April 6, 2016

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

Re: Options Clearing Corporation ("OCC"), Notice of Filing of Proposed Rule Change Related to the Adoption of an Options Exchange Risk Control Standards Policy; SEC File No. SR-OCC-2016-004 (March 04, 2016).

Dear Mr. Fields,

BOX Options Exchange ("BOX" or "Exchange") appreciates this opportunity to comment on the above-referenced filing made by The Options Clearing Corporation ("OCC")[1] concerning the implementation of principle-based risk control standards for options exchanges and an additional fee for transactions occurring on an exchange that does not have risk controls deemed adequate by OCC (the "Proposed Filing"). BOX believes that the Proposed Filing raises significant regulatory and policy issues that need to be addressed. Additionally, BOX believes the Proposed Filing will give OCC authority over the options exchanges which is outside the scope of OCC's current authority and potentially infringes on the authority of the Securities and Exchange Commission (the "SEC" or "Commission"). To be clear, BOX does not object to increased risk controls – the Exchange has previously enhanced its rules surrounding risk controls[2] – the major issues that the Exchange has identified focus upon whether OCC has the relevant authority to implement the Proposed Filing. BOX believes that an in depth analysis into the far reaching consequences of the Proposed Filing is warranted by the Commission.

I. Background

The Proposed Filing would allow OCC to impose a fee on trades executed on options exchanges that do not have risk controls deemed adequate by OCC in the following categories: (i) price reasonability checks, (ii) drill-through protections, (iii) activity-based protection, and (iv) kill-switch protections. Pursuant to the Proposed Filing, the options exchanges will be required to certify with OCC that they have adequate risk controls in the above listed categories. If OCC determines, through their own review, that an options exchange does not have adequate risk controls, OCC will

[1] OCC is a registered clearing agency with the SEC and a registered derivatives clearing organization with the Commodity Futures Trading Commission. OCC is the sole clearing agency for the US listed options markets.

[2] See Securities and Exchange Act Release Nos. 71344 (January 17, 2014), 79 FR 4186 (January 24, 2014) (SR-BOX-2014-02); 71343 (January 17, 2014), 79 FR 4224 (January 24, 2014)(SR-BOX-2014-03); 71346 (January 17, 2014), 79 FR 4207 (January 24, 2014)(SR-BOX-2014-04); 77092 (February 9, 2016), 81 FR 7873 (February 16, 2016) (SR-BOX-2016-03); 77095 (February 9, 2016), 81 FR 7853 (February 16, 2016) (SR-BOX-2016-04); and 77096 (February 9, 2016), 81 FR 7879 (February 16, 2016) (SR-BOX-2016-05).

start assessing an additional two-cent clearing fee, per side, for all transactions occurring on such exchange. The options exchanges have until June 30, 2016, provided that the compliance date may be pushed back pending regulatory approval, to certify to OCC that they are compliant. If an options exchange is not compliant by June 30, 2016, or such later date of regulatory approval, OCC will start charging the proposed two-cent fee 60 days after the compliance date. Additionally, the options exchanges will have to recertify annually with OCC to ensure that they continue to have risk controls deemed adequate by OCC.

II. General Authority

BOX questions whether OCC has the authority to prescribe what risk controls the options exchanges must make available to market participants. BOX strongly believes that any industry-wide requirements should be mandated by the Commission. The Commission has explicit authority, as granted by the United States Congress, to regulate the national securities exchanges, including the options exchanges. There are numerous examples of the Commission requiring an industry-wide initiative, for example Regulation SCI and the CAT NMS Plan.[3] BOX questions whether the OCC has the authority to prescribe to the options exchanges what rules and procedures must be made available to market participants. The Exchange has been unable to locate anything in the Exchange Act or otherwise that grants OCC authority to regulate the options exchanges. OCC claims that the proposed risk controls are consistent with guidance received by Chair White.[4] While we recognize that Chair White called for greater risk controls, this should not give OCC the ability to expand their authority over the options exchanges, which this Proposed Filing will accomplish. Additionally, the Exchange has already made numerous rule changes in response to Chair White's Statement.[5]

