

**EXHIBIT 3A**

## Rules and By-Law Comparison

This Exhibit 3A is provided as a tool to indicate changes that OCC is proposing to existing text of Art. VI, Sections 11 and 11A; Art. XII, Sections 3, 4 and 4A; and Art. XVII, Section 3 of the By-Laws that would be deleted from those By-Law Sections, as reflected in Exhibit 5B, and relocated to a new Chapter XXVIII of the Rules as reflected in Exhibit 5A.

Footnotes are used throughout to identify the source of the existing provisions. The term “relocates” is used to identify that the existing provision is shown as it would be moved into Chapter XXVIII with any proposed changes marked. The term “replaces” is used to mean that an existing Interpretation and Policy is being moved entirely into a rule.

Underlining and strikethroughs are marked against the existing provisions wherever feasible and footnotes are used throughout to identify the source of the existing provisions. Text taken from existing provisions is marked as entirely new where it (i) is derived from multiple existing sources or (ii) results from relocating an existing Interpretation and Policy into a newly proposed Rule.

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

## Chapter XXVIII – Contract Adjustments<sup>[1]</sup>

### RULE 2801 – Adjustment by the Corporation~~Policies and Procedures~~<sup>[2]</sup>

~~SECTION 11.~~ (a) Determination of the Corporation. Unless otherwise provided in the By-Laws or Rules of the Corporation, all adjustments to the terms of outstanding cleared contracts shall be made by the Corporation, ~~which shall determine whether to make adjustments~~ to reflect particular events in respect of an underlying interest, and the nature and extent of any adjustment, based on its judgment as to what is appropriate for the protection of investors and the public interest.<sub>;</sub>

(b) Factors. When determining whether to make an adjustment, the Corporation will ~~taking~~take into account such factors as:

- (i) fairness to holders and writers (or purchasers and sellers) of the affected contracts<sub>;</sub>
- (ii) the maintenance of a fair and orderly market in the affected contracts<sub>;</sub>
- (iii) consistency of interpretation and practice<sub>;</sub>
- (iv) efficiency of exercise settlement procedures<sub>;</sub> and
- (v) the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying interest. ~~The Securities Committee shall be authorized to adopt statements of policy or interpretations having general application to specified types of events or specified kinds of cleared contracts.~~

In making any adjustment determination, the Corporation shall apply the factors set forth in this ~~Section~~ Rule and any policy statements set forth in this Rule 2801(b), as applicable, in light of the circumstances known to the Corporation at the time such determination is made, subject to the discretion of the Corporation to depart from policy or precedent where the Corporation determines that unusual circumstances make such a departure appropriate.<sup>[3]</sup>

~~(b)~~(c) Discretion of the Corporation. Every adjustment determination ~~under the By-Laws or Rules~~ of the Corporation shall be within the sole discretion of the Corporation and shall be conclusive and binding on all investors and not subject to review. If the Corporation does not learn, or does not learn in a timely manner, of an event for which the Corporation would have

<sup>1</sup> Proposed Chapter XXVIII aggregates the contract adjustment provisions under current By-Law Article VI, Section 11 and 11A; Article XII, Section 3, 4 and 4A; Article XVII, Section 3; and Article XXII, Section 3.

<sup>2</sup> Proposed Rule 2801 relocates Section 11 of Article VI with changes as marked. Proposed Rule 2801 would also replace Section 3(a) of Article XII with respect to adjustments of futures and futures options.

<sup>3</sup> Proposed Rule 2801(b) relocates Section 11(a) of Article VI with changes as marked, including replacing reference to “this Section 11” with “this Rule 2801(b)”.

otherwise made an adjustment, the Corporation shall not be liable for any failure to make such adjustment or delay in making such adjustment.<sup>[4]</sup>

## **RULE 2802 – Statements of Adjustment Policies and Interpretations**

(a)(1) Statements of Policies and Interpretations Regarding Adjustments of Option Contracts. In addition to the policies contained in this Chapter, the Securities Committee shall be authorized to adopt statements of policy or interpretations having general application to specified types of events or specified kinds of cleared contracts that are stock option contracts, Treasury securities option contracts, yield-based Treasury option contracts, debt securities option contracts, foreign currency option contracts, cash-settled foreign currency option contracts, index option contracts or other cash-settled option contracts.<sup>[5]</sup>

~~(e)(2) Securities Committee; Composition and Governance.~~ The composition and manner of acting of the Securities Committee and panels comprised of representatives of Securities Exchanges that have authority under the By-Laws and Rules to adopt statements of policy or interpretations under paragraph (a)(1) above will ~~make certain determinations with respect to cleared contracts shall~~ be as set forth below, unless otherwise provided in the By-Laws and Rules of the Corporation:

~~(1)~~ (i) The Securities Committee shall consist of one designated representative of each Securities Exchange and the Executive Chairman. The Executive Chairman shall not be a voting member of the Committee or of any panel except in the case of a tie vote, in which case the Executive Chairman shall have the right to cast a vote to break the tie and shall, for such purpose, be deemed to be a voting member.

~~(2)~~ (i) The vote of a majority of the voting members of the Securities Committee shall constitute the determination of the Securities Committee. With respect to a panel convened for the purpose of determining a required amount or value (other than as provided for in ~~Article VI, Section 11A of the By-Laws~~ Rule 1703), a majority of the Securities Exchanges on which such cleared contract is open for trading shall constitute a quorum for purposes of acting.

~~(3)~~ (iii) The Securities Committee or any panel may transact its business by telephone or such other means as may be designated by the Securities Committee from time to time.

~~(4)~~ (iv) Notwithstanding the foregoing provisions of this ~~Section 11~~ Rule or any other requirements of the By-Laws and Rules, the Executive Chairman may designate any other representative of the Corporation, and any representative of an Exchange may designate any

<sup>4</sup> Proposed Rule 2801(c) relocates Section 11(b) of Article VI. Proposed Rule 2801(c) would replace the second sentence of Section 3(a) of Article XII with respect to futures and futures options.

