

# SCULPTOR CAPITAL MANAGEMENT, INC.

## **FORM S-8** (Securities Registration: Employee Benefit Plan)

Filed 11/12/08

Address	9 WEST 57TH STREET SUITE 1300 NEW YORK, NY, 10019
Telephone	(212)790-0000
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**26-0354783**

(IRS Employer Identification No.)

**9 West 57th Street  
New York, New York 10019  
(212) 790-0041**

(Address of Principal Executive Offices) (Zip Code)

**OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC AMENDED AND RESTATED 2007 EQUITY  
INCENTIVE PLAN**

(Full Title of the Plan)

**Jeffrey C. Blockinger  
Chief Legal Officer, Chief Compliance Officer  
and Secretary  
Och-Ziff Capital Management Group LLC  
9 West 57th Street  
New York, New York 10019  
(212) 790-0041**

(Name, Address and Telephone Number of Agent for Service)

*Copy to:*

**Linda L. Griggs  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 739-5245**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

## CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price <sup>(1)</sup>	Amount of Registration Fee <sup>(1)(2)</sup>
Class A Shares <sup>(3)</sup>	57,785,714	\$4.56	\$263,502,855	\$10,355.66
LTIP Unit Awards <sup>(4)</sup>	(5)	(5)	(5)	(5)
Restricted Share Units <sup>(6)</sup>	(5)	(5)	(5)	(5)

- (1) Calculated pursuant to Rules 457(c) and (h), based upon the average of the high and low sale prices of a Class A Share (defined below) reported on the New York Stock Exchange on November 11, 2008.
- (2) Och-Ziff Capital Management Group LLC (the “Registrant”) previously paid a registration fee of \$58,542.71 upon its filing of a registration statement on Form S-8 on November 13, 2007 (File No. 333-147356), registering the sale of Class A Shares. The full amount of the previous fee has been offset against the current registration fee of \$10,355.66, resulting in a currently due fee of \$0. The previous registration statement is terminated, and \$48,187.05 remains available for future registration fees.
- (3) Registrant Class A Shares (“Class A Shares”) reserved for issuance under the Registrant’s Amended and Restated 2007 Equity Incentive Plan (the “Plan”). Pursuant to Rule 416(a), this registration statement also covers an indeterminate number of additional Class A Shares that may become issuable under the Plan as a result of share distributions, share splits or similar transactions involving Class A Shares in accordance with the antidilution provisions of the Plan.
- (4) Includes rights to acquire Class A Shares in exchange for interests in certain of the Registrant’s subsidiaries (the “LTIP Units”), and may include a number of Class B Shares of the Registrant (“Class B Shares”) not to exceed the number of Class A Shares acquirable upon the exchange of the LTIP Units, which Class B Shares (if any) consist solely of voting rights and will be canceled upon the exchange of the LTIP Units for Class A Shares. Pursuant to Rule 416(a), this registration statement also covers an indeterminate number of additional LTIP Unit Awards, including rights to acquire Class A Shares and any related Class B Shares, that may become issuable under the Plan as a result of share distributions, share splits or similar transactions involving Class A Shares in accordance with the antidilution provisions of the Plan.
- (5) Included in the amount to be registered and the offering price of the Class A Shares registered herein. Any value attributable to the LTIP Unit Awards, representing rights to acquire Class A Shares and any related Class B Shares, and the Restricted Share Units, including rights to acquire Class A Shares, is reflected in the market price of Class A Shares, and such LTIP Unit Awards and Restricted Share Units will be sold for consideration not to exceed the value of the underlying Class A Shares. Accordingly, there is no amount to be registered or offering price for the LTIP Unit Awards and Restricted Share Units beyond those for the Class A Shares, and no registration fee is required with respect thereto.
- (6) Represents rights, with or without distribution equivalents, to acquire Class A Shares upon the vesting thereof, as provided in the Plan. Pursuant to Rule 416(a), this registration statement also covers an indeterminate number of additional Restricted Share Units that may become issuable under the Plan as a result of share distributions, share splits or similar transactions involving Class A Shares in accordance with the antidilution provisions of the Plan.

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**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information. \***

**Item 2. Registrant Information and Employee Plan Annual Information. \***

\* The documents containing the information specified in Part I of Form S-8 will be sent or given by Och-Ziff Capital Management Group LLC (the "Company") to participants in the Och-Ziff Capital Management Group LLC Amended and Restated 2007 Equity Incentive Plan (the "Plan") as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). Such documents need not be filed with the Securities and Exchange Commission (the "SEC") either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. Upon written or oral request, the Company will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this registration statement. The Company will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b).

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed with the SEC by the Company are incorporated by reference in this registration statement:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007.
- (b) The Company's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2008, June 30, 2008 and September 30, 2008.
- (c) The Company's Current Reports on Form 8-K filed on February 4, 2008, March 25, 2008, April 30, 2008 (only with respect to Item 8.01), June 20, 2008, August 6, 2008 (only with respect to Item 8.01), September 19, 2008, and November 4, 2008 (only with respect to Item 8.01).
- (d) The description of the Class A Shares of the Company ("Class A Shares") contained in the registration statement on Form 8-A, dated November 6, 2007, filed to register such securities under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed with the SEC by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this registration statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing of such documents.

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Any statement contained in a document incorporated or deemed to be incorporated by reference in this registration statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this registration statement, modifies or supersedes such prior statement. Any statement contained in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this registration statement modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

The LTIP Unit Awards registered herein include rights to acquire Class A Shares in exchange for interests in certain of the Company's subsidiaries (the "LTIP Units"), and may include a number of Class B Shares of the Company ("Class B Shares") not to exceed the number of Class A Shares acquirable upon the exchange of the LTIP Units, which Class B Shares (if any) consist solely of voting rights but no economic interests in the Company and will be canceled upon the exchange of the LTIP Units for Class A Shares. Subject to the provisions of the Plan and the applicable award documents, LTIP Unit Awards, including rights to acquire Class A Shares and any related Class B Shares, may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of or encumbered and shall be subject to a risk of forfeiture until the lapse of all applicable restrictions.

The Restricted Share Units registered herein represent rights, with or without distribution equivalents, to acquire Class A Shares upon the lapsing of restrictions thereon, as provided in the Plan and the applicable award document. Subject to the provisions of the Plan and the applicable award document, Restricted Share Units may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of or encumbered and shall be subject to a risk of forfeiture until the lapse of all applicable restrictions.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Company's Second Amended and Restated Limited Liability Company Agreement (the "operating agreement") provides that the Company will indemnify, to the fullest extent permitted by the Delaware Limited Liability Company Act, each person who was or is made a party or is threatened to be made a party in any legal proceeding by reason of the fact that he or she is or was a director and/or officer of the Company or any of its subsidiaries (other than in instances of fraud, gross negligence and willful misconduct). Accordingly, unless the Company's officers and directors commit acts of fraud, gross negligence or willful misconduct, the Company's shareholders may not have remedies available against such individuals under applicable law. Indemnification of former directors or officers shall be determined by any person authorized to act on the matter on the Company's behalf. Expenses incurred by a director or officer in defending against such legal proceedings are payable before the final disposition of the action, provided that the director or officer undertakes to repay the Company if it is later determined that he or she is not entitled to indemnification.