In order to become an approved national securities exchange and self-regulatory organization, the exchange must file and receive approval from the SEC under Section 6 of the Securities Exchange Act of 1934 ("Exchange Act").[6] Among other things, the SEC must determine that the exchange's rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. BOX believes that the Commission, not OCC, should be the arbiter of whether the rules and procedures of the individual options exchanges meet the requirements of the Act. This is the reason why there is a robust rule filing process which requires the exchanges to file all rule changes with the Commission. By allowing OCC to require the options exchanges to have certain procedures and rules in order to avoid an additional clearing fee on all transactions executed on that exchange, OCC is given the power and authority to determine whether the exchange's rules are sufficient. OCC will financially benefit if the

[3] See Securities Exchange Act Release Nos. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release"); 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).
[4] See SEC Chair White Statement on Meeting with Leaders of Exchanges, September 12, 2013.
[5] See SEC File Nos. SR-BOX-2014-02, SR-BOX-2014-03 and SR-BOX-2014-04.
[6] 15 U.S.C. 78f(b).

rules of an options exchange are determined to not be sufficient, which appears to be a direct conflict of interest. This is especially true given the fact that OCC will have to annually certify that the options exchanges are compliant. The Exchange is concerned that, if the Proposed Filing is approved by the Commission, it will allow OCC to become an additional arbiter in determining the adequacy of an exchange's rules.

BOX believes that the Proposed Filing will have the result of OCC becoming a defacto regulator over the options exchanges. OCC is a self-proclaimed "market utility".[7] However, the Exchange believes that this Proposed Filing is a drastic step away from the market utility model to one of a defacto regulator of the option market. Specifically, by dictating to the options exchanges the specific level of risk controls that are required and reviewing the adequacy of such rules, OCC is moving away from serving the market to a position where OCC is asserting control over how the industry as a whole operates. The Exchange strongly believes that an approval of the Proposed Filing will have far reaching consequences and respectfully requests that the Commission examine all of them.

In the Proposed Filing, OCC asserts that the mandating of the proposed risk controls are consistent with Rule 17Ad-22(d)(7).[8] Rule 17Ad-22(d)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that risks that arise when OCC establishes links are managed prudently on an ongoing basis. BOX questions how the Proposed Filing is related to established links by OCC. The Proposed Filing would require the options exchanges to have specific risk controls covering trading on their exchanges; however, the Exchange fails to see how that relates to the link between the options exchanges and OCC. The Exchange respectfully requests that OCC provides additional information on how the Proposed Filing relates to Rule 17Ad-22(d)(7).

III. Burden on Competition

OCC claims the proposed rule change "may impose a burden on competition amongst Options Exchanges, as Options Exchanges that do not implement sufficient Risk Control Standards to meet the Risk Control Standards will have the Fee added to the cost of transacting such Options Exchange."[9] There is no question that the Proposed Filing will impose a burden on competition, regardless of any fee increase. Even if an options exchange is deemed compliant by OCC there is still a substantial burden placed on the individual exchanges. This includes, but is not limited to the resources needed to guarantee that the exchange has the required risk controls and the resources expended yearly to make sure the exchange is continually compliant with OCC's mandated risk controls. This burden is especially high for smaller exchanges, such as BOX. This increased oversight of the options exchanges is an unnecessary burden. BOX believes that OCC fails to adequately justify in the Proposed Filing the need for additional

[7] See Letter from James E. Brown, General Counsel, The Options Clearing Corporation (April 17, 2014) at 6.
[8] See SR-OCC-2016-004 at 23.
[9] See SR-OCC-2016-004 at 24.

oversight over the options exchanges and why the current regulatory structure is not adequate.

