

525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

ARTHUR W. HAHN
arthur.hahn@kattenlaw.com
312.902.5241 direct
312.577.8892 fax

November 1, 2010

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

Re: Application For Registration as a Derivatives Clearing Organization

Dear Mr. Stawick:

On behalf of our client, New York Portfolio Clearing, LLC (“Applicant” or the “Clearinghouse”), we hereby submit this application (this “Application”) for registration as a derivatives clearing organization (“DCO”) pursuant to Section 5b of the Commodity Exchange Act (the “Act”) and Part 39 of the Regulations of the Commodity Futures Trading Commission (the “Commission”). Applicant respectfully requests that the Commission issue an order (a) granting Applicant registration as a DCO, and (b) approving the cross-margining of (i) U.S. dollar-denominated interest rate futures contracts cleared by Applicant with (ii) U.S. Treasury and other fixed income securities and repurchase agreements cleared by the Fixed Income Clearing Corporation (“FICC”), a securities clearing agency registered with the Securities and Exchange Commission (the “SEC”) under Section 17A of the Securities Exchange Act of 1934. Applicant represents that it will operate in accordance with the definition of a “derivatives clearing organization” contained in Section 1a(15) of the Act.

This Application demonstrates that Applicant complies with the Core Principles set forth in Section 5b(c)(2) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and fulfills each of the representations made in connection with its application to the Commission for DCO registration. A table cross-referencing each Core Principle and the relevant portions of this Application demonstrating the Applicant’s satisfaction of such Core Principle is attached hereto as Appendix A. An index of exhibits that support Applicant’s ability to comply with the Core Principles is attached hereto as Appendix B.

Pursuant to the requirements of Part 39 of the Commission’s Regulations, this Application also includes certain agreements entered into or to be entered into between or among Applicant (or its affiliates) and its technology, regulatory and banking service providers and/or

its Clearing Members (as hereinafter defined) that will enable Applicant to comply with the Core Principles. To the extent any such agreements have not been finalized as of the date hereof, Applicant represents that such services will be obtained as soon as operations as a DCO require. The Clearinghouse has separately provided descriptions of system test procedures, tests conducted and test results that demonstrate Applicant's ability to comply with the Core Principles.

Applicant has requested confidential treatment for specified exhibits to this Application.

Applicant hereby requests pursuant to Commission Regulation 39.3(a) that this Application be reviewed on an expedited basis and that Applicant be registered as a DCO not later than 90 days after the date of receipt of this Application.

I. CLEARINGHOUSE ORGANIZATION

A. Clearinghouse Ownership

Applicant is organized as a Delaware limited liability company and is jointly owned in equal proportion by NYSE Euronext ("NYSE") and The Depository Trust & Clearing Corporation ("DTCC").¹ The Third Amended and Restated Limited Liability Company Agreement of New York Portfolio Clearing, LLC (the "LLC Agreement"), the Agreement Among the Members of New York Portfolio Clearing, LLC (the "Members Agreement"), the Rules of NYPC (the "Rules"), the NYPC Code of Ethics and Business Conduct (the "Code of Ethics") and the NYPC Board Code of Ethics (the "Board Code of Ethics") govern the management and operation of the Clearinghouse.²

There will be two categories of clearing membership in the Clearinghouse: Class A Members and Class B Members (each a "Clearing Member" and collectively, the "Clearing Members").³ Clearing Members will have no current direct equity interest in the Clearinghouse.

¹ The Certificate of Formation of the Clearinghouse and Certificate of Amendment thereto is attached hereto as Exhibit A. NYSE is a publicly traded Delaware corporation (NYSE: NYX) and operates multiple markets in the United States and Europe, including the New York Stock Exchange and Euronext. DTCC is a New York corporation and, through its subsidiaries, provides clearing, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. FICC is a wholly owned subsidiary of DTCC.

² The LLC Agreement and the Members Agreement are attached hereto as Exhibit B. The Rules, the Code of Ethics and the Board Code of Ethics are attached hereto as Exhibit C and Exhibit D, respectively.

³ The Clearinghouse has begun discussions with a number of firms regarding membership in the Clearinghouse. A list of such firms is attached hereto as Exhibit E.

