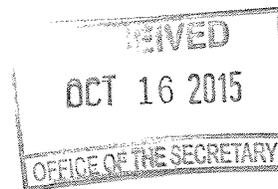


SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petitions of
The Options Clearing Corporation

)
)
) File No. SR-OCC-2015-02
)
)

OCC's BRIEF IN OPPOSITION TO MOTION FOR ORAL ARGUMENT



Pursuant to Rule 154 of the Commission’s Rules of Practice, The Options Clearing Corporation (“OCC”) hereby responds in opposition to the Motion for Oral Argument in Connection with the Commission’s Review of the Staff’s Order Approving Capital Plan (“Motion for Oral Argument”) filed by Susquehanna International Group, LLP (“SIG”) on October 7, 2015.

INTRODUCTION

The Motion for Oral Argument is an attempt by SIG to delay the Commission’s review of OCC’s Proposed Rule Change Concerning its Proposed Capital Plan (“Capital Plan”). Oral argument is neither necessary nor appropriate, and the Commission should 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.¹ 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.² The Commission also found in the no objection order that the Capital Plan contributes to reducing systemic risks and supporting the stability of the broader financial system.³ 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

¹ The background of this matter is described at length in several of OCC’s most recent filings. *See, e.g.*, OCC Written Statement in Support of Affirming March 6, 2015 Order Approving Capital Plan, File No. SR-OCC-2015-02, at 2-8 (Oct. 7, 2015); OCC Brief in Opposition to Motion to Reinstitute Automatic Stay, File No. SR-OCC-2015-02, at 3-4 (Sept. 22, 2015); OCC Motion to Lift Stay, File No. SR-OCC-2015-02, at 1 (Apr. 2, 2015). As a result, this brief discusses only those facts most relevant to the instant motion.

² *See* Notice of No Objection to Advance Notice Filing, Exchange Act Release No. 34-74387 (Feb. 26, 2015), 80 Fed. Reg. 12215 (Mar. 6, 2015).

³ *See id.* at 25.

Plan (“Approval Order”).⁴ Implementation of the Capital Plan was shortly thereafter automatically stayed when SIG and other petitioners filed Notices of Intention to Petition for Review, followed by their Petitions for Review. On April 2, 2015, OCC moved to lift the stay to enable it to proceed with implementation of its Capital Plan,⁵ and the Commission ordered that the stay be lifted on September 10, 2015, 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.⁶

The Commission also issued an order granting the Petitions for Review on September 10, 2015, ordering that the parties and other persons would be permitted to file written statements in support of or in opposition to the Approval Order by October 7, 2015,⁷ and SIG and others submitted written statements. Now SIG seeks oral argument, which would prevent the Commission from promptly reviewing and affirming the Approval Order. OCC opposes the motion, and asks that the Commission deny it.

ARGUMENT

SIG argues that the Commission should order oral argument in connection with its ongoing review of the Approval Order on the ground that the Commission will be significantly

⁴ 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 (Mar. 6, 2015), 80 Fed. Reg. 13058 (Mar. 12, 2015) (“Approval Order”).

⁵ See OCC Motion to Lift Stay, File No. SR-OCC-2015-02 (Apr. 2, 2015).

⁶ Order Discontinuing the Automatic Stay, Exchange Act Release No. 34-75886, at 2 (Sept. 10, 2015), 80 Fed. Reg. 55668 (Sept. 16, 2015).

⁷ Order Granting Petitions for Review and Scheduling Filing of Statements, Exchange Act Release No. 34-75885 (Sept. 10, 2015), 80 Fed. Reg. 55700 (Sept. 16, 2015).

aided in its review process.⁸ SIG's motion, however, is a transparent attempt to delay the Commission's ultimate determination regarding the Capital Plan. The Commission has all the information it requires in the written submissions of SIG and others, and the Motion for Oral Argument should therefore be denied.

Commission Rule 451 provides that the Commission will consider appeals, motions, and other matters properly before it on the basis of the papers filed by the parties without oral argument, unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.⁹ Oral argument is routinely denied where "[i]t appears that the issues raised in the pending application can be determined on the basis of the record and the papers filed by the parties."¹⁰ As in other matters in which oral argument has been denied, "the issues here have been thoroughly briefed" and "there is no prejudice to the [movant] in denying [its] request for oral argument."¹¹

The Motion for Oral Argument and its supporting memorandum do not support the granting of oral argument. SIG states the conclusion that the Commission will be significantly aided in its review process, but does not show that there are any specific facts or legal standards that cannot be adequately considered on the written submissions.