The Company has entered into separate indemnification agreements with the Company's directors and officers. Each indemnification agreement provides, among other things, for indemnification to the fullest extent permitted by law and the operating agreement against (i) any and all expenses and liabilities, including judgments, fines, penalties and amounts paid in settlement of any claim with the Company's approval and counsel fees and disbursements; (ii) any liability pursuant to a loan guarantee, or otherwise, for any of the Company's indebtedness; and (iii) any liabilities incurred as a result of acting on the Company's behalf (as a fiduciary or otherwise) in connection with an employee benefit plan. The indemnification agreements provide for the advancement or payment of all expenses to the indemnitee and for reimbursement to the Company if it is found that such indemnitee is not entitled to such indemnification under applicable law and the operating agreement.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

The Company maintains directors' and officers' liability insurance for the Company's directors and officers.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
4.1	Specimen certificate evidencing the Company's Class A Shares (incorporated by reference to Exhibit 4.1 of the Company's registration statement on Form S-1, as amended (File No. 333-144256))
4.2	Specimen certificate evidencing the Company's Class B Shares (incorporated by reference to Exhibit 3.2 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))
4.3	Class B Shareholders Agreement (incorporated by reference to Exhibit 4.2 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))
4.4	Second Amended and Restated Limited Liability Company Agreement of the Company (incorporated by reference to Exhibit 3.2 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))
4.5	Registration Rights Agreement among the Company and the covered persons named therein (incorporated by reference to Exhibit 4.3 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))
4.6	Registration Rights Agreement between the Company and DIC Sahir Limited (incorporated by reference to Exhibit 4.4 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))
4.7	Exchange Agreement among the Company, Och-Ziff Holding Corporation, Och-Ziff Holding LLC, OZ Management LP, OZ Advisors LP, OZ Advisors II LP, and the Och-Ziff Limited Partners and Class B Shareholders (incorporated by reference to Exhibit 10.4 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (File No. 001-33805))

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- 5.1 Opinion of Morgan, Lewis & Bockius LLP
  - 10.1 Och-Ziff Capital Management Group LLC Amended and Restated 2007 Equity Incentive Plan
  - 23.1 Consent of Ernst & Young LLP
  - 23.2 Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1)
  - 24.1 Power of Attorney (included on the signature pages hereto)

**Item 9. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of

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any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



## SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on November 10, 2008.

OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC  
(Registrant)

By: /s/ Daniel S. Och  
Name: Daniel S. Och  
Title: Chief Executive Officer, Executive Managing  
Director and Chairman of the Board

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Joel M. Frank and Jeffrey C. Blockinger, and each of them, the individual's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the person and in his name, place and stead, in any and all capacities, to sign any or all post-effective amendments to the registration statement, new registration statements pursuant to General Instruction E of Form S-8 pertaining to the registration of additional securities and post-effective amendments thereto, and any and all other documents in connection therewith to be filed with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact as agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Daniel S. Och</u> Daniel S. Och	Chief Executive Officer, Executive Managing Director and Chairman of the Board ( <i>Principal Executive Officer</i> )	November 10, 2008
<u>/s/ Joel M. Frank</u> Joel M. Frank	Chief Financial Officer, Executive Managing Director and Director ( <i>Principal Financial and Accounting Officer</i> )	November 10, 2008
<u>/s/ David Windreich</u> David Windreich	Executive Managing Director and Director	November 10, 2008
<u>/s/ Allan S. Bufferd</u> Allan S. Bufferd	Director	November 10, 2008
<u>/s/ William C. Cobb</u> William C. Cobb	Director	November 10, 2008
<u>/s/ Jerome P. Kenney</u> Jerome P. Kenney	Director	November 10, 2008
<u>/s/ Jeffrey R. Leeds</u> Jeffrey R. Leeds	Director	November 10, 2008

## Exhibit Index

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24.1	Power of Attorney (included on the signature pages hereto)

November 12, 2008

Board of Directors  
Och-Ziff Capital Management Group LLC  
9 West 57th Street  
New York, NY 10019

Re: Och-Ziff Capital Management Group LLC: Registration Statement on Form S-8

Gentlemen:

We have acted as counsel to Och-Ziff Capital Management Group LLC, a Delaware limited liability company (the "Company"), in connection with the filing of the Company's registration statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"), with the Securities and Exchange Commission (the "SEC") on November 12, 2008. The Registration Statement relates to the proposed offer and sale of up to an aggregate of 57,785,714 Class A Shares of the Company (the "Shares") and rights to acquire Shares represented by LTIP Unit Awards and Restricted Share Units under the Och-Ziff Capital Management Group LLC Amended and Restated 2007 Equity Investment Plan (the "Plan"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

In connection with this opinion letter, we have examined originals or copies certified or otherwise identified to our satisfaction of the Registration Statement; the Second Amended and Restated Limited Liability Company Agreement of the Company, dated November 13, 2007 (the "LLC Agreement"); the Plan; certain resolutions of the Board of Directors of the Company relating to the Plan, the filing of the Registration Statement and certain related matters; and such other documents, records and other instruments as we have deemed appropriate for purposes of the opinions set forth herein.

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, electronic, facsimile or photostatic copies and the authenticity of the originals of all documents submitted to us as copies. In making our examination of executed documents, we have assumed that the parties thereto, other than the Company and the Subsidiaries, had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties.

Based upon the foregoing, we are of the opinion that:

1. the Shares have been duly authorized and, when sold in the manner and for the consideration contemplated by the LLC Agreement, the Plan, and the Registration Statement, will be validly issued, fully paid and

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nonassessable, except as such nonassessability may be limited by Section 18-607 or Section 18-804 of the Delaware Limited Liability Company Act (the “Delaware LLC Act”); and

2. (a) the LTIP Unit Awards, including (i) the rights to acquire Shares in exchange for interests in the Subsidiaries (the “LTIP Units”) and (ii) the related Class B Shares (if any) of the Company that are cancelled upon such exchange of LTIP Units for Shares, and (b) the Restricted Share Units, representing rights, with or without Distribution Equivalents, to acquire Shares upon the vesting thereof, have in each case been duly authorized and, when sold in the manner and for the consideration contemplated by the LLC Agreement, the Plan, and the Registration Statement, will constitute valid and legally binding obligations of the Company.

Members of our firm are admitted to the bar of the State of New York. The opinions expressed herein are limited to general contract principles and the Delaware LLC Act.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of our name therein. In giving such consent, we do not admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the SEC thereunder.

