October 26, 2007

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Petition to Establish a Cross-Margining Program With the Options Clearing Corporation

Dear Mr. Stawick:

On behalf of ICE Clear US, Inc. ("ICE Clear US") we respectfully petition the Commission for an Order pursuant to Section 4d of the Commodity Exchange Act ("CEA" or "Act") to approve a cross-margining ("XM") program between ICE Clear US and The Options Clearing Corporation ("OCC") (collectively the "Parties"). Specifically, ICE Clear US seeks relief under Section 4d(a)(2) of the CEA to permit the Parties and their clearing members to commingle customer funds held in segregated accounts maintained in accordance with Section 4d with other funds used to margin, secure or guarantee certain securities option positions cleared by OCC.

Under the proposal, participants who are members of both clearing organizations or who are members of one of the clearing organizations and affiliated with a member of the other clearing organization, could elect to have the margin obligation associated with futures or options on futures positions cleared by ICE Clear US offset by the corresponding obligation for related securities option positions cleared by OCC. This would allow members of ICE Clear US and OCC to benefit from lower margin requirements whenever there is an offsetting reduction in risk between two contract positions and thus enjoy greater liquidity and more efficient use of their collateral.

The proposed XM program is substantially similar to the XM program that has been in place between OCC and the Chicago Mercantile Exchange ("CME") since 1993 with the Commission's approval. As discussed below, ICE Clear US participated in such XM program, with the approval of the Commission, from 1997 to 2004, under its prior names, "Commodities Clearing Corporation" ("CCC") and "New York Clearing Corporation" ("NYCC").

As with other XM programs that the Commission has approved in the past, the proposed arrangement between ICE Clear US and OCC would enhance the efficiency and financial integrity of the clearing system by allowing the participating clearing organizations to recognize the offsetting risks of correlated products in the securities and commodities markets without compromising the financial integrity of the interrelated marketplace.

Background

The parties propose to enter into the Cross-Margining Agreement (the "Agreement"), a draft of which is attached hereto as Appendix A. The Agreement provides for the establishment of a cross-margining arrangement with respect to proprietary futures and options positions and futures and options positions carried and cleared for "Market Professionals" (as such term is defined below) . Under the Agreement, participating clearing members would be able to elect to have certain futures contracts and options on futures contracts and security options contracts cleared by the respective clearing organizations carried in special pairs of accounts, one at each clearing organization, each pair to be combined and margined as a single account. The Agreement would establish procedures to allow margin deposited by such members to be held jointly by OCC and ICE Clear US, with OCC and ICE Clear US having a joint security interest in the property in the accounts.

Parties to the Agreement

ICE Clear US is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the CEA. It acts as a clearing organization for futures contracts and options on futures contracts traded on ICE Futures US, Inc. ("ICE Futures US"). OCC is a clearing organization registered with the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 and with the CFTC as a derivatives clearing organization. It acts as the clearing organization for all securities options listed and traded on national securities exchanges and also offers clearing and settlement services for transactions in futures and options on futures traded on the CBOE Futures Exchange and Philadelphia Board of Trade as well as security futures contracts traded on One-Chicago.

Applicability

The Agreement would apply to Joint Clearing Members, *i.e.,* clearing members who are members of both ICE Clear US and OCC, and to Affiliated Clearing Members, *i.e.,* two clearing members affiliated with each other, one of which is a clearing member of ICE Clear US and the other a clearing member of OCC. The Agreement would apply only to proprietary transactions and to the non-proprietary transactions of "Market Professionals," as defined below. As with the similar cross margining programs approved in the past, public customers would not be eligible to participate.

Under the Agreement, "Market Professional" is defined as follows:

> "Market Professional" means (1) any Market-Maker, specialist, or Registered Trader as defined in the OCC Rules and (2) any Member as defined in the Rules of ICE Futures U.S., Inc., but only to the extent (for purposes of both (1) and (2) above) he or it is trading for his or its own account and not for others, and only if such person or entity actively trades for his or its own account Eligible Contracts cleared by each Clearing Organization.

The definition of "Market Professional" is similar to the definition used in the XM program approved by the Commission involving OCC and CME (and previously ICE Clear US), and includes any Member of ICE Futures U.S. who also satisfies the other prongs of the definition of "Market Professional" with respect to their trading. In order to make cross-margining available to professional traders who presently may not be members of ICE Futures U.S., a new Rule 2.40 is being adopted by ICE Futures U.S. that establishes a process for application and approval of a member of any designated contract market as a "Cross-Margining Participant" of ICE Futures U.S.. A person so approved as a Cross-Margining Participant will be deemed a "Member" of ICE Futures U.S within the meaning of that term under the Rules of ICE Futures, U.S., to the extent that they participate in a Cross-Margining Program to which ICE Clearing US is a party. As such, they will be Market Professionals within the scope of the XM Agreement.

The XM program would be restricted to specified Eligible Contracts with correlated and potentially offsetting risk characteristics traded on different exchanges. The "Eligible Contracts" would initially be limited to the following, which were selected by both clearing organizations after each determined that the products met their respective risk management standards:

*Futures Contracts and ETF Options* on each of the Russell 1000, 2000 and 3000 Indices, Russell 1000 and 2000 Value Indices and the Russell 1000 and 2000 Growth Indices;

*Index Options* on the Russell 1000 Index and Russell 2000 Index; and

*Options on Futures* on the Russell 1000, 2000 and 3000 Index, the Russell 1000 Value Index and the Russell 1000 Growth Index.

The correlation of the underlying indexes is above 75% for all possible pairs of contracts, and the contracts are therefore deemed appropriate by both clearing organizations for the purposes of cross-margining. ICE Clear derives correlation among contracts by calculating the front month correlation for each product as it relates to the others in the product mix. Correlations of back month contracts are also tested periodically to confirm their adequacy. OCC uses the method described in its STANS rule filing (SR-OCC-2004-20). The determination also takes into account the differing sizes of the Eligible Contracts in order to determine the appropriate offsets.

Operation of the XM Agreement

As noted above, the proposed XM program is similar to the cross-margining program currently in effect between OCC and CME and with other cross-margining programs previously approved by the Commission, including the tri-party arrangement previously in place among CME, OCC, and ICE Clear US.[1] Under the proposed arrangement, members of the two clearing

[1] The predecessor program, which was approved in 1993, was among CME, OCC and the Intermarket Clearing Corporation ("ICC"). In 1997, ICE Clear US (which was then known as CCC) replaced ICC as

organizations would be able to cross-margin certain futures (and options on futures) positions they maintain at ICE Clear US with related securities options positions at OCC.

As noted above, the "Eligible Contracts" in the Agreement would be restricted to specified products with offsetting risk characteristics traded on different exchanges. Such contracts would be carried in special pairs of accounts with each pair to be combined and margined as a single account based upon the net risk presented by the contracts in such accounts. All margin deposited by clearing members would be held jointly by OCC and ICE Clear US, with both organizations having a joint security interest in such accounts to secure obligations of the clearing members to them, and the joint account would be maintained separately from other accounts of the parties. The arrangement would allow each clearing organization to offset the risks of positions held at the other clearing organizations. It would also facilitate daily cash settlements with participating clearing members on a nettable basis.

Pursuant to the Agreement, initial margin would be assessed based on the net risk of the positions in the combined account. To the extent that the contracts in the account are offsetting from a risk perspective, the clearing member's initial margin requirement would be less than it would be if the initial margin requirements were determined separately without any netting or offset.

The Agreement envisions two types of accounts: 1) a "non-proprietary XM account," which is a cross-margined account limited to transactions and positions of "Market Professionals" and carried for an ICE Clear US clearing member by ICE Clear US or an OCC clearing member by OCC; and 2) a "proprietary XM account," which is a cross-margined account limited to transactions and positions of non-customers (as defined in the Agreement) carried for an ICE Clear US clearing member by ICE Clear US or an OCC clearing member by OCC.

Each joint clearing member or pair of affiliated clearing members would be able to establish one pair of proprietary XM accounts and one pair of non-proprietary XM accounts at each of ICE Clear US and OCC. Each XM account would be subject to the rules of the applicable clearing organization to the extent not inconsistent with the Agreement. The Agreement also envisions either ICE Clear US or OCC acting as the designated clearing organization for each joint clearing member or pair of affiliated clearing members, with one affiliated clearing member acting as agent for the other for purposes of dealing with margin and settlement; and with a bank being designated for purposes of daily money settlement in respect of each XM account.

As in the case of similar cross-margining programs approved by the Commission, the non-proprietary cross-margining accounts would be treated as segregated futures accounts under Section 4d of the CEA, and in the event of bankruptcy would be subject to the distributional convention for customer funds specified in Appendix B to Part 190 of the CFTC's regulations.

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a member to the arrangement pursuant to an agreement that was approved by the Commission. ICE Clear US participated in this program (as CCC and later NYCC) until it withdrew in 2004, leaving the existing bilateral program between OCC and CME.

Margin Setting

Initially, OCC's margin system would be used to determine the amount of initial margin for all contracts carried in each pair of XM accounts. However, either OCC or ICE Clear US would be authorized to increase the margin requirement for any pair of XM Accounts at any time and in any amount they deem appropriate. Under the Agreement, ICE Clear US would have the right to elect, on not more than 30 days notice to OCC, a procedure by which ICE Clear US and OCC would jointly determine initial margin requirements. Under that procedure, each clearing organization would use its margin system to determine the required initial margin as if all contracts in each pair of XM Accounts were carried in a single account at such clearing organization, and the initial margin requirement would be the average of the two calculations.

The Agreement provides for margin in the form of cash to be deposited in a Proprietary Joint Settlement Account or in the case of a non-proprietary XM account, in a Customers' Segregated Joint Margin Account. In the latter case, the funds could only be invested in "permitted investments" as defined in CFTC Rule 1.25.

