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KCG

April 9, 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
Response to Motion to Lift Automatic Stay

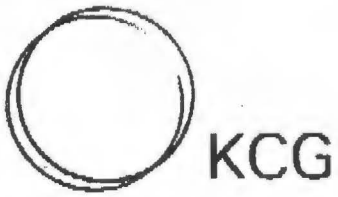
Dear Mr. Fields:

Enclosed please find an original and three copies of the Response to Motion to Lift Automatic Stay ("Response") 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 Response does not exceed 7,000 words. Also enclosed, please find a Certificate of Service.

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

Sincerely,

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



CERTIFICATE OF SERVICE

I, John A. McCarthy, General Counsel of KCG Holdings, Inc., hereby certify that on April 9, 2015, I served a copy of the attached Response to Motion to Lift Automatic Stay, by way of facsimile on William J. Nissen, counsel to The Options Clearing Corporation, and sent the original and three copies by Federal Express and a copy by facsimile to the Secretary at the following addresses:

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

William J. Nissen
Sidley Austin, LLP
One South Dearborn

Chicago, IL 60603
Facsimile: 312-853-7036

Dated: April 9, 2015

John A. McCarthy
General Counsel
KCG Holdings, Inc.

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OTHER AUTHORITIES

Exchange Act Release No. 74452 (March 6, 2015),
80 FR 12058 (March 12, 2015) 1

Before the
SECURITIES AND EXCHANGE COMMISSION

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

RESPONSE TO MOTION TO LIFT AUTOMATIC STAY

KCG Holdings, Inc. ("KCG"), pursuant to Rule 154 of the Rules of Practice of the Securities and Exchange Commission ("SEC" or the "Commission"),[1] hereby responds to the Motion to Lift Stay (the "Motion") filed by The Options Clearing Corporation ("OCC"), and requests that the Motion be denied.

Background

On March 6, 2015, staff from the Division of Trading and Markets ("Staff"), acting pursuant to delegated authority, issued an order approving File No. SR-OCC-2015-02 (the "Order"),[2] which related to OCC's request to change its rules and implement a plan to raise capital from its four stockholder exchanges in return for providing them with the ability to receive excessive dividends at above-market rates *in perpetuity ("OCC's Plan")*.

On March 13, 2015, KCG, which previously filed a comment letter opposing OCC's requested rule change and its Plan, filed its Notice of Intention to Petition for Review of the Order (the "KCG Notice") in accordance with Commission Rule of Practice 431(b)(1).[3] Several other commenters also filed their own Notices of Intention to Petition for Review, including:

[1] 17 CFR 201.154

[2] *See*, Exchange Act Release No. 74452 (March 6, 2015), 80 FR 12058 (March 12, 2015).

[3] 17 CFR 201.431(b)(1).

BATS Global Markets, Inc., BOX Options Exchange, LLC, Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP (collectively, the "other Petitioners"). Pursuant to Rule 431(e),[4] the filing of KCG's Notice, as well as the other notices, automatically stayed of the effectiveness of the Staff's Order "until the Commission orders otherwise."

KCG, and the other Petitioners, subsequently filed Petitions for Review (collectively, the "Petitions for Review") detailing the reasons the Commission should review and set aside the Staff's Order. On April 2, 2015, OCC filed its Motion requesting that the Commission lift the automatic stay and submitted a brief in support of its motion ("OCC's Brief"). For the following reasons, the automatic stay imposed by Rule 431(e) should be maintained until the Commission has taken action on the pending Petitions for Review.

Argument

A. The Policies Surrounding Rule 431 Dictate the Automatic Stay Should Remain in Effect

The Commission's consideration of actions taken pursuant to delegated authority are governed by Rule 431 of the Commission's Rules of Practice. Section (e) of Rule 431 is unique as it explicitly reverses the normal procedure applicable to litigated appeals, where the burden to establish that a stay is appropriate pending completion of the appellate process is placed upon the party seeking review. Instead, Section (e) of Rule 431 provides for an *automatic* stay "[u]pon filing with the Commission of a notice of intention to petition for review ... [of] an action made pursuant to delegated authority." Whenever the Staff takes action pursuant to delegated authority and an aggrieved party subsequently challenges the Staff's action, the Commission's Rules of Practice dictate a stay be imposed automatically and thus demonstrates a strong policy preference for the Commission to review the action by the Staff *before* such action becomes effective.

As noted in the multiple Petitions for Review submitted in this matter, the Staff's Order implicates important policy issues for the options market that should be reviewed and addressed directly by the Commission as opposed to being delegated to the Staff. In particular, the Order approves the transformation of OCC's model from that of a non-profit industry utility

[4] 17 CFR 201.431(e).

operated for the benefit of the financial market to that of a for-profit enterprise designed to maximize the profits of a small and select group. The impact of this change on OCC clearing members, public options investors, and the various options exchanges will be significant. Because of the crucial policy considerations at stake, it is important that the matter is stayed pending Commission review. If the automatic stay is lifted at this stage and OCC is permitted to move forward with its Plan prior to review by the Commission, the resulting actions taken by OCC and others will be virtually impossible to undo regardless of the Commission's ultimate decision on the merits. Therefore, the Commission should deny OCC's request to lift the automatic stay.