Very truly yours,

/s/ Morgan, Lewis & Bockius LLP

**OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC**  
**AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN**  
(as of October 27, 2008)

**1. Purpose of the Plan.**

The Och-Ziff Capital Management Group LLC 2007 Equity Incentive Plan was adopted by the Board on November 11, 2007 and approved by the sole managing member of Och-Ziff Capital Management Group LLC (the “Company”) on November 13, 2007, prior to the Company’s IPO. This amendment and restatement of the 2007 Equity Incentive Plan (the “Plan”) was adopted by the Board effective as of October 27, 2008. The purpose of the Plan is to provide additional incentive to selected employees, directors and Consultants of and service providers to the Company or any Subsidiary (including OZ Advisors LP, OZ Management LP and OZ Advisors II LP) or Affiliate, whose contributions are essential to the growth and success of the Company’s business, in order to strengthen the commitment of such persons to the Company and its Subsidiaries and Affiliates, motivate such persons to faithfully and diligently perform their responsibilities and attract and retain competent and dedicated persons whose efforts should result in the long-term growth and profitability of the Company and its Subsidiaries and Affiliates. To accomplish such purposes, the Plan provides that the Company or a Participating Subsidiary or Affiliate may grant or sell equity-based Awards based on or consisting of Class A Shares, Class B Shares, and LTIP Units. Notwithstanding any provision of the Plan, to the extent that any Award would be subject to Section 409A of the Code, it is the Company’s intent that each such Award comply with the requirements set forth in Section 409A of the Code and any regulations or guidance promulgated thereunder.

**2. Definitions.**

The following capitalized terms used in the Plan have the respective meanings set forth in this Section:

(a) “Administrator” means the Board, or if and to the extent the Board does not administer the Plan, the Committee in accordance with Section 3.

(b) “Affiliate” means, with respect to the Company, any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Company. As used herein, the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

(c) “Award” means, individually or collectively, any Option, Share Appreciation Right, Restricted Share, Restricted Share Unit, Performance Share, unrestricted Share or Other Share-Based Award, including but not limited to LTIP Unit Awards, granted or sold under the Plan.

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(d) “Award Document” means any written agreement, contract or other instrument or document, or any portion of any such instrument or document, evidencing an Award.

(e) A “Beneficial Owner” of a security is a Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power, which includes the power to dispose, or to direct the disposition of, such security. The term “Beneficially Own” and its derivatives shall have a correlative meaning.

(f) “Board” means the Board of Directors of the Company.

(g) “Cause” means, unless otherwise defined in the Participant’s Award Document, employment agreement, or other written agreement describing the Participant’s terms of employment or other service with the Company or any Subsidiary or Affiliate, (i) the commission of an act of fraud, dishonesty, misrepresentation or breach of trust by the Participant in the course of the Participant’s employment with or the Participant’s provision of services to the Company or any Subsidiary or Affiliate; (ii) the Participant’s indictment or entering of a plea of no contest for a crime constituting a felony or in respect of any act of fraud or dishonesty; (iii) the commission of an act by the Participant which would make the Participant or the Company or any Subsidiary or Affiliate subject to being enjoined, suspended, barred or otherwise disciplined for violation of federal or state securities laws, rules or regulations, including a statutory disqualification; (iv) gross negligence or willful misconduct in connection with the Participant’s performance of his or her duties in connection with the Participant’s employment by or provision of services to the Company or any Subsidiary or Affiliate which the Participant may be employed by or providing service to on a full-time basis at the time or the Participant’s failure to comply with any of the restrictive covenants set forth herein; (v) the commission of any act that would result or which might reasonably be a substantial factor resulting in the termination of the Company or any Subsidiary or Affiliate for cause under any of the Company’s or any Subsidiary’s or Affiliate’s management, advisory or similar agreements; (vi) the Participant’s failure to comply with any material policies or procedures of the Company or any Subsidiary or Affiliate which the Participant may be employed by or providing service to on a full-time basis at the time as in effect from time to time; provided, however, that the Participant shall have received a copy of such policies or a notice that they have been posted on a Company or Subsidiary or Affiliate, as the case may be, website prior to such compliance failure; and (vii) the Participant’s failure to perform the material duties in connection with the Participant’s position.

(h) “Change in Capitalization” means any (i) merger, consolidation, reclassification, recapitalization, spin-off, spin-out, repurchase or other reorganization or corporate transaction or event, (ii) distribution (whether in the form of cash, shares, LTIP Units or other property), share or unit split or reverse split, (iii) combination or exchange of shares or units, (iv) other change in structure, or (v) declaration of a distribution, which the Administrator determines, in its sole discretion, affects the Shares or LTIP Units such that an adjustment pursuant to Section 5 is appropriate.

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(i) “Change in Control” means the occurrence of any of the following events:

- (1) any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Exchange Act, or any successor provisions thereto, excluding any Permitted Transferee or any group of Permitted Transferees, becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding voting securities; or
- (2) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: individuals who, on the date of the consummation of the IPO, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company’s shareholders was approved or recommended by a vote of at least two-thirds ( $\frac{2}{3}$ ) of the directors then still in office who either were directors on the date of the consummation of the IPO or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (2); or
- (3) there is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (i) the members of the Board immediately prior to the merger or consolidation do not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a subsidiary, the ultimate parent thereof, or (ii) all of the Persons who were the respective Beneficial Owners of the voting securities of the Company immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then-outstanding voting securities of the Person resulting from such merger or consolidation; or
- (4) the shareholders of the Company approve a plan of complete liquidation or dissolution of the Company, or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Company of all or substantially all of the Company’s assets, other than the sale or other disposition by the Company of all or substantially all of the Company’s assets to an entity, at least fifty percent (50%) of the combined voting power of the voting securities of which are Beneficially Owned by shareholders of the Company in substantially the same proportions as their Beneficial Ownership of such securities of the Company immediately prior to such sale.

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Notwithstanding the foregoing, except with respect to clause (2) and clause (3)(i) above, a “Change in Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

(j) “Class A Shares” means the Class A Shares of the Company.

(k) “Class B Shares” means the Class B Shares of the Company.

(l) “Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of any successor law.

(m) “Committee” means the Board, or a committee designated by the Board to administer the Plan. With respect to Awards granted to Covered Employees, such committee shall consist of two or more persons, each of whom, unless otherwise determined by the Board, is an “outside director” within the meaning of Section 162(m) of the Code and a “nonemployee director” within the meaning of Rule 16b-3 under the Exchange Act (“Rule 16b-3”) and has any other qualifications required by the applicable stock exchange on which the Shares are listed. If at any time or to any extent the Board shall not administer the Plan, then the functions of the Administrator specified in the Plan shall be exercised by such committee.

(n) “Company” means Och-Ziff Capital Management Group LLC, a Delaware limited liability company, and any successors thereto.

(o) “Consultant” means a consultant or advisor who is a natural person, engaged to render *bona fide* services to the Company or any Subsidiary or Affiliate.

(p) “Covered Employee” is a person who is or is likely to become a “covered employee” as defined in Section 162(m)(3) of the Code.

(q) “Disability” means, unless otherwise defined in the Participant’s Award Document, that a Participant (i) as determined by the Administrator in its sole discretion, is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last



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for a continuous period of not less than twelve (12) months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Company or any Subsidiary or Affiliate.

(r) “Distribution Equivalent” means a right, granted pursuant to the Plan, to be paid an amount determined with respect to the distributions declared and paid with respect to outstanding Shares or LTIP Units, as specified in, and pursuant to the terms of, an applicable Award Document.

(s) “Exchange Act” means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time and any successor to such statute, and the rules and regulations promulgated thereunder.

(t) “Exercise Price” means the per share price at which a holder of an Option may purchase the Shares issuable upon exercise of such Option.

