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February 24, 2015

By Electronic Mail
Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090
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Re: *File No. SR-OCC-2014-813: Notice of Filing of an Advance Notice, as Modified by Amendment No. 1, by The Options Clearing Corporation 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*

and

File No. SR-OCC-2015-02: Notice of Filing of a Proposed Rule Change by The Options Clearing Corporation 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

The Options Clearing Corporation ("OCC")[1] is submitting this letter in response to comments from the Securities Industry and Financial Markets Association ("SIFMA")[2] on OCC's recent advance notice and rule filing regarding its proposed capital plan (the "Proposal").[3] OCC appreciates the opportunity to respond to these comments. For the reasons set forth below, OCC believes that the criticism raised in the SIFMA Letter is based upon an incorrect interpretation of the Proposal and unsupported predictions about its consequences.

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[1] OCC is registered as a clearing agency with the SEC and as a derivatives clearing organization with the Commodity Futures Trading Commission. The Financial Stability Oversight Council has designated OCC as a systemically important financial market utility ("SIFMU").

[2] Letter from Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association (February 20, 2015) ("SIFMA Letter").

[3] Exchange Act Release No. 74202 (February 4, 2015), 80 FR 7056 (February 9, 2015) (SR-OCC-2014-813) (Advance Notice Filing); Exchange Act Release No. 74136 (34-74136) (January 26, 2015), 80 FR 5171 (January 30, 2015) (SR-OCC-2015-02) (Proposed Rule Change Filing).

The Proposal sets forth a plan for raising additional capital (the "Capital Plan") that would support OCC's function as a SIFMU and facilitate OCC's compliance with SEC Proposed Rule 17Ad-22(e)(15) (the "Proposed Rule"). The Proposed Rule would require OCC to have liquid net assets funded by equity sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, and that must in all cases cover the greater of either (i) six months of OCC's current operating expenses, or (ii) the amount determined by the Board of Directors (the "Board") to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of OCC, as contemplated by the Recovery and Wind-Down Plan that OCC will be required to create and maintain pursuant to SEC Proposed Rule 17Ad-22(e)(3)(ii). OCC would further be required under the Proposed Rule to maintain a viable plan, approved by the Board and updated at least annually, for raising additional equity capital should its equity fall close to or below the amount required under the Proposed Rule.[4]

As of February 24, 2015, the Commission has received four comment letters on the Proposal, including comments from BATS Global Markets, Inc.,[5] BOX Options Exchange,[6] and a letter submitted by counsel on behalf of six market maker firms (the "MM Letter").[7] OCC has submitted a response to the MM Letter containing a number of responses that apply with equal force to the SIFMA Letter. Accordingly, for the avoidance of repetition, OCC makes reference to the description of the background of the Proposal and to its responses to the MM Letter in certain sections of this letter. As noted in the MM Letter, the Board and OCC's management ("Management") have determined, both for business reasons and in order to address current and proposed regulatory requirements, that OCC's capital is too low for a SIFMU. OCC continues to believe that the approval of the Proposal is entirely consistent with the Exchange Act.

An important component of the Proposal is that it permits OCC to make a substantial refund to Clearing Members for 2014. In December 2014, in anticipation of the Proposal being approved, OCC's Board declared a refund for 2014 (to be paid in 2015) and this refund has been reflected in OCC's draft financial statements for the year ended December 31, 2014. However, the refund declared by the Board can be changed by the Board at any time prior to its payment. In the absence of the capital contribution from the Stockholder Exchanges, the Board would deem it imprudent to reduce OCC's regulatory capital by making a refund for 2014, and the draft financial statements would be changed to remove the refund. OCC is required by Rule 213 of its Rules to provide to Clearing Members its audited financial statements within 60 days following the close of OCC's fiscal year (February 27, 2015). Further, those financial statements cannot be finalized without knowing that the amount and likelihood of payment of the 2014 refund is "probable" and "estimable." Therefore, if, as of February 27, 2015, it is not "probable" that the Proposal will be approved, it is likely that the Board will eliminate the 2014 refund and that the financial statements will be issued without reference to a 2014 refund. Since the 2014 refund is

[4] *See* Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014).

[5] Letter from Eric Swanson, General Counsel & Secretary, BATS Global Markets, Inc. (February 19, 2015).

[6] Letter from Tony McCormick, Chief Executive Officer, BOX Options Exchange (February 19, 2015).

