



THE OPTIONS CLEARING
CORPORATION

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2004 JUN -4 PM 12:36

June 3, 2004

TAC 7-1/39

Jean a. Webb
Secretary
The Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Order Permitting Commingling of Funds

Dear Ms. Webb:

Introduction. The Options Clearing Corporation (“OCC”) intends to establish an internal cross-margining program that will permit a Clearing Member that is both a broker-dealer registered as such under the Securities Exchange Act of 1934 and a futures commission merchant registered as such under the Commodity Exchange Act (the “CEA”) to establish with OCC a non-proprietary account for market professionals in which security options and security futures that are cleared by OCC in its capacity as a securities clearing agency (“Securities Products”) may be cross-margined with security futures, commodity futures and options on commodity futures that are cleared by OCC in its capacity as a derivatives clearing organization (“DCO”) registered as such under the CEA (“Commodity Products”).

Benefits of Cross-Margining. Cross-margining, in the form contemplated by OCC, refers to the practice of combining long and short positions in Securities Products with long and short positions in Commodity Products in a single portfolio, and determining the net risk of the combined portfolio. To the extent that positions in the account are offsetting from a risk perspective (i.e., are on opposite sides of the market), the margin required on the portfolio may be reduced relative to the margin that would be required if the positions were carried separately—an obvious potential benefit to Clearing Members and their customers. Cross-margining has long been recognized as a means of reducing systemic risk by ensuring that gains on positions representing one side of the market can be immediately applied to losses on the other, thus reducing the reliance on cash and other assets having a fixed value or a value that may have the same risk profile as the obligation it secures. Cross-margining has been endorsed by various Presidentially appointed task forces and other economic policy makers over the years.

The Commission itself has issued numerous orders approving cross-margining programs involving OCC. For the convenience of the Commission, several of these are listed on the attached Exhibit A.

JEAN M. CAWLEY

FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

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Segregation Requirement. Section 4d(a) of the CEA provides as follows:

It shall be unlawful for any person to engage as a futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contract market or derivatives transaction execution facility unless—

(1) [omitted] and

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades of contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held[.]

The term “customer” as used in Section 4d means a commodity customer as defined in the CEA. Section 4d is accordingly interpreted to prohibit commingling of money, securities and property of commodity customers with money, securities and property of securities customers—even if the commodity and securities customers are the same persons. But this commingling is of the essence of a cross-margining program.

Relief Requested. The purpose of this letter is to request that the Commission prescribe by order that any money, securities, or property received by a Clearing Member in its capacity as a futures commission merchant with respect to a non-proprietary cross-margining account for market professionals and required to be separately accounted for and treated as the property of commodity customers may be commingled with money, securities, and property received by the same Clearing Member in its capacity as a registered broker-dealer for securities customers.

Statutory Basis for Granting Relief. The second proviso in Section 4d(a)(2) (the “Second Proviso”) authorizes the Commission to prescribe by rule, regulation, or order the terms and conditions in accordance with which money, securities, and property of the customers of a futures commission merchant may be commingled and deposited as provided in that section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant.



Terms and Conditions of Relief. An order under the Second Proviso must prescribe the terms and conditions under which relief from the segregation requirements may be granted. In order to conform to prior orders, the terms and conditions would be:

- (a) Each participating market professional execute a Market Professional's Agreement for Internal Cross-Margining with OCC and the applicable participating clearing firm;
- (b) OCC, each participating clearing firm, and each depository separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;
- (c) OCC, each participating clearing firm, each participating market professional, and each depository provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;
- (d) each participating clearing firm include all cross-margining property received from participating market professionals to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions, or securities option transactions, when calculating segregation requirements for purposes of Section 4d(a) of the Act;
- (e) each participating clearing firm compute total segregation requirements under Section 4d(a) of the CEA and Commission Regulation 1.32, 17 CFR 1.32, by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;
- (f) each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;
- (g) OCC calculate the margin requirements for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts, collect any margin required with respect to non-proprietary cross-margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades,



contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals; and

(h) OCC satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds.

We enclose for the convenience of the Commission a copy of the proposed rule change, as filed with the Securities and Exchange Commission (the "SEC") on June 3, 2004. Item 3 in particular provides additional information about cross-margining in general and the internal cross-margining program that is the subject of this letter. In accordance with a discussion between our counsel and the Commission staff, OCC will file the attached rule change with the Commission and certify its compliance with the CEA as soon as OCC is notified that the requested relief has been granted. OCC respectfully requests that this relief be granted in time to make the rule change effective simultaneously with its effectiveness at the SEC, which may be obtained within approximately 30 days of the filing date.

