April 8, 2015

VIA FACSIMILE
AND FEDERAL EXPRESS

Brent Fields
Secretary
Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

RE: SR-OCC-2015-02, Exchange Release No. 74452
Response to Motion to Lift Automatic Stay

Dear Mr. Fields,

BATS Global Markets, Inc. ("BATS"), on behalf of its subsidiary options exchange, BATS Exchange, Inc., BOX Options Exchange, LLC, and Miami International Securities Exchange, LLC, hereby submit the enclosed original and three copies of Response to Motion of the Options Clearing Corporation to Lift Automatic Stay in relation to the above-captioned matter. This Response to Motion was sent via facsimile to telephone number 202-772-9324 and via Federal Express on April 8, 2015. Also enclosed, please find a Certificate of Service and facsimile confirmation sheet.

Any questions concerning this matter can be directed to:

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Miami International Securities Exchange, LLC

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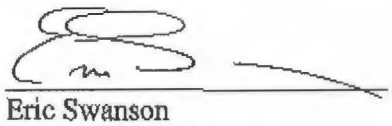
(609) 987-2201 (fax)

Sincerely,



Eric Swanson
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L.J. Fall

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Miami International Securities Exchange, LLC

CERTIFICATE OF SERVICE

We, Eric Swanson, General Counsel and Secretary of BATS Global Markets, Inc., Lisa J. fall, President of BOX Options Exchange, LLC, and Barbara J. Comly, Executive Vice President, General Counsel and Corporate Secretary of Miami International Securities Exchange, LCC, hereby certify that on April 8, 2015, we served copies of our Response to Motion of Options Clearing Corporation to Lift Automatic Stay, on:

Brent Fields
Secretary
Securities and Exchange Commission
100 F. Street N.E.
500Washington, D.C. 20549-1090

William J. Nissan
Sidley Austin, LLP
One South Dearborn Street
Wacker Drive, Suite
Chicago, IL 60603

Dated: April 8, 2015

Eric Swanson
General Counsel and Secretary
BATS Global Markets, Inc.

Dated: April 8, 2015

Lisa J. Fall
President
BOX Options Exchange, LCC

Dated: April 8, 2015

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In the Matter of the Petitions of:	)	File No. SR-OCC-2015-02
BATS Global Markets, Inc., BOX Options Exchange, LLC, and Miami Internal Securities Exchange, LLC	)	

RESPONSE OF BATS GLOBAL MARKETS, INC., BOX OPTIONS EXCHANGE, LLC, AND MIAMI INTERNATIONAL SECURTIES EXCHANGE, LLC TO MOTION OF THE OCC TO LIFT AUTOMATIC STAY

BATS Global Markets, Inc. ("BATS"), BOX Options Exchange, LLC ("BOX"), and Miami International Securities Exchange, LLC ("MIAX") (collectively, the "Petitioners"), pursuant to Rule 154 of the Securities and Exchange Commission's ("SEC" or "Commission") Rule of Practice,[1] hereby respond to the OCC's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action (the "Motion") triggered by the multiple Notices of Intention to Petition for Review of SR-OCC-2015-02,[2] which was approved by the Division of Trading and Markets (the "Division" or "Staff") pursuant to delegated authority. For the reasons that follow, BATS, BOX and MIAX respectfully request that the Commission deny the Motion.

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1 17 CFR 201.154.

2 *See* MIAX Notice of Intention to Petition for Review (March 12, 2015), SIG Notice of Intention to Petition for Review (March 13, 2015), BATS Notice of Intention to Petition for Review (March 13, 2015), KCG Notice of Intention to Petition for Review (March 13, 2015), and BOX Notice of Intention to Petition for Review (March 13, 2015) available at http://www.sec.gov/rules/sro/occ.shtml.