[7] Letter from Howard L. Kramer, Willkie Farr & Gallagher (February 20, 2015).

such an integral part of the Proposal, it is also likely that the Proposal will be abandoned and OCC instead will focus on accumulating the necessary capital by raising fees by as much as 162%, as described in the MM Letter, to be in compliance by the reasonably anticipated effective date for the Proposed Rule. OCC desires to avoid this result, which necessitates the approval of the Proposal in a timely manner.

RESPONSES TO THE SIFMA COMMENTS

SIFMA COMMENT: SIFMA SUPPORTS THE GREATER CAPITALIZATION OF OCC.

OCC notes and appreciates the support offered in the SIFMA Letter for OCC's development of a capital plan. SIFMA does not dispute the necessity of a capital infusion in the near-term or the necessity of adopting a longer-term capital plan to address the need for a source of replenishment capital. Further, unlike the MM Letter, the SIFMA Letter does not dispute the dollar amounts identified in the Proposal in respect of OCC's aggregate capital needs. These are important acknowledgments and areas of agreement—ones that the Board and Management have worked to articulate to OCC's stockholders and to market participants. OCC, its exchanges, and SIFMA, therefore, are aligned on these fundamental points. As discussed in OCC's response to the MM Letter, it is important to reiterate that OCC believes it is in the best interests of all of its constituents to have a capital plan, addressing the fundamental capital needs of OCC as set forth in the Proposal, as quickly as possible and in no event later than the reasonably anticipated effective date for the Proposed Rule. OCC has addressed these points in detail in its response to the MM Letter, which it incorporates herein by reference, in particular in OCC's responses under the caption "MM COMMENT: THE CAPITAL PLAN NEEDS MORE VETTING BY THE OPTIONS INDUSTRY."

SIFMA COMMENT: THE CAPITAL PLAN RISKS CONVERTING OCC FROM ITS TRADITIONAL INDUSTRY UTILITY OPERATING MODEL TO A FOR-PROFIT MODEL MAXIMIZING RETURNS FOR THE STOCKHOLDER EXCHANGES.

1. *The Capital Plan supports rather than undermines OCC's historical role as an industry utility.*

It is an inherent problem for a public or common facility that all the users want it but are much less likely to agree about how to pay for it. Any proposal for raising a substantial amount of capital will draw criticism from some constituents, as has already been demonstrated with respect to previous proposals.[8] The SIFMA Letter mischaracterizes the Proposal as an

[8] *See* Letter from Howard L. Kramer, Willkie Farr & Gallagher, on behalf of Belvedere Trading, et al. (March 26, 2014), Letter from Ellen Greene, Vice President of Financial Services Operations, Securities Industry and Financial Markets Association (April 17, 2014), Letter from John Daley, Stifel, Nicolaus, Chairman of the Board, and James Toes, President & CEO, Security Traders Association (April 17, 2014), Letter from Howard L. Kramer, Willkie Farr & Gallagher, on behalf of Belvedere Trading, et al. (April 24, 2014) (each commenting on Rule Change Filed for Immediate Effectiveness by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC- 2014-05)).

"abandon[ment]" of the industry utility model "in favor of a profit-maximizing structure designed to enhance the future returns of the Stockholder Exchanges." That assertion is baseless. The Proposal is in fact consistent with and preserves OCC's historical role as an industry utility. This matter is discussed at length in the advance notice, the rule filing and in OCC's response to the MM Letter under the caption "MM COMMENT: THE CAPITAL PLAN IS A DRAMATIC DEPARTURE FROM OCC'S HISTORICAL BUSINESS MODEL." The Board, in the exercise of its business judgment, and Management have determined that the Proposal is balanced and fair to all constituencies, and OCC believes that no viable alternatives that would ensure OCC's ability to meet the requirements of the Proposed Rule in a timely manner have been proposed.

Furthermore, among the reasons the SIFMA Letter raises concerns about the Proposal's effect on OCC's status as an industry utility is the assertion that the Capital Plan will remain in place "in perpetuity." In fact, the Capital Plan represents a negotiated change to the capital structure of OCC currently in place, demonstrating that the capital structure in fact can change over time as circumstances change. Moreover, the Board has certain fiduciary duties under corporate law to consider proposals that might be advantageous to OCC, which duties would apply to possible changes to its capital structure that may be proposed in the future or might otherwise be necessary to address evolving regulatory capital requirements.

2. *The Fee, Refund and Dividend Policies do not suggest that OCC would be operating as a for-profit entity*.

