

**EXHIBIT 5B**

### **Escrow Program Tri-Party Agreement**

This Escrow Program Tri-Party Agreement (“Agreement”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made between \_\_\_\_\_ (“Bank”), \_\_\_\_\_ (“Customer”) and The Options Clearing Corporation, a Delaware corporation (“OCC”) in respect of Bank’s participation in OCC’s Escrow Deposit Program (the “Program”).

WHEREAS, Customer desires to participate in the Program, under which, in order to cover its obligations as writer of option contracts issued by OCC, Customer may from time to time deposit with Bank, in escrow, cash held in an account at Bank, and Bank, in its capacity as a Participating Escrow Bank and on behalf of Customer, may in turn effect deposits of such cash in connection with the Program for the benefit of OCC (“Deposits”), and withdrawals or “roll overs” such Deposits;

WHEREAS, OCC has admitted Bank as a participating escrow bank in the Program (a “Participating Escrow Bank”);

WHEREAS, the participation by the Customer and the Bank is, in each case, subject to the terms and conditions set forth herein and the provisions of OCC’s By-Laws and Rules (together, the “Rules”) relating to the Program (the “Program Rules”), as described in greater detail in Section 2 below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Representations, Warranties and Covenants of Customer.** As of the date set forth above and subsequently upon making a Deposit or submitting an instruction with respect to a Deposit, Customer represents and warrants to OCC and Bank that:
  - a. Customer by entering into this Agreement appoints Bank as a Participating Escrow Bank with respect to its participation in the Program in accordance with the Program Rules.
  - b. This Agreement is the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to the effects of bankruptcy, insolvency and equitable principles.
  - c. To the extent of a Deposit in respect of a short position in index call options, Customer or its duly authorized representative affirms that all index call options written for such Customer’s account and covered by Deposits with the Bank are written against a diversified stock portfolio.
  - d. Customer understands that, in accordance with Rule 610C(j)(4): (i) if the short position specified in the instruction is closed out under circumstances permitting the related Deposit to be withdrawn by the clearing member, Customer shall work with Bank to withdraw the Deposit from OCC, and until the Deposit is duly released by OCC, OCC will retain the right to demand delivery or payment of the Deposit or its proceeds upon the assignment of an exercise notice to any short position in an option series specified in the instruction carried in the clearing member’s customers’ account with OCC; and (ii) exercise notices assigned by OCC to short positions for which Deposits have been made by the clearing member are allocated to particular customers by the clearing member or by their respective brokers, and if the clearing member is suspended by OCC and OCC cannot promptly determine the identities of the assigned customers, OCC will reallocate the exercise notices, and reallocation will be binding on Customer notwithstanding any contrary notice or confirmation which Customer may have received from the clearing member or Customer’s broker.

- e. Customer has established an account at the Bank for the benefit of OCC and such account shall be used solely for the purpose of making Deposits.

Customer covenants and agrees that each of the foregoing shall remain true during the term of this Agreement.

2. **Compliance with and Incorporation of Program Rules.** Customer shall abide by the Program Rules and shall be bound by all the provisions thereof and by all operating procedures adopted by OCC pursuant thereto, as either may be amended from time to time. The Program Rules shall be a part of the terms and conditions of every Deposit which Customer may make pursuant to the Program. The following provisions of the Rules shall constitute the Program Rules, provided that OCC may amend this list to reflect one or more Program Rules' ceasing to be effective or in connection with any amendment to the Program Rules adopted pursuant to Section 3 below:

Article I of OCC's By-Laws – Definitions

Article XVII of OCC's By-Laws – Index Options and Certain Other Cash-Settled Options – Section 1 –  
Definitions

