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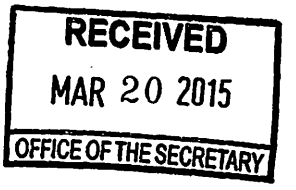

March 20, 2015

VIA FACSIMILE
AND FEDERAL EXPRESS

Brent Fields
Secretary
Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

RE: SR-OCC-2015-02, Exchange Release No. 74452
Petition for Review

Dear Mr. Fields:

Enclosed please find an original and three copies of the Petition for Review regarding the above-captioned matter submitted by KCG Holdings, Inc. ("KCG"). Pursuant to Rule 154(c) of the Securities and Exchange Commission's Rules of Practice, KCG certifies that the enclosed petition for Review does not exceed 7,000 words. This Petition for Review was sent via facsimile to telephone number 202-772-9324 and via Federal Express on March 20, 2015. Also enclosed, please find a Certificate of Service and facsimile confirmation sheet.

Any questions concerning this matter can be directed to me at jmccarthy@kcg.com or 646-428-1615.

Sincerely,

John A. McCarthy
General Counsel

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petition of:	)	
	)	File No. SR-OCC-2015-02
KCG Holdings, Inc.	)	
	)	

PETITION FOR REVIEW

John A. McCarthy
General Counsel
KCG Holdings, Inc.
545 Washington Boulevard
Jersey City, NJ 07310

Date: March 20, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PETITION FOR REVIEW

KCG Holdings, Inc. ("KCG") hereby petitions for Commission review of an action taken pursuant to delegated authority approving a proposed rule change by the Options Clearing Corporation ("OCC") to raise capital in connection with its designation as a systemically important financial market utility.

Preliminary Statement

On March 6, 2015, staff from the Division of Trading and Markets ("Staff") pursuant to delegated authority issued an Order approving OCC's proposal to amend its By-laws and governing documents to implement a plan to raise capital (the "Plan").[1] Under OCC's Plan, a select group of four options exchange operators that own equity in OCC ("Stockholder Exchanges")[2] will make an additional capital contribution in exchange for the ability to receive from OCC dividends at above-market rates *in perpetuity*.

The Staff's Order approving the rule change authorizes OCC to implement a capital plan that will dramatically change OCC's model from that of a non-profit industry utility operated for the benefit of the financial market to a for-profit enterprise designed to maximize the profits of a small and select group. This transformation -- and the impact it will have on OCC clearing members, investors, and the various options exchanges -- presents a fundamental and profound policy issue for the options market that warrants review by the Commission.

The abandonment of OCC's non-profit utility model in favor of a for-profit enterprise is not a necessary and unavoidable result of OCC's need to increase capital to support its designation as a systemically important financial market utility ("SIFMU"). Rather, it is the result of a consistent and conscious effort by the Stockholder Exchanges to lever and monetize for their sole benefit OCC's need to increase capital in connection with its SIFMU designation.

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[1] *See* Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02) (the "Order").

[2] The Stockholder Exchanges include: Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange ("ISE"), NASDAQ OMX PHLX ("NASDAQ"), and NYSE MKT LLC and NYSE Arca, Inc. (collectively, NYSE").

OCC's monopoly position in the options market and its regulatory imperative to raise capital is being exploited to accomplish something otherwise prohibited by the Exchange Act – Commission approval of a rule change that codifies an excessive cost structure for OCC clearing members (and investors) and suppresses competition among the various options exchanges. In addition, the Staff's conclusions contained in the Order conflict with several sections of the Securities Exchange Act of 1934 ("Exchange Act") and contains material errors of fact and law.

Accordingly, KCG requests that the Commission review and set aside the action by the Staff pursuant to delegated authority. The Commission should review this matter.

OCC Background and the Rule Filing at Issue

OCC is registered with the Commission as a clearing agency pursuant to Section 17A of the Exchange Act and is a self-regulatory organization ("SRO"). OCC also is registered with the CFTC as a derivatives clearing organization pursuant to Section 5b the Commodity Exchange Act.

As the world's largest equity derivatives clearing organization, OCC occupies a significant position in the financial markets. OCC plays a critically important role in the options market, as it clears all standardized options listed on the twelve U.S. national securities exchanges. As the sole clearing house for exchange-listed options in the U.S., OCC is not only an essential part of the options market infrastructure, it is essentially a monopoly.

