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September 22, 2015

By Federal Express and Facsimile

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090
Facsimile: 202-772-9324

Re: The Options Clearing Corporation's Brief in Opposition to Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02

Dear Mr. Fields:

The Options Clearing Corporation ("OCC") hereby files the enclosed OCC's Brief in Opposition to Motion to Reinstitute Automatic Stay. The original and three copies are enclosed.

The enclosed OCC's Brief in Opposition to Motion to Reinstitute Automatic Stay has been served by Federal Express and facsimile on each party to the proceeding in accordance with 17 C.F.R. § 201.150, and as reflected in the Certificate of Service attached to it.

Very truly yours,

William J. Nissen

William J. Nissen

WJN:sn

Enclosures

cc: Division of Trading and Markets *(by facsimile 202-772-9273) (w/ encl.)*
Petitioners *(by Federal Express and facsimile) (w/ encl.)*

SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petitions of:	)	
BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP.	)	**File No. SR-OCC-2015-02**

OCC's
BRIEF IN OPPOSITION TO
MOTION TO REINSTITUTE AUTOMATIC STAY

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Pursuant to Rule 154 of the Commission's Rules of Practice, The Options Clearing Corporation ("OCC") hereby responds in opposition to the Motion to Reinstitute Automatic Stay ("Motion") filed by Petitioners BATS Global Markets, Inc., BOX Options Exchange LLC, Miami International Securities Exchange, LLC, KCG Holdings, Inc., and Susquehanna International Group, LLP (collectively, "Petitioners") on September 15, 2015.

INTRODUCTION

The Motion to Reinstitute Automatic Stay is wholly without merit, as well as a needless and wasteful diversion from the review that the Commission has decided to undertake. The Commission should deny the Motion and promptly affirm the order approving OCC's Capital Plan.[1]

The Petitioners have already had ample opportunity to argue why the stay should not be lifted, and they took advantage of that opportunity by filing multiple extensive briefs. Rejecting Petitioners' arguments, the Commission decided that it was in the public interest to lift the stay for three reasons: (1) strengthening the capitalization of a systemically important clearing agency such as OCC is a compelling public interest, (2) the concerns raised by the Petitioners regarding potential monetary and competitive harm do not currently justify maintaining the stay during the pendency of the Commission's review, and (3) the Commission does not believe that lifting the stay precludes meaningful review.[2]

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[1] Order Approving 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. 34-74452, 80 Fed. Reg. 13058 (Mar. 6, 2015) (approving SR-OCC-2015-02) ("Approval Order").

[2] Order Discontinuing the Automatic Stay, Exchange Act Release No. 34-75886, 80 Fed. Reg. 55668 (Sept. 10, 2015) ("Lift Order").

Petitioners' Motion is nothing more than an attempt to reargue an issue that has already been argued at length, considered, and decided. Petitioners have not shown any manifest error, change in law or other recognized basis for the Commission to reconsider its order.

Furthermore, by seeking to relitigate the Commission's order lifting the stay, Petitioners' Motion acts to divert the Commission's attention from timely review of the order approving OCC's Capital Plan. The Commission should not permit this repetitious and meritless Motion to distract the Commission's attention from prompt review and affirmance of the Approval Order.

Even if the Commission were to reconsider its order lifting the stay, Petitioners fail to provide any valid basis for the Commission to change that order, which was based on findings that there is a compelling public interest in strengthening OCC's capitalization, and that it is in the public interest for the stay to be lifted. Contrary to the Commission's findings, Petitioners contend that, in their opinion, OCC has enough capital, so the Commission should not be concerned about strengthening it. To support this argument, Petitioners make inaccurate factual assertions regarding the Capital Plan and the current level of OCC's capital, neglect to consider the significant role that the commitment to replenish capital plays in OCC's achieving an adequate level of capital, and make an unfounded prediction that no event will occur during the review period that will create a need for OCC to draw on its additional capital resources. If the stay were reimposed, OCC's capital would remain significantly below the level that OCC's Board, domestic regulators including the Commission and the CFTC, which regulates OCC as a result of its futures clearing business, and international standard-setters have stated is appropriate, and no one can predict when OCC would have to use capital that is provided by the Capital Plan.

