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KCG

February 26, 2015

Via Electronic Mail (rule-comments@sec.gov)

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; SR-OCC-2015-02

Dear Mr. Fields:

KCG Holdings, Inc. ("KCG") submits this letter in response to the above-referenced filing by the Options Clearing Corporation ("OCC") concerning a proposed plan for raising additional capital that would support OCC's function as a systemically important financial market utility (the "Proposed Plan"). KCG believes OCC's filing raises, but fails to address, significant policy concerns. In addition, we believe OCC's capital raising approach should be more inclusive instead of being limited to OCC's current equity owners. Finally, OCC's request for accelerated effectiveness should be denied given the important policy concerns raised by the Proposed Plan.

The Proposed Plan seems to abandon OCC's traditional non-profit industry utility model in favor of a new for-profit model

OCC has historically operated as a non-profit industry utility for the benefit of the financial market. In particular, it collects fees from its clearing members at a level designed to meet its operating expenses and maintain capital reserves necessary to meet its obligations. On an annual basis, OCC then refunds surplus fees – any amounts collected in excess of operating expenses and capital obligations - back to its clearing members on a *pro rata* basis through rebates.

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Under the Proposed Plan, OCC would increase its capital through the contribution of additional capital by the options exchanges that currently own equity in OCC ("Stockholder Exchanges").[1] In return for making additional capital contributions, the Stockholder Exchanges will receive the right to annual dividends from OCC for an unspecified amount of time. These dividends will be generated from excess clearing fees collected from OCC clearing members; therefore the result of the Proposed Plan will be to reduce the amount of excess fees that will be available to be refunded back to clearing members through annual rebate payments.

KCG appreciates that OCC must raise capital given its designation as a systemically important financial market utility. The Proposed Plan, however, appears to result in the conversion of OCC's model from that of an industry utility designed for the benefit of the entire industry to a for-profit organization designed to generate above-market returns for the Stockholder Exchanges. There are several examples that illustrate a change in focus designed to maximize dividends to Stockholder Exchanges that will have a detrimental effect on the interests of clearing members, customers and the general public.

- The refund provided to clearing members will be limited to 50% of surplus fees paid by them with remainder of surplus fees paid by clearing members will be reserved to pay dividends to the Stockholder Exchanges.
- There is no limitation on the duration of dividend payments to the Stockholder Exchanges. In other words, the Proposed Plan appears to entitle the Stockholder Exchanges to receive such dividends for as long as they continue to be equity owners, or *in perpetuity*.
- In addition to capping the refund to clearing members at 50% of surplus fees collected from them, the amount available for clearing member refunds may be further reduced by deducting from surplus fees additional amounts required to meet future capital requirements. Unlike the Stockholder

[1] The equity owners of the OCC include five national securities exchanges for which OCC provides clearing services: NYSE Arca, NYSE MKT, the CBOE, the ISE, and NASDAQ PHLX. OCC also provides clearing services to seven other national securities exchanges that trade options but are not equity owners of OCC.

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Exchanges, however, clearing members would not earn any return on additional capital contributions generated from excess fees paid to OCC.

- The Proposed Plan is the result of a proposal brought to OCC's Board by the Stockholder Exchanges.

OCC should address potential alternatives to the Proposed Plan

The filings submitted by OCC do not contain specific information about the terms of the Proposed Plan. It is unclear from the filings whether OCC's capital raising plan – capital contributions by the Stockholder Exchanges in exchange for receipt of dividends *in perpetuity* - will provide it with the required capital at a reasonable rate or if the plan will be extraordinarily expensive for OCC and its clearing members. It seems, however, that the Proposed Plan will provide the Stockholder Exchanges with a significant and low risk annual dividend to be funded by OCC clearing members. This investment is low risk due to OCC's unique position in the market and its ability to raise fees whenever necessary. Indeed, OCC increased clearing member fees by 70% in 2014 alone.

In addition, the filing by OCC fails to address other potentially viable alternatives for raising the necessary capital, such as seeking capital from other non-equity owner exchanges, OCC clearing members, and third party investors. Although the filing submitted by OCC does not address specific alternatives, it seems clear that its decision to raise capital in this manner - by seeking additional capital contributions from Stockholder Exchanges in exchange for annual dividends funded by OCC clearing members - was not the result of a competitive process. According to OCC's filing, the Proposed Plan is the result of a proposal brought to OCC's Board by the Stockholder Exchanges.

KCG believes OCC's capital raising efforts would better serve the marketplace with a more inclusive approach, as opposed to being limited to current OCC ownership. We believe other non-equity owner exchanges, clearing members and third parties could assist OCC in meeting its capital raising needs in a more efficient and cost effective manner. Further, a more inclusive approach would ensure the U.S. maintains the best capital market structure in the world.

The request for accelerated effectiveness should be denied

OCC has requested the effectiveness of the Proposed Plan be accelerated to February 27, 2015. According to OCC, good cause exists for accelerated effectiveness because it would allow OCC to strengthen its capital position earlier than otherwise would be the case. OCC's request for accelerated effectiveness should not be granted. First, the Proposed Plan raises important policy concerns around the OCC's continuing status as an industry utility. Second, there is time as the Commission has not yet adopted proposed Rule 17Ad-22, which is the primary regulation cited by OCC requiring the need for it to raise capital.

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KCG appreciates this opportunity to comment on the Proposal. Please do not hesitate to contact me at [redacted] if you have questions regarding any of the comments provided in this letter.

Sincerely,

John A. McCarthy

John A. McCarthy
General Counsel

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