CBOE EXECUTE SUCCESS®

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December 6, 2016

Via Electronic Mail
Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: File No. SR-BOX-2016-50

Dear Mr. Fields:

Chicago Board Options Exchange, Incorporated ("CBOE") hereby submits comments on the proposed rule change of BOX Options Exchange LLC ("BOX"), rule filing number SR-BOX-2016-50 (the "BOX Proposal").[1]

Introduction

BOX proposes to establish a pilot program under which BOX would list and trade a contract that it calls RealDay™ Options ("RealDay Contracts"). Although BOX characterizes the RealDay Contracts as cash-settled, European style options, the strike price for these "options" would not be established until the day before they expired, even though they would be permitted to trade for a period of between two weeks and nine months before expiration. On the day before expiration, the strike price would be set with reference to the closing trade price that day of the SPDR® S&P 500® ("SPDR") Exchange Traded Fund ("ETF"), shares of which trade under the "SPY" trade symbol. The exercise settlement value of the RealDay Contracts would be the cash difference between the strike price and the closing trade price for SPDR ETF shares on the expiration date. These cash settled RealDay Contracts would trade alongside physically settled SPDR options that have American-style exercise and deliver SPDR shares upon exercise.

The BOX Proposal should be disapproved because it creates serious and unanswered issues about whether RealDay Contracts would qualify as securities within the jurisdiction of the Commission. The RealDay Contract purports to be an option on a security – namely, on SPDR shares. However, an essential attribute of an option – namely, its strike price would not be specified until the day before expiration. Accordingly, the RealDay Contract would exist and trade for the vast bulk of its lifespan – *i.e.*, for as long as nine months – with no specified strike price.

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[1] *See* Securities Exchange Act Release No. 34-79258, (November 8, 2016), 81 FR 80125 (November 15, 2016) (notice of SR-BOX-2016-50).

It would live for only a single day with all of the essential features of an option having been specified.

A. It Raises Serious Jurisdictional Issues to Leave the Strike Price Unspecified Until the Day Before Expiration.

There is no precedent for this type of contract or for classifying it as a securities option. BOX claims that the RealDay Contract "is not a new concept," referring to CBOE Delayed Start Options ("DSOs").[2] BOX Proposal at 2, n.3. In fact, RealDay Contracts would be fundamentally different from DSOs, because the strike price of a RealDay Contract would be set so late in the contract's life. In its request for Commission approval for the DSO product, CBOE represented that the time interval between setting the strike price and expiration initially would be three months.[3] Although CBOE's rule filing stated that CBOE would be able to increase or decrease that interval, CBOE never considered reducing that interval so drastically that the DSO would live as a fully specified option for but a single day in a much longer lifespan.

Such a contract would ignore the fundamental considerations that, according to Seventh Circuit precedent, define the boundary between a future and an option. The Seventh Circuit held that a contract is an option only if, among other things, it "establish[es] a careful balance among premium, strike price, and duration." Chicago Mercantile Exchange v. SEC, 883 F.2d 537, 546 (7th Cir. 1989). Rather than establishing a "careful balance" between strike price and duration, RealDay Contracts would destroy that relationship – because the time period during which the RealDay Contract would trade without a specific strike price would vastly exceed the duration during which it would trade with one. In fact, as proposed, the contract could have a duration measured in many months, but would lack a specified strike price until the contract's very last day. There is a serious and novel issue about whether a contract can be considered a securities option – and therefore can fall within the Commission's jurisdiction – when it lives without a specified strike price for all but a tiny portion of its life.

B. Cash Settlement Creates Additional Unanswered Issues.

The Box Proposal is also unprecedented because of how RealDay Contracts would be settled. The SPDR ETF is an equity security, so if an option on the share price of the SPDR ETF qualified as a security, it would be an equity option. *See* The Options Clearing Corporation ("OCC") By Laws, Article I, §1(O)(4) (defining "stock option contract" as an option where "the underlying security is an equity security, including fund shares"). ETF options have always been

[2] The Commission approved DSOs for trading in 2007, but CBOE has never listed DSOs for trading. *See* Securities Exchange Act Release No. 34-56855, (November 28, 2007), 72 FR 68610 (December 5, 2007) (order approving SR-CBOE-2006-90). CBOE's DSOs were approved for listing solely on indexes and possessed the exact same characteristics of existing index options after the strike setting date – *e.g.*, they were cash-settled index options subject to the same exercise style (*i.e.*, American or European) of the existing index option class.

[3] *See* id at 68611.

physically settled, but RealDay Contracts in contrast would be cash settled. RealDay Contracts therefore would be unprecedented because they would involve options that do not now exist – namely, they would deliver the cash value of an ETF share price.

In claiming that there is nothing unusual about settling RealDay Contracts in cash, BOX misleadingly asserts that "cash settlement for options is not a unique feature and other options exchanges have cash settled options" citing to the existence of CBOE's SPX options and of FX options. *See* Box Proposal at 8, n.9. There indeed is nothing unusual about settling index and currency options into cash. Those types of options always have been cash settled, because index options cannot be settled physically and because physical delivery of currency by definition involves delivery of cash. That is not the case with ETF options, which always have been physically settled.

It would be unprecedented to allow an ETF option to cash settle against the share price of the underlying asset. It also would be without precedent for such an option to have European-style exercise when it would be trading alongside physically settled options with American-style exercise on the same ETF that might have the exact same strikes and would be permitted to expire on the same day. Such unprecedented developments should not be considered without careful scrutiny of the broader regulatory issues they would raise.

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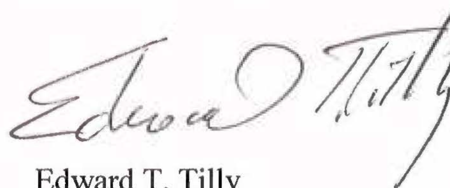
For these reasons, CBOE urges the Commission to disapprove the BOX Proposal. CBOE appreciates the opportunity to provide these comments. Should you require any further information, please contact the undersigned at [redacted], Joanne Moffic-Silver at [redacted]-[redacted], or Jenny Golding at [redacted].

Sincerely,



Edward T. Tilly
Chief Executive Officer
Chicago Board Options Exchange, Incorporated

cc: John Roeser (SEC)
David Liu (SEC)
Joseph Kamnik (OCC)