INTRODUCTION

On March 6, 2015, the Division, acting pursuant to delegated authority, approved File No. SR-OCC-2015-02 (the "Capital Plan"), which involved the OCC's request to amend its rules to enable it to raise capital from its shareholder exchanges and in return pay those shareholders an excessive dividend in perpetuity.[3] On March 13, 2015, BATS and BOX, and on March 12, 2015, MIAX, each of which previously filed several comments letters in opposition to the Capital Plan,[4] filed their Notices of Intention to Petition for Review (the "Notices") with the Commission. Pursuant to Rule 431(e) of the Commission's Rules of Practice,[5] the filing of the Notices automatically caused the stay of the effectiveness of the Division's Approval Order until and unless the Commission orders otherwise.

On March 16, 2015, BATS, and on March 20, 2015, BOX and MIAX, filed their Petitions for Review (the "Petitions"), setting forth the reasons why the Commission should undertake to review the Division's Approval Order and that order should be set aside. On April 2, 2015, the OCC filed its Motion and its Brief in Support of the Motion (the "Brief"). For the following reasons, the automatic stay imposed by Rule 431(e) should remain in effect until the Commission has taken action on the Petitions.

ARGUMENT

I. The Policies Underlying Rule 431(e) Require that the Stay Remain in Effect.

The OCC is seeking through the Motion to achieve that which the Commission's Rules of Practice are in place to prevent – the implementation of a rule approved by the Staff pursuant to

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3 Exchange Act Release No. 74452 (March 6, 2015), 80 FR 12058 (March 12, 2015) (the "Approval Order").

4 *See* BATS comment letters dated February 19, 2015, February 27, 2015, and March 3, 2015, BOX comment letters dated February 19, 2015 and March 3, 2015, and MIAX comment letters dated February 24, 2015 and March 1, 2015, all available at http://www.sec.gov/comments/sr-occ-2015-02/occ201502.shtml.

5 17 CFR 201.431(e).

delegated authority without appropriate review by the Commission of the significant policy issues implicated by that rule. Were this effort to be effective, the OCC would be able to implement the Capital Plan to such an extent that it would be difficult to unwind should the Petitioners be successful on the merits. This is precisely why Rule 431(e) provides for an automatic stay in the first instance.

In its Brief, the OCC argues that the following four factors should govern whether a stay should be lifted: (i) whether there is a strong likelihood that a party will succeed on the merits in a proceeding challenging the particular Commission action, (ii) whether, without a stay, a party will suffer imminent irreparable injury; (iii) whether there will be substantial harm to any person if the stay were continued; and (iv) whether the stay would likely serve the public interest.[6] The OCC culled these factors from the Commission's *Order Preliminarily Considering Whether to Issue a Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications*.[7] However, the Order on Stay Guidelines involved the Commission's consideration of whether to issue a stay of the effectiveness of its own final Commission action while the matter was subsequently litigated in federal court, not to lift the automatic stay of action of the Staff by delegated authority. The Petitioners agree that in the former case, the Petitioners would bear the burden of proof associated with the grant of the stay and the cited four factors would be the appropriate standard of review, but in this case, and for the sound policy reasons discussed below, the stay is automatic and the Order on Stay Guidelines is irrelevant to the Commission's analysis. Moreover, by virtue of filing the Brief and arguing an erroneous standard of review for the Motion, the OCC is attempting to obtain a hearing on the merits of the Petitions, which is inappropriate at this stage of petition process.

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6 The Brief at pp. 5-6.

7 Exchange Act Release No. 33870, 1994 WL 117920 (April 7, 1994) (the "Order on Stay Guidelines").

Rule 431(e) of the Commission's Rules of Practice provides for an automatic stay "[u]pon filing with the Commission of a notice of intention to petition for review . . . [o]f an action made pursuant to delegated authority." Thus, whenever the Division takes action pursuant to delegated authority and that action is challenged, the Commission's Rules of Practice evidence a policy preference for Commission review *before* the rule change goes into effect.

