



April 12, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: The Options Clearing Corporation; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Revise The Options Clearing Corporation's Schedule of Fees - Rel. No. 34-82793; File No. SR-OCC-2018-004

Dear Mr. Fields:

Susquehanna International Group, LLP ("SIG") wishes to provide a limited response to an issue raised in the Options Clearing Corporation's ("OCC") Submission in Support of the Proposed Rule Change to Revisit its Schedule of Fees, dated March 27, 2018 (the "OCC Submission"). The OCC Submission offers the approval of "independent and disinterested" OCC directors as a basis for Securities and Exchange Commission ("SEC" or the "Commission") approval of its proposed fee increase, in an apparent attempt to subvert SIG's claim that the proposed fee increase results from a conflicted process at the heart of OCC's Capital Plan. This attempt is without merit.

OCC seeks to "determine whether its projected fees are sufficient to cover its projected operating expenses while maintaining the required Business Risk Buffer."¹ OCC points out that it has done this previously, and has adjusted its fees to obtain a sufficient amount of projected revenue to cover its

¹ OCC Submission, p. 8. Despite admitting that "The Business Risk Buffer is an amount of fee revenue that OCC targets *above its anticipated operating expenses...*", OCC confusingly asserts, "To be clear, the Business Risk Buffer is met when OCC's net income (the difference between its projected revenue and operation expenses) is equal to 25% of OCC's forecasted revenue." (*Id.* p. 6) (emphasis added) However, it is simple math that when you add 33% of any given number to that number, the add-on is 25% of the resultant sum (e.g., where $75 + 25 = 100$, 25 is 33% of 75 and 25% of 100). Calling the add-on 25% of the sum rather 33% of the base is a cosmetic distortion that is senseless in the context of a buffer. It is not a "buffer below revenue", which makes no sense, but a buffer above expenses. In other words, OCC's expenses are not determined by subtracting at least 25% from a revenue target; rather, the revenue target is determined by increasing the proposed expenses by 33%.

projected expenses plus the Business Risk Buffer. “And, in each instance, OCC’s proposed fee changes were reviewed carefully by OCC management and OCC’s Board of Directors and its subcommittees, who scrutinized OCC’s proposed budget and expenses closely to make sure they are appropriate given that an overwhelming majority of the Board represents those who will be responsible for paying the fees – not the Stockholder Exchanges.”² OCC concludes that, given the composition of its Board of Directors (five Stockholder Exchange representatives, one OCC management director, nine clearing member firm representatives, and five unaffiliated public directors), OCC’s Stockholder Exchanges “have no ability to inflate OCC’s expenses nor resulting clearing fees, and no one who actually controls how expenses and fees are determined has any incentive to do so.”³

As a preliminary matter, this appeal must be rejected by the SEC as the self-same “trust the process” reasoning that was discredited by the D.C. Circuit.⁴ It also represents the high-level, conclusory, and baseless arguments upon which OCC has thematically relied in support of its Capital Plan from which the instant proposed fee increase stems.⁵

More importantly, the prospect of non-Stockholder Exchange directors does not neutralize the inherent OCC Capital Plan conflict which incentivizes OCC budget bloat and fee increases to subsidize the resultant increase in Stockholder Exchange dividends.⁶ Unlike most other businesses, the OCC Board of Directors does not operate under the tempering influence of revenue streams that they cannot control. They need not weigh budget proposals against uncertain revenue expectations over which they have no control, because OCC’s monopoly empowers it to simply set its own revenue stream at a level that accommodates its claimed budget needs.

Further, OCC’s claim that “an overwhelming majority of the Board represents those who will be responsible for paying the fees” is untrue, as OCC clearing members merely pass on fee increases to their clients, like SIG, who have no choice but to pay. The OCC Capital Plan provides no incentives for the directors to “closely scrutinize” proposed OCC budgets to “make sure they are appropriate”, nor to take a stand that OCC does not actually need all the money it claims to need in order to carry out its responsibilities; and, it provides no disincentives for directors to simply approve any proposed budget without a discriminating analysis of its data inputs and assumptions, and a determination of the reasonability thereof. Moreover, the Stockholder Exchange directors are clearly conflicted (they do not operate at “arm’s length”, as the D.C. Circuit noted), and should have no part in the deliberations, let

² *Id.*, 8-9.

³ *Id.*, p. 9.

⁴ *Susquehanna Int’l Grp., LLP v. SEC*, 866 F.3d 442, 447-8 (D.C. Cir. 2017)

⁵ For example, OCC offers no evidence of directors scrutinizing OCC’s proposed budget, let alone provide detail or explanation of what such scrutiny consisted of and the bases for any determination that the proposed budget was “appropriate”.

⁶ OCC notes that it has been collaborating with the SEC staff and that, “as the Commission knows, OCC must now devote considerable resources to enhance its technological, legal and compliance, and security capabilities.” (OCC Submission, p. 1) This claim – again high level and conclusory – does not negate the prospect that OCC may over-source its response to any purported needs out of self-interest of the Stockholder Exchanges and any associated self-interests that arise out of the Capital Plan conflict of interests. Nor does OCC’s discussion of “meaningful opportunity” for public comment (*Id.*, p. 19) explain what that means in the absence of the public’s ability to assess the basis(es) of a proposed filing, particularly in the face of substantial concern of a conflict of interest as in the instant case.

alone vote, on any proposed budget and subsidizing fee proposals.⁷ The same may be said of the OCC management director, who works for the company stockholders.

Accordingly, we continue to oppose the instant fee filing and the Capital Plan from which it stems. We thank you for your consideration.

Respectfully,



Richard J. McDonald

⁷ The Stockholder Exchanges may balk at this prospect, but they were the ones who created the conflict to begin with.