



March 20, 2019

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

Re: The Options Clearing Corporation ("OCC") Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise The Options Clearing Corporation's Schedule of Fees Rel. No. 34-85322; File No. SR-OCC-2019-001 (the "Proposed Fee Increase")

Dear Mr. Fields:

Susquehanna International Group, LLP ("SIG") appreciates the opportunity to comment on the above-referenced Proposed Fee Increase. The fee increase is not reasonable and should be disapproved. Among other things, OCC has not justified the purpose of the fee increase, and ignores that it has ample capital and better alternatives to raise capital in any event.

The Securities Exchange Act of 1934 (the "Act") requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹ The burden is on the OCC to establish, and on the Securities and Exchange Commission (the "SEC" or "Commission") to determine, that the proposed fees are reasonable. Moreover, the Act requires that a clearing agency's rules be designed, in general, to protect investors and the public interest.² To the extent the Proposed Fee Increase is not reasonable, it harms, rather than protects, investors and the public interest.

In determining whether a rule filing is reasonable, the Commission must undertake a reasoned analysis supported by substantial evidence.³ In the Proposed Fee Increase rule filing, OCC once again fails to provide the Commission with a sufficient basis upon which to engage in reasoned decision-making or to conclude that the subject fee increase is reasonable.

I. The Proposed Fee Increase

In its rule filing, OCC proposed to increase its clearing fees for trades up to 999 contracts by 10% from \$0.05 per contract to \$0.055 per contract. OCC stated that the fee change is designed to enable OCC to accumulate capital to comply with SEC Rule 17Ad-22(e)(15), which requires OCC to hold as equity liquid

¹ 17 U.S.C. § 78q-1(b)(3)(D).

² 17 U.S.C. § 78q-1(b)(3)(F).

³ The SEC may not merely rely on assurances from OCC. See, *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017).

net assets equal to the greater of six months current operating expenses or the cost of recovery or orderly wind-down, and a viable plan for raising additional equity should its equity fall close to or below the amount required to be held.⁴

OCC also stated:

“...the [OCC] Board believes that the proposed fee change is necessary and advisable to ensure that OCC maintains sufficient liquid net assets to maintain its target capital level above \$247 million throughout 2019. This target capital requirement was determined based on a number of considerations including: (i) a baseline amount that is the greater of six months of projected operating expenses or the amount determined to ensure a recovery or orderly wind-down of critical operations and services; (ii) a value linked to OCC’s risk of potential business or operational losses; and (iii) the level of annual expenses from OCC’s budget (excluding one-time expenses).”⁵

OCC claimed that the fee increase is reasonable because:

1. “... it is designed to generate sufficient revenue and accumulate sufficient reserves in the form of liquid net assets to cover OCC’s operating expenses and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize (including through a recovery or orderly wind-down of critical operations and services) and thereby facilitate compliance with certain requirements of Rule 17Ad-22(e)(15)(ii).”⁶
2. “... it is the only way in which OCC can increase its capital as quickly as reasonably possible and in a manner that is consistent with its existing By-Laws and Rules.”⁷

II. OCC Has Not Established That The Fee Increase Is Reasonable

OCC is proposing to increase fees in order to fund an equity target amount that exceeds the level required by Rule 17Ad-22(e)(15). Such a proposal must be reviewed critically, because it implicates the very same conflicts of interest that discredited the OCC Capital Plan. That is, just as the OCC shareholder exchanges reaped outsized dividends resulting from escalated expenses under the Capital Plan, they may likewise receive a large distribution of cash upon a sale of OCC (and its oversized shareholders equity account). This provides the shareholders an incentive to raise expenses, as they directly impact the target capital level that may increase shareholder equity.⁸

⁴ Proposed Fee Increase rule filing, pp. 4-5. To be clear, OCC is implementing a new capital plan in replacement of its disapproved plan by means of an effective-upon-filing fee rule change.

⁵ *Id.*, pp. 6-7.

⁶ *Id.*, p. 9.