<sup>5</sup> This sentence of proposed Rule 2802(a) relocates the second to last sentence of Section 11(a) of Article VI with modifications, including stating with particularity the types of securities option contracts for which the Securities Committee may adopt statements of policy or interpretations having general application.

other representative of such Exchange, to serve in his place at any meeting of the Securities Committee or of any panel. In the event of such designation, the designee shall, for the purposes of such meeting, have all of the powers and duties under this ~~Section 11~~ Rule of the person designating ~~him~~ them. Neither the Corporation nor any Exchange shall designate to serve on any panel (i) any Exchange member or Clearing Member, or any director, officer, partner, or employee of any Exchange member or Clearing Member, or (ii) any person who, to the knowledge of the self-regulatory organization designating such person, is the beneficial holder of a long or short position in the cleared contracts as to which such panel is to make a determination.<sup>[6]</sup>

(b) Statements of Policies Regarding Adjustments of Futures and Futures Options. The Corporation may for futures and futures options adopt statements of policy having general application to specified types of events.<sup>7</sup>

### **RULE 2803 – Adjustments for Stock Option Contracts and Stock Futures**<sup>[8]</sup>

~~SECTION 11A.~~ (a) Corporate Actions; Adjustment Policies and Procedures. Whenever there is a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event in respect of any underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of any underlying security, the Corporation may adjust any of the following, or any combination of the following, with respect to all outstanding stock option contracts and stock futures in that underlying security in accordance with this Rule:

- (1) the number of contracts;
- (2) the unit of trading in the case of an options contract or the unit of trading (or settlement price) in the case of a stock futures;
- (3) the exercise price in the case of an options contract; and
- (4) the underlying security; ~~or any of them, with respect to all outstanding option contracts open for trading in that underlying security may be adjusted in accordance with this Section 11A.~~<sup>[9]</sup>

<sup>6</sup> Proposed Rule 2802(b) relocates Section 11(c) of Article VI with changes as marked. Proposed Rule 2802(a) would replace the last sentence of Section 3(b) of Article XII with respect to stock futures.

<sup>7</sup> This sentence of proposed Rule 2802(a) relocates the third sentence of Section 3 of Article XII with modifications to delete “in addition to determining adjustments to futures and futures options on a case-by-case basis” because that authority will already be addressed in proposed Rule 2804 and 2805.

<sup>8</sup> Proposed Rule 2803 relocates Section 11A of Article VI with changes as marked. Proposed Rule 2803 replaces the first sentence of paragraph (b), paragraphs (c) through (j), and the Interpretations and Policies to Section 3 of Article XII with respect to stock futures.

<sup>9</sup> Proposed Rule 2803(a) relocates Section 11A(a) of Article VI with changes as marked and replaces the first sentence of Section 3(b) of Article XII with respect to stock futures.

For the avoidance of doubt, flexibly structured options on fund shares that are cash settled are governed by this Rule 2803.<sup>[10]</sup>

(b) All adjustments ~~hereunder~~ shall be made by the Corporation in accordance with the policies and procedures set forth ~~in Section 11~~ under this Chapter.

(c) Events Not Ordinarily Resulting in a Contract Adjustment. Except as provided by paragraph (k) below with respect to certain stock futures, ~~It~~ it shall be the general rule that the Corporation will not adjust outstanding stock options contracts or stock futures ~~there will be no adjustment~~ to reflect ~~(x)~~ the following:

(1) Ordinary Dividends or Distributions. The Corporation generally will not make an adjustment following an ordinary cash dividends or distributions or an ordinary stock dividends or distribution (~~collectively, each an~~ “ordinary distributions”) by the issuer of the underlying security.<sup>[11]</sup>

(i) Factors. The Corporation will determine on a case-by-case basis whether a dividend or distribution is an “ordinary distribution” or whether it is a dividend or distribution for which an adjustment should be made. In making such determinations, the Corporation may take into account such factors as it deems appropriate, including, without limitation:

(A) the issuer’s stated dividend payment policy;

(B) the issuer’s characterization of a particular dividend or distribution as “regular,” “special,” “accelerated” or “deferred”;

(C) whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis; and

(D) the issuer’s dividend payment history.<sup>[12]</sup>

(ii) Cash Dividends or Distribution. As a general rule, a cash dividend or distribution deemed to be an “ordinary distribution” includes:

(A) a cash dividend or distribution (regardless of size) by the issuer of the underlying security which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis

<sup>10</sup> This sentence replaces the first clause in Section 3(a) of Article XVII, and is also included in proposed Rule 2804(a) for clarity for users of the Rules to determine that Rule 2803 governs adjustments of flexibly structured options on fund shares that are cash settled rather than Rule 2804 that more generally applies to adjustment of cash settled options.

<sup>11</sup> Proposed Rule 2803(c) and (c)(1) relocates clause (x) of Section 11A(c) of Article VI with changes as marked and replaces the Section 3(c) of Article XII with respect to stock futures.

<sup>12</sup> Proposed Rule 2803(c)(1)(i) replaces the third sentence of the first paragraph and the first sentence of the second paragraph of Interpretation and Policy .01 to Section 11A of Article VI and the last sentence of the first paragraph and the first sentence of the second paragraph of Interpretation and Policy .01(a) to Section 3 of Article XII with respect to stock futures.

or which the Corporation believes represents an acceleration or deferral of such payments; and<sup>[13]</sup>

(B) interest payments on index-linked securities.<sup>[14]</sup>

(iii) *Stock Dividends or Distributions*. As a general rule, a stock dividend or distribution by the issuer of the underlying security deemed to be “ordinary distributions” include those:

(A) in an aggregate amount per dividend or distribution which does not exceed 10% of the number of shares or other units of the underlying security outstanding as of the close of trading on the declaration date, and which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis or which the Corporation believes represents an acceleration or deferral of such payments.<sup>[15]</sup>

(B) which are paid in lieu of a cash dividend or distribution that itself would have been an ordinary distribution.<sup>[16]</sup>

(iv) *Dividends and Distributions Not Deemed Ordinary*. As a general rule, the Corporation shall not classify as an ordinary distribution:

(A) a dividend or distribution when the Corporation believes that similar dividends or distributions will not be paid on a quarterly or other regular basis.<sup>[17]</sup>

(B) a distribution of short-term or long-term capital gains in respect of fund shares by the issuer; and<sup>[18]</sup>

(C) other distributions in respect of fund shares by the issuer if (x) the fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or (y) the distribution on the fund shares includes or reflects a dividend or other distribution on

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<sup>13</sup> Proposed Rule 2803(c)(1)(ii)(A) replaces the first sentence of Interpretation and Policy .01 to Section 11A of Article VI and the first sentence of Interpretation and Policy .01(a) to Section 3 of Article XII.