Settlement Procedures

Section 7 of the Agreement describes daily settlement procedures to be employed, the issuance of settlement instructions and the process required for the approval or withholding of approval of such transfers and settlement instructions. These settlement procedures are substantially identical to those employed in the current XM program between OCC and CME which has been approved by the Commission. The Agreement would require that margin and settlement reports issued by the clearing organizations show the *net* amount of all premiums and exercise settlement amounts due in respect to option positions and the *net* amount of variation margin due to or from a clearing member. Under Section 7, these amounts would be required to be netted together with any margin deficit to obtain a single net cash settlement amount due to or from a clearing member in respect of each pair of XM accounts. Procedures for the issuance of intra-day variation margin calls and the issuance of instructions for the transfer to or from clearing members with such calls based upon the net amount of intra-day variation margin are also set forth in Section 7.

Instructions issued by either clearing organization pursuant to Section 7 directing the transfer of funds from a Proprietary Joint Settlement Account or a Customers' Segregated Joint Margin Account to or from the designated bank account of any clearing member would require the approval of the other clearing organization. If either clearing organization withheld approval of a settlement instruction, the Agreement requires the other clearing organization to issue a revised settlement instruction. In the case of unresolved disputes with respect to the proper disposition of funds in a Proprietary Joint Settlement Account or a Customers' Segregated Joint Margin Account, Section 7 requires such funds be transferred to a separate bank account established at an XM clearing bank for that purpose.

Default and Other Provisions

The Agreement sets forth procedures for ICE Clear US and OCC to suspend clearing members and to liquidate their accounts in either Proprietary or Non-Proprietary Liquidating

Accounts, as the case may be, and to use the proceeds to offset any liquidating deficit or defaults. Under the Agreement, any shortfall is to be shared by ICE Clear US and OCC equally, with each organization thereafter applying its clearing or guarantee fund and exercising any rights to make additional assessments against clearing members to the extent necessary to satisfy any obligation to the other clearing organization.

Either party may terminate the Agreement without cause by providing 90 days written notice to the other party and with cause on five days notice. In such an event, margin held jointly would be transferred from the Joint Custody Account to the custody of either OCC or ICE Clear US at the direction of the depositing clearing member. The Agreement would also require the clearing organizations to notify each other of changes in margin levels and major processing difficulties.

Regulatory Authority

Commingling of futures and non-futures funds of customers is generally not permitted under Section 4d and the Commission's regulations. Section 4d(a)(2) of the Act, however, authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property of the customers . . . received . . .[to margin, guarantee, or secure the commodity futures trades or contracts of a customer] may be commingled . . . with any other money, securities, and property. . . required by the Commission to be separately accounted for and treated and dealt with as belonging to [the] customer." Accordingly, any proposal that would permit such commingling in connection with the proposed Agreement requires Commission action pursuant to section 4d(a)(2).

Both the Commission and the SEC have found these types of cross margining programs to be consistent with clearing agency responsibilities under their respective statutory authority and highly beneficial to the clearing organization, its clearing members, and the public. As previously mentioned, the proposed arrangement is substantially similar to the tri-lateral program for joint and affiliated members of CME, OCC, and the ICE Clear US that the Commission approved in 1997. The primary difference from that program pertains to the *bilateral*, rather than to a trilateral nature of the arrangement that is proposed here. As noted above, there is also a difference in the way the term "Market Professional" is defined in the Agreement, which is modified to reflect the expanded degrees of participation that have become feasible due to the advent of electronic trading. Aside from these differences, the XM program contemplated by the proposed Agreement is virtually the same as the trilateral XM program approved in the past except, as in the case of OCC internal cross-margining, no super-margin schedule will be applied to these accounts. Each Clearing Organization, of course, remains free to increase the margin requirement for the cross-margined accounts.

Relief Sought

Order Under Section 4d of the CEA.

For the reasons set forth above, ICE Clear US seeks an Order pursuant to Section 4d(a)(2) to commingle customer funds in segregated accounts as part of a cross-margining arrangement between ICE Clear US and OCC. Consistent with the relief granted in the past by the CFTC to similar arrangements involving the cross-margining of securities and futures accounts among CME, OCC, and ICE Clear US (formerly CCC and NYCC), ICE Clear US respectfully requests that the Order include the following terms and conditions:[2]

- ICE Clear US will treat money, securities, and property received in respect of all accounts other than cross-margining accounts in a manner consistent with the requirements of the CFTC and SEC.

- Each participating clearing organization, participating clearing firm and depository will separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts.

- Each participating clearing firm will include all cross-margining property received from participating market professionals to margin, guarantee, or secure trades when calculating segregation requirements for purposes of Section 4d.

- Each participating clearing firm will compute total segregation requirements under Section 4d 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.

- Each participating clearing firm will designate non-proprietary cross-margining accounts and positions as such in its books and records.

- ICE Clear US will calculate and collect the margin requirement for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts.

- ICE Clear US will satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds.

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[2] *See Chicago Mercantile Exchange Proposal To Expand Its Cross-Margining Program With The Options Clearing Corporation To Include the Cross-Exchange Net margining of the Positions of Market Professionals,* 56 Fed Reg. 61404 (Order of CFTC, Dec. 3, 1991).

In addition to the foregoing terms and conditions, each participating market professional will acknowledge that:

- Any cross-margining property held on its behalf in a non-proprietary cross-margining account will be treated in a manner consistent with the Agreement and any order issued by the Commission;
- Such property will be accounted for, treated, and dealt with as belonging to such market professional in a manner consistent with Section 4d;
- In the event of bankruptcy, any net equity claim of such market professional in respect of such property shall be subordinated to net equity claims of securities customers in order to insure that the market professional is excluded from the definition of "customer" under the Securities Investor Protection Act of 1970 and SEC Rule 15c3-3;
- Such property held on his behalf will not be customer property under the Federal securities laws, but instead will constitute customer property under the CEA, subchapter IV of chapter 7 of title 11 of the Bankruptcy Code, and part 190 of the Commission's regulations.

The approval of the request for relief will significantly enhance the efficiency of the proposed Agreement and provide greater liquidity in such circumstances by allowing for the netting of all settlements under the cross margining program. As such, the proposed relief would be consistent with the intent of Congress in enacting the 2005 amendments to the Code to provide a safe harbor for the offset of claims that arise under cross margining programs.

If the Commission requires any additional information regarding this matter, please do not hesitate to contact me at 212-748-4083 or George Haase, Executive Vice Chairman of ICE Clear US, at 212-748-4123.

Very Truly Yours,

Audrey R. Hirschfeld
Senior Vice President & General Counsel
ICE Futures U.S., Inc.

Cc: Robert Wasserman-DCIO
George Haase-ICE Clear US

# APPENDIX A

# CROSS-MARGINING AGREEMENT

This Cross-Margining Agreement (the "Agreement") is entered into this __ day of [ ], 2007 by The Options Clearing Corporation ("OCC"), a Delaware corporation and ICE Clear US, Inc. ("ICE Clear"), a New York corporation.

## RECITALS

A. OCC is a clearing agency registered with the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act") and acts as the clearing organization for all securities options presently listed and traded on national securities exchanges.

B. ICE Clear is a derivatives clearing organization registered with the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA") and acts as the clearing organization for certain futures contracts and options on futures contracts for which ICE Futures US, Inc. ("ICE Futures US") has been designated as a contract market by the CFTC pursuant to the CEA.

C. OCC and ICE Clear desire to establish cross-margining arrangements applicable to proprietary transactions and transactions of market professionals whereby (i) joint clearing members and (ii) pairs of affiliated clearing members that are prepared to deposit margin and pledge contracts to secure each other's obligations as described herein, may elect to have certain futures contracts and option contracts cleared by the respective clearing organizations carried in special pairs of accounts (proprietary or non-proprietary), each pair to be combined and margined as a single account based upon the net risk presented by the contracts carried in such accounts.

D. In order to facilitate such cross-margining arrangements, OCC and ICE Clear desire to establish procedures whereby all margin deposited by clearing members in respect of such pairs of accounts would be held jointly by OCC and ICE Clear, and OCC and ICE Clear would have a joint security interest in contracts, margin and other property in the pairs of accounts, to secure all obligations of the clearing members to them.

AGREEMENTS

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Definitions. In addition to the terms defined above, certain other terms used in this Agreement shall be defined as follows:

(a) "Affiliate," except as provided in Section 15 of this Agreement, means, when used in respect of a particular Clearing Member, a Clearing Member of a Clearing Organization who directly or indirectly controls a Clearing Member of the other Clearing Organization, or who is directly or indirectly controlled by or under common control with such Clearing Member. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie control of that entity for purposes of this definition.

(b) "Business Day" means each day on which trading in Contracts is conducted and on which OCC and ICE Clear conduct money settlements; provided, however, that if trading in Contracts occurs on a bank holiday when money transfers cannot be made, such day shall be a Business Day for purposes of certain provisions of this Agreement but not for others as the context requires and as may be agreed upon from time to time by the parties; provided, further that OCC and ICE Clear may agree in writing to designate other days as Business Day for purposes of Section 7 of this Agreement.

(c) "Cash Settlement Amount" means the cash amount due to or from a Joint Clearing Member or pair of Affiliated Clearing Members on each Business Day in respect of a pair of X-M Accounts as described in Section 7 of this Agreement.

(d) "Clearing Member" means a Clearing Member as defined in the OCC Rules ("OCC Clearing Member") or the ICE Clear Rules ("ICE Clear Clearing Member"). "Joint Clearing Member" means a Clearing Member of each Clearing Organization. "Affiliated Clearing Members" means two Clearing Members that are Affiliates of one another, one of which is an OCC Clearing Member and the other of which is an ICE Clear Clearing Member.

(e) "Clearing Organization" means either OCC or ICE Clear.

(f) "Contract" means a long or short OCC-cleared option contract, a long or short ICE Clear-cleared futures contract or a long or short ICE Clear-cleared options contract.