B. Clearinghouse Management⁴

1. Board of Directors

The business and affairs of Applicant are managed by a board of directors (each, a “Director” and collectively, the “Board of Directors”) acting pursuant to the LLC Agreement. The Board of Directors will be comprised of nine members. NYSE will appoint three Directors (the “NYSE Directors”), DTCC will appoint three Directors (the “DTCC Directors”) and the remaining three Directors will be independent (the “Independent Directors”) in accordance with published New York Stock Exchange and Commission requirements for director independence. Two Independent Directors will be nominated by DTCC and one Independent Director will be nominated by the NYSE.⁵ In appointing Directors, NYSE and DTCC will endeavor to select individuals who have appropriate skills and qualifications, particularly with respect to risk management, and will ensure that one or more of the Independent Directors are market participants or representatives of market participants.

The Board of Directors will appoint an individual to serve as the chairman of the Board of Directors for a one-year term (the “Chairman”). The chairmanship will alternate annually between a DTCC Director and an NYSE Director.

Any action, determination or judgment taken by the Board of Directors requires the affirmative vote or consent of a majority of the DTCC Directors and a majority of the NYSE Directors present and voting. In addition, decisions involving risk management, regulatory compliance and other similar decisions will require the approval of a majority of the NYSE Directors, a majority of the DTCC Directors and a majority of the Independent Directors present and voting.

If the Directors are unable to reach agreement regarding a matter before the Board of Directors, the LLC Agreement sets forth a series of steps that may be undertaken to resolve the matter, including the submission of the matter to the chief executive officers of NYSE and DTCC and non-binding mediation by the Independent Directors.

⁴ A chart setting forth the organizational structure of the Clearinghouse (the “NYPC Organizational Chart”) is attached hereto as Exhibit F.

⁵ Prior to the commencement of operations, the business and affairs of the Applicant are being managed by an interim board of directors, consisting of four individuals. Two interim directors have been appointed by NYSE and two interim directors have been appointed by DTCC. Attached hereto as Exhibit G is a list of the interim directors.

2. Committees

The Board of Directors will initially establish an Executive Committee, a Regulatory Oversight and Audit Committee, a Risk Committee and a Risk Advisory Committee.⁶ The Board of Directors may establish other committees in the future as it deems appropriate.

The Executive Committee is a committee of the Board of Directors that, when the Board of Directors is not in session, is authorized to exercise all powers of the Board of Directors regarding the supervision of the management of the business and affairs of the Clearinghouse. The committee will be composed of the Chairman and either (i) a Director appointed by NYSE if the Chairman was appointed by DTCC or (ii) a Director appointed by DTCC if the Chairman was appointed by NYSE.

The Regulatory Oversight and Audit Committee is a committee of the Board of Directors, with responsibility for (i) independent oversight of core regulatory functions and trends, including financial surveillance; (ii) oversight of the relationship of the Clearinghouse with regulatory authorities; (iii) assisting the Board of Directors in minimizing potential conflicts of interests of the Clearinghouse to allow the Clearinghouse to administer effectively its self-regulatory obligations; (iv) ensuring that core regulatory functions are administered in a manner that is fair and impartial to all Clearing Members; (v) oversight of the integrity of the Clearinghouse's internal controls and financial statements; and (vi) oversight of the performance of the internal audit function and the effectiveness of the Clearinghouse's process for monitoring compliance with applicable laws, regulations and the Clearinghouse's Code of Ethics. The committee will be composed of not fewer than five members, including at least one member appointed by DTCC, at least one member appointed by NYSE and the three Independent Directors.

The Risk Committee is a committee of the Board of Directors, with responsibility for oversight and assessment of the Clearinghouse's risk management programs, policies and procedures, as well as proposed changes to the Rules with respect to all issues involving risk management; establishment, monitoring and verification of the qualifications, financial requirements and status of Clearing Members; and recommending to the Board of Directors whether a prospective Clearing Member should be approved for membership. The chairman of the Risk Committee will be an Independent Director, and a majority of the members of the committee similarly will be Independent Directors.

The Risk Advisory Committee is a committee established by the Board of Directors to obtain information from and the views of Clearing Members and other market participants. The Risk Advisory Committee advises the Board of Directors and the Chief Executive Officer and the Chief Risk Officer of the Clearinghouse with respect to the committee's views regarding the Clearinghouse's assessment and management of risk, including credit, market, liquidity,

⁶ The charters for the committees are attached hereto as Exhibit H.

operational, systemic and reputational risk. Members of the committee may not be affiliated by common employment or otherwise with any Director and will include representatives of Clearing Members and other market participants, as the Board of Directors deems appropriate.

3. Officers

The principal officers of the Clearinghouse will be the Chief Executive Officer (“CEO”), the Chief Operating Officer (“COO”), the Chief Risk Officer (“CRO”), the Chief Compliance Officer and Counsel (“CCOC”) and such other officers as the CEO may determine.⁷ In appointing officers, the Board of Directors and, where appropriate, the CEO will appoint qualified persons with the requisite knowledge and experience to perform the obligations required of such office and to cause the Clearinghouse to implement and comply with the Core Principles.

The CEO is responsible for the overall leadership and strategic direction of the Clearinghouse. The incumbent is tasked with accomplishing the Clearinghouse’s business objectives and ensuring the success of this newly established business venture. The CEO manages regulatory issues and represents the Clearinghouse in relationships with the Board of Directors, major clients, industry organizations, regulators and other key outside parties.

The COO reports directly to the CEO and is responsible for administering the day-to-day affairs and business of the Clearinghouse, focusing on the delivery of all clearing, settlement, and product management services to customers and managing vendor relations. The COO advises and counsels the CEO on planning the scope and direction of the company’s operations, and presents recommendations for future objectives. As appropriate, the COO represents the Clearinghouse with clients and industry groups and facilitates cross-functional resources, including service level agreements between the Clearinghouse and DTCC or NYSE Liffe U.S., as applicable, regarding operations. In the absence of the CEO, the COO performs his/her functions under the direction of the Board of Directors.

The CRO is responsible for identifying and mitigating the Clearinghouse’s credit and market risk exposures, with a lead role in determining, testing and implementing applicable best practices and controls for risk. Additionally, the incumbent functions as lead risk professional in responding to regulatory reviews and represents the Clearinghouse with clients and industry groups on risk issues. The CRO facilitates cross-functional resources, including service level

⁷

A description of the positions that the Clearinghouse has filled is set forth in Exhibit I. Walter Lukken, formerly Acting Chairman of the Commission and a Commissioner from 2002 – 2009, has been appointed CEO of the Clearinghouse; Ira J. Krulik, formerly Co-Head, Futures Sales & Marketing, and Director, Listed Derivative Operations, Credit Suisse Securities (USA) LLC, has been appointed as COO; Joseph F. Benning, formerly Senior Economist, Chicago Board of Trade and Director, Moody’s Analytics, has been appointed as CRO; and Laura C. Klimpel, formerly an attorney in private practice concentrating on regulated futures markets, corporate and financial transactions and legislative developments, has been appointed as CCOC.

agreements between the Clearinghouse and DTCC or NYSE Liffe U.S., as applicable, regarding risk. The CRO represents the Clearinghouse in discussions with, and reports to, the Risk Committee of the Board of Directors (in addition to reporting to the CEO). The CRO updates the Board of Directors, CEO and the operations and legal teams regarding regulatory and risk developments.

The CCOC is responsible for ensuring that the Clearinghouse remains in compliance with all legal and regulatory matters affecting the Clearinghouse, including (i) monitoring and ensuring that the Clearinghouse remains in compliance with the Core Principles for DCOs under the Act; (ii) evaluating and responding to new and changing regulatory requirements; (iii) interacting with regulators and others in response to relevant inquiries and requests; (iv) monitoring compliance with the Rules and procedures of the Clearinghouse; and (v) monitoring compliance with the Clearinghouse's founding legal documents. The CCOC represents the Clearinghouse in discussions with, and reports to, the Regulatory Oversight and Audit Committee of the Board of Directors (in addition to reporting to the CEO).

4. Conflicts of Interest

Officers, employees and consultants of the Clearinghouse are subject to the conflicts of interest policy contained in the Clearinghouse's Code of Ethics. Independent Directors are subject to the conflicts of interest policy contained in the Board Code of Ethics.⁸ Furthermore, members of the Board of Directors, officers, members of a Clearinghouse committee and other individuals authorized to exercise authority on behalf of the Clearinghouse are prohibited under the Rules from participating in deliberations or votes of the Board of Directors, a committee or any panel of the Clearinghouse involving a disciplinary matter in connection with which they have a material conflict of interest.⁹

5. Master Services Agreements

The Clearinghouse has entered into Master Services Agreements ("MSAs") with DTCC and NYSE Liffe U.S., pursuant to which those organizations will provide a variety of software development, risk management, internal audit, business and managed technology and other services to the Clearinghouse under the Clearinghouse's supervision. The services being provided by NYSE Liffe U.S. are described in the Annexes to the MSA between the Clearinghouse and NYSE Liffe U.S.; the services being provided by DTCC are described in the Annexes to the MSA between the Clearinghouse and DTCC.¹⁰ For the convenience of the Commission, a summary of the services that are being provided by NYSE Liffe U.S. and DTCC

⁸ The Code of Ethics and the Board Code of Ethics are attached hereto as Exhibit D.

