



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

February 27, 2019

Joseph P. Kamnik  
Options Clearing Corporation  
125 S. Franklin Street  
Suite 1200  
Chicago, IL 60606

Re: Options Clearing Corporation (“OCC”)  
Request Regarding Certain Timing Requirements for Posting Audited Financial  
Statements

Dear Mr. Kamnik:

In your letter dated February 26, 2019 (“Request”),<sup>1</sup> you request assurances that the Division of Trading and Markets (“Staff”) will not recommend that the Securities and Exchange Commission (“Commission”) take enforcement action against OCC under Rule 17Ad-22(c)(2), promulgated under the Securities Exchange Act of 1934 (“Exchange Act”), or Exchange Act Section 19(g)(1) if OCC does not post its annual audited financial statements and the accompanying reports of its independent public accountant (“2018 Annual Report”) on its website or provide the 2018 Annual Report to its clearing members within 60 days after the end of OCC’s fiscal year. The Request states that OCC will make its 2018 Annual Report available (by posting on its website as required by Rule 17Ad-22(c) and by furnishing to its clearing members as required by OCC Rule 213)<sup>2</sup> no later than March 31, 2019.

Based on the Request, we understand the facts to be as follows:

OCC is currently registered with the Commission as a clearing agency and, as such, is a self-regulatory organization (“SRO”) under the Exchange Act.<sup>3</sup> As a registered clearing agency, OCC is subject to Exchange Act Rule 17Ad-22(c),<sup>4</sup> which requires OCC to post its annual audited financial statements on its website within 60 days after the end of its fiscal year.<sup>5</sup>

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<sup>1</sup> A copy of the Request is attached.

<sup>2</sup> A copy of OCC’s Rules is available at [https://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/occ\\_rules.pdf](https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf).

<sup>3</sup> See 15 U.S.C. 78c(a)(26).

<sup>4</sup> 17 C.F.R. 240.17Ad-22(c)(2).

<sup>5</sup> Id.

As an SRO, OCC is also subject to Section 19(g)(1) of the Exchange Act,<sup>6</sup> which, in relevant part, requires that every SRO shall comply with its own rules.<sup>7</sup> OCC's Rule 213 requires furnishing each of OCC's clearing members a copy of OCC's 2018 Annual Report within 60 days following the close of the fiscal year.<sup>8</sup>

OCC's fiscal year ends on December 31. In accordance with the requirement of Rule 17Ad-22(c)(2), OCC would ordinarily publish its 2018 Annual Report to its website by March 1 of 2019. Similarly, in accordance with the requirement of OCC Rule 213, OCC would ordinarily furnish its clearing members with a copy of OCC's 2018 Annual Report by March 1 of 2019.

On February 13, 2019, the Commission issued an order disapproving a previously-approved proposed rule change implementing a plan that significantly increased OCC's capitalization ("Disapproval Order").<sup>9</sup> OCC states that it needs to evaluate if there has been a material impact to its 2018 financial statements and disclosures, and therefore, its independent public accountants will require time to adequately perform the review in order to issue its opinion.

As a result, OCC believes that it will be unable to post its 2018 Annual Report to its website or to furnish its clearing members with a copy of OCC's 2018 Annual Report by March 1, 2019.

Response:

Based upon the facts and representations made in the Request, but without necessarily concurring with your conclusions or analysis, Staff would not recommend enforcement action to the Commission under Exchange Act Rule 17Ad-22(c)(2) or Exchange Act Section 19(g)(1), if OCC posts or distributes its 2018 Annual Report no later than March 31, 2019.

This Staff position is based strictly on the facts and circumstances discussed in this letter, and any different facts and circumstances may require a different response. Furthermore, this response expresses the Staff's position regarding enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation at any time.

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<sup>6</sup> See 15 U.S.C. 78s(g).

<sup>7</sup> Id.

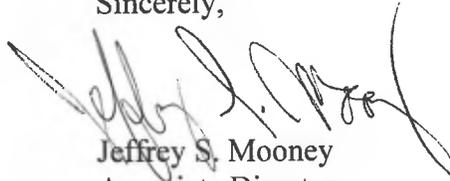
<sup>8</sup> OCC Rule 213.