Nor do Petitioners in any way refute the Commission's other findings that supported the lifting of the stay. Petitioners do not dispute the Commission's finding that their concerns about potential monetary and competitive harm do not justify maintaining the stay. And as to the Commission's finding that meaningful review would not be precluded in the absence of a stay, Petitioners merely repeat their previous argument, already rejected by the Commission, that the ability of the OCC to implement its plan during the review period could result in changes that would be difficult to reverse.

As the Commission has found, lifting the stay has served a compelling public interest. In lifting the stay, the Commission rightly recognized OCC's crucial role in ensuring the stability of the national and global economies and the need for additional capital to perform that role. Petitioners fail to show that reinstituting the stay would serve the public interest in any way. The Commission should therefore deny the Motion.

BACKGROUND

In December 2014 – January 2015, OCC submitted a proposed rule change and an advance notice filing to enable it to implement its Capital Plan.[3] On February 26, 2015, the Commission, acting directly, issued a notice of no objection to the advance notice filing, finding that the Capital Plan was consistent with the objectives of the Payment, Clearing and Settlement Supervision Act.[4] The Commission also found in the no objection notice that the Capital Plan contributes to reducing systemic risks and supporting the stability of the broader financial

[3] Given the Commission's familiarity with the relevant background facts of this matter, this brief summarizes only those facts relevant to the instant Motion. OCC provided a fuller description of relevant facts in its Motion to Lift Automatic Stay filed on April 2, 2015. *See* OCC Motion to Lift Stay, File No. SR-OCC-2015-02, at 3-5 (Apr. 2, 2015).

[4] *See* Notice of No Objection to Advance Notice Filing, Exchange Act Release No. 34-74387, 80 Fed. Reg. 12215 (Feb. 26, 2015) (relating to SR-OCC-2014-813).

system.[5] On March 6, 2015, the Commission's staff, acting for the Commission pursuant to delegated authority, issued an order approving the rulemaking needed to implement the Capital Plan ("Approval Order").[6] Implementation of the Capital Plan was automatically stayed, however, by the filing of Petitioners' Notices of Intention to Petition for Review, followed by their Petitions for Review. OCC then moved to lift the stay to enable it to proceed with implementation of its Capital Plan.[7]

On September 10, 2015, the Commission issued an order granting OCC's Motion to Lift Stay ("Lift Order"), finding:

> [I]t is in the public interest to lift the stay during the pendency of the Commission's review. Under the circumstances of this case, the Commission believes, on balance, that strengthening the capitalization of a systematically important clearing agency, such as OCC, is a compelling public interest. The Commission also believes that the concerns raised by the Petitioners regarding potential mandatory and competitive harm do not currently justify maintaining the stay during the pendency of the Commission's review.[8]

The Commission also issued an order granting the Petitions for Review on September 10, 2015, and ordered that the parties and other persons would be permitted to file written statements in support of or in opposition to the Approval Order.[9] In the Lift Order, the Commission specifically observed that it did not believe "that lifting the stay precludes meaningful review of the Approval Order."[10]

ARGUMENT

The Commission rightly concluded that OCC's financial stability and capacity to operate effectively are of critical importance to the securities markets and the financial system, and it

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[5] *See id.* at 12221.
[6] *See supra* n. 1.
[7] *See* OCC Motion to Lift Stay, File No. SR-OCC-2015-02 (Apr. 2, 2015).
[8] Lift Order, at 2.
[9] Order Granting Petitions for Review and Scheduling Filing of Statements, Exchange Act Release No. 34-75885, 80 Fed. Reg. 55700 (Sept. 10, 2015).
[10] Lift Order, at 4.

acted appropriately in lifting the automatic stay. The arguments Petitioners now advance should be rejected for three reasons. First, Petitioners' Motion is both baseless and wasteful. In asking the Commission to revisit the Lift Order in the absence of manifest error or change in law, the Petitioners are submitting a motion that does not meet the standards for reconsideration and only acts to create a distraction and thereby delay the Commission's review of the Approval Order. Second, Petitioners' arguments should be rejected because they are based on incorrect and unfounded factual assertions regarding the Capital Plan and OCC's current financial resources. Finally, Petitioners' arguments do not in any way undermine the Commission's conclusion that lifting of the automatic stay serves the public interest. The Motion should be denied.

