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By E-Mail (submissions@cftc.gov)

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Order Permitting Commingling of Customer Funds

Ladies and Gentlemen:

New York Portfolio Clearing, LLC ("NYPC") is proposing to expand its existing one-pot cross-margining program with Fixed Income Clearing Corporation ("FICC"), which was approved by the Commission on March 2, 2011 in connection with NYPC's order of registration as a derivatives clearing organization (the "Cross-Margining Program"), to include positions held by NYPC clearing members and clearing members of FICC's Government Securities Division ("Participating Clearing Members") for participating "market professionals".

Introduction

In its present form, the Cross-Margining Program is limited to the cross-margining of proprietary accounts. NYPC proposes to expand the Cross-Margining Program to non-proprietary accounts carried by Participating Clearing Members on behalf of "market professionals". The proposed expansion of the Cross-Margining Program necessitates certain amendments to NYPC's Rules and the cross-margining agreement between NYPC and FICC (the "Cross-Margining Agreement"), including the proposed agreements among the Participating Clearing Members and NYPC and FICC (the "Clearing Member Agreements") and the proposed agreements among the Market Professionals and Participating Clearing Members (the "Market Professional Agreements"), which have been described in NYPC's voluntary rule approval submission to the Commission pursuant to Commission Regulations 39.4(e) and 40.5 dated March 20, 2012.

Under the Cross-Margining Agreement, a "market professional" is defined as an entity, other than a "non-customer" (as defined therein), that is a member of a designated contract market and that actively trades for its own account products that are eligible under the Cross-Margining Agreement ("Market Professional"). As defined in the Cross-Margining Agreement, the term "Eligible Products" includes futures contracts and options on futures contracts, including U.S. dollar denominated interest rate and fixed income futures contracts and options on futures contracts, cleared by NYPC and U.S. Government securities, securities of U.S. federal agencies and U.S. Government-sponsored enterprises, financing products and certain mortgage-backed securities cleared by FICC.



Under the revisions that are proposed to be made to NYPC's Rules and the Cross-Margining Agreement, positions and collateral held for Market Professionals will be maintained in accounts that are distinct from both proprietary cross-margining accounts and non-cross-margining accounts.

The Commission and the Securities and Exchange Commission ("SEC") have issued numerous orders approving similar "market professional" cross-margining programs involving other derivatives clearing organizations. For the convenience of the Commission, these orders are listed on the attached Exhibit A.

Relief Requested

The purpose of this letter is to request that the Commission prescribe by order, pursuant to Section 4d(a)(2) of the Commodity Exchange Act (the "CEA") that Eligible Products (as such term is defined in the Cross-Margining Agreement) that are cleared by NYPC and property received by a participating NYPC clearing member to margin, guarantee, or secure trades or positions in or accruing as a result of such Eligible Products may be commingled in a Market Professional cross-margining account with Eligible Products cleared by FICC and with property received by a participating FICC clearing member to margin, guarantee, or secure trades or positions in or accruing as a result of such Eligible Products.

Statutory Basis for Granting Relief

Section 4d(a)(2) of the CEA 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 ("FCM") may be commingled and deposited as provided in Section 4d(a)(2) with any other money, securities and property received by such FCM and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such FCM.

Terms and Conditions of Relief

An order under Section 4d(a)(2) must prescribe the terms and conditions under which relief from the segregation requirements may be granted. In order to conform to prior Commission orders and applicable Commission Regulations, the terms and conditions of the Commission Order would require that:

- 1) all money received by a Participating Clearing Member to margin, guarantee, or secure Eligible Products 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 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, and each Market Professional acknowledge in writing that:
 - a. any property held on the Market Professional's behalf in a non-proprietary cross-



marginng account will be treated in a manner consistent with this Order;

- 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 non-proprietary cross-marginng 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. §§741-753 ("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. §§ 761-767, 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-marginng 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-marginng property maintained in non-proprietary cross-marginng accounts and not commingle such cross-marginng property with any property maintained in any non-cross marginng accounts or proprietary cross-marginng accounts;
 - 4) NYPC, FICC, each Participating Clearing Member, Market Professional, and each depository provide the Commission with access to its books and records with respect to non-proprietary cross-marginng 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-marginng 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-marginng and non-cross-marginng accounts without using any net liquidating equity in one account to reduce a deficit in the other;
 - 7) Participating Clearing Members designate non-proprietary cross-marginng 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 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 Members to margin, guarantee, or secure Eligible Products 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 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 non-proprietary 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 non-proprietary cross-margining account 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 treated in accordance with the distributional framework established by Appendix B, Framework 1 to Part 190 of the CFTC's regulations.

Very truly yours,

Laura C. Klimpel
General Counsel

Encl.



NYPC NEW YORK
PORTFOLIO
CLEARING

Exhibit A¹

Options Clearing Corporation (“OCC”)-Chicago Mercantile Exchange (“CME”) (1991) – 56 Fed. Reg. 61404 (CFTC); Release No. 34-29991 (SEC).

OCC-Intermarket Clearing Corporation (“ICC”) (1991) – 56 Fed. Reg. 61406 (CFTC); Release No. 34-30041 (SEC).

OCC-ICC-CME (1993) – Release No. 34- 32534 (SEC).

OCC-Board of Trade Clearing Corporation (1993) - Release No. 34-32681 (SEC).

OCC-Kansas City Board of Trade Clearing Corporation (“KCBOT”) (1993) – Release No. 34-32708 (SEC).

OCC-ICC-Commodity Clearing Corporation (1993) – Release No. 34-33272 (SEC).

OCC-ICC, OCC-ICC-CME, OCC-KCBOT (1996) – Release No. 34-36819 (SEC).

OCC-CME-Commodity Clearing Corporation (1997) – Release No. 34-38584 (SEC).

OCC-ICE Clear U.S. (2008) – Comm. Fut. L. Rep. ¶130,786 (CFTC); Release No. 34-57118 (SEC).

¹ Commission orders approving cross-margining programs are typically not published in the Federal Register. (The SEC publishes all approvals of clearinghouse rule filings; those approvals are referenced above.)