The SIFMA Letter asserts that one of the indications that the Proposal, if approved, would convert OCC into a "profit-maximizing" entity is the adoption of the proposed Fee, Refund and Dividend Policies discussed in the advance notice and rule filing. The Proposal, including those policies, in no way creates a for-profit model. Rather, the SIFMA Letter appears to misunderstand the relationship among the Fee, Refund and Dividend Policies. In response to this comment, OCC refers to its detailed discussions of these policies and their interaction with one another in the advance notice, the rule filing and in its response to the MM Letter under the captions "Background," "MM COMMENT: THE CAPITAL PLAN IS A DRAMATIC DEPARTURE FROM OCC'S HISTORICAL BUSINESS MODEL" and "MM COMMENT: OCC IS PRIMARILY SUPPORTED WITH FEES PAID BY MARKET PARTICIPANTS."

In support of its assertion, the SIFMA Letter constructs a straw man argument by suggesting that OCC is asserting that a "6% fee reduction" is equivalent to a "50% reduction in the refund." That is obviously not the case. As repeatedly stated in the Proposal, the reason that Clearing Member refunds will be less than 100% of the available Business Risk Buffer is to compensate the Stockholder Exchanges for their initial capital contribution and ongoing funding commitments. See the discussion in OCC's response to the MM Letter under the caption "MM COMMENT: OCC IS PRIMARILY SUPPORTED WITH FEES PAID BY MARKET PARTICIPANTS."

The SIFMA Letter also suggests that the Capital Plan is biased in favor of the Stockholder Exchanges because, if replenishment capital is required from the Stockholder Exchanges and has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement within 24 months, OCC would no longer pay refunds to Clearing Members, even if the Target Capital Requirement is restored and all replenishment capital is repaid at a later date (in each case after such 24 month period), whereas dividends would be

resumed once the Target Capital Requirement has been restored. The SIFMA Letter remarks that there is "little question that these provisions seek to maximize and prioritize the dividends payable to the Stockholder Exchanges, and at the expense of the amount of fees paid by, and other interests of, the [Clearing] Members." That is not the case. The reasoning for these terms is discussed in detail in OCC's response to the MM Letter, which OCC incorporates herein by reference, specifically under the caption "MM COMMENT: THE REPLENISHMENT CAPITAL COMMITMENT IS MORE LOAN THAN CAPITAL."

3. *The treatment of OCC's assets, including retained earnings from fees, is not a departure from its industry utility model.*

The SIFMA Letter states that the additional contribution of capital from the excess fees of Clearing Members would not be returned to the Clearing Members or their customers under the proposed revisions to the OCC's Certificate of Incorporation if OCC were to liquidate, dissolve, demutualize or effectuate some other business combination. It has always been the case that retained earnings constitute shareholders' equity and the Proposal is, therefore, in no way a departure from OCC's industry utility model. In fact, absent the agreement of the Stockholder Exchanges to contribute the additional capital (or some alternative source of funds that has not been identified after a year of extensive investigation by the Board and Management), OCC's existing rules would require OCC to set clearing fees at a level sufficient to accumulate the entire amount of the needed additions to its capital as well as the replenishment capital. For further discussion, please see OCC's response to the MM Letter under the caption "MM COMMENT: THE PROPOSAL IS DEFICIENT IN COMPARISON TO OTHER ALTERNATIVES," which OCC incorporates herein by reference.

4. *The nature of the dividend commitment is appropriate and does not undermine OCC's standing as an industry utility.*

The SIFMA Letter itself suggests that a dividend that is limited in time or amount might be acceptable, indicating that SIFMA does not have a per se objection to the payment of dividends and its effect on OCC as an industry utility. The SIFMA Letter nevertheless seems to take issue with the absence of a "limitation on the amount or duration" of the dividend as contemplated under the Proposal. As has been discussed at length in OCC's response to the MM Letter and in the advance notice and rule filing, the mechanics of the Capital Plan do in fact materially limit the amount of dividends that could be paid at any given time.

Moreover, OCC has already considered an alternative plan to limit the amount of time dividend payments are made to the Stockholder Exchanges, for example by repaying the Stockholder Exchanges' capital contributions over a period of years, which OCC determined was unworkable for a variety of reasons. OCC has discussed at length the process undertaken when OCC considered this type of alternative plan. That discussion is contained in its response to the MM Letter under the caption "MM COMMENT: THE PROPOSAL IS DEFICIENT IN COMPARISON TO OTHER ALTERNATIVES," and OCC incorporates that discussion into this response. OCC continues to believe that the Proposal was and remains the only viable proposal offered that would allow OCC to increase its capital to a level appropriate for a SIFMU and to ensure compliance with the Proposed Rule by its reasonably anticipated effective date. As stated in the advance notice and rule filing, this cannot be accomplished without modification of the past practice of not

providing dividends to stockholders and providing for the appropriate mechanisms to effectuate this structural change.

