UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

TRADING TECHNOLOGIES INTERNATIONAL, INC.)))))
Plaintiff,)
V.)
BGC PARTNERS, INC.)
Defendant.)

Case No. 10 C 715 (Consolidated with: 10 C 716, 10 C 718, 10 C 720, 10 C 721, 10 C 726, 10 C 882, 10 C 883, 10 C 884, 10 C 885, 10 C 929, 10 C 931)

Judge Virginia M. Kendall

RESPONSE OF CERTAIN DEFENDANTS TO TRADING TECHNOLOGIES' "EMERGENCY" MOTION

Defendants TradeStation Securities, Inc. & TradeStation Group, Inc., IBG LLC &

Interactive Brokers LLC, and CQG, Inc. & CQGT, LLC ("Defendants")¹ hereby respond to

Plaintiff Trading Technologies' "emergency" motion (ECF No. 604) for an order "confirming

that stay is lifted."

As an initial matter, Defendants note that there is no "emergency" here. Under the

Court's Standing Order, an emergency filing requires a party to identify serious harm justifying

special treatment, which TT has not done and cannot do.² Moreover, TT's motion curiously

¹ Defendant FuturePath Trading, LLC filed its own statement responding to TT's motion (ECF No. 607) and did not participate in this response.

² TT's purported emergency is the oral argument set for early August in its appeal of this Court's CBM stay order. But this is a problem of TT's own making. TT, as the appellant, can simply move to dismiss its appeal in light of the TDA settlement and which no party would oppose. In fact, defendants explicitly agreed in a meet-and-confer to not oppose a simple motion to dismiss the appeal, but TT insisted on including additional language that they believed would be potentially prejudicial to defendants in a stipulation. When defendants would not agree to the additional language TT wanted beyond a simple dismissal, TT instead sought emergency relief from this Court.

Case: 1:10-cv-00715 Document #: 609 Filed: 07/15/15 Page 2 of 5 PageID #:26522

seeks an order "confirming" that the stay is lifted. It is Defendants' understanding that the proper procedure would be simply to move to lift the stay.

Setting aside the issue of whether this is an "emergency" and TT's apparent circumvention of normal case management procedures (otherwise used throughout this case), Defendants note that (1) the Patent Trial and Appeal Board ("PTAB") found it more likely than not that claims in four of the patents asserted here are, in fact, unpatentable, and (2) the proceeding that would have finally decided those validity issues was unexpectedly terminated on the eve of trial as a result of a settlement. Counsel for the remaining Defendants were not privy to those settlement discussions and did not receive advance notice that the PTAB proceedings would be terminated such that the validity issues would not in fact be adjudicated.

The serious validity concerns raised by those now-terminated PTAB proceedings thus remain unresolved. To that end, Defendants plan to request that the PTAB decide the validity of TT's patents, by refiling challenges to most (if not all) of the patents-in-suit. Defendants plan to ask that the PTAB give expedited treatment at least as to those patents which were on the cusp of trial, since the record has already been fully developed as to those cases, and thus avoid any unnecessary delay. Given these very recent developments, Defendants respectfully request a short period of time to coordinate on these PTAB actions. Defendants expect a Covered Business Method Review Petition on one of the patents in suit to be filed by Monday, July 20, with additional petitions to be filed in the coming weeks.

Finally, although Defendants agree the AIA provision upon which the Court granted the instant stay no longer would be the basis for a stay order, there is no case law cited by TT, and Defendants in the time permitted have found none, that shows a stay automatically dissolves without permitting the Court or the parties to address future action. The parties should have a

2

Case: 1:10-cv-00715 Document #: 609 Filed: 07/15/15 Page 3 of 5 PageID #:26523

fair opportunity to address proceedings going forward. Defendants thus suggest that the Court hold a status conference in approximately four to six weeks, in advance of which the parties can advance proposals for the further conduct of this proceeding, including a proposal that the Court further stay the litigation pursuant to its own inherent discretionary powers to manage its docket. Defendants would brief and show the Court that the best use of its resources, the parties resources, and fairness and management of the case. Indeed, that the PTAB is highly likely to institute further CBM review, at a minimum as to those patents which it already determined were likely invalid and had reached the eve of trial at the PTAB, which supports a stay. Alternatively, sound case management requires an informed plan of action or competing plans, preferably discussed among counsel for *all* parties, be presented. Respectfully submitted,

Date: July 15, 2015

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Case: 1:10-cv-00715 Document #: 609 Filed: 07/15/15 Page 5 of 5 PageID #:26525

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

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