

the process of reviewing these materials. They are requesting this extension of time so that they can provide the Commission with informed and deliberate comments.

Under Rule 161, the Commission may, for good cause shown, extend the time permitted for a filing at any time prior to the closing of the record. 17 C.F.R. § 201.161(a). The Commission may grant such a request “where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” *Id.* § 201.161(b)(1). In determining whether to grant a request for an extension of time, the Commission “shall consider, in addition to any other relevant factors: (i) The length of the proceeding to date; (ii) The number of postponements, adjournments or extensions already granted; (iii) The stage of the proceedings at the time of the request; (iv) The impact of the request on the hearing officer’s ability to complete the proceeding in the time specified by the Commission; and (v) Any other such matters as justice may require.” *Id.* Ordinarily, “extensions of time for filing papers shall not exceed 21 days,” unless the Commission sets forth the reasons why a longer extension is necessary. *Id.* § 201.161(c)(1).

The Petitioners’ request for an extension of time readily meets the standard set forth in Rule 161. First, the Petitioners will suffer substantial prejudice if their request for an extension of time is denied. In its October 13, 2017 filing with the Commission, the OCC placed substantial emphasis on the materials contained in the confidential appendix it submitted along with its public filing. Because the Petitioners were required to negotiate a confidentiality agreement with the OCC before being granted access to that appendix, they did not receive a copy until November 1. By extending the deadline for response to November 30, the Petitioners will have approximately the same amount of time to evaluate and respond to the OCC’s full submission as contemplated by the scheduling order.

Second, although the OCC's proposed rule change was originally filed with the Commission on January 14, 2015, *see* Notice of Filing of a Proposed Rule Change Concerning a Proposed Capital Plan for Raising Additional Capital That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 34-74136 (Jan. 26, 2015), the proceeding is now before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit. *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442 (D.C. Cir. 2017). The D.C. Circuit's mandate was issued on August 18, 2017. Granting the Petitioners until November 30 to review and comment on the confidential materials that the OCC provided to them on November 1 would foster the aim of engaging in reasoned decisionmaking without unduly lengthening this remand proceeding.

Third, the Commission has previously granted no "postponements, adjournments or extensions" in this proceeding.

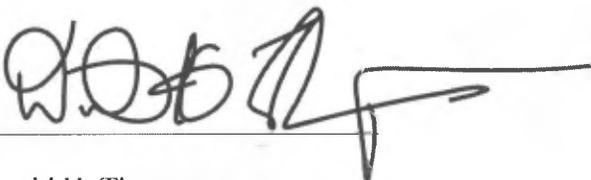
Fourth, the request is being made at an appropriate stage in the proceedings. Submissions in response to the Options Clearing Corporation's submission are currently scheduled to be filed on November 13, 2017. As Petitioners obtained access to the confidential filings submitted by the OCC only on November 1, 2017, they have not unduly delayed the filing of this motion.

Finally, the requested extension will not unduly delay the resolution of this matter by the Commission. Indeed, any costs incurred as a result of this short delay would be far outweighed by the benefit to the Commission of receiving fully-informed and thoughtful public comment. The confidential filings submitted by the OCC go to the essence of its proposed rule change. Although both the Petitioners and the OCC worked diligently and amicably to reach an agreement that would permit the Petitioners to review those materials, that agreement was finalized only on November 1. Petitioners are, therefore, seeking an additional 17 days in which

to review and comment on those materials. Given the importance that the D.C. Circuit placed upon the need to engage in the informed and reasoned decisionmaking required under the Exchange Act and the Administrative Procedure Act, the benefit of adjusting the currently briefing schedule to permit informed public comments far outweigh the cost of a short delay in the closing of the period for public comment.

For all these reasons, Petitioners' motion should be GRANTED and the deadline for filing submissions responsive to the submission made by the Options Clearing Corporation extended to November 30, 2017.

Dated: November 7, 2017

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CERTIFICATE OF SERVICE

I, Harold S. Reeves, counsel for Petitioners, hereby certify that on November 7, 2017, I filed the original and three copies of the attached motion with the Secretary by courier, and, because of they do not reside locally, served copies on Joseph Kamnick, Senior Vice President and General Counsel of the Options Clearing Corporation (OCC), and the General Counsel of BATS Global Markets, by Federal Express at the following addresses:

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Dated: November 7, 2017

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