⁹ Rule 205.

¹⁰ The MSAs, the Annexes thereto and the associated Software License Agreements are attached hereto as Exhibit J.

is attached as an Appendix to the NYPC Organizational Chart. The Clearinghouse maintains full regulatory responsibility for each of the functions with respect to which DTCC or NYSE Liffe U.S. is providing support services.

6. Office Location

The Clearinghouse maintains office space in New York, New York at 55 Water Street, 31st Floor.

II. FINANCIAL RESOURCES OF THE CLEARINGHOUSE

A. Initial Capitalization and Additional Capital Contributions

The Clearinghouse has been initially capitalized with working capital of \$22 million, which amount has been contributed in equal proportion by NYSE and DTCC. NYSE and DTCC, in their capacity on the Board of Directors, also have each agreed to make additional contributions of working capital in equal proportion sufficient to ensure that the Clearinghouse has cash on hand at all times equal to no less than one year of operating requirements, considered on a rolling basis, up to a total of \$30 million. In addition, the Board of Directors may at any time require that NYSE and DTCC make additional capital contributions to the Clearinghouse if the Board of Directors approves such additional capital contribution or determines that additional capital is required in order for the Clearinghouse to maintain its status as a DCO or to satisfy other regulatory obligations.¹¹

Pro forma financial statements for the years ended December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012, December 31, 2013 and December 31, 2014 are attached as Exhibit K. The Clearinghouse will have operating resources at least equal to annual operating costs for a period of one year from the date of DCO registration, and at least one-half of those resources will be in liquid form.

B. Margin Requirements

The Clearinghouse will require each Clearing Member to deposit margin in amounts determined by the Clearinghouse to protect the Clearinghouse on cleared contracts and to cover potential exposures in normal market conditions (“Original Margin”).¹² DTCC, acting under the Clearinghouse’s supervision pursuant to an MSA, will calculate Original Margin requirements twice daily. The end-of-day Original Margin calculation will be reflected in the Clearing Member’s Original Margin requirement in the morning of the next business day. Margin deficits are required to be met by 9:30 a.m. (all times Eastern Time). Intra-day Original Margin requirements will be calculated as of 12:00 p.m., utilizing a position update to the Clearing

¹¹ The LLC Agreement, which reflects these obligations, is attached hereto as Exhibit B.

¹² Rule 402.

Member's portfolio. Intra-day Original Margin reports will be made available to Clearing Members by 2:00 p.m., and Clearing Members will have until 2:45 p.m. to meet an intra-day Original Margin call. Clearing Members may request the return of excess Original Margin until 12:00 p.m., and again from approximately 2:00 p.m. to 2:15 p.m. based on their intra-day Original Margin requirements.

Original Margin calls may be satisfied through the deposit of cash or one or more of the following securities, in each case subject to such criteria and requirements as may be established by the Clearinghouse from time to time (collectively, "Eligible Securities"): (i) direct obligations of the U.S. government, (ii) direct obligations of U.S. agencies and government-sponsored enterprises as the Clearinghouse may designate from time to time,¹³ and (iii) mortgage-backed pass-through obligations issued by U.S. agencies and government-sponsored enterprises as the Clearinghouse may designate from time to time.¹⁴ Margin deposited in the form of Eligible Securities will be subject to haircuts and concentration limits determined by the Clearinghouse from time to time.¹⁵ Clearing Members will be required to maintain the lesser of \$5 million or 10% of their Original Margin requirements in cash, with a minimum of \$100,000 in cash; a minimum of 40% will be required to be in cash or U.S. Treasury securities.

The Clearinghouse may invest and reinvest all or part of the funds constituting Original Margin. In making investment decisions, the Clearinghouse will take into account its overall credit risk exposures and ensure that its overall credit risk exposure to any individual obligor remains within acceptable concentration limits.¹⁶ Any investments of customer segregated funds will be made in compliance with Commission Regulation 1.25.

DTCC, acting under the Clearinghouse's supervision pursuant to an MSA, will mark trades and positions to market and will pay and collect margin ("Variation Margin" and, with Original Margin, "Margin") twice each business day and may do so more frequently if

¹³ It is anticipated that direct obligations of the following U.S. agencies and government-sponsored enterprises will be accepted by the Clearinghouse: Federal National Mortgage Association (Fannie Mae), Federal Agricultural Mortgage Corporation (Farmer Mac), Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Home Loan Banks, Financing Corporation (FICO), Tennessee Valley Authority and Resolution Funding Corporation. Obligations of such agencies and enterprises must be fixed rate (if coupon-bearing), senior debentures, AAA-rated, U.S. dollar denominated and eligible for clearance and settlement through the Government Securities Division of FICC.