<sup>9</sup> Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR-OCC-2015-02).

Mr. Kamnik  
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If you have any questions regarding this letter, please call me at (202) 551-5712 or Moshe Rothman at (202) 551-5645.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Mooney". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jeffrey S. Mooney  
Associate Director

Attachment



**THE FOUNDATION  
FOR SECURE  
MARKETS**

Options Clearing Corporation  
125 S. Franklin Street, Suite 1200  
Chicago, IL 60606  
312 322 6200 | theocc.com

February 26, 2019

**VIA ELECTRONIC MAIL**

Mr. Jeffrey Mooney, Associate Director  
Office of Clearance and Settlement,  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

RE: Request for No-Action Relief from Rule 17Ad-22(c)(2) promulgated under the Securities Exchange Act of 1934 and from Section 19(g)(1) of the Securities Exchange Act of 1934

Dear Mr. Mooney:

We are writing to request that staff of the Division of Trading and Markets (“Division”) of the U.S. Securities and Exchange Commission (“Commission”) confirm, on an expedited basis, that it will not recommend that the Commission take enforcement action against The Options Clearing Corporation (“OCC”) under Rule 17Ad-22(c)(2) promulgated under the Securities Exchange Act of 1934 (“Exchange Act”) nor under Section 19(g)(1) of the Exchange Act if OCC does not post its 2018 annual audited financial statements and the accompanying reports of its independent public accountant on its website (“Annual Report”) within 60 days after the end of OCC’s fiscal year.

**Introduction and Background**

OCC is currently registered with the Commission as a clearing agency and, as such, is a self-regulatory organization (“SRO”) under the Exchange Act.<sup>1</sup> As a registered clearing agency, OCC is subject to Exchange Act Rule 17Ad-22(c),<sup>2</sup> which requires OCC to post its annual audited financial statements on its website within 60 days after the end of its fiscal year.<sup>3</sup>

As an SRO, OCC is also subject to Section 19(g)(1) of the Exchange Act,<sup>4</sup> which, in relevant part, requires that every SRO shall comply with its own rules.<sup>5</sup> OCC Rule 213 requires

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<sup>1</sup> See 15 U.S.C. 78c(a)(26).

<sup>2</sup> 17 C.F.R. 240.17Ad-22(c)(2).

<sup>3</sup> *Id.*

<sup>4</sup> See 15 U.S.C. 78s(g)(1).

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

furnishing each of OCC's clearing members a copy of OCC's Annual Report within 60 days following the close of the fiscal year.<sup>6</sup>

OCC's fiscal year ends on December 31. In accordance with the requirement of Rule 17Ad-22(c)(2), OCC ordinarily publishes its Annual Report to its website by March 1 of each year. Similarly, in accordance with the requirement of OCC Rule 213, OCC ordinarily furnishes its clearing members with a copy of OCC's Annual Report by March 1 of each year.

On February 13, 2019, the Commission issued an order disapproving a previously approved rule change implementing a plan that significantly increased OCC's capitalization ("Capital Plan").<sup>7</sup> Due to the timing and complexity of the Commission's disapproval order, OCC needs to evaluate if the Commission's disapproval order has a material impact to its 2018 financial statement and disclosures. In addition, OCC's auditor is currently performing a review in order to issue its opinion in light of the Commission's disapproval order.

Given the potential impact of the changes resulting from the Commission's disapproval order on OCC's financial statements and the timing of the Commission's issuance of the disapproval order (10 business days prior to March 1), it is not possible for OCC to post its Annual Report to its website or to furnish its clearing members with a copy of OCC's Annual Report by March 1, 2019.

### Analysis

OCC believes that granting no-action relief is consistent with the public interest and the protection of investors. The Commission adopted Rule 17Ad-22(c)(2) to provide an "additional layer of information about the activities and financial strength of [a] clearing agency that market participants may find useful in assessing their use of the clearing agency's services."<sup>8</sup> Consistent with the Commission's intent behind Rule 17Ad-22(c)(2), it is in the public's interest and consistent with investors' protection for market participants to receive audited financial statements that correctly reflect the impact of the Commission's disapproval order.