<sup>14</sup> Proposed Rule 2803(c)(1)(ii)(B) replaces Interpretation and Policy .09 to Section 11A of Article VI and Interpretation and Policy .10 to Section 3 of Article XII.

<sup>15</sup> Proposed Rule 2803(c)(1)(iii)(A) relocates the second sentence of Interpretation and Policy .01 to Section 11A of Article VI and replaces Interpretation and Policy .01(b) to Section 3 of Article XII.

<sup>16</sup> Proposed Rule 2803(c)(1)(iii)(B) is new.

<sup>17</sup> Proposed Rule 2803(c)(1)(iv)(A) replaces the last sentence of the second paragraph of Interpretation and Policy .01 to Section 11A of Article VI and the last sentence of the second paragraph of Interpretation and Policy .01(a) to Section 3 of Article XII.

<sup>18</sup> Proposed Rule 2803(c)(1)(iv)(B) replaces clause (i) of Interpretation and Policy .08 to Section 11A of Article VI and clause (i) of Interpretation and Policy .08 to Section 3 of Article XII.

a portfolio security (I) that results in an adjustment of options on other fund shares pursuant to clause (x), or (II) that is not deemed an ordinary distribution.<sup>[19]</sup>

(v) *Determination.* Any issue as to whether a particular dividend or distribution was declared pursuant to a policy of paying such dividends or distributions on a quarterly or (where applicable) other regular basis shall be determined by the Corporation.<sup>[20]</sup>

(2) *Cash Distributions or Dividends Below Threshold.* ~~or (y)~~ The Corporation generally will not make an adjustment to a stock option contract for any cash dividend or distribution by the issuer of the underlying security if such dividend or distribution is less than \$0.125 per share provided that, in the case of a stock option contract that is originally listed with a unit of trading larger than 100 shares, the applicable threshold shall be \$12.50 per contract.<sup>[21]</sup>  
However, in connection with contract adjustment determinations involving cash in lieu of fractional entitlements for a stock option contract (for example in respect of stock rights, contingent value rights or other distributions) the determination will not be subject to the general rule stated in the preceding sentence.<sup>[22]</sup>

(3) *Other Events Not Ordinarily Resulting in Adjustments.*

(i) *Poison Pill Rights.* The Corporation will not ordinarily make an adjustment to reflect the issuance of so-called “poison pill” rights that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, begin to trade separately from the underlying security, or are redeemed, the Corporation will determine whether an adjustment is appropriate pursuant to Rule 2803(d)(1).<sup>[23]</sup>

(ii) *Tender Offer or Exchange Offer.* The Corporation will not ordinarily make an adjustment to reflect a tender offer or exchange offer to the holders of the underlying security, whether such offer is made by the issuer of the underlying security or by a third person or whether the offer is for cash, securities or other property. This Rule will apply without regard to whether the price of the underlying security may be favorably or adversely affected by the offer or whether the offer may be deemed to be “coercive.” Outstanding options ordinarily will be adjusted to reflect a merger, consolidation or

<sup>19</sup> Proposed Rule 2803(c)(1)(iv)(C) replaces clause (ii) of Interpretation and Policy .08 to Section 11A of Article VI and clause (ii) of Interpretation and Policy .08 to Section 3 of Article XII.

<sup>20</sup> Proposed Rule 2803(c)(1)(v) replaces the last sentence of the first paragraph of Interpretation and Policy .01 to Section 11A of Article VI.

<sup>21</sup> Proposed Rule 2803(c)(2) relocates clause (y) of Section 11A(c) of Article VI with changes as marked, including to clarify that it applies to stock option contracts but not stock futures.

<sup>22</sup> This sentence of proposed Rule 2803(c)(2) is new.

<sup>23</sup> Proposed Rule 2803(c)(3)(i) replaces Interpretation and Policy .02 to Section 11A of Article VI and the first, fifth and sixth sentences of Interpretation and Policy .02 to Section 3 of Article XII.



similar event that becomes effective following the completion of a tender offer or exchange offer as described in Rule 2803(d)(2).<sup>[24]</sup>

(iii) *Change in Capital Structure.* The Corporation will not ordinarily adjust a contract to reflect changes in the capital structure of an issuer where all of the underlying securities outstanding in the hands of the public (other than dissenters' shares) are not changed into another security, cash or other property. For example, the Corporation will not ordinarily adjust a contract merely to reflect the issuance (except as a distribution on an underlying security) of new or additional debt, stock, or options, warrants or other securities convertible into or exercisable for the underlying security, the refinancing of the issuer's outstanding debt, the repurchase by the issuer of less than all of the underlying securities outstanding, or the sale by the issuer of significant capital assets.<sup>[25]</sup>

(iv) *Non-Transferable Property.* Adjustments generally will not be made to reflect a distribution of non-transferable property.<sup>[26]</sup>

(v) *Shareholder Election of the Form of Dividend or Distribution.* Adjustments generally will not be made where a dividend or distribution is determined to be ordinary regardless of whether it is subject to a shareholder election regarding the form in which it will be paid, such as cash or stock.<sup>[27]</sup>

(d) *Events Ordinarily Resulting in Contract Adjustments.* It shall be the general rule that ~~in the case of~~ the Corporation shall make an adjustment in the following cases:

(1) *Distribution or Combination of Shares.* Distribution of additional shares of the underlying security by the issuer of the security that are not deemed to be "ordinary dividends and distributions" pursuant to Rule 2803(c), shall be adjusted as follows:

(i) In the event of a stock dividend, stock distribution or stock split ~~whereby for which the issuer of the security issues~~ a whole number of additional shares of the underlying security ~~is issued~~ with respect to each outstanding share, each option contract and each stock future covering that underlying security shall be increased by the same number of additional option contracts or stock futures as the additional number of shares issued with respect to each share of the underlying security, the exercise price per share in effect or last settlement price established immediately prior to such event shall be proportionately reduced, and the unit of trading shall remain the same.