Very truly yours,

The Options Clearing Corporation

By: 

Jean M. Cawley
First Vice President and
Deputy General Counsel

JC/sd
060304-webbltr

Cc: John Lawton
Chief Counsel
Division of Clearing and Intermediary Oversight



EXHIBIT A

CFTC Orders Approving Cross-Margining Programs Involving OCC

1. Order of June 1, 1988, approving the proprietary cross-margining system proposed by the Intermarket Clearing Corporation ("ICC") and OCC.
2. Order of September 26, 1989, approving the proprietary cross-margining system proposed by the Chicago Mercantile Exchange ("CME") and OCC.
3. Order of November 26, 1991, approving the expansion of the ICC/OCC cross-margining system to include cross-margining of positions of market professionals in non-proprietary accounts of participating Clearing Members.
4. Order of November 26, 1991, approving the expansion of the CME/OCC cross-margining system to include cross-margining of positions of market professionals in non-proprietary accounts of participating Clearing Members.
5. Order of June 2, 1993, approving the proposals of CME and ICC to implement a tri-lateral cross-margining program with OCC.
6. Amended Order of January 22, 1996, superseding the Order of June 2, 1993 to reflect approval of proposed changes to the CME/ICC/OCC cross-margining program for proprietary and market professional accounts to incorporate the provisions of Appendix B, Framework 1 to the Commission's Part 190 Regulations and related proposed rule amendments.
7. Amended Order of January 22, 1996, superseding the Order of November 26, 1991 (relating to the ICC) to reflect approval of proposed changes to the ICC/OCC cross-margining program for proprietary and market professional accounts to incorporate the provisions of Appendix B, Framework 1 to the Commission's Part 190 Regulations and related proposed rule amendments.



THE OPTIONS CLEARING
CORPORATION

June 3, 2004

VIA COURIER DELIVERY

Jerry W. Carpenter
Assistant Director
Division of Market Regulation
Mail Stop 10-1
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

**Re: The Options Clearing Corporation
File No. SR-OCC-2004-10**

Dear Jerry:

The Options Clearing Corporation hereby files a manually signed original and eight copies of the referenced rule change. This rule change proposes to establish an internal cross-margining program as described more fully in the filing.

This filing is being made pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder. However, at a later date, OCC may request that the Commission accelerate its approval of this filing. The Chicago Board Options Exchange recently has received SEC approval to trade options on variability indexes ("variability options"). Such index options could be cross-margined with commodity futures on variability indexes that are traded on CFE, a CBOE subsidiary, and cleared by OCC. See 34-49563 and 34-49698. Although CBOE will not be able to commence trading variability options until the Commission has approved a supplement to the options disclosure document, OCC recently filed such supplement with the Commission on behalf of the options exchanges. We have requested that the Commission approve the proposed supplement on an accelerated basis. CBOE further has requested that OCC provide cross-margining when it commences trading in variability options.

The Federal Register notice for this filing will be emailed to you.

JEAN M. CAWLEY

FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

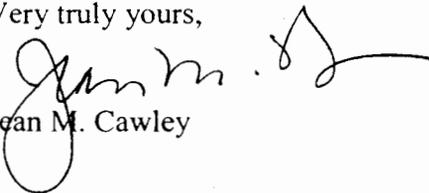
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Please call me at (312) 322-6269 with any questions you may have on this filing.

Very truly yours,


Jean M. Cawley

JC/sd
2004-10sec.ltr

File No. SR-OCC-2004-10

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

**Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934**

Item 1. Text of the Proposed Rule Change

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend its By-Laws and Rules as set forth below to create an internal cross-margining program that will permit a Clearing Member to establish a non-proprietary account for market professionals in which securities and security futures that are cleared by OCC in its capacity as a securities clearing agency may be cross-margined with commodity futures and options on such futures that are cleared by OCC in its capacity as a derivatives clearing organization (“DCO”) registered as such under the Commodity Exchange Act (the “CEA”).

Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets. Material proposed to be added in a pending rule change filing is double underlined.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE I

Definitions

* * *

Definitions

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A. – H. [no change]

I.

(1)-(6) [no change]

Internal Non-Proprietary Cross-Margining Account

(7) The term “internal non-proprietary cross-margining account” means an account with the Corporation carried by a Clearing Member in which positions of non-proprietary Market Professionals in cleared contracts that are eligible for cross-margining treatment in accordance with Article VI, Section 25 of the By-Laws are maintained.

(7)-(10) [redesignated as (8)-(11), but otherwise no change]

J. – L. [no change]

M.

(1)-(5) [no change]

Market Professional

(6) The term “Market Professional” means (i) any Market-Maker as defined in the Rules and (ii) any member of, or firm owning a membership in, a commodity exchange for which [ICC] the Corporation or a Participating CCO is the clearing organization, to the extent he is trading for his own account and not for the account of others.

(7)-(8) [no change]

N.

(1)-(2) [no change]

(3) [renumbered (5) and relocated accordingly; otherwise no change]

Non-Proprietary Market Professional

(4) The term “non-proprietary Market Professional” means a Market Professional other than a proprietary Market Professional.

(4) [renumbered (3) and relocated accordingly; otherwise no change]

(5) [renumbered (6); otherwise no change]

O. – Z. [no change]

* * *

ARTICLE VI

Clearance of Exchange Transactions

* * *

Maintenance of Accounts

SECTION 3. (a)-(f) [no change]

(g) A Clearing Member may also establish and maintain an “OCC proprietary X-M account,” [and] an “OCC non-proprietary X-M account” and an “internal non-proprietary cross-margining account” to the extent permitted by the By-Laws and Rules and subject to the provisions thereof.