In its Brief, OCC argues in favor of lifting the automatic stay based upon the application of a four factor test it claims the Commission should consider: (1) the likelihood of success on the merits in a proceeding challenging the particular Commission action; (2) whether a party will suffer imminent irreparable injury without a stay; (3) whether there will be substantial harm to any person if the stay were continued; and (4) whether the stay would likely serve the public interest.[5] The four factor test cited by OCC, however, is the wrong standard of review as it applies to a different situation than the matter currently awaiting Commission determination. The four factor test is applicable where the Commission is evaluating the relevance of a stay of action taken by the Commission as opposed to the appropriateness an automatic stay under Rule 431 of an action taken by the Staff pursuant to delegated authority. The correct standard of review for maintaining a Rule 431 automatic stay is whether the matter decided by the Staff has raised important policy considerations that warrant Commission review. Here, Commission review of important policy considerations is warranted – specifically, the dramatic change in the nature of OCC's role and the impact on clearing members, investors, and the various options exchanges – and thus the automatic stay should be maintained. Even under the erroneous review standard referenced by OCC, the automatic stay should nonetheless be maintained.

[5] OCC Brief at pp. 5-6

B. The Petitioners Have a Strong Likelihood of Success on the Merits

Given the Staff's Order conflicts with several sections of the Securities Exchange Act of 1934 ("Exchange Act") and contains material errors of fact and law, the Petitions have a strong likelihood of success on the merits. OCC's Plan provides the Stockholder Exchanges with an economic windfall at the expense of OCC clearing members and the investing public, therefore it was erroneous for the Staff to conclude that the Plan did not violate Section 17A(b)(3)(D) of the Exchange Act,[6] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Staff also erred in failing to meet its obligation under Sections 17A(b)(3)(I) and 3(f) of the Exchange Act[7] to conduct a careful and reasoned assessment of the economic effects and costs and benefits of the Plan and to scrutinize whether it promotes or hinders competition. 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.[8] The Staff failed to meet its obligation in this regard. As a result, there is a strong likelihood the Petitioners will succeed on the merits.

C. OCC Will Not Suffer Substantial Harm if the Automatic Stay Continues

In its Brief, OCC contends that the automatic stay is causing it harm and should be immediately lifted: "The stay is thus causing substantial harm to OCC and the financial system generally, and it should be promptly lifted to permit the implementation of the Capital Plan to continue."[9] OCC, however, has not shown any harm in support of its request to lift the automatic stay. The Commission has not yet adopted proposed Rule 17Ad-22, which is the primary regulation relied upon by OCC for its need for it to raise capital.

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[6] 15 U.S.C. § 78q-1(b)(3)(D).

[7] 15 U.S.C. § 78q-1(b)(3)(I) and 15 U.S.C. § 78c(f).

[8] See Order at p 45.

[9] OCC Brief at p. 18.

The automatic stay serves the important function of preventing OCC from moving forward with a capital raising plan that will fundamentally transform the nature of OCC -- from that of a non-profit industry utility to that of a for-profit enterprise -- until such time as the Commission has an opportunity to review the Staff's Order and to consider the policy implications of OCC's transformation. The mere fact that OCC is momentarily delayed in implementing their capital raising plan, which the Commission may ultimately determine is inconsistent with the purposes of the Exchange Act, is not the sort of "irreparable harm" that would justify lifting the stay at this time.

D. Continuation of the Stay Serves the Public Interest

OCC also argues that the stay does not serve the public interest: "The stay should be lifted because it is not in the public interest. Implementation of the Capital Plan should be allowed to proceed in order to provide a strong capital base for OCC to continue to perform its critical functions ... and the stay is interfering with OCC's well-designed and equitable plan for its future capital needs ..."[10]

Contrary to its assertions, OCC simply cannot demonstrate that the stay is against the public interest. The manner in which OCC proposes to raise capital will dramatically alter 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 the public – including OCC clearing members, investors, and the various options exchanges -- presents a fundamental and profound policy issue for the options market. This point of policy warrants the continuance of the Rule 431 automatic stay until such time as the matter is reviewed by the Commission.

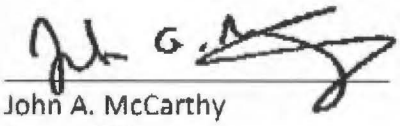
Conclusion

For the foregoing reasons, and particularly so that the Commission has the opportunity to consider the serious policy issues raised in KCG's Petition for Review as well as the Petitions for Review filed by others, KCG respectfully requests that the Commission deny OCC's Motion to Lift the Stay.

[10] OCC Brief at p. 18.

DATED: April 9, 2015

Respectfully Submitted,



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