(ii) In the event of a stock dividend, stock distribution or stock split ~~whereby for which the issuer of the security issues~~ other than a whole number of shares of the underlying

<sup>24</sup> Proposed Rule 2803(c)(3)(ii) replaces Interpretation and Policy .03 to Section 11A of Article VI and Interpretation and Policy .03 to Section 3 of Article XII.

<sup>25</sup> Proposed Rule 2803(c)(3)(iii) replaces Interpretation and Policy .04 to Section 11A and Interpretation and Policy .04 to Section 3 of Article XII.

<sup>26</sup> Proposed Rule 2803(c)(3)(iv) is new.

<sup>27</sup> Proposed Rule 2803(c)(3)(v) is new.



security ~~is issued in~~ with respect of each outstanding share, the exercise price in effect, in the case of options contracts, or the last settlement price established, in the case of stock futures, immediately prior to such event shall be proportionately reduced and the unit of trading shall be proportionately increased.

(iii) In the event of reverse stock splits, combinations of shares, or similar events, option contracts and stock futures shall be adjusted solely for purposes of determining the property deliverable upon exercise of the option or in respect of such futures contract, by decreasing the unit of trading to reflect the number of shares eliminated. If an adjustment is made in accordance with the preceding sentence, the unit of trading for all such adjusted series of options and such adjusted futures contracts shall remain unchanged for purposes of determining the aggregate exercise price of the option or the aggregate settlement value of the futures contract payable upon delivery and for purposes of determining the premium for any such option purchased and sold or the settlement value of any such futures contract purchased and sold.<sup>[28]</sup>

(2) Cash Mergers, and Similar Events. When an underlying security is converted into a right to receive a fixed amount of cash, such as in a merger or a call or redemption of an entire class of index-linked securities, the Corporation shall adjust outstanding options and outstanding stock futures to replace such underlying interest with cash in an amount per share or unit equal to the conversion or redemption price. As a result of such adjustment, the value of all outstanding in-the-money options will become fixed, and all at-the-money and out-of-the-money options will become worthless. No adjustment will ordinarily be made in the event of a call of less than an entire class of index-linked securities.<sup>[29]</sup>

(3) Stock or Cash, Reorganizations and Stock Mergers or Similar Event. When an underlying security is converted into a right to receive another security or a combination of another security and cash, such as in a merger, reorganization or similar event, the Corporation shall adjust outstanding option contracts and stock futures by replacing such underlying security with the like number of units of the shares of the resulting company or cash in an amount per share or unit equal to the conversion or redemption price<sup>[30]</sup>

(4) Subsequent Adjustments for Conversion to Debt Security or Preferred Stock. When an underlying security is converted in whole or in part into a debt security or a preferred stock, such as in a merger, and interest or dividends on such debt security or preferred stock are payable in the form of additional units thereof, outstanding options or stock futures that have been adjusted by replacing the original underlying security with the security into which the original underlying security has been converted shall be further adjusted to call for delivery

<sup>28</sup> Proposed Rule 2803(d) relocates Section 11A(d) of Article VI with changes as marked and replaces Section 3(d) of Article XII with respect to stock futures.

<sup>29</sup> Proposed Rule 2803(d)(2) replaces Interpretation and Policy .05 to Section 11A of Article VI and Interpretation and Policy .05 to Section 3 of Article XII.

<sup>30</sup> Proposed Rule 2803(d)(3) replaces Interpretation and Policy .06 to Section 11A of Article VI and Interpretation and Policy .06 to Section 3 of Article XII.

of the securities distributed as interest or dividends, effective as of the ex-date for each payment of interest or dividends.<sup>[31]</sup>

(5) Rights Distributions with Respect to Stock Futures. When an adjustment is made for a rights distribution, the unit of trading in effect immediately prior to the distribution will ordinarily be adjusted to include the number of rights distributed with respect to the number of shares or other units of the underlying security comprising the unit of trading. If, however, the Corporation determines that the rights are due to expire before the time they could be exercised upon delivery under the futures contract, then delivery of the rights will not be required. Instead, the Corporation will ordinarily adjust the last settlement price established before the rights expire to reflect the value, if any, of the rights as determined by the Corporation in its sole discretion.<sup>[32]</sup>

(e) Other Distributions. It shall be the general rule that in the case of any distribution made with respect to shares of an underlying security, other than ordinary distributions and other than distributions for which adjustments are provided in paragraph (d) of this ~~Section 11A~~ Rule, if an adjustment is determined by the Corporation to be appropriate, (i) the exercise price in effect in the case of an option or the last settlement price established in the case of a stock future immediately prior to such event shall be reduced by the value per share of the distributed property, in which event the unit of trading shall not be adjusted, or alternatively, (ii) the unit of trading in effect immediately prior to such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the unit of trading in effect prior to such adjustment, in which event the exercise price shall not be adjusted. ~~The Corporation shall, with respect to adjustments under this paragraph or any other paragraph of this Section 11A, have the authority to determine the value of distributed property.~~<sup>[33]</sup>

(f) Corporate Actions Not Otherwise Provided For. In the case of any event for which adjustment is not provided in any of the foregoing paragraphs of this ~~Section 11A~~ Rule, the Corporation may make such adjustments, if any, with respect to the option contracts and stock futures affected by such event as the Corporation determines.<sup>[34]</sup>

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<sup>31</sup> Proposed Rule 2803(d)(4) replaces Interpretation and Policy .07 to Section 11A of Article VI and Interpretation and Policy .07 to Section 3 of Article XII.

