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February 24, 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"), appreciates the opportunity to submit this 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").<sup>1</sup> MIAX respectfully requests that the Securities and Exchange Commission ("Commission") take action to temporarily suspend the OCC Proposal and institute Disapproval Proceedings against the OCC Proposal. MIAX believes 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. As described below, MIAX believes that the OCC Proposal is inconsistent with the requirements of Rule 17A(b)(3)(I) of the Act. In particular, MIAX believes that the OCC's Proposal imposes a burden on competition that is inconsistent with the Act. Additionally, MIAX 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.

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

## **OCC Proposal**

The OCC is owned by five national securities exchanges (“Stockholder Exchanges”).<sup>2</sup> 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”).<sup>3</sup> 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 is Inconsistent with Rule 17A(b)(3)(I)**

Rule 17A(b)(3)(I) of the Act provides that the rules of a clearing agency shall “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of” the Act.

The OCC Proposal imposes a burden on competition that is inconsistent with the purposes of the Act. Moreover, the OCC Proposal fails to address the competitive burden on Non-Stockholder Exchanges that arises as a result of the OCC’s determination to pay dividends only to Stockholder Exchanges. In particular, since such dividends 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 will have a competitive advantage over Non-Stockholder Exchanges. Since the dollar amounts associated with the dividends have been redacted from the public filings the extent of this competitive advantage cannot be assessed. 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. This allows the Stockholder Exchanges to compete with the Non-Stockholder Exchanges using an unfair advantage.

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. Instead, the OCC presents the OCC Proposal as the only option, claiming that it better aligns with an industry utility model than the current model

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<sup>2</sup> The Stockholder Exchanges are Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

<sup>3</sup> The Non-Stockholder Exchanges are BATS Options, NASDAQ Options, NASDAQ BX, BOX, C2, Gemini, and MIAX.

pursuant to which the OCC refunds excess fees to its clearing members. The reason it better aligns, the OCC argues, is because most of the refunds are not ultimately passed through by the clearing members to their end customers. MIAX disagrees with the OCC's rationale, especially in light of the fact that the OCC proposes to pay dividends to Stockholder Exchanges rather than paying refunds to its clearing members, the actual users of the OCC's services.

**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."<sup>4</sup> 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.

For the reasons stated above, MIAX believes that the OCC Proposal is prejudicial, discriminatory and anticompetitive and not consistent with the requirements of the Act and therefore the Commission should ultimately disapprove the filing. Additionally, the OCC's request for accelerated effectiveness should also be denied by the Commission in light of the important policy issues raised, but not addressed, by the OCC Proposal. Once again, MIAX appreciates the opportunity to comment on the OCC Proposal. 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

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<sup>4</sup> SR-OCC-2015-02 at p. 39.