(h) [no change]

... *Interpretations and Policies* [no change]

* * *

Limitation of Liability

SECTION 25. [no change from proposed language in SR-OCC-2003-13, subject to the following: proposed rule change SR-OCC-03-13 will, if adopted, add a new section at the end of Article VI of the By-Laws, designated as Section 25 in the filing. OCC now prefers for that section to be numbered 26, so that 25 may be used as the section number of the section next set forth below. (Its subject matter is related to that of Section 24.) Accordingly, if SR-OCC-03-13 is adopted before the present proposed rule change, OCC proposes to publish Section 25 thereof as Section 26, with Section 25 reserved. If the present rule change is subsequently adopted, OCC proposes to publish the section next set forth below as Section 25. If the present rule change is adopted before SR-OCC-03-13, OCC proposes to publish the section next set forth below as Section 25. If SR-OCC-03-13 is subsequently adopted, OCC proposes to publish the relevant section in that filing as Section 26.]

Internal Cross-Margining for Non-Proprietary Market Professionals

SECTION 25. (a) The Corporation may establish a cross-margining program permitting a Clearing Member to establish an internal non-proprietary cross-margining account with the Corporation for the purpose of receiving cross-margining treatment for positions of non-

proprietary Market Professionals in cleared contracts that have been designated by the Corporation as eligible for inclusion in such account.

(b) Each Clearing Member desiring to elect internal non-proprietary cross-margining as described in this Section shall so notify the Corporation in accordance with the procedures specified by the Corporation. Such election shall be subject to the approval of the Corporation and shall remain in effect until terminated by the Corporation. Such election shall also be subject to the execution by each non-proprietary Market Professional whose positions are included in the internal non-proprietary cross-margining account of a "Market Professional's Agreement for Internal Cross-Margining" in the form specified from time to time by the Corporation. The provisions of this Section shall apply to all cleared contracts carried in any internal non-proprietary cross-margining account and shall supersede all other provisions of the By-Laws and Rules to the extent inconsistent therewith.

(c) Eligible security options positions and eligible positions in security futures, commodity futures and options on commodity futures carried in an internal non-proprietary cross-margining account shall be margined together as a single portfolio. The Corporation shall calculate the margin required in respect of all other accounts of the Clearing Member without regard for any contracts carried in any internal non-proprietary cross-margining account.

(d) The internal non-proprietary cross-margining account shall be limited to transactions and positions carried by the Clearing Member with the Corporation on behalf of Market Professionals who are not non-customers of the Clearing Member and who have signed a "Market Professional's Agreement for Internal Cross-Margining" as referred to in paragraph (b) above.

(e) On behalf of itself and each Market Professional on whose behalf positions may be maintained in the internal non-proprietary cross-margining account, the Clearing Member agrees that (i) the Corporation shall have a lien on, security interest in, and right of setoff against such account, including all security option contracts, futures contracts, options on futures contracts and security futures products purchased or carried in such account from time to time, all cash, securities and other property deposited with or held by the Corporation as margin in respect thereof, and all proceeds of any of the foregoing, as security for the obligations of the Clearing Member to the Corporation in respect of such account, (ii) the Corporation shall have the right to net all writing transactions against all purchase transactions effected in such account in accordance with the Rules, and (iii) the Corporation may close out the positions in the account and apply the proceeds thereof at any time without prior notice to the Clearing Member or Market Professional.

... Interpretations and Policies:

.01 The Corporation may designate from time to time those cleared contracts that it deems to be eligible for inclusion in an internal non-proprietary cross-margining account. The Corporation

will so designate only those cleared contracts that the Corporation determines to have sufficient price correlation with one another to provide significant risk reduction when positions in one such cleared contract are maintained on the opposite side of the market from positions in one or more other such cleared contracts.

* * *

RULES

* * *

CHAPTER XI

Suspension of a Clearing Member

* * *

Creation of Liquidating Settlement Account

RULE 1104. (a) Upon the suspension of a Clearing Member, the Corporation shall promptly convert to cash, in the most orderly manner practicable, all margins deposited with the Corporation by such Clearing Member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such Clearing Member's contributions to the Clearing Fund; provided, however, that cash derived from margins deposited in respect of the segregated futures account or the internal non-proprietary cross-margining account shall not be commingled with any other cash, and provided, further, that if the issuer of a letter of credit deposited by such Clearing Member pursuant to Rule 604(c) shall agree in writing to extend the irrevocability of its commitment thereunder in a manner satisfactory to the Corporation, the Corporation may, in lieu of demanding immediate payment of the face amount of such letter of credit, but reserving its right thereto, demand only such amounts as it may from time to time deem necessary to meet anticipated disbursements from the Liquidating Settlement Accounts provided for below. These and all other funds of the suspended Clearing Member subject to the control of the Corporation, except funds held in or payable to the segregated futures account or the internal non-proprietary cross-margining account, shall be placed by the Corporation in a special account, to be known as the Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes hereinafter specified. Funds held in or payable to the segregated futures account, and only such funds, shall be placed by the Corporation in a separate special account, to be known as the Segregated Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes hereinafter specified. Funds held in or payable to the internal non-proprietary cross-margining account, and only such funds, shall be placed by the Corporation in a separate special account, to be known as the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes hereinafter specified. Funds obtained from the issuer of a letter of credit shall be disbursed (1) only after all other funds contained in the Liquidating Settlement Account, with the exception of funds derived