<sup>32</sup> Proposed Rule 2803(d)(5) replaces the second through third sentences of Interpretation and Policy .02 to Section 3 of Article XII.

<sup>33</sup> Proposed Rule 2803(e) relocates Section 11A(e) of Article VI with changes as marked and replaces Section 3(e) of Article XII with respect to stock futures. The last sentence of current Section 11A(e) is relocated to proposed Rule 2804(j) with certain modifications, including to update the current reference to Section 11A of Article VI.

<sup>34</sup> Proposed Rule 2803(f) relocates Section 11A(f) of Article VI with changes as marked and replaces Section 3(f) of Article XII with respect to stock futures.

(g) Effective on Ex-Date. Adjustments pursuant to this ~~Section 11A~~ Rule shall as a general rule become effective in respect of option contracts and stock futures outstanding on the “ex-date” established by the primary market for the underlying security.<sup>[35]</sup>

(h) Rounding. It shall be the general rule that:

(1) all adjustments of the exercise price of an outstanding option contract or settlement price of an outstanding stock future shall be rounded to the nearest adjustment increment;<sup>‡</sup>

(2) when an adjustment causes an exercise price or settlement price to be equidistant between two adjustment increments, the exercise price or settlement price shall be rounded up to the next highest adjustment increment;<sup>‡</sup>

(3) all adjustments of the unit of trading shall be rounded down to eliminate any fraction;<sup>‡</sup> and

(4) if the adjustment is made pursuant to ~~subparagraph Rule 2804~~ (d)(1)(ii) above and the unit of trading is rounded down to eliminate a fraction, the adjusted exercise price or settlement price may be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the option contract or stock future resulting from the elimination of the fraction, or if the adjustment is made pursuant to ~~subparagraph Rule 2804~~ (d)(1)(iii) above and the unit of trading is rounded down to eliminate a fraction, the value of the fractional share so eliminated as determined by the Corporation shall be added to the unit of trading.<sup>[36]</sup>

(i) Election Mergers and Similar Events. The deliverable resulting from an adjustment in the case of an election merger or similar event involving shareholder elections, such as shareholder election of a non-ordinary dividend, will generally be based on the consideration accruing to a non-electing shareholder if the Corporation determines in its sole discretion that it is readily able to facilitate delivery of that consideration.<sup>[37]</sup>

(j) Cash Value Determination. The Corporation has the authority to determine the value of distributed property with respect to any adjustments.<sup>[38]</sup> The Corporation may use this authority in circumstances that include, but are not limited to, cases in which the Corporation determines that the final amount or distribution resulting from a corporate action may not be determined for a long period.<sup>[39]</sup>

<sup>35</sup> Proposed Rule 2803(g) relocates Section 11A(g) of Article VI with changes as marked and replaces Section 3(g) of Article XII with respect to stock futures.

<sup>36</sup> Proposed Rule 2803(h) relocates Section 11A(h) of Article VI with changes as marked and replaces Section 3(h) of Article XII with respect to stock futures.

<sup>37</sup> Proposed Rule 2803(i) is new.

<sup>38</sup> Proposed Rule 2803(j) replaces the last sentence of Section 11A(e) of Article VI and the last sentence of Section 3(e) of Article XII.

<sup>39</sup> This second sentence of proposed Rule 2803(j) is new.

(k) Determination of Cash Amounts In Lieu of Fractional Share Entitlements in Adjusted Deliverables. Cash amounts in lieu of fractional share entitlements included in adjusted deliverables will generally be made in a manner consistent with any determinations by a central securities depository clearing agency.<sup>[40]</sup>

(l) Foreign Withholding Tax. In general, all contract adjustments will be made net of any relevant foreign withholding taxes, with the exception of events for which local tax authorities issue rulings that exempt certain groups from the withholding tax and it is reasonable that U.S. investors collectively can be included in such groups.<sup>[41]</sup>

(m) Adjustments Made Per Contract. All contract adjustments will be made on a per contract basis.<sup>[42]</sup>

~~(i)(n) Exceptions.~~ ~~Notwithstanding the general rules set forth in paragraphs (c) through (h) of this Section 11A, the~~ The Corporation shall have the power to make exceptions to the general rules set forth in paragraphs (c) through (i) of this Rule in those cases or groups of cases (which may include making exceptions for one or more series of flexibly structured options) in which, in applying the standards set forth ~~in Section 11(a) hereof or adopted under Rule 2803,~~ the Corporation shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the Corporation affirmatively determines to make an exception in a particular case or group of cases.<sup>[43]</sup>

(o) Adjustment of Stock Futures Using Amounts Reported by an Exchange. Notwithstanding the general rule set forth in paragraph (c) of this Rule, such security futures as may be designated by the Exchange on which such contracts are traded as subject to this paragraph (o) shall be adjusted for the aggregate amount of all cash dividends or distributions as reported by such Exchange to the Corporation. The settlement price of each such contract on the ex-date shall be adjusted by such aggregate amount of such dividend or distribution, provided that (i) the Exchange has reported such information to the Corporation prior to the ex-date in accordance with the Corporation's requirements, or (ii) the Exchange failed to provide the information on a timely basis or reported incorrect information to the Corporation, but provides such information or corrected information to the Corporation on the ex-date. The Corporation shall have no liability with respect to a dividend or distribution that has not been timely reported by the trading Exchange or for which such Exchange has reported incorrect information without making a timely subsequent correction.<sup>[44]</sup>

<sup>40</sup> Proposed Rule 2803(k) is new.

<sup>41</sup> Proposed Rule 2803(l) is new.

<sup>42</sup> Proposed Rule 2803(m) is new.

<sup>43</sup> Proposed Rule 2803(n) relocates Section 11A(i) of Article VI with changes as marked and replaces Section 3(i) of Article XII with respect to stock futures. The exception is also modified to cover new proposed Rule 2803(i) regarding the general rule regarding the deliverable for election mergers and similar events.

<sup>44</sup> Proposed Rule 2803(o) replaces Section 3(j) of Article XII.

***... Interpretations and Policies:***

~~.01 Cash dividends or distributions (regardless of size) by the issuer of the underlying security which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which the Corporation believes represents an acceleration or deferral of such payments will, as a general rule, be deemed to be “ordinary cash dividends or distributions” within the meaning of paragraph (c) of Section 11A. Stock dividends or distributions by the issuer of the underlying security (i) in an aggregate amount per dividend or distribution which does not exceed 10% of the number of shares or other units of the underlying security outstanding as of the close of trading on the declaration date, and (ii) which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis or which the Corporation believes represents an acceleration or deferral of such payments will, as a general rule, be deemed to be “ordinary stock dividends or distributions” within the meaning of paragraph (c) of Section 11A. The Corporation will determine on a case-by-case basis whether other dividends or distributions are “ordinary distributions” or whether they are dividends or distributions for which an adjustment should be made. Where the Corporation determines to adjust for a dividend or distribution, the adjustment shall be made in accordance with paragraph (e) of Section 11A. Any issue as to whether a particular dividend or distribution was declared pursuant to a policy of paying such dividends or distributions on a quarterly or (where applicable) other regular basis shall be referred to the Corporation for a determination.~~<sup>[45]</sup>

~~In making such determinations, the Corporation may take into account such factors as it deems appropriate, including, without limitation, the issuer’s stated dividend payment policy, the issuer’s characterization of a particular dividend or distribution as “regular,” “special,” “accelerated” or “deferred,” whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis, and the issuer’s dividend payment history. Normally, the Corporation shall classify a dividend or distribution as non-ordinary when it believes that similar dividends or distributions will not be paid on a quarterly or other regular basis.~~<sup>[46]</sup>

~~.02 Adjustments will not ordinarily be made to reflect the issuance of so-called “poison pill” rights that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, begin~~

<sup>45</sup> The first sentence of Interpretation and Policy .01 to Section 11A is replaced by proposed Rule 2803(c)(1)(ii)(A). The second sentence is replaced by proposed Rule 2803(c)(1)(iii). The third sentence is replaced by the first sentence of proposed Rule 2803(c)(1)(i). The fourth sentence is deleted as redundant of Rule 2803 (e). The last sentence of the first paragraph is replaced by the second sentence of proposed Rule 2803(c)(1)(iv).

<sup>46</sup> The first sentence of the second paragraph of Interpretation and Policy .01 to Section 11A is replaced by the second sentence and subitems (A) through (D) of proposed Rule 2803(a)(1)(i) relocates. The last sentence of the second paragraph is replaced by the first sentence of proposed Rule 2803(c)(1)(iv).

~~to trade separately from the underlying security, or are redeemed, the Corporation will determine whether an adjustment is appropriate.~~<sup>[47]</sup>

~~.03 Adjustments will not be made to reflect a tender offer or exchange offer to the holders of the underlying security, whether such offer is made by the issuer of the underlying security or by a third person or whether the offer is for cash, securities or other property. This policy will apply without regard to whether the price of the underlying security may be favorably or adversely affected by the offer or whether the offer may be deemed to be “coercive.” Outstanding options ordinarily will be adjusted to reflect a merger, consolidation or similar event that becomes effective following the completion of a tender offer or exchange offer.~~<sup>[48]</sup>

~~.04 Adjustments will not be made to reflect changes in the capital structure of an issuer where all of the underlying securities outstanding in the hands of the public (other than dissenters' shares) are not changed into another security, cash or other property. For example, adjustments will not be made merely to reflect the issuance (except as a distribution on an underlying security) of new or additional debt, stock, or options, warrants or other securities convertible into or exercisable for the underlying security, the refinancing of the issuer's outstanding debt, the repurchase by the issuer of less than all of the underlying securities outstanding, or the sale by the issuer of significant capital assets.~~<sup>[49]</sup>

~~.05 When an underlying security is converted into a right to receive a fixed amount of cash, such as in a merger or a call or redemption of an entire class of index-linked securities, outstanding options will be adjusted to require the delivery upon exercise of cash in an amount per share or unit equal to the conversion or redemption price. As a result of such adjustment, the value of all outstanding in-the-money options will become fixed, and all at-the-money and out-of-the-money options will become worthless. No adjustment will ordinarily be made in the event of a call of less than an entire class of index-linked securities.~~<sup>[50]</sup>

~~.06 In the case of a corporate reorganization, reincorporation or similar occurrence by the issuer of an underlying security which results in an automatic share-for-share exchange of shares in the issuer for shares in the resulting company, the options on the underlying security will ordinarily be adjusted to require delivery upon exercise of a like number of units of the shares of the resulting company. Because the securities are generally exchanged only on the books of the issuer and the resulting company, and are not generally exchanged physically, deliverable shares will ordinarily include certificates that are denominated on their face as shares in the original issuer, but which, as a result of the corporate transaction, represent shares in the resulting company.~~<sup>[51]</sup>

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<sup>47</sup> Interpretation and Policy .02 to Section 11A of Article VI is replaced by proposed Rule 2803(c)(3)(i).

<sup>48</sup> Interpretation and Policy .03 to Section 11A of Article VI is replaced by proposed Rule 2803(c)(3)(ii).

<sup>49</sup> Interpretation and Policy .04 to Section 11A of Article VI is replaced by proposed Rule 2803(c)(3)(iii).

<sup>50</sup> Interpretation and Policy .05 to Section 11A of Article VI is replaced by proposed Rule 2803(d)(2).

<sup>51</sup> Interpretation and Policy .06 to Section 11 of Article VI is removed and replaced by proposed Rule 2803(d)(3).



