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March 1, 2015

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **The Options Clearing Corporation Proposed Rule Change Concerning a Proposed Capital Plan for Raising Additional Capital That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility; Exchange Act Release No. 74136, SR-OCC-2015-02 (January 30, 2015)**

Dear Mr. Fields:

Miami International Securities Exchange, LLC ("MIAX") submitted a comment letter on February 24, 2015 (the "February Comment Letter") regarding the above-referenced rule filing by the Options Clearing Corporation ("OCC") concerning a proposed capital plan whereby the OCC aims to raise additional capital in connection with its increased responsibilities as a systemically important financial market utility (the "OCC Proposal").¹ MIAX requested that the Securities and Exchange Commission ("Commission") take action to temporarily suspend the OCC Proposal and institute Disapproval Proceedings against the OCC Proposal. MIAX stated in the February Comment Letter that it believed that the OCC Proposal is not consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and that the Commission should ultimately disapprove the filing. Moreover, MIAX stated in the February Comment Letter that it believes that the OCC Proposal is inconsistent with the requirements of Rule 17A(b)(3)(I) of the Act and that the OCC's Proposal imposes a burden on competition that is inconsistent with the Act. Finally, MIAX stated in the February Comment Letter that it believes that the OCC's request for accelerated effectiveness should also be denied given the significant policy issues raised, but not addressed, in the OCC Proposal.

¹ See Securities Exchange Act Release No. 74136 (January 26, 2015), 80 FR 5171 (January 30, 2015) (SR-OCC-2015-02).

Five other comment letters were submitted against the OCC Proposal.²

The OCC responded to comments raised on the OCC Proposal in letters dated February 23, 2015 and February 24, 2015.

OCC Proposal

The OCC is owned by five national securities exchanges (“Stockholder Exchanges”).³ The OCC provides clearing services for these Stockholder Exchanges. Additionally, the OCC provides clearing services for the seven other national securities exchanges, including MIAX, that trade options and are non-equity note-holders of the OCC (“Non-Stockholder Exchanges”), however of these seven exchanges only MIAX, BATS and BOX are not affiliates of the Stockholder Exchanges (the “Non-Affiliated Exchanges”).⁴ The OCC, as a non-profit utility, sets fees to its clearing members at a level designed to cover its operating expenses. The OCC also maintains capital reserves as it deems necessary to meet its obligations. OCC clearing members annually receive refunds of any fees collected in excess of the OCC’s operating expenses and capital obligations. The OCC is proposing via the OCC Proposal to adopt certain policies, and amend its By-Laws and other governing documents, to enable the OCC to implement a capital plan, pursuant to which Stockholder Exchanges would make additional capital contributions and a commitment to replenishment capital in the future. In return, the Stockholder Exchanges would receive, among other incentives, the right to receive dividends from the OCC.

The OCC Proposal Imposes an Improper Burden on Competition

As set forth in the February Comment Letter, MIAX believes that the OCC Proposal imposes a burden on competition that is inconsistent with the purposes of the Act. Since the dividends payable to the Stockholder Exchanges may be used by Stockholder Exchanges to offset operating costs and subsidize the cost of execution services they provide to their members, the Stockholder Exchanges and their affiliates will have a competitive advantage over Non-Affiliated Exchanges. In light of the fact that options exchanges operate in an extremely competitive environment and that each exchange is always searching for a competitive edge over its competitors, Stockholder Exchanges may capitalize on this competitive advantage and use the dividends to allow their members to trade at reduced fees. Should these fees be reduced to a level that could not be sustained by the Non-Affiliated Exchanges, the ability of the Non-Affiliated Exchanges to provide services to investors and the public may become affected. Accordingly, we believe that this would be an improper burden on competition that may harm investors.

² See the comments letters of: BATS Global Markets dated February 19, 2015; BOX Options Exchange dated February 19, 2015; Howard L. Kramer of Wilkie Farr & Gallagher LLP on behalf of Belvedere Trading, et al. dated February 20, 2015; SIFMA dated February 20, 2015; and KCG Holdings dated February 26, 2015.

³ The Stockholder Exchanges are Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

⁴ The Non-Stockholder Exchanges are BATS Options, NASDAQ Options, NASDAQ BX, BOX, C2, Gemini, and MIAX.