(g) "Customers' Segregated Joint Custody Account" means one or more accounts established in the joint names of OCC and ICE Clear at one or more X-M Clearing Banks for the purpose of holding U.S. Treasury securities and GSE debt securities deposited by Clearing Members as Initial Margin in respect of Pairs of Non-Proprietary X-M Accounts.

(h) "Customers' Segregated Joint Margin Account" means one or more bank accounts established in the joint names of OCC and ICE Clear for the purpose of making daily money settlement and holding cash Margin in respect of Pairs of Non-Proprietary X-M Accounts.

(i) "Designated Clearing Organization" means the Clearing Organization designated by a Clearing Member or a pair of Affiliated Clearing Members in accordance with Section 2 of this Agreement.

(j) "Effective Date" shall mean the date established pursuant to Section 16(j) of this Agreement.

(k) "Eligible Contracts" means Contracts belonging to one of the classes of ICE Clear-cleared Contracts and OCC-cleared Contracts listed on Exhibit A hereto and any other classes of such Contracts as OCC and ICE Clear may agree in writing to include within this definition, provided, however, that any Contact will be removed as an Eligible Contract within 30 days of a written request of the Clearing Organization that clears the Contract, which 30 day period may be extended by mutual agreement of ICE Clear and OCC if necessary to make appropriate provisions for the protection of the market place, existing open positions and the holders thereof.

(l) "GSE debt securities" means certain debt securities issued by Congressionally chartered corporations. The following GSE debt securities are acceptable as a form of Initial Margin: (i) non-callable debt securities issued by the Federal Home Loan

Mortgage Corporation under its Reference Debt Program and (ii) non-callable debt securities issued by the Federal National Mortgage Association under its Benchmark Debt Program.

(m) "Margin" means both Initial Margin and Variation Margin. "Initial Margin" means cash, securities or other property deposited with or held by OCC and ICE Clear in accordance with Section 5 of this Agreement to secure certain obligations of a Clearing Member or its Affiliated Clearing Member, if any, to OCC or ICE Clear. "Variation Margin" means daily mark-to-market payments in respect of futures contracts and shall include similar payments in respect of options contracts in the event that the terms of any option contract that is an Eligible Contract should provide for such futures-style or similar Variation Margin.

(n) "Margin and Settlement Report" means the report distributed by a Designated Clearing Organization to its Clearing Members in respect of pairs of X-M Accounts as provided in Section 7 of this Agreement.

(o) "Margin Requirement" means the amount of Initial Margin required by the Clearing Organizations with respect to a pair of X-M Accounts as provided in Section 5 of this Agreement. "Margin Deficit" means the amount by which the Initial Margin held by OCC and ICE Clear in respect of a pair of X-M Accounts is less than the Margin Requirement for such accounts, and "Margin Excess" means the amount by which such Initial Margin exceeds such Margin Requirement.

(p) "Market Professional" means (1) any Market-Maker, specialist, or Registered Trader as defined in the OCC Rules and (2) any Member as defined in the Rules of ICE Futures U.S., Inc., but only to the extent (for purposes of both (1) and (2) above) he or it is trading for his or its own account and not for others, and only if such person or entity actively trades for his or its own account Eligible Contracts cleared by each Clearing Organization.

(q) A "Non-Customer" of an OCC Clearing Member means a person whose account with such OCC Clearing Member would not be the account of a "customer" within the meaning of SEC Rules 8c-1 and 15c2-1 or whose positions are otherwise permitted under the OCC Rules to be carried in a Proprietary X-M Account. A "Non-Customer" of a ICE Clear Clearing Member means a person whose account with such Clearing Member would be a

"proprietary account" within the meaning of Section 1.3(y) of the General Regulations of the CFTC.

(r) "Non-Proprietary X-M Account" means a cross-margined account limited to transactions and positions of Market Professionals and carried for an OCC Clearing Member by OCC or for a ICE Clear Clearing Member by ICE Clear as the context requires, but shall not include any transactions and positions of a Non-Customer of that Clearing Member. The term "Pair of Non-Proprietary X-M Accounts" means the Non-Proprietary X-M Account of a Joint Clearing Member or a pair of Affiliated Clearing Members at each Clearing Organization. The term "Non-Proprietary X-M Account" includes a Non-Proprietary X-M Pledge Account.

(s) "Non-Proprietary Liquidating Account" means one or more bank accounts established by the Clearing Organizations in connection with the liquidation of the Pair of Non-Proprietary X-M Accounts of a suspended Clearing Member or pair of Affiliated Clearing Members in accordance with Section 8 of this Agreement.

(t) "Operating Procedures" means the cross margining procedures that OCC and ICE Clear have agreed to as set forth in Exhibit C attached hereto as such procedures may be amended from time to time in a writing executed by OCC and ICE Clear.

(u) "Proprietary Joint Custody Account" means one or more accounts established in the joint names of OCC and ICE Clear at one or more X-M Clearing Banks for the purpose of holding U.S. Treasury securities and GSE debt securities deposited by Clearing Members as Initial Margin in respect of Pairs of Proprietary X-M Accounts.

(v) "Proprietary Joint Settlement Account" means one or more bank accounts established in the joint names of OCC and ICE Clear for the purpose of making daily money settlement and holding cash Margin in respect of X-M Accounts to the extent that such funds are not required to be held in the Customers' Segregated Joint Margin Account.

(w) "Proprietary X-M Account" means a cross-margined account limited to transactions and positions of Non-Customers and carried for an OCC Clearing Member by OCC or an ICE Clear Clearing Member by ICE Clear, as the context requires. The term "Pair of Proprietary X-M Accounts" means the Proprietary X-M Account of a Joint

Clearing Member or a pair of Affiliated Clearing Members at each Clearing Organization. The term "Proprietary X-M Account" includes a Proprietary X-M Pledge Account.

(x) "Proprietary Liquidating Account" means one or more bank accounts established by the Clearing Organizations in connection with the liquidation of the Pair of Proprietary X-M Accounts of a suspended Clearing Member or pair of Affiliated Clearing Members in accordance with Section 8 of this Agreement.

(y) "Rules" means the By-Laws and Rules of OCC ("OCC Rules") and the By-Laws and Rules of ICE Clear ("ICE Clear Rules") as may be in effect from time to time.

(z) "X-M Account" means a Proprietary X-M Account or a Non-Proprietary X-M Account. The term "X-M Account" includes an X-M Pledge Account.

(aa) "X-M Clearing Bank" means a bank designated by OCC and ICE Clear in accordance with Section 2 of this Agreement for purposes of making daily money settlement in respect of Pairs of Proprietary X-M Accounts and Pairs of Non-Proprietary X-M Accounts.

2. Establishment of X-M Accounts.

(a) Subject to the approval of both Clearing Organizations, each Joint Clearing Member or pair of Affiliated Clearing Members may establish one pair of Proprietary X-M Accounts and one pair of Non-Proprietary X-M Accounts. A pair of Proprietary X-M Accounts consists of two accounts: a Proprietary X-M Account at each of ICE Clear and OCC. A pair of Non-Proprietary X-M Accounts consists of two accounts: a Non-Proprietary X-M Account at each of ICE Clear and OCC. Each X-M Account, and the Contracts and Margin contained therein or deposited in respect thereof, shall be treated in accordance with this Agreement, and each Clearing Organization agrees to adopt and seek regulatory approval of all necessary Rules to effectuate this purpose. It is understood that each X-M Account shall be subject also to other applicable Rules of the Clearing Organization at which it is carried to the extent not inconsistent with the provisions of this Agreement, and in the event of any such inconsistency, the provisions of this Agreement shall govern.

(b) Either OCC or ICE Clear will act as the Designated Clearing Organization for each Joint Clearing Member or pair of Affiliated Clearing Members electing cross-margining, as agreed in each case among OCC, ICE Clear and such Clearing Member(s). Except as otherwise permitted in writing by the Clearing Organizations, in the case of Affiliated Clearing Members, one Clearing Member that is a Clearing Member of the Designated Clearing Organization shall be appointed by the other Clearing Member as its agent for purposes of receiving daily Margin and Settlement Reports, depositing Margin in respect of the X-M Accounts, making money settlement in respect of such X-M Accounts, and otherwise interacting with the Designated Clearing Organization in respect of such X-M Accounts. Each Joint Clearing Member or pair of Affiliated Clearing Members shall be required to designate a bank account in an X-M Clearing Bank for purposes of daily money settlement in respect of its Pair of Proprietary X-M Accounts ("proprietary bank account") and a bank account for purposes of daily money settlement in respect of its Pair of Non-Proprietary X-M Accounts ("segregated funds bank account").

(c) Each Joint Clearing Member electing to establish a Pair of Proprietary X-M Accounts shall be required to execute a Proprietary Cross-Margin Account Agreement in the form prescribed by OCC and ICE Clear.

(d) Each pair of Affiliated Clearing Members electing to establish a Pair of Proprietary X-M Accounts shall be required to execute a Proprietary Cross-Margin Account Agreement in the form prescribed by OCC and ICE Clear.

(e) Each Joint Clearing Member electing to establish a Pair of Non-Proprietary X-M Accounts shall be required to execute a Non-Proprietary Cross-Margin Account Agreement in the form prescribed by OCC and ICE Clear.

(f) Each pair of Affiliated Clearing Members electing to establish a Pair of Non-Proprietary X-M Accounts shall be required to execute a Non-Proprietary Cross-Margin Account Agreement in the form prescribed by OCC and ICE Clear.

3. [Intentionally Omitted]

4. Transactions and Positions Permitted in X-M Accounts. In an X-M Account a Clearing Member may purchase and sell Contracts, exercise option Contracts (and be assigned exercise notices in respect of option Contracts), and effect all other transactions in accordance with the Rules; provided, however, that X-M Accounts shall be limited to transactions and positions in Eligible Contracts.

5. Initial Margin Required for X-M Accounts.

(a) Subject to the right of ICE Clear to elect the joint procedure described in Section 5(b) below, the parties have agreed that OCC shall determine the Margin Requirement for each pair of X-M Accounts using its margin system to determine the amount of margin that it would ordinarily require with respect to all Contracts carried in such Pair of X-M Accounts (without regard to Contracts carried in other accounts) as if such Contracts were carried in a single account at OCC, and exclusive of any "Super Margin" requirement.

