April 20, 2016

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-OCC-2016-004

Dear Mr. Fields:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced proposed rule filing ("Filing" or "Proposal") in which The Options Clearing Corporation ("OCC") proposes a principles-based Options Exchange Risk Control Standards Policy ("Policy") and related fees. We fully support the Filing and urge prompt Commission approval.

OCC is the sole registered clearing agency for listed options; it issues and clears all options contracts that are traded on registered national securities exchanges. It also is designated as a systemically important financial market utility. In its role as a critical market utility, OCC created a "Working Group" comprised of all the options exchanges to develop the Policy. The goal of the Policy is to help ensure that "the potential significant financial impact and elevated risk of disruption resulting from erroneous transaction is limited to the greatest extent possible."[1] The Filing encourages options exchanges to adopt risk controls consistent with the Policy. If an exchange does not adopt such risks controls, OCC would impose a $.02 per contract fee on OCC members that clear trades executed on such an exchange.

The Policy encourages the adoption of risk controls in the areas of: price reasonability checks; drill-through protections; activity-based protections; and kill-switch protections. These are all areas that OCC and the options exchanges have identified as critical to an effective risk management control infrastructure. As part of the Working Group that developed the Policy, we fully support the proposed Proposal as a fair and reasonable effort to create incentives for exchanges to implement controls to limit risk in the national market system for listed options.

The BOX Options Exchange, Inc. ("BOX") has raised a number of objections to the Proposal.[2] While BOX does not object to the substance of the

[1] Filing at page 6.

[2] Letter dated April 6, 2016, from Lisa J. Fall, President, BOX, to Brent Fields, Secretary, Commission.

Proposal, its letter raises a number of legal concerns regarding both the Policy and the related fees. These concerns are without merit.

Concern 1: OCC's Legal Authority to Adopt Risk Controls

BOX "questions whether OCC has the authority to prescribe what risk controls the options exchange must make available to market participants." But rather than provide legal reasoning as to why OCC may lack such authority, BOX simply states that any industry-wide requirements "should be mandated by the Commission." We recognize that people can disagree over whether OCC or the Commission is best positioned to adopt rules akin to the Policy. However, that is not a question before the Commission. The relevant question is whether the Securities Exchange Act of 1934 (the "Exchange Act") gives OCC authority to adopt the Policy. Clearly it does.

In attempting to find authority for OCC to adopt the Policy, BOX first takes a detailed look at Section 6 of the Exchange Act, and fails to find authority in that section. That is not surprising since Section 6 is entitled "National Securities Exchanges," and does not apply to national clearing agencies such as OCC. Rather, Section 17A of the Exchange Act, entitled "National System for the Clearance and Settlement of Securities Transactions," governs the registration of clearing agencies. That section requires a clearing agency "to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible," and "to enforce…compliance by its participants with the rules of the clearing agency…"[3] Generally, the rules of a clearing agency must "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transaction, and, in general, to protect investors and the public interest."[4]

It is difficult for us to imagine rules more critical to the national clearance and settlement system than rules addressing the risks covered by the Policy. As discussed, OCC is the sole registered clearing agency for all listed options transactions and it is a systemically important financial market utility. It is in its best interests, the interests of the options exchanges, the interests of all broker-dealers, and the interests of the investing public, to minimize the possibility of erroneous transactions that would adversely affect the listed options market. Those are precisely the risks that the Policy address and OCC has clear authority under Section 17A to adopt rules addressing those risks.

Concern 2: Burden on Competition

BOX states that the Proposal imposes a burden on competition, in that exchanges that do not adopt the Policy will have the fee added to the costs that

[3] Section 17A(b)(3)(A) of the Exchange Act.

[4] Section 17A(b)(3)(F) of the Exchange Act.

members incur when transacting on non-compliant exchanges. BOX also argues that there is a "substantial burden" placed even on compliant exchanges since such an exchange must guarantee that it has the required risk control in place. BOX views this burden as "especially high for smaller exchanges, such as BOX."

BOX fails to analyze this claim under the governing law. Specifically, the Exchange Act provides that the rules of a clearing agency cannot "impose any burden on competition not necessary or appropriate in furtherance of the purpose" of the Exchange Act.[5] In this context, the questions for the Commission are: (1) whether any discriminatory effect on exchanges that do not adopt the Policy is necessary or appropriate; and (2) whether there is a further inappropriate or unnecessary discriminatory effect on smaller exchanges.