⁷ *Id.*, p. 10. OCC also noted that “... there no alternative means for OCC to increase its capital in a manner that is consistent with its existing By-Laws and Rules on a timely basis.” *Id.*, p. 7.

⁸ OCC has already increased its expenses at a compound annual growth rate of 14.86% from 2015 through 2017 under the disapproved Capital Plan, which was 6.5 times greater than OCC’s annual growth rate projection of 2.3% after its designation as a SIFMU. As the D.C. Circuit Court observed, the decision-making process to arrive at OCC’s now-disapproved Capital Plan was hardly “arm’s length”, and the instant fee proposal to increase OCC shareholder

In any event, the reasonability of any proposed fee increase whose purpose is to meet a given capital target necessarily depends, in part, on the reasonability of the capital target. Accordingly, OCC must properly justify any proffered equity capital target, and enable the Commission to engage in the reasoned decision-making it is required to exercise in its review of the same. As discussed below, OCC has failed in both respects.

a. OCC's Target Capital Requirement Is Not Justified

In a notice disseminated last month ("OCC Notice"), OCC indicated that in December 2018 its Management recommended, and its Board approved, maintaining OCC's target capital level at \$247 million. After the Commission's disapproval of the OCC Capital Plan on February 13, 2019, this target amount was reaffirmed by the Board later that month; and is the same target capital amount for which the Proposed Fee Increase is designed to accumulate capital to meet.⁹

In its Capital Plan rule filing, OCC explained that this \$247 million target capital requirement was comprised of \$226 million in operational risk plus \$21 million in pension risk. OCC also noted that the funding of the \$247 million target was comprised of \$117 million as baseline capital, representing six months projected operating expenses in compliance with Rule 17Ad-22(e)(15); and another \$130 million over and above the requisite amount as its target capital buffer.¹⁰ Accordingly, \$130 million of OCC's \$247 million target capital level is not required by Rule 17Ad-22(e)(15), and must be otherwise justified, as the purpose of the Proposed Fee Increase is to meet that target level.¹¹ To the extent a fee increase is collected to satisfy an unjustified target capital level, it is an unnecessary burden that is harmful to the interests of public investors, including through wider quotes.

The D.C. Circuit Court of Appeals previously found that the Commission's prior approval order of the OCC Capital Plan failed to support its conclusion that the self-same \$247 million capital target was reasonable; and that the Commission was in no position to make a reasoned finding that OCC's process for arriving at the same was sound, let alone that the capital target was reasonable.¹² Since the Court's remand of the prior approval order, OCC's submissions have neither justified, nor enabled the SEC to engage in reasoned decision-making to conclude, that the capital target is reasonable.

As we pointed out in our submissions opposing the OCC Capital Plan, the studies on which the capital target was based were hurried and flawed.¹³ Moreover, despite OCC's claims to the contrary, no consultant recommended that OCC adopt a target capital level of \$247 million.¹⁴ Rather, its consultant Oliver Wyman reported on what amount of losses were associated with various loss scenarios (not what

equity is no different. See, *Susquehanna*, 866 F.3d at 448. The Proposed Fee Increase is made in the shadow of the OCC shareholders' conflict of interest.

⁹ The OCC Notice is enclosed as Exhibit 1.

¹⁰ SEC Rel. No. 34-74136 (January 26, 2015), p. 6 – 8.

¹¹ The baseline amount described by OCC, which is the only amount required by Rule 17Ad-22(e)(15)(ii), must also be justified as a reasonable amount, as it is likewise subject to the aforementioned conflict of interest whereby OCC shareholder equity may increase the higher OCC sets its expenses.

¹² *Susquehanna*, 866 F. 3d at 449.

¹³ See, Petitioners' Submission on Remand, File No. SR-OCC-2015-02 (Nov. 30, 2017), pp. 19 – 21.