(b) In the event that ICE Clear so elects at any time on notice to OCC, the Clearing Organizations shall, from and after a mutually agreed upon date not later than 30 days from the date of such notice, which 30 day period may be extended by mutual agreement of ICE Clear and OCC, jointly determine the Margin Requirement for each pair of X-M Accounts as follows: each Clearing Organization shall use its margin system to determine the amount of margin that it would ordinarily require with respect to all Contracts carried in such Pair of X-M Accounts (without regard to Contracts carried in other accounts) as if such Contracts were carried in a single account at such Clearing Organization, exclusive of any "Super Margin" requirement, and the Margin Requirement for such Pair of X-M Accounts shall be the average of such amounts.

(c) Notwithstanding the foregoing Sections 5(a) and (b), either Clearing Organization may in its discretion elect to use the margin calculation produced by the other Clearing Organization's margin system for determining the Margin Requirement for any pair of X-M Accounts. Furthermore, if the Clearing Organizations mutually agree, in writing or orally, to use, on any day or for any period, one Clearing Organization's system for purposes of calculating the Margin Requirement, the other Clearing Organization need not use its systems for such purpose on such day or during such period. Any such oral agreement pursuant to this

paragraph shall be promptly confirmed in writing, but the failure to do so shall not affect the validity of such oral agreement.

(d) Either Clearing Organization may determine to increase the Margin Requirement for any pair of X-M Accounts at any time and in any amount as it deems appropriate in its discretion to reflect the financial condition of a Clearing Member (or its Affiliated Clearing Member), size of positions carried by a Clearing Member (or its Affiliated Clearing Member), unusual market conditions, changes in market prices or other special circumstances. The Margin Requirement with respect to any pair of X-M Accounts may not be decreased without the consent of both Clearing Organizations.

(e) Each Clearing Organization assumes the responsibility of determining to its satisfaction that the Margin Requirement for any Pair of X-M Accounts is adequate, and, notwithstanding any other provision of this Agreement, no Clearing Organization shall have liability to the other Clearing Organization or to any other person based upon an allegation that any margin calculation made by such Clearing Organization was inaccurate or inadequate.

6. Forms of Initial Margin and Method of Holding Initial Margin.

(a) Initial Margin deposited in respect of X-M Accounts shall be deposited in the form of cash, United States Treasury securities, GSE debt securities, letters of credit, common stocks, or a combination of the foregoing. Treasury securities, GSE debt securities and common stocks deposited as Initial Margin shall meet the requirements of both Clearing Organizations and shall be valued at the lowest value that would be given to them under the Rules of OCC or ICE Clear. Letters of credit shall be in a form mutually acceptable to both Clearing Organizations, and OCC and ICE Clear shall be joint beneficiaries thereof and each letter of credit shall provide that the proceeds of any demand for payment thereunder shall be deposited in a bank account in the names of the joint beneficiaries. Letters of credit shall also be subject to such other requirements as shall be set forth in the Operating Procedures. In the event that the form of demand for payment under any such letter of credit provides for execution by only one beneficiary, such Clearing Organization may execute such a demand for payment, in

which event it will provide notice to the other beneficiary. Letters of credit shall be issued by institutions approved for that purpose by both Clearing Organizations.

(b) Initial Margin deposited in the form of cash by a Clearing Member or pair of Affiliated Clearing Members in respect of a Pair of Proprietary X-M Accounts shall be deposited by the Designated Clearing Organization in a Proprietary Joint Settlement Account and shall be held there until returned to the Clearing Member(s) or applied in accordance with this Agreement; provided, however, that such funds may be invested overnight by the Designated Clearing Organization subject to such arrangements as may be mutually agreed to by OCC and ICE Clear, in which event any income on such investments shall be shared equally by the Clearing Organizations. To the extent that such investment requires a transfer of funds from a Proprietary Joint Settlement Account by the Designated Clearing Organization, such transfer shall not require the approval of the other Clearing Organization. Treasury securities and GSE debt securities deposited in respect of a Pair of Proprietary X-M Accounts shall be held in book-entry form in a Proprietary Joint Custody Account. Common stock deposited in respect of a Pair of Proprietary X-M Accounts will be held in an account at the Depository Trust Company ("DTC") and will be subject to the joint control of OCC and ICE Clear.

(c) Initial Margin deposited in the form of cash by a Clearing Member in respect of a Pair of Non-Proprietary X-M Accounts shall be deposited by the Designated Clearing Organization in a Customers' Segregated Joint Margin Account and shall be held there until returned to the Clearing Member(s) or applied in accordance with this Agreement; provided, however, that such funds may be invested overnight by the Designated Clearing Organization subject to such arrangements as may be mutually agreed to by OCC and ICE Clear, in which event any income on such investments shall be shared equally by the Clearing Organizations. Without limiting the foregoing, such funds shall only be invested in "permitted investments" as defined in Section 1.25 of the General Regulations of the CFTC or any successor rule or regulation of the CFTC. To the extent that such investment requires a transfer of funds from a Customers' Segregated Joint Margin Account by the Designated Clearing Organization, such transfer shall not require the approval of the other Clearing Organization. Treasury securities and GSE debt securities deposited in respect of a Pair of Non-Proprietary X-M Accounts shall be held in book-entry form in a Customers' Segregated Joint Custody Account.

Common stock deposited in respect of a Pair of Non-Proprietary X-M Accounts will be held in an account at DTC which is designated as containing customer segregated funds, and will be subject to the joint control of OCC and ICE Clear.

(d) Letters of credit deposited by a Clearing Member or a pair of Affiliated Clearing Members in respect of a pair of X-M Accounts will be held by the Designated Clearing Organization on behalf of both Clearing Organizations. If a Clearing Member deposits a letter of credit which indicates on its face that it is being deposited to serve as Margin for a Pair of Non-Proprietary X-M Accounts, such letter of credit shall not constitute Margin for any other account.

7. Daily Settlement Procedures.

(a) Settlement shall be conducted on each Business Day in accordance with the procedures set forth below. All times specified refer to local time in effect in Chicago, Illinois, and all such times may be changed from time to time as the parties agree in writing or orally. Any such oral agreement shall be promptly confirmed by email and subsequently in writing, but the failure to do so shall not affect the validity of such oral agreement. All instructions issued by a Clearing Organization pursuant to this Section 7 directing an X-M Clearing Bank to transfer funds to or from a Proprietary Joint Settlement Account or a Customers' Segregated Joint Margin Account, or directing transfers to or from the designated bank account of any Clearing Member in respect of X-M Accounts, shall be transmitted by facsimile, by other electronic means acceptable to the Clearing Organizations or by hand delivery in advance to the other Clearing Organization, and, except as otherwise provided in Section 6(b) or 6(c) of this Agreement, all such instructions directing the transfer of funds from a Proprietary Joint Settlement Account or a Customers' Segregated Joint Margin Account, or directing transfers to or from the designated bank account of any Clearing Member in respect of X-M Accounts, shall require the approval of the other Clearing Organization.

(b) Not later than 6:00 a.m., in the case of a debit instruction, and 9:00 a.m., in the case of a credit instruction on each Business Day, the Clearing Organization issuing any instruction provided for in paragraphs (f) through (j) of this Section 7 ("Regular Morning Instruction") shall transmit a copy of such instruction to the other Clearing Organization. In the

case of any instruction provided for in paragraphs (k) through (m) of this Section 7 (an "Intra-Day Instruction"), the issuing Clearing Organization shall transmit the instruction to the other Clearing Organization as far in advance of the intended time of transfer as possible. The non-issuing Clearing Organization shall promptly acknowledge receipt of any instruction transmitted to them as provided in this paragraph and, if the instruction requires the approval of such Clearing Organization, then the issuing Clearing Organization shall either (A) indicate its approval by authorizing the instruction and forwarding it to the applicable X-M Clearing Bank or (B) indicate its non-approval by informing the issuing Clearing Organization (in writing if so requested) of the reason for the non-approval of the instruction. The non-issuing Clearing Organization shall so indicate its approval or non-approval: (A) in the case of a Regular Morning Instruction, at or prior to the later of 6:40 a.m. or 30 minutes from the time of receipt of such instruction and (B) in the case of an Intra-Day Instruction, within 30 minutes of receipt of such instruction. A Clearing Organization may withhold its approval of an instruction only if it reasonably believes one or more of the following to be true: (i) the amount of the transfer requested was incorrectly calculated, (ii) if the transfer is from an account of a Clearing Member, the Clearing Member is not obligated to make the payment represented by the transfer, (iii) if the transfer is to an account of a Clearing Member or the other Clearing Organization, such Clearing Member or Clearing Organization is not entitled to receive the payment represented by the transfer, (iv) the transfer is otherwise not authorized under the terms of this Agreement, or (v) the Clearing Organization withholding approval has not received the information required to be provided to it pursuant to paragraph (d) of this Section 7 and is therefore unable to determine whether the instruction is proper. The withholding of approval of an instruction other than as permitted in the preceding sentence, or the negligent or willful failure by a Clearing Organization to indicate its approval or non-approval of a settlement instruction to the issuing Clearing Organization within the time specified above shall constitute a failure to perform a material obligation of this Agreement, and the Clearing Organization so failing shall be liable to the other Clearing Organization for any loss, cost or expense to such other Clearing Organization resulting from such failure. Each Clearing Organization acknowledges that time is of the essence with respect to its obligations under this Section 7. Any remedy referred to in this Section 7 shall be cumulative to any other remedies at law or equity that such Clearing Organization may have. Any dispute arising under this paragraph shall be subject to the arbitration procedures set forth in

Section 16 of this Agreement; provided, however, that in the case of any arbitration proceeding relating to any such dispute, the notice referred to in paragraph (d) of Section 16 may be furnished at any time prior to, or concurrently with, the institution of arbitration proceedings.

