted to the Corporation for clearing.~~

(2) – (8) [Renumbered as 1. - 7.; otherwise no change]

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C.

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Class

(11) The term “class” means, when applied to options, all option contracts of the same type and style covering the same underlying interest; provided, however, that ~~OTC options and~~ listed options that would otherwise constitute a single class of options shall constitute separate classes. When applied to futures, the term “class” means all futures covering the same underlying interest.

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**Clearing Member**

(15) The term “Clearing Member” means a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. References in the By-Laws or Rules to the term “Clearing Member” preceded by a capitalized reference to an underlying interest or a cleared contract, e.g., a “Stock Clearing Member,” or a “Security Futures Clearing Member,” shall be deemed to be to a Clearing Member approved in accordance with Chapter II of the Rules to clear transactions in options on the specified underlying interest, or in the cleared contract, as applicable, provided that the term “Stock Clearing Member” shall be deemed to include a Clearing Member approved to clear transactions in BOUNDS as well as stock options, the term “Treasury Securities Clearing Member” shall mean a Clearing Member approved to clear transactions in Treasury Securities options excluding yield-based Treasury options and the term “Index Clearing Member” shall mean a Clearing Member approved to clear transactions in cash-settled options other than ~~OTC options and~~ flexibly structured options on fund shares that are cash settled. ~~The term “OTC Index Option Clearing Member” means a person that has been approved to clear OTC index options.~~

\* \* \*

(27) The term “confirmed trade” means a transaction for the purchase, writing, or sale of a cleared contract, or for the closing out of a long or short position in a cleared contract, that is ~~(i)~~ effected on or through the facilities of an Exchange and submitted to the Corporation for clearance ~~or (ii) affirmed through the facilities of an OTC Trade Source and submitted to the Corporation for clearance.~~

**. . . Interpretations and Policies:**

**.01** The term ~~“Exchange transaction” was removed from the By-Laws and Rules and replaced with the term “confirmed trade” to reflect the expansion of the Corporation’s clearing activities into OTC options.~~ “Confirmed trade” is a successor term to the term “Exchange transaction.” Any reference to the term “Exchange transaction” or “exchange transaction” in any agreement to which the Corporation is a party should be interpreted to refer instead to the term “confirmed trade.”

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**I.**

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**Index Multiplier**

(3) The term “index multiplier” (i) as used in reference to an index option contract ~~other than an OTC index option contract,~~ means the dollar amount (as specified by the Exchange on which such contract is traded) by which the current index value is to be multiplied to obtain the aggregate current index value, ~~(ii) as used in reference to an OTC index option contract, means the dollar amount (as agreed upon by the parties to such transaction) by which the current index value is to be multiplied to obtain the aggregate current index value,~~ and (iii) as used in reference

to index futures of any series, means the dollar amount (as specified by the Exchange on which such series is traded) by which the final settlement price in respect of such futures is to be multiplied to obtain the final variation payment. Such term replaces the term “unit of trading,” used in reference to other kinds of options.

\* \* \*

Index Value Determinant

(4) The term “index value determinant,” used in respect of settlement of flexibly structured index option contracts and futures ~~and OTC options~~, means the method for determining the current index value on the expiration date or maturity date as that method is reported to the Corporation by the applicable Exchange ~~or OTC Trade Source~~.

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O.

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Origination Date

~~(5) The term “origination date” means the date when the bilateral option was entered into by the parties to such bilateral option, as communicated to the Corporation by the OTC Trade Source.~~

\* \* \*

OTC Index Option

~~(6) The term “OTC index option” means an “OTC option,” as defined in this Article I, that is an index option.~~

\* \* \*

OTC Option

~~(7) The term “OTC option” means an “option contract,” as defined in this Article I, with variable terms that are negotiated bilaterally between the parties to such transaction (subject to any specific requirements applicable to such products as set forth in the By-Laws and Rules), and that is affirmed through the facilities of an OTC Trade Source and submitted to the Corporation for clearing as a confirmed trade.~~

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OTC Trade Source

~~(8) The term “OTC Trade Source” means any electronic messaging system approved by the Corporation through which transactions in OTC options may be affirmed by the parties to such transactions and submitted to the Corporation for clearance.~~

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**OTC Trade Source Rules**

~~(9) The term “OTC Trade Source Rule,” when used in respect of any OTC Trade Source, means the rules, agreements, policies and procedures of the OTC Trade Source applicable to users or participants of the OTC Trade Source.~~

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T.