(u) “Fair Market Value” as of a particular date shall mean the fair market value as determined by the Administrator in its sole discretion; provided, however, that (i) if the share, LTIP Unit or other security is listed on a national securities exchange, the fair market value on any date shall be the closing sale price reported on such date, or (ii) if the share, LTIP Unit or other security is traded in an over-the-counter market, the fair market value on any date shall be the average of the highest bid and lowest asked prices for such share in such over-the-counter market on such date.

(v) “IPO” means the initial public offering of Class A Shares, as contemplated in the registration statement on Form S-1 of the Company (No. 333-144256).

(w) “LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of Och-Ziff Capital Management Group LLC, as amended from time to time.

(x) “LTIP Units” means interests in the members of the Och-Ziff Operating Group, as more fully described in Section 10(b).

(y) “LTIP Unit Awards” means Awards consisting of, among other things, LTIP Units, as more fully described in Section 10(b).

(z) “Och-Ziff Operating Group” shall have the meaning assigned to it in the LLC Agreement.

(aa) “ Option ” means an option to purchase Shares granted pursuant to Section 7. Each Option shall be a nonqualified option, and shall not be an incentive stock option as defined in Section 422 of the Code.

(bb) “ Other Share-Based Award ” means an Award granted pursuant to Section 10.

(cc) “ Participant ” means (i) any employee, director, partner or Consultant of or service provider to the Company or any Subsidiary or Affiliate; and (ii) the trustee of any trust established for the purpose of providing benefits to any individual described in (i) and/or to any dependant, family member (including any spouse, former spouse, widow, widower or co-habitee) or household member of any individual described in (i) and/or to any class of individuals comprising individuals described in (i), their dependants, family members or household members, provided always that the relevant employee, director, partner, Consultant or service provider has been selected as a Participant by the Administrator, pursuant to the Administrator’s authority in Section 3, to receive an Award or, where applicable, as being eligible or potentially eligible to receive an Award subject to any discretion conferred upon the trustee by the terms of the relevant trust.

(dd) “ Participating Subsidiary or Affiliate ” means each Subsidiary or Affiliate that is a member of the Och-Ziff Operating Group and has adopted the Plan.

(ee) “ Performance Goals ” means performance goals based on one or more of the following criteria: (i) earnings, including operating income, earnings before or after taxes, earnings before or after interest, depreciation, amortization, or extraordinary or special items or book value per share (which may exclude nonrecurring items); (ii) pre-tax income or after-tax income; (iii) earnings per share (basic or diluted); (iv) operating profit; (v) economic income; (vi) revenue, revenue growth or rate of revenue growth; (vii) return on assets (gross or net), return on investment, return on capital, or return on equity; (viii) returns on sales or revenues; (ix) operating expenses; (x) share price appreciation; (xi) cash flow, free cash flow, cash flow return on investment (discounted or otherwise), net cash provided by operations, or cash flow in excess of cost of capital; (xii) implementation or completion of critical projects or processes; (xiii) economic value created; (xiv) cumulative earnings per share growth; (xv) operating margin or profit margin; (xvi) share price or total shareholder return; (xvii) cost targets, reductions and savings, productivity and efficiencies; (xviii) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, investor satisfaction, employee satisfaction, human resources management, supervision of litigation, or information technology goals, and goals relating to acquisitions, divestitures, joint ventures and similar transactions, and budget comparisons; (xix) personal professional objectives, including any of the foregoing Performance Goals, the implementation of policies and plans, the negotiation of transactions, the development of long-term business goals, the formation of joint ventures, research or development collaborations, and the completion of other corporate transactions; and (xx) any combination of, or a specified increase in, any of the foregoing. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company, a Subsidiary or

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Affiliate, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Administrator. The Performance Goals may include a threshold level of performance below which no payment shall be made (or no vesting shall occur), levels of performance at which specified payments shall be made (or specified vesting shall occur), and a maximum level of performance above which no additional payment shall be made (or at which full vesting shall occur). Each of the foregoing Performance Goals shall not be required to be determined in accordance with generally accepted accounting principles and shall be subject to certification by the Administrator; provided, however, that the Administrator shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary or Affiliate or the financial statements of the Company or any Subsidiary or Affiliate, in response to changes in applicable laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles.

(ff) “Permitted Transferee” means any transferee of a Share through a “Permitted Transfer,” as defined in the LLC Agreement, in accordance with applicable restrictions.

(gg) “Performance Shares” means Shares that are subject to restrictions based upon the attainment of specified Performance Goals granted pursuant to Section 9.

(hh) “Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

(ii) “Plan” means this Och-Ziff Capital Management Group LLC Amended and Restated 2007 Equity Incentive Plan, as amended from time to time.

(jj) “Restricted Shares” means Shares subject to certain restrictions granted pursuant to Section 9.

(kk) “Restricted Share Units” means the right to receive Shares or cash equal to the Fair Market Value of Shares at the end of a specified period granted pursuant to Section 9.

(ll) “Shares” means the Class A Shares (as specified in the applicable Award Document) reserved for issuance under the Plan, as adjusted pursuant to the Plan, and any successor (pursuant to a merger, consolidation or other reorganization) security.

(mm) “Share Appreciation Right” means the right pursuant to an Award granted under Section 8 to receive an amount equal to the excess, if any, of (i) the aggregate Fair Market Value, as of the date such Share Appreciation Right or portion thereof is surrendered, of the Shares covered by such right or such portion thereof, over (ii) the aggregate base price of such right or such portion thereof.

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(nn) “ Subsidiary ” means, with respect to the Company, as of any date of determination, any other Person as to which the Company owns or otherwise controls, directly or indirectly, more than fifty percent (50%) of the voting shares or other similar interests or a sole general partner interest or managing member or similar interest of such Person.

### **3. Administration.**

(a) The Plan shall be administered by the Committee in accordance with the requirements of Section 162(m) of the Code only to the extent applicable and to the extent the Administrator determines that specified Awards are intended to qualify as performance-based compensation under Section 162(m) of the Code and, to the extent applicable, Rule 16b-3.

(b) Pursuant to the terms of the Plan, the Administrator, subject to any restrictions on the authority delegated to it by the Board, shall have the power and authority, without limitation:

- (1) to select Participants;
- (2) to determine whether and to what extent Awards are to be granted to Participants;
- (3) to determine the number of Shares, LTIP Units, or Class B Shares to be covered by each Award;
- (4) to determine the terms and conditions, not inconsistent with the terms of the Plan, which shall govern Award Documents (including but not limited to (i) the restrictions applicable to Awards and the conditions under which restrictions applicable to such Awards shall lapse, (ii) the Performance Goals and periods applicable to Awards, (iii) the Exercise Price, base price or purchase price, if any, of Awards, (iv) the vesting schedule applicable to Awards, (v) the number of Shares, LTIP Units or Class B Shares subject to Awards and (vi) any amendments to the terms and conditions of outstanding Awards, including but not limited to reducing the Exercise Price or base price of such Awards, extending the exercise period of such Awards and accelerating the vesting schedule of such Awards);
- (5) to make Fair Market Value determinations with respect to any Award;

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- (6) to determine the duration and purpose of leaves of absence which may be granted to a Participant without constituting a termination of the Participant's employment or service for purposes of Awards;
  - (7) to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable;
  - (8) to construe and interpret the terms and provisions of the Plan and any Award (and the Award Document relating thereto), and to otherwise supervise the administration of the Plan and exercise all powers and authorities either specifically granted under the Plan or advisable in the administration of the Plan;
  - (9) to delegate its authority, in whole or in part, under this Section 3 to two or more individuals (who may or may not be members of the Board), subject to the requirements of applicable law or any stock exchange on which the Shares are listed;
  - (10) to delegate its authority, in whole or in part, under this Section 3 and with respect to Participants who are not executive officers of the Company, to one or more individuals (who may or may not be members of the Board), subject to the requirements of applicable law or any stock exchange on which the Shares are listed; and
  - (11) to determine at any time whether, to what extent and under what circumstances and method or methods Awards may be settled by the Company, or any Participating Subsidiary or Affiliate. In the event of such determination, references to the Company shall be deemed to be references to the applicable Participating Subsidiary or Affiliate for purposes of the Plan as appropriate.