Chapter I of OCC's Rules – Definitions

OCC Rules 610, 610A, 610B and 610C – Deposits in Lieu of Margin

3. **Amendment.** No provision of this Agreement may be amended, supplemented or modified, or any of its terms waived, except by a written instrument executed by OCC, Customer and Bank, provided that Bank and Customer shall be bound by any amendment to the Program Rules and by all operating procedures adopted by OCC pursuant thereto as fully as though such amendment were now a part of the Program Rules or operating procedures without further consent by Customer or Bank. OCC agrees to provide Bank with 60 days' written notice prior to implementation of any amendments to the Program Rules. Customer agrees that OCC shall not be required to deliver notice of amendments to the Customer. Customer or Bank may terminate this Agreement upon written notice to OCC within 30 days of such notification to Bank, with effectiveness as of the later of the implementation of such amendments to the Program Rules or applicable procedures or the receipt by OCC of such notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date until such Deposits are withdrawn or released, provided that during such period such rule change shall not be effective with respect to such Deposits.
4. **Security Interest; Instructions of OCC/UCC Jurisdiction.**
- a. Pursuant to the Rules and this Agreement, Customer grants a security interest to OCC in and a right of setoff against all cash Deposits, and in all proceeds thereof, to secure Customer's obligations to the clearing member or OCC and to secure clearing member's obligations to OCC with respect to the applicable short position.
- b. Each of OCC, Customer and Bank agree that Bank will follow disbursement directions of OCC with respect to cash included within Deposits promptly and fully without further consent by the Customer. Bank shall have no duty to investigate or make any determinations as to whether OCC is entitled to give disbursement directions with respect to Deposits and shall comply with such disbursement directions without regard to the authority or lack of authority to give such disbursement directions. Bank agrees that its "jurisdiction" (as described in Section 9-304 of the Uniform Commercial Code) for purposes of the Uniform Commercial Code as in effect in the State of Illinois is the State of Illinois.
5. **Binding Court Order or Judgment.** Nothing herein shall be deemed to require Bank to deliver a Deposit or any portion thereof in contravention of any court order or judgment binding on Bank in its capacity as Participating Escrow Bank, [which on its face affects such Deposit or portion thereof] **[OPEN POINT]**.
6. **Default by Customer.** If at any time (a) Customer fails to comply with its obligations under this Agreement or the Program Rules, (b) any representation and warranty made or deemed made by the Customer hereunder or under the Program Rules is determined to have been false or misleading when made or deemed made or (c) Customer becomes insolvent (each a "Customer Default"), OCC shall have all remedies available to it under this

Agreement, the Program Rules and all procedures adopted by OCC pursuant thereto, as well as all remedies available to it under applicable law (subject in all respects to Section 13 below).

7. **Term/Termination.** Any of OCC, Bank or Customer may terminate this Agreement for any reason on 45 days' prior written notice, in which case the Agreement shall nonetheless remain in effect with regard to any outstanding Deposits outstanding as of the termination date, until such Deposits are withdrawn or released. Upon the occurrence of a Customer Default, OCC may terminate this Agreement immediately and disregard any existing Deposits, or take possession of cash and/or securities making up such Deposits for the purposes set forth in, and in accordance with, Rule 610C(r).
8. **Access to Rules.** Customer acknowledges that it has access to a copy of the Program Rules on OCC's website and has reviewed the Program Rules as in effect at the date of this Agreement.
9. **Assignment; Beneficiaries.** The rights and obligations of Customer and Bank hereunder shall not be assignable without the written consent of OCC. This Agreement shall be binding upon, and inure to the benefit of, Customer and Bank and their respective successors and assigns, and shall also inure to the benefit of OCC and its successors and assigns.
10. **GOVERNING LAW AND CONSENT TO JURISDICTION.** THIS AGREEMENT IS DEEMED TO BE MADE UNDER, AND SHALL BE CONSTRUED BY, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES. CUSTOMER AND BANK IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE PROGRAM. OCC, CUSTOMER AND BANK WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROGRAM.
11. **Miscellaneous.** No failure by OCC to exercise, and no delay in exercising, any right under this Agreement waives that right. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, together shall constitute one instrument. This Agreement, including the Program Rules and all operating procedures adopted by OCC pursuant thereto, constitutes the entire agreement and understanding between the parties with respect to the Program. In the event that any one or more of the provisions in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. Section headings used in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement.
12. **Notices.** All notices or other communications to be given in writing shall be sent to the addresses provided below.
13. **Limitation of Bank Liability.** Bank has no duties with respect to the Program other than those expressly set forth herein, in the Participating Escrow Bank agreement to which Bank is a Party (the "PEB Agreement"), and in the Program Rules and operating procedures. Bank shall have no liability for losses arising in connection with the Program other than those caused by its own breach of its obligations in respect of the Program (including a breach of this Agreement, the PEB Agreement or a violation of the Program Rules) or by its own negligence, fraud or willful misconduct. Bank shall not be liable for any special, indirect, consequential or punitive damages of any form incurred by any person or entity with respect to Bank's performance or non-performance under this Agreement. In addition, Bank shall have no liability for any damage, loss, expense or liability of any nature that OCC or Customer may suffer or incur caused by an event beyond the control of Bank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, as of the date first set forth above.

THE OPTIONS CLEARING CORPORATION

BANK

By\_\_\_\_\_

By\_\_\_\_\_

Printed Name\_\_\_\_\_

Printed Name\_\_\_\_\_

Title\_\_\_\_\_

Title\_\_\_\_\_

Address:

Address:

Email:

Email:

CUSTOMER

By\_\_\_\_\_

Printed Name\_\_\_\_\_

Title\_\_\_\_\_

Address:

Email:

Bank Account Number: