THE OPTIONS CLEARING CORPORATION

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October 23, 2007

VIA E-MAIL

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2007-15 Rule Certification

Dear Mr. Stawick:

Attached is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commission Regulation 40.6. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act").

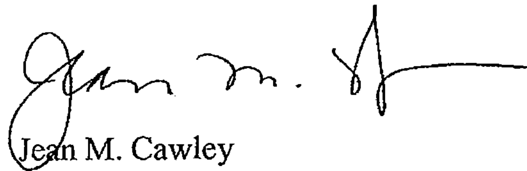
In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is when the proposed rule has been approved by the SEC. No substantive opposing views were expressed to OCC by governing board or committee members, clearing members of OCC, or market participants, that were not incorporated into the rule.

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Commodity Exchange Act and the Commission's regulations thereunder.

JEAN M. CAWLEY
SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL
ONE N. WACKER DRIVE, SUITE 500 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280
JCAWLEY@THEOCC.COM WWW.OPTIONSCLEARING.COM

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-6269.

Sincerely,



Jean M. Cawley

Attachments

cc: CFTC Central Region (w/ enclosure)
525 West Monroe Street, Suite 1100
Chicago, IL 60661
Attn: Frank Zimmerle

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OFC. OF THE SECRETARIAT

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 add an interpretation to its By-Laws and Rules as set forth below to clarify that, under existing OCC By-Laws and Rules, "securities contracts" and "commodity contracts" held by a Clearing Member in a "proprietary account" at OCC are held pursuant to "a cross-margining agreement or similar arrangement" for purposes of Section 561(b)(3)(A) of the United States Bankruptcy Code.

Material proposed to be added to OCC's By-Laws and Rules is underlined and material proposed to be deleted is enclosed in bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE VI

Clearance of Exchange Transactions

* * *

Maintenance of Accounts

SECTION 3. [Body: No change.]

. . . Interpretations and Policies:

.01 [No change.]

.02 In any "proprietary account" a Clearing Member is permitted to carry both cleared contracts that are "securities" as defined in Section 3(a)(10) of the Securities Exchange Act of 1934 and cleared contracts that are commodity futures or futures options subject to regulation under the Commodity Exchange Act, and the margin requirements applicable to any such proprietary account shall be determined under Rule 601 based upon the net liquidating value of all positions carried in the account. Accordingly, all such proprietary accounts are deemed to be held subject to a "cross-margining agreement or similar arrangement" for purposes of Section 561(b)(3)(A) of the United States Bankruptcy Code (11 U.S.C. § 561(b)(3)(A)) and any netting performed between cleared contracts that are securities, on the one hand, and cleared contracts that are commodity futures or futures options, on the other, including any close-out netting that is performed in accordance with Section 27 of Article VI of the By-Laws or Chapter XI of the Rules, shall be deemed to occur pursuant to such cross-margining agreement or similar arrangement. For purposes of this interpretation, a "proprietary account" includes (i) a firm account, (ii) a separate Market-Maker's account for which the Market-Maker is a Clearing Member or a proprietary Market-Maker trading for his own account, (iii) a combined Market-Maker's account confined to the Exchange transactions of Market-Makers who are Clearing Members or proprietary Market-Makers trading for their own accounts, (iv) an OCC proprietary X-M account (together with the corresponding proprietary X-M account at a participating futures clearing organization), or (v) a proprietary futures professional account and any other account that does not contain positions or other property of any person who is a "customer" within the meaning of the Commodity Exchange Act and regulations thereunder.

.02 – .05 [Renumbered .03 – .06 but otherwise no change.]