**Trade Date**

(1) The term “trade date” in respect of any confirmed trade effected on or through the facilities of an Exchange means the day on which such transaction occurred except that the trade date in respect of confirmed trades in cleared contracts that are effected in trading sessions beginning on one calendar day and ending on the next calendar day shall be deemed to be the calendar day on which such trading ends. ~~The term “trade date” in respect of any confirmed trade in OTC options means the day on which such transaction is accepted by the Corporation for clearance.~~

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V.

**Variable Terms**

(1) The term “variable terms” in respect of a series of option contracts ~~other than OTC options~~ means the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and the expiration date of such option contract. In addition to these variable terms, flexibly structured options on fund shares may settle physically or settle in cash. The term “variable terms” ~~in respect of a series of OTC options means the terms of such options that are permitted to be negotiated bilaterally between the parties within the range of values specified by the Corporation therefor as set forth in the By-Laws and Rules.~~ “Variable terms,” when used in respect of a series of futures means the name of the underlying interest, the maturity date, the method of determining the final settlement price, and the series marker, if any, and in the case of a flexibly structured index future, the index value determinant and the index multiplier.

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**ARTICLE VI – CLEARANCE OF CONFIRMED TRADES****General Clearance Rule**

SECTION 1. All confirmed trades shall be cleared through the Corporation, and no other transaction shall be cleared through the Corporation without its consent.

*... Interpretations and Policies:*

.01 (a) Subject to paragraph (c) below, it is the policy of the Corporation to permit a Clearing Member to submit adjustments to its positions with the Corporation to (1) effect a transfer of accounts between Clearing Members; (2) effect a Return, (3) effect a CMTA Retransfer; (4) correct a bona fide error or omission regarding a confirmed trade previously submitted to the Corporation by the Exchange, security futures market, futures market, or international market ~~or OTC Trade Source~~ on which such confirmed trade occurred or was affirmed; (5) grant a request for offset pursuant to Rule 1306; and (6) effect a retender in connection with the settlement of a physically-settled commodity future pursuant to Rule 1307. Such data shall be submitted in such form and within such times as the Corporation shall prescribe. Such adjustments shall be treated as confirmed trades for the purposes of Sections 15 and 16 of Article VI of the By-Laws and for the purposes of other sections of Article VI except where the context otherwise requires. ~~Notwithstanding the foregoing, adjustment of positions in OTC Options shall be a manual process and subject to such procedures as the Corporation may specify from time to time.~~

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SECTION 3. Every Clearing Member may establish and maintain with the Corporation one or more of the following accounts:

(a) – (b) [No change]

(c) A combined Market-Makers' account, which shall be confined to the confirmed trades of the Market-Makers for which it is established. No confirmed trades of the Clearing Member or proprietary Market-Makers shall be included in a combined Market-Makers' account that is used for the confirmed trades of Market-Makers that are not proprietary Market-Makers. ~~Likewise, no confirmed trades of associated Market-Makers shall be included in a combined Market-Makers' account that is used for the confirmed trades of Market-Makers that are not associated Market-Makers.~~ The Clearing Member agrees, and represents to the Corporation that it has obtained the agreement of each Market-Maker on whose behalf positions may be maintained in a combined Market-Makers' account, that (i) the positions of such Market-Maker may be commingled in a combined Market-Makers' account with the positions of the Clearing Member acting as Market-Maker or of other proprietary Market-Makers if such Market-Maker is a proprietary Market-Maker; ~~with the positions of other associated Market-Makers if such Market-Maker is an associated Market-Maker,~~ or with other Market-Makers that are not proprietary ~~or associated Market-Makers~~ if such Market-Maker is not a proprietary ~~or associated~~ Market-Maker; (ii) the Corporation shall have a restricted lien on all long positions in securities options and on other securities (including security futures) in such combined Market-Makers' account and the proceeds thereof and a general lien on all other funds and property in such combined Market-Makers' account, (iii) the Corporation shall have the right to net all writing transactions against all purchase transactions effected in such account in accordance with the Rules, (iv) the Corporation may close out the positions in the account, and apply the proceeds thereof, at any time without prior notice to the Clearing Member or Market-Maker, and (v) notwithstanding the provisions of clause (i) hereof, if a combined Market-Makers' account is confined to the confirmed trades of the Clearing Member and proprietary Market-Makers, the Corporation shall have a general lien on all positions and on all other securities, margin, and other funds and property in such account, and the account shall be a "firm lien account."

