

[Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—D.C. Cir.: Options market participants seek to upend Commission’s okay of OCC’s capital plan rules, \(Feb. 19, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Mark S. Nelson, J.D.](#)

A group of firms that participate in the U.S. listed options market have asked the D.C. Circuit to stay a Commission order approving the Options Clearing Corporation’s proposed rule change to implement a capital plan that will help it to fulfill its role as an FSOC-designated systemically important financial market utility. The request was made on an emergency basis while the court mulls the firms’ [petition](#) to review the Commission’s order. The firms argue that the stay is needed because an impending \$161 million in distributions by OCC could hamper judicial review of the Commission’s order ([Susquehanna International Group, LLP v. SEC](#), February 17, 2016).

Petitioners Susquehanna and KCG Holdings, Inc. represent options market makers in listed options, while Bats Global Markets, Inc. is a non-OCC stockholder exchange. BOX Options Exchange LLC and Miami International Securities Exchange, LLC also are non-OCC stockholder exchanges and are expected to join Susquehanna’s emergency motion.

OCC’s capital plan. According to OCC’s board, changes in financial markets pointed to a need to boost capital, which OCC planned to do through capital contributions from its stockholder exchange owners, who also might be called upon to make replenishment capital contributions in tougher times. Replenishment capital would be triggered by either a soft trigger telling OCC to re-evaluate its capital needs, or by a hard trigger that obligates OCC’s stockholder exchanges to pay up when capital falls below a certain level. But OCC’s capital plan was not meant to deal with central counter party risk, on-balance sheet credit risk, or market risk.

The stockholder exchanges also would be eligible to receive dividends, and the OCC would impose enough fees to meet expenses and provide for a business risk buffer. Dividends are intended to serve as consideration for the stockholder exchanges’ capital contributions and commitment to provide replenishment capital. In December 2015, OCC announced a \$39 million refund to clearing members, declared a dividend of \$17 million to be paid to its stockholder exchanges, and said its fees would drop by 19 percent.

The Commission’s latest order noted that OCC, which is owned by five stockholder exchanges, currently is the only clearing agency for standardized U.S. options listed on U.S. exchanges. Trading of listed options can take place on exchanges run by OCC’s stockholder exchanges and on seven other national securities exchanges that are not OCC owners.

The February 2016 order. The Commission’s [February 2016 order](#) approved the OCC’s proposal (File No. SR-OCC-2015-02) and set aside the [delegated order](#) previously issued by the agency’s Division of Trading and Markets. Some commenters had worried that OCC’s dividend policy could erode investor protections by giving OCC’s stockholder exchanges a chance to turn a low-cost public utility into a for-profit business that could impede non-stockholder exchanges’ ability to compete with stockholder exchanges.

The Commission determined that OCC’s capital plan, in particular its dividend structure, was consistent with the Exchange Act because it would enhance OCC’s capital without being designed to help stockholder exchanges monetize OCC’s monopoly in the clearing space. The Commission also dealt with commenters’ worries about the use of authority delegated to the Division of Trading and Markets. Here, the Commission noted that the question was moot because it was now setting aside the prior delegated order and because the Commission conducted its own de novo review of the OCC matter.

The case is [No. 16-1061](#).

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Companies: Susquehanna International Group, LLP; KCG Holdings, Inc.; BATS Global Markets, Inc.; The Options Clearing Corporation; BOX Options Exchange LLC; Miami International Securities Exchange, LLC

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