The potential impact of the changes to OCC's financial statements resulting from the Commission's disapproval order and the timing of the Commission's issuance of the disapproval order make it impossible for OCC to post its Annual Report to its website or to furnish its clearing members with a copy of OCC's Annual Report by March 1, 2019. OCC and its auditor will need more than 10 business days to evaluate, make and review any necessary changes to OCC's

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<sup>6</sup> The accompanying reports of OCC's independent public accountant are explained in OCC Rule 213 as: "(i) the Corporation's audited financial statements for such fiscal year, together with the report of the Corporation's independent public accountants thereon, and (ii) a report by the Corporation's independent public accountants on the Corporation's system of internal accounting control, describing any material weaknesses discovered and any corrective action taken or proposed to be taken."

<sup>7</sup> SEC Release No. 34-85121.

<sup>8</sup> Clearing Agency Standards, 77 Fed. Reg. 66220, 66244 (Nov. 2, 2012).

financial statements. Accordingly, no-action relief from the March 1 deadline is necessary for OCC, in the public's interest and consistent with investors' protection.

OCC believes that granting no-action relief also is consistent with the purposes of Section 17A of the Exchange Act. In relevant part, Section 17A(a)(1) of the Exchange Act establishes that inefficient procedures may impose unnecessary costs on investors and persons facilitating transactions on behalf of investors.<sup>9</sup> Granting no-action relief to provide OCC and its auditor sufficient time to adjust OCC's financial statements to correctly reflect the impact of the Commission's disapproval order will improve the efficiency and accuracy of the process by which clearing members and market participants consume such information. Furthermore, granting no-action relief would not be inconsistent with the purpose of prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

#### **No-Action Relief Requested**

For the reasons provided above and given the time-sensitive nature of the relief requested, OCC seeks expedited confirmation from Division staff that it would not recommend that the Commission take enforcement action against OCC under Exchange Act Rule 17Ad-22(c)(2) or Exchange Act Section 19(g)(1) if OCC does not post its 2018 Annual Report on its website or provide the Annual Report to its members within 60 days after the end of OCC's fiscal year. As a condition of any no-action relief granted by Division staff, OCC would agree to make its 2018 Annual Report available (by posting on its website as required by Rule 17Ad-22(c) and by furnishing to its clearing members as required by OCC Rule 213) no later than March 31, 2019. OCC believes that, due to the potential impact of the Commission's disapproval order and the timing of the order, a 30-day period during which OCC and its independent auditors can evaluate if there is a material impact to its financial statement or disclosures, so that OCC and its independent auditor can evaluate the complexity and the need for tax review of the return of investment capital to shareholders, and OCC's independent auditor can adequately perform its review in order to issue its opinion.<sup>10</sup>

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<sup>9</sup> 15 U.S.C. 78q-1(a)(1).

<sup>10</sup> If OCC and its external auditor are able to conduct the necessary analysis and post its 2018 Annual Report on its website prior to the March 31, 2019, it will do so.

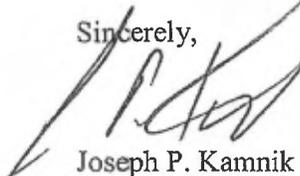
Mr. Jeffrey Mooney, Associate Director

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If you should have any further questions or require additional information, please do not hesitate to contact the undersigned at [jkamnik@theocc.com](mailto:jkamnik@theocc.com) or (312) 322-7570.

Sincerely,



Joseph P. Kamnik  
Chief Regulatory Counsel

CC: Brett Redfearn, Director, Division of Trading and Markets  
Christian Sabella, Deputy Director, Division of Trading and Markets  
Jeffrey Mooney, Associate Director, Office of Clearance and Settlement, Division of  
Trading and Markets  
Moshe Rothman, Assistant Director, Office of Clearance and Settlement, Division of  
Trading and Markets