By its nature, action by delegated authority is not action of the President-appointed and Senate-confirmed Commissioners themselves. As such, Congress' provision in 1962 of the right to delegate Commission decision-making to the Staff is appropriately constrained by the requirements that the Commission retain a discretionary right to review Staff action pursuant to delegated authority upon its own initiative or upon petition of a party.[8] In fact, the Senate had rejected the delegation proposal in the original legislation deeming it to be too broad because it did not contain appropriate checks on the Staff's use of the delegation, including the right for Commission review of actions taken under the delegation.[9] Thus, the legislative history associated with the adoption of the delegated authority provisions reference these constraints in support of the appropriate balance between permitting the delegation to allow the Commission to be better able to "direct its attention to major matters of policy and planning confronting it," retaining the right for the Commission to review action taken under the delegation when such action itself implicates major matters of policy.[10] As a whole, the Commission's Rules of Practice and the relevant enabling legislation support the sound policy position that there must be appropriate checks on the Staff's use of the delegation and that when important matters of public policy are implicated, upon the Commission's own motion or upon the petition of a party,

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8 15 U.S.C. 78d-1.

9 *See* H.R. Rep. No. 87-2045 (1962), *reprinted in* 1962 U.S.C.C.A.N. 2150, 2151.

10 *Id.*

implementation of a matter approved by delegated authority is stayed to enable the Commission to review the matter.

The appropriate standard of review of whether to maintain the automatic stay of a matter decided by the Staff pursuant to delegated authority, as previously articulated by the Commission, is simply whether the matter decided by the Staff "has raised important policy issues that warrant Commission consideration."[11] For the reasons stated in our prior comment letters, Petitions, and herein, Petitioners have raised significant policy concerns that warrant Commission consideration, including: (i) concerns associated with OCC shareholder exchanges' monetization of the OCC, an industry utility monopoly, on terms that amount to a windfall to those shareholder exchanges at the expense of the industry, (ii) the undue burden on competition presented by the Capital Plan, (ii) the unfair discriminatory impact of the Capital Plan on the non-shareholder OCC participant exchanges, such as BATS, BOX, and MIAX and (iv) the materially flawed governance process that led to the OCC's adoption of the Capital Plan. As such, the Commission should deny the Motion.

Although the OCC has put forward the wrong standard of review of the automatic stay of an action decided by the Staff pursuant to delegated authority in an attempt to shift the burden to the Petitioners, even under that erroneous standard of review the OCC's arguments are meritless.

II. Petitioners Have a Strong Likelihood of Success in Obtaining Review and Reversal of the Order.

The OCC makes much in its brief of the Staff's allegedly careful consideration of the relevant policy issues as evidenced, according to the OCC, by the Staff's 47-page Approval Order, which the OCC alleges contains a thorough analysis of the Petitioners' and others'

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[11] *Order Denying International Securities Exchange, LLC's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action Triggered by Chicago Board Options Exchange, Incorporated's Notice of Intention to Petition for Review*, Exchange Act Release No. 60988 (November 12, 2009).

objections to the Capital Plan in detail. In fact, the Approval Order, while lengthy, contains 25 pages explaining the Capital Plan, 12 pages summarizing the comment letters, and only 9 pages of substantive analysis of the numerous objections raised to the Capital Plan. And, as noted in the Petitions, the Staff committed numerous errors and made findings that were unsupported by relevant facts or analysis. Moreover, the Staff completely failed to address the fact that the OCC violated its own By-Laws, which are considered OCC rules under the Exchange Act, including by adopting the Capital Plan without honoring the non-shareholder exchanges', such as BATS', BOX's, and MIAX's, rights to be notified that the Capital Plan was under consideration by the OCC Board, as well as their rights to make presentations to the OCC's Board regarding the Capital Plan. As such, the Petitioners have shown a strong likelihood of success in obtaining review and a reversal of the Staff's Approval Order.

The OCC further argues that the Commission's issuance of a no-objection to the OCC's advanced notice filing of the Capital Plan[12] evidences that the Commission has already "reviewed the Capital Plan . . . and has determined that the Capital Plan will achieve important protections for OCC and the broader financial system."[13] The Petitioners note that the Commission's no-objection to the OCC's advance notice filing was issued under Section 805(b) of the Payment, Clearing and Settlement Supervision Act and reflects the Commission's non-objection to the Capital Plan from the standpoint of whether the Capital Plan is designed to, among other things, promote robust risk management and reduce systemic risks. Importantly, the Commission's order on the OCC's advance notice filing was *not* a decision on the merits of the OCC's compliance with the Exchange Act of 1934 and, hence, it has no bearing on the merits of the Petitions before the Commission. Accordingly, the Motion should be denied.

