

the public interest.<sup>10</sup> The party seeking a stay has the burden of establishing that relief is warranted.<sup>11</sup> These factors weigh against granting petitioners' stay request.

First, with respect to likelihood of success on the merits, we note that the court did not address petitioners' arguments that the Plan was inconsistent with the Exchange Act. Rather, it remanded for the Commission to "properly evaluate the Plan."<sup>12</sup> By repeating their same arguments regarding consistency with the Act in support of a stay, petitioners are asking the Commission to opine on their likelihood of success before engaging in the further analysis directed by the court. We are not yet in a position to do so. Unlike the more typical situation in which the Commission addresses stay motions, here there is neither a full record nor a final decision on which to base such an analysis. Thus, we do not view this factor as weighing in favor of the partial stay request.

Second, petitioners fail to establish that they will be irreparably harmed in the absence of a stay. To demonstrate irreparable harm, petitioners "must show an injury that is 'both certain and great' and 'actual and not theoretical.'" <sup>13</sup> "A stay 'will not be granted [based on] something merely feared as liable to occur at some indefinite time.'" <sup>14</sup> That "an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay."<sup>15</sup> Petitioners acknowledge that the monetary aspects of the Plan "are readily reversible"<sup>16</sup> and that the court concluded that "the task of unwinding

the Plan would be no more difficult if done after remand rather than immediately."<sup>17</sup> They nonetheless argue that "[a] stay of the dividend is needed to prevent distortion of the competitive landscape from continuing to harm competition."<sup>18</sup> But petitioners provide no evidence that competitors will be "driven from the marketplace" or that investors have "lost liquidity," as petitioners claim.<sup>19</sup> Thus, petitioners' argument—which presumes they are correct on the merits regarding the Plan's effect on competition—is too speculative at this stage to be the basis for relief. We also note that petitioners made these same arguments regarding competitive harm before the D.C. Circuit, yet the court did not stay or vacate the Plan.

Finally, petitioners have not demonstrated that the balance of harm to others in the absence of a stay and the public interest favors a stay. Petitioners argue that "a stay would injur[e] nobody,"<sup>20</sup> because they are asking only to stay the dividend component of the Plan. But even setting aside the impact on shareholder exchanges that are due the dividends under the Plan, petitioners' claim that the dividend component of the plan can be isolated is overly simplistic. Under the Plan, "OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date."<sup>21</sup> A stay of the dividends to the shareholders would thus have the effect of also staying the payment of refunds to OCC's members.

Moreover, as discussed above, the court squarely considered whether to vacate the Plan or leave it in effect during the Commission's reconsideration, and decided to leave the Plan, including the provisions with respect to dividends, in place. Petitioners' request to stay that part of the Plan therefore, in fact, seeks a change in the status quo that we believe is unsupported at this time. Granting petitioners' request would require piecemeal suspension of portions of the Plan, while leaving others in place, despite at least the possibility of having to reinstitute those provisions at a later

date if the Commission, after conducting the required analysis on remand, should determine to approve the Plan. Indeed, the court implicitly rejected this type of partial stay when petitioners proposed it in a pre-decision letter to the court<sup>22</sup> and the court remanded without entering such a stay. We believe, as the court did, that the better course is to leave the status quo in place while we conduct a further review of the entirety of the Plan.

Accordingly, we decline to impose the partial stay requested.

For the reasons stated above, it is hereby:

*Ordered* that movants' request for a partial stay of the Capital Plan while the Commission considers the Plan pursuant to the direction of the D.C. Circuit is *Denied*.

By the Commission.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2017–20080 Filed 9–20–17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[File No. SR–OCC–2015–02; Release No. 81629]

### Before the Securities and Exchange Commission; Securities Exchange Act of 1934; In the Matter of the The Options Clearing Corporation For an Order Granting the Approval of 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; Corrected Order Scheduling Filing of Statements on Review

September 14, 2017.

On February 11, 2016, the Commission issued an order ("Approval Order") approving the plan of the Options Clearing Corporation's ("OCC") for raising additional capital (the "Plan") to support its function as a systemically important financial market utility.<sup>1</sup> BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP (collectively "petitioners")<sup>2</sup> filed a

<sup>22</sup> See Fed. R. App. P. 28(j) letter from petitioners, dated April 17, 2017 (asking the court "at a minimum, to stay operation of the dividend component of the Plan during a remand").

<sup>1</sup> Exchange Act Release No. 77112, File No. SR–OCC–2015–02.

<sup>2</sup> BATS Global Markets, Inc., was initially a petitioner, but later withdrew.

<sup>10</sup> *Berner E. Young*, Exchange Act Release No. 78440, 2016 WL 4060106, at \*1 (July 29, 2016); see also Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 33870, 1994 WL 17920, at \*1 (Apr. 7, 1994).

<sup>11</sup> *Young*, Exchange Act Release No. 78440, 2016 WL 4060106, at \*1.

<sup>12</sup> 866 F.3d at 451.

<sup>13</sup> *Kenny A. Akindemowo*, Exchange Act Release No. 78352, 2016 WL 3877888, at \*2 (July 18, 2016) (quoting *Donald L. Koch*, Exchange Act Release No. 72443, 2014 WL 2800778, at \*2 (June 20, 2014)); accord *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

<sup>14</sup> *Akindemowo*, 2016 WL 3877888, at \*2 (quoting *Koch*, 2014 WL 2800778, at \*2); accord *Wis. Gas Co.*, 758 F.2d at 674.

