



**THE FOUNDATION  
FOR SECURE  
MARKETS**

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

August 30, 2024

**FOIA Request for Confidential Treatment  
Pursuant to 5 U.S.C. 552(b) and 17 C.F.R. §§ 40.8 and 145.9**

**VIA Email (FOIAsubmissions@cftc.gov)**

CFTC FOIA Compliance Office  
1155 21st Street N.W.  
Washington, DC 20036  
FOIAsubmissions@cftc.gov

**Re: FOIA Request for Confidential Treatment**

Dear Sir or Madam:

The Options Clearing Corporation (“OCC”) has on this date provided Exhibits B through D to its Rule Certification concerning its backtesting framework and to establish a Resource Backtesting Margin Charge pursuant to CFTC Regulation 40.6, which has also been submitted to U.S. Securities and Exchange Commission (“SEC”) as File No. SR-OCC-009. In accordance with the provisions of 17 C.F.R. § 40.8, OCC submits this Application for Confidential Treatment of the Confidential Material (the “Application”).

Confidential treatment is requested, *inter alia*, on the grounds that the Confidential Material contains commercial and financial information that is exempt from disclosure under paragraph (b)(4) of the Freedom of Information Act (“FOIA”), , 5 U.S.C. § 552. *See Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427 (2019) (information “confidential” under FOIA exemption when both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy). Nonpublic treatment is appropriate for the Confidential Material, because it contains commercial and financial information that is not customarily released to the public and is, and always has been, treated as the private information of OCC. Release of the Confidential Material is likely to cause foreseeable harm to OCC’s commercial or financial interests. OCC protects the Confidential Material by maintaining it on OCC’s secure and encrypted systems, submitting it through secure portals, and marking it as “Business Sensitive” or “Confidential” pursuant to OCC’s Information Classification Policy. In addition, OCC is providing the Confidential Material based on its understanding that paragraph (b)(4) of FOIA, the Commission’s related regulations, and the Commission’s prior practice with respect to confidential material submitted in furtherance of the Commission’s review of OCC’s submissions assure that the Confidential Material will be afforded confidential treatment.

Confidential treatment is also requested on the grounds that the Confidential Material concerns the supervision of OCC, a financial institution regulated by the Commission and the SEC, under FOIA

**CONFIDENTIAL TREATMENT REQUESTED BY OCC**

**CFTC FOIA Compliance Office**

**August 30, 2024**

**Page 2**

paragraph (b)(8) and CFTC Regulation 145.5(h). *See Pub. Investors Arb. Bar Ass'n v. SEC*, 771 F.3d 1 (D.C. Cir. 2014) (records collected by SEC while examining a FINRA program for arbitrating disputes between securities brokers and their customers fell within the scope of FOIA exemption). OCC is providing the Confidential Information to the Commission and the SEC to aid in their supervision of OCC. Public disclosure of the Confidential Information would threaten the security and integrity of OCC and the markets that it serves and harm cooperation and communication between the Commission and the financial institutions that it regulates.

In accordance with the provisions of paragraph (d)(5) of Commission Regulation 145.9, we request that the Confidential Materials be afforded confidential treatment in perpetuity.

OCC understands that if the CFTC receives a FOIA request for the Confidential Material, we will be notified of such request in accordance with the CFTC's regulations and will be asked to submit, within ten business days, a detailed written justification for confidential treatment of the Confidential Material. *See Executive Order 12600*, 52 Fed. Reg. 23781 (June 23, 1987) (detailing pre-disclosure notification procedures under FOIA). In such event, we request that CFTC staff telephone or email the undersigned rather than rely upon United States mail for such notice.

OCC hereby consents to the CFTC's furnishing any information subject to confidential treatment requested hereunder to other governmental agencies, offices or bodies and to the U.S. Congress. If the CFTC or its staff transmits any of the Confidential Material to another governmental agency, office or body or to the U.S. Congress, we request that you forward a copy of this letter to any such agency with the Confidential Material and further request that you advise any such party that OCC has requested that this material be accorded confidential treatment.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any sort whatsoever that are made by, or at the request of, any employee of the CFTC (or any other federal agency) and which (1) incorporate, include or relate to any aspect of the Confidential Material; or (2) refer to any conference, meeting, or telephone conversation between OCC, its current or form employers, representatives, agents, auditors or counsel on one hand and employees of the CFTC (or any other governmental agency) on the other, relating to the Confidential Material.

Any questions regarding the Application should be directed to the attention of the undersigned at (312) 322-6200, rulefilings@theocc.com or 125 S. Franklin Street, Suite 1200, Chicago, Illinois 60606.

Sincerely,

/s/ Mark C. Brown

Mark C. Brown  
Associate General Counsel  
The Options Clearing Corporation

**CONFIDENTIAL TREATMENT REQUESTED BY OCC**