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12 Exchange Act Release No. 74387; File No. SR-OCC-2014-813 (February 26, 2015).

13 The Brief at p. 7.

III. The Capital Plan Imposes an Undue Burden on Competition.

The Capital Plan creates an undue burden on competition by virtue of paying the select shareholder exchanges an excessive dividend, in perpetuity, in the range of 16% – 20% of their invested capital, per year, during the first few years the Capital Plan is in place, and potentially significantly higher than that in subsequent years. This dividend stream reflects an unprecedented monetization of an industry utility monopoly, enabling the shareholder exchanges to subsidize their provision of execution services to the direct competitive detriment of the non-shareholder exchanges such as BATS, BOX, and MIAX. The Staff acknowledged as much in the Approval Order but then erred in concluding that burden was not *undue*.[14]

In addressing this issue for the first time in its Brief, the OCC argues that the competitive disadvantage to non-shareholder exchanges is immaterial amounting at most to the shareholder exchanges' abilities to subsidize a reduction in execution fees of 1% – 1.5%. But, the "math" that yields that result is so absurd that to call it disingenuous would require giving the OCC a generous benefit of the doubt. In particular, the OCC derived its figures in part from extrapolating the CBOE's average net capture rate on its market share to conclude that total fee-based revenues in the U.S. options industry are $1.6 – $2 billion annually; hence, divided by overall industry volume of approximately 4.5 billion contracts, this would yield an approximate net capture rate per contract of approximately $.36 – $.40 (or, $.18 – $.20 per side). Per the OCC's logic, assuming the annual dividend to the shareholder exchanges is between $22 – $30 million, once that is split five ways between the shareholder exchanges, the fee subsidization amounts to 1% – 1.5% of current fees.

The immediately obvious problem with this analysis is that the CBOE's financial results are heavily biased by the proprietary products it exclusively lists and trades (*i.e.*, products that

[14] Approval Order at p. 45.

are not subject to competition) – the VIX and SPX contracts.[15] As a result of these proprietary products, in 2013, the CBOE's average net capture across all options contracts was approximately $.30 per contract. When considering only those contracts that are actually subject to competition between the CBOE and other options exchanges (*i.e.*, equity options contracts) the CBOE's net capture in 2013 falls dramatically to $.09 per contract and in 2014 was approximately $.07 per contract. In fact, based on publicly available data the average net capture per contract for equity options contracts for the following OCC shareholder exchanges is:

CBOE	$.07[16]
NYSE	$.16[17]
NASDAQ	$.15[18]

A volume-weighted average net capture rate across the exchanges conservatively yields a result of approximately $.07 – $.10 per contract, not the $.36 – $.40 per contract put forward by the OCC.

The net result is that rather than having the ability to reduce fees by 1% – 1.5%, the Petitioners estimate that an annual dividend of $30 million would enable the shareholder exchanges, depending on the market share of each, to reduce fees by between 7% - 22%, which reflects a material subsidy and an undue burden on competition.

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15 A point highlighted by the CBOE in its annual report: "Our exclusive products – S&P 500 Index (SPX) options and CBOE Volatility Index (VIX) options and futures – generate our highest revenue per contract. In 2013, transaction fees generated from index options and VIX futures accounted for 79 percent of the company's total transaction fee revenue." CBOE Holdings, Inc. 2013 Annual Report at p. 1, available at http://www.cboe.com/aboutcboe/annualreportarchive/annualreport2013.pdf.

16 *See* CBOE Holdings Inc.'s 4th quarter 2014 earnings presentation (February 6, 2015), available at http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/presentations/4q-earnings-presentation.pdf

17 *See* ICE's 4th quarter 2014 earnings presentation (February 5, 2015), available at http://ir.theice.com/~/media/Files/I/Ice-IR/quarterly-results-archive/2014/fourth-quarter-2014/4Q14-Earnings-Presentation-v1.pdf.

