UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of the Options Clearing Corporation
Proposal to Implement Non-Proprietary
Cross-Margining Program

ORDER

The Options Clearing Corporation ("OCC") has submitted to the Commodity Futures Trading Commission ("Commission"), under Commission Regulation 40.6, a proposal to implement a non-proprietary internal cross-margining program for market professional customers for the cross-margining of positions in security futures and security options cleared by OCC in its capacity as a securities clearing agency with security futures, and 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 Commodity Exchange Act ("Act'). These cross-margined accounts would be carried by OCC clearing members that are both broker-dealers registered as such under the Securities Exchange Act of 1934 and futures commission merchants ("FCM") registered as such under the Act.

The OCC internal cross-margining program provides for the calculation by OCC of a single margin requirement to support positions of participating market professionals in the internal cross-margined accounts carried by participating FCM/Broker-Dealer clearing firms.

While commingling of futures and non-futures funds of customers is not permitted under the Act and the Commission's regulations, Section 4d(a) of the Act authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property [received by an FCM to margin, guarantee or secure the commodity futures trades or contracts of a customer] may be commingled . . . . 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]."

The Commission has reviewed the internal cross-margining proposal; the representations of OCC as to the operation of the program; the Market Professional's Agreement for Internal Cross-Margining with OCC and the applicable participating clearing firm; and such other documents as constitute the complete record in this matter; and

Based on the Record in this matter, and provided that the cross-margining proposal submitted by OCC is implemented consistently with the representations and agreements cited herein, and provided that:

(a) each participating market professional shall execute a Market Professional's Agreement for Internal Cross-Margining, in the form provided to the Commission, with OCC and the applicable participating clearing firm;

(b) OCC, each participating clearing firm, 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 money, securities, and property maintained in any other accounts, including non-cross-margining accounts or proprietary cross-margining accounts;

(c) each participating clearing firm shall include all cross-margining property received from participating market professionals to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, security futures transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, or transactions, when calculating segregation requirements for purposes of Section 4d(a) of the Act and Commission Regulation 1.32, 17 CFR 1.32, and shall calculate 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;

(d) each participating clearing firm shall 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;

(e) 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, shall 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 commodity futures trades, commodity futures contracts, commodity option transactions, security future 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, or transactions separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, security futures contracts, commodity options 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;

(f) OCC shall not satisfy any deficiency in a non-proprietary cross-margining account by recourse to non-cross-margining segregated funds; and

(g) OCC, each participating clearing firm, each participating market professional, and each depository shall provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and position in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;

It is hereby Ordered pursuant to Section 4d(a)(2) of the Act:

(1) that all money, securities, and property received by a participating clearing firm to margin, guarantee, or secure trades or contracts carried in a non-proprietary cross-margining account for or on behalf of participating 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 firms and shall be accounted for and treated and dealt with as belonging to the participating market professional customers of the participating clearing firm consistently with Section 4d of the Act;

(2) that, subject to the terms of this Order, notwithstanding any provisions to the contrary in the Commission's regulations, the money, securities, and property described in the preceding paragraph of this Order may be commingled in a non-proprietary cross-margining account with money, securities, and property received by a participating clearing firm to margin, guarantee, or secure trades or positions in eligible commodity futures or commodity option contracts, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act; and

(3) that, in the event of bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm, any customer net equity claim which a participating market professional has in respect of cross-margining property held by such participating clearing firm in a non-proprietary cross-margining account shall 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 will be treated in accordance with the distributional framework established by Appendix B, Framework 1 to Part 190 of the Commission's regulations.

Issued in Washington, D.C., this 5th day of November, 2004.

Jean A. Webb

Jean A. Webb
Secretary of the Commission