from the suspended Clearing Member's contributions to the Clearing Fund, have been exhausted, (2) in the case of a letter of credit indicating on its face that it is being deposited to serve as margin for the segregated futures account, only after all other funds contained in the Segregated Liquidating Settlement Account have been exhausted, and (3) in the case of a letter of credit indicating on its face that it is being deposited to serve as margin for the internal non-proprietary cross-margining account, only after all other funds contained in the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account have been exhausted. In the event the sum of (i) the proceeds from any restricted letter of credit held in the customers' account, (ii) the proceeds from the closing out of unsegregated long positions in options and BOUNDS and any variation payments received from closing out long or short positions in futures in the customers' account, and (iii) the proceeds from the closing out of exercised option contracts, matured futures and expired BOUNDS in the customers' account should exceed the amount withdrawn by the Corporation from the Liquidating Settlement Account pursuant to Rules 1105 through 1107 in respect of transactions or positions in the customers' account, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. In the event the sum of (i) the proceeds from any restricted letter of credit held in the segregated futures account, (ii) any variation payments received from closing out long or short positions in futures in the segregated futures account, and (iii) the proceeds from the closing out of matured futures and long futures options positions in the segregated futures account should exceed the amount withdrawn by the Corporation from the Segregated Liquidating Settlement Account pursuant to Rules 1105 through 1107 in respect of transactions or positions in the segregated futures account, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. In the event the sum of (i) the proceeds from any restricted letter of credit held in the internal non-proprietary cross-margining account, (ii) the proceeds from the closing out of long positions in options (including futures options) and BOUNDS and any variation payments received from closing out long or short positions in futures in the internal non-proprietary cross-margining account, and (iii) the proceeds from the closing out of exercised option contracts, matured futures and expired BOUNDS in the internal non-proprietary cross-margining account should exceed the amount withdrawn by the Corporation from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account pursuant to Rules 1105 through 1107 in respect of transactions or positions in the internal non-proprietary cross-margining account, the excess shall be remitted by the Corporation to the Suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. Notwithstanding the foregoing provisions of this Rule, margin and all other funds of a suspended Clearing Member in respect of sets of X-M accounts (other than such Clearing Member's contributions to the Clearing Fund) shall be subject to Rule 707 and the applicable Participating CCO Agreement and not to this Rule.

(b)-(d) [no change]

... *Interpretations and Policies:* [no change]

* * *

Pending Transactions and Variation Payments

RULE 1105. Leading paragraph and (a)-(c) [no change]

(d) Premiums on closing sale transactions in options or BOUNDS and variation payments received on positions or transactions in security futures in a customers' lien account shall be held in such account, pending the closing out of all open positions and transactions in such account, for application in accordance with the provisions of Section 3 of Article VI of the By-Laws applicable to such portfolio margining account.¹

[(d)] (e) Premiums payable on opening or closing purchase transactions in options or BOUNDS and variation payments payable on positions or transactions in security futures in any account shall be withdrawn by the Corporation from the Liquidating Settlement Account; provided, however, that (i) any such payments payable in respect of a Market-Maker's account or a customers' lien account² shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; [and] (ii) any such payments payable in respect of the segregated futures account shall first be withdrawn from the suspended Clearing Member's Segregated Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; and (iii) any such payments payable in respect of the internal non-proprietary cross-margining account shall first be withdrawn from the suspended Clearing Member's Internal Non-Proprietary Cross-Margining Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account.

(e) [renumbered as (f) but otherwise no change]

[(f)] (g) All variation payments received on positions or transactions in [security] futures in the segregated futures account shall be credited to the Segregated Liquidating Settlement Account. All variation payments received on positions or transactions in futures in the internal non-proprietary cross-margining account shall be credited to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account.

(g) [renumbered as (h) but otherwise no change]

... *Interpretations and Policies:* [no change]

Open Positions

RULE 1106. (a) [no change]

¹ See SR-OCC-2003-04

² See SR-OCC-2003-04

(b) *Short Positions in Options and BOUNDS.* (1) Except as hereinafter provided, open short positions in options or BOUNDS of a suspended Clearing Member in all accounts, other than a segregated futures account or an internal non-proprietary cross-margining account as updated to reflect pending transactions that have been accepted by the Corporation, shall be closed by the Corporation in the most orderly manner practicable. Amounts payable in settlement of closing purchase transactions in options effected by the Corporation shall be withdrawn from the suspended Clearing Member's Liquidating Settlement Account; provided, however, that amounts payable in settlement of closing purchase transactions and in respect of any dividend equivalent obligation in a Market-Maker's account or a customers' lien account³ shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any closing or transfer of short positions pursuant to this Rule.