1. Petitioners Should Not be Permitted to Distract the Commission and Delay Review with a Reconsideration Motion

Petitioners' self-styled "Motion to Reinstitute Automatic Stay" is in reality a motion for reconsideration of the Lift Order and is wholly improper. Petitioners point to no authority in the Commission's Rules of Practice or precedent in support of their position that an "automatic" stay that has been lifted may be reinstituted, particularly in the absence of the required elements for imposing a stay.[11] Petitioners do not even attempt to prove the factors required for the Commission to impose a stay.[12]

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[11] *See* 17 C.F.R. § 201.431(e) (providing for an automatic stay "unless the Commission orders otherwise"). Petitioners fail to specify the authority by which the Commission may "reinstitute" an "automatic" stay that is activated and later lifted by operation of Rule of Practice 431(e).

[12] These factors are: (1) a strong likelihood of success on the merits, (2) imminent irreparable injury in the absence of a stay, (3) no substantial harm to any person if the stay were imposed, and (4) whether a stay is in the public interest. *See* Order Preliminarily Considering Whether to Issue Stay *Sua Sponte* and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 34-33870, 1994 WL 117920, at *1 (Apr. 7, 1994); *see also, e.g.*, *In the Matter of Am. Petroleum Inst.*, Exchange Act Release No. 34-68197, 2012 WL 5462858, at *2 (Nov. 8, 2012); *In the Matter of the Application of Marshall Spiegel for Stays of Commission Orders Approving Proposed Rule Changes by the Chicago Bd. Options Exchange, Inc.*, Exchange Act Release No. 34-52611, 2005 WL 2673495, at *2 (Oct. 14, 2005); *In the Matter of Institutional Networks Corp.*, Exchange Act Release No. 34-25039, 1987 WL 756909, at *1 (Oct. 15, 1987) (specifically considering whether automatic stay was "in the public interest and [had] the potential to harm" under previous version of Rule 431(e)).

Petitioners' Motion is analogous to a motion in court for reconsideration of a non-final order. Courts routinely deny such motions to reconsider, because the standard for prevailing on such a motion is difficult to satisfy. In considering such motions, a court may consider "whether the court 'patently' misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred."[13] A court's discretion to reconsider is limited by the law of the case doctrine and is subject to the caveat that, "where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again."[14] Petitioners' Motion plainly fails to meet this strict standard.

Here, Petitioners cannot argue that the Commission misunderstood their previous arguments—the Commission simply rejected them.[15] Further, Petitioners do not attempt to argue that lifting the stay was outside the adversarial scope of the briefing, or that any change in law justifies reinstitution of the stay. Instead, Petitioners cite a May 2015 Standard & Poor's report, and state that the report was published "after the petitions for review and the briefing on OCC's motion to lift the stay."[16] Petitioners, however, fail to recognize that the report is based largely on information "as of year-end 2014," and that the latest information cited pertains to March 2015—*before* the motion to lift stay was even filed.[17] This report thus provides nothing new that is material, and Petitioners' arguments are merely repetitive of arguments made by Petitioners in

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[13] *In Defense of Animals v. Nat'l Insts. of Health*, 543 F. Supp. 2d 70, 75-76 (D.D.C. 2008).
[14] *Williams v. Savage*, 569 F. Supp. 2d 99, 110 (D.D.C. 2008) (internal citation omitted).
[15] *See* Lift Order, at 2 (recognizing and rejecting Petitioners' arguments and concluding "it is in the public interest to lift the stay").
[16] Petitioners' Memorandum in Support of Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02, at 5 (Sept. 15, 2015).
[17] Standard & Poor's Ratings Services, *Ratings Direct*, "Options Clearing Corp.," May 20, 2015, at 4-5, *available at* http://www.optionsclearing.com/components/docs/about/sp_rating.pdf. This excludes the report's ratings detail as of May 20, 2015. *See id.* at 9.

the briefing of the Motion to Lift Stay, where they argued that OCC's financial condition was strong enough without implementation of the Capital Plan.

In order to promote finality, predictability, and economy of judicial resources, courts are loathe to revisit their prior decisions in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice.[18] This principle should equally apply to the Commission, because the principle conserves the resources of the Commission and serves the interest of administrative efficiency by encouraging parties to focus their arguments rather than reserving alternative strategies for later attacks. The Commission has already determined that a lifting of the stay was warranted, and if it were to reconsider the Lift Order without requiring Petitioners to demonstrate any recognized basis for reconsideration, the Commission would set a precedent of tolerating such motions and invite a reconsideration motion in response to every duly considered order.