⁸ SIG Memorandum in Support of Motion for Oral Argument in Connection with the Commission's Review of the Staff's Order Approving Capital Plan, File No. SR-OCC-2015-02, at 2 (Oct. 7, 2015) ("SIG Memorandum").

⁹ 17 C.F.R. § 201.451(a).

¹⁰ See, e.g., Order Denying Request for Oral Argument, *In the Matter of the Application of Positron Corp. for Review of Action Taken by FINRA*, File No. 3-15837, Exchange Act Release No. 74101 (Jan. 20, 2015); see also, e.g., Order Denying Request for Oral Argument, *In the Matter of the Application of Wedbush Sec., Inc. & Edward William Wedbush For Review of Disciplinary Action Taken by FINRA*, File No. 3-16329, Exchange Act Release No. 74961 (May 14, 2015).

¹¹ Opinion of the Commission, *In the Matter of D.E. Wine Inv., Inc., et al.*, File No. 3-8535, Exchange Act Release No. 43929 (Feb. 6, 2001); see also Opinion of the Commission, *In the Matter of the Application of Cleantech Innovations, Inc.*, File No. 3-14640, Exchange Act Release No. 69968, at 17 n.67 (July 11, 2013) ("Because the issues have been thoroughly briefed and can be adequately determined on the basis of the record filed by the parties, Applicants' request for oral argument is denied.").

Oral argument should be denied because it is unnecessary. SIG, like other interested persons, has had multiple opportunities to submit evidence and arguments to the Commission. Where an agency has been apprised of the substantial arguments of the parties, it is proper to deny oral argument. *See Nat'l Aviation Trades Ass'n v. Civil Aeronautics Bd.*, 420 F.2d 209, 222-23 (D.C. Cir. 1969) (denial of oral argument proper where agency was presented with a "voluminous" record including "eighty-one pages of briefs . . . [and] over thirty pages of petitions to review" and was fully informed of "all of petitioners' substantial arguments").

Oral argument should also be denied because it would unduly delay resolution of the Commission's review. Prompt resolution of this matter is urgently needed to provide certainty to OCC, the securities industry, and the investing public that OCC has the capital it needs to perform its function as an systemically important financial market utility.

CONCLUSION

The record is complete and it is time for the Commission to decide the matter. It would be contrary to the public interest to allow SIG to delay this matter further with oral argument. The Commission has the arguments of the parties and other interested persons before it and should proceed to a decision on the written submissions. OCC respectfully submits that the Motion for Oral Argument should be denied.

THE OPTIONS CLEARING CORPORATION

By: William J. Nissen

William J. Nissen
Steve Sexton
Kristen Rau
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Telephone: 312-853-7000

Dated: October 15, 2015

CERTIFICATE OF SERVICE

I, William J. Nissen, counsel to The Options Clearing Corporation, hereby certify that on October 15, 2015, I served copies of the attached OCC's Brief in Opposition to Motion for Oral Argument 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:

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

John A. McCarthy
General Counsel
KCG Holdings, Inc.
545 Washington Boulevard
Jersey City, NJ 07310
Facsimile: 201-557-8024

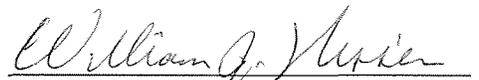
Lisa J. Fall
President
BOX Options Exchange LLC
101 Arch Street, Suite 610
Boston, MA 02110
Facsimile: 617-235-2253

Barbara J. Comly
Executive Vice President, General Counsel
& Corporate Secretary
MIAX
7 Roszel Road, Suite 5-A
Princeton, NJ 08540
Facsimile: 609-987-2201

Joseph C. Lombard
James P. Dombach
Murphy & McGonigle, P.C.
555 13th Street N.W.
Suite 410
Washington, DC 20004
Facsimile: 202-661-7053

Eric Swanson
General Counsel & Secretary
BATS Global Markets, Inc.
8050 Marshall Drive, Suite 120
Lenexa, KS 66124
Facsimile: 913-815-7119

Dated: October 15, 2015



William J. Nissen
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Telephone: 312-853-7000
Facsimile: 312-853-7036