

UNITED STATES OF AMERICA  
Before The  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of ICE Clear US, Inc.  
Non-Proprietary Cross-Margining  
Agreement with  
the Options Clearing Corporation

ORDER

By letter dated October 26, 2007 (the "Submission,"), ICE Clear US Inc. ("ICE Clear"), petitioned the Commodity Futures Trading Commission ("Commission") for an Order pursuant to Section 4d of the Commodity Exchange Act ("CEA"), 7 U.S.C. §6d, in order to implement a non-proprietary cross-margining program with the Options Clearing Corporation ("OCC"). The cross-margining program would involve the cross-margining of positions in specified commodity futures, options on futures, and securities options as agreed to in writing between ICE Clear and OCC ("Eligible Contracts"). The program would cover the positions of customers who are "Market Professionals," as such term is defined in the proposed agreement between ICE Clear and OCC (the "Clearinghouse Agreement"). These Market Professionals are customers whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(y), 17 C.F.R. 1.3(y), and whose positions would be carried by joint clearing members who are clearing members of both ICE Clear and OCC, or by affiliated clearing members one of which is a clearing member of ICE Clear and the other of which is a clearing member of OCC (in either such case, the "Participating Clearing Members"). ICE Clear, the OCC, and the Participating Clearing Members would commingle customer funds held in segregated accounts maintained in accordance with CEA Section 4d with other funds used to margin, guarantee, or secure certain securities options positions cleared by OCC and a single margin requirement would be calculated for each.

The Commission has reviewed the Submission; the proposed agreements among the Participating Clearing Members and ICE Clear and OCC (the "Clearing Member Agreements"); the proposed agreements among the Market Professionals and Participating Clearing Members (the "Market Professional Customer Agreements"); and the representations of ICE Clear as to the operation of the program.

IT IS ORDERED, pursuant to CEA Section 4d, that the petition is granted and that, subject to the additional terms of this Order, but notwithstanding any provisions to the contrary in the Commission's regulations (including but not limited to Commission Regulations 1.20(a), 1.22, and 1.24, 17 C.F.R. 1.20(a), 1.22, and 1.24), Eligible Contracts that are securities options contracts and property received by a Participating Clearing Member to margin, guarantee, or secure trades or positions in such Eligible Contracts may be commingled in a non-proprietary

cross-margining account with Eligible Contracts that are commodity futures or options on futures contracts, property received by a Participating Clearing Member to margin, guarantee, or secure trades or positions in or accruing as a result of such Eligible Contracts, and otherwise required by the Commission to be segregated under the CEA.

IT IS FURTHER ORDERED, that:

(1) all money received by a Participating Clearing Member to margin, guarantee, or secure Eligible Contracts carried in a non-proprietary cross-margining account for or on behalf of Market Professionals, or accruing as a result of such trades or contracts, and held subject to the terms of this Order, shall be deemed to have been received by the Participating Clearing Member and shall be accounted for and treated and dealt with as belonging to the Market Professional customers of the Participating Clearing Member consistently with CEA Section 4d;

(2) ICE Clear, OCC, each Participating Clearing Member, and each Market Professional shall execute the Clearinghouse Agreement, the Clearing Member Agreements, and the Market Professional Customer Agreements, as appropriate, and each Market Professional shall acknowledge in writing that:

(A) any property held on the Market Professional's behalf in a non-proprietary cross-margining account will be treated in a manner consistent with this and any other applicable Orders of the CFTC;

(B) any property held on the Market Professional's behalf by a Participating Clearing Member will be considered customer property received by an FCM to be accounted for, treated, and dealt with by such FCM in a manner consistent with CEA Section 4d; and

(C) any property held on the Market Professional's behalf by a Participating Clearing Member in a non-proprietary cross-margining account, to the extent necessary to effect this Order, will not be treated as customer property under the Federal securities laws and will not be treated as customer property under Subchapter III of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§741-752 ("Subchapter III"), or the Securities Investor Protection Act of 1970, 15 U.S.C. §78aaa et seq. ("SIPA"), and will not be claimed as such, and will be treated as customer property under the CEA, under Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§ 761-766, and under Part 190 of the CFTC's regulations, 17 CFR Part 190, and subject to the distributional framework set forth in Appendix B, Framework 1 to that Part 190, and any claim asserted by the Market Professional against the Participating Clearing Member arising out of or based upon the non-proprietary cross-margining account, 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;

(3) ICE Clear, OCC, each Participating Clearing Member, and each depository shall separately account for cross-margining property maintained in non-proprietary cross-margining accounts and shall not commingle such cross-margining property with any property maintained in any non-cross margining accounts or proprietary cross-margining accounts;

(4) ICE Clear, OCC, each Participating Clearing Member, Market Professional, and depository shall provide the CFTC with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with CFTC Regulation 1.31, 17 C.F.R. §1.31;

(5) each Participating Clearing Member shall include all cross-margining property received from Market Professionals as provided herein to margin, guarantee, or secure Eligible Contracts, or accruing to such Market Professionals as a result of such trades, contracts, or transactions, when calculating segregation requirements for the purposes of CEA Section 4d;

(6) each Participating Clearing Member shall compute total segregation requirements under CEA Section 4d and Commission Regulation 1.32, 17 C.F.R. §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;

(7) each Participating Clearing Member shall designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained by the Participating Clearing Member and account statements sent to Market Professionals;

(8) ICE Clear and OCC shall 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 shall maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure Eligible Contracts that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, or transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures transactions, options on futures transactions, or securities options transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals;

(9) ICE Clear and OCC shall satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds;

(10) in the event of the bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a Participating Clearing Member, any customer net equity claim which a Market Professional has in respect of cross-margining property held by such Participating Clearing Member in a non-proprietary cross-margining account shall be treated as a customer net equity claim under Part 190 of the CFTC's regulations and Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, and will be treated in accordance with the distributional framework established by Appendix B, Framework 1 to Part 190 of the CFTC's regulations; and

(11) a Participating Clearing Member may, for convenience, commingle cross-margining property maintained in respect of this non-proprietary cross-margining arrangement between ICE Clear and OCC with property permitted to be commingled pursuant to other Orders of the Commission concerning non-proprietary cross-margining arrangements and may, in the normal course of business, apply such commingled property to meet its obligations to other clearing organizations arising from trades or positions held in its non-proprietary cross-margining account established pursuant to one or more of such cross-margining arrangements, provided that the Participating Clearing Member shall:

(A) separately identify and account for the property held pursuant to each of the non-proprietary cross-margining arrangements; and

(B) separately calculate the margin requirements with respect to each of the non-proprietary cross-margining arrangements, treating each position as being held pursuant to only one such arrangement.

Issued in Washington, D.C., this 29 day of Feb., 2008.

By the Commission,



David A. Stawick

Secretary of the Commission