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THE OPTIONS CLEARING CORPORATION

ONE N. WACKER DRIVE, SUITE 600, CHICAGO, ILLINOIS 60606

2004 JUN 18 PM 12:40

WILLIAM H. NAVIN

EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY

TEL 312 322 1017 FAX 312 322 1936

WNAVIN@THEOCC.COM

June 18, 2004

Via Electronic Mail and Facsimile

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

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COMMENT

Re: Futures Market Self-Regulation: Proposed Amendment of Joint Audit Agreement

Dear Ms. Webb:

The Options Clearing Corporation ("OCC") is submitting this letter in response to the Commission's Request for Comment on a pending proposal (the "Proposal") to amend the 1984 Joint Audit Agreement (the "1984 Agreement") among the domestic futures exchanges and the National Futures Association.<sup>1</sup>

OCC

OCC is a securities clearing agency regulated by the Securities and Exchange Commission. In that capacity, OCC clears securities options for the nation's six options exchanges, as well as security futures traded on NQLX and OneChicago. In 2001, the Commission registered OCC as a derivatives clearing organization ("DCO"). In that capacity, OCC clears commodity futures traded on the CBOE Futures Exchange and the Philadelphia Board of Trade.

A number of futures commission merchants ("FCMs") have recently become OCC participants. Because OCC is exposed to the credit of these participants, OCC has an interest in the risk management activities of the Joint Audit Committee ("JAC").

<sup>1</sup> Federal Register, Vol. 69, No. 70, dated April 12, 2004, at 19166.

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### Comments

OCC concurs in principle with the comments on the Proposal submitted by The Clearing Corporation ("TCC").<sup>2</sup> In particular, OCC believes that it is important that independent DCOs have access to JAC meetings.

Clearinghouses have a responsibility to monitor the creditworthiness of their participants. The public has an interest in ensuring that they have the tools to do so. OCC understands that the JAC has served as a forum for the sharing of risk management information, including audit findings, among its members, including futures exchanges with captive clearinghouses. To the extent that the JAC functions as a vehicle for the sharing of risk information, OCC believes that independent clearinghouses, as well as captive clearinghouses, should have access to that information.

We understand that independent DCOs have been excluded from JAC meetings except by special invitation. This seems strange, given that DCOs, like exchanges, are self-regulatory organizations affected with a public interest. Just as exchanges have an interest in gaining access to information regarding the financial condition of their members, DCOs have an interest—and a compelling one—in gaining access to information bearing on the financial soundness of their participants. Moreover, independent clearinghouses will often have information of value to the JAC, so the benefits of DCO participation in JAC meetings could be mutual.

The JAC's exclusionary stance contrasts with the openness of the Intermarket Surveillance Group ("ISG"). Like the JAC, the ISG is an organization of exchanges formed to facilitate the sharing of self-regulatory information. Unlike the JAC, the ISG has extended a standing invitation to OCC to attend its meetings, and its Options Sub-Group reserves an agenda item at each meeting for matters to be raised by OCC.

The Commodity Exchange Act recognizes the importance of information sharing arrangements to DCOs. Core Principle M obligates DCOs to enter into and abide by appropriate information-sharing agreements and to use relevant information gained from such arrangements in carrying out their risk management programs.<sup>3</sup> Yet independent clearinghouses are barred from access to JAC meetings, and the Proposal would only permit—not require—JAC members to share information regarding the finances and risk exposures of FCMs with DCOs.

We believe that in the interests of sound risk management and the reduction of systemic risk, independent DCOs should have full access to JAC meetings. We do not regard

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<sup>2</sup> Letter of Nancy K. Brooks to Jean A. Webb dated June 16, 2004.

<sup>3</sup> 7 USC §7a-1(c)(2)(M).

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membership status or voting rights as critical. It would be sufficient for our purposes if independent DCOs were allowed to participate in JAC meetings as non-voting affiliate members.<sup>4</sup> However, we can see no justification for outright exclusion, particularly when captive clearinghouses can access JAC meetings indirectly through their affiliated exchanges.

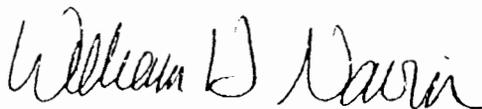
Like TCC, we also believe that independent clearinghouses should have input in the development of financial reporting and net capital standards for FCMs. Independent clearinghouses have experience and expertise in risk management that could be of value in that process. OCC, for example, has over 30 years of experience in evaluating and monitoring the creditworthiness of participants and managing derivatives risk.

### Conclusion

For the foregoing reasons, we urge the Commission not to approve the pending proposal to amend the 1984 Agreement unless it is revised to allow independent clearinghouses to participate in meetings of the JAC. Indeed, we believe that the Commission should consider withdrawing its approval of the 1984 Agreement itself if it is not so revised.<sup>5</sup>

We appreciate the opportunity to submit these comments. Any questions may be addressed to the undersigned at 312-322-1817.

Very truly yours,



William H. Navin  
Executive Vice President and  
General Counsel

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<sup>4</sup> DCO participation should not, however, be limited to passive observer status. It should include the right to be heard, as well as the same access to agendas, briefing materials, etc. as voting members.

<sup>5</sup> The Commission's Request for Comment expressly notes that the Commission may withdraw its approval of a DSRO plan in whole or in part if it determines that the plan (or part) no longer adequately effectuates the purposes of the Commodity Exchange Act or Commission regulations.