¹⁴ It is anticipated that mortgage-backed pass-through obligations of the following U.S. agencies and government-sponsored enterprises will be accepted by the Clearinghouse: Government National Mortgage Association (Ginnie Mae), Fannie Mae and Freddie Mac. Obligations of such agencies and enterprises must be AAA-rated, secured by single family residential first mortgages that are fully amortizing with level payments and be eligible for clearance and netting through the Mortgage-Backed Securities Division of FICC.

¹⁵ A schedule of haircuts for Eligible Securities is attached hereto as Exhibit L.

¹⁶ The Clearinghouse's Investment Policy is attached hereto as Exhibit M.

appropriate (for example, in times of heightened volatility). Variation Margin calls may be satisfied only through the deposit of cash. Variation Margin will be calculated at the end of each day and must be deposited by Clearing Members by 10:00 a.m. (all times Eastern Time) the following business day. Intra-day Variation Margin requirements will be calculated as of 12:00 p.m., utilizing a position and price update to the Clearing Member's portfolio, with reports being made available to Clearing Members by 2:00 p.m., and debits (credits) collected (paid) by 3:15 p.m.

The Clearinghouse may assign, pledge, repledge or otherwise create a lien on or security interest in, and enter into repurchase agreements involving, Margin deposits to secure the repayment of funds that may be borrowed by the Clearinghouse. Any funds so borrowed will be used and applied by the Clearinghouse solely for the purposes for which cash, securities and other property held as Margin are authorized to be used.

C. Cross-Margining

The Clearinghouse intends to establish a cross-margining arrangement with FICC pursuant to which a Clearing Member that is also a member of FICC (a "Joint Clearing Member") may, at the discretion of the Clearinghouse and FICC, and in accordance with the provisions of the Rules, elect to have its margin requirement in respect of eligible positions in its proprietary account at the Clearinghouse and its margin requirement in respect of eligible positions at FICC calculated by taking into consideration the net risk of such eligible positions at both clearing organizations.¹⁷ In addition, an affiliate of a Clearing Member that is a member of FICC (a "Cross-Margining Affiliate") may agree to have its positions and margin at FICC margined together with eligible positions of the Clearing Member at the Clearinghouse.

The proposed "one-pot" cross-margining arrangement between the Clearinghouse and FICC will allow (i) Joint Clearing Members and (ii) Clearing Members and their Cross-Margining Affiliates to have their margin requirements for Clearinghouse and FICC positions determined on a combined basis, with the Clearinghouse and FICC each having a security interest in Clearing Members' margin deposits and other collateral to secure Clearing Members' obligations to the Clearinghouse and FICC.

¹⁷ A copy of the Cross-Margining Agreement to be entered into between the Clearinghouse and FICC, including forms of agreements to be entered into among the Clearinghouse, FICC and Clearing Members, is attached hereto as Exhibit N. The Cross-Margining Agreement provides for the cross-margining of fixed income securities and repurchase agreements cleared by FICC and futures contracts and options on futures contracts cleared by the Clearinghouse. As discussed elsewhere in this Application, the Clearinghouse will modify its risk modeling methodologies and will consult with the Commission prior to clearing options on futures contracts.

D. Parent Guaranty and Cross-Ownership Guaranty of Clearing Member

Each Clearing Member is required to submit to the Clearinghouse a written guarantee from every person (including natural persons) that directly or indirectly is the beneficial owner of 5% or more of any class of equity security or other equity interest (a “5% Owner”) of the Clearing Member.¹⁸ Each 5% Owner, as well as each person owning 5% or more of the equity securities of such 5% Owner (continuing up the chain of ownership until the owner is a natural person or a public reporting company), will be required to guarantee all obligations (other than any obligation of the Clearing Member to pay an assessment as described below and any obligations of a Clearing Member resulting from a deficiency in a customer account) arising out of accounts cleared by the Clearing Member that are: (i) non-customer accounts of the Clearing Member, including proprietary accounts as defined in Commission Regulation 1.3(y); and (ii) accounts carried by another futures commission merchant, as such term is defined in the Act (an “FCM”), if such accounts would be considered non-customer accounts, including proprietary accounts as defined in Commission Regulation 1.3(y), of the Clearing Member, if carried directly by the Clearing Member. Any 5% Owner owning 50% or more of the Clearing Member will be required to guarantee the full amount of the Clearing Member’s obligations described above. Any 5% Owner that owns less than 50% of the Clearing Member will be required to only guarantee a percentage of the Clearing Member’s obligations equal to its ownership percentage in the Clearing Member.¹⁹