SIFMA COMMENT: THE ABSENCE OF A COMPETITIVE OFFERING PROCESS OR TRANSPARENT PRICING DATA RAISES QUESTIONS AS TO THE FAIRNESS AND EFFICIENCY OF THE RETURNS PROVIDED TO THE STOCKHOLDER EXCHANGES UNDER THE CAPITAL PLAN. . . . OCC SHOULD ENGAGE IN A PUBLIC AND TRANSPARENT PROCESS TO ENSURE THAT IT IS ABLE TO OBTAIN AND MAINTAIN ADDITIONAL CAPITAL ON TERMS AND AT PRICES THAT ARE FAIR, REASONABLE AND EFFICIENT.

1. *OCC has engaged in a process that has not only provided transparency to Clearing Members but actively involved their representatives.*

The SIFMA Letter asks for a more transparent process involving Clearing Members and other interested parties. The notion that industry participants were not involved in the negotiation and adoption of the Proposal is inaccurate. The Board engaged in a lengthy process since early 2014 during which it investigated, reviewed and weighed various alternative models and engaged in extensive discussions with regulators, Clearing Members, Stockholder Exchanges, and outside advisors. This process culminated in the Board's determination that the proposed Capital Plan was the best option that would allow OCC to increase its capital to a level appropriate for a SIFMU and to ensure compliance with the capital and liquidity requirements on or before the reasonably anticipated effective date for the Proposed Rule.

Directors representing Clearing Members have been actively involved in the examination and negotiation of the Capital Plan, including the proposed dividend, throughout the entire process. The involvement in the process by representatives of market participants in conjunction with the public materials and statements provided by OCC is, therefore, sufficient to fully analyze the Proposal, and OCC has no reason to believe that more time would produce a different result or one that would garner greater support from its various constituencies or regulators. Under the caption "MM COMMENT: THE CAPITAL PLAN NEEDS MORE VETTING BY THE OPTIONS INDUSTRY," in OCC's response to the MM Letter, OCC describes in detail the lengthy process undertaken by the Board in analyzing and negotiating the Capital Plan, including the proposed dividend. OCC also refers to this discussion in response to the SIFMA Letter's more particular complaints about the proposed dividend contemplated by the Proposal. This element obviously was a key component of the Capital Plan reviewed and negotiated by the Board. The Board's considerations in determining the reasonableness of the structure of the dividend are explained in detail under the same caption in OCC's response to the MM Letter.

The terms reflected in the Proposal were negotiated principally by Board members representing both the Stockholder Exchanges and the Clearing Members. The largest group of Board members is the group representing the Clearing Members ("Member Directors"). The Capital Plan was approved by a two-thirds majority of the Board, including four Member Directors, constituting a majority of the Member Directors voting on the Capital Plan.[9] It is fair

[9] Out of nine Member Directors, one did not attend the Board meeting at which the Capital Plan was approved, one abstained, four voted in favor, and three voted against.

to say, then, that industry representatives were not only apprised of, but closely involved in, the development, negotiation and approval of the Proposal.

2. *The Capital Plan is fair to and provides substantial protections for the interests of industry participants*.

The Proposal's own terms, as explained in the advance notice and rule filing, also require the ongoing participation and assent of industry representatives on the Board. The Fee Policy, Dividend Policy and Refund Policy each provides that any exception or amendment to the policy requires the affirmative vote of two-thirds of the directors then in office as well as the approval of each of the Stockholder Exchanges. Under the current composition of the Board, a two-thirds majority of the directors in office cannot be achieved without the votes of at least some of the Member Directors. The Member Directors as a group therefore have an effective veto over any change in these policies. Any change in the composition of the Board of Directors would also, pursuant to Article XI, Section 1 of OCC's By-Laws, require a two-thirds vote of the directors then in office as well as unanimous approval of stockholders, and the same is required to amend Article XI, Section 1 itself. OCC has provided a detailed explanation in the advance notice, the rule filing and in OCC's response to the MM Letter of the various protections provided for in the Proposal that ensure it is fair and protects the interests of OCC's various constituencies. OCC refers to those discussions, including under the caption "MM COMMENT: THE CAPITAL PLAN WILL CREATE CONFLICTS OF INTEREST IN SETTING OCC'S BUDGETS" in its response to the MM Letter.