18 *See* NASDAQ's 4th quarter 2014 earnings presentation (January 29, 2015), available at http://files.shareholder.com/downloads/NDAQ/0x0x805700/043D924F-4108-4C78-8290-EA82F986758B/NDAQabc4Q14123EarningsabcPresentation.pdf.

The OCC further argues that each shareholder exchange could achieve more material price decreases if it simply invested the capital directly in fee reductions instead of contributing it to the OCC in exchange for dividends.[19] But this analysis is also fundamentally flawed in that it fails to account for the fact that any such investment in fee reductions would amount to a one-time use of the capital, whereas the contribution to the OCC results in the payment of recurring dividends in perpetuity, and the capital contribution itself enhances the shareholders' equity of the OCC to the long-term benefit of the shareholder exchanges.

In short, the OCC's attempts in the Brief to minimize the extent of the competitive burden of the Capital Plan are misleading and should be given no weight by the Commission in considering either the Motion or the merits of the Petitions.

IV. The Governance Process that Resulted in the OCC's Adoption of the Capital Plan was Fundamentally Flawed to the Detriment of the non-Shareholder Exchanges.

Petitioners have raised significant flaws in the OCC's governance process, including the fact that the OCC failed to provide the non-shareholder exchanges, such as BATS, BOX, and MIAX, with appropriate notice that the Capital Plan was under consideration by the Board, as required by the OCC's By-Laws, to enable the non-shareholder exchanges to make presentations to the OCC's Board, as further required by the OCC's By-Laws, as well as the failure of the OCC to include its required number of public directors on its Board. In the Approval Order, the Division dismissed these failures stating only that the OCC had represented to the Staff that it had conducted its business in conformance with its By-Laws and that the Staff had no basis to dispute the OCC's position on the matter.[20] The Petitioners have challenged this conclusion as

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19 The Brief at p. 9.

20 Approval Order at p. 46.

irreconcilable with the Petitioners' comment letters specifically stating that the OCC did not comply with its By-Laws, and arguing that given the unique role and structure of the OCC, including its status as a monopoly and the shareholder exchanges' absolute right to veto any capital-raising plan that would dilute their shareholdings, the Staff should have conducted a reasonable level of inquiry on the appropriateness of the OCC's Board governance in this matter.

In its Brief, the OCC concedes that it did not inform the non-shareholder exchanges that the Capital Plan was under consideration, arguing that it "did not and does not believe that there is a material competitive consequence to the terms [of the Capital Plan],"[21] which, with the exception of the word "material," which the OCC has inappropriately attempted to insert, is the standard in the By-Laws that triggers the OCC's requirement to notify the non-shareholder exchanges of certain matters. The OCC argues that the Capital Plan is not a matter of competitive consequence because the non-shareholder exchanges "would continue to receive clearing services on the same equal basis as they had in the past, with no obligation to contribute capital or make any Replenishment Capital commitment."[22] The OCC further portrays the shareholder exchanges as the "reluctant" recipients of the dividend windfall.[23]

The OCC's position in this regard is disingenuous. The relevant By-Laws provision was adopted by the OCC in connection with its 2002 rule change to preclude additional options exchanges from becoming equity owners of the OCC.[24] The Commission was concerned at the time (appropriately, it would appear) that without equity ownership and the rights conveyed by

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21 The Brief at p. 16.

22 *Id.*

23 *Id.*

24 Securities and Exchange Act Release No. 46469 (September 6, 2002), 67 FR 58093 (September 13, 2002) (SR-OCC-2002-02) ("2002 By-Laws Amendment Order").

such equity ownership, the shareholder exchanges might operate the OCC in a manner that would be anticompetitive as it relates to the non-shareholder exchanges. Thus, the By-Laws provisions that require the OCC to notify the non-shareholder exchanges of matters of competitive significance and allow the non-shareholder exchanges to make presentations to the Board represent important protections that are intended to provide the non-shareholder exchanges, despite their lack of equity ownership, with "fair representation . . . in the selection of the [OCC's] directors *and administration of its affairs*."[25] As a self-regulatory organization ("SRO"), the OCC is responsible for acting in the interests of the public, and not exclusively in the interests of its shareholders. As such, and in light of the Commission's concerns that resulted in the adoption of these important competitive protections in the OCC's By-Laws, the OCC should act accordingly in interpreting the circumstances under which those provisions are triggered.