OCC provides clearing services to the 12 national securities exchanges that trade options and all of these options exchanges are required to be OCC participants. Historically, an option exchange became an OCC participant by contributing capital to OCC and thereby joining other OCC equity owners as a Stockholder Exchange. The four current Stockholder Exchanges became OCC participants in this manner. In 2002, however, OCC revised its By-laws to restrict new options exchanges from admittance as equity owners of OCC and instead created an alternative category of "non-equity exchange" and required new options exchanges to become noteholders.[3] As a result, equity ownership of OCC has been fixed since 2002 and consists of the following options exchange operators: CBOE, NYSE, NASDAQ, and ISE. Unlike the

[3] *See* Securities Exchange Act Release No. 46469 (September 6, 2002), 67 FR 58093 (September 13, 2002) (SR-OCC-2002-02).

Stockholder Exchanges, the remaining options exchange operators like BATS, BOX and MIAX are noteholders and are not represented on OCC's Board of Directors ("Board").

OCC has traditionally operated as a non-profit industry utility for the benefit of OCC clearing members, investors, and the financial market. As a non-profit industry utility, OCC has routinely collected fees from OCC clearing members in an amount designed to meet its operating expenses and maintain capital reserves necessary to meet its obligations (such as unforeseen costs or drops in revenue). On an annual basis, OCC has refunded surplus fees – any amounts collected in excess of actual OCC operating expenses and unforeseen costs – back to its clearing members on a pro rata basis, in keeping with its role as a non-profit industry utility.

On January 14, 2015, OCC filed with the Commission the proposed rule change SR-OCC-2015-02 pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder.[4] The Commission published the filing for comment and received seventeen comment letters from seven commenters and OCC. All commenters, besides OCC, opposed the Plan set forth in the OCC's filing. Nonetheless, on March 6, 2015, the Staff issued an Order approving OCC's proposed rule change pursuant to delegated authority.

OCC's Plan, which was proposed to OCC's Board by the Stockholder Exchanges, calls for the infusion of $150 million in capital by the Stockholder Exchanges along with a commitment to provide replenishment capital. When combined with $72 million in retained earnings (excess 2014 clearing member fees that were not refunded) OCC accumulated from clearing members in 2014, the additional capital contributed by the Stockholder Exchanges will raise OCC's capital from its existing level of $25 million to $247 million. In return for making additional capital contribution, the Stockholder Exchanges will receive the right to annual dividends at above-market rates from OCC for an indefinite amount of time. As with all OCC expenses, dividends will be funded from transaction fees imposed on clearing members (and their customers).

[4] 17 CFR 240.19b-4

Applicable Legal Requirements

Rules 430 and 431 of the Commission's Rules of Practice[5] provide for Commission review of actions taken pursuant to delegated authority upon request by an aggrieved person. KCG is a broker-dealer registered with the Commission and a clearing member of OCC that trades exchange-listed options. KCG is directly affected by the Staff's Order because, as discussed below, OCC's Plan will impose excessive costs on us as a clearing firm and will undermine competition among the various options exchanges. KCG has complied with the procedural requirements contained in Rule 430.[6]

Rule 431 sets forth the requirements relating to the Commission's review of the petition. It provides that the Commission, in determining whether to grant review in response to a petition such as this one, must look to the standards set forth in Rule 411(b)(2) of the Rules of Practice.[7] Rule 411(b)(2) essentially instructs the Commission to consider whether the petition for review makes a reasonable showing that the Staff's decision embodies (i) a finding of material fact or a conclusion of law that is erroneous or (ii) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Plan Implicates Important Policy Decisions that Warrant Review by the Commission

As noted above, one of these factors the Commission must consider is whether the petition for review makes a reasonable showing that the Staff's decision embodies decision of law or policy that is important and should be reviewed by the Commission. The Order authorizes a Plan that raises important policy issues for the options market that the Commission should directly address, including the transformation of OCC's model from a non-

[5] 17 CFR 201.430 and 17 CFR 201.431

[6] KCG received actual notice of the action on March 6, 2015. We submitted a Notice of Intention to Petition, pursuant to Rule 430 of the Commission's' Rules of Practice, indicating our intention to file a petition requesting that the Commission review this matter on March 13, 2015. *See* Letter to Brent Fields, Secretary, Securities and Exchange Commission, dated March 13, 2015.

[7] 17 CFR 201.411(b)(2)

profit utility to a for-profit enterprise and the impact of this change on OCC clearing members, investors, and the various options exchanges.