(c) Except as expressly provided by the Administrator (including but not limited to for purposes of complying with the requirements of the LLC Agreement and the organizational documents of any Participating Subsidiary or Affiliate relating to lawful consideration for the issuance of Awards, Class A Shares, Class B Shares or LTIP Units), no consideration other than services will be required as consideration for the grant (but not the exercise) of any Award. Awards may, as determined by the Administrator, be granted in substitution for any other Award granted under the Plan or any award granted under any other plan of the Company or any Subsidiary or Affiliate or any business entity to be acquired by the Company or any Subsidiary or Affiliate or any other right of a Participant to receive payment from the Company or any Subsidiary or Affiliate.

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(d) Notwithstanding paragraph (b) of this Section 3, neither the Board, nor the Administrator, nor their respective delegates shall have the authority to reprice (or cancel and regrant) any Option or, if applicable, other Award at a lower Exercise Price or base price without first obtaining the approval of the Company's shareholders.

(e) All decisions made by the Administrator pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, including the Company and any Subsidiary or Affiliate and the Participants. No member of the Board or the Administrator, nor any officer, partner, member or employee of the Company or any Subsidiary or Affiliate acting on behalf of the Board or the Administrator, shall be personally liable for any action, omission, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Administrator and each and any officer, partner, member or employee of the Company and of any Subsidiary or Affiliate acting on their behalf shall, to the maximum extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, omission, determination or interpretation.

#### **4. Shares Reserved for Issuance Under the Plan.**

(a) Subject to Section 5, the maximum number of Class A Shares that may be delivered pursuant to Awards shall be a number of Class A Shares equal to fifteen percent (15%) of the number of Class A Shares outstanding immediately after the consummation of the IPO (assuming the exchange of all Och-Ziff Operating Group A Units, as defined in the LLC Agreement, for Class A Shares), as increased on the first day of each fiscal year beginning in calendar year 2008 by a number of Class A Shares equal to the excess of (i) fifteen percent (15%) of the number of outstanding Class A Shares on the last day of the immediately preceding fiscal year (assuming the exchange of all Och-Ziff Operating Group A Units for Class A Shares) over (ii) the number of Shares then reserved for issuance under the Plan as of such date.

(b) If any Award expires or terminates unexercised, becomes unexercisable or is forfeited as to any Shares, or is tendered or withheld as to any Shares in payment of the Exercise Price of the Award or the taxes payable with respect to the exercise or vesting of the Award, then such unpurchased, forfeited, tendered or withheld Shares shall thereafter be available for further Awards under the Plan unless, in the case of Options, Related Share Appreciation Rights (as defined in paragraph (a) of Section 8) are exercised.

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## **5. Equitable Adjustments.**

In the event of any Change in Capitalization, an appropriate equitable substitution or proportionate adjustment shall be made, in each case in the manner to be determined by the Administrator in its sole discretion, in order to prevent an enlargement or dilution of rights, in (i) the aggregate number of Shares reserved for issuance under the Plan and the maximum number of Shares that may be subject to Awards granted to any Participant in any fiscal year, (ii) the kind, number and Exercise Price, base price, or ratio of Shares subject to outstanding Options, Share Appreciation Rights and exchangeable LTIP Units, and (iii) the kind and number of Shares or LTIP Units and the purchase price of Shares subject to outstanding Awards of Restricted Shares, Restricted Share Units, Performance Shares, unrestricted shares or Other Share-Based Awards, including but not limited to LTIP Unit Awards; provided, however, that any fractional shares or units resulting from the adjustment shall be eliminated. Without limiting the generality of the foregoing, in connection with a Change in Capitalization, the Administrator shall take such action as is necessary to adjust the outstanding Awards to reflect the Change in Capitalization, including but not limited to the cancellation of any outstanding Award in exchange for payment in cash or other property of the aggregate Fair Market Value of the Shares or LTIP Units covered by such Award, reduced by the aggregate Exercise Price, base price, or purchase price thereof, if any. Notwithstanding the foregoing, no such adjustment shall cause any Award that is or becomes subject to Section 409A of the Code to fail to comply with the requirements of such section. The Administrator's determinations pursuant to this Section 5 shall be final, binding and conclusive.

## **6. Eligibility.**

Participants shall be selected from time to time by the Administrator, in its sole discretion.

## **7. Options.**

(a) General. Each Participant who is granted an Option shall enter into an Award Document containing such terms and conditions as the Administrator shall determine, in its discretion, which Award Document shall set forth, among other things, the Exercise Price of the Option, the term of the Option and provisions regarding exercisability of the Option. The provisions of each Option need not be the same with respect to each Participant. More than one Option may be granted to the same Participant and be outstanding concurrently. Options shall be subject to the terms and conditions set forth in this Section 7 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable and set forth in the Award Document.

(b) Exercise Price. The Exercise Price of Shares purchasable under an Option shall be determined by the Administrator in its sole discretion at the time of grant; provided, however, that the Exercise Price of any Option shall not be less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant.

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(c) Option Term. The maximum term of each Option shall be fixed by the Administrator, but no Option shall be exercisable more than ten (10) years after the date such Option is granted. Each Option's term is subject to earlier expiration pursuant to the applicable provisions in the Plan and the Award Document.

(d) Exercisability. Each Option shall be exercisable at such time or times and subject to such terms and conditions, including the attainment of preestablished Performance Goals, as shall be determined by the Administrator in the Award Document. The Administrator may also provide that any Option shall be exercisable only in installments, and the Administrator may waive such installment exercise provisions at any time, in whole or in part, based on such factors as the Administrator may determine in its sole discretion. Notwithstanding the foregoing, the Administrator shall have the authority to accelerate the exercisability of any outstanding Option at such time and under such circumstances as it, in its sole discretion, deems appropriate. Notwithstanding anything to the contrary contained herein, an Option may not be exercised for a fraction of a Share.