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*... Interpretations and Policies:*

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**.03** The fact that a Clearing Member may have accounts under more than one Clearing Member number shall have no significance for purposes of a liquidation of a Clearing Member's accounts under Chapter XI of the Rules, and all such accounts—whether or not representing separate business segments or divisions—shall be treated as accounts of the same suspended Clearing Member. Although a Clearing Member may maintain more than one firm lien account with the Corporation, all of the Clearing Member's firm lien accounts established under paragraphs (a), (b)(iv), (c)(v), and (k) of this Section 3 shall be treated as a single firm lien account in the event of such a liquidation. Similarly, in such an event, all of the Clearing Member's firm non-lien accounts established under paragraph (a) of this Section 3 shall be treated as a single firm non-lien account, ~~all of the Clearing Member's combined Market-Makers' accounts established under paragraph (c) of this Section 3 for associated Market-Makers will be treated as a single combined Market-Makers' Account;~~ all of the Clearing Member's combined Market-Makers' accounts established under paragraph (c) of this Section 3 for Market-Makers that are not proprietary ~~or associated~~ Market-Makers will be treated as a single combined Market-Makers' Account, all of the Clearing Member's customers' accounts established under paragraph (e) of this Section 3 shall be treated as a single customers' account, all of the Clearing Member's segregated futures accounts established under paragraphs (f) and (j) of this Section 3 shall be treated as a single segregated futures account, all of the Clearing Member's JBO Participants' accounts established under paragraph (e) of this Section 3 shall be treated as a single JBO Participants' account, and all of the Clearing Member's customers' lien accounts established under paragraph (i) of this Section 3 shall be treated as a single customers' lien account. Each separate account maintained by a Clearing Member under paragraph (b) or (d) of this Section 3, with the exception of a proprietary Market-Maker account, shall be treated in a liquidation as a separate account.

Whenever a group of restricted lien accounts is treated as a single account in accordance with this Interpretation .02, all assets subject to the restricted lien shall secure obligations arising in any of the accounts within such group of accounts.

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**.06** Paragraph ~~I~~(c) of this Section 3 provides, in effect, for ~~three~~ two separate types of combined Market-Maker accounts: (i) a combined account limited to Market-Makers that are not ~~neither~~ proprietary Market-Makers ~~nor associated Market-Makers (as defined in Article I of the By-Laws); and~~ (ii) a combined account limited to proprietary Market-Makers; ~~and (iii) a combined account limited to associated Market-Makers.~~ Each of these is a separate account for purposes of holding positions and collateral and determining margin requirements, and each such account type would be liquidated separately under the provisions of Chapter XI of the Rules. The Corporation may use its system sub-accounting function, with each account margin, collateral and settlement enabled, in order to maintain these three separate account types under the same Clearing Member number, and each account would nevertheless be treated as a separate account for all purposes under the By-Laws and Rules. If these separate account types are maintained

under the same Clearing Member number, in addition to depositing collateral in respect of a specific account type, the Clearing Member may deposit collateral in respect of all three combined Market-Maker account types, provided that collateral deposited in respect of all three account types must be limited to proprietary collateral, and shall be so treated for all purposes under the By-Laws and Rules, including, without limitation, for purposes of a liquidation of a Clearing Member's accounts under Chapter XI of the Rules and for purposes of close-out netting under Article VI, Section 27 of the By-Laws.

\* \* \*

~~.09 Notwithstanding anything to the contrary in this Section 3, confirmed trades in OTC options shall be effected, and positions in OTC options shall be maintained, only in a Clearing Member's firm account, separate Market Maker's account, combined Market Makers' account or securities customers' account, as applicable. Confirmed trades in certain classes of OTC options, as specified by the Corporation from time to time, for which resulting positions are to be carried in a securities customers' account must be submitted to the Corporation with a customer ID assigned by the OTC Trade Sourcee for the limited purpose of identifying whether a transaction in an OTC Option was an opening transaction or a closing transaction.~~

.10 [renumbered .09; otherwise no change]

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### Terms of Cleared Contracts

SECTION 10. (a) The applicable provisions of the By-Laws and the Rules, including, without limitation, the liens on cleared contracts and the liquidation rights of the Corporation provided for therein, shall constitute part of the terms of each cleared contract issued by the Corporation.

(b) Except to the extent provided otherwise in the next sentence with respect to delayed start options and except to the extent provided otherwise in the By-Laws and Rules with respect to transactions in flexibly structured options ~~or OTC options~~, the expiration date and exercise price and, (i) in the case of capped option contracts, the cap interval (as defined, in the case of capped cash-settled option contracts, in Article XVII of the By-Laws), and (ii) in the case of packaged spread options, the base exercise price and spread interval (as defined in Article XXVI of the By-Laws), of option contracts of each series of options shall be determined by each Exchange at the time such series of options is first opened for trading on that Exchange, provided that the expiration date is not a date specified by the Corporation as ineligible to be an expiration date. In the case of delayed start options, the exercise price setting date and the exercise price setting formula of option contracts of each series shall be determined by the Exchange at or before the time such series of options is first opened for trading on that Exchange. The unit of trading of option contracts of each series of options shall be designated by the Corporation prior to the time such series of options is first opened for trading, and in the absence of such designation for a series of options in which the underlying security is a common stock, the unit of trading shall be 100 shares. The unit of trading and exercise price established for an option contract are subject to adjustment in accordance with the By-Laws.