Changes to these documents and the constraints contained therein could not be accomplished without the consent of all Stockholder Exchanges as well as the approval of the Board in each case and the affirmative vote of two-thirds of the directors then in office in the case of the By-Laws. Furthermore, changes to these documents generally require the approval of the SEC and would be the subject of a rule filing process that will permit public comment. As noted above, the directors representing the Stockholder Exchanges do not constitute a majority of the Board. OCC believes, therefore, that changes to these protections could not be effected without very broad support from the Clearing Members as well as the exchanges and the regulators.

3. *OCC has provided all of the material terms of the Capital Plan as laid out in detail in the advance notice and rule filing, which were known to and negotiated by representatives of the Clearing Members.*

SIFMA asserts that because the term sheet for the Proposal has been redacted from the filing, it cannot fully analyze the Proposal, including its cost. Contrary to SIFMA's assertions regarding a lack of transparency, OCC has described in the advance notice and rule filing the considerations that went into setting the terms of the Proposal, described the Proposal in detail, made statements that the terms of the Proposal will not change materially over time, and noted that the Board determined it to be reasonable. The term sheet related to the Proposal does not contain any material terms that were not already disclosed and described in detail in the Proposal. For example, the formulas related to determining the proposed dividend and the dividend's treatment in the event replenishment capital is outstanding are all described in the

Proposal under the headings "Dividend Policy" and "Replenishment Capital Plan" substantially as set forth in the term sheet.

4. *The advance notice and rule filing acknowledge the fee increase of 70% in 2014, which was intended to raise equity capital, but fee increases are not a viable source of capital for purposes of complying with each of the requirements under the Proposed Rule*.

The SIFMA Letter asserts that OCC fails to acknowledge that fee increases instituted in 2014 have and will provide for additional capital through retained earnings and further proposes that suspending refunds from those increased fees would allow OCC to raise more than one-half of the *initial* capital infusion contemplated by the Proposal. Contrary to the assertions of the SIFMA Letter, the Proposal does in fact note the elimination of the discounted fee schedule, which resulted in an increase in fees.[10] SIFMA at some points appears to be objecting to increasing shareholders' equity through higher fees yet also objecting to OCC's refunding of amounts related to those fee increases. It is not clear whether SIFMA would prefer that greater amounts be refunded to Clearing Members, as it argues in a number of instances in its letter, or that greater amounts be retained by OCC, as suggested by this comment.

As discussed in OCC's response to the MM Letter under the caption "MM COMMENT: OCC SHOULD HAVE ADOPTED A CAPITAL PLAN RELIANT ON RAISING CAPITAL THROUGH THE FEE INCREASES AND SUSPENSION OF REFUNDS THAT BEGAN IN 2014," it is not, in any event, possible to accumulate in a timely manner the large amount of capital required under the Capital Plan without dramatically increasing fees and potentially affecting order flow, effective spreads, and trading volumes. As previously noted, the SIFMA Options Committee itself filed a comment letter with the SEC on April 17, 2014 concerning the proposed elimination of OCC's discounted fee schedule in which it remarked, "SIFMA's Listed Options Trading Committee has raised a number of concerns surrounding the fee increase, including, but not limited to, the timing and amount of the notice, *and the use of the member clearing fee increase to raise the required capital as opposed to continued evaluation of alternative methods*." (Emphasis added.)

Furthermore, whatever the true preference of SIFMA members may be, even on its own terms, the high-level outline of a capital plan proposed in the SIFMA Letter, which focuses on using retained earnings and the suspension of refunds as the source of capital, fails to allow OCC to even approach meeting the capital requirements contemplated by the Proposed Rule by the reasonably anticipated effective date of the Proposed Rule, nor would it provide OCC with a viable plan for accessing replenishment capital. As noted in OCC's response to the MM Letter, the projections provided by OCC's financial advisors indicate that, under this model and OCC's current fee structure, OCC would not achieve compliance with the requirements of the Proposed Rule by accumulating the required $364.0 million until the fourth quarter of 2017, or current fees would need to be increased by as much as 162% in order to comply with the Proposed Rule by its reasonably anticipated effective date. This failure validates the Board's determination after its nearly year-long process of evaluating alternative capital plans that the Proposal is the only

[10] *See* Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC- 2014-05).

remaining viable option for meeting the requirements of the Proposed Rule on or before the reasonably anticipated effective date.

