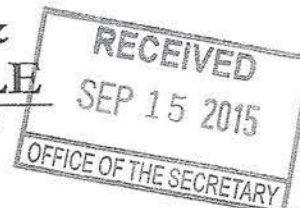


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September 15, 2015

VIA COURIER AND FAX

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Susquehanna International Group, LLP *et al.* Motion to Reinstitute Automatic Stay and Supporting Brief

Dear Mr. Fields:

Petitioners BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP and its affiliated and related entities, (collectively "Petitioners"), hereby file the enclosed Motion to Reinstitute Automatic Stay and supporting brief. The original and three copies are enclosed.

The enclosed Motion to Reinstitute Automatic Stay and supporting brief have been served by facsimile on each party of the proceeding in accordance with 17 C.F.R. § 201.150, and as reflected in the Certificate of Service attached to each.

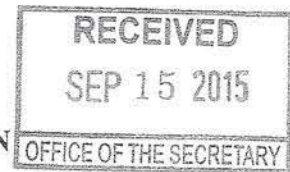
Very truly yours,

Joseph C. Lombard
Counsel for Susquehanna International
Group, LLP

Enclosures

Cc: Division of Trading and Markets (*by facsimile, w/ encl.*)
Petitioners and OCC (*by facsimile, w/ encl.*)

Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of the Petitions of:)

File No. SR-OCC-2015-02

BATS Global Markets, Inc.)
 BOX Options Exchange LLC)
 KCG Holdings, Inc.)
 Miami International Securities Exchange,)
 LLC and)
 Susquehanna International Group, LLP)
 _____)

MOTION TO REINSTITUTE AUTOMATIC STAY

Pursuant to Rule 154¹ of the Rules of Practice, Petitioners BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP and its affiliated and related entities, (collectively "Petitioners") move to reinstitute the automatic stay provided for by Rule 431(e)² of the Rules of Practice.

Petitioners seek to preserve the status quo pending the Securities and Exchange Commission's review of the Division of Trading and Markets' March 6, 2015 order (the "Approval Order") approving, pursuant to delegated authority, a capital plan proposed by the Options Clearing Corporation ("OCC").³ The grounds for reinstating the stay are set forth in detail in Petitioners' supporting memorandum, submitted herewith. Among other things, neither the record before the Commission nor the Commission's Order lifting the stay contained any information concerning OCC's current financial position. Publicly available information reflects

¹ 17 CFR § 201.154.

² 17 CFR § 201.431(e)

³ Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

that OCC has achieved, or is close to achieving, the capital target that OCC claimed was required for 2015, obviating the need for implementing the proposed capital plan during the pendency of the Commission's review of the Approval Order.

Wherefore, the Petitioners pray for an order of the Commission reinstating the automatic stay of the Approval Order.

Respectfully Submitted,

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capital level, particularly compared to OCC's \$247 million "Target Capital Requirement" set forth in the Plan. In fact, the record suggests that OCC's current capital levels are quickly approaching the \$247 million Target Capital Requirement and will likely exceed that amount in a matter of months, representing a tenfold increase over the historic levels that were sufficient to weather the 2008 financial crisis. Second, there is no compelling reason to implement the Plan now, as it was filed with the Commission to comply with a proposed rule that remains unapproved. Indeed, the Commission allowed nearly six months to pass after the Approval Order was first challenged before lifting the automatic stay, underlining the fact that there is no urgency around OCC's current capital levels. Third, implementing the Plan at this point will have the perverse effect of depleting OCC of tens of millions of dollars in rebates and dividends of non-interest bearing funds accumulated through fee revenue, in order to accept a like amount of capital contributions that will accrue annual dividend obligations at 17%-30%, unnecessarily increasing OCC's cost of capital. Finally, it will be extremely impracticable to reverse the effects of implementing the Plan, which would entail the reclamation of dividends, taxes, and rebates, among other difficult issues, if the Commission or an appellate court were to later reverse the Approval Order. In sum, the OCC has failed to demonstrate a level of harm, substantial or otherwise, that would support the lifting of the automatic stay, and it should be reinstated.

BACKGROUND

The automatic stay relates to the Plan, pursuant to which OCC proposes to, among other things, increase its capital to a Target Capital Requirement level of \$247 million through Exchange Owner capital contributions of \$150 million that will receive annual dividends of approximately 17% to 30%. Petitioners challenged the Plan as, among other things, (1) a

conflict between OCC's historical functioning as a not-for-profit utility and the Exchange Owners' profit motive, (2) egregiously beyond market norms, (3) unnecessary given OCC's rapidly increasing capital level, currently estimated to be approximately ten times historic levels, and (4) imposing an undue burden on competition between the OCC shareholder and non-shareholder options exchanges.