(2)-(3) [no change]

(c) [no change]

(d) *Closing of Positions by Offset.* If the Corporation elects or is required pursuant to this Rule to close both long positions and short positions in the same series of cleared contract carried by a suspended Clearing Member, the Corporation may, in lieu of closing such positions through closing transactions on an Exchange, futures market or security futures market, offset such positions against each other, reducing each position by the same number of contracts; provided, that (i) futures or futures options in the segregated futures account may be offset only against other futures or futures options in that account, and (ii) positions in the internal non-proprietary cross-margining account may be offset only against other positions in that account. If the Corporation closes positions in any series of cleared contracts by offset pursuant to the foregoing sentence, the Corporation shall notify the suspended Clearing Member or its representative thereof, and such positions shall be deemed to have been closed at a price equal to (i) in the case of options or BOUNDS, the per-unit premium margin amount (determined in accordance with Rule 601 or Rule 602, as applicable) for such series on the date when the positions were offset, and (ii) in the case of futures, the settlement price for such series on the date when the positions were offset.

(e) [no change]

(f) *Protective Action.* If the Chairman, the Management Vice Chairman, or the President of the Corporation shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to convert to cash any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to convert to cash any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely

³ See SR-OCC-2003-04

for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours, and any such transactions that are executed shall be reported to the Membership/Margin Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account⁴ shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; [and] (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account, and (iii) costs, expenses and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

(g) [no change]

Exercised or Matured Contracts

Rule 1107. (a) (1)-(5) [no change]

(6) All other exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member was a party shall be closed through the buy-in and sell-out procedures provided in the Rules. All losses and gains on such buy-ins and sell-outs shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Member, provided, however, that (i) all losses on such buy-ins and sell-outs in a Market-Maker's account or a customers' lien account⁵ shall first be paid from such account to the extent there are funds available in such account and only the amount of any deficit therein shall be paid from the Liquidating Settlement Account; [and] (ii) all losses on such buy-ins and

⁴ See SR-OCC-2003-04

⁵ See SR-OCC-2003-04

sell-outs in a segregated futures account shall first be paid from the Segregated Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account; and (iii) all losses on such buy-ins or sell-outs in an internal non-proprietary cross-margining account shall first be paid from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account.

(b)-(c) [no change]

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by OCC's Board of Directors at a meeting held on May 20, 2003.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, First Vice President and Deputy General Counsel, at (312) 322-6269.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to make cross-margining available to non-proprietary market professionals where the positions to be cross-margined are all maintained with OCC. This program is similar to cross-margining programs currently in effect between OCC and the Chicago Mercantile Exchange and other commodities clearing organizations, with one major difference: the positions to be cross-margined under this proposal are all cleared by OCC. There is no second clearing organization. For this reason the program is called "internal" cross-margining. Internal cross-margining is possible because OCC, in its capacity as a DCO, can now

clear futures and futures options subject to the exclusive jurisdiction of the Commodity Futures Trading Commission (“CFTC”).

In the existing “external” cross-margining programs, OCC contracts with a DCO, such as the Chicago Mercantile Exchange, to permit a clearing member of OCC that is (or has an affiliate that is) a clearing member of the DCO to margin as a single portfolio its positions in security options cleared by OCC and its (or its affiliate’s) positions in related commodity futures and commodity options thereon cleared by the DCO. Margin is assessed based on the net risk of the portfolio, and to the extent that the contracts in the account are offsetting from a risk perspective, the clearing member’s margin requirement is less than it would be if the commodity positions were carried in accounts separate from the security positions.

Internal cross-margining functions in the same way, except that the internal cross-margining account would contain only positions in contracts cleared by OCC. This greatly simplifies the arrangement in that it eliminates the need for contractual relationships between two clearing organizations, the holding of collateral for their joint benefit, loss sharing arrangements, etc. As in the case of existing non-proprietary cross-margining programs, the internal non-proprietary cross-margining account would be treated as a segregated futures account under Section 4d of the CEA and, in accordance with Appendix B to Part 190 of the CFTC’s regulations, would be separately segregated from the regular segregated futures account that an OCC clearing member may maintain under Article VI, Section 3(f) of the By-Laws. That futures account is confined to customer transactions in futures, futures options and security futures (to the extent that such security futures are carried in futures accounts by the clearing member’s customers), and may not include positions in security options.

OCC is seeking approval of internal cross-margining only in relation to accounts of non-proprietary market professionals. A market professional is, in essence, a market-maker, specialist or person acting in a similar capacity on a securities exchange, or a member of a futures exchange trading for its own account. A non-proprietary market professional is any market professional that is required to be treated as a “customer” under the CEA, and therefore excludes any market professional that is affiliated with the carrying clearing member in a way that would cause its account to be treated as a “proprietary account” under Section 1.3(y) of the CFTC’s regulations.

In the absence of an internal cross-margining program, clearing members would be unable to carry futures positions of non-proprietary market professionals in the same account as their positions in security options, because of the segregation requirements applicable to the former under the Commodity Exchange Act.

Since it granted approval of the first cross-margining program in 1988,⁶ the Commission has repeatedly found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act and highly beneficial to the clearing organization, its clearing members and the public. Cross-margining programs enhance Clearing Member and systemic liquidity, resulting in lower initial margin deposits. They reduce the risk that a Clearing Member will become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect, and they enhance the security of the clearing system.⁷

Explanatory Comments

⁶ SEC Release No. 34-26153 (October 3, 1988)

The following comments note particular points of interest.