In addition to failing to meet the standard for a reconsideration motion, the Motion is a needless distraction to the Commission and an abuse of the Commission's procedures. The Commission has granted the Petitioners the review they requested. But instead of submitting their views on the merits of the Approval Order, they have sought to divert the Commission's time and attention from the merits by attempting to relitigate the stay issue, which has already been litigated and decided. The Commission should not tolerate this abuse of its procedures, and should summarily deny the Motion.

2. The Motion is Based on Incorrect and Unfounded Factual Assertions Regarding, and Neglects Key Aspects of, OCC's Capital Plan and Current Financial Resources

In ordering that the automatic stay be lifted, the Commission ruled that strengthening the capitalization of a systemically important clearing agency, such as OCC, is a compelling public

[18] *Arias v. DynCorp*, 856 F. Supp. 2d 46, 51 (D.D.C. 2012) (alterations in original).

interest. Petitioners seek to undermine that finding by making incorrect and unfounded assertions of fact regarding the merits of OCC's Capital Plan and OCC's financial position, and by neglecting to recognize key elements of the Capital Plan while measuring the financial resources it provides to OCC. Petitioners' baseless assertions and self-serving misinterpretations should be given no credence by the Commission.

Petitioners' Motion and arguments reflect either a lack of understanding or an intentional disregard of the many factors, including both domestic and international standards, affecting OCC's capital needs. Thus, without any basis, Petitioners characterize OCC's target capital requirement as "inflated."[19] In fact, OCC's target capital requirement is not inflated, but rather was developed by OCC's Board in a rigorous and systematic process in order to permit OCC to satisfy its obligations as a systemically important financial market utility ("SIFMU"). The Commission described this extensive process in its Notice of No Objection to Advance Notice Filing, as including the following elements:

- An outside consultant conducted a "bottom-up" analysis of OCC's risks and quantified the appropriate amount of capital to be held against each risk, with consideration of credit, market, pension, operation and business risk.
- Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC's operational risk was quantified at $226 million and pension risk at $21 million, resulting in the total target capital requirement of $247 million.
- Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risks to zero by

[19] Petitioners' Memorandum in Support of Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02, at 3 (Sept. 15, 2015).

adjusting levels at which fees and refunds are set and by adopting a "Business Risk Buffer" of 25% when setting fee rates.

- Other risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks without use of OCC's capital.
- An analysis was performed to determine the greater of (a) the recovery or wind-down costs and (b) six months of operating expenses, which resulted in the calculation of OCC's Baseline Capital Requirement at $117 million.
- The appropriate amount of a Target Capital Buffer was computed from operational risk, business risk and pension risk, resulting in a Target Capital Buffer of $130 million, which, when added to the Baseline Capital Requirement, resulted in a Target Capital Requirement of $247 million.

The Commission's Notice of No Objection also states that, in addition to the Target Capital Requirement, OCC's Capital Plan calls for the stockholders to make a Replenishment Capital Commitment, currently $117 million, which could be increased to as much as $200 million if the Baseline Capital Requirement increases.[20] The resulting capital resources of OCC, as reflected in the Notice of No Objection, are $364 million under the Capital Plan.

OCC's Capital Plan was developed by OCC to ensure OCC was capitalized at a prudent level for a SIFMU, and to proactively come into compliance with evolving U.S. and international standards for central counterparties. Under the Capital Plan, OCC will be prepared to comply

[20] *See* Notice of No Objection to Advance Notice Filing, Exchange Act Release No. 34-74387, 80 Fed. Reg. 12215 (Feb. 26, 2015) (relating to SR-OCC-2014-813).

with proposed Commission Rule 17Ad-22(e)(15).[21] Petitioners argue that there is no need for OCC to implement the Capital Plan now, because this rule is not yet in effect. They also argue that the Capital Plan is "inflated" because it calls for ten times the amount of capital that OCC had during the 2008 financial crisis. However, these arguments are both irrelevant and wrong. First, as demonstrated above (and in the advance notice and proposed rule filing for the Capital Plan), OCC believes the target capital requirement and replenishment capital that would be accrued by OCC under the Capital Plan represents a prudent level of capital for a SIFMU now, irrespective of any regulatory-imposed obligation, and irrespective of what level of capital was maintained seven years ago. Second, OCC must take steps now to prepare for compliance with the proposed rule because, as this process has shown, there is a long lead time for raising capital in the amounts needed to comply. Moreover, the Commission's proposed rule was developed after the Commission considered international standards, including the Principles for Financial Market Infrastructures ("PFMIs") Report published by CPSS-IOSCO, and the Capital Requirements for Bank Exposures to Central Counterparties, also known as Basel III capital requirements, published by the Basel Committee on Banking Supervision.[22] Many of OCC's clearing members are subject to international standards such as these. OCC must remain current with them in order for OCC to serve as central counterparty for the international community and to prevent certain of its clearing members from being subject to onerous capital charges.[23]

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[21] *See* Standards for Covered Clearing Agencies, Exchange Act Release No. 34-71699, 79 Fed. Reg. 29507 (Mar. 12, 2014).