In addition, if any person directly or indirectly controls, owns 10% or more of, or has the right to 10% or more of the profits of two or more Clearing Members, then each such Clearing Member will be required to submit to the Clearinghouse a written guarantee of the obligations of such other Clearing Member(s) to the Clearinghouse.²⁰

E. Liquidity Facilities

The Clearinghouse will have access to liquidity from the cash component of Clearing Members’ Original Margin and Guaranty Fund deposits. The Clearinghouse also expects to have a secured committed credit facility for the lesser of \$50 million and the securities component of its Guaranty Fund deposits and expects to be able to obtain cash from any remaining securities deposited in its Guaranty Fund as well as from the securities deposited by Clearing Members in satisfaction of Original Margin requirements pursuant to repurchase arrangements with third-

¹⁸ Rule 307.

¹⁹ Copies of the forms of Parent Guaranty are attached hereto as Exhibit O.

²⁰ Rule 307. A copy of the Cross-Ownership Guaranty is attached as Exhibit P. It is anticipated that the Clearinghouse will waive the Parent and Cross-Ownership Guaranty requirements for Clearing Members whose regulatory capital exceeds a specified threshold. If the Board of Directors were to adopt such a policy, it would likely be on terms similar to those that have been adopted by other DCOs.

party counterparties in the event that a default by a Clearing Member were to give rise to demands for additional liquidity.²¹

F. Guaranty Fund

The margin processes described above are designed to capture the risk inherent in a Clearing Member's portfolio to a 99% confidence level. To protect against additional risks under "extreme but plausible" market conditions, the Clearinghouse will maintain a guaranty fund (the "Guaranty Fund") comprised of contributions made by Clearing Members. In addition to Clearing Member contributions, NYSE has provided a \$50,000,000 guaranty to the Clearinghouse, which will be secured by \$25,000,000 in cash in the first year of the Clearinghouse's operations.²² The Board of Directors will evaluate the size of the Guaranty Fund no less often than quarterly, with the target suggested Guaranty Fund level being set at 1.5 times the amount required to enable the Clearinghouse to cover the losses associated with closing out the positions of the Clearing Member (and its affiliates) to which the Clearinghouse has the largest potential exposure in "extreme but plausible" market conditions, without disruption of the operations of the Clearinghouse should such Clearing Member fail to meet its obligations to the Clearinghouse.²³ The Clearinghouse will make available to the public information regarding the size and composition of the Guaranty Fund.

Each Clearing Member will be required to deposit and maintain a contribution to the Guaranty Fund in an amount to be determined by the Clearinghouse.²⁴ Each Clearing Member's contribution is initially expected to equal the greater of: (i) \$3,000,000 for Class A Members, \$1,000,000 for Class B Members, and \$1,000,000 for Class A or Class B Members that are not registered with the Commission as FCMs, and (ii) the results of a formula under which 75% of the total requirement is based upon the Clearing Member's proportionate contribution to the aggregate Original Margin requirements over the preceding three months and 25% is based on the Clearing Member's proportionate contribution to volume over the preceding three months. Each Clearing Member will be required to maintain 10% of its required Guaranty Fund

²¹ Evidence of the liquidity of the Clearinghouse's resources is attached as Exhibit Q.

²² A copy of the NYSE Guaranty and the associated Cash Collateral Deposit Agreement are attached hereto as Exhibit R.

²³ The methodology used to determine the level of the Guaranty Fund is set forth in Exhibit Y. The level of the Guaranty Fund is designed to meet and exceed the risk management standards set forth in Core Principle V of the Bank for International Settlements, Committee on Payments and Settlement Systems, *Core Principles for Systemically Important Payment Systems*, January 2001 and Recommendation 5 of the Bank for International Settlements, Committee on Payments and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, *Recommendations for Central Counterparties*, November 2004.

²⁴ Rule 504(a).

contribution in cash, with a minimum cash requirement of \$100,000 and a maximum cash requirement of \$5,000,000.