¹⁴ Amidst all the consultant reports and materials provided by OCC in support of its capital target, OCC never – because it cannot – cited to a quote from any consultant recommending that OCC raise \$247 million in equity capital.

amount of capital, if any, should be held to protect against these potential losses). These sets of scenarios and associated loss values were presented at different risk levels: 1-in-100 year risk level (\$105 million); 1-in-200 year risk level (\$136 million); and the extremely remote 1-in-1,000 year risk level (\$226 million). OCC has never explained (1) why it selected the 1-in-1,000 year risk level over the other two levels (or any other metric), and (2) why it determined that it needs to hold 100% of the loss value as capital – immediately – to protect against the identified loss scenarios, as opposed to buying insurance or pursuing other alternatives.¹⁵ Accordingly, OCC has never justified the \$226 million as a capital requirement on account of operational risk nor the \$21 million on account of pension risk, together comprising the \$247 million capital target.¹⁶

This failure is not remedied by OCC's assertions that its Board reaffirmed the target capital amount. OCC states that the target capital requirement "was determined based on a number of considerations including: (i) a baseline amount that is the greater of six months of projected operating expenses or the amount determined to ensure a recovery or orderly wind-down of critical operations and services; (ii) a value linked to OCC's risk of potential business or operational losses; and (iii) the level of annual expenses from OCC's budget (excluding one-time expenses)."¹⁷ This is precisely the sort of superficial summary description that, as found by the D.C. Circuit Court, failed to support reasoned decision-making by the Commission. Even at this late juncture in its capital funding efforts, OCC still seeks to prevail upon the SEC to "trust the process".¹⁸

b. No Basis For Characterization of Increasing Capital "As Quickly As Reasonably Possible"

As noted, OCC claimed that the Proposed Fee Increase is reasonable "because it is the only way in which OCC can increase its capital as quickly as reasonably possible and in a manner that is consistent with its existing By-Laws and Rules."¹⁹ It similarly claimed that "there are no alternative means for OCC to increase its capital in a manner that is consistent with its existing By-Laws and Rules on a timely basis."²⁰

OCC has not explained what "timely" or "as quickly as reasonably possible" mean. It has not explained what target date it has set for the accumulation of equity through the fee increase, let alone how and

¹⁵ It is difficult to imagine that OCC does not, in fact, carry insurance against potential losses. As a SIFMU, it would seem irresponsible not to. In that case, the wholesale pre-funding of potential losses is even more unnecessary.

¹⁶ Unlike its inadequate support for the \$226 million regarding operational risk, OCC has never offered any explanation or support whatsoever for the \$21 million regarding pension risk.

¹⁷ This last consideration is a new addition to the \$247 million target capital. In its Capital Plan submissions, OCC supported the target amount with only the baseline capital and loss scenario factors, so the addition of a new factor to arrive at the same dollar amount makes said amount that much more dubious.

¹⁸ The public is at a loss to meaningfully comment on OCC's determination of the appropriate level of the proposed fee increase, as the summary of its analysis was provided to the SEC in a confidential exhibit. This information should be shared openly to enable meaningful public commentary on whether the Proposed Fee Increase is reasonable. This issue, however, is secondary to the fact that the fee increase should be disapproved because its very purpose is unjustified. Moreover, the analysis summary will not provide a basis for reasoned decision-making by the Commission if it is as superficial as OCC's proffered basis for its capital target. Indeed, if OCC's support for its \$247 million capital target is not the discredited basis discussed above, then OCC has provided no basis – via confidential exhibits or otherwise – in support of its hollow summary points (nor explain how such new bases curiously arrive at the same \$247 million figure as its discredited approach). This includes, *inter alia*, the subject expenses on which the capital target is partially based and their respective justifications for the expense types and amounts, and how the same were determined.

¹⁹ Proposed Fee Increase rule filing, p. 10.

