

**UNITED STATES OF AMERICA**

**Before the**

**COMMODITY FUTURES TRADING COMMISSION**

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**In the Matter of New York Portfolio Clearing, LLC  
Non-Proprietary Cross Margining Agreement with the  
Fixed Income Clearing Corporation**

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**ORDER**

By letter dated March 20, 2012 (the "Petition"), New York Portfolio Clearing, LLC ("NYPC") petitioned the Commission for an Order pursuant to Section 4d(a) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 6d(a), in order to implement a non-proprietary cross-margining program with the Fixed Income Clearing Corporation ("FICC"). The cross-margining program would involve the cross-margining of positions in specified futures, options on futures, and securities as agreed to in writing between NYPC and FICC (hereinafter collectively, "Eligible Products"). The program would cover the positions of customers that are "Market Professionals," as such term is defined in the amended cross-margining agreement between NYPC and FICC (the "Cross-Margining Agreement"). These Market Professionals are customers whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(k), and whose positions would be carried by clearing members who are clearing members of both NYPC and FICC, or by affiliated clearing members one of which is a clearing member of NYPC and the other of which is a clearing member of FICC (in either such case, the "Participating Clearing Members").

The Commission has reviewed the Petition; the proposed agreements among the Participating Clearing Members and NYPC and FICC (the “Clearing Member Agreements”); the proposed agreements among the Market Professionals and Participating Clearing Members (the “Market Professional Customer Agreements”); the representations of NYPC as to the operation of the program; and rule amendments submitted pursuant to Section 5c(c) of the CEA and deemed approved pursuant to Commission Regulation 40.5. Therefore,

IT IS ORDERED, pursuant to CEA Section 4d(a), 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), Eligible Products that are securities contracts and property received by a Participating Clearing Member to margin, guarantee, or secure trades or positions in such Eligible Products may be commingled for purposes of margin calculation in a Market Professional Cross-Margining Account with Eligible Products 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 Products, 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 Products carried in a Market Professional 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 the Commission’s Order, be deemed to have been received by the Participating Clearing Member and be accounted for and treated and dealt with as belonging to the Market Professional customers of the Participating Clearing Member consistent with CEA Section 4d(a)(2);
- (2) NYPC, FICC, each Participating Clearing Member, and each Market Professional execute the Cross-Margining Agreement, the Clearing Member Agreements, and the

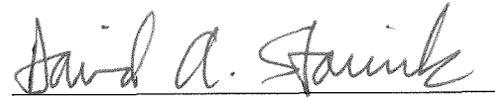
Market Professional Agreements, as appropriate, which Agreements are hereby approved by the Commission, and each Market Professional acknowledge in writing that:

- a. any property held on the Market Professional's behalf in a Market Professional Cross-Margining Account will be treated in a manner consistent with this and any other applicable Orders of the Commission;
  - 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(a)(2); and
  - c. any property held on the Market Professional's behalf by a Participating Clearing Member in a Market Professional Cross-Margining Account, to the extent necessary to effect the Commission's 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 Market Professional 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) NYPC, FICC, each Participating Clearing Member, and each depository separately account for cross-margining property maintained in Market Professional Cross-Margining Accounts and not commingle such cross-margining property with any property maintained in any non-cross margining accounts or proprietary cross-margining accounts;
  - (4) NYPC, FICC each Participating Clearing Member, Market Professional, and depository provide the Commission with access to its books and records with respect to Market Professional Cross-Margining Accounts and positions in a manner consistent with Commission Regulation 1.31, 17 C.F.R. §1.31;
  - (5) Participating Clearing Members include all cross-margining property received from Market Professionals as provided in the Commission's Order to margin, guarantee, or secure Eligible Products, 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(a)(2);

- (6) Participating Clearing Members compute total segregation requirements under CEA Section 4d(a)(2) 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) Participating Clearing Members designate Market Professional Cross-Margining Accounts and positions as such in their books and records, including both internal documents maintained by the Participating Clearing Member and account statements sent to Market Professionals;
- (8) the positions of a Market Professional cleared by NYPC be cross-margined only with the positions of the same Market Professional cleared by FICC, consistent with the requirements of Commission Regulation 39.13(g)(8)(i);
- (9) NYPC and FICC calculate the margin requirements for each Market Professional Cross-Margining Account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to Market Professional 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 Market Professional Cross-Margining account; and maintain all cross-margining property received from Participating Clearing Members to margin, guarantee, or secure Eligible Products that are effected for Market Professional 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 transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals;
- (10) NYPC and FICC satisfy any deficiency in a Market Professional Cross-Margining Account without recourse to non-cross-margining segregated funds; and
- (11) 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 Market Professional Cross-Margining Account be treated as a customer net equity claim under Part 190 of the Commission's regulations and Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, and treated in accordance with the distributional framework established by Appendix B, Framework 1 to Part 190 of the Commission's regulations.

Dated: August 3, 2012  
By the Commission

A handwritten signature in cursive script, reading "David A. Stawick", written over a horizontal line.

David Stawick  
Secretary of the Commission