

April 17, 2014

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Ms. Elizabeth M. Murphy – Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File Number SR-OCC-2014-05

Dear Ms. Murphy,

The Security Traders Association (“STA”) welcomes the opportunity to comment on The Options Clearing Corporation (“OCC”) Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect the Elimination of a Discount to OCC’s Clearing Fee Schedule, (“Filing”). The STA is an organization comprised of individuals who are involved in the trading of financial securities. Our members represent many of the business models in the financial services sector, including full and discount service broker dealers, agency only broker dealers, asset managers, exchanges and ATs. Because of the diversity within our membership we are uniquely qualified to provide insight and comments on the Filing. The STA uses a Committee structure to vet issues amongst its various constituencies to create bottom-up consensus.

Over the course of our 75 year history the STA has compiled a list of principles of rule-making which we consult to ensure our opinions are consistent. We believe two of those principles guide our opinions regarding the Filing.

- First, and foremost, regulation should do no harm.
- The use of empirical data should be required in any rulemaking process

This letter was written in the context of these principles which we believe have withstood the test of time.

### Executive Summary

On March 12, 2014 the Securities and Exchange Commission (“Commission”) proposed rules which if adopted, would establish operation and governance standards for central clearing agencies, including the OCC, which have been designated by the Financial Stability Oversight Council (“FSOC”) as Systemically Important Financial Market Utilities (“SIFMU”). On March 21, 2014 the OCC filed a proposed rule change pursuant to Section 10(b)(3)(A) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4(f)(2) thereunder, so that the proposal was effective upon filing with the Commission.



OCC proposes to amend its Schedule of Fees, effective April 1, 2014, to reflect the elimination of a discount to OCC's clearing fee schedule adopted, effective May 1, 2007 and made permanent effective January 1, 2008 until further action of by the OCC Board. In the Filing OCC stated<sup>1</sup>:

*OCC's revenues principally are derived from clearing fees charged to clearing members and OCC's current and projected operating expenses have increased due to current and anticipated regulatory requirements.*

### **STA's Executive Summary Opinion**

The STA respectfully urges the Commission to suspend the immediate effectiveness of the Filing until such time that: (i) additional data is made available detailing the increased costs incurred with being classified a SIFMU; (ii) additional data for revenue estimates the fee increase will produce; and (iii) a policy and procedure for any reconciliation performed should the increased schedule of fees result in an over-collection. Reconciliations would not be limited to any refund, rebate or dividend. Having such data and procedural process would provide parties impacted by the increase with the necessary information to respond accordingly. In addition the data on cost and revenue estimates and the policy and procedures for reconciling an over-collection will better ensure that the regulatory mandates are achieved without placing certain participants at a competitive disadvantage and harm.

### **The OCC Filing is Unique**

In testimony before the Capital Markets and Government Sponsored Enterprises Subcommittee Committee on Financial Services U.S. House of Representatives on June 12, 2012, STA made the following comments pertaining to changes in fee structures through an effective upon filing exemption<sup>2</sup>.

*SEC approval of SRO rules, and SRO rules in certain cases that are effective upon filing, presents unique problems. While there are similarities in these processes, they are distinct and vary primarily in the level of due diligence required of the Commission. There are efficiencies within both processes that when applied properly serve the competitive nature of our markets and investor confidence.*

*STA does not suggest that changes to fee structures or other SRO proposals that attempt to differentiate themselves would merit a uniform SEC approach.*

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<sup>1</sup> [OCC Filing Release No. 34-71769; File No. SR-OCC-2014-05](#)

<sup>2</sup> [STA Testimony June 20, 2012](#)



STA still believes in the above comments, but we also feel it necessary to describe the uniqueness of the OCC Filing and how an effective upon filing exemption may not be a suitable process to introduce this schedule of fee change.

- The stated catalyst for the schedule of fee change is a regulatory action and not a competitive factor.
- The increase is material, in some cases as much as a 60% increase.

To be clear, STA is not advocating at this time that this change in schedule of fees be introduced in a way other than an effective upon filing exemption. Rather, we are asking that the Filing be suspended and any described data be provided so a decision as to whether an effective upon filing exemption is appropriate.

### **Non Self-Clearing Firms**

STA is concerned that non self clearing firms, who are not OCC members, may be harmed unnecessarily if the Filing is approved. The increase in fees is substantial and data which could determine if the increases in fees are too much (or not enough) has not been presented. In the absence of data, STA believes non self clearing firms may be unnecessarily harmed if the increase results in an over collection. Today, excess revenues from fees are refunded back to OCC members. Such refunds do not flow back to non self-clearing firms who rely on an OCC member to provide clearing services. To be clear, STA is not advocating that non OCC members be entitled to refunds, but they should not be placed in a position where they can be harmed unnecessarily.

### **Summary**

STA respectfully urges the Commission to suspend the Filing until more data is provided. We look forward to working with the Commission on this issue.

A handwritten signature in black ink that reads "John Daley". The signature is written in a cursive, flowing style.

John Daley, Stifel Nicolaus  
Chairman of the Board

A handwritten signature in black ink that reads "James Toes". The signature is written in a cursive, flowing style.

James Toes  
President & CEO