BOX OPTIONS EXCHANGE

February 19, 2015

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 Concerning a Proposed Capital Plan for Raising Additional Capital; SEC File No. SR-OCC-2015-02 (January 30, 2015).

Dear Mr. Fields:

BOX Options Exchange ("BOX") appreciates this opportunity to comment on the above-referenced filing made by The Options Clearing Corporation ("OCC") concerning a proposed capital plan for raising additional capital that would support the OCC's function as a systemically important financial market utility (the "Proposed Capital Plan" or "Plan"). BOX appreciates that the OCC needs to raise additional capital to comply with new Securities Exchange Commission (the "SEC" or "Commission") requirements. However, BOX believes additional clarity on the Plan is needed.

I. Background

The OCC is owned equally by five national securities exchanges for which it provides clearing services ("Stockholder Exchanges").[1] In addition, OCC provides clearing services for seven other national securities exchanges, one of which is BOX, that trade options ("Non-Stockholder Exchanges").[2] OCC is proposing to amend its By-Laws and other governing documents, and to adopt certain policies, for the purpose of implementing the Proposed Capital Plan under which the Stockholder Exchanges would make an additional capital contribution and commit to replenishment capital ("Replenishment Capital"), and would receive, among other things, the right to receive dividends from the OCC. The OCC has determined that its currently appropriate "Target Capital Requirement" is $247 million, reflecting a Baseline Capital Requirement of $117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of $130 million. As of December 31, 2013, the OCC had total shareholders' equity of approximately $25 million, meaning that the OCC needs to add additional capital of $222 million to meet its 2015 Target Capital Requirement.

[1] The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[2] In 2002 the OCC removed the requirement that all national securities exchanges that the OCC provides clearing services for be owners of the OCC. See Securities Exchange Act Release No. 46469 (September 6, 2002), 67 FR 58093 (September 12, 2002)(Order Approving SR-OCC-2002-02).

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II. Structure of Recapitalization

The Proposed Capital Plan lacks clarity on whether the method used for recapitalization will provide the OCC with capital at a reasonable rate or whether it will be extraordinarily expensive to the OCC and therefore provide a financial windfall for the Stockholder Exchanges. From what can be gathered from the information provided in the Proposed Capital Plan, it appears that the proposed recapitalization is nothing more than a mechanism for the Stockholder Exchanges to earn substantial and low risk dividends from OCC funded fees that OCC collects from clearing members. Given OCC's monopoly position and its ability to raise fees as needed, the risk of a Stockholder losing its capital or not receiving dividend payments is very small.

The OCC claims to operate as an "industry utility" model and that the Proposed Capital Plan will better align the OCC with this model. BOX believes that as such the OCC should be required to raise financing at a market rate commensurate with other market utilities. However, the Proposed Capital Plan appears to be raising capital at an above market rate. As such, the Stockholder Exchanges will be advantaged through a high return on capital, while clearing members, retail customers, and non-Stockholder Exchanges will all be unfairly disadvantaged by the high cost of capital.

In order to show that the Proposed Capital Plan is reasonable, the OCC should provide details of the financial impact to the Stockholder Owners and clearing members if the plan had been in place in the past. Specifically, the OCC should provide these financial results as if the plan was in place for the last three years. The results should clearly demonstrate whether the Proposed Capital Plan is a reasonable method to raise capital.

III. Financial Windfall for Stockholder Exchanges

As mentioned above, the OCC's Proposed Capital Plan provides a potential financial windfall to the Stockholder Exchanges while putting non-Stockholder Exchanges, including BOX, at a competitive disadvantage. Under the Proposed Capital Plan, the Stockholder Exchanges will be entitled to receive dividend payments from the OCC. The Stockholder Exchanges are virtually guaranteed an annual dividend by the fact that the annual fees are set a level 25% above expected costs and the fact under the Plan that the OCC will only reimburse clearing members if it is also paying a dividend to its Stockholder Exchanges. Further compounding this problem, BOX believes that the OCC's plan to reduce rebates to some customers in exchange for enhanced dividends to its Stockholder Exchanges presents an opportunity for predatory pricing.

These dividend payments will allow the Stockholder Exchanges to offset operating costs and subsidize reductions in trading fees at their respective exchanges. The options exchanges already compete in a highly competitive environment whereby each exchange is constantly looking for any edge it can find over its competitors. Under the Proposed Capital Plan the Stockholder Exchanges have found this edge, and they will receive a potentially substantial dividend payment every year with little risk. The Stockholder Exchanges can exploit this unfair advantage by using the dividend to offset their costs and allow them offer reduced trading fees. This in turn will cause substantial harm to the non-Stockholder Exchanges who will have to find some way to compete with the Stockholder Exchange's unfair advantage.