(c) In the event that either Clearing Organization withholds approval of a Settlement Instruction, the Clearing Organization initiating such Settlement Instruction shall as promptly as practicable initiate a revised Settlement Instruction reflecting any item, or any portion of any item, that is not in dispute. Such revised Settlement Instruction shall be transmitted to the other Clearing Organization for approval or non-approval as provided in paragraph (a) of this Section; provided, however, that such approval or non-approval shall be indicated as promptly as practicable and in no event later than 15 minutes after receipt of such revised Settlement Instruction. If such revised Settlement Instruction is approved, settlement shall be effected in accordance with the usual procedures. In the event that any funds in a Proprietary Joint Settlement Account or a Customers' Segregated Joint Margin Account are subject to a dispute between the Clearing Organizations as to their proper disposition, including a failure by a Clearing Organization to approve a Settlement Instruction, and such dispute is not resolved within one hour after the time specified in paragraph (b) of this Section for approval or non-approval of Settlement Instructions, the funds subject to the dispute shall be transferred to a separate bank account established at an X-M Clearing Bank for that purpose by the Designated Clearing Organization on behalf of itself and the other Clearing Organization. Any withdrawal of funds from such account shall require the approval of both Clearing Organizations.

(d) At or prior to 1:00 a.m. on each Business Day, each Clearing Organization shall furnish to the other (in such form as may from time to time be agreed upon) information respecting: (i) the positions in each X-M Account carried at such Clearing Organization reflecting the preceding Business Day's trading activity and any transfers or other position adjustments affecting such accounts; (ii) settlement amounts for each such X-M Account reflecting option premiums, exercise settlement amounts, and any Variation Margin due to or from the Clearing Member in such account; (iii) daily futures settlement prices and option marking prices; and (iv) such other information as may reasonably be requested for the purposes of this Agreement by the Clearing Organization receiving such information. At or prior to 4:30 a.m. or such other time as may be agreed upon, the Clearing Organizations shall jointly

determine the Margin Requirement for each pair of X-M Accounts in accordance with Section 5 of this Agreement.

(e) At or prior to 6:00 a.m. on each Business Day, each Clearing Organization shall issue to each Clearing Member or pair of Affiliated Clearing Members for which it is the Designated Clearing Organization a Margin and Settlement Report. Such report shall show the Margin Requirement for each pair of X-M Accounts of such Clearing Member(s), the amount of Initial Margin previously deposited by the Clearing Member(s) in respect of such X-M Accounts, and any Margin Deficit or Margin Excess in respect of such accounts. Such report shall also show the net amount of premiums and exercise settlement amounts due to or from the Clearing Member(s) in respect of OCC options and ICE Clear options and the net amount of Variation Margin due to or from the Clearing Member(s) in such accounts. Option premiums, exercise settlement amounts and Variation Margin will be identified to the Clearing Organization at which they arise. These amounts shall be netted together with any Margin Deficit to obtain a single net Cash Settlement Amount due to or from the Clearing Member(s) in respect of each pair of X-M Accounts on that day. If the Cash Settlement Amount in respect of any pair of X-M Accounts is due from the Clearing Member(s), such Cash Settlement Amount shall be reduced by the amount of any Margin Excess held by the Clearing Organizations in respect of such pair of X-M Accounts in the form of cash.

(f) If a Cash Settlement Amount remains due from the Clearing Member(s) in respect of its or their Pair of Proprietary X-M Accounts after application of such Margin Excess, the Designated Clearing Organization shall issue instructions directing the applicable X-M Clearing Bank to transfer such amount from the designated proprietary bank account of the Clearing Member(s) to the Proprietary Joint Settlement Account; and if a Cash Settlement Amount remains due from the Clearing Member(s) with respect to its or their Pair of Non-Proprietary X-M Accounts after application of such Margin Excess, the Designated Clearing Organization shall issue instructions to the applicable X-M Clearing Bank to transfer such amount from the designated segregated funds bank account of the Clearing Member(s) to the Customers' Segregated Joint Margin Account. This paragraph refers to transfers that are to be effected by the X-M Clearing Banks at or prior to 8:00 a.m. on each Business Day.

(g) ICE Clear shall issue instructions directing the applicable X-M Clearing Bank(s) (i) to transfer to or from the Proprietary Joint Settlement Account from or to ICE Clear's bank account the net amount of all premiums and Variation Margin due from or to ICE Clear as shown on the Margin and Settlement Reports for that day in respect of all Proprietary X-M Accounts carried at ICE Clear, and (ii) to transfer to or from the Customers' Segregated Joint Margin Account from or to ICE Clear's bank account the net amount of all premiums and Variation Margin due from or to ICE Clear as shown on the Margin and Settlement Reports for that day in respect of all Non-Proprietary X-M Accounts carried at ICE Clear. This paragraph refers to transfers that are to be effected by the X-M Clearing Banks at or prior to 8:00 a.m. on each Business Day.

(h) OCC shall issue instructions directing the applicable X-M Clearing Bank(s) (i) to transfer to or from the Proprietary Joint Settlement Account from or to OCC's bank account the net amount of all premiums and exercise settlement amounts due from or to OCC as shown on the Margin and Settlement Reports for that day in respect of all Proprietary X-M Accounts carried at OCC, and (ii) to transfer to or from the Customers' Segregated Joint Margin Account from or to OCC's bank account the net amount of all premiums and exercise settlement amounts due from or to OCC as shown on the Margin and Settlement Reports for that day in respect of all Non-Proprietary X-M Accounts carried at OCC. This paragraph refers to transfers that are to be effected by the X-M Clearing Banks at or prior to 9:00 a.m. (in the case of amounts due to OCC) or 10:00 a.m. (in the case of amounts due from OCC) on each Business Day.

(i) If a Cash Settlement Amount is due to a Clearing Member or pair of Affiliated Clearing Members in respect of its or their Pair of Proprietary X-M Accounts, the Designated Clearing Organization shall issue instructions directing the applicable X-M Clearing Bank to transfer the Cash Settlement Amount from the Proprietary Joint Settlement Account to the designated proprietary bank account of the Clearing Member(s); provided, however, that no such instructions shall be issued until the Designated Clearing Organization has received confirmation that the Clearing Member(s) has (have) completed its or their morning settlement obligations in respect of all other accounts carried by it or them at both Clearing Organizations. If a Cash Settlement Amount is due to a Clearing Member or pair of Affiliated Clearing

Members in respect of its or their Pair of Non-Proprietary X-M Accounts, the Designated Clearing Organization shall issue instructions directing the applicable X-M Clearing Bank to transfer the Cash Settlement Amount from the Customers' Segregated Joint Margin Account to the designated segregated funds bank account of the Clearing Member(s); provided, however, that no such instruction shall be issued until the Designated Clearing Organization has received confirmation that the Clearing Member(s) has (have) completed its or their morning settlement obligations in respect of all other non-proprietary accounts carried by it or them at the Carrying Clearing Organizations. This paragraph refers to transfers that are to be effected by the X-M Clearing Banks at or prior to 10:00 a.m. on each Business Day.

(j) If there is a Margin Excess in respect of a Pair of X-M Accounts, the Clearing Member or pair of Affiliated Clearing Members may withdraw the amount of the excess upon submission to the Designated Clearing Organization between 6:00 a.m. and 12:00 noon (or between such other times as the Designated Clearing Organization may specify) of a withdrawal request in such form as the Designated Clearing Organization prescribes. Notwithstanding the foregoing, a Clearing Member or pair of Affiliated Clearing Members may not withdraw a Margin Excess in any form or currency in an amount in excess of the amount of margin of that form deposited by the Clearing Member in the pair of X-M Accounts from which the withdrawal is requested.

(k) Instructions to the applicable X-M Clearing Bank shall be issued by the Designated Clearing Organization at such time or times as may be specified by the other Clearing Organization (i) to transfer from the designated proprietary bank account of a Clearing Member or pair of Affiliated Clearing Members to the Proprietary Joint Settlement Account the amount of any intra-day call for additional Initial Margin or Variation Margin required by such Clearing Organization for a Pair of Proprietary X-M Accounts, or (ii) to transfer from the designated segregated funds bank account of a Clearing Member or pair of Affiliated Clearing Members to the Customers' Segregated Joint Margin Account the amount of any intra-day call for additional Initial Margin or Variation Margin required by such Clearing Organization for a Pair of Non-Proprietary X-M Accounts.

(l) At the time or times determined by ICE Clear following the settlement time for any Intra Day Margin Call, ICE Clear shall issue instructions directing the X-M Clearing Banks: (i) to transfer to or from the Proprietary Joint Settlement Account from or to ICE Clear's bank account the net amount of intra-day Variation Margin due from or to ICE Clear in respect of all Proprietary X-M Accounts carried at ICE Clear, and (ii) to transfer to or from the Customers' Segregated Joint Margin Account from or to ICE Clear's bank account the net amount of intra-day Variation Margin due from or to ICE Clear in respect of all Non-Proprietary X-M Accounts carried at ICE Clear. Intra-day Variation Margin due to a Clearing Member or pair of Affiliated Clearing Members in respect of its or their Proprietary X-M Account at ICE Clear shall be held in the Proprietary Joint Settlement Account (or invested in accordance with Section 6 of this Agreement) overnight, except that the Clearing Member(s) may be permitted upon request to withdraw such intra-day Variation Margin to the extent that it does not exceed the amount of Margin Excess not withdrawn by such Clearing Member(s) in accordance with paragraph (k) of this Section, and any such intra-day Variation Margin not so withdrawn shall be a credit to the Clearing Member(s) in calculating the Cash Settlement Amount due to or from the Clearing Member(s) in respect of its or their Pair of Proprietary X-M Accounts on the following Business Day. Intra-day Variation Margin due to a Clearing Member or pair of Affiliated Clearing Members in respect of its or their Non-Proprietary X-M Account at ICE Clear shall be held in the Customers' Segregated Joint Margin Account (or invested in accordance with Section 6 of this Agreement) overnight, except that the Clearing Member(s) may be permitted upon request to withdraw such intra-day Variation Margin to the extent that it does not exceed the amount of Margin Excess not withdrawn by such Clearing Member(s) in accordance with paragraph (k) of this Section, and any intra-day Variation Margin not so withdrawn shall be a credit to the Clearing Member(s) in calculating the Cash Settlement Amount due to or from the Clearing Member(s) in respect of its or their Pair of Non-Proprietary X-M Accounts on the following Business Day.