(e) Method of Exercise. Options may be exercised in whole or in part by giving written notice of exercise to the Company specifying the number of Shares to be purchased, accompanied by payment in full of the aggregate Exercise Price of the Shares so purchased in cash or its equivalent, as determined by the Administrator. As determined by the Administrator in its sole discretion with respect to any Option or category of Options, payment in whole or in part may also be made (i) by means of consideration received under any cashless exercise procedure approved by the Administrator (including, but not limited to the withholding of Shares otherwise issuable upon exercise), (ii) in the form of unrestricted Shares already owned by the Participant which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Shares as to which such Option shall be exercised, (iii) any other form of consideration approved by the Administrator and permitted by applicable law or (iv) any combination of the foregoing.

(f) Rights as Shareholder. A Participant shall have no rights to distributions or any other rights of a shareholder with respect to the Shares subject to an Option until the Participant has given written notice of exercise, has paid in full for such Shares, has satisfied the requirements of Section 14 and, if requested, has given the representation described in Section 15(b).

(g) Transfers of Options. Except as otherwise determined by the Administrator, no Option shall be transferable by a Participant other than by the laws of descent and distribution. Unless otherwise determined by the Administrator in accordance with the provisions of the immediately preceding sentence, an Option may be exercised during the lifetime of the Participant only by the Participant or, during the period the Participant is under a Disability, by the Participant's guardian or legal representative. The Administrator may, in its sole discretion, subject to applicable law, permit the gratuitous transfer during a Participant's lifetime of an Option, (i) by gift to a member of the Participant's immediate family, (ii) by transfer by instrument to a trust for the benefit of such immediate family members, or (iii) to a partnership or limited liability company in which such family members are the only partners or members;



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provided, however, that, in addition to such other terms and conditions as the Administrator may determine in connection with any such transfer, no transferee may further assign, sell, hypothecate or otherwise transfer the transferred Option, in whole or in part, other than by operation of the laws of descent and distribution. Each such transferee shall agree to be bound by the provisions of the Plan and the applicable Award Document.

(h) Termination of Employment or Service.

- (1) Unless the applicable Award Document provides otherwise or unless otherwise determined by the Administrator, in the event that the employment or service of a Participant with the Company or any Subsidiary or Affiliate shall terminate for any reason other than Cause, Disability, or death, but including termination by reason of the entity employing the Participant or to which the Participant is rendering services ceasing to be a Subsidiary or Affiliate, (A) Options granted to such Participant, to the extent that they are exercisable at the time of such termination, shall remain exercisable until the date that is ninety (90) days after such termination, on which date they shall expire and (B) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. The ninety (90)-day period described in this Section 7(h)(1) shall be extended to one year after the date of such termination in the event of the Participant's death during such ninety (90)-day period. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.
- (2) Unless the applicable Award Document provides otherwise or unless otherwise determined by the Administrator, in the event that the employment or service of a Participant with the Company or any Subsidiary or Affiliate shall terminate on account of the Disability or death of the Participant, (A) Options granted to such Participant, to the extent that they were exercisable at the time of such termination, shall remain exercisable until the date that is one year after such termination, on which date they shall expire and (B) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.
- (3) In the event of the termination of a Participant's employment or service for Cause, all outstanding Options, including vested Options, granted to such Participant shall expire at the commencement of business on the date of such termination.

(i) Other Change in Employment or Service Status. An Option may be affected, both with regard to vesting schedule and termination, by leaves of absence, changes from full-time to part-time employment, Disability or other changes in the employment or service status of a Participant, in the discretion of the Administrator. The Administrator shall follow applicable written policies of the Company (if any), including but not limited to such rules, guidelines and practices as may be adopted pursuant to Section 3, as they may be in effect from time to time, with regard to such matters.

## **8. Share Appreciation Rights.**

(a) General. Share Appreciation Rights may be granted either alone (“Free-Standing Share Appreciation Rights”) or in conjunction with all or part of any Option (“Related Share Appreciation Rights”). Related Share Appreciation Rights may be granted either at or after the time of the grant of such Option. The Administrator shall determine the Participants to whom, and the time or times at which, grants of Share Appreciation Rights shall be made; the number of Shares to be awarded; the base price per Share; and all other conditions of Share Appreciation Rights. Notwithstanding the foregoing, no Related Share Appreciation Rights may be granted for more Shares than are subject to the Option to which they relate, and any Share Appreciation Rights must be granted with a base price not less than one hundred percent (100%) of the Fair Market Value of Shares on the date of grant. The provisions of Share Appreciation Rights need not be the same with respect to each Participant. Share Appreciation Rights shall be subject to the following terms and conditions set forth in this Section 8 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable, as set forth in the applicable Award Document.

### (b) Exercisability.

- (1) Free-Standing Share Appreciation Rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator at or after grant.
- (2) Related Share Appreciation Rights shall be exercisable only at such time or times and to the extent that the Options to which they relate shall be exercisable in accordance with the provisions of Section 7.

### (c) Payment Upon Exercise.

- (1) Upon the exercise of a Free-Standing Share Appreciation Right, the Participant shall be entitled to receive up to, but not more than, the value equal to the excess of the Fair Market Value of a Share as of the date of exercise over the base price per Share specified in the Free-Standing Share Appreciation Right (which price shall be no less than one hundred percent (100%) of the Fair

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Market Value of such Share on the date of grant) multiplied by the number of Shares in respect of which the Free-Standing Share Appreciation Right is being exercised, with the Administrator having the right to determine the form of payment.

- (2) A Related Share Appreciation Right may be exercised by a Participant by surrendering the applicable portion of the related Option. Upon such exercise and surrender, the Participant shall be entitled to receive up to, but not more than, the value equal to the excess of the Fair Market Value of a Share as of the date of exercise over the Exercise Price specified in the related Option (which price shall be no less than one hundred percent (100%) of the Fair Market Value of a Share on the date of grant) multiplied by the number of Shares in respect of which the Related Share Appreciation Right is being exercised, with the Administrator having the right to determine the form of payment. Options that have been so surrendered, in whole or in part, shall no longer be exercisable to the extent the Related Share Appreciation Rights have been so exercised.
- (3) Notwithstanding the foregoing, the Administrator may determine to settle the exercise of a Share Appreciation Right in cash (or in any combination of Shares and cash).

(d) Rights as a Shareholder . A Participant shall have no rights to distributions or any other rights of a shareholder with respect to the Shares subject to Share Appreciation Rights until the Participant has given written notice of exercise, has satisfied the requirements of Section 14 and, if requested, has given the representation described in Section 15(b).

(e) Non-Transferability . Share Appreciation Rights shall not be transferable; provided, however, that Related Share Appreciation Rights are transferable only when and to the extent the related Option would be transferable under Section 7.

(f) Termination of Employment or Service .

- (1) In the event of the termination of employment or service with the Company or any Subsidiary or Affiliate of a Participant who has been granted one or more Free-Standing Share Appreciation Rights, such Rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator.
- (2) In the event of the termination of employment or service with the Company or any Subsidiary or Affiliate of a Participant who has been granted one or more Related Share Appreciation Rights, such Rights shall be exercisable at such time or times and subject to such terms and conditions as set forth in the Award Document.

(g) Term.

- (1) The term of each Free-Standing Share Appreciation Right shall be fixed by the Administrator, but no Free-Standing Share Appreciation Right shall be exercisable more than ten (10) years after the date such Right is granted.
- (2) The term of each Related Share Appreciation Right shall be the term of the Option to which it relates, but no Related Share Appreciation Right shall be exercisable more than ten (10) years after the date such Right is granted.