²⁰ *Id.*, p. 7.

why such date was set. In particular, it has not explained why it must “ensure that OCC maintains sufficient liquid net assets to maintain its target capital level above \$247 million throughout 2019,” when the operational risk metric used to arrive at that figure has a 1-in-1,000 year chance of occurrence.²¹

c. No Basis for Characterization That Fee Increase Is The “Only Way”

1. The Characterization Ignores SIG’s Offer

OCC provides no basis for its claims that the proposed fee increase is “the only way” to quickly increase OCC’s capital, and that “there are no alternative means”. It provided no analysis nor other foundation for this conclusory claim. Moreover, it ignores multiple clear alternatives, like SIG’s prior offer to finance OCC’s \$150 million claimed capital contribution need at the U.S. Treasury bill rate of return. We renew our offer now, up to \$250 million.

OCC’s prior protestations that SIG’s offer does not satisfy the requirement that the capital be in the form of equity are without merit. The financing may take the form of a loan to the shareholder exchanges to invest in OCC as equity, and the exchanges would simply pass through to SIG the Treasury bill rate of return from OCC. This would assure a low, fixed rate of return on the equity investment that is commensurate with the risk thereof. We have also offered to be flexible with OCC and the shareholder exchanges in exploring other avenues to provide such funding in order to satisfy the equity form requirement of Rule 17Ad-22(e)(15).²²

2. The Characterization Ignores The Recapture of Capital Plan Dividends

OCC also ignores the funding it should rightly receive – but has not – from the return of the \$78 million in dividends paid to the shareholder exchanges under the Capital Plan. Now that the Plan has been disapproved and is being unwound, OCC has or is returning to the shareholder exchanges their \$150 million investment (\$110 million now and \$40 million at a later date), *but has taken no action to retrieve the \$78 million in dividends paid out on said investment.*²³

OCC’s failure to recoup these dividends wrongfully and unfairly allows the shareholder exchanges to keep the \$78 million as free money, and should not stand. Rather, these monies should be returned as part of the unwinding of the disapproved Capital Plan.²⁴ The OCC By-Law Article IX Section 9

²¹ OCC’s portrayal of a tight time constraint, albeit unspecified and unsupported, ignores the Commission’s offer to consider OCC requests for exemptive relief while OCC seeks to come into compliance with Rule 17Ad-22(e)(15). OCC offers no reason to rush into a new capital plan, as it does with the Proposed Fee Increase.

²² As noted above, pursuant to Rule 17Ad-22(e)(15)(ii), only \$117 million of OCC’s claimed capital need must be in the form of equity. The balance is not so constrained and should be held in a non-equity account.

²³ The Proposed Fee Increase rule filing stated that the shareholder exchanges agreed to allow OCC to retain \$40 million of their capital contribution on a temporary basis, the return of which depends on multiple factors that are only partially identified and wholly unexplained. As made clear in section II.c.3 below, we believe this is unnecessary. Accordingly, it would be inappropriate for the temporary retention of this \$40 million to generate any investment return to the shareholder exchanges, as the amount of clearing fee revenue diverted to this unnecessary expense would render such fees to be not reasonable and harmful to investors and the public interest.

²⁴ The same is not true for refunds paid out under the Capital Plan, because the result of the Capital Plan on refunds was that they were cut in half.

amendment under the Capital Plan rule filing that provided for the subject dividends was disapproved, so the payments to the shareholder exchanges are not properly authorized and must be recouped.²⁵

Moreover, the shareholder exchanges' retention of the dividend payments maintains a condition that was expressly not found to be allowable. As OCC knows, the SEC disapproval of its Capital Plan was based, in part, on the Commission's inability to determine whether the Plan has burdened competition, as the Petitioners had argued. It was also based, in part, on the Commission's inability to determine that the rate of return provided by the dividends under the Plan was reasonable. The shareholder exchanges should not be allowed to retain the \$78 million dividends as they have not been shown to be a reasonable return on their investment, which was a critical question for the D.C Circuit Court; and would perpetuate the undue burden on competition against non-shareholder exchanges.