THE AUTOMATIC STAY SHOULD BE REINSTITUTED

When the Commission issued the Order Discontinuing the Automatic Stay, the record before it did not include any information concerning OCC's current capital condition, particularly compared to the Plan's Target Capital Requirement. The brief Order Discontinuing the Automatic Stay contains only four sentences of findings, including a conclusory statement that "it is in the public interest to lift the stay during the pendency of the Commission's review" because it is a "compelling public interest" to strengthen OCC's capitalization. But the Order Discontinuing the Automatic Stay does not contain any analysis or cite any facts supporting the proposition that OCC's current capitalization is in need of strengthening. Without any information concerning OCC's current capital position, there was no basis for the Commission to conclude that there was a "compelling public interest" for OCC to immediately begin implementing the Plan during the pendency of the Commission's review.

On the contrary, as described more fully below, based on publicly available options trading data, it appears that OCC has achieved – or is close to achieving – the purported (and inflated) capital target that OCC claimed was required for 2015, obviating the need for implementing the Plan, including during the pendency of the Commission's review. OCC determined that its Target Capital Requirement for 2015 was \$247 million, reflecting the sum of a Baseline Capital Requirement of \$117 million (six months of operating expenses) plus a Target

Capital Buffer of \$130 million.³ While explaining in its Plan proposal that the new equity would come from the new fee schedule and contributions from Exchange Owners, OCC did not discuss what would happen if it was unable to implement the Plan in 2015 and the higher fees instituted in April 2014 continued unabated, especially if OCC refrained from issuing clearing member rebates of those fees for 2014 and 2015 activity. Yet, since the Plan was proposed and the higher fees have remained in place, OCC revenues and net income have been growing at unprecedented rates.

The higher fees have been in place since April 1, 2014, representing an increase of over 60% in the aggregate, which resulted in net income before taxes of over \$109 million for 2014 (while the new fees were only in place for nine months). By all public accounts, it appears that OCC's 2015 volume and budget projections have not materially changed from 2014. OCC's average daily volume has increased slightly over the 2014 level. Additionally, many of the new expenses referenced in the Plan as "regulatory requirements" were apparently already built into the 2015 budget as carryovers of the 2014 budget. As such, all else remaining nearly equal, even at 2014's net income figure of \$109 million (when the fee increase was only in effect for nine months), shareholders' equity would be nearly \$250 million by year-end 2015.

As of today, with the higher fees still in place, OCC has not notified clearing members that it would issue rebates for 2014 or 2015 – except in accordance with implementing the Plan. The \$25 million in OCC's shareholders' equity account as of December 31, 2013, grew to more than \$130 million as of December 31, 2014, and we estimate that it will likely grow to nearly \$250 million by the end of 2015 – if the current fee structure stays in place and no clearing member

³ Approval Order, 80 FR at 13059. Petitioners dispute the necessity of a \$130 million buffer in light of OCC's history of never having even a *de minimis* loss in more than 40 years, and the lack of support for such a requirement in *proposed* Rule 15Ad-22 or Principle 15 of the Principles for Financial Market Infrastructures. *See* SIG Petition, at 24.

rebates or Exchange Owner dividends are paid. Accordingly, it appears that OCC is close to reaching its Target Capital Requirement of \$247 million – **without having implemented the Plan**. Consequently, the result of implementing the Plan would be replacing existing low cost capital with higher cost capital.

These estimates demonstrate that lifting the stay is wholly unjustified because OCC's capital position has already been strengthened to close to the inflated level that OCC claims is necessary. Even if OCC's capital were "only" \$200 million rather than the full \$247 million OCC claims it needs, that level would still be eight times OCC's historic levels, which was more than sufficient during the country's worst financial crisis since the Great Depression.⁴

A Standard & Poor's report, issued on May 20, 2015 (*i.e.*, after the petitions for review and the briefing on OCC's motion to lift the stay) analyzing OCC's financial condition provides further support. That report concluded that "OCC has an 'excellent' business risk profile and 'minimal' financial risk":

We assess OCC's financial risk profile as "minimal." The company has no debt apart from \$34.8 million of debt on operating leases and \$54.2 million on pension deficit (as of end-year 2014). We view \$111.7 million of cash on the balance sheet (out of a total of \$143.7 million as of year-end 2014) as restricted as it is needed to meet expected regulatory standards (*i.e.* it corresponds to six months of forward-looking operating expenses). Overall, adjusted debt made up for less than 0.5 times (adjusted) EBITDA, a level that is consistent with a "minimal" financial risk profile.