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(g) New series of cleared contracts may generally be opened on a same day or next day basis; provided, however, that no series of cleared contracts shall be opened for trading without the consent of the Corporation unless the Corporation shall have received prior notice thereof from the Exchange not later than the applicable deadline for new series established from time to time by the Corporation. The Corporation may require a longer notice period for new series of cleared contracts having as a contract month, maturity date or expiration month a calendar month that is not then, or was not during the prior calendar year, in use for any other series of cleared contract. Series of flexibly structured cleared contracts may be subject to different notice periods than those applicable to other cleared contracts. ~~Notwithstanding any other provision of this Section 10, a new series of OTC options may be opened on the date a confirmed trade in OTC options is accepted by the Corporation for clearing and all OTC options covering the same underlying interest and having identical terms shall be considered to be in the same series.~~

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### Close-Out Netting

SECTION 27. (a) *Default or Insolvency of the Corporation.* If at any time the Corporation: (i) fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member under the By-Laws or Rules for a period of thirty days from the date that OCC receives notice from the Clearing Member of the past due obligation, (ii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for the Corporation's winding-up or liquidation, or (iii) takes corporate action to authorize any proceeding or petition described in clause (ii) above, the Corporation or its representative shall promptly notify the Securities and Exchange Commission, the Commodity Futures Trading Commission, all Clearing Members, any clearing organizations with which the Corporation has cross-margining or cross-guarantee arrangements, and all Exchanges, futures markets and security futures markets for which the Corporation clears confirmed trades ~~and all OTC Trade Sources from which OCC accepts confirmed trades for clearance.~~

(b) *Notice of Termination.* Upon the occurrence of any event described in clause (i) through (iii) of paragraph (a), a Clearing Member that is neither suspended nor in default with respect to any obligation owing to the Corporation may notify the Corporation in writing of its intention to terminate all cleared contracts and stock loan and borrow positions in all accounts of such Clearing Member; provided that a notice based on the Corporation's failure to comply with an obligation described in clause (i) may only be made by the Clearing Member to whom such obligation is owed. The Corporation shall promptly forward any such notice, specifying the date of receipt thereof, to the Securities and Exchange Commission, the Commodity Futures Trading Commission, all Clearing Members, any clearing organizations with which the Corporation has cross-margining or cross-guarantee arrangements, and all Exchanges, futures markets and security futures markets for which the Corporation clears confirmed trades ~~and all OTC Trade Sources from which OCC accepts confirmed trades for clearance.~~ Such notice shall have the effects hereinafter described in this Section with respect to all Clearing Members, without the

necessity of a similar notice being sent by any other Clearing Member. As of the close of business on the third business day following the Corporation's receipt of such notice or such other termination time as may be established by the United States Bankruptcy Code in the case of a proceeding governed by such Code (the "Termination Time"), the Corporation shall accept no more confirmed trades for clearing, and all pending transactions, positions in cleared contracts and stock loan and borrow positions remaining in all accounts of all Clearing Members at the Termination Time shall be valued as of the Termination Time and liquidated in accordance with this Section. Such liquidated positions shall be netted to the maximum extent permitted by law and the By-Laws and Rules, and settlement of the net amounts shall be effected in the manner provided by this Section in satisfaction of all obligations owing between the Corporation and Clearing Members in respect of such positions. The provisions of this Section, other than paragraph (l) below, shall not apply to the disposition of assets and liabilities in any X-M account provided for in Article VI, Section 24 of the By-Laws. From and after the Termination Time the rights of Clearing Members against the Corporation shall be limited to those set forth in this Section. In the event that a Clearing Member is suspended by the Corporation pursuant to Chapter 11 of the Rules or the Corporation suffers a loss from any cause that is chargeable against the Clearing Fund in accordance with the By-Laws and Rules, whether such suspension or loss occurs before or after the Corporation gives a notice under this paragraph (a), the provisions of paragraph (m) below shall apply.

