



March 3, 2015

Brent Fields
Secretary
Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 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

Dear Mr. Fields,

BATS submits the following additional comments to the OCC’s rule filing to establish a capital plan (the “Proposal”).¹

In 2002, the OCC amended its by-laws so that it could provide clearing services to new options exchanges without having those exchanges become stockholders of OCC.² In doing so, the OCC created a new category of non-equity exchange participants. To address concerns that the non-equity exchange participants could be disadvantaged vis-à-vis the equity exchange participants, the OCC ensured that non-equity exchange participants “will be entitled under the [by-law] provision to ‘fair representation . . . in the selection of (OCC’s) directors and administration of its affairs’”. (Id.) In connection with the adoption of these changes, the OCC made the following additional representations to the SEC:

OCC has represented to the Commission that OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee. Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (July 8, 2002).³

¹ Exchange Act Release No. 74136; SR-OCC-2015-02.

² Exchange Act Rel. No. 46469; SR-OCC-2002-02.

³ Id.

Ultimately, the OCC adopted the following language as Interpretation and Policy .01 to Article VIIB of its by-laws:

.01 Non-Equity Exchanges will be promptly provided with information that the Executive Chairman considers to be of competitive significance to such Non-Equity Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board of Directors or any Committee of the Board of Directors.

As detailed in our prior comment letters, the Proposal raises significant competitive concerns as between the non-equity exchanges and equity exchanges because the Proposal allows the equity exchanges to extract an excessive dividend or rebate from the OCC at the expense of both the non-equity exchanges and the industry at-large, which will be used to subsidize the equity exchanges' competition for execution services, which in turn provides the equity exchanges with a significant competitive advantage over the non-equity exchanges. It was exactly these concerns that led to the adoption of the above-referenced by-law provisions and the representations the OCC made to the SEC.

However, in developing the Proposal, the OCC failed to comply with either the by-law provisions or the representations it made to the SEC in SR-OCC-2002-02. In particular, although the Proposal was a matter of competitive significance to the non-equity exchanges, the OCC failed to inform BATS, a non-equity exchange, – “promptly” or otherwise – that the Proposal was under consideration by the OCC. Had BATS been promptly informed of this matter of competitive significance, it would have had a right by request to make presentations regarding the Proposal to the OCC board or to the appropriate committee of the board. By virtue of being denied this information, BATS was unable to exercise its right at all, let alone in a timely fashion, before the board voted on the Proposal. As such, the Proposal is before the SEC in violation of the OCC's by-laws and SR-OCC-2002-02.

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For the foregoing reasons and those stated in our comment letters of February 19, 2015 and February 27, 2015, BATS respectfully requests that the SEC disapprove the Proposal.

Sincerely,



Eric Swanson
General Counsel and Secretary

Mr. Brent Fields

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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
Mr. Gary L. Goldsholle, Deputy Director, Division of Trading and Markets
Peter Curley, Associate Director, Division of Trading and Markets