The Plan fundamentally transforms the role of OCC from a nonprofit designed to operate for the benefit of clearing members, investors and the financial markets to a for-profit enterprise designed to maximize and prioritize dividend payments to the Stockholder Exchanges. OCC's unique role as the sole options clearing house implicates significant policy concerns that require Commission review. Indeed, the Commission is well aware of the market power of clearing agencies, such as OCC, and has recognized the current market for clearing services is characterized by high barriers to entry and very limited competition. In addition, OCC has been designated a SIFMU. Given OCC's recognized role as an important market utility and its monopoly position in the options market, it is critically important to ensure that OCC is not permitted to be exploited by any group for their own benefit and to the detriment of the options market. This is especially critical as certain aspects of OCC governance and affairs – such as veto rights over the issuance of equity that could dilute OCC ownership -- are concentrated in the hands of the four Stockholder Exchanges.

The Plan involves important policy decisions because – in addition to transforming the nature of OCC – it directly impacts options investors and clearing members. In exchange for providing OCC with the additional capital (and a commitment to provide Replenishment Capital) the Stockholder exchanges would be entitled to receive dividends at above-market rates *in perpetuity*. This element of the Plan has an obvious impact on OCC clearing members (and their customers) as the dividends will come from OCC's sole source of revenue, fees collected by OCC from its clearing members, and warrants Commission review as a matter of policy. The Plan contains many features that illustrate of how the dividend structure will negatively impact clearing members' costs.

One example is the fact that the Plan would lower rebate payments back to clearing members from excess fees paid by them from 100% of excess fees to 50%. The remaining 50% of excess fees would be earmarked for dividend payments. The Plan also provides no sunset provision or other mechanism designed to decrease either the duration or amount of dividend

payments. In other words, in exchange for contributing capital the Stockholder Exchanges will be entitled to receive dividends *in perpetuity*.

Also, in calculating the amount of refund available to clearing members as a result of excess fees collected in 2014, the Plan removes $72 million of excess fees as retained earnings and set it aside towards increasing its capital. Although this is one avenue for OCC to increase capital, unlike the capital contributions to be made by the Stockholder Exchanges, however, this additional infusion of capital by members (and their customers) would not be entitled to a dividend and would not be returned upon liquidation or dissolution. These examples illustrate how the structure of the Plan, which by design maximizes and prioritizes dividend payments to the Stockholder Exchanges and comes at the expense of options investors and clearing members, is incompatible with OCC's role as a non-profit options market utility.

Finally, the Plan also impacts the various options exchanges, especially those remaining options exchanges that are not OCC owners. The Plan creates an un-level playing field between two groups of options exchange operators – the Stockholder Exchanges and the non-equity exchanges – as it will allow dividends from clearing member fees to be used as subsidies by the Stockholder Exchanges as they compete in the options market against those exchanges that do not own equity.

Commission review of this matter is warranted because it involves a dramatic change in the nature of OCC's role and because this change directly impacts clearing members, investors, and the various options exchanges.

The Order Conflicts with Exchange Act Requirements

Section 19(b)(2)(C) of the Exchange Act[8] directs the Commission to approve a proposed rule change of a self-regulatory organization only if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and applicable rules and regulations. The Plan is inconsistent with Exchange Act requirements and the Staff erred in several respects in issuing the Order.

[8] 15 U.S.C. 78s(b)(2)(C).

A. *The Plan Imposes an Inequitable and Unreasonable Cost Structure on Clearing Members*

The Plan in inconsistent with the provisions of Section 17A(b)(3)(D) of the Exchange Act,[9] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. In the Order, the Staff rejected concerns that the Plan's dividend structure creates conflicts of interest for the Shareholder Exchanges that could influence clearing member fees, noting that future increases to OCC fees and related fee and dividend policies will require OCC to submit regulatory filings with the Commission, provide for public comment and require Commission review. The Staff's conclusion that the SRO rule filing process will provide sufficient protection against inappropriate dividend-driven fee increases is erroneous. OCC rule filings related to changes in clearing member fees will be submitted to the Commission (and decided) prior to Board determinations on dividend payments. Dividend determinations will be made much later in time and well after OCC makes a fee related rule filing with the Commission and collects fees from members, at which point there will be no opportunity for the Commission to revisit the prior fee filing and examine it for conflicts of interest or other concerns in light of the subsequent dividend payment. The Staff erred in concluding the SRO rule filing process would provide adequate protection against dividend driven fee increases.

B. *The Plan Imposes an Undue Burden on Competition*

The Staff erred in finding the Plan to be consistent with Exchange Act provisions relating to competitive burdens imposed by the Plan.

The Exchange Act imposes "unique obligation[s]" on the Commission in analyzing SRO rules to take account of costs, benefits, and competitive effects.[10] Section 17A(b)(3)(I)[11] provides that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Likewise, Section

[9] 15 U.S.C. 78q-1(b)(3)(D).

[10] *See Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011).

[11] 15 U.S.C. 78q-1(b)(3)(I).

3(f)[12] requires the Commission to undertake a careful, reasoned assessment of the economic effects of a rule of an SRO and prohibits the Commission from imposing undue burdens on competition. The D.C. Circuit has weighed in on this issue on several occasions, holding the Commission has a "statutory obligation to do what it can to apprise itself-and hence the public and the Congress-of the economic consequences of a proposed regulation before it decides whether to adopt the measure."[13] Together, Sections 17A(b)(3)(I) and 3(f) make it clear that, in analyzing OCC's rule proposal to implement the Plan, the Commission is obligated to conduct a careful and reasoned assessment of the economic effects and costs and benefits of the Plan and scrutinize whether it will promote or hinder competition.

Contrary to its obligations under the Exchange Act, the Staff did not conduct a careful and reasoned analysis of the Plan with respect to its economic effects or its burden on competition. The Staff stated:

> ... While the precise magnitude and incidence of any burden that exits in this case is necessarily subjective, the Commission believes that, even if OCC's Capital Plan may result in some burden on competition, such a burden is necessary and appropriate in furtherance in the purposes of the Act given 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 ... For these reasons, the Commission believes OCC's Capital Plan, as approved by its Board of Directors in the exercise of its business judgment, is consistent with OCC's obligations under Section 17A(b)(3)(I) of the Act.[14]

As is clear from the Order, rather than performing a thoughtful and reasoned analysis of the economic effects of the Plan and the burden on competition, the Staff instead simply presumed the competitive burden to be "subjective" and unknowable. The Staff clearly failed

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[12] 15 U.S.C. § 78c(f)

[13] See *Chamber of Commerce v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005)(considering identical language in the Investment Company Act of 1940).

[14] Order, *supra* footnote 1, at 13068.

to meet its obligation in this regard. In addition, the Order also indicates why the Staff may have considered a careful analysis to be unnecessary, because it had already concluded that any competitive burden, no matter how significant, to be necessary and appropriate. The Commission's obligations under the Exchange Act to conduct a careful and reasoned assessment prohibit such foregone conclusions. Finally, the Staff erred in deferring to the Board's "business judgment" on competition and economic effects instead of conducting its own independent analysis.

Similarly, the Staff erred in deferring to the judgment of the Board regarding the appropriateness of the dividend rate and policy in connection with the risk of the Stockholder Exchanges' equity investment, "OCC has represented that the Board of Directors determined, in its exercise of business judgment ... that the dividends were fair and in the best interests of OCC."[15] In a situation such as this, where OCC has been designated a systemically important financial market utility and maintains a monopoly over options clearing, and the Stockholder Exchanges who stand to benefit exert an outsized voice on OCC's Board, the Commission should not defer its responsibilities to determine the burden on competition by accepting the "business judgment of the Board" rationale offered by OCC.

Conclusion

The Plan represents an extraordinary change in the role of OCC. Because of OCC's unique nature and position in the options markets, the resulting impact of this effort will ultimately impose excessive costs on clearing firms and investors and undermine competition among the various options exchanges. The detrimental impact of OCC's Plan on the options markets will be enormous and long lasting, and the Staff made numerous errors of fact and law in approving the Order authorizing the Plan. For these reasons, KCG respectfully requests that the Commission exercise its discretion to review this Petition and set aside the Order.

[15] Order, *supra* footnote 1, at 13068.

DATED: March 20, 2015

Respectfully Submitted,

John A. McCarthy
General Counsel

CERTIFICATE OF SERVICE

I, John A. McCarthy, General Counsel of KCG Holdings, Inc., hereby certify that on March 20, 2015, I served copies of the attached Petition for Review of File No. SR-OCC-2015-02, Exchange Release No. 74452, by way of facsimile telephone number (202) 772-9324 and by sending the original the same day by Federal Express Mail to:

Brent Fields
Secretary
Securities and Exchange Commission
Corporation
100 F. Street N.E.
Washington, D.C. 20549-1090

James Brown
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1 N. Wacker Drive, Suite 500
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Dated: March 20, 2015

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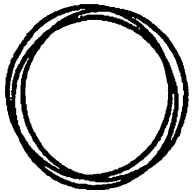

KCG

FAX

To	Brent Fields
Company	Securities and Exchange Commission
Fax No.	202-772-9324
Copy	
From	KCG, John McCarthy
Date	3.20.15
No. of pages	16
Subject	**SR-OCC-2015-02, Exchange Release No. 74452 Petition for Review**