~~.07 When an underlying security is converted in whole or in part into a debt security and/or a preferred stock, as in a merger, and interest or dividends on such debt security or preferred stock are payable in the form of additional units thereof, outstanding options that have been adjusted to call for delivery of such debt security or preferred stock shall be further adjusted, effective as of the ex-date for each payment of interest or dividends thereon, to call for delivery of the securities distributed as interest or dividends thereon.~~<sup>[52]</sup>

~~.08 Notwithstanding Interpretation and Policy .01 under Section 11A of Article VI of the By-Laws, (i) distributions of short term or long term capital gains in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary distributions” within the meaning of paragraph (c) of Section 11A, and (ii) other distributions in respect of fund shares by the issuer thereof shall not, as a general rule, be deemed to be “ordinary distributions” within the meaning of paragraph (c) of this Section 11A if (x) the fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or (y) the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security (I) that results in an adjustment of options on other fund shares pursuant to clause (ii)(x), or (II) that is not deemed an ordinary distribution under Interpretation .01 above. Adjustments of the terms of options on such fund shares for distributions described in clause (i) or (ii) above shall be made in accordance with paragraph (c) of Section 11A, unless the Corporation determines, on a case-by-case basis, not to adjust for such a distribution; provided, however, that no adjustment shall be made for any such distribution that is less than \$.125 per fund share and provided that, in the case of a contract that is originally listed with a unit of trading larger than 100 fund shares, the applicable threshold shall be \$12.50 per contract.~~<sup>[53]</sup>

~~.09 Interest payments on index-linked securities will, as a general rule, be deemed to be “ordinary cash dividends or distributions” within the meaning of paragraph (c) of this Section 11A.~~<sup>[54]</sup>

#### **RULE 2804 – Adjustment of Index Options and Futures and Certain Other Cash-Settled Options and Futures**<sup>[55]</sup>

~~SECTION 3. (a) Except in the case of flexibly structured options on fund shares that are cash settled, Section 11A of Article VI of the By-Laws shall not apply to cash-settled option contracts.~~

<sup>52</sup> Interpretation and Policy .07 to Section 11A of Article VI is replaced by proposed Rule 2803(d)(4) with certain modifications, including changing “and/or” to “or”.

<sup>53</sup> Interpretation and Policy .07 to Section 11A of Article VI is replaced by proposed Rule 2803(c)(1)(v).

<sup>54</sup> Interpretation and Policy .09 to Section 11A of Article VI is replaced by Proposed Rule 2803(c)(1)(ii)(B).

<sup>55</sup> Proposed Rule 2804 relocates Section 3 of Article XVII with changes as marked. Proposed Rule 2804 replaces Section 4 of Article XII.



~~(b)~~(a) Adjustment of Cash-Settled Options and Futures Generally. In the case of cash-settled options or cash-settled futures that ~~have a single commodity as their underlying interest~~do not require physical delivery of the underlying interest, except as expressly provided otherwise in the ~~By-Laws or~~ Rules relating to a particular cleared contract, determinations as to whether and how to adjust the terms of such cash-settled options or cash-settled futures to reflect events affecting the underlying interest shall be made by the Corporation in accordance with Rule 2801 ~~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 the buyers and sellers of such options, the maintenance of a fair and orderly market in such options and consistency of interpretation and practice.~~<sup>[56]</sup> Flexibly structured options on fund shares that are cash settled are governed by Rule 2803.<sup>[57]</sup>

~~(e)~~(b) Addition, Deletion or Change to Index Components.

(1) Except as provided by paragraph (b)(2), the Corporation ordinarily will not~~No~~ adjustments ~~s will ordinarily be made in~~ the terms of index option contracts, index futures contracts, or variance futures that have an index as their reference variable in the event that index components are added to or deleted from the underlying index or reference index or when the relative weight of one or more such index components has changed.

(2) ~~However, if~~if the Corporation shall determine in its sole discretion that any ~~such~~ addition, deletion, or change to the index components causes significant discontinuity in the level of the underlying index, the Corporation may adjust the terms of the affected index option contracts or index futures contract by adjusting either or both of the index multiplier and ~~or~~ exercise price, as applicable, with respect to such contracts or by taking such other action as the Corporation in its sole discretion deems fair to both the holders and writers of such contracts. The Corporation may use its discretion to adjust variance futures as necessary to correct for any impact such an event could have on an underlying variance.<sup>[58]</sup>

~~(d)~~(c) Change to Index Multiplier, Calculation Method, or Underlying Index or Reference Index.

(1) Conditions. The Corporation shall make adjustments to an index option contract, index futures contract, or variance futures contract if:

(i) ~~If~~ an Exchange shall increase or decrease the index multiplier for any index option contract, index futures contract or variance futures contract; ~~or~~

(ii) the reporting authority shall change the method of calculation of ~~an underlying index or reference index~~ an index that is an underlying interest or reference variable so as to

<sup>56</sup> Proposed Rule 2804(a) relocates Section 3(b) of Article XVII with changes as marked. Proposed Rule 2804(a) replaces Section 4A(b) of Article XII.

<sup>57</sup> This sentence replaces the first clause in Section 3(a) of Article XVII.

<sup>58</sup> Proposed Rule 2804(b) relocates Section 3(c) of Article XVII with changes as marked. Proposed Rule 2804(b) replaces Section 4(a) of Article XII.

create a discontinuity or change in the level of the index that does not reflect a change in the prices or values of ~~the index securities~~the constituents of the index;

(iii) a futures market or its reporting authority shall change the method of calculation of an underlying variance so as to create a discontinuity or change in the underlying variance that does not reflect a change in the variability of the reference variable; or

(iv) the Corporation shall substitute one underlying index or reference index for another pursuant to Rule 2804(d).~~paragraph (e) of this Section 3,~~

(2) Adjustments. In the event an above condition occurs, the Corporation shall make such adjustments in the number of outstanding affected options or futures, ~~or~~ the exercise prices of such options or the contract prices of such futures, or such other adjustments, if any, as the Corporation in its sole discretion deems fair to both the holders and the writers of such options or buyers and sellers of such futures.<sup>[59]</sup>

~~(e)~~(d) Substitution of Successor Index. (1) The Corporation may substitute another index (a “successor index”) as the underlying interest or reference variable if ~~In the event~~ the Corporation determines that:

- (i) publication of an underlying index or reference index has been discontinued;
- (ii) an underlying index or reference index has been replaced by another index, or
- (iii) the composition or method of calculation of an underlying index or reference index is so materially changed since its selection as an underlying index or reference index that it is deemed to be a different index, the Corporation may substitute another index (a “successor index”) as the ~~underlying index or reference index~~underlying interest or reference variable.