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of OCC at meetings held on July 27, 2004 and September 26, 2006.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, Senior 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 add an interpretation to Section 3 of Article VI of OCC's By-Laws to clarify that OCC's existing By-Laws and Rules constitute "a cross-margining agreement or similar arrangement" with respect to cleared contracts carried in any proprietary account with OCC to the extent that commodity futures and futures options (collectively, "commodity contracts") are permitted to be carried in such account along with securities options and other securities (collectively, "securities contracts").[1] Where such positions are permitted to be so commingled, margin is calculated under Chapter VI of OCC's Rules based on the net risk of all such cleared contracts whether they are securities contracts or commodity contracts. "Proprietary accounts" within the scope of this interpretation include (i) a firm account, (ii) a separate Market-Maker's account for which the Market-Maker is a clearing member or a proprietary Market-Maker trading for his own account, (iii) a combined Market-Maker's account confined to the Exchange transactions of Market-Makers who are Clearing Members or proprietary Market-Makers trading for their own accounts, (iv) an OCC proprietary X-M account, or (v) a proprietary futures professional account. All such proprietary accounts must be confined under OCC's By-Laws to the transactions of the Clearing Member itself and

[1] Security futures carried in a proprietary account would appear to be both securities contracts and commodity contracts for purposes of this rule filing.

such other persons as are not required to be treated as "customers" of the Clearing Member either under the definition in CFTC Regulation 1.3(k) or under SEC Rules 8c-1 , 15c-2-1 or 15c3-3, or SEC staff interpretations or "no action" letters thereunder.[2]

Section 4d of the CEA and CFTC regulations thereunder require that futures and futures options traded on a "designated contract market" and carried for the account of a "customer" (as defined in CFTC Regulation 1.3(k)) must be segregated by the carrying futures commission merchant ("FCM") from funds or positions that are "proprietary" to the carrying FCM. Although Section 4d and the CFTC regulations permit the property of separate customers of the same FCM to be commingled at the clearinghouse in segregated customer accounts, CFTC Regulation 1.22 provides that "[c]ustomer funds shall not be used to carry trades or positions of

[2] Article VI, Section 3(a) of OCC's By-Laws provides that a "firm account . . . shall be confined to (i) the Exchange transactions in cleared securities other than security futures of such Clearing Member's non-customers [which is defined in terms of rules under the Securities Exchange Act of 1934], (ii) the Exchange transactions in (x) futures other than security futures and (y) futures options of persons whose transactions are not required to be treated as the transactions of futures customers, and (iii) the Exchange transactions in security futures of persons whose transactions are not required to be treated as the transactions either of securities customers or of futures customers." The term "futures customer" is defined in Article I of OCC's By-Laws as "a person whose positions are carried by a futures commission merchant . . . in a futures account required to be segregated under Section 4d of the Commodity Exchange Act and regulations of the Commodity Futures Trading Commission thereunder." Article VI, Section 3(c) provides that a proprietary combined Market-Makers' account is confined to transactions of "proprietary Market-Makers," which is defined to include "any participant, as such, in an account that is not required to be segregated under Section 4d of the Commodity Exchange Act." A "separate Market-Maker's account" under Section 3(b) is similarly limited to a "proprietary Market-Maker." An "OCC Proprietary X-M account (together with the corresponding proprietary X-M account at a participating futures clearing organization)" is defined in the applicable cross-margining agreements to be an account of a person whose account is a "proprietary account" within the meaning of Section 1.3(y) of the CFTC regulations. Finally, a "proprietary futures professional account" is defined in Article I of the By-Laws to be an account of a futures professional that is not a futures customer. Accordingly, all of these accounts are defined in terms that exclude any person whose property is required to be segregated under Section 4d of the CEA. Moreover, a futures commission merchant is itself obligated to carry the positions of futures

the same commodity and/or option customer other than in commodities or commodity options traded through the facilities of a [CFTC-designated] contract market." Accordingly, OCC carries trades and positions of commodity customers in separate segregated funds accounts in compliance with the CFTC's regulations and, except in accordance with specific cross-margining orders of the CFTC, does not commingle these funds with the funds of securities options customers.

However, Section 4d and the cited regulations do not apply to accounts that are "proprietary" within the meaning of CFTC Regulation 1.3(y). There is no prohibition against commingling of proprietary funds of an FCM relating to its futures activities with other proprietary funds of the same FCM at the clearinghouse level. Accordingly, a Clearing Member may maintain both securities contracts and commodity contracts in any proprietary account (to the extent that such inclusion is otherwise consistent with the purposes of the account) with the automatic result that clearing level margin requirements applicable to any such proprietary account are determined under OCC Rule 601 based upon the net liquidating value of all positions carried in the account. Therefore, the margin that would otherwise be required on positions in securities contracts may be reduced by offsetting positions in commodity contracts and vice versa.

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customers in CFTC segregated accounts and would be in violation of that obligation by carrying them in any account at OCC that is not such an account.

Section 561(b)(2)(A) of the United States Bankruptcy Code (the "Code")[3] contains certain prohibitions against the offset by a party of obligations to a "debtor" [i.e., a person subject to a bankruptcy proceeding under the Code] arising under or in connection with a commodity contract as defined under Section 761(4) of the Code[4] against any claim arising under or in connection with other instruments (including securities contracts) "except to the extent that the party has positive net equity in its commodity accounts at the debtor." Section 561(b)(2)(B) of the Code contains a similar prohibition against such offsets applicable to "another commodity broker" having an obligation to the debtor arising under or in connection with a commodity contract entered into on behalf of a "customer of the debtor." The legislative history of these provisions states, "Subsections 561(b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers."[5]

OCC recently adopted a "close-out netting" rule, set forth in Section 27 of Article VI of OCC's By-Laws. Section 27 is intended to allow Clearing Members to calculate their credit exposure to OCC on a net basis for balance sheet and regulatory capital purposes to the extent consistent with customer protection rules under the Exchange Act and the CEA. Paragraph (d) of Section 27 effectively permits netting of assets and liabilities within proprietary accounts without limitation as to whether the assets and liabilities in the account arise from

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[3] 11 U.S.C. §561(b)(2)(A).
[4] 11 U.S.C. §761(4). This very broad "commodity contracts" definition should include commodity futures and futures options and may include security futures as well.

securities contracts or commodity contracts. Absent an applicable exception, the prohibition in Section 561(b)(2)(A) could be interpreted to limit such netting and make it unenforceable to the extent that there are both securities contracts and commodity contracts in such accounts.[6] However, an exception to the prohibition in Section 561(b)(2)(A) (and Section 561(b)(2)(B) as well) was created for cross-margining arrangements, and that exception is applicable to the close-out netting provided for in Section 27 of Article VI of OCC's By-Laws insofar as such netting permits the offset of commodity contracts against securities contracts in proprietary accounts.

Section 561(b)(3)(A) of the Code provides that "no provision of [Section 561(b)(2)] shall prohibit the offset of claims and obligations that arise under a "cross-margining agreement or similar arrangement that has been submitted to the [CFTC] under paragraph (1) or (2) of section 5c(c) of the [CEA] and has not been abrogated or rendered ineffective by the CFTC." All of OCC's By-Laws and Rules have been submitted under paragraph (1) or (2) of Section 5c(c) of the CEA, and none has been abrogated or rendered ineffective by the CFTC.

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[5] H.R. Rep. No. 109-31, Part 1 at 132 (April 8, 2005).

[6] Section 561(b)(2)(B) should not apply to close-out netting in the event of an insolvency of OCC. Section 561(b)(2)(B) would appear to provide, in effect, that a Clearing Member may not net an obligation to OCC arising from a commodity contract entered into on behalf of a "customer of the debtor" against amounts owed by OCC to the Clearing Member arising under a securities contract or other contracts other than commodity contracts. Because OCC would be the debtor, the term "customer of the debtor" would appear to refer to a customer of OCC. OCC does not believe that a Clearing Member would likely be deemed to have entered into any commodity contract on behalf of any party that would also be deemed to be a customer of OCC for purposes of this provision; and we therefore think that Section 561(b)(2)(B) should not be interpreted as limiting the enforceability of any provisions of Section 27 of Article VI of OCC's By-Laws. In any event, however, Section 561(b)(2)(B) would be overridden by the exception in Section 561(b)(3)(A) as set forth in the proposed Interpretation and Policy.