5. *The proposed amendments to Article VIII, Section 5(d) of the OCC By-Laws do not provide the Stockholder Exchanges with a "unilateral right" to "determine to fund Clearing Fund deficiencies through additional retained Member and end-user fees rather than risk having to fund their required Replenishment Capital commitment.*"

SIFMA asserts that the proposed amendments to Article VIII, Section 5(d) of the OCC By-Laws would allow the Stockholder Exchanges to manage the risk of having to fund the replenishment capital "by determining whether retained earnings could be used to compensate for a loss or deficiency in the Clearing Fund." SIFMA implies that the effect of such an action would be to inappropriately shift the loss from a Clearing Member default from the Stockholder Exchanges to the Clearing Members and "end-users." This is not correct. Article VIII, Section 5(d) of the OCC By-Laws provides that "in lieu of charging a loss or deficiency proportionately to the Clearing Fund computed contributions of non-defaulting Clearing Members pursuant thereto, the Corporation may, in its discretion, subject to the unanimous approval of the holders of Class A Common Stock and Class B Common Stock, elect to charge such loss or deficiency in whole or in part to the Corporation's current earnings or retained earnings." (Proposed amendment in underlined text.)

At present, OCC's capital is not at risk in the event of a Clearing Member default, since the Clearing Fund is supported solely by deposits made by Clearing Members and the commitment by Clearing Members to deposit additional amounts on the terms set forth in the By-Laws. That said, the By-Laws do provide the Board with the discretion to charge a loss resulting from a Clearing Member default against current earnings rather than make a proportional charge against the Clearing Fund deposits of non-defaulting Clearing Members, in which case "such charge shall be deemed a refund of clearing fees to the non-defaulting Clearing Members to whose Clearing Fund contributions the loss or deficiency would otherwise have been charged." In other words, the effect is simply to treat it as an advance against the refunds to which they otherwise would have been entitled, and the effect is one of timing. If the Board determines to charge the loss against retained earnings, it would be necessary to increase retention of earnings, thus decreasing both dividends and refunds, resulting in a sharing of the burden of necessary additions to capital in the manner described above and in the Proposal. The obligation of the Stockholder Exchanges to contribute replenishment capital would be triggered only if the charge against retained earnings were to cause OCC's stockholder equity to fall below 125% of its then current Target Capital level. In that case also, both refunds and dividends would be suspended until the replenishment capital has been repaid—again resulting in a shared burden.

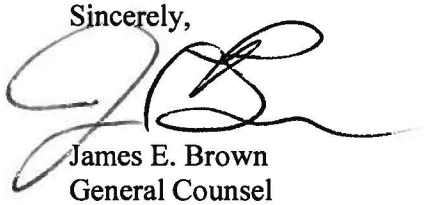
In other words, it is neither the purpose nor the effect of the replenishment capital facility to shift the potential loss from a Clearing Member default, which has always been mutualized among Clearing Members, so long as OCC remains solvent. Rather, the purpose of the replenishment capital facility is to maintain OCC's solvency and regulatory capital compliance if *general business* losses cause shareholders' equity to fall below the specified level. And in that case, the Stockholder Exchanges are potentially at risk for their entire contribution in the case of OCC's insolvency. This arrangement is appropriate and fully consistent with both the industry

utility model and the Exchange Act, and in particular Rule 17Ad-22(e)(15) thereunder, which specifically requires "liquid net assets funded by equity" sufficient to cover "potential general business losses" and is separate from and in addition to resources needed to cover clearing member defaults.

CONCLUSION

OCC's Board has exhaustively considered numerous alternatives for raising sufficient capital to comply with the Proposed Rule by its reasonably anticipated effective date and has reached agreement with Stockholder Exchanges to provide sufficient capital on an ongoing basis for OCC's needs. To undo any of the carefully negotiated terms could prove fatal to the agreement and reset the entire, nearly year-long process OCC's Board and Management have pursued to bolster OCC's capital and to achieve compliance with the Proposed Rule. OCC continues to believe that the Proposal was and remains the only viable alternative offered for achieving this compliance and would do so without a very large increase in fees that could prove harmful to the options markets. Accordingly, the Proposal is entirely consistent with the Exchange Act and the rules and regulations thereunder applicable to OCC as well as with the public interest and protection of investors. OCC, therefore, respectfully requests that the Commission notify OCC that it does not object to and approves the Proposal.

Sincerely,



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