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## ARTICLE XVII – INDEX OPTIONS AND CERTAIN OTHER CASH-SETTLED OPTIONS

### Introduction

By-Laws in this Article are applicable only to cash-settled options that are not specifically addressed elsewhere in these By-Laws, including flexibly structured options that cash settle, Exchange-listed index options, ~~OTC index options~~ and cash-settled commodity options other than binary options or range options (which are governed by the provisions of Article XIV). Section 1 of Article XII is also applicable to cash-settled commodity options. By-Laws in Articles I-XI are also applicable to cash-settled options, in some cases supplemented by one or more By-Laws in this Article, except for By-Laws that have been replaced in respect of such options by one or more By-Laws in this Article and except where the context otherwise requires. Whenever a By-Law in this Article supplements or, for purposes of this Article, replaces one or more By-Laws in Articles I-XI, that fact is indicated in brackets following the By-Law in this Article.

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### Definitions

#### SECTION 1.

**A. – B.** [No change]

C.

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**Class of Options**

(4) The term “class of options” used in respect of cash-settled options means all such options of the same type and style (and, in addition, in the case of flexibly structured index options ~~and OTC index options~~, having the same index value determinant) and having the same underlying interest, provided that ~~OTC index options shall constitute a separate class of options from other cash-settled options of the same type and style and having the same underlying interest and~~ flexibly structured options that cash settle shall constitute a different class of options from physically settled options on the same underlying interest.

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**Current Underlying Interest Value; Current Index Value**

(5) The term “current underlying interest value” when used in respect of cash-settled options means the current value or level of the underlying interest at a point in time as reported by the reporting authority. The current underlying interest value in respect of an index option is sometimes also referred to as the “current index value.” Subject to the provisions of Section 5 of this Article, the term “current index value,” in respect of any underlying index on a given day, means the level of such index at the close of trading on such day, or if such day is not a trading day, on the immediately preceding trading day, or, in the case of an index option ~~other than an OTC index option~~, any multiple or fraction thereof specified by the Exchange, as such value is reported by the reporting authority. Notwithstanding the foregoing, but subject to the provisions of Section 4 of this Article, the current index value for an index underlying a flexibly structured index option ~~or an OTC index option~~ on the expiration date shall be determined in accordance with the index value determinant.

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E.

(1) – (2) [No change]

**Expiration Date**

(3) The term “expiration date” in respect of cash-settled options expiring prior to February 1, 2015, other than flexibly structured options ~~or OTC index options~~, means the Saturday following the third Friday of the expiration month, and in respect of cash-settled options expiring on or after February 1, 2015, other than flexibly structured options ~~or OTC index options~~, means the third Friday of the expiration month, or if such Friday is a day on which the Exchange on which such option is listed is not open for business, the preceding day on which such Exchange is open for business, except that in respect of a class or series of option contracts that is identified by an Exchange as having an expiration date that is a business day other than the third Friday of the expiration month, the term “expiration date” shall mean such date as identified by the Exchange at or prior to the time of inception of trading of the class or series provided that such date is not a date specified by the Corporation as ineligible to be an expiration date. ~~The expiration date of an OTC index option shall be determined as set forth in Section 6 of this Article.~~

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#### Expiration Time

~~(4) The term “expiration time” in respect of an OTC index option contract means 7:00 P.M. Central Time (8:00 P.M. Eastern Time).~~

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#### R.

(1) – (2) [No change]

#### Reporting Authority

(3) The term “reporting authority” in respect of cash-settled options other than ~~OTC index options and~~ flexibly structured options on fund shares that are cash settled means the institution or reporting service designated by an Exchange as the official source for the current value of a particular underlying interest or reference variable. Unless another reporting authority is identified by the listing Exchange for a class of cash-settled options, the listing Exchange will be the reporting authority. ~~In respect of OTC index options, the reporting authority shall be the institution or reporting service designated by the Corporation as the official source for the current value of a particular underlying interest or reference variable.~~ In respect of flexibly structured options on fund shares that are cash settled, the reporting authority shall be the institution or reporting service used by the Corporation for the value of the underlying interest for physically settled equity options.

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#### S.

#### Series of Options

(1) The term “series of options” used in respect of cash-settled options ~~other than OTC index options~~ means all such options of the same class with the same exercise price (or, in the case of delayed start options that do not yet have a set exercise price, the same exercise price setting formula and exercise price setting date), cap price (if any), unit of trading (if any), expiration date, and multiplier; provided that if an Exchange shall adopt a rule superseding Section 1 C.(5) of this Article, index options ~~(other than OTC index options)~~ to which such Exchange rule applies shall be deemed to be of a different series than otherwise identical index options to which such rule does not apply. ~~In respect of OTC index options, the term “series of options” means all such options of the same class and having identical variable terms.~~

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#### Adjustments

#### SECTION 3.

(a) – (g) [No change]

(h) Except in the case of ~~OTC index options or~~ any of the events described in paragraphs (f) and (g) of this Section 3, determinations with respect to adjustments pursuant to this Section shall be made by the Corporation. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation pursuant to this Article XVII, Section 3 and to adjustments made by the Corporation pursuant to Article VI, Section 11A for flexibly structured options on fund shares that are cash settled.