8. Suspension and Liquidation of Clearing Member.

(a) Either Clearing Organization may suspend a Clearing Member in accordance with its Rules. Upon such suspension, the suspending Clearing Organization shall immediately by telephone or in person, and thereafter in writing, notify such the other Clearing

Organization of such suspension , and each Clearing Organization shall immediately liquidate the Contracts in each X-M Account carried for the suspended Clearing Member or its Affiliated Clearing Member at that Clearing Organization except to the extent that both Clearing Organizations agree, consistent with their respective Rules, (i) to transfer Contracts carried in the Non-Proprietary X-M Accounts of such Clearing Member(s), or (ii) to delay liquidation of some or all of such Contracts. Each Clearing Organization shall coordinate with the other in good faith the transfer or liquidation of such Contracts so as to minimize risk. Any funds received by either Clearing Organization upon liquidation of the X-M Accounts of a Clearing Member pursuant to this Section shall be applied in accordance with the following paragraphs of this Section.

(b) Each Clearing Organization may apply any funds received on the liquidation of the Proprietary X-M Account of the suspended Clearing Member at such Clearing Organization to set off funds expended in liquidating such Proprietary X-M Account. Additionally, each Clearing Organization may apply any funds received on the liquidation of the Non-Proprietary X-M Account of such Clearing Member at such Clearing Organization to set off funds expended in liquidating such Non-Proprietary X-M Account. Following the initial setoffs referred to in the preceding sentences, any remaining proceeds from the liquidation of the Proprietary X-M Account may be applied to set off any remaining deficit incurred by such Clearing Organization in liquidating the Clearing Member's Non-Proprietary X-M Account. Funds received or expended in liquidating an X-M Account shall include funds received or expended in liquidating Contracts in such account, funds received or expended with respect to pending premium or Variation Margin settlements in such account, and any other funds received or expended by the Clearing Organizations in liquidating such account or in effecting transfers of positions in such account.

(c) The Clearing Organizations shall establish, in their joint names, a Proprietary Liquidating Account and a Non-Proprietary Liquidating Account at a bank that is acceptable to OCC and ICE Clear. Any net proceeds from Contracts in the Proprietary X-M Accounts that remain after the setoffs referred to in the preceding paragraph shall be deposited in the Proprietary Liquidating Account, and any net proceeds from Contracts in the Non-Proprietary X-M Accounts that remain after such setoffs shall be deposited in the Non-

Proprietary Liquidating Account. Cash margin deposited in respect of the Proprietary X-M Accounts shall be deposited in the Proprietary Liquidating Account, and cash margin deposited in respect of the Non-Proprietary X-M Accounts shall be deposited in the Non-Proprietary Liquidating Account. The Clearing Organizations shall also promptly convert to cash, in the most orderly manner practicable, all other Margin jointly held by them in respect of the X-M Accounts; including demanding immediate payment of any letter of credit deposited as Margin unless both Clearing Organizations agree not to take such action. Cash proceeds of Margin deposited in respect of the Non-Proprietary X-M Accounts shall be deposited in the Non-Proprietary Liquidating Account, and cash proceeds of Margin deposited in respect of the Proprietary X-M Accounts shall be deposited in the Proprietary Liquidating Account.

(d) (i) The funds in the Non-Proprietary Liquidating Account shall be applied to set off any liquidating deficits in, and to satisfy any settlement obligations with respect to, the Non-Proprietary X-M Accounts at both Clearing Organizations (including to reimburse the Proprietary Liquidating Account to the extent that proceeds of any Proprietary X-M Account were applied pursuant to paragraph (b) of this Section to set off a liquidating deficit in any Non-Proprietary X-M Account). The funds in the Proprietary Liquidating Account shall be applied first to set off any liquidating deficits in, and to satisfy any settlement obligations with respect to, the Proprietary X-M Accounts at both Clearing Organizations, and, if such funds are more than sufficient to cover any net liquidating deficit in and settlement obligations with respect to such Proprietary X-M Accounts, the surplus may next be applied to set off any net liquidating deficits in, and to satisfy any settlement obligations with respect to, the Non-Proprietary X-M Accounts at both Clearing Organizations.

(ii) If any surplus remains in the Proprietary Liquidating Account after all of the foregoing setoffs, each Clearing Organization shall be entitled to retain or receive 50% of the surplus (including all amounts available to be drawn under letters of credit deposited as margin in respect of the X-M Accounts that have not been identified as deposited in respect of Non-Proprietary X-M Accounts), for application against any losses whatsoever to such Clearing Organization resulting from defaults in other obligations of the defaulting Clearing Member (or either of the Affiliated Clearing Members in the case of a pair of Affiliated Clearing Members); provided that if the net loss sustained by a Clearing Organization resulting from

defaults in such other obligations ("other losses"), before any assessment against non-defaulting Clearing Members or their clearing or guarantee fund deposits, amounts to less than their share of the surplus, then (i) such Clearing Organization shall be entitled to retain or receive only an amount equal to its other losses, and (ii) the other Clearing Organization shall be entitled to retain or receive the balance of the surplus up to the amount of its other losses, if any.

(e) [Intentionally omitted]

(f) If the funds in the Proprietary and Non-Proprietary Liquidating Accounts, when applied to the full extent permitted in accordance with this Section 8, are insufficient to offset the aggregate of the liquidating deficits in all X-M Accounts of the Clearing Member or pair of Affiliated Clearing Members at both Clearing Organizations, OCC and ICE Clear shall bear such shortfall equally (i.e., the Clearing Organization with the smaller (or no) liquidating deficit shall pay to the other Clearing Organization an amount sufficient to equalize the loss borne by each Clearing Organization), and each Clearing Organization agrees that it will, in accordance with its Rules, apply its clearing or guarantee fund and exercise any rights to make additional assessments against Clearing Members to the extent necessary to satisfy any obligation to the other Clearing Organization under the preceding sentence. Funds owed by one Clearing Organization under this paragraph to another shall be paid promptly upon demand after a provisional determination of the amount thereof has been made, and any funds owed by one Clearing Organization to another resulting from a subsequent adjustment to such a provisional determination shall be paid promptly upon demand after a determination of the amount of such adjustment. In calculating the net proceeds or liquidating deficit in respect of an X-M Account, each Clearing Organization shall include all expenses reasonably incurred in liquidating such account including, but not limited to, the cost of borrowing funds pursuant to paragraph (h) of this Section or otherwise in connection with such liquidation.

(g) Any amounts remaining in the Proprietary and Non-Proprietary Liquidating Accounts after all of the applications referred to in this Section shall be paid to the Clearing Member or pair of Affiliated Clearing Members or its or their respective representatives for distribution to the persons entitled thereto.

(h) Nothing in this Agreement shall be construed to require either Clearing Organization to deliver funds to the other Clearing Organization at any time when such Clearing Organization is subject to an expressly applicable stay or other order of a court or regulatory agency prohibiting it from doing so; provided, however, that such Clearing Organization shall use its best efforts to borrow funds equal in amount to those which it is stayed from delivering and deliver such borrowed funds to the other Clearing Organization pending the lifting of the stay or other order, and the cost of borrowing such funds shall be shared equally by the Clearing Organizations to the extent not chargeable against the Clearing Member. If it is determined that such Clearing Organization has no right to the funds subject to the stay, the Clearing Organizations shall share equally in any additional loss caused thereby.

9. Confidentiality.

(a) Except as expressly authorized in this Agreement, each Clearing Organization shall maintain in confidence any and all information obtained by it in connection with this Agreement or the transactions or activities contemplated herein with respect to the other Clearing Organization or the positions, transactions or financial condition of any Clearing Member of such other Clearing Organizations ("Confidential Information"). The foregoing shall not apply to any information which is or becomes generally known to the public, other than through an action or failure to act by such Clearing Organization. The foregoing shall not prohibit a Clearing Organization from furnishing Confidential Information to the CFTC or the SEC or, pursuant to any surveillance agreement or similar arrangement to which such Clearing Organization is a party, to any "self-regulatory organization" within the meaning of the CEA or the Exchange Act or to any foreign government or regulatory body.

(b) In the event that either Clearing Organization is required by subpoena, or by any other order of court, law or regulation to disclose any Confidential Information in the possession of such Clearing Organization, it is agreed that the Clearing Organization which is subject to such requirement shall provide the other Clearing Organization with prompt notice of such requirement so that the other Clearing Organization may seek an appropriate protective order and/or waive compliance with the provisions of this Section with respect to such required disclosure. In the event that such other Clearing Organization

determines to seek a protective order, the Clearing Organization subject to the requirement shall cooperate to the extent reasonably requested by the other Clearing Organization. It is further agreed that if in the absence of a protective order or the receipt of a waiver hereunder, the Clearing Organization subject to the requirement is nonetheless, in the opinion of its counsel, compelled to disclose such Confidential Information to any tribunal or regulatory agency or else stand liable for contempt or suffer other censure or penalty, such Clearing Organization may produce such Confidential Information without liability under this Section 9.

(c) The provisions of this Section 9 shall survive the termination of this Agreement.

