



**By Electronic Mail**

**January 16, 2018**

Mr. Brent Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NW  
Washington DC 20549

**Re: FIA Response to proposed changes to OCC rules concerning Enhanced and New Tools for Recovery Scenarios (SR-OCC-2017-020)**

Dear Mr. Fields:

By letter dated December 18, 2017 (the “**Letter**”), the Options Clearing Corporation (“**OCC**”) submitted for the Securities and Exchanges Commission’s (“**Commission’s**”) approval, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b thereunder, amendments to its Rules and By-Laws (the “**Rules**”) pertaining to tools intended to address liquidity shortfalls and credit losses following a clearing member default (the “**Amendments**”).

FIA<sup>1</sup> has reviewed and analyzed the proposed Amendments and would like to bring to the Commission’s attention a number of areas where we do not support the approach OCC is proposing to take in the Rules with the Amendments. We hope to have the opportunity to discuss these matters over the coming months with the Commission and OCC.

We have separated our response into 2 sections:

- a) Replenishment of Clearing Fund; and
- b) Partial Tear-ups.

### **Replenishment of Clearing Fund and Assessments**

Currently, the Rules provide for a standing obligation for OCC’s members to replenish the Clearing Fund following the use of Clearing Fund monies following a default. The Amendments propose a supposed ‘cap’ on liabilities “(inclusive of assessments)” which should be 200% of the Clearing Fund contribution

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<sup>1</sup> FIA is a global organization with offices in the US, Europe and Asia. Its core members, many of which are banking organizations, are members of central counterparties. FIA’s membership also consists of the major global futures exchanges, clearinghouses, trading platforms, and others that, together, make central clearing possible.

calculated as being required from a member prior to the relevant default in a cooling-off period (which is triggered following a Clearing Fund charge being assessed against a member, in other words, the Clearing Funds has been used against the costs of a default).

The OCC should provide an explanation as to how the cap level of 200% was determined and why it considers 200% appropriate, rather than a lower cap level.

### **Partial Tear-Ups**

The Amendments provide for OCC to be able to conduct Partial Tear-Ups (in effect to select cleared contracts of a defaulted member and tear up those contracts so as to eliminate default losses). The Amendments also provide for the Board of OCC to be able to re-allocate losses falling upon members with opposing positions to the defaulted member impacted by Partial Tear-Up, to the extent they can be reasonably determined, from such members to all non-defaulting members (including members whose trades were not torn up) through a special charge that is proportionate to Clearing Fund contributions.

As a general matter, we support the use of partial tear-up as a position rebalancing tool. We also commend OCC for initiating partial tear-up at a time when the CCP expects to have sufficient resources and for using the resource in the waterfall to cover the losses. We are also supportive of the principle of compensating participants who are impacted by partial tear-up for potential losses that they may incur and commend OCC for providing such impacted members with an opportunity for re-establishing their positions and submitting information on losses, costs or expenses imposed. We do not believe it is reasonable nor analytically sound for tear-ups to result in incremental costs of undefined amounts being distributed through assessments as it effectively enables the Board of OCC to engage in unlimited assessments. Doing so defies the purpose of tear-ups, which are a default management tool which limit costs of a default to non-defaulted members who are members with an opposing position to a defaulted member (in contrast to assessments which mutualize costs between all non-defaulted members). This enables the Board of OCC to transform Partial Tear-Ups into, effectively, another assessment. This transfer of cost is also unlimited in value and number and so enables the Board of OCC to engage in unlimited assessments. Such a policy is problematic by creating an unquantifiable and unmanageable risks for members with the added problem of the cost being at the discretion of the Board of OCC and thus potentially capricious. Costs of Partial Tear-Ups should, therefore, not be transferable to unaffected members.

In addition, where a cleared trade is selected by the Board of OCC for Partial Tear-Up, the price of the trade should be determined objectively (either by marking to market or an objective best-estimate of market price), not on a discretionary basis.

Furthermore, OCC should ensure that the design and application of Partial-Tear Ups do not dis-incentivize bidding in default management auctions.

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We appreciate the Commission's consideration of these comments. If the Commission has any questions regarding the matters discussed herein, please contact Jacqueline Mesa, Senior Vice President of Global Policy, at +1.202.466.5460 or [jmesa@fia.org](mailto:jmesa@fia.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "J. H. Mesa", is positioned above the printed name.

Jacqueline H. Mesa  
Senior Vice President of Global Policy