Engmann Options, Inc.

September 13, 2009

Mr. Gary Gensler, Chairman, Commodities Futures Trading Commission
Three Lafayette Centre
1155 – 21ST Street, NW
Washington, DC 20581

Ms. Mary Shapiro, Chairwoman, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Harmonization of Regulation

Dear Ms. Shapiro and Mr. Gensler:

Thank you for allowing the opportunity for the public to comment on the topic of harmonization of SEC and CFTC rules and regulations following your groundbreaking joint hearing in Washington on August 26th and 27th. I was able to attend the first hearing in person and found the exchange between the Commissioners of both agencies and the panels to be enlightening and displayed hopeful signs that some progress could be made on regulatory harmonization. Certainly the joint hearing was a valuable forum to highlight both the areas of overlap where common agreement is possible and areas where such agreement might be harder to obtain. I encourage both Commissions to continue this practice on a regular basis.

As the former Head of Equities for Newedge USA, LLC from 2005 to 2008, I had the privilege of spearheading the industry adoption of portfolio margining through our sole participation in the initial pilot project approved by the SEC in the summer of 2005 until April 2007 when other broker-dealers became approved. During this period we were able to provide feedback to the SEC, through its SROs who supervise the program, on changes and modifications that would allow portfolio margining to expand and operate more effectively.

As I listened to the testimony and read the statements of the witnesses it is clear that clearing issues are a paramount priority, including the difficulties in getting agreement on the inclusion of index futures in a portfolio margin account. While some firms in the industry have been able to do cross-margining workarounds of this problem for their customers (primarily using overseas affiliates), there is still an unmet demand among customers who trade both index futures at the CME and the ICE and index options at the CBOE and other options exchanges.

However, more importantly than the satisfaction of our public clients, the Commissions must also address the larger effects on the safety and soundness of our clearing systems and potential systemic risk of not allowing customers, firms and clearing agencies to cross-margin offsetting positions of correlated products. With cross-margins customers are encouraged to hedge their positions, which was the philosophy behind portfolio margining. Broker-dealer capital requirements are based on their customer capital requirements, which will deter them from encouraging hedging without cross-margin relief. And most importantly, individual clearing agencies without cross-margining agreements will liquidate hedged positions separately which will always cause the most damage to the creditors of the firm being liquidated, and possibly the clearing system as a whole.

220 Bush Street, Suite 660
San Francisco, CA 94104
Phone: 415.733.3001
Fax: 415.781.4641

The listed exchanges and the futures, options and securities clearinghouses have boasted that the clearing and exchange systems performed well without any losses during the recent financial crises and the bankruptcy of Lehman. Nevertheless, rumors abound about the significant losses in Lehman's book of bonds, futures and equities due to the uncoordinated liquidation of those positions by multiple clearing agencies. While some may say that is the way the system should work as no individual clearing agencies took losses due to the liquidations, if there had not been government intervention to "save" Merrill, Wachovia, Bear Stearns and other investment banks one wonders how well our clearing system would have survived with 3 or 4 major firms needing liquidation. Cross-margining and agreements for coordinated liquidation of correlated instruments among multiple clearing agencies will become even more important if multiple clearing agencies are approved for OTC contracts such as interest rate, equity, commodity future and credit default swaps as well as for carbon permits and related derivative products.

I am certainly not naive in evaluating the cultural, legal and political barriers to resolving this issue. However, I do believe that creative minds from the industry can possibly devise solutions that might avoid some of the legal or political pitfalls that the traditional one-pot, two-pot argument has encountered. Anthony Leitner testified on these issues before your joint Commission hearing and recommended an independent industry panel be appointed to help the Commissions address these issues. I am in full support of that recommendation. Your predecessors had been discussing such a panel on portfolio margining issues for over two years, yet disappointingly, could not even come to a simple agreement to appoint representatives to an advisory panel.

After the 1987 market "crash", the Brady Commission did an intensive study of the factors in the crash and encouraged market reforms to improve the safety and soundness in our clearing systems. Cross-margining between index futures and index options for broker-dealers and market professionals was a major recommendation. In this case the CFTC and the SEC were able to cooperate and approve regulation for the benefit of the overall industry. I am proud that my firm at that time - Sage Clearing Corporation - was one of the firms that pioneered the implementation of that cross-margining initiative nearly 20 years ago. Now is the time for both Commissions to have the same fortitude and vision that the Commissions had after 1987 to revisit the role of clearing and systemic risk in light of the recent financial crisis and take action to improve the safety and soundness of our markets across all products.

Sincerely yours,

Doug E

Douglas Engmann,
President
Engmann Options, Inc.

Former Vice-Chairman and Acting Chairman, Pacific Stock Exchange
Former Director, Options Clearing Corporation
Former Director, National Securities Clearing Corporation

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