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By Electronic Mail

December 13, 2010

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
secretary@cftc.gov

Re: RIN 3038–AC98, 3038–AD02, “Financial Resources Requirements for Derivatives Clearing Organizations”

Dear Mr. Stawick:

New York Portfolio Clearing, LLC (“NYPC”) is pleased to respond to the request for comment by the Commodity Futures Trading Commission (the “Commission”) regarding its proposed regulations to establish financial resources requirements for derivatives clearing organizations (“DCOs”).

New York Portfolio Clearing, LLC (“NYPC”) is a joint venture derivatives clearinghouse owned equally by NYSE Euronext (“NYSE”) and The Depository Trust & Clearing Corporation (“DTCC”) that—pending regulatory approvals—will clear interest rate futures contracts as a DCO and cross-margin such positions against fixed income cash instruments cleared by DTCC’s subsidiary, the Fixed Income Clearing Corporation (“FICC”). Utilizing a uniform risk methodology across clearinghouses, this “one-pot” cross-margining arrangement will provide increased margin and operational efficiencies for market participants and enhance market and regulatory transparency with respect to the clearing of fixed income portfolios.

NYPC has applied to the Commission for registration as a DCO pursuant to Section 5b of the Commodity Exchange Act (the “Act”) and Part 39 of the Commission’s Regulations. Once registered as a DCO, NYPC will be subject to the Commission’s comprehensive oversight and required to maintain compliance with each of the Core Principles set forth in Section 5b(c)(2) of the Act, including Core Principle B as amended by the Dodd-Frank Reform and Consumer Protection Act (“Dodd-Frank Act”), which relates to financial resources requirements for DCOs and is the subject of the above-referenced proposed regulations.



NYPC generally supports the Commission's proposal regarding financial resources requirements for DCOs, and in particular the ways in which the proposed regulations track the current CPSS-IOSCO Recommendations for Central Counterparties. Adopting uniform global standards among clearinghouses will ensure that systemic risk in the financial system is appropriately monitored and mitigated without the threat of cross-border regulatory arbitrage.

In meeting these global standards, the Commission appropriately notes in the notice of proposed rulemaking that DCOs should be given an appropriate level of discretion in determining how to operate their businesses within the statutory framework.¹ Principles-based regulation, which is the basis of this discretion, has worked extraordinarily well for both the Commission and the futures markets in general and we encourage the Commission to continue to strike the proper balance between the flexibility provided by principles and the certainty derived from rules, as the proposed regulations endeavor to achieve.

In particular, NYPC supports Proposed Regulation 39.11(a)(1), which would require a DCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the affiliated group of clearing members creating the largest financial exposure for the DCO in extreme but plausible market conditions. The adoption of this globally recognized and accepted standard for clearinghouses is important in protecting the clearinghouse and the marketplace from a contagion effect and benefits from the fact that it can be measured, tested and verified by clearinghouses and regulators.

NYPC also supports Proposed Regulation 39.11(a)(2), which would require a DCO to maintain sufficient financial resources to cover its operating costs for at least one year, calculated on a rolling basis. It is sound policy to require clearinghouses that are often guaranteeing long-dated futures contracts to have sufficient resources to operate and meet obligations for 12 months going forward in order to ensure the integrity of the transactions and markets they serve.

Proposed Regulation 39.11 lists in subsection (b)(1) the types of financial resources that would be available to a DCO to satisfy obligations arising from clearing member defaults, and lists in subsection (b)(2) the types of financial resources that would be available to a DCO as operating resources, in each case including a DCO's own capital as a type of available financial resource. In the notice of proposed rulemaking, the Commission notes that it does not currently prescribe capital or equity capital requirements for DCOs and requests comment on the desirability of adopting such requirements.²

¹ See 75 Fed. Reg. 63113 (October 14, 2010).

² See *id.* at 63114–15.



While some clearinghouses, including NYPC, have chosen to use some form of capital in satisfying obligations arising from clearing member defaults and as operating resources, we would caution the Commission that mandating that DCOs hold specific forms or amounts of capital could have a chilling effect on competition, at odds with the principles of the Act and the Dodd-Frank Act, by potentially shutting out various forms of organizational structures for DCOs without necessarily enhancing the stability of the financial system. As the Commission notes in the notice of proposed rulemaking, at base, Core Principle B requires that DCOs maintain sufficient financial resources to perform their functions as central counterparties in compliance with the Act.³ Whether such financial resources are derived from a DCO's own capital or other financial resources deemed acceptable to the Commission should be inconsequential to the extent such statutorily prescribed functions are fulfilled.

NYPC appreciates the opportunity to comment in support of the proposed regulations. If the Commission has any questions regarding the matters discussed in this letter, please contact me or Laura C. Klimpel, NYPC's Chief Compliance Officer & Counsel at 212-855-5230 or lklimpel@nypclear.com.

Very truly yours,

Walter Lukken

cc: Hon. Gary Gensler, Chairman
Hon. Michael Dunn, Commissioner
Hon. Jill Sommers, Commissioner
Hon. Bart Chilton, Commissioner
Hon. Scott O'Malia, Commissioner

³ See *id.* at 63113.