~~... Interpretations and Policies:~~

~~.01 For the elimination of doubt, all adjustments to the terms of outstanding cleared contracts in OTC index options shall be made by the Corporation in its sole discretion, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers (or purchasers and sellers) of the affected contracts, the maintenance of a fair and orderly market in the affected contracts, consistency of interpretation and practice (including consistency with adjustments to Exchange-listed index options on the same underlying interest), and efficiency of exercise settlement procedures.~~

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### Unavailability or Inaccuracy of Current Underlying Interest Value

Effective for Series of Options Opened for Trading After September 16, 2000

SECTION 4. (a) If the Corporation shall determine that the primary market(s) (as determined by the Corporation) for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a “required value”) for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that the Corporation may be entitled to take under the By-Laws and Rules, the Corporation shall be empowered to do any or all of the following with respect to any series of options on such index (“affected series”):

(1) [No change]

(2) The Corporation may fix the exercise settlement amount for exercised contracts of an affected series. In the case of flexibly structured options on fund shares that are cash settled, the exercise settlement amount will be determined by using the last reported sale price for the underlying security during regular trading hours, consistent with the expiration closing price determination procedures of Rule 805. In the case of cash-settled securities options other than flexibly structured cash settled options on fund shares that are cash settled ~~and OTC index options~~, the exercise settlement amount shall be fixed by a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading and the Chief Executive Officer. In the case of ~~OTC index options or~~ cash-settled commodity options, unless the By-Laws or Rules specifically provide otherwise in respect of a particular class of such options, the exercise settlement amount shall be fixed by the Corporation. The Corporation will consult with the Risk Committee when appropriate to obtain any additional or supplemental

market information or data from the members of such committee that the Corporation believes will be useful in setting such exercise settlement value. The panel (or the Corporation, as the case may be) shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected series, the maintenance of a fair and orderly market in such affected series of options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. Without limiting the generality of the foregoing, the panel (or the Corporation) may fix the exercise settlement amount using: (i) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the close of regular trading hours (as determined by the Corporation) on the last preceding trading day for which such a price or value was reported by the reporting authority; (ii) the reported price or value for the relevant security(ies), commodity(ies) or underlying interest at the opening of regular trading hours (as determined by the Corporation) on the next trading day for which such an opening price or value is reported by the reporting authority; or (iii) a price or value for the relevant security(ies), commodity(ies) or underlying interest at such other time, or representing a combination or average of prices or values at such time or times, as the Corporation deems appropriate. The provisions of Article VI, Section 11(c) of the By-Laws with respect to the vote required to constitute the determination of a panel, the voting rights of members of such panels, the ability of such panels to conduct their business by telephone or other designated means, and the ability of the Chief Executive Officer and Exchange representatives to designate others to serve in their place on such panels shall apply equally to panels convened pursuant to this Section. Every determination pursuant to this Section shall be within the sole discretion of the Corporation or the panel making such determination, as the case may be, and shall be conclusive and binding on all investors and not subject to review.

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### **Time for Determination of Current Index Value**

SECTION 5. (a) An Exchange may provide by rule that the current index value for the index underlying any class of index options traded on such Exchange, either generally or on particular trading days, shall be determined by reference to the reported level of such index at a time or times other than the close of trading. ~~Similarly, the parties to a transaction in OTC index options may elect to base the current index value of the underlying index on a given day on the reported level of the underlying index at either the open or close of trading on such day.~~ Any such Exchange rule ~~or election by the parties to a transaction in OTC index options~~ shall supersede any contrary provision in Section 1 C.(5) of this Article.

(b) For purposes of settling each flexibly structured index option contract exercised on the expiration date, an Exchange shall provide the Corporation with a current index value for the expiration date as calculated pursuant to the index value determinant reported to the Corporation by the Exchange.

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### **~~OTC Index Options~~**



~~SECTION 6. (a) Variable Terms. The variable terms that are negotiated bilaterally between the parties to a transaction in OTC index options shall include (i) the type of option; (ii) the style of option; (iii) the underlying index, selected only from among those underlying indices approved by the Corporation and which the By-laws and Rules specifically allow to be selected as an underlying index for an OTC index option; (iv) the expiration date; (v) the exercise price (stated in U.S. dollars and cents); (vi) the index multiplier; and (vii) the index value determinant; subject in each case to the limitations generally applicable to such variable terms as set forth in paragraph (b) below and any additional specific requirements applicable to OTC index options on a particular underlying index as set forth in the interpretations and policies following this Section 6 or as otherwise published by the Corporation on its website.~~

