BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	
The Options Clearing Corporation	)	
	)	File No. SR-OCC-2015-02
For an Order Granting the Approval of	)	
	)	
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 (File No. SR-OCC-2015-02)	)	

Petitioners' Reply to the Options Clearing Corporation's Reply to Petitioners' Submission on Remand

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Petitioners Susquehanna International Group, LLP, BOX Options Exchange LLC, Miami International Securities Exchange, LLC, Virtu Financial Inc., and Virtu Americas LLC (collectively, "Petitioners") hereby submit this response to the Options Clearing Corporation's ("OCC") Reply to Petitioners' Submission on Remand and in Further Support of the Re-Approval of the Capital Plan (Dec. 20, 2017) (the "OCC Reply" or the "Reply").

INTRODUCTION

The OCC Reply largely avoids the points raised in Petitioners' Submission on Remand (Nov. 30, 2017) ("Petitioners' Submission") and once again offers conclusory statements and "trust the process" appeals that have been discredited by the D.C. Circuit. Petitioners need not rehash these arguments. The Reply goes on, however, to distort information about OCC's capital requirements under cited regulatory obligations, and it makes a bold, new claim that OCC is permitted to pay out any rate of return to its shareholder exchanges without restraint or question of reasonability. Petitioners briefly address each of these points below.

ARGUMENT

I. OCC Overstates Its Capital Need.

The D.C. Circuit recognized that OCC's capital target must be reasonable, and not excessive and hence not burden competition more than necessary or appropriate.[1] The OCC Reply seeks to justify OCC's claim that it needs $247 million in capital funded from equity by appealing to its regulatory obligations under Securities and Exchange Commission (the "SEC" or the "Commission") Rule 240.17Ad-22(e)(15). OCC claims that "Petitioners erroneously focus on Barclays' (and OCC's) computation of six months of operating expenses only—*i.e.*, $106 million [and that doing so] ignores that the Board was specifically authorized by the Commission

[1] *Susquehanna Int'l Grp., LLP v. SEC*, 866 F. 3d 442, 448 (D.C. Cir. 2017).

to determine the amount of capital required 'to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize' and it did just that."[2]

OCC's quoted language is from the preamble to Rule 240.17Ad-22(e)(15). The body of the Rule then provides that the capital requirement should be established at a level which is designed to result in "[h]olding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency."[3] In its original rule filing, OCC noted that its Capital Plan's "Baseline Capital Requirement" of $117 million was, in fact, equal to the greatest of these thresholds and further noted that the amount represented six months of projected operating expenses.[4]

Accordingly, the $247 million figure does not represent the amount of capital required under OCC's regulatory obligations, which obligations were themselves designed to assure that clearing agencies maintained sufficient capital. Rather, it is an excessive overage based on the aggregate notional amount of potential losses associated with Oliver Wyman's hasty and flawed analysis.[5]

In attempting to justify OCC's purported capital need, the Reply states, ". . . although not mentioned by Petitioners, Barclays also reported, based on Oliver Wyman's work (about which

[2] OCC Reply at 3 (footnote omitted).
[3] 17 C.F.R. § 240.17Ad-22(e)(15)(ii).
[4] 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 at 7 (Jan. 26, 2017) ("Proposed Rule Change"). OCC does not reconcile the $106 million that it now admits it and Barclays determined to be six months operating expenses with the $117 million it claimed in its rule filing.
[5] *See* Petitioners' Submission at 19–20.

Petitioners can only nitpick) that '[a]nalysis at a 99.9% confidence interval resulted in a need of $247mm of capital.' "[6] This argument is unavailing, as Barclays' statement is a mere mathematical exercise based on the given confidence interval and not a recommendation that OCC maintain $247 million in capital. Indeed, the same report indicated that analysis at the 99.5% confidence interval would result in a needed capital amount of $157 million.[7] As noted in Petitioners' Submission, these Oliver Wyman confidence levels reflect risk of occurrence metrics—the 99% confidence level equals a 1-in-100 year risk level, the 99.5% confidence level equals a 1-in-200 year risk level, and the 99.9% confidence level—the level selected by OCC for its Capital Plan over the other levels without explanation—equals a 1-in-1,000 year risk level.[8] In fact, the $130 million "Target Capital Buffer" in OCC's Capital Plan is merely the difference between the $247 million figure and the purported $117 million required under SEC Rule 240.17Ad-22(e)(15) as "sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize."[9]

II. OCC Dividends Must Be Reasonable.

Dismissing Petitioners' valid concerns about unconscionable shareholder exchange returns under the Plan, OCC states, "[n]othing in the Exchange Act regulates what shareholders can, and cannot, earn on investments in SROs."[10] It asserts that "[f]or OCC's stockholder