The Clearinghouse expects that the Guaranty Fund will be deposited in a special account in the name of the Clearinghouse in such depositories as may be designated by the Clearinghouse from time to time. The Clearinghouse will monitor such depositories' financial condition on an on-going basis. The Clearinghouse may invest and reinvest all or part of the funds constituting the Guaranty Fund. In making investment decisions, the Clearinghouse will take into account its overall credit risk exposures and ensure that its overall credit risk exposure to any individual obligor remains within acceptable concentration limits.²⁵

The Clearinghouse may assign, pledge, repledge or otherwise create a lien on or security interest in, and enter into repurchase agreements involving, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds that may be borrowed by the Clearinghouse. Any funds so borrowed will be used and applied by the Clearinghouse solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used.

After a Clearing Member withdraws from membership or its membership is terminated, all obligations of the withdrawing or terminated Clearing Member to the Clearinghouse will be accelerated and become due and payable upon the effective date of such withdrawal or termination. The Clearing Member's Guaranty Fund deposit, the proceeds from the sale of any other deposits required by the Clearinghouse and any remaining assets available to the Clearinghouse will not be released until the Clearinghouse has determined that all of the Clearing Member's contracts and obligations have been settled and paid, and all other sums owing to the Clearinghouse have been paid.²⁶

G. Cross-Guaranty Agreement

FICC, its affiliates The Depository Trust Company and National Securities Clearing Corporation, and The Options Clearing Corporation are parties to a Netting Contract and Limited Cross-Guaranty (the "Cross-Guaranty Agreement") that provides, in essence, that if a clearinghouse that is party to that agreement has a net gain after liquidating a defaulting clearing member's margin and positions, it will share that net gain with the other clearinghouses that are party to the Cross-Guaranty Agreement if they have a net loss upon their liquidation of the defaulting clearing member. The Clearinghouse anticipates becoming a party to the Cross-Guaranty Agreement shortly after commencing operations.

²⁵ The Clearinghouse's Investment Policy is attached hereto as Exhibit M.

²⁶ Rule 311.

H. Assessment Powers

If a Clearing Member is in default and obligations remain outstanding after the Clearinghouse has applied all assets available under the Rules, the Clearinghouse has the power to levy an assessment against all non-defaulting Clearing Members for any remaining obligations.²⁷ In such an event, a non-defaulting Clearing Member will be subject to an assessment in an amount as determined by the Clearinghouse that is proportional to such Clearing Member's Guaranty Fund requirement compared to the total Guaranty Fund requirement of all Clearing Members. A Clearing Member will not be required to deposit more than an additional 100% of the amount of its pre-assessment Guaranty Fund contribution if the Clearing Member notifies the Clearinghouse in writing that it is terminating its status as a Clearing Member and meets certain other requirements set forth in the Rules.

III. PARTICIPANT AND PRODUCT ELIGIBILITY

A. Clearing Membership

1. Clearing Member Qualifications

A Clearing Member will be entitled to clear contracts through the Clearinghouse for its proprietary accounts and, if registered with the Commission as an FCM, for customer accounts.

A prospective Clearing Member must (i) be engaged in or demonstrate its capacity to engage in the conduct of the business of a Clearing Member; (ii) have received all necessary government approvals (if any); (iii) demonstrate such fiscal integrity as would justify the Clearinghouse's assumption of the risk inherent in clearing its contracts; (iv) demonstrate financial capitalization commensurate with requirements established by the Clearinghouse; (v) have an established relationship with a Clearinghouse-approved Settlement Bank and a Clearinghouse-approved Clearing Bank (as hereinafter described); and (vi) maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to the Clearinghouse.²⁸

In addition, a prospective Class A Member must be a FICC member.²⁹ These FICC members must meet certain requirements regarding, among other things, operational capability, suitability and financial responsibility.³⁰ A Class B Member (which is not a FICC member)

²⁷ Rule 504(b).

²⁸ Rule 302(a).

²⁹ Rule 302(b).