In the Proposed Filing, OCC states that the two-cent fee "should not materially impact a Clearing Member that chooses to execute a transaction on an Options Exchange that has not certified its Risk Control Standards."[10] BOX disagrees with this statement., In the highly competitive environment in which the options exchanges compete, any increase in fees can make a world of difference. All increases in clearing fees should be carefully studied and deliberated on prior to their implementation. The OCC has noted as much, "[The OCC] agree[s] that to best serve the markets for which it clears, it is critically important for a clearing agency to thoroughly consider and understand the impact of its fee structure."[11]However, OCC has provided no specific data or study that supports the need for a two-cent fee increase for transactions occurring on exchanges that do not have the proposed risk controls. BOX strongly believes that an increased clearing fee applicable to a single exchange could have devastating effects on that exchange's ability to successfully compete, and that OCC fails to adequately justify the need for the proposed fee.

IV. Charging Fees Based Upon the Exchange

BOX questions whether OCC has authority to charge different fees for clearing transactions based on the executing exchange. As far as the Exchange can determine, OCC has never charged different clearing fees for transactions dependent upon the options exchange where they were executed. This proposed departure from treating all options exchange the same is extremely concerning. Approval of the Proposed Filing by the Commission will have far reaching consequences by establishing that OCC has the authority to discriminate between exchanges through the fees OCC charges. Once OCC has established the authority to charge different fees depending upon the exchange the transactions were executed on, the door would be opened for OCC to start charging different fees based on additional factors.

Pursuant to OCC's By-Laws, the clearing fees are to be set at a level sufficient to (a) cover operating expenses plus a business risk buffer, (b) maintain reserves reasonably necessary to the conduct of OCC's business, and (c) to accumulate such additional surplus as the Board deems advisable for OCC to meet its obligations to clearing members and the general public.[12] Additionally, OCC's By-Laws provide that the provisions of (b) and (c) above shall be invoked only in extraordinary circumstances and to the extent that OCC's Board of Directors has determined that the required amount of additional reserves and additional surplus is expected to exceed the full amount that is expected to be accumulated through the application of the business risk buffer referred to in clause (a). OCC claims the primary reason for the proposed two-cent fee is to "provide additional funds for OCC to manage the elevated risk that would be presented to OCC

[10] See SR-OCC-2016-004 at 17.
[11] See supra note 7.
[12] See Article IX, Section 9 of OCC By-Laws

absent the Risk Control Standards and for which OCC has no reasonable means to predict, measure, or consider otherwise."[13] This justification seems to fall under clauses (b) and (c) above, therefore, OCC By-Laws require that "extraordinary circumstances" exist in order in implement the proposed two-cent fee. BOX questions whether extraordinary circumstances exist and respectfully requests that OCC provide justification for the existence of extraordinary circumstances. The Proposed Filing only mentions the By-Laws in passing, stating that the Proposed Filing "is not inconsistent with any existing OCC By-Laws."[14] OCC should provide additional information and justification on how the proposed fee is not inconsistent with the above referenced provisions of the OCC's By-Laws.

V. The Proposed Fee is a Defacto Fee on the Option Exchanges

BOX believes the proposed fee is a defacto fee imposed directly on the options exchanges and questions whether OCC has the authority to implement it. Specifically, OCC's statutory authority with respect to allocation of fees under Section 17A(b)(3)(D) of the Exchange Act is limited to "the equitable allocation of reasonable dues, fees, and other charges among its participants."[15] Therefore, OCC has no authority to impose fees on the individual exchanges, which OCC openly admits.[16] The charging of an additional fee for transactions occurring on a specific exchange is essentially the same as charging a fee on the exchange directly. This is due to the direct effect it will have on the total transaction cost to market participants and the effect it will have on the exchange's revenue. When OCC charges an extra two cents, firms will include the fee into their decision making process in determining where to send orders based upon total transaction cost. The exchange will either have to decrease all fees by two cents to maintain the status quo or be at an economic disadvantage to their competition. Either way, there will be a decrease in revenue to the exchange; such a decrease would be a defacto fee charged by OCC on the exchange. The negative effect of the fee on the exchange's revenue is no different in the end than charging the exchange a fee. The fact that the fee is collected from clearing members and not the exchange directly is irrelevant due to the final result that the exchange would suffer a financial hardship.