~~(b) General Limitations on Variable Terms. In respect of an OTC index option contract: (i) the type of option may be either a put or a call; (ii) the style of option may be either American-style or European-style; (iii) the underlying index may be any index identified by the Corporation as a permissible underlying index; (iv) the expiration date shall be a business day that is, at the maximum, no more than fifteen years from the trade date of the contract series provided that such date is not a date specified by the Corporation as ineligible to be an expiration date; (v) the exercise price shall be stated in U.S. dollars and cents; and (vi) the current index value at expiration may be determined based on either the opening index value or closing index value.~~

~~(c) Acceptance of Confirmed Trades in OTC Index Options for Clearing. If the confirmed trade information in respect of a transaction in OTC index options reported by an OTC Trade Source to the Corporation passes the Corporation's validation process, the Corporation shall accept such confirmed trade for clearing. The Corporation shall reject the transaction if the Corporation determines that: (i) any variable term of the contract does not comply with any applicable limitations established by the Corporation; (ii) the transaction would violate any applicable restrictions imposed on any of the Clearing Members for whose accounts the transaction is submitted to the Corporation for clearing (including, but not limited to, one or both of such Clearing Members are not approved to clear OTC index options); (iii) the information in the confirmed trade report submitted by the OTC Trade Source to the Corporation contains unresolved errors or omissions; or (iv) the information in the confirmed trade does not meet any other applicable criteria set forth in the By-Laws and Rules or procedures of the Corporation. Any transactions in OTC index options submitted to the Corporation for clearing that are rejected by the Corporation shall have no further effect as regards the Corporation and shall be deemed null and void and given no effect for purposes of the By-Laws and Rules.~~

~~(d) The Role of the Corporation. Commencing at the time at which the Corporation accepts a confirmed trade in OTC index options for clearing, the Corporation shall be substituted through novation as the seller to the Purchasing Clearing Member and the buyer to the Selling Clearing Member, and shall be the obligor to the extent set forth in the By-Laws and Rules with respect to obligations owing to persons having positions in such cleared contract. Each Clearing Member agrees with the Corporation that (i) it shall be bound, in accordance with the By-Laws and Rules, by all transactions in OTC index options submitted for its account through an OTC Trade Source and accepted by the Corporation for clearing; and (ii) it shall be bound by the terms of each transaction as reported by the OTC Trade Source to the Corporation and the Corporation shall not be responsible or liable to the Clearing Member for any error or omission in the variable terms or other information reported by the OTC Trade Source in connection with such~~

~~transaction or for any acts or omission taken or made by the Corporation in reliance on such information.~~

~~(e) *Fungibility*. OTC index options of the same series shall be fungible. Positions in OTC index options created in a transaction between two counterparties may be closed out through a closing transaction between one of the parties to the original transaction and a different counterparty.~~

~~(f) *Clearing Members' Representations and Warranties*. Upon the submission of a confirmed trade in OTC index options to the Corporation for clearing, each Clearing Member for whose account the transaction is submitted shall be deemed to represent and warrant to the Corporation that: (i) the offer and sale of the OTC index options that are the subject of such transaction are exempt from the registration requirements of the Securities Act of 1933; (ii) such transaction has been effected by the Clearing Member in accordance with, the Clearing Member's participation in such transaction is in compliance with, and the Clearing Member will continue with respect to such transaction to comply with, all applicable laws and regulations including, without limitation, all applicable rules and regulations of the Securities and Exchange Commission, and the rules of the Financial Industry Regulatory Authority, Inc. and any other regulatory or self-regulatory organization to which the Clearing Member is subject; (iii) in respect of OTC index options on any S&P Index, the Clearing Member has read and understands the disclaimer language set forth below in item .03 of the Interpretations and Policies following this Section 6; (iv) in the case where the transaction is effected for the account of a customer, the customer is an "Eligible Contract Participant" as defined in Section 3a(65) of the Securities Exchange Act of 1934, as amended; (v) unless the Corporation notifies Clearing Members that the OTC Options will no longer be offered and sold pursuant to Rule 506 of Regulation D under the Securities Act of 1933, as amended, the Clearing Member has not offered or sold the OTC Options to any person that is not an "accredited investor," as defined in Rule 501(a) under Regulation D and has otherwise complied with applicable conditions to the exemption set forth in Rule 506; and (vi) unless the Corporation notifies Clearing Members that such restriction no longer applies, the Clearing Member has not offered or sold the OTC Options by any form of general solicitation or general advertising that, at the time of such activities, is or may be deemed to constitute general solicitation or general advertising, as described in Rule 502(c) of Regulation D. The Clearing Member shall indemnify and hold the Corporation harmless from any claim, liability or expense, including reasonable attorneys' fees, which may arise or be asserted as a result of any such representation and warranty being false or of any action brought against OCC alleging that any such representation and warranty is false, other than any claim, liability or expense that (a) results primarily from the gross negligence or willful misconduct of the Corporation or (b) results from conduct of the Corporation that causes the offer or sale of the OTC Options to become subject to the registration provisions of Section 5 of the Securities Act of 1933, as amended.~~