OCC acknowledged that it was "consistent with the SEC's order disapproving the Capital Plan" for OCC to retain the amounts that would have been issued as dividends and refunds for 2018.²⁶ It is likewise consistent that OCC receive back the dividends already paid out under the disapproved Capital Plan.

3. OCC Currently Has Ample Capital, And The Recapture of Dividends Would Raise OCC's Capital Above Its Capital Target

Pursuant to the aforementioned OCC Notice, the amount of retained 2018 refunds and dividends was about \$118 million, and after taxes about \$82 million. Adding this amount to the \$97 million of OCC equity that remains after the return of the shareholder exchanges' investment (i.e., \$247 million - \$150 million = \$97 million) equals \$179 million.²⁷ This amount, which OCC currently holds, provides a substantial buffer above OCC's required \$117 million equity capital level. It also far exceeds OCC's identified potential loss values, inclusive of OCC's alleged \$21 million pension risk, at the 100 year and 200 year risk levels (\$126 million and \$157 million, respectively); and, it is 72% of OCC's \$247 million target for a 1,000 year risk level.

The recoupment of the \$78 million in unauthorized dividends would then increase the currently held \$179 million capital balance to \$257 million, which is \$10 million more than OCC's claimed capital target. Accordingly, OCC appears to currently hold ample capital, and the appropriate recoupment of the Capital Plan Dividends would place OCC above its claimed capital needs.

d. No Basis For A Fee Rate Set For An "Excess" Over The \$247 Million Capital Target

OCC asserts that the fee change is necessary to ensure that OCC maintains "sufficient liquid net assets to maintain its target capital level *above* \$247 million throughout 2019."²⁸ (emphasis added) It likewise acknowledges that OCC sought to determine "the level of fees necessary to ensure that OCC continues to maintain liquid net assets *in excess* of [its target capital requirement]."²⁹

²⁵ The now disapproved amendment language was, "Excess net income resulting from fees calculated pursuant to this section may be distributed as a dividend to the stockholders in accordance with the Corporation's dividend policy as may be in effect from time to time."

²⁶ Exhibit 1.

²⁷ This amount is exclusive of the \$40 million that OCC intends to return to the shareholder exchanges as a return of investment.

²⁸ Proposed Fee Increase rule filing, p. 6.

²⁹ *Id.*, p. 7.

Having reaffirmed \$247 million as OCC's target capital level, OCC makes no case for raising capital above this amount.³⁰ As discussed, this target capital amount already comprises a \$130 million buffer above OCC's required \$117 million equity requirement, which buffer is set at an extremely remote 1-in-1,000 year risk level; and OCC offers no justification for a further "buffer of the buffer".

Nor does OCC say how far above the target capital level the fee increase is designed to achieve, let alone justify such margin and explain how it was determined. Accordingly, the Proposed Fee Increase should be disapproved because the margin above OCC's target capital level that the fee is designed to reach is undefined and, like the capital target itself, unjustified.

e. OCC Outreach Is Not A Basis For Reasonability

The Rule Filing includes a section entitled "Clearing Member Outreach" wherein it references the aforementioned OCC Notice, a fee change notice, unanimous OCC Board approval (the majority of whom were the same Board members who approved the Capital Plan or representatives of the same shareholder exchanges), and a conference call with "industry participants". Presumably this was to lend credence to OCC's claim that the proposed fee increase is reasonable.

If that is so, then OCC's Outreach discussion fails. It does not supplant the Commission's independent responsibility to engage in reasoned decision-making to determine whether the fee increase is reasonable and protects, rather than harms, public investors. OCC's unilateral notices lend nothing in this regard in any event, and the vote of the OCC Board is clearly another appeal for the Commission to simply "trust the process".