The OCC also fails to address any potential alternatives to the OCC Proposal, including, but not limited to, providing Non-Stockholder Exchanges with the opportunity to become owners of the OCC so that all exchanges are similarly situated as it pertains to the receipt of dividends, or raising capital through third party investors. The OCC argued in its response letter that the OCC Proposal does not create an unnecessary burden on competition because none of the non-Stockholder exchanges have presented a proposal under which they would provide a meaningful source of additional equity capital for OCC. Similar to other Non-Stockholder Exchanges, MIAX was never invited to participate in a process under which it could have proposed equity capital and we would ask that action on the OCC Proposal not occur for at least for 60 days so that any party that has a superior financial proposal for OCC to consider be given the opportunity to present the same. It appears that several Non-Stockholder Exchanges as well as clearing members may be willing to contribute the needed capital to the OCC at more favorable rates than the existing Stockholder Exchanges and as a fiduciary OCC would want time to consider the same. Based on the recently disclosed 2014 Annual Report of OCC it appears that there is an adequate capital cushion available to OCC at this time.

Request for Accelerated Effectiveness Should be Denied

The OCC has requested accelerated effectiveness of the OCC Proposal. The OCC argues that good cause exists for accelerated approval because it “will allow OCC to strengthen its capital position ... earlier than would otherwise be the case.”⁵ Proposed Rule 17Ad-22(e)(15) under the Act, which the OCC cites in the OCC Proposal as the regulation its capital raising initiatives are intending to comply with, is currently pending Commission action. In light of the foregoing, and due to the important policy issues raised, MIAX believes that the OCC’s request for accelerated effectiveness should be denied.

Governance Issues

Governance issues have been raised concerning the process associated with Board approval of the OCC Proposal at the OCC Board meeting on December 18, 2014. The OCC has noted in its February 23, 2015 response letter that during the board meeting at which the capital plan was approved the OCC Proposal was approved by “two-thirds majority of the Board, including four Member Directors, constituting a majority of the Member Directors voting on the capital plan.”

As set forth in the OCC Charter and By-Laws, the Board of OCC is to be comprised of two (2) Management Directors one of whom is the Executive Chairman of the Board; five (5) Exchange Directors representing each of OCC’s Equity Exchanges (i.e., stockholders); nine (9) Member Directors representing OCC clearing members; and five (5) Public Directors, for a total of 21 Directors. We understand that, at the time of the vote, the OCC Board had only three public directors and not the five required by Article III of the OCC’s By-Laws. Those vacancies were filled subsequent to the December 18, 2014 meeting as announced by OCC on February 24, 2015: “OCC announced today that Thomas R. Cardello and Robert R. Litterman were appointed

⁵ SR-OCC-2015-02 at p. 39.

to its Board of Directors, increasing the number of public directors on OCC's Board from 3 to 5." Accordingly, it appears that at the time of the December 18, 2014 Board approval there were only 19 of the 21 mandated directors and in particular only 3 of the required 5 Public Directors, in violation of the OCC Charter and By-Laws.

Footnote 12 of the OCC Letter dated February 23, 2015, states that of the nine Member Directors, one did not attend, one abstained, four voted in favor, and three voted against. Even if one were to assume that the 19 member board had authority to act at the December 18, 2014 Board meeting, the board would need to act in a way that comports with Delaware law. Under Delaware law interested directors generally recuse themselves from interested party transactions. It appears that the five equity Stockholder Exchanges failed to recuse themselves from the vote on December 18, 2014, notwithstanding their interest in the transaction. Finally, the OCC's statement that the transaction was approved by a "majority" of the member firms is also at issue since four voted in favor, three voted against and one abstained. An abstention is generally considered to be a "no" vote. Accordingly, there are significant issues as to whether the Board approval of the OCC Proposal comports with the OCC Charter and By-Laws and Delaware law.

For the reasons stated above and in our February Comment Letter, MIAX respectfully requests that the Commission disapprove the filing as well as the OCC's request for accelerated effectiveness. Should the Commission or the Staff have any questions, please feel free to contact me at [REDACTED].

Sincerely,



Barbara J. Comly
Executive Vice President, General Counsel
& Corporate Secretary

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
Gary L. Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets