THE FOUNDATION FOR SECURE MARKETS

Options Clearing Corporation
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February 7, 2022

Committee on Payments and Market Infrastructures (CPMI) Secretariat
Bank for International Settlements
CH-4002 Basel
Switzerland
cpmi@bis.org

International Organization of Securities Commissions (IOSCO) Secretariat
C/ Oquendo 12
28006 Madrid
SPAIN
consultation-06-2021@iosco.org

Re: *Discussion Paper on Client Clearing: Access and Portability*, November 2021

Dear Sirs/Madams:

The Options Clearing Corporation ("OCC") appreciates the opportunity to comment on the *Discussion Paper on Client Clearing: Access and Portability* ("the Paper") issued by the Committee on Payments and Market Infrastructures ("CPMI) and the Board of the International Organization of Securities Commissions ("IOSCO"). OCC applauds the efforts of CPMI-IOSCO to prepare the Paper and values the continued dialogue regarding access to clearing and portability. As a member of CCP12 and the World Federation of Exchanges, OCC's responses to the Paper can be found in the letters submitted to the CPMI and IOSCO by those organizations. In this letter, OCC offers supplemental comments and observations on portability.

About OCC

OCC, founded in 1973, is the world's largest equity derivatives clearing organization. OCC operates under the jurisdiction of both the U.S. Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). As a registered clearing agency under SEC jurisdiction, OCC clears transactions for exchange-listed options. As a registered derivative clearing organization ("DCO") under CFTC jurisdiction, OCC clears transactions in futures and options on futures. OCC also provides central counterparty clearing and settlement services for securities lending transactions. In addition, OCC has been designated by the Financial Stability Oversight Council as a Systemically Important Financial Market Utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a

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SIFMU, OCC is also subject to oversight by the Board of Governors of the Federal Reserve System. OCC operates as a market utility, is owned by five exchanges, and governed by a Board that includes clearing member, exchange and public directors.

Discussion

Central counterparties ("CCPs") performed exceptionally well during the global financial crisis in 2008, and, as noted in the Paper, CCPs have become increasingly critical components in the financial system. The increased reliance on CCPs as the independent risk manager for financial markets has proven to be an effective means of supporting the stability and resiliency of global financial markets. CCPs manage the risk of the markets they serve by establishing financial and operational standards to which their participants must adhere. Client clearing service providers (*i.e.*, clearing members), in turn, are responsible for knowing their clients, managing the risk they present and guaranteeing their financial performance to the CCP. Following the default of a clearing member, the Paper correctly notes that CCPs are not prepared to manage the accounts and associated risks arising from the activities of all the defaulting clearing member's individual client accounts, but may tolerate this risk for a brief period to facilitate the transfer of such accounts where practicable. If no other clearing member agrees to take the individual client accounts, a CCP must liquidate the defaulting clearing members' client positions.

While the discussion of portability set forth in the Paper correctly identifies certain challenges faced by CCPs that operate pursuant to regulatory regimes that mandate net margining, it does not seem to acknowledge the practical considerations that arise for these accounts. Under net margining, a CCP typically establishes omnibus accounts that hold the positions for multiple clients of a clearing member. This account structure allows the CCP to manage its net exposure to the clearing member but generally does not provide the CCP with sufficient information to accurately attribute positions and collateral to specific clients of the clearing member. Accordingly, it is unlikely that a CCP operating under such a regime could identify the positions of all of the customers held in each omnibus account, attribute collateral to such positions, identify a clearing member willing to receive the positions of each customer and transfer such positions in a time frame that is acceptable from a risk perspective.

The lack of information described above impedes certain recommendations set forth in the Paper. For example, a CCP that holds clearing member client positions in an omnibus account that is margined on a net basis is unlikely to have sufficient information about each clearing member's client base and their positions to form and maintain a plan to transfer the positions of each customer to a back-up clearing member. Attempting to create and maintain this type of a plan could also raise a variety of confidentiality, regulatory and technological concerns.

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As noted in the Paper, maintaining alternate or backup clearing members can streamline and give clients more control over the porting process. In structuring their business, clients should weigh the cost considerations associated with maintaining a single clearing member relationship (*e.g.*, volume discounts, netting benefits, fees, etc.) against the risk and uncertainty that could arise from the failure of that clearing member. If a client maintains multiple relationships, it is much more likely that it will be able to port positions held at a defaulting clearing member to another clearing member with which it already has a pre-existing relationship.

International standard setting bodies and regulators should encourage clients to maintain alternative access arrangements and monitor the financial condition of their clearing members, as this is ultimately the client's responsibility not the CCP's. CCPs will continue to do their best to port clients when permitted by the circumstances; however, shifting the responsibilities to the CCPs for identifying backup CCPs for clients disincentivizes responsible client behavior. Failing to maintain alternative arrangements and/or transfer positions away from a clearing member that is experiencing financial difficulties will result in increased uncertainty and an increased likelihood that a client's positions will be liquidated if their clearing member defaults.

Conclusion

We thank CPMI and IOSCO for the opportunity to provide comments on the Paper. As described more fully above, OCC encourages CPMI-IOSCO to account for the nuances and lack of information that may arise when omnibus client accounts are margined on a net basis. We also believe that the responsibility to maintain a backup clearing member should remain the sole responsibility of clearing members' clients. We would be pleased to further discuss our comments. If you have any questions, comments, or need any further information, please do not hesitate to contact me at +1-312-322-6220 or JDavidson@theocc.com.

Sincerely,

John P. Davidson III

John P. Davidson
Chief Executive Officer