[6] OCC Reply at 3 (citing Barclays, Project Optimal: Third Update – Ad Hoc Strategic Advisory Group Discussion (Sept. 30, 2014) at 12).
[7] These figures are the sum of operational loss figures at the given confidence interval ($226 million and $136 million, respectively) plus $21 million in purported pension risk. *See* Petitioners' Submission at 20–21. Barclays also noted in the same report that a 99% confidence interval resulted in an operational loss figure of $105 million. *Id.*
[8] Petitioners' Submission at 21.
[9] 17 C.F.R. § 240.17Ad-22(e)(15).
[10] OCC Reply at 6.

dividends to be an issue, Petitioners must show that they impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act or that they run afoul of one of the other requirements of the Exchange Act."[11] Repeating its prior claims and sidestepping Petitioners' case for how the Plan dividends burden competition and harm the public, OCC goes on to claim that "[a]ny burden on competition is easily justified by 'the importance of OCC's ongoing operations to the U.S. options market and the role of the Capital Plan in assuring its ability to facilitate the clearance and settlement of securities transactions in a wide range of market conditions.' "[12]

This is astounding, as the D.C Circuit made clear that whether the Capital Plan pays dividends to shareholder exchanges at a reasonable rate is "a central issue."[13] The Court stated, "if the dividend rate represents an unnecessary windfall for shareholders, as Petitioners argue, then the Plan may run afoul of the Exchange Act's prohibitions by unnecessarily or inappropriately burdening competition, harming the interests of investors and the public, or unfairly discriminating against nonshareholders and clearing members."[14] Accordingly, to the extent that the dividends are unreasonable, the windfall itself may cause the inappropriate burden. As demonstrated in Petitioners' Submission, the OCC dividends are, in fact, a burden on

[11] *Id.*
[12] *Id.* at 8 (citation omitted). The OCC Reply likewise seeks to dismiss the outsized dividends as "an insignificant sum when compared to the overall, multi-billion-dollar market for options execution services," *id.* at 7; and "merely a rounding error on [the shareholder exchanges'] books," *id.* OCC's comparison of individual entity dividends to the notional value of the overall market is blatantly inapt. Moreover, its attempt to dismiss the significance of the dividends is belied by the material steps taken by OCC and its shareholder exchanges to extract and retain exclusive rights to those dividends; nor may OCC obscure the prospect that millions of dollars in high-rate, effectively risk-free returns into perpetuity is worthwhile to any investor. In short, OCC doth protest too much.
[13] *Susquehanna Int'l Grp*, 866 F3d at 446.
[14] *Id.* (citation omitted).

competition resulting in an unnecessary windfall to the shareholder exchanges on the backs (and to the harm of) market participants, and discriminate against non-shareholder exchanges.

CONCLUSION

When all is said and done, the fact remains that the situation resulting from the confluence of the Rule 240.17Ad-22(e)(15) requirements, the exclusive ownership and veto rights of the OCC shareholder exchanges, and the monopoly status of OCC was exploited to create a "golden goose" that would produce outsized returns into perpetuity to the sole benefit of those shareholder exchanges. The tempering factor that made the OCC monopoly paradigm work historically was that OCC operated as a market utility on a zero-profit model. That tempering factor ceases under the instant proffer of an exaggerated capital need claim and the exclusive, windfall investment through the systemically conflicted Plan to "remedy" the exaggerated need. For these reasons and those set out in Petitioners' Submission, the Commission should disapprove the Plan.

Dated: January 10, 2018

x_____

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CERTIFICATE OF COMPLIANCE

I, David H. Thompson, Counsel for Petitioners, hereby certify that the foregoing Petitioners' Reply to the Options Clearing Corporation's Reply to Petitioners' Submission on Remand complies with the word limitation provided in 17 C.F.R. § 201.450(c). Exclusive of the exempted portions of the brief, as provided by 17 C.F.R. § 201.450(c), the Submission includes 1,449 words. The undersigned relied upon the word count function of Microsoft Word in preparing this certificate.

David H. Thompson
Counsel for Petitioners

Dated: January 10, 2018

CERTIFICATE OF SERVICE

I, Harold S. Reeves, counsel for Susquehanna International Group, LLP, Miami International Securities Exchange, LLC, BOX Options Exchange, Inc., Virtu Financial Inc., and Virtu Americas LLC, hereby certify that on January 10, 2018, I served copies of the attached *Petitioners' Reply to the Options Clearing Corporation's Reply to Petitioners' Submission on Remand and in Further Support of the Re-Approval of the Capital Plan* on the OCC by Facsimile and Federal Express and filed the original with the Secretary by Facsimile and Federal Express at the following addresses:

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