The OCC strains credulity in arguing that the Capital Plan does not reflect a matter of competitive consequence to the non-shareholder exchanges. As evidenced by the record in this matter, including the numerous comment letters filed by the non-shareholder exchanges, the potential burden on competition actually *acknowledged* by the Division in the Approval Order, and the extent of the anticompetitive advantage enabled by the perpetual dividend, as detailed in this response to the Motion, the Capital Plan indeed presents a matter of competitive consequence. The OCC's failure to provide the non-shareholder exchanges with timely notice that the Capital Plan was under consideration by the OCC's Board violated the OCC's By-Laws, which in turn violated Section 19(g) under the Exchange Act, and which reflects a fundamental

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[25] *Id.* at 58094 (emphasis added).

flaw in the governance process that alone should result in the Commission setting aside the Division's Approval Order. As such, the Commission should deny the Motion.

Moreover, with respect to the participation of public directors, as noted in the Petitions, two of the five public director positions were vacant at the time the Capital Plan was considered by the OCC and those positions were only filled after the Capital Plan was filed with the SEC. The Petitioners have raised concerns that by failing to maintain the requisite number of public directors on the OCC Board while the Capital Plan was deliberated and voted on, the process was deprived of key input from disinterested directors who would be most likely to argue for an outcome that is objectively in the best interest of the OCC and the options industry. The OCC dismisses this argument in the Brief, noting that it had received guidance from outside counsel that it was acceptable to move forward on deliberations and voting on the Capital Plan regardless of these vacancies.[26] However, while that may comply with Delaware law, the Petitioners continue to question the OCC's compliance with its By-Laws and the Exchange Act on this point. In light of the OCC's position as an SRO and a monopoly, the role of public directors takes on acute importance, particularly as it relates to ensuring the SRO does not act in an anticompetitive fashion as the OCC has here. The Commission has previously recognized the importance of public directors in this regard, stating the following in connection with the NASDAQ's application to become a registered national securities exchange:

> [P]ublic representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the

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[26] The Brief at p. 17.

Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Nasdaq Exchange.[27]

At the very least, the Petitioners believe the OCC's failure to maintain the appropriate number of public directors on its Board during the deliberations and vote on the Capital Plan reflects an important policy matter deserving of consideration by the full Commission. As such, the Motion should be denied.

V. Continuation of the Automatic Stay will not Cause Substantial Harm to the OCC.

The OCC argues that the "OCC, the U.S. options industry, and the financial system as a whole will suffer significant harm in the event that the Commission does not lift the stay."[28] In support of this argument, the OCC alleges that it plays a critical role in the U.S. options market and that its designation as a SIFMU demonstrates its importance to the integrity of the financial system generally. As such, according to the OCC, its inability to carry out its plan to maintain capital resources at the level proposed in the Capital Plan subjects it to substantial harm because it cannot "address *potential* increased capital requirements that *may* be imposed by the Commission, and unexpected financial stresses that could occur at any time."[29] The OCC further argues that without the stay being lifted it is unable to comply with certain non-mandatory international standards, such as Principle 15 of the Principles for Financial Market Infrastructure.[30]

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27 *In the Matter of the Application of The Nasdaq Stock Market LLC for Registration as a National Securities Exchange,* Exchange Act Release No. 34-53128; File No. 10-131 (January 13, 2006).

28 The Brief at p. 18.

29 *Id.* (emphasis added.

30 *Id.* at p. 1.