10. Indemnification.

(a) Each Clearing Organization (the "indemnitor") shall indemnify, defend and hold harmless the other Clearing Organization, its directors, officers, employees and each person, if any, who controls each such Clearing Organization ("indemnified party") against any Claims and Losses (as defined below) incurred by an indemnified party as the result, or arising from allegations, of:

(i) any action or failure to act by the indemnitor in connection with this Agreement or the cross-margining procedures contemplated under this Agreement, if any such action or failure to act constitutes a violation of this Agreement or any obligation undertaken in connection with this Agreement or the cross-margining procedures, any Rule of the indemnitor (except to the extent that such Rule is inconsistent with the provisions of this Agreement), or any law or governmental regulation applicable to the indemnitor;

(ii) without limiting the generality of the foregoing, in the case of an indemnitor that undertakes responsibility for directing the investment of cash deposited as Margin in respect of X-M Accounts, any unauthorized investment of such funds or any defalcation or theft of funds or investments by an employee of the indemnitor.

(b) As used in this Section 10, the term "Claims and Losses" means any and all losses, damages and expenses whatsoever (whether direct or arising from claims of third parties) including, without limitation, liabilities, judgments, damages, costs of investigation,

reasonable attorneys fees and other expenses and amounts paid in settlement (pursuant to consent of the indemnitor, which consent shall not be unreasonably withheld) in connection with any action, suit, litigation, claim or proceeding to which an indemnified party is made a party defendant, or is threatened to be made such a party.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action or the assertion of any claim against such indemnified party, such indemnified party shall, if a claim in respect thereof is to be made against the indemnitor, notify the indemnitor in writing of the commencement of such action or assertion of such claim; but the omission so to notify the indemnitor will not relieve the indemnitor from any liability which it may have to any indemnified party except to the extent that the indemnitor has been prejudiced by the lack of prompt notice and shall in any event not relieve the indemnitor of any liability which it may have to an indemnified party otherwise than under this Section 10. In case any such action is brought against any indemnified party, and such party promptly notifies the indemnitor of the commencement thereof, the indemnitor will be entitled to participate in, and, to the extent that it may wish, to assume and control the defense thereof, with counsel chosen by it, and, after notice from the indemnitor to such indemnified party of its election so to assume the defense thereof, the indemnitor will not be liable to such indemnified party under this Section 10 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, but the indemnified party may, at its own expense, participate in such defense by counsel chosen by it, without, however, impairing the indemnitor's control of the defense. In any action in which the named parties include the indemnitor and one or more indemnified parties, the indemnitor shall have the right to assume control of any legal defenses that are available to it and any of the indemnified parties. Notwithstanding the foregoing, in any action in which the named parties include both the indemnitor and an indemnified party and in which the indemnified party shall have been advised by its counsel that there may be legal defenses available to the indemnified party that are different from or additional to those available to the indemnitor, the indemnitor shall not have the right to assume such different or additional legal defenses; and provided further that the indemnitor shall not, in connection with one action or separate but substantially similar actions arising out of the same general allegations or circumstances, be liable for more than the reasonable fees and disbursements of one separate firm of attorneys for all of the indemnified

parties for the purpose of conducting such different or additional legal defenses. The indemnitor may negotiate a compromise or settlement of any such action or claim provided that such compromise or settlement does not require a contribution by, or otherwise adversely affect the rights of, the indemnified party.

11. Limitation of Liability of Designated Clearing Organization. No Clearing Organization shall have any liability to the other Clearing Organization as the result of any action taken, or omitted to be taken, by it in the course of performing its responsibilities as a Designated Clearing Organization under this Agreement unless such action or omission constitutes willful misconduct.

12. Representations and Warranties.

(a) Each Clearing Organization represents and warrants that as of the date hereof and as of the Effective Date:

(i) Good Standing. It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified and authorized to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which failure to so qualify could have a material adverse effect on its financial condition, business or operations.

(ii) Corporate Power and Authority. It has all requisite corporate power and authority to enter into this Agreement and the agreements referenced in this Agreement, as applicable, and full power and authority to take all actions required of it pursuant to such agreements. This Agreement and the applicable agreements referenced in this Agreement will constitute, when executed and delivered, valid and binding obligations of such Clearing Organization, and the execution, delivery and performance of all of its obligations under this Agreement and the applicable agreements referenced in this Agreement have been duly authorized by all necessary corporate action on the part of such Clearing Organization.

(iii) No Violation. Except for provisions as to which waivers have been obtained, the execution and delivery of this Agreement and the applicable agreements

referenced in this Agreement by the Clearing Organization and the performance of its obligations under this Agreement and the applicable agreements referenced in this Agreement: (i) do not result in a violation or breach of, do not conflict with or constitute a default under, and will not accelerate or permit the acceleration of performance required by, any of the terms and provisions of its certificate or articles of incorporation, by-laws, rules or other governing documents, any note, debt instrument, or any other agreement to which it is a party or to which any of its assets or properties is subject, and will not be an event which after notice or lapse of time or both will result in any such violation, breach, conflict, default or acceleration; and (ii) do not result in a violation or breach of any law, judgment, decree, order, rule or regulation of any governmental authority or court, whether federal, state or local, at law or in equity, applicable to it or any of its assets or properties.

(b) Each Clearing Organization represents and warrants to the other that as of the Effective Date all authorizations, permits, approvals or consents required to be obtained from, and all notifications and filings required to be made with, all governmental authorities and regulatory bodies and third parties to permit such Clearing Organization to place into effect this Agreement and the applicable agreements referenced in this Agreement and to perform its obligations under this Agreement and under the applicable agreements referenced in this Agreement have been obtained.

13. Termination.

(a) Either Clearing Organization may terminate this Agreement without cause by delivering written notice of termination to the other specifying a termination date not less than 90 days following the date on which such notice is sent.

(b) In the event that either party fails to perform any material obligation under this Agreement and such failure is not promptly cured after written notice thereof is sent to such party, a nondefaulting party may terminate this Agreement by delivering written notice of such termination to the other parties specifying a termination date not less than five Business Days following the date on which such notice of termination is sent.

(c) This Agreement will be terminated on the termination date established under paragraph (a) or (b) above except to the extent otherwise provided in this Agreement.

(d) In the event that a termination date is established under paragraph (a) or (b) above, each Clearing Organization shall promptly notify all of its affected Clearing Members that maintain X-M Accounts as of the termination date. On and after the termination date, each Clearing Organization may calculate Margin on Contracts, and may clear and settle transactions, in each X-M Account maintained at that Clearing Organization in accordance with its Rules and procedures applicable to other accounts. Settlement in respect of options that were exercised on or prior to the termination date but that have not been settled prior to the termination date will be effected separately at the applicable Clearing Organization. Margin held jointly by OCC and ICE Clear in the form of cash, Treasury securities, GSE debt securities, or property other than letters of credit shall be transferred from the Joint Custody Account to the custody of either OCC or ICE Clear at the direction of the Clearing Member that deposited them. Common stock shall be transferred from the applicable joint DTC account to either the custody of OCC or ICE Clear at the direction of the Clearing Member that deposited them. Letters of credit shall be returned to the Clearing Member. Each Clearing Organization shall cooperate fully in exchanging all necessary data, records, computer files and other information, and in executing documents and taking other action necessary or appropriate to effect transfers, releases, etc. in order to effect termination of the cross-margining arrangement as contemplated in this Agreement. Notwithstanding the foregoing, neither Clearing Organization shall be required to release its interest in any Margin held in respect of X-M Accounts of a Clearing Member until such Clearing Member's Contracts are fully margined at such Clearing Organization. In the event that a liquidation of a Clearing Member is pending on the termination date or prior to the time all Margin is released, the provisions of Section 8 of this Agreement shall survive the termination until such liquidation has been completed and any amount due from one Clearing Organization to the others in respect of such liquidation has been paid.

14. <u>Forbearance of Authority to Reject Transactions</u>. Neither Clearing Organization shall, without the express consent of the other, exercise any authority contained in

its Rules to reject a transaction effected in an X-M Account (whether a purchasing or selling transaction) that was reported to such Clearing Organization in a report of matched trades.

15. Information Sharing.

(a) OCC and ICE Clear hereby agree to provide one another with the following information regarding their respective Clearing Members that have established X-M Accounts and any of their Clearing Members who are affiliates of such Clearing Members ("Reportable Clearing Members"):

(i) If a Clearing Organization applies certain special surveillance procedures to a Reportable Clearing Member, such Clearing Organization will inform the other Clearing Organization of that fact. In the case of an OCC Clearing Member, this notification will be required if OCC places a Reportable Clearing Member on its "Watch Level III" or "Watch Level IV." In the case of an ICE Clear Clearing Member, this notification will be required if ICE Clear is notified by ICE Futures US of the application of any special surveillance procedures.

(ii) If a Clearing Organization requires more frequent reporting of financial information by a Reportable Clearing Member, that Clearing Organization will inform the other Clearing Organization of that fact and the period of reporting.

(iii) If a Clearing Organization increases the capital requirement for any Reportable Clearing Member, that Clearing Organization will notify the other Clearing Organization of that fact, the amount of the additional capital required and the deadline for meeting the requirement.

(iv) If a Clearing Organization imposes higher margin requirements with respect to a particular Reportable Clearing Member, or issues a special intra-day call for margin or settlement variation in respect of any account of a Reportable Clearing Member, that Clearing Organization shall notify the other Clearing Organization of that fact and the amount of the additional margin required.

(v) Each Clearing Organization shall, upon request by the other Clearing Organization, furnish the following information with respect to each account carried by the Reportable Clearing Member with the Clearing Organization from whom the information is requested: (A) margin required and on deposit in respect of such account, and (B) the dollar amount of any current settlement obligations owed to or by the Reportable Clearing Member that have been determined for such account in respect of variation margin, premiums, option exercises and any other settlements.

(vi) Each Clearing Organization shall notify the other Clearing Organization of any disciplinary action (other than an appeal from an administrative fine) taken by its governing board, or committee or subcommittee thereof, against a Reportable Clearing Member involving non-compliance with financial or financial reporting requirements, or violation of the rules of OCC or the clearing rules of ICE Clear.

(vii) Each Clearing Organization shall notify the other Clearing Organization in the event that the notifying Clearing Organization learns of any major processing difficulties (including, but not limited to, back-office computer problems) or operational errors of a Reportable Clearing Member.