<sup>15</sup> *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at \*1 (Nov. 4, 2004); see also *William Timpinaro*, Exchange Act Release No. 29927, 1991 WL 288326, at \*3 (Nov. 12, 1991) (recognizing that "[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough" to constitute irreparable harm) (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

<sup>16</sup> Mot. at 1.

<sup>17</sup> Mot. at 16.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* Petitioners cite the acquisition of BATS by CBOE Holdings, Inc.—which, we note, closed on February 28, 2017—in support of their argument, stating that there has been consolidation in the exchange marketplace while the Capital Plan has been in effect. But they supply no evidence of a causal relationship between that acquisition and the Capital Plan or the dividends at issue.

<sup>20</sup> Mot. at 16.

<sup>21</sup> Exchange Act Release No. 74136 (Notice of Proposed Rule Change) at 15, File No. SR–OCC–2015–02.

petition for review of the Approval Order in the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), challenging the Commission’s Approval Order as inconsistent with the Exchange Act and lacking in the reasoned decisionmaking required by the Administrative Procedure Act.

The D.C. Circuit concluded that the Approval Order did not “represent the kind of reasoned decisionmaking required by either the Exchange Act or the Administrative Procedure Act,” and therefore remanded the case to the Commission for further proceedings.<sup>3</sup> In so ruling, the court did not reach the merits of any of petitioners’ arguments that the Plan was inconsistent with the substantive requirements of the Exchange Act.<sup>4</sup>

The court specifically decided not to vacate the Approval Order prior to remand, instead leaving the Plan in place and remanding “to give the SEC an opportunity to properly evaluate the Plan.”<sup>5</sup> The D.C. Circuit’s mandate, which issued on August 18, 2017, returned the matter to the Commission for further proceedings.

Accordingly, to facilitate the Commission’s further review of the Plan, *It is Ordered*, that by October 14, 2017, OCC may file any additional statements or information that it considers relevant to the Commission’s reconsideration, including but not limited to information OCC’s board of directors considered in approving the Plan.

Furthermore, the Commission is providing other parties and persons thirty days to respond to any additional statements OCC may submit.

Accordingly, *It is Ordered*, that by November 13, 2017, any party or other person may file any additional statement, which may include statements previously submitted or otherwise available, or any new information such party or other person considers relevant.

All submissions should refer to File Number SR–OCC–2015–02. The Commission will post submissions on the Commission’s Internet Web site as they are received. Submissions received will be posted without change; the Commission does not edit personal identifying information from submissions. If a party or person wishes to submit information for the Commission to consider that is confidential, Rule 83 of the Commission Rules of Practice provides a procedure

by which persons submitting information may request that it be withheld when requested under the Freedom of Information Act.<sup>6</sup> Any party or person seeking to submit information in this matter should make sure that their request complies with procedures specified by Rule 83. An explanation of the rule is available on the Commission’s Web site at: <https://www.sec.gov/foia/conf/treat.htm>.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–20081 Filed 9–20–17; 8:45 am]

**BILLING CODE 8011–01–P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. EP 290 (Sub-No. 5) (2017–4)]

### **Quarterly Rail Cost Adjustment Factor**

**AGENCY:** Surface Transportation Board.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board approves the fourth quarter 2017 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2017 RCAF (Unadjusted) is 0.889. The fourth quarter 2017 RCAF (Adjusted) is 0.367. The fourth quarter 2017 RCAF–5 is 0.350.

**DATES:** *Applicability Date:* October 1, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Board’s decision, which is available on our Web site, <http://www.stb.gov>. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

By the Board, Board Members Begeman, Elliott, and Miller.

Decided: September 18, 2017.

**Marline Simeon,**  
*Clearance Clerk.*

[FR Doc. 2017–20136 Filed 9–20–17; 8:45 am]

**BILLING CODE 4915–01–P**

## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

[Docket No. USTR–2017–0017]

### **2017 Special 301 Out-of-Cycle Review of Thailand: Request for Comments**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is conducting a Special 301 Out-of-Cycle Review of Thailand. USTR requests written comments concerning any act, policy, or practice that is relevant to the decision regarding whether and how USTR should identify Thailand based on Thailand’s protection for intellectual property rights or market access Thailand provides to U.S. persons who rely on intellectual property protection.

**DATES:**

*October 20, 2017, at 11:59 p.m.*

*Eastern Time:* Deadline for submission of written comments.

*October 27, 2017, at 11:59 p.m.*

*Eastern Time:* Deadline for submission of written comments from foreign governments.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. For alternatives to on-line submissions, please contact USTR at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:**

Daniel Lee, Deputy Assistant U.S. Trade Representative for Innovation and Intellectual Property, at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) or (202) 395–4510. You can find information about the Special 301 Review at [www.ustr.gov](http://www.ustr.gov).

**SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Pursuant to Section 182 of the Trade Act of 1974 (19 U.S.C. 2242), USTR must identify countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. USTR will identify the countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country’s designation as a Priority Foreign Country normally are the

<sup>3</sup> *Susquehanna Int’l Grp., LLP v. SEC*, 866 F.3d 442, 443 (D.C. Cir. 2017).

<sup>4</sup> *Id.* at 446.

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.83.