VI. Additional Questions

Before the Proposed Filing is approved by the Commission, BOX believes that additional information is needed in order to fully understand the implications and consequences of the Proposed Filing. To be clear, the Exchange supports the general idea

[13] See SR-OCC-2016-004 at 17.
[14] See SR-OCC-2016-004 at 23.
[15] Under Section 3(a)(24) of the Exchange Act, "[t]he term 'participant' when used in respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant, or (B) as a pledgee of securities."
[16] See Letter from James E. Brown, General Counsel, The Options Clearing Corporation (May 15, 2014) at 11.

around increased risk controls for the industry, which is evident by recent rule filings from BOX;[17] however, the Exchange respectfully requests that OCC respond to the following concerns.

- In the future, could OCC expand this initiative to charge different fees for transactions executed on different exchanges based on additional factors? Does OCC have or anticipate having any plans to expand to additional areas?

- The Proposed Filing mentions the adoption of a new Options Exchange Risk Control Policy ("Policy"). This proposed Policy is redacted from the Proposed Filing. The Exchange has not been shown the Policy or received any information about the specifics of the Policy. Given the fact that the Proposed Filing will affect the entire industry, BOX requests that the Policy not be redacted from the Proposed Filing; it should be fully transparent to those impacted.

- The Proposed Filing requires yearly certification with OCC. Does this mean that additional requirements may be established by OCC in the future? Could an options exchange be initially compliant but the following year be deemed non-compliant?

- Will OCC ever require an onsite inspection or audit of the individual options exchanges in order to determine whether they are compliant or otherwise?

- What will the OCC do with the two-cent fee once collected? OCC claims the primary reason for the fee is to provide funds for OCC to manage the elevated risk associated with clearing trades executed on options exchanges without sufficient risk controls. Additionally, OCC provides that the fee will not be available for a Clearing Member refund or Stockholder Exchange dividend.[18] Although the fees will not be available to Clearing Members of Stockholder Exchanges directly, could the fees be used to offset additional operating expenses of OCC which could lead to a greater Clearing Member refund or greater Stockholder dividend? Additionally, if the fees are used to cover a loss of the clearing fund, under OCC's By-Laws such charge shall be deemed a refund of clearing fees to the non-defaulting Clearing Members.[19] This appears to conflict with the statement that the fees will not be available for a Clearing Member refund. The Exchange respectfully requests clarity on this point.

- What if there is a conflict between SEC and OCC approvals? Will all rule changes by an option exchange have to be reviewed by OCC to ensure they do not affect the exchange's risk controls? Does OCC believe they have the

[17] See supra note 2.
[18] See SR-OCC-2016-004 at 8.
[19] See Article VIII Section 5(d) of OCC's By-Laws.

authority to require the options exchanges to have specific trading rules or procedures? If not, how does OCC justify the requirements in the Proposed Filing?

- OCC claims that, among other things, they will evaluate the parameters around each exchange risk control covered by the Proposed Filing when determining if an options exchange is compliant. Does this mean that an exchange will have to obtain OCC approval prior to making any changes to its risk control parameters?

- OCC claims that the increase in clearing fees should not materially alter a Clearing Member's determination to execute a transaction on an options exchange. BOX respectfully requests additional information supporting this conclusion. The options exchanges operate in an extremely competitive environment where every penny matters. Has OCC studied the effect of an increased fee for transactions executed on an individual exchange? Have they discussed the effect with market participants?

VII. Conclusion

BOX supports increased risk controls for the market; however, as stated above, the Exchange has concerns about the potential for additional requirements being mandated by OCC. Additionally, BOX questions whether OCC has the authority, statutory or otherwise, to impose requirements on the options exchanges and charge different clearing fees based on the executing exchange. BOX appreciates the Commission's consideration of our comments in connection with File No. SR-OCC-2016-004.

Sincerely,

Lisa J. Fall
President