With respect to general discrimination, BOX does not attempt to argue that the "substantial burden" on exchanges to comply with the policy is inappropriate. BOX even states that it "does not object to increased risk controls," and does not object to the specific controls that OCC proposes in the Policy. Rather, BOX objects to OCC, and not the Commission, imposing these controls. But since OCC does have the authority to adopt the Policy (as discussed above), there is nothing inappropriate or unreasonable in OCC treating transactions on compliant exchanges more favorably than transactions on non-compliant exchanges.

With respect to the "especially high" burden on smaller exchanges, there are no special provisions in the Exchange Act that require less robust regulation of smaller exchanges. Instead, there is a single set of statutory provisions for exchanges in Section 6 of the Exchange Act and a single set of statutory provisions for clearing agencies in Section 17A of the Exchange Act. Congress could have adopted lessened regulatory standards for smaller exchanges, but it wisely chose not to do so. In our view, such a two-tiered approach would result in unnecessary and inappropriate risk in the national market and clearance and settlement systems. Thus, BOX is not entitled to special treatment simply because it classifies itself as a "smaller exchange."

Concern 3: Discrimination Between Exchanges

BOX "questions whether OCC has authority to charge different fees for clearing transactions based on the executing exchange." Again, BOX never explicitly states that OCC lacks this authority. Rather, BOX simply "questions" the matter. In the context of the Policy, we believe that OCC clearly has the authority to adopt fees based on the executing exchange.

BOX characterizes the issue as whether OCC "has the authority to discriminate between exchanges through the fees OCC charges." BOX again fails to cite the relevant statutory provision, which states that a clearing agency's

[5] Section 17A(b)(3)(I) of the Exchange Act.

rules cannot "permit unfair discrimination …in the use of the clearing agency…."[6] While the Proposal clearly discriminates between exchanges, the relevant question is whether the adoption of the Policy and the imposition of the associated fees on transactions effected on non-compliant exchanges is "unfair discrimination."

The Policy and the fees discriminate against exchanges that have not adopted risk protections that OCC deems necessary for it to discharge its statutory obligation as a registered clearing agency and as a systemically important financial market utility. OCC developed these standards in consultation with the Working Group, which included all the options exchanges, including BOX. In OCC's view, a view with which we agree, exchanges that do not adopt the Policy pose greater risk to the national clearance and settlement system than compliant exchanges. We thus believe that requiring OCC members that decide to trade on non-compliant exchanges to pay higher fees is eminently fair discrimination. Such higher fees will provide OCC with additional resources to address losses it may incur from transactions on such exchanges. In addition, the fee was implemented at the request of the Working Group to provide strong encouragement to the options exchanges to comply with the Policy. If they do so, it will avoid the need to charge the higher fees at ll.

Concern 4: Defacto Fee on the Options Exchanges

BOX "believes the proposed fee is a defacto fee imposed directly on options exchanges and questions whether OCC has the authority to implement it." BOX reaches its conclusion through the faulty logic that if an exchange is subject to the fee it "will either have to decrease all fees by two cents to maintain the status quo or be at an economic disadvantage to their competition." Because that basic supposition isn't true, BOX's argument is without merit.

In practice, an exchange can avoid having clearing members pay the fee by complying with the Policy. If an exchange chooses not to comply with the Policy, it is making an economic decision that non-compliance is economically preferable. Specifically, such an exchange has determined that it is more cost effective to avoid compliance than spending what would be necessary to comply with the Policy. Because an exchange establishes is overall fees to recover its total costs, an exchange that chooses not to incur the costs of compliance can charge lower fees than a compliant competitor. Thus, when making routing decisions and setting clearing fees, OCC members will consider the full cost of a transaction, including both an exchange's trading fees and OCC's clearing fees. Effectively the proposed fee levels the playing field and avoids economically rewarding exchanges that choose to avoid the costs of complying with the Policy.

* * *

[6] Section 17A(b)(3)(F) of the Exchange Act.

For the reasons described above, ISE believes that the Filing is fully consistent with the requirements of the Exchange Act and the rules thereunder. We thus respectfully ask that the Commission expeditiously approve the proposed rule change. We thank the Commission for the opportunity to comment again on the Filing. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

Michael J. Simon,
Secretary and General Counsel