The Petitioners submit that the OCC has not demonstrated any type of substantial harm – irreparable or otherwise – that would justify the lifting of the automatic stay. As the OCC acknowledges, there are no mandatory requirements on the OCC at present supporting its need to raise capital. While it may be important for the OCC to increase its capital position, the specific SEC proposal referenced by the OCC is just that, a proposal. It has not been adopted by the Commission and even if and when it is, the OCC has offered no support for the proposition that the Commission's proposal would cause it to raise capital to the extent it is seeking through the Capital Plan.[31] In fact, the OCC has already dramatically increased its capital position over the past year, a fact the OCC conveniently fails to acknowledge in its pleadings. In particular, at the end of 2013, the OCC had $25 million in shareholders' equity, and by the end of 2014, the OCC had $142 million in excess revenue over operating expenses as a result of fee increases imposed in 2014.[32] In addition, in more than 40 years of its existence, the OCC has never had more than a de minimis deficit or loss, and has routinely operated with a cash reserve of less than 20% over its annual budget. And, while the OCC's designation as a SIFMU may demonstrate its importance to the financial system, the Petitioners note that such designation is not new. The OCC was designated a SIFMU nearly three years ago in July 2012, and the OCC did not propose a plan to increase its capital until recently.

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31 To the extent the OCC relies on Principle 15 of the Principles for Financial Market Infrastructure to support the Capital Plan, Principle 15 is the standard of international organizations (IDS and IOSCO) made up of unelected officials who remain unaccountable to the public investors of the US. It therefore provides no legitimacy to the capital levels OCC seeks to raise to "comply" with it. If OCC believes independently of Principle 15 that the levels contained in the Capital Plan are necessary, it should be required to demonstrate as much.

32 *See* OCC 2014 Annual Report, available on OCC's website, http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2014_annual_report.pdf. Instead of using all of these funds to address its capital needs, the OCC curiously reserved $33 million to rebate to clearing members, which lowered its shareholders' equity at the end of 2014 to $97 million, still a nearly four times increase in capital from the prior year.

All of this is to say that while it may be important and desirable for the OCC to increase its capital position, the OCC has not and cannot make the case that its needs are so immediate such that it will face substantial harm or irreparable injury if the automatic stay is not lifted. In contrast, if the automatic stay was lifted, the Petitioners would face substantial harm because the implementation of the Capital Plan would be difficult to unwind in the event the Petitioners are successful on the merits, regardless of the timing of the planned payment of any dividends. As previously discussed, sound policy reasons support the automatic stay as part of the Commission's review of the Staff's exercise of delegated authority, and the OCC bears the burden of overcoming those policy concerns; it has failed to meet that burden. As such, the Motion should be denied.

CONCLUSION

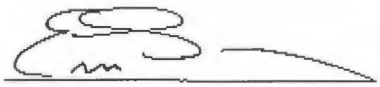
For the foregoing reasons, the Petitioners respectfully request the Motion be denied. The Capital Plan reflects an unprecedented attempt by its shareholder exchanges to monetize an industry utility monopoly to their benefit. Because of the unique nature of the OCC, including its monopoly status and discriminatory governance that favors the shareholder exchanges, the resulting impact of this effort is to significantly undermine competition among the various options exchanges, discriminate unfairly against non-shareholder exchanges, and ultimately impose excessive costs on clearing firms and investors. There are sound policy reasons supporting the automatic stay of the Capital Plan during the pendency of the petition process to enable the Commission to review the action of the Staff pursuant to delegated authority and the OCC has not established a basis for lifting the stay.

The Petitioners further respectfully request that the Commission set aside the Staff's Approval Order. Given the unique nature of the OCC, the Petitioners believe at a minimum, the

OCC should be required to engage in a more fulsome and transparent process for raising capital from the market in order to derive a more reasonable, market-based return that will not present the same policy concerns currently presented by the Capital Plan. While this may require the Commission to amend the OCC's governing documents, including its shareholder agreements, the Commission is vested with such authority and the Petitioners believe that such an outcome consistent with the Exchange Act could be achieved in a relatively short period – as little as 90 days.

DATED: April 8, 2015

Respectfully Submitted,



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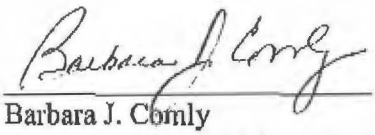

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