The conference call with "industry participants" offers little in the way of support, and raises more questions than it answers. OCC says that the feedback from the call "primarily consisted of questions concerning the length of time that the fee increase would need to be in place before OCC could reduce fees," but OCC curiously offered no answer to this question.³¹

OCC noted that "there were no specific objections to the fee increase raised during the call," but OCC provides no information about who the unidentified "industry participants" were, how many participated, who was invited to the call, and how invitees were determined. If OCC was genuinely interested in industry feedback on the proposed fee increase, it is curious that SIG was not invited in view of our demonstrated familiarity with, and active participation regarding, OCC's equity capital accumulation efforts. To our knowledge, the other petitioners opposed to OCC's Capital Plan were likewise unaware of, and not invited to, OCC's conference call. In any event, the alleged lack of objection of an unknown amount of unidentified "industry participants", whatever that means, is not a credible corroboration of the claimed reasonability of the proposed fee increase.³²

³⁰ See, Exhibit 1.

³¹ Notwithstanding that the Proposed Fee Increase should be disapproved in any event, the lack of a sunset provision terminating the rate increase when it fulfilled its express limited purpose of reaching the OCC capital target is a material disconnect between the Proposed Fee Increase and its intended purpose. The addition of any such provision, however, would not have remedied any of the reasons that it should be disapproved regardless.

³² It is, rather, emblematic of the type of superficial support by OCC for its disapproved Capital Plan and instant Proposed Fee Increase that was discredited by the D.C. Circuit Court.

III. Conclusion

The Proposed Fee Increase is part of a set of measures discussed in the OCC Notice that inappropriately benefit the exchange shareholders at the expense of market participants – including the maintenance of a \$247 million capital target, the return of the shareholder exchanges' \$150 million investment without recouping the \$78 million return on that investment, and the fee increase to raise OCC equity. These measures provide the exchanges with unwarranted cash now and equity that may be monetized upon a sale of OCC. Like the inflated budgets under the OCC Capital Plan, the shareholder exchanges are incented to maintain a high equity capital target, because they stand to realize the resultant equity value upon a sale of OCC. Any protestations that the shareholder exchanges have no current plans to sell OCC do not change this fact.

These circumstances are unnecessary and unjustified. Any capital held by OCC above its \$117 million baseline need not be in the form of equity, and may be held in a non-equity account for the benefit of the OCC clearing members who paid into said funds rather than the shareholder exchanges who did not. It would therefore be inequitable for the shareholder exchanges to have any claim to this money. Moreover, the maintenance of such capital as non-equity mitigates the incentive to set an unduly high capital target and impose undue fee increases to finance the same.³³

The instant proposed fee increase is unreasonable. Its express purpose is to fund an unidentified and unsupported margin above a capital target that is unjustified, on an unidentified timetable that is likewise unjustified. It ignores faster and much cheaper ways to raise capital, as well as the fact that OCC has ample capital already. In any event, OCC has not enabled the Commission to exercise reasoned decision-making to conclude that the fee increase is reasonable and that it will protect, rather than harm, public investors.

OCC's monopoly has been accepted for decades because of its market utility model. That approach was more workable when OCC was owned by exchanges who themselves were owned by the self-same members who paid OCC fees, but is now dubiously conflict-prone under its ownership by de-mutualized, for-profit exchanges. This makes it all the more important to safeguard OCC's market utility model.

As a market utility, it is important that OCC refrain from setting its target capital too high, because it would in that event operate unduly as a for-profit enterprise inuring to the benefit of the shareholder exchanges. Rather, as discussed above, money retained by OCC above the amount required by Rule 17Ad-22(e)(15)(ii) should go to a non-equity account that OCC may use if needed, but is otherwise for the benefit of clearing members. Alternatively, if OCC acts as a for-profit entity, other clearing corporations should be allowed to compete against OCC. OCC cannot defend its monopoly while exploiting that status at the indulgence of the very persons who bear the burden of any OCC excesses.

³³ The Rule 17Ad-22(e)(15)(ii) requirement to maintain at least six months of operating expenses as equity (if greater than recovery or wind-down costs) may incent the shareholder exchanges to increase OCC expenses in order to increase their equity account, but there is no need to gratuitously exacerbate this conflict of interest by holding funds over this amount as equity.