⁴ The Plan also includes the Replenishment Capital Commitment, the Exchange Owners' agreement to contribute an additional \$117 million of capital if it becomes necessary. But during the anticipated period of the Commission's review of the Plan, there is no reasonably foreseeable scenario in which OCC's (estimated) more than \$200 million of capital will be dissipated at a rate that will require OCC to issue a capital call rather than increase fees (which it did in 2014 when its projected operating costs were expected to substantially increase due to new regulations). In addition, during the pendency of the Commission's review, there is no need for a formal commitment by the Exchange Owners to replenish capital. In a worse-case scenario, given that an economically viable OCC is a critical component of the Exchange Owners' businesses, there is every reason to believe that the exchanges would provide needed capital during the review period without such a formal commitment.

Significantly, Standard & Poor's assessed OCC's liquidity position as "exceptional."⁵

Accordingly, there is no compelling need to lift the stay at this point. The Plan was proposed in order to comply with proposed Rule 17Ad-22(e)(15), which has not been adopted let alone made effective. Absent this rule, no case whatsoever has been made that OCC requires the capital levels and structure (including the Replenishment Capital Commitment) provided for in the Plan.⁶

Further evidencing the lack of urgency surrounding the Plan is the timing of the Commission's Order Discontinuing the Automatic Stay. At any time after March 12, 2015 (the initial filing of a notice of intention to petition for review of the Approval Order), the Commission was authorized to discontinue the automatic stay of the Approval Order.⁷ Yet, for nearly six months, the Commission kept the stay in place. Not until September 10, 2015, citing the "compelling public interest" in strengthening the capitalization of OCC, did the Commission decide to lift the stay. Given that the OCC's capital position has been increasing consistently over the past six months, the Commission's cited interest appears misplaced. In short, there is no reason to abruptly change course now, and the Commission did not provide one in the Order Discontinuing the Automatic Stay.

Moreover, maintaining the status quo under the stay preserved OCC's ample and growing capital, but lifting the stay would allow OCC to distribute its current **non-interest** bearing funds out of its capital account in the form of a dividend to its Exchange Owners and allow them to re-contribute that same money solely to earn dividends payable by OCC at an annual rate of 17-

⁵ Standard & Poor's Rating Services, Ratings Direct, Options Clearing Corp., May 20, 2015, at pp. 3,4, 7, available at http://www.optionsclearing.com/components/docs/about/sp_rating.pdf.

⁶ Importantly, the Plan addresses only OCC's capitalization for operational needs, not for its clearing and centralized guarantee risk (for which it has over \$8 billion available and the guarantee of its clearing members).

⁷ See 17 CFR 201.431(e) (stating that action made pursuant to delegated authority "shall be stayed until the Commission orders otherwise").

30%. OCC would be exchanging cost-free capital for capital on which it will have to pay dividends at a usurious rate, effectively weakening OCC's capital position and undermining the Commission's stated "compelling public interest" to **strengthen** OCC's capitalization. The rational course is thus to reinstate the automatic stay and preserve the status quo while the Commission reviews the Plan.

Finally, although the Order Discontinuing the Automatic Stay states that the Commission did not "believe that lifting the stay precludes meaningful review of the Approval Order," it cannot be seriously disputed that, if OCC moves forward with the Plan during the review period⁸ and the Commission (or an appellate court) ultimately reverses the Approval Order, "unscrambling the egg" will be extremely impracticable. Among other things, the logistical issues would include: (1) reversing and reclaiming dividends paid to the Exchange Owners; (2) resolving issues associated with taxes paid on those dividends; (3) clawing back rebates from clearing members that OCC stated it would pay if the stay were lifted – leading those members to impose additional costs on the investing public to offset the loss of the rebates; and (4) reversing fee decreases that OCC stated it would implement if the stay were lifted.

Petitioners do not dispute the importance of OCC's capital adequacy as a regulatory objective. Petitioners respectfully submit, however, that there is no factual basis in the administrative record to support a finding that lifting the stay would strengthen OCC's capital adequacy, nor that its capitalization is even in need of strengthening. Given the concrete and irrevocable negative consequences that are likely to flow from the absence of a stay, the automatic stay should be reinstated.

⁸ OCC's prior actions demonstrate the likelihood that it would move forward during the Commission's review to aggressively implement its controversial Plan and present the industry and investors with a *fait accompli*. Indeed in March 2015, OCC exploited the brief (several day) delay in the operation of the automatic stay, rushing to implement the Plan despite the uniform opposition thereto by commentators and the strong likelihood of the impending stay. SIG Opp. to Motion to Lift Stay, April 9, 2015, at 4.

CONCLUSION

For all the foregoing reasons, Petitioners request that the Commission reinstate the automatic stay pending resolution of the Commission's review of the Approval Order.

Respectfully submitted,

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