[22] *See id.*

[23] OCC is also registered with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization ("DCO") for its futures clearing business. The CFTC Staff has interpreted CFTC regulations governing systemically important DCOs ("SIDCOs"), and those DCOs who elect to be regulated as SIDCOs, to be harmonized with the PFMIs. *See* Staff Interpretation Regarding Consistency between Part 39 and The Principles for Financial Market Infrastructures, CFTC Memorandum No. 15-50 (Sept. 18, 2015). OCC may be required to elect to be regulated as a SIDCO for its futures clearing business in order to be recognized under EMIR, and such election would make it subject to requirements consistent with the PFMIs as a matter of law.

Finally, Petitioners' suggestion that the capital level maintained by OCC seven years ago is a valid benchmark for determining capital requirements in today's world shows either a lack of understanding or a deliberate disregard of the capital needs of a SIFMU under current regulatory thinking.

In addition to making the baseless statement that OCC's Target Capital Requirement is inflated, Petitioners also make unfounded and incorrect assertions when they claim that OCC has achieved, or is close to achieving, its Target Capital Requirement of $247 million. Petitioners completely ignore that OCC's current capital resources under the Capital Plan are $364 million, which includes the $117 million Replenishment Capital Commitment. Also, in making their argument, Petitioners engage in pure speculation by citing financial information showing OCC with $130 million in capital as of December 31, 2014, and then offering their "estimate," without any basis for the estimate, that OCC's capital will grow to "nearly $250 million" by the end of 2015.[24]

Petitioners' unsupported "estimate" is far from the truth. In fact, as of August 31, 2015, if OCC were deprived of the $150 million deposited by its stockholders as part of the Capital Plan, OCC's adjusted shareholders' equity would be $149,613,874. OCC would also have no access to the Replenishment Capital Commitment of $117 million that is now available to it as a result of the lifting of the stay. Thus, in the absence of implementing the Capital Plan, as allowed by the lifting of the stay, OCC's capital resources would be less than $150 million, which is less than half of the $364 million in capital resources available to it under the Capital Plan, and significantly less than the $247 million Target Capital Requirement.

[24] Petitioners' Memorandum in Support of Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02, at 4 (Sept. 15, 2015).

Recognizing the significant advantage to the trading public of including the Replenishment Capital Commitment in OCC's capital resources, which would be lost if the stay were reimposed, Petitioners assert, without any basis in fact whatsoever, that "there is no reasonably foreseeable scenario ... that will require OCC to issue a capital call rather than increase fees ...."[25] In addition to being unfounded in fact, this statement disregards the potential need for OCC in a crisis to have a need for immediate liquidity, which can be achieved with the Replenishment Capital Commitment, but not with an increase in fees going forward. Petitioners thus fail to refute the significant benefit to OCC, and the trading community it serves, of the Replenishment Capital Commitment, which would disappear if the stay were reimposed.

Petitioners also cite a general statement in a May 2015 report by Standard & Poor's, based on year-end 2014 financial information, asserting that OCC has a "minimal financial risk profile," to argue that the substantial financial resources provided by the Capital Plan are unnecessary.[26] According to the report, this means only that OCC has great flexibility to raise fees or reduce refunds, and has minimal debt. This generality says nothing about the amount of capital needed by OCC to be prepared for the multiple risks that were analyzed in developing the Capital Plan. Moreover, there is a strong consensus in the U.S. and international regulatory communities, which Petitioners themselves do not dispute, that SIFMUs such as OCC need to be better capitalized than they have been in the past. Imposing a stay on OCC's implementation of its Capital Plan, which would deprive OCC of the considerable resources available under the Plan, including the Replenishment Capital Commitment, would be contrary to this regulatory policy.

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[25] *Id.* at 5 n.4.

