

From: Rosenzweig, Kenneth M. <kenneth.rosenzweig@kattenlaw.com>
Sent: Monday, August 23, 2010 1:34 PM
To: secretary <secretary@CFTC.gov>; Wasserman, Robert B. <rwasserman@CFTC.gov>; Taylor, David <dtaylor@CFTC.gov>; Partridge, Jocelyn <JPartridge@CFTC.gov>; Alvarez, Cody <CAlvarez@CFTC.gov>
Cc: WLukken@nypclear.com; LKlimpel@nypclear.com; JSherman@nyx.com
Subject: Comment File 10-010 - Business Continuity and Disaster Recovery (75 Fed. Reg. 42633)
Attach: New York Portfolio Clearing (Comment File 10-010).pdf

I have attached the comments of New York Portfolio Clearing, LLC on the above-referenced proposal. <<New York Portfolio Clearing (Comment File 10-010).pdf\$>> Please let me know if you have any questions.

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NOTIFICATION: Katten Muchin Rosenman LLP is an Illinois limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997).
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By Electronic Mail

August 23, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

**Re: Business Continuity and Disaster Recovery
75 Fed.Reg. 42633 (July 22, 2010)**

Dear Mr. Stawick:

New York Portfolio Clearing, LLC (“NYPC”) is pleased to submit these comments in support of the proposal by the Commodity Futures Trading Commission (“Commission”) to amend its rules and guidance governing designated contract markets (“DCMs”) and derivatives clearing organizations (“DCOs”) to require “critical financial markets” and “core clearing and settlement organizations” to maintain business continuity and disaster recovery resources sufficient to meet a same-day recovery time objective for trading and clearing (the “Proposed Regulations”). NYPC is a joint venture between NYSE Euronext¹ and Depository Trust & Clearing Corporation (“DTCC”).²

Pending regulatory approval from the Commission for registration as a DCO and other regulatory approvals, NYPC will provide clearing services with respect to U.S. dollar-denominated interest rate and fixed income futures contracts and options on futures contracts. NYPC, which will provide clearing services for NYSE Liffe US, LLC (a registered DCM) and will have the ability to provide clearing services to other exchanges in the future, will be the first

¹ NYSE Euronext is the world’s most diverse exchange group, offering a broad and growing array of financial products and services in Europe and the United States that includes cash equities, futures, options, exchange-traded products, bonds, market data, and commercial technology solutions. With over 8,000 listed issues globally, NYSE Euronext’s equities markets - the New York Stock Exchange, Euronext, NYSE Arca, and NYSE Amex - represent nearly 40 percent of the world’s cash equities trading volume, the most liquidity of any global exchange group. NYSE Euronext also operates NYSE Liffe, the leading European derivatives business and the world’s second largest derivatives business by value of trading, and NYSE Liffe US, LLC, a registered DCM. NYSE Euronext offers comprehensive global commercial technology, connectivity, and market data products and services through its innovative trading solutions unit, NYSE Technologies.

² DTCC, through its subsidiaries, provides clearance, settlement and information services for equities, corporate and municipal bonds, U.S. government and mortgage-backed securities, money market instruments and over-the-counter derivatives. In addition, DTCC is a leading processor of mutual funds and insurance transactions, linking funds and carriers with financial firms and third parties who market these products. DTCC’s depository provides custody and asset servicing for more than 3.5 million securities issues from the United States and 117 other countries and territories, valued at \$27.6 trillion. Last year, DTCC settled more than \$1.88 quadrillion in securities transactions. DTCC has operating facilities in multiple locations in the United States and overseas.

derivatives clearing solution to bring together fixed income securities and interest rate and fixed income futures and options on futures in a single margin calculation.

Because NYPC intends to offer clearing services with respect to U.S. dollar-denominated interest rate and fixed income futures contracts and options on futures contracts, and NYSE Liffe US intends to list such products for trading, each may, at some point in the future, become subject to the Proposed Regulations.³ NYPC agrees with the Commission that “critical financial markets” and “core clearing and settlement organizations” should maintain business continuity and disaster recovery resources sufficient to meet a same-day recovery time objective for trading and clearing. In addition, such entities should maintain geographic dispersal of infrastructure and personnel sufficient to enable achievement of a same-day recovery time objective, in the event of a wide-scale disruption.⁴

NYPC, notes, however, that the proposal does not address the timeframe within which a DCM that is determined to be a “critical financial market” or a DCO that is determined to be a “core clearing and settlement organization” should be expected to meet these higher standards. In this regard, NYPC notes that establishment of the business continuity and disaster recovery resources required under the Proposed Regulations may present significant operational, logistical and financial challenges that will take time to address, including identifying appropriate locations, negotiating necessary agreements, acquiring computer servers and other hardware and, potentially, modifying critical software programs.

Thus, if the Commission elects to adopt the Proposed Regulations, NYPC encourages the Commission to make clear that in the context of determining whether a DCM is a “critical financial market” or a DCO is a “core clearing and settlement organization”, it will work with

³ Drawing on the definitions set out in the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System*, issued by the Federal Reserve Board, the Department of the Treasury and the Securities and Exchange Commission in 2003, proposed Commission Rule 40.1(j) defines a “critical financial market” as a DCM that provides the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provides support for the provision of a wide range of financial services to businesses and consumers in the United States, particularly including markets whose trading impacts federal funds, foreign exchange, commercial paper, US government and agency securities, corporate debt, equity securities, or physical commodities of broad, major importance to the national or international economy.

Proposed Rule 40.1(k) defines a “core clearing and settlement organization” as a DCO that provides clearing and settlement services integral to a critical financial market (or to multiple DCMs that are critical financial markets on a collective rather than individual basis).

⁴ That is, an entity’s disaster recovery resources should not rely on the same critical transportation, telecommunications, power, water, or other infrastructure components as the infrastructure on which the entity normally relies for such activities. Further, personnel sufficient to enable the critical financial market or core clearing and settlement organization to meet a same-day recovery time objective, after interruption of normal trading or clearing by a wide-scale disruption affecting the relevant area in which the personnel on whom the entity normally relies to engage in such activities are located, must live and work outside that relevant area, so that they will not be made unavailable by a wide-scale evacuation or unavailability of personnel who live or work in that relevant area. Proposed Rule 40.9(c).

the affected entity to establish an appropriate timetable within which the entity will be required to come into compliance.

NYPC appreciates the opportunity to submit these comments. If the Commission has any questions regarding the matters discussed in this letter, please contact me (at (212-855-5210 or wlukken@nypclear.com) or Laura C. Klimpel, NYPC's Chief Compliance Officer & Counsel (at (212-855-5230 or lklimpel@nypclear.com)).

Sincerely,

A handwritten signature in black ink, appearing to read "Walter Lukken". The signature is written in a cursive, flowing style.

Walter Lukken
Chief Executive Officer