Additionally, in the Proposed Capital Plan, the OCC states that non-Stockholder Exchanges will also benefit from the Proposed Capital Plan "by continuing to receive OCC's clearing services for their products on the same basis as they presently do." Although this may be true, as explained above, the harm that will be done to the non-Stockholder Exchanges far outweighs any potential benefit of continuing to receive the same services.

IV. Additional Questions

Before the Proposed Capital Plan is implemented by the OCC, BOX believes that there are additional questions that need to be addressed and more information needs to be provided by the OCC.

The Proposed Capital Plan makes no mention of the duration of the Plan or any end date. The OCC should provide additional detail on whether the Stockholder Exchanges will receive these dividend payments in perpetuity or will they be capped after the Stockholder Exchanges are repaid for their capital contributions plus some additional amount compensating them for their capital infusion.

The Proposed Capital Plan provides for a situation where the OCC will cease providing a refund for clearing members. Specifically, if, within 24 months of the issuance date of any Replenishment Capital,[3] such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, 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. The OCC should provide its reasoning of why it believes it is necessary to discontinue paying a refund to clearing members even if the Replenishment Capital has been refunded in full. This would seem contrary to the OCC's stated goal of functioning as an industry utility.

[3] The Proposed Capital Plan includes the Replenishment Capital commitment, which would provide OCC access to additional equity contributed by the Stockholder Exchanges should OCC's equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk.

The Proposed Capital Plan states that the OCC had total Shareholders' Equity of $25 million as of December 31, 2013; however, the Plan fails to state if those levels will still be accurate when the Plan is implemented. The OCC should provide more recent information on the level of Shareholders' Equity and the sources of any increases in that equity. Further, the Plan states that the OCC's Target Capital for 2015 is almost $250 million and Stockholder Exchanges will provide an additional contribution of $150 million to help cover the gap. The OCC should provide more detail on how the remaining shortfall of almost $75 million will be closed.

The Proposed Capital Plan lacks clarity on the level of the dividends. The OCC states that the dividends will be capped at a level that the Board has determined results in reasonable rate of return on contributed capital. The Proposed Capital Plan then goes on to list comparisons that will make it a reasonable rate of return but provides no hard examples of what a "reasonable rate" of return would be. The OCC should provide past dividend numbers for the last three years assuming the recapitalization plan was put in place before then.

The OCC claims that the Proposed Capital Plan will result in enhanced benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin to 25%. However, the opposite would seem to be the case. The OCC will be paying less of a refund to clearing members as part of the Plan in order to pay a dividend to Stockholders. This is turn would tend to support the conclusion that since clearing members are receiving less of a refund there is less to pass on to the end customers and in turn higher costs to the end user customers.

The OCC states that they considered available alternatives before agreeing on the Proposed Capital Plan to raise the addition capital. However, the OCC does not give much detail on what the available alternatives are and why the OCC feels that they would not adequately raise the additional capital needed. The OCC has previously stated that they believed the best approach for a long-term capital plan was appropriately structured preferred stock.[4] For example, non-cumulative preferred stock that is redeemable at OCC's discretion after five years. The OCC makes no mention of why they believe this is no longer the case when adopting the current recapitalization plan. BOX believes that the OCC should provide a detailed explanation of the alternatives evaluated by the OCC and explain why the chosen method provides the greatest benefit to the OCC.

The OCC claims that the Proposed Capital Plan will better align the interest of Stockholder Exchanges and clearing members with respect to expenses because changes to the level of operating expenses directly affect the Target Capital Requirement.

[4] See Letter from James E. Brown, General Counsel, The Options Clearing Corporation (May 27, 2014). Commenting on the Commission's proposed Standards for Covered Clearing Agencies.

However, any additional capital provided by the Stockholder Exchanges will be reimbursed to them through retained earnings before any refund is paid to clearing members.

V. Conclusion

Although the Proposed Capital Plan will help the OCC reach adequate levels of capitalization, for the reasons explained above, BOX believes that the method for doing so will lead to a financial windfall to the Stockholder Exchanges that will cause damage to the competitive balance in the options market. Consequently, BOX believes that the Commission should reject the Proposed Capital Plan in its current form. BOX appreciates the Commission's consideration of our comments in connection with File No. SR-OCC-2015-02.

Sincerely,

Tony McCormick
Chief Executive Officer