[26] *Id.* at 5 (internal quotation marks omitted).

Petitioners also argue that lifting the stay permits OCC to exchange "cost free capital" for "capital on which it will have to pay dividends at a usurious rate" of 17-30%.[27] This argument, like others, is based on unfounded and incorrect assertions. First, this argument omits to state that the alleged "cost-free capital" is less than half of the capital resources available under the Capital Plan. Second, this capital is not cost-free, as it is being borne by OCC's clearing members and the trading public, who will be relieved of this burden when OCC acts under policies filed in conjunction with the Capital plan to redistribute the capital. Third, one of the Petitioners, *i.e.*, Susquehanna International Group, LLC ("SIG"), has itself projected the 2015 dividend to be 15.69%, which is below the bottom of the range that Petitioners are now citing.[28] Fourth, the dividend compensates the stockholders not only for contributed capital but also for their Replenishment Capital Commitment, not included in SIG's calculation, which is a valuable part of OCC's capital resources. Finally, the exchanges themselves have a weighted average cost of capital and alternative ways to use that capital, so that, considering the risks they are taking, the capital they are contributing, and the Replenishment Capital Commitment they are making, it would not be unreasonable for them to receive a dividend of 15.69% as calculated by Petitioner SIG.

In sum, Petitioners' assertions that OCC's Target Capital Requirement is inflated, and that OCC has achieved or is close to achieving this Target, are baseless, irresponsible, and an attempt to serve Petitioners' interests at the expense of the public interest. These assertions also reflect a fundamental lack of understanding of OCC's capital needs. In ordering the lifting of the stay, the Commission rightly concluded that "strengthening the capitalization of a systemically

[27] *Id.* at 7.
[28] SIG's Opposition to OCC's Motion to Lift the Automatic Stay, File No. SR-OCC-2015-02, at 20 (Apr. 9, 2015).

important clearing agency, such as OCC, is a compelling public interest," and Petitioners have failed to undermine that conclusion in any respect.[29]

3. Reinstituting the Automatic Stay Would Be Contrary to the Public Interest

The Motion should also be denied because reinstitution of the stay would be contrary to the public interest. Petitioners argue that the Commission had "no basis" for concluding that the public interest favored lifting the automatic stay.[30] Petitioners are incorrect. OCC has shown that the public interest was served by lifting the stay, and the Commission has agreed by ordering the stay lifted. The public interest will be served because, in addition to significantly increasing OCC's capital resources to support OCC's role as a SIFMU, the Capital Plan provides, over the long term, for lower clearing fees that will benefit clearing members and the trading public.

Finally, Petitioners fail to acknowledge that OCC has a responsibility to be prepared for unexpected market developments that could occur at any time. Petitioners argue that OCC's capital level is adequate because it was "more than sufficient during the country's worst financial crisis since the Great Depression."[31] OCC must, however, be prepared to operate in a rapidly changing environment in which no one can predict what may occur. The amount of capital was determined by the comprehensive process described above, and the Capital Plan increases OCC's capital so that this amount will be available. In lifting the automatic stay, the Commission rightly recognized OCC's unique and critically important role in safeguarding the stability of the national and global economies, and the need for the Capital Plan now. Reinstitution of a stay would be a step backwards, by significantly reducing OCC's capital resources, and would in turn impose unnecessary risks on our financial system.

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[29] Lift Order, at 2.
[30] Petitioners' Memorandum in Support of Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02, at 3 (Sept. 15, 2015).
[31] *Id.* at 5.

CONCLUSION

Reinstitution of the automatic stay would seriously harm OCC and the financial markets by significantly reducing OCC's capital resources. Petitioners' request that the Commission revisit its decision to lift the stay is baseless, abusive, and a diversion from the review that Petitioners themselves requested and were granted. Petitioners' arguments are also based on unsupported factual assertions and ignore the interests of the public and the financial system. OCC respectfully requests that the Commission deny the Motion and promptly affirm the order approving OCC's Capital Plan.

THE OPTIONS CLEARING CORPORATION

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Dated: September 22, 2015

CERTIFICATE OF SERVICE

I, William J. Nissen, counsel to The Options Clearing Corporation, hereby certify that on September 22, 2015, I served copies of the attached OCC's Brief in Opposition to Motion to Reinstitute Automatic Stay by way of facsimile at the numbers shown below and by Federal Express to the addresses shown below, including the original and three copies by Federal Express to the Secretary:

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