~~(g) Except as expressly provided in this paragraph or elsewhere in the By-Laws and Rules, and except to the extent inconsistent with the provisions of this Section 6, OTC index options shall be subject to all provisions of the By-Laws and Rules to the extent such provisions are applicable by their terms.~~

~~--- Interpretations and Policies:~~



~~.01 Only the S&P 500 Index has been approved by the Corporation as an underlying index for OTC index options, as described in Section 6(a)(iii) of this Article XVII. In respect of an OTC index option contract on the S&P 500 Index: (i) the index multiplier shall be fixed at 1, (ii) the expiration date must be within 5 years of the date on which a transaction in such OTC index option is accepted by the Corporation for clearance, and (iii) unless one or the other of the parties to the transaction is entering into the transaction as a closing purchase transaction or a closing sale transaction (provided, in either case, that such closing transaction does not constitute an opening purchase transaction or opening sale transaction for a nonproprietary account of one Clearing Member and a closing sale transaction or closing purchase transaction, respectively, for any proprietary account of the other Clearing Member), the expiration date must be at least 125 days, and no more than 15 years, from the origination date. In addition, unless one or more of the parties to the transaction is entering into the transaction as a closing purchase transaction or a closing sale transaction (provided, in either case, that such closing transaction does not constitute an opening purchase transaction or opening sale transaction for a non-proprietary account of one Clearing Member and a closing sale transaction or closing purchase transaction, respectively, for any proprietary account of the other Clearing Member), the minimum "notional value" of a transaction in OTC index options on the S&P 500 Index submitted to the Corporation for clearing shall be: (x) for options with an expiration date that is 275 or fewer days from its origination date, \$500,000 times the value of the S&P 500 Index at the opening of business in New York on the first business day of the calendar year in which the Corporation accepted the transaction for clearing; or (y) for options with an expiration date that is more than 275 but less than 1,101 days from its origination date, at least \$100,000 times the value of the S&P 500 Index at the opening of business in New York, New York on the first business day of the calendar year in which the Corporation accepted the transaction for clearing. The "notional value" of a transaction in an OTC index option on the S&P 500 Index shall equal the quantity of contracts multiplied by the closing value of the S&P 500 index on the business day prior to the date the transaction is accepted by the Corporation for clearing.~~

~~.02 For purposes of paragraph (c) of this Section 6, any transaction in OTC index options submitted to the Corporation for clearing that is rejected by the Corporation shall remain subject to any applicable agreement between the original parties to the transaction which, for the avoidance of doubt, may provide, among other things, that such rejected transaction shall remain a bilateral transaction between the parties subject to such agreement or other documentation as the parties have entered into for that purpose or may be terminated. The offer and sale of any such option or other security entered into bilaterally would not be covered by any exemption from the registration or other requirements of the Securities Act of 1933 that is specifically applicable, and limited, to OTC index options issued by the Corporation, and parties that may be deemed offerors or sellers of any such bilateral option contract or other security should satisfy themselves that the offer and sale would not be in violation of any applicable provision of the Securities Act of 1933.~~

~~.03 For purposes of clause (iii) of paragraph (f) of this Section 6, the S&P disclaimer reads as follows:~~

~~"S&P SHALL OBTAIN INFORMATION FOR INCLUSION IN OR FOR USE IN THE CALCULATION OF THE S&P INDEXES FROM SOURCES WHICH S&P CONSIDERS RELIABLE, BUT S&P DOES NOT GUARANTEE THE ACCURACY AND/OR THE~~

~~COMPLETENESS OF THE S&P INDEXES OR ANY DATA INCLUDED THEREIN AND S&P SHALL HAVE NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INTERRUPTIONS THEREIN. S&P MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RESULTS TO BE OBTAINED BY ANY PERSON OR ANY ENTITY FROM THE USE OF THE S&P INDEXES OR ANY DATA INCLUDED THEREIN IN CONNECTION WITH THE TRADING OF THE CONTRACTS, OR FOR ANY OTHER USE. S&P MAKES NO EXPRESS OR IMPLIED WARRANTIES, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE S&P INDEXES OR ANY DATA INCLUDED THEREIN. WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL S&P HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES."~~

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