(viii) Each Clearing Organization agrees to notify the other Clearing Organization in the event that a Reportable Clearing Member defaults in any settlement obligation (other than routine delays of not more than forty-eight hours in the physical delivery of underlying interests).

(ix) For purposes of this paragraph 15(a), a Clearing Member shall be considered an "affiliate" of another Clearing Member if it controls or is controlled by such other Clearing Member; and "control" of one Clearing Member by another shall mean the direct or indirect ownership by such Clearing Member of at least 50% of the equity of such other Clearing Member. Clearing Members that are related to one another in other ways shall also be considered "affiliates" of one another for purposes of this paragraph 15(a) in cases where the Clearing Organizations agree, whether in terms of a general rule or on a case-by-case basis, that the financial condition of the related Clearing Member could have a material impact on the financial condition of the cross-margining Clearing Member.

(b) OCC and ICE Clear hereby agree to notify one another in the event that the notifying Clearing Organization learns of any major processing difficulties (including, but not limited to, computer problems) or operational errors of an X-M Clearing Bank.

(c) OCC and ICE Clear hereby agree to inform one another, on a monthly basis, of the total size of, and aggregate amount of required contributions to, such Clearing Organization's clearing or guarantee fund.

(d) Any notice required to be given pursuant to this Section 15 shall be given by telephone or facsimile promptly upon the occurrence of the event giving rise to the requirement of notification, and any such notice given by telephone shall be promptly confirmed in writing. Each such notice shall be directed as follows:

If to OCC:

First Vice President – Risk Management
Telephone:
Facsimile:

If to ICE Clear:

Vice President – Risk Management
Telephone: 212-748-4122
Facsimile: [ ]

In case of the absence or unavailability of any officer named above, any telephone calls shall be directed to another individual who has been designated in writing by the Clearing Organizations as authorized to receive such telephone calls. Prior to the Effective Date of this Agreement, each Clearing Organization shall provide the others with the name and telephone number of any other individual designated by such Clearing Organization pursuant to the preceding sentence.

16. General Provisions.

(a) Further Assurances. Each party agrees, without additional consideration, to execute and deliver such instruments and take such other actions as shall be

reasonably required or as shall be reasonably requested by one or both of the other parties in order to carry out the transactions, agreements and covenants contemplated by this Agreement.

(b) Amendment, Modification and Waiver. Unless otherwise expressly provided herein, this Agreement may be permanently modified, amended or supplemented only by mutual written agreement of the parties. A party may temporarily waive or modify any condition intended to be for its benefit provided such waiver shall be in writing signed by the party or parties to be charged. Any delay or failure of any party hereto at any time to require performance by one or both of the other parties of any provision of this Agreement shall in no way affect the right of such party to require future performance of that or any other provision of this Agreement and shall not be construed as a waiver of any subsequent breach of any provision, a waiver of this provision itself or a waiver of any other right under this Agreement.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws (without regard to principles of conflicts of laws) of the State of Illinois.

(d) Notices. Unless otherwise expressly provided in this Agreement, all notices to be given by any party under this Agreement shall be in writing and shall be given by hand delivery, recognized courier delivery service, or by confirmed telecopy, to the other parties at the following addresses (or such other addresses as any party may furnish to the others in writing for such purpose):

If to OCC:

The Options Clearing Corporation
One North Wacker Drive
Suite 500
Chicago, Illinois 60606
Attention: Chairman

Copy to:

The Options Clearing Corporation
One North Wacker Drive
Suite 500
Chicago, Illinois 60606
Attention: General Counsel

If to ICE Clear: ICE Clear US., Inc.
One North End Avenue
13th Floor
New York, New York 10282-1101
Attention: President

Copy to: ICE Futures US, Inc.
One North End Avenue
13th Floor
New York, New York 10282-1101
Attention: General Counsel

(e) Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other parties, nor is this Agreement intended to confer upon any other person except the parties any rights or remedies hereunder.

(f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) Headings. The section and paragraph headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not affect in any way the meaning or interpretation of this Agreement.

(h) Entire Agreement. Except as set forth expressly herein or in another instrument in writing signed by the party to be bound thereby which makes reference to this Agreement, this Agreement, including the exhibits hereto, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and no other restrictions, promises, representations, warranties, covenants, or undertakings in relation thereto exist among the parties. This Agreement supersedes all prior agreements (including, but not limited to, the Original Agreement) and understandings among the parties with respect to such subject matter.

(i) Invalid Provision. In the event that any provision, or any portion of any provision, of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, or any other portion of any provision, of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Effective Date. This Agreement shall become effective on a date mutually agreed to by the parties, which date shall be not earlier than the date on which all necessary regulatory approval has been received and not later than 60 days after such date.

(k) Force Majeure. Notwithstanding any other provision of this Agreement, no party hereto shall be liable for any failure to perform or delay in performing its obligations hereunder if such failure or delay is caused by fire, strike, power failure, riot or other civil commotion, acts of nature, acts of terrorism, acts of federal, state or municipal public authorities, governmentally ordered business or banking moratoria or orders to refrain from using power (whether or not such moratoria or orders are legally authorized), equipment failure or any other condition or event beyond the reasonable control of the party whose performance is prevented or delayed. Each party agrees to notify the others promptly upon learning that any such condition or event has occurred and shall cooperate with the others, upon request, in arranging alternative procedures and in otherwise taking reasonable steps to mitigate the effects of any inability to perform or any delay in performing.

(l) For purposes of Title IV, Subtitle A of the Federal Deposit Insurance Corporation Improvement Act of 1991 [12 USC 4401- 4407], this Agreement shall be deemed to be a "netting contract" and all payments made or to be made hereunder, including payments made in accordance with this Agreement in connection with the liquidation of a Clearing Member or Pair of Affiliated Clearing Members, shall be deemed to be "Covered Contractual Payment Obligations" or "Covered Contractual Payment Entitlements", as the case may be, as well as "Covered Clearing Obligations".

(m) Each Clearing Organization acknowledges that it has no intellectual property or other rights with respect to the Eligible Contracts cleared by the other

Clearing Organization, including, but not limited to, any rights with respect to Contract prices, settlement prices, open interest, trading volume or any other data related to Eligible Contracts cleared by the other Clearing Organization except those rights specifically granted pursuant to the terms of this Agreement or reasonably necessary or appropriate to carry out the functions of such Clearing Organization under this Agreement in a manner consistent with the manner in which other similar cross-margining agreements between OCC and other futures clearing organizations are presently conducted. Each Clearing Organization agrees that it shall not disclose, transfer or use any such data related to the Eligible Contracts cleared by the other Clearing Organization except to the extent necessary to perform its obligations pursuant to this Agreement or as may be required by applicable law or reasonably necessary or appropriate to carry out its functions under this Agreement in a manner consistent with the manner in which other similar cross-margining agreements between OCC and other futures clearing organizations are presently conducted. The Clearing Organizations agree that, in the event of any violation or alleged violation of this paragraph by either Clearing Organization, the sole remedy of the other Clearing Organization shall be to provide notice of the alleged violation to the alleged violator, and, if such violation does not cease, to seek injunctive or similar equitable relief to terminate the violation; and in no event shall either party be liable to the other for damages based on a violation of this paragraph. For the elimination of doubt, the Clearing Organizations acknowledge that nothing in this paragraph shall limit or adversely affect the security interest of either Clearing Organization in Eligible Contracts or Margin held in, or in connection with, X-M Accounts or any rights or remedies arising as the result of the suspension and liquidation of a defaulting Clearing Member.

17. Arbitration.

(a) Any controversy or claim arising out of or relating to this Agreement, any amendments or modifications thereto hereafter entered into among OCC and ICE Clear, or the breach, termination or invalidity of any of the foregoing, shall be settled by arbitration before the American Arbitration Association (the "AAA") in accordance with the then current Commercial Arbitration Rules of the AAA to the extent that such Rules do not conflict with any provisions of this section.

(b) The arbitration shall be held at the Chicago office of the AAA if brought by ICE Clear and in the New York office of the AAA if brought by OCC. The arbitration shall be held before a panel of three arbitrators: one appointed by each party and one neutral arbitrator to be appointed by agreement of the two party-appointed arbitrators. The neutral arbitrator shall be an attorney with not less than an aggregate of 12 years of experience in legal practice, legal teaching or adjudication. Only a neutral arbitrator shall act as chairman.

(c) No party hereto shall institute an arbitration proceeding hereunder unless, at least 30 days prior thereto, such party shall have furnished to the others party written notice of its intent to do so and of the basis therefor.

(d) Any award, order or judgment pursuant to such arbitration shall be deemed final and may be entered and enforced in any state or federal court of competent jurisdiction. Each party agrees to submit to the jurisdiction of any such court for purposes of the enforcement of any such award, order or judgment.

(e) Any award of damages pursuant to such arbitration shall be included in a written decision which shall state the reasons upon which the award was based, including all the elements involved in the calculation of any award of damages.

(f) Any arbitration proceeding hereunder shall be conducted on a confidential basis.

(g) Notwithstanding any other provision of this Agreement, each party shall have the right to apply to any court of competent jurisdiction for temporary injunctive or other preliminary relief.

(h) The parties agree to permit discovery proceedings in accordance with the Federal Rules of Civil Procedure both in advance of, and during recesses of, the arbitration hearings. Any disputes relating to such discovery will be resolved by the arbitrators.

(i) No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and

signed by the Clearing Organizations that are parties to the arbitration. Any such written consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein.

(j) The provisions of this Section 17 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

THE OPTIONS CLEARING CORPORATION

By: ____________________________
Name:
Title:

ICE Clear US, INC.

By: ____________________________
Name:
Title:

DRAFT 10/26/07

# EXHIBIT A

## LIST OF ELIGIBLE CONTRACTS

### OCC ELIGIBLE CONTRACTS

**[TO BE PROVIDED]**

### ICE CLEAR ELIGIBLE CONTRACTS

**[TO BE PROVIDED]**