(2) A successor index shall be reasonably comparable, as determined by the Corporation in its discretion, to the original underlying index or reference index for which it substitutes. An index may be created specifically for the purpose of becoming a successor index.

(3) With respect to index futures contracts and variance futures, if ~~if~~ the Corporation determines in its discretion not to substitute a successor index, the Corporation may terminate the futures contract and fix a final settlement price in accordance with Section 5 of ~~this~~ Article XII. Any outstanding options on a futures contract terminated in accordance with the preceding sentence will be automatically exercised if in-the-money based upon the final settlement price for the underlying future or will terminate if out-of-the-money based upon such final settlement price.<sup>[60]</sup>

<sup>59</sup> Proposed Rule 2804(c) relocates Section 3(d) of Article XVII with changes as marked. Proposed Rule 2804(c) replaces Section 4(b) and 4(d) of Article XII.

<sup>60</sup> Proposed Rule 2804(d) relocates Section 3(e) of Article XVII with changes as marked. Proposed Rule 2804(d) replaces Section 4(c) of Article XII.

~~(f)~~(e) Underlying Relative Performance Index Below Zero. In the event that the value of an underlying relative performance index for a cash-settled option falls below zero, any such negative value of the index will be deemed by the Corporation to be zero; provided, however, that if it is deemed impractical for systems reasons to have an index value of zero, then any index value of zero or below will be deemed to be an economically nominal positive number. Such an adjustment will have the effect of limiting the maximum exercise settlement amount for in-the-money put options on such indexes to the difference between the exercise price and the nominal positive number substituted for the actual index value (times the applicable multiplier).<sup>[61]</sup>

~~(g)~~(f) Elimination of Individual Reference Security. ~~In the event that~~If any individual reference security in an underlying relative performance index for a cash-settled option defined in the preceding paragraph is eliminated as the result of a cash-out merger or other event, the reporting authority may cease to publish the index. In that case, the exercise settlement value of the options would become fixed based upon the last published value for the index, and the Exchange on which such options are traded may determine to accelerate the expiration date for such options (and, in the case of European-style options, their exercisability). The expiration date for such options will ordinarily be accelerated to fall on the next regularly scheduled expiration date for the same class of options or such other date as the Corporation may establish in consultation with the Exchange on which such options are traded.<sup>[62]</sup>

(g) Adjustment of Options on Index Futures or Variance Futures. (i) If the Corporation adjusts an index futures contract or variance futures contract underlying a futures option, such futures option ordinarily will be adjusted to provide, upon exercise, for delivery of the futures contract as adjusted by the Corporation. (ii) In the event the Corporation, acting pursuant ~~to paragraph (b) or (d) of this Section~~ Rule 2804(c), adjusts (A) the number of outstanding index futures or variance futures in a series of futures underlying a futures option, (B) the contract price of index futures or variance futures underlying a futures option, or (C) the index futures or variance futures underlying a futures option in any other manner, the futures option ordinarily will be adjusted in a manner corresponding to the adjustment in the underlying futures contract (e.g., if the number of outstanding index futures or variance futures in a series of futures underlying a futures option is adjusted, the number of futures options on the adjusted underlying index future or variance future will be similarly adjusted; if the contract price of the underlying index future or variance future is adjusted, the exercise price of the futures options will be similarly adjusted; etc.).<sup>63</sup>

(h) General Rule Application and OTC Adjustments. Except in the case of OTC index options or any of the events described in paragraphs (e) and (f) ~~and (g)~~ of this ~~Section 3~~ Rule, determinations with respect to adjustments pursuant to this ~~Section~~ Rule shall be made by the

<sup>61</sup> Proposed Rule 2804(e) relocates Section 3(f) of Article XVII with changes as marked, including to make the provision applicable to any cash-settled option or future and not just index options.

<sup>62</sup> Proposed Rule 2804(f) relocates Section 3(g) of Article XVII with changes as marked, including to make the provision applicable to any cash-settled option or future and not just index options.

<sup>63</sup> Proposed Rule 2804(g) relocates Section 4(e) of Article XII of the By-Laws with modifications marked.

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 XXII, Section 3.~~

~~... 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.

**RULE 2805 – Adjustment of Cash-Settled Foreign Currency Options and Futures**<sup>[64]</sup>

~~SECTION 3.~~(a) In the event that (i) a trading or an underlying currency is replaced by a new currency, or (ii) the exchange rate or exchange characteristics of a trading or underlying currency with respect to other currencies are officially altered, the Corporation may adjust:

(1) with respect to cash-settled foreign currency options, the exercise price, unit of trading, number of contracts, underlying currency, or other terms of option contracts affected by such event; ~~or. The provisions of Article VI, Section 11 of the By-Laws shall apply equally to adjustments made by the Corporation pursuant to this Article XXII, Section 4.~~

(2) with respect to cash-settled foreign currency futures, the underlying interest, unit of trading, settlement price or any other terms of futures affected by such event.

~~... Interpretations and Policies:~~

~~.01~~(b) Policy of the Corporation. The Corporation will not ordinarily adjust the terms of cash-settled foreign currency options or cash-settled foreign currency futures in response to devaluations or revaluations of trading or underlying currencies.

<sup>64</sup>

Proposed Rule 2805 relocates Section 3 of Article XXII with modifications a marked. Proposed Rule 2805 replaces Section 4A(a) of Article XII.