**9. Restricted Shares, Restricted Share Units and Performance Shares.**

(a) General. Awards of Restricted Shares, Restricted Share Units or Performance Shares may be issued either alone or in addition to other Awards. The Administrator shall determine the Participants to whom, and the time or times at which, Awards of Restricted Shares, Restricted Share Units or Performance Shares shall be made; the number of Shares to be awarded; the price, if any, to be paid by the Participant for the acquisition of Restricted Shares, Restricted Share Units or Performance Shares; the Restricted Period (as defined in paragraph (c) of this Section 9), if any, applicable to Awards of Restricted Shares or Restricted Share Units; the Performance Goals, if any, applicable to Awards of Restricted Shares, Restricted Share Units or Performance Shares; any rights to Distribution Equivalents; and all other conditions of the Awards of Restricted Shares, Restricted Share Units and Performance Shares. The Administrator may also condition the grant of the Award of Restricted Shares, Restricted Share Units or Performance Shares upon the exercise of Options, or upon such other criteria as the Administrator may determine, in its sole discretion. If the restrictions, Performance Goals and/or conditions established by the Administrator are not attained, a Participant shall forfeit his or her Restricted Shares, Restricted Share Units or Performance Shares. The provisions of the Awards of Restricted Shares, Restricted Share Units or Performance Shares need not be the same with respect to each Participant.

(b) Awards and Certificates. Except as otherwise provided below in this Section 9, (i) each Participant who receives an Award of Restricted Shares or Performance Shares shall be issued a share certificate in respect of such Restricted Shares or Performance Shares (or such other appropriate evidence of ownership as determined by the Administrator); and (ii) such certificate (or other evidence of ownership) shall be registered in the name of the Participant, and, if appropriate, shall bear a legend referring to the terms, conditions, and restrictions applicable to any such Award. The Company may require that the Share certificates evidencing Restricted Shares or Performance Shares be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any Award of Restricted Shares or Performance Shares, the Participant shall have delivered a power of attorney, endorsed in blank, relating to the Shares covered by such Award.

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(c) Restrictions and Conditions. The Awards of Restricted Shares, Restricted Share Units and Performance Shares shall be subject to the following restrictions and conditions and any additional restrictions or conditions as determined by the Administrator:

- (1) Subject to the provisions of the Plan and the Award Document, during such period as may be set by the Administrator commencing on the date of the Award (the “Restricted Period”), the Participant shall not be permitted to sell, transfer, pledge or assign Restricted Shares, Restricted Share Units or Performance Shares; provided, however, that the Administrator may, in its sole discretion, provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion, including but not limited to the attainment of certain Performance Goals, the Participant’s termination of employment or service as a director or Consultant of or service provider to the Company or any Subsidiary or Affiliate or the Participant’s death or Disability. Notwithstanding the foregoing, upon a Change in Control, the outstanding Awards shall be subject to Section 11.
- (2) Except as may be provided in the Award Document, the Participant shall generally have the rights of a shareholder of the Company with respect to Restricted Shares and Performance Shares during the Restricted Period. The Participant shall generally not have the rights of a shareholder with respect to Shares subject to Awards of Restricted Share Units during the Restricted Period; provided, however, that, at the discretion of the Administrator, Distribution Equivalents may be awarded during a restricted period, if any, applicable to such Distribution Equivalents with respect to the number of Shares covered by Restricted Share Units and may be accrued and paid to the Participant promptly after, and only after, the restricted period, if any, applicable to such Distribution Equivalents shall expire without forfeiture. Certificates for unrestricted Shares shall be delivered to the Participant promptly after, and only after, the Restricted Period shall expire without forfeiture in respect of such Awards of Restricted Shares, Restricted Share Units or Performance Shares except as the Administrator, in its sole discretion, shall otherwise determine.
- (3) The rights of Participants granted Awards of Restricted Shares, Restricted Share Units or Performance Shares upon termination of employment or service as a director or Consultant of or service provider to the Company or to any Subsidiary or Affiliate for any reason during the Restricted Period shall be set forth in the Award Document.

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(d) To the extent that the Plan is then subject to Section 162(m) of the Code, no payment pursuant to this Section 9 with respect to Awards which are intended to qualify as performance-based compensation under Section 162(m) of the Code shall be made to a Covered Employee prior to the certification by the Committee that the applicable Performance Goals have been attained. The Committee may establish such other rules applicable to Awards made pursuant to this Section 9; provided, however, that, with respect to Awards that are intended to qualify as performance-based compensation under Section 162(m) of the Code, such rules shall be in compliance with Section 162(m) of the Code.

#### **10. Other Share-Based Awards.**

(a) The Administrator is authorized to grant Awards to Participants in the form of Other Share-Based Awards, as deemed by the Administrator to be consistent with the purposes of the Plan and as evidenced by an Award Document, including but not limited to Awards that are valued in whole or in part by reference to Class A Shares, including Awards valued by reference to book value, fair value or performance of the Company or any Subsidiary, Affiliate or partnership interests, including Distribution Equivalents and restricted or performance units. Other Share-Based Awards may be granted as free-standing Awards or in tandem with other Awards. The Administrator shall determine the terms and conditions of such Awards, consistent with the terms of the Plan, including any Performance Goals and performance periods. Shares, partnership interests, or other securities or property delivered pursuant to an Award in the nature of a purchase right granted under this Section 10 shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including but not limited to Shares, other Awards, notes or other property, as the Administrator shall determine, subject to any required corporate action. The Administrator may, in its sole discretion, settle such Other Share-Based Awards for cash, Shares, partnership interests, or other property as appropriate; provided, however, that it determines, after consultation with its legal counsel and tax advisers, that such alternate settlement would be in the Company's best interests.

(b) The Administrator is also authorized to grant LTIP Unit Awards to Participants in the form of LTIP Units that, whether vested or unvested, shall entitle the Participant to receive, currently or on a deferred or contingent basis, distributions or Distribution Equivalents with respect to a number of LTIP Units or other distributions from the members of the Och-Ziff Operating Group, with respect to which the Administrator may provide in the Award Document that such amounts (if any) shall be deemed to have been reinvested in additional LTIP Units. The LTIP Units may include an exchange ratio pursuant to which the LTIP Units (with or without other property) may be exchanged for Class A Shares in accordance with the terms of the LLC Agreement, and in such case may include Class B Shares; provided, however, that the number of Class B Shares issued as a feature of the LTIP Unit Award may not exceed the number of Class A Shares acquirable upon the exchange of the LTIP Units included in such Award and that such Class B Shares are cancelled pro tanto at the same time that the exchangeable LTIP Units are exchanged for such Class A Shares. LTIP Units may be structured as "profits interests," "capital interests" or other types of partnership interests for federal income tax purposes. The Administrator has the authority to determine the number of shares, interests, units or rights underlying LTIP Unit Awards in light of all applicable circumstances, including but not limited to performance-based vesting conditions, operating partnership "capital account allocations," value accretion factors, and conversion or exchange ratios, to the extent set forth in the partnership agreements for the members of the Och-Ziff Operating Group, the Code or otherwise.