Amended Definition

The existing definition of "Market Professional" is amended to substitute a reference to OCC in place of the reference to ICC, which has been merged into OCC.

Absence of Cross-Margining Agreement

All previously established external cross-margining programs involving OCC have had a cross-margining agreement as the constitutive and governing document. The parties to a cross-margining agreement are the clearing organizations that clear the trades in the cross-margining account of a joint Clearing Member or a pair of affiliated clearing members. Internal cross-margining, however, does not require a cross-margining agreement, because the only participating clearing organization is OCC.

Requirement of Market Professional's Agreement

The terms governing the cross-margining arrangements between OCC and a Clearing Member are set forth in the By-Laws and Rules. The rights and obligations of a non-proprietary market professional that wants the benefits of internal cross-margining vis-à-vis the Clearing Member through which it clears are not covered in the By-Laws and Rules and so must be made the subject of a separate agreement. The execution of such an agreement, termed "Market Professional's Agreement for Internal Cross-Margining," is a requirement for the market professional's participation in the program. The form of this agreement is attached hereto as Appendix 1.

⁷ SEC Release No. 34-32708 (August 2, 1993)

Amendments to Chapter XI of the Rules

Chapter XI of the Rules relates to the suspension of a Clearing Member, and the amendments all relate to the liquidation of a suspended Clearing Member, as set forth in Rules 1104 through 1107. Just as the liquidation of the segregated futures account requires the addition of separate rules applicable only to it, so also does the liquidation of the internal non-proprietary cross-margining account, and for the same reason: they are both segregated accounts under the Commodity Exchange Act, and the positions and other assets of each may not be commingled with those not in the account nor be used to satisfy obligations other than those arising from activity in the account. Thus, in each place where special provision is made for the segregated funds account, a parallel provision for the internal non-proprietary cross-margining account has been inserted with a parallel purpose and effect.

Regulatory Approvals

In addition to the approval of the Commission, OCC must also obtain the approval of the CFTC to the commingling of positions of non-proprietary market professionals in futures products with their security options positions. OCC is concurrently applying to the CFTC for such approval.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material burden on competition.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none has been received.

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Neither summary effectiveness nor accelerated effectiveness is sought.

Item 8. Proposed Rule Change Based on Rules of Another Regulatory Organization or of the Commission

The proposed rule change is not based on a rule change of another self-regulatory organization.

Item 9. Exhibits

Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.

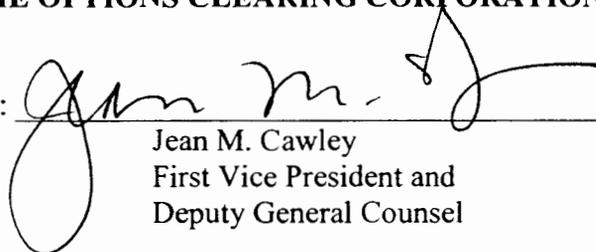
Appendix 1. Market Professionals's Agreement for Internal Cross-Margining

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: _____

A handwritten signature in black ink, appearing to read "Jean M. Cawley", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.

Jean M. Cawley
First Vice President and
Deputy General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2004-10

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Creating an Internal
Cross-Margin Program

Comments requested within ____ days
after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C.

'78s(b)(1), notice is hereby given that on _____, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation ("OCC" or the "Corporation") proposes to amend its By-Laws and Rules as set forth below to create an internal cross-margining program that will permit a Clearing Member to establish a non-proprietary account for market professionals in which securities and security futures that are cleared by OCC in its capacity as a securities clearing agency may be cross-marginated with commodity futures and options on such futures that

are cleared by OCC in its capacity as a derivatives clearing organization (“DCO”) registered as such under the Commodity Exchange Act (the “CEA”).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to make cross-margining available to non-proprietary market professionals where the positions to be cross-margined are all maintained with OCC. This program is similar to cross-margining programs currently in effect between OCC and the Chicago Mercantile Exchange and other commodities clearing organizations, with one major difference: the positions to be cross-margined under this proposal are all cleared by OCC. There is no second clearing organization. For this reason the program is called “internal” cross-margining. Internal cross-margining is possible because OCC, in its capacity as a DCO, can now clear futures and futures options subject to the exclusive jurisdiction of the Commodity Futures Trading Commission (“CFTC”).

In the existing “external” cross-margining programs, OCC contracts with a DCO, such as the Chicago Mercantile Exchange, to permit a clearing member of OCC that is (or has an affiliate that is) a clearing member of the DCO to margin as a single portfolio its positions in security options cleared by OCC and its (or its affiliate’s) positions in related commodity futures

and commodity options thereon cleared by the DCO. Margin is assessed based on the net risk of the portfolio, and to the extent that the contracts in the account are offsetting from a risk perspective, the clearing member's margin requirement is less than it would be if the commodity positions were carried in accounts separate from the security positions.