As commonly understood, a "cross-margining agreement" includes an arrangement under which commodity contracts and securities contracts are margined together as a single portfolio.[7] This is precisely what takes place under OCC By-Laws and Rules, and its Rule 601 in particular, in all proprietary accounts to the extent that they contain both securities contracts and commodity contracts.

The original cross-margining program, which was initiated between OCC and ICC in 1988, was limited to proprietary accounts.[8] In connection with its approval, the SEC stated that "it appears that no statutory, Commission [i.e., SEC] or CFTC rule changes are required to implement a cross-margining system for proprietary accounts."[9] OCC rule changes were necessary in 1988 in order to implement proprietary cross-margining because OCC and ICC were separate clearing organizations and needed to have special arrangements between them in order to combine securities contracts cleared by OCC and commodity contracts cleared by ICC for margin purposes. However, when OCC itself registered as a derivatives clearing organization under the CEA, cross-margining in proprietary accounts was an automatic consequence of that dual registration. Of course, a rule filing was necessary in order to combine *customer* positions in security contracts and commodity contracts

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[7] *See, e.g.*, SEC Release No. 34-26153, 53 FR 39561 (October 3, 1988) approving the first cross-margining program between OCC and its commodity clearing affiliate, The Intermarket Clearing Corporation ("ICC"). CFTC approval of that cross-margining program was memorialized in a letter from Jean A. Webb, Secretary, to George S. Hender, President, ICC, dated June 1, 1988.

[8] SEC Release No. 34-26153, 53 FR 39561 (October 3, 1988).

[9] *Id.* fn. 15.

for margin purposes, even where OCC clears both the commodity contracts and the securities contracts. Accordingly, OCC submitted appropriate rule filings to both the SEC and the CFTC and received the necessary approval to create an internal cross-margining program for non-proprietary market professionals.[10] In the case of proprietary cross-margining, however, no such approval is required and this rule filing is being submitted simply in order to clarify OCC's interpretation of its existing rules.

*   *   *

Since its approval of the first cross-margining program in 1988,[11] the Commission has repeatedly expressed its support for such programs and has found that they are consistent with the Exchange Act and in particular Section 17A of the Exchange Act. Indeed, there has been wide support for cross-margining systems over many years. For example, The Report of President's Task Force on Market Mechanisms (the 'Brady Report') noted that the absence of an effective cross-margining system for futures and securities options markets contributed to payment strains in October 1987. Accordingly, the Brady Report recommended that cross-margining be allowed, permitting market participants with an investment in futures to receive

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[10] *See* SR-OCC-2004-10 adopting By-Law Article VI, Section 25, which was approved by the SEC in Release No. 34-50509 (Oct. 8, 2004) and by the CFTC by order issued November 5, 2004.

[11] SEC Release No. 34-26153 (October 3, 1988).

credit for a hedged investment in stocks or options.[12] The President's Working Group on Financial Markets in its Interim Report concurred, recommending that the SEC and CFTC not only approve the OCC/ICC cross-margining program but facilitate cross-margining among other clearing agencies.[13]

The Commission has previously found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Securities Exchange Act of 1934, as amended. In so finding, the Commission noted that cross-margining programs reduce the risk that a Clearing Member would become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect, and that they therefore enhance the security of the clearing system.[14]

The proposed rule change is not inconsistent with the rules of OCC, including any rule proposed to be amended.

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

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

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[12] *See* Brady Report at 66 (January 1988).

[13] *See* Interim Report of the President's Working Group on Financial Markets, Appendix D at 11 (May 1988).

[14] SEC Release No. 34-32708 (August 2, 1993).

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 have 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 Securities Exchange Act of 1934.

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

This rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4(f) thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

Item 8. Proposed Rule Change Based on Rule of Another Self-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 Proposed Rule Change for publication in the Federal Register.

SIGNATURE

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

THE OPTIONS CLEARING CORPORATION

By: William H. Navin

William H. Navin
Executive Vice President and
General Counsel