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(c) To the extent that the Plan is then subject to Section 162(m) of the Code, no payment pursuant to this Section 10 with respect to Awards that are intended to qualify as performance-based compensation under Section 162(m) of the Code shall be made to a Covered Employee prior to the certification by the Committee that the applicable Performance Goals have been attained. The Committee may establish such other rules applicable to the Other Share-Based Awards; provided, however, that, with respect to Awards that are intended to qualify as performance-based compensation under Section 162(m) of the Code, such rules shall be in compliance with Section 162(m) of the Code.

#### **11. Accelerated Vesting in Connection with a Change in Control.**

(a) In the event of a Change in Control, any outstanding Option that is not assumed or continued, or for which an equivalent option or right is not substituted pursuant to the Change in Control transaction's governing document, shall become fully vested and exercisable "immediately prior to" the effective date of such Change in Control and shall expire upon the effective date of such Change in Control. For purposes of this Section 11, "immediately prior to" shall mean sufficiently in advance of the Change in Control transaction such that there will be time for each affected Participant to exercise his or her Option and participate in the Change in Control transaction in the same manner as all other holders of Shares. If an Option becomes fully vested and exercisable immediately prior to a Change in Control, the Administrator shall notify the affected Participant in writing or electronically that the Option has become fully vested and exercisable, and that the Option will terminate upon the Change in Control.

(b) Unless otherwise determined by the Administrator and evidenced in an Award Document, in the event that (i) a Change in Control occurs and (ii) the Participant's employment or service is terminated by the Company, its successor or affiliate thereof without Cause on or after the effective date of the Change in Control but prior to twelve (12) months following such Change in Control, then:

- (1) any unvested or unexercisable portion of any Award carrying a right to exercise shall become vested and exercisable; and
- (2) the restrictions, deferral limitations, payment conditions and forfeiture conditions applicable to any other Award shall lapse and all unvested Awards shall be deemed fully vested and performance conditions imposed with respect to such Awards shall be deemed to be fully achieved.

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## **12. Amendment and Termination.**

The Board may amend, alter or terminate the Plan, but no amendment, alteration, or termination shall be made that would impair the rights of a Participant under any Award theretofore granted without such Participant's consent. Unless the Board determines otherwise, the Board shall obtain approval of the Company's shareholders for any amendment that would require such approval in order to satisfy the requirements of Section 162(m) of the Code, any rules of the stock exchange on which the Shares are listed or other applicable law. If any Award is subject to Section 409A of the Code and fails to comply with the requirements of Section 409A of the Code, the Administrator reserves the right to (but is not obligated to) amend, modify or supplement such Award in order to cause it to either not be subject to Section 409A of the Code or to comply with the applicable provisions of Section 409A of the Code. The Administrator may amend the terms of any Award theretofore granted, prospectively or retroactively, but no such amendment shall impair the rights of any Participant without his or her consent.

## **13. Unfunded Status of Plan.**

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company or any Participating Subsidiary or Affiliate.

## **14. Withholding Taxes.**

Each Participant shall, no later than the date as of which the value of an Award first becomes includible in the gross income of the Participant for federal, state, or local income tax purposes, pay to the Company or any Subsidiary or Affiliate, or make arrangements satisfactory to the Administrator regarding payment of, any federal, state, or local taxes of any kind required by law to be withheld with respect to the Award. The obligations of the Company or any Participating Subsidiary or Affiliate under the Plan shall be conditional on the making of such payments or arrangements, and the Company or any Subsidiary or Affiliate shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant. Whenever cash is to be paid pursuant to an Award, the Company or any Participating Subsidiary or Affiliate shall have the right to deduct therefrom an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto. Whenever Shares or LTIP Units are to be delivered pursuant to an Award, the Company or any Participating Subsidiary or Affiliate shall have the right to require the Participant to remit to the Company or such Participating Subsidiary or Affiliate in cash an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto. With the approval of the Administrator, a Participant may elect to satisfy the foregoing requirement by electing to have the Company or any Participating Subsidiary or Affiliate withhold from delivery of Shares, LTIP Units, or other property or by delivering already owned unrestricted Shares, LTIP Units, or other property, in each case having a value equal to the minimum amount of tax required to be



withheld. Such Shares, LTIP Units, or other property shall be valued at their Fair Market Value, if any, on the business day immediately preceding the date on which the amount of tax to be withheld is determined. Fractional share or unit amounts shall be settled in cash. Such an election may be made with respect to all or any portion of the Shares, LTIP Units, or other property to be delivered pursuant to an Award. The Company or any Subsidiary or Affiliate may also use any other method of obtaining the necessary payment or proceeds, as permitted by law, to satisfy its withholding obligation with respect to any Award.

## **15. General Provisions.**

(a) Awards, Class A Shares, Class B Shares and LTIP Units shall not be issued pursuant to the Plan unless the issuance and delivery of such Awards, shares or LTIP Units pursuant hereto shall comply with all relevant provisions of law, including but not limited to the Securities Act of 1933, as amended, the Exchange Act and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) The Administrator may require each person acquiring Awards, Class A Shares, Class B Shares or LTIP Units to represent to and agree with the Company or any Participating Subsidiary or Affiliate in writing that such person is acquiring the Awards, Class A Shares, Class B Shares or LTIP Units without a view to distribution thereof. The certificates for any shares or LTIP Units may include any legend that the Administrator deems advisable to reflect any restrictions on transfer which the Administrator determines, in its sole discretion, arise under applicable securities laws or are otherwise applicable.

(c) All certificates for Class A Shares, Class B Shares or LTIP Units delivered under the Plan shall be subject to such stop-transfer orders and other restrictions as the Administrator may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Shares may then be listed, and any applicable federal or state securities law, and the Administrator may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

(d) The Administrator may require a Participant receiving Awards, Class A Shares, Class B Shares or LTIP Units, as a condition precedent to receipt of such Awards, shares or LTIP Units, to enter into a shareholder agreement, "lock-up" or other agreement in such form as the Administrator shall determine is advisable to further the interests of the Company or any Participating Subsidiary or Affiliate.

(e) The adoption of the Plan shall not confer upon any Participant any right to continued employment or service with the Company or any Subsidiary or Affiliate, as the case may be, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment or service of any Participant at any time.

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**16. Effective Date.**

The Plan became effective upon adoption by the Board on November 11, 2007 (the “Effective Date”), and approval by the sole managing member of the Company on November 13, 2007.

**17. Term of Plan.**

No Award shall be granted pursuant to the Plan on or after the tenth (10th) anniversary of the Effective Date, but Awards theretofore granted may extend beyond that date.

**18. Governing Law.**

The Plan shall be construed and enforced in accordance with the laws of the State of Delaware without regard to the application of the principles of conflicts or choice of laws.

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 filed on November 12, 2008 pertaining to the Amended and Restated 2007 Equity Incentive Plan of Och-Ziff Capital Management Group LLC of our report dated March 25, 2008, with respect to the consolidated and combined financial statements of Och-Ziff Capital Management Group LLC and subsidiaries (prior to November 14, 2007, Och-Ziff Operating Group) included in its Annual Report on Form 10-K for the year ended December 31, 2007 filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP  
New York, New York  
November 12, 2008