Internal cross-margining functions in the same way, except that the internal cross-margining account would contain only positions in contracts cleared by OCC. This greatly simplifies the arrangement in that it eliminates the need for contractual relationships between two clearing organizations, the holding of collateral for their joint benefit, loss sharing arrangements, etc. As in the case of existing non-proprietary cross-margining programs, the internal non-proprietary cross-margining account would be treated as a segregated futures account under Section 4d of the CEA and, in accordance with Appendix B to Part 190 of the CFTC's regulations, would be separately segregated from the regular segregated futures account that an OCC clearing member may maintain under Article VI, Section 3(f) of the By-Laws. That futures account is confined to customer transactions in futures, futures options and security futures (to the extent that such security futures are carried in futures accounts by the clearing member's customers), and may not include positions in security options.

OCC is seeking approval of internal cross-margining only in relation to accounts of non-proprietary market professionals. A market professional is, in essence, a market-maker, specialist or person acting in a similar capacity on a securities exchange, or a member of a futures exchange trading for its own account. A non-proprietary market professional is any market professional that is required to be treated as a "customer" under the CEA, and therefore excludes any market professional that is affiliated with the carrying clearing member in a way

that would cause its account to be treated as a “proprietary account” under Section 1.3(y) of the CFTC’s regulations.

In the absence of an internal cross-margining program, clearing members would be unable to carry futures positions of non-proprietary market professionals in the same account as their positions in security options, because of the segregation requirements applicable to the former under the Commodity Exchange Act.

Since it granted approval of the first cross-margining program in 1988,⁸ the Commission has repeatedly found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act and highly beneficial to the clearing organization, its clearing members and the public. Cross-margining programs enhance Clearing Member and systemic liquidity, resulting in lower initial margin deposits. They reduce the risk that a Clearing Member will become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect, and they enhance the security of the clearing system.⁹

Explanatory Comments

The following comments note particular points of interest.

Amended Definition

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⁸ SEC Release No. 34-26153 (October 3, 1988)

⁹ SEC Release No. 34-32708 (August 2, 1993)

Absence of Cross-Margining Agreement

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Requirement of Market Professional's Agreement

The terms governing the cross-margining arrangements between OCC and a Clearing Member are set forth in the By-Laws and Rules. The rights and obligations of a non-proprietary market professional that wants the benefits of internal cross-margining vis-à-vis the Clearing Member through which it clears are not covered in the By-Laws and Rules and so must be made the subject of a separate agreement. The execution of such an agreement, termed "Market Professional's Agreement for Internal Cross-Margining," is a requirement for the market professional's participation in the program. The form of this agreement is attached hereto as Appendix 1.

Amendments to Chapter XI of the Rules

Chapter XI of the Rules relates to the suspension of a Clearing Member, and the amendments all relate to the liquidation of a suspended Clearing Member, as set forth in Rules 1104 through 1107. Just as the liquidation of the segregated futures account requires the addition of separate rules applicable only to it, so also does the liquidation of the internal non-proprietary cross-margining account, and for the same reason: they are both segregated accounts under the Commodity Exchange Act, and the positions and other assets of each may not be commingled

with those not in the account nor be used to satisfy obligations other than those arising from activity in the account. Thus, in each place where special provision is made for the segregated funds account, a parallel provision for the internal non-proprietary cross-margining account has been inserted with a parallel purpose and effect.

Regulatory Approvals

In addition to the approval of the Commission, OCC must also obtain the approval of the CFTC to the commingling of positions of non-proprietary market professionals in futures products with their security options positions. OCC is concurrently applying to the CFTC for such approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve the proposed rule change; or,
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by _____.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

Dated: _____

**THE OPTIONS CLEARING CORPORATION
MARKET PROFESSIONAL'S AGREEMENT
FOR INTERNAL CROSS-MARGINING**

THIS MARKET PROFESSIONAL'S AGREEMENT FOR INTERNAL CROSS-MARGINING

(this "Agreement") is entered into as of _____, _____ by and between _____ ("Member"), and _____ ("Clearing Member").

WHEREAS, Member is a member of one or more exchanges, futures markets or security futures markets, trades on which are cleared by The Options Clearing Corporation (the "Corporation");

WHEREAS, Clearing Member clears transactions in security options, security futures products, commodity futures and/or options on commodity futures through the Corporation;

WHEREAS, Clearing Member maintains with the Corporation an internal non-proprietary cross-margining account (the "Account") in which positions of non-proprietary Market Professionals in certain security options, security futures products, commodity futures and/or options on commodity futures ("Eligible Contracts") may be carried together and cross-margined based upon the net risk of such positions;

WHEREAS, Member desires that Clearing Member carry some or all of Member's positions in Eligible Contracts in the Account so that Clearing Member may calculate Member's obligation to deposit margin with Member on such a cross-margined basis; and

WHEREAS, entry into this Agreement is a precondition to Clearing Member's ability to carry such positions in the Account;

NOW, THEREFORE, the parties agree as follows:

1. Member represents and warrants that it is a non-proprietary Market Professional as defined in the Corporation's By-Laws, and that it trades or proposes to trade Eligible Contracts for its own account.