For the reasons discussed above, the proposed fee increase should be disapproved. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "Richard J. McDonald", with a stylized flourish at the end.

Richard J. McDonald

Encl.

Exhibit 1

On February 13, 2019, the Securities and Exchange Commission disapproved OCC's Capital Plan. It is vital for OCC, a systemically important financial market utility and the sole provider of clearance and settlement services for the U.S. listed options market, to remain appropriately capitalized at all times. The Commission's disapproval of the Capital Plan relates to OCC's capital available to cover operational risks. It does not affect OCC's financial resources available to protect against a clearing member default, which are sized to cover the simultaneous default of OCC's two largest clearing members in extreme but plausible scenarios. Those resources remain over \$8.5 billion, in addition to margin collateral holdings at OCC.

Following the Commission's action, on Friday, February 22, 2019, OCC's Board approved Management's recommendation to take the following actions:

Target Capital: On an ongoing basis, OCC evaluates the amount of equity capital we need in accordance with regulatory obligations that require OCC to hold liquid net assets funded by equity sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize. To determine our target capital, we take into consideration multiple dimensions which include: (i) a baseline amount that is the greater of six months of projected "operating expenses" or the amount determined to ensure a recovery or orderly wind-down of critical operations and services; (ii) a value linked to our risk of operational loss; and (iii) the level of annual expenses from our budget, not including one-time expenses. Based upon our review, in December 2018 Management recommended, and the Board approved, maintaining the target capital level at \$247 million. This result was reaffirmed by the Board at Friday's meeting.

Refunds and Dividends: Consistent with the SEC's order disapproving the Capital Plan and associated OCC policies, the Board agreed to retain amounts that otherwise would have been issued as refunds and dividends for 2018 in order to maintain OCC's target capital level. As previously advised, these amounts were estimated to be a refund in the aggregate amount of \$59 million and dividends to shareholders in the aggregate amount of \$44 million. The retention of the excess risk buffer of \$48 million is unchanged. Since the Commission's approval of the capital plan in March 2015, OCC has issued refunds to clearing members in the aggregate amount of \$268 million.

Clearing Fees: In order to lay the foundation for further work to be done on the regulatory requirement to have a means of "replenishing" target capital should a significant operational loss occur, pending regulatory approval, the Board agreed to raise clearing fees by one half of one cent from \$0.05 to \$0.055. The revised fee schedule, effective April 1, 2019, would be: 1-999 contracts, \$0.055; 1,000 + contracts, \$55. Management will be working with Broadhaven Capital Partners, LLC to further refine the replenishment methodology as well as OCC's longer-term approach to our clearing fee structure.

Return of Investment: While OCC currently has sufficient capital to meet our target capital level the Stockholder Exchanges have agreed to allow OCC to retain \$40 million of their initial capital contribution at this time to be repaid at a later date provided that such repayment does not cause OCC's liquid net assets funded by equity to fall below the \$247 million target capital level. The

remaining \$110 million will be returned to OCC's shareholders by the end of the month, proportional to their original investments. The shareholders willingness to leave \$40 million with OCC helps address short term cash flow needs while continuing to meet our target capital requirement.

As a result of the SEC's action, on February 21, 2019, S&P placed OCC on CreditWatch Negative and will evaluate OCC in three months to review progress toward the development of a plan to help ensure that it remains adequately capitalized at all times and in compliance with all applicable regulations. This action by S&P serves as a reminder of OCC's need to take immediate action on this important matter. While we remain disappointed that the Commission disapproved the Capital Plan, we believe the actions described herein are necessary and appropriate in light of the SEC's action to help ensure OCC maintains a target capital level aligned with regulatory expectations and maintain confidence in the markets that we serve.

Please feel free to reach out to your regular OCC contacts or any of us if you have further questions on this matter. OCC will host clearing member conference calls on this matter later in the week.

Sincerely

Craig Donohue
Executive Chairman

John P. Davidson
Chief Executive Officer

Scot Warren
Chief Operating Officer