2. Clearing Member acknowledges and understands that Member desires it to clear and carry some or all, as directed by Member, of Member's positions in Eligible Contracts in the Account ("Cross-Margined Positions") and to provide cross-margining treatment to Member with respect to such

positions. Notwithstanding the foregoing, Member agrees that Clearing Member may, at any time and in its sole discretion, determine to clear and/or maintain any one or group of such positions in accounts at the Corporation other than the Account.

3. Member agrees that its Cross-Margined Positions, all margin deposited with Member in respect thereof, and all proceeds of any of the foregoing, may be commingled with positions and property originating with other Market Professionals whose positions and property may be carried by Clearing Member in the Account. Member further agrees that all such property may be used by Clearing Member to purchase, margin, secure, settle or otherwise carry positions in Eligible Contracts on behalf of Member and other non-proprietary Market Professionals. Member acknowledges and understands that the Commodity Futures Trading Commission ("CFTC") has, by order, rendered inapplicable the provisions of the Commission's Regulations (including, but not limited to, §§ 1.20(a), 1.22 and 1.24), to the extent that such regulations would prohibit the commingling and use of Member's property as provided in this paragraph, and Member acknowledges that such property will be treated in a manner consistent with applicable orders of the CFTC. Member further acknowledges and agrees that such property held on behalf of Member by Clearing Member will be customer property received by a futures commission merchant ("FCM"), to be accounted for, treated and dealt with by such FCM in a manner consistent with Section 4d of the Commodity Exchange Act ("CEA").

4. Member agrees that in the event of the bankruptcy, liquidation or receivership of or other proceeding involving the distribution of funds held by Clearing Member: (i) Member's claims against Clearing Member, if any, with respect to Cross-Margined Positions, and all money, securities and property received with respect thereto, shall be subject to the distributional convention established in Appendix B to Part 190 of the CFTC's Regulations; (ii) Cross-Margined Positions and all cash, securities and other property carried in respect thereof shall not be "customer property" for purposes of the federal securities laws (to the extent necessary to effect cross-margining in accordance with the applicable orders of the CFTC), or for purposes of Subchapter III of Chapter 7 of the Bankruptcy Code ("Subchapter III") or the Securities Investor Protection Act of 1970 ("SIPA"), and will not be claimed as such, and shall be "customer property" for purposes of the CEA, Subchapter IV of Chapter 7 of the Bankruptcy Code and Part 190 of the Regulations of the CFTC; and (iii) any claim asserted by Member against Clearing Member arising out of or based upon such property, to the extent that such claim would otherwise represent a claim against or be payable from "customer property" as defined in Subchapter III or SIPA, shall be subordinated to the claims of all other customers, as the term "customer" is defined in Subchapter III or SIPA.

5. Member hereby grants to Clearing Member a lien on, security interest in, and right of setoff against all of its right, title and interest in (i) all of Member's interest in Cross-Margined Positions from time to time purchased or carried in the Account, (ii) all margin held by the Corporation or Clearing Member in respect thereof, and (iii) all proceeds of any of the foregoing (all such positions, margin and proceeds hereinafter referred to collectively as the "Member Collateral"), as security for the obligations of Member to Clearing Member; provided, however, that the rights of Clearing Member in the Member Collateral shall be subordinate to the rights of the Corporation therein. Member hereby consents to the granting of a security interest in the Member Collateral by Clearing Member to the Corporation as set forth in the By-Laws or Rules of the Corporation. Member represents and warrants to Clearing Member that as of the date of this Agreement, there is no outstanding lien on or security interest in the Member Collateral except as provided in this Section 5 or in the By-Laws and Rules of the Corporation, and agrees that it shall not grant or permit to be created any other lien on or security interest in the Member Collateral without the express written consent of the Clearing Member; provided, however, that the foregoing prohibition shall not apply to any interest in the Collateral that is subordinate to the interest of the Clearing Member and the Corporation.

6. Member acknowledges that in the event of the suspension of Clearing Member in accordance with the rules of the Corporation, it shall be within the sole discretion of the Corporation to determine whether to transfer or liquidate positions in the Account.

7. Member and Clearing Member acknowledge and agree that the Corporation is a third party beneficiary of this Agreement and as such shall be entitled to the rights and benefits afforded it under this Agreement to the extent set forth herein as if the Corporation were a party hereto. Member and Clearing Member agree not to modify, amend or terminate this Agreement without the prior written consent of the Corporation, and further agree not to modify this Agreement by any other instrument without the written approval of the Corporation. An executed counterpart of this Agreement shall be filed with the Corporation.

8. This Agreement shall become effective upon the later of execution of this Agreement and the receipt of all necessary regulatory approvals from the Securities and Exchange Commission and the CFTC.

**MEMBER
A CORPORATION, PARTNERSHIP OR
OTHER ENTITY**

Print Name of Entity

Authorized Signature Date

Print Name and Title

CLEARING MEMBER

Print Name of Clearing Member

Authorized Signature Date

Print Name and Title

**MEMBER
ONE OR MORE INDIVIDUALS**
(All account participants must sign)

Signature Date

Print Name: _____

Signature Date

Print Name: _____

Signature Date

Print Name: _____