³⁰ *See, e.g.*, FICC Government Securities Division Rules 2A and 3.

must enter into a securities settlement arrangement with one or more FICC members in form and substance acceptable to the Clearinghouse.³¹

A prospective Clearing Member that is organized or established under the laws of a country other than the United States must: (i) maintain a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable about the applicant's business and can assist representatives of the Clearinghouse as necessary, and ensure that the applicant will be able to meet its data submission, settlement and other obligations to the Clearinghouse as a Clearing Member in a timely manner; (ii) represent and certify to the Clearinghouse that it is in compliance with the financial reporting and responsibility standards of its home country and, if it is a regulated entity, that it is regulated in its home country by a financial regulatory authority in the areas of maintenance of relevant books and records, regular inspections and examinations and minimum capital standards, and make such other representations as the Clearinghouse deems necessary; and (iii) upon request by the Clearinghouse, submit an opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to the Clearinghouse.³²

Each Clearing Member will be required to comply with the Rules, act in a manner consistent with the Rules and be responsible to the Clearinghouse for any violation of the Rules that occur during its tenure as a Clearing Member.³³

2. Financial Requirements of Membership

Each Clearing Member will be required to maintain minimum regulatory capital in an amount in excess of the greater of \$5,000,000 and, if applicable, the capital requirements imposed by a government agency or self-regulatory organization or other examining authority or regulator to which the Clearing Member is subject.³⁴

3. Application for Membership

Each prospective Clearing Member must complete a membership application that will be reviewed by the Clearinghouse.³⁵ The Clearinghouse will have the authority to examine the

³¹ Rule 302(c).

³² Rule 302(d).

³³ Rule 303.

³⁴ Rule 305.

³⁵ The form of Membership Application for Clearing Members is attached hereto as Exhibit T. Some of the documents that comprise the Membership Application refer to "Common" or "NYPC" members; those terms describe Class A and Class B Members, respectively. The Membership Application also includes material that applies to an applicant for membership in NYPC that is an affiliate of a FICC member. As discussed elsewhere in this Application, FICC members that are affiliated with a Clearing Member may
(cont.)

books and records of the applicant and to take such steps as it deems necessary to ascertain the facts bearing upon the qualification of the applicant.³⁶

B. Instruments Accepted for Clearing

The Clearinghouse initially will accept for clearing U.S. dollar-denominated interest rate futures contracts traded on NYSE Liffe U.S. (the “Exchange”).³⁷ The Clearinghouse has entered into a Clearing Services Agreement with the Exchange pursuant to which the Clearinghouse will be obligated to provide certain services to the Exchange with respect to products submitted to the Clearinghouse for clearance and settlement.³⁸

Following the launch of interest rate futures, the Clearinghouse may elect to clear other futures contracts as well as options on futures contracts. The Clearinghouse also will have the ability to clear over-the-counter interest rate products. The Clearinghouse will modify its risk modeling methodologies prior to clearing other futures or options on futures products or acting as a DCO for over-the-counter instruments. The Clearinghouse additionally will consult with the Commission prior to clearing options on futures contracts and with the Commission and other regulators as appropriate prior to clearing over-the-counter instruments.

The efficiencies that will be provided by the cross-margining program that is to be put into place by the Clearinghouse and FICC will be of substantial benefit to Clearing Members. In particular, the Clearinghouse anticipates that Clearing Members will benefit from the more efficient use of capital that results from the reduction of risk, and corresponding reduction of Original Margin (and FICC clearing fund) requirements that is made possible by cross-margining.

IV. RISK MANAGEMENT

A. Responsibility for Risk Management

The Risk Committee of the Board of Directors and the CRO are responsible for monitoring risk exposures at the Clearinghouse. The Clearinghouse will adopt Risk Procedures setting forth procedures regarding the establishment of the Guaranty Fund and periodic evaluation of its sufficiency, monitoring of Margin requirements, risk monitoring, credit

elect to cross-margin their eligible positions as Cross-Margining Affiliates with those of the Clearing Member.

³⁶ Rule 301(d).

³⁷ A list of those contracts and their specifications is attached hereto as Exhibit U. Information regarding projected volume and open interest for the first four years of the Clearinghouse’s operations is set forth in Exhibit V.

³⁸ A copy of the Second Amended and Restated Clearing Services Agreement is attached hereto as Exhibit W.

monitoring and the evaluation and monitoring of Clearing Members' initial and continuing compliance with the financial and other qualifications for membership.³⁹

B. Monitoring of Clearing Members

On an ongoing basis, each Clearing Member will be required to provide to the Clearinghouse monthly and audited annual financial reports to enable the Clearinghouse to evaluate its financial status. Clearing Members will be required to submit financial reports using either Form 1-FR-FCM, the FOCUS Report (required of SEC-registered broker-dealers) or Form G-405 (required of government securities broker-dealers and permitted to be used by FCMs that are also SEC-registered broker-dealers). A Clearing Member may be required to provide additional reports in such form and at such times as the Clearinghouse may require.⁴⁰

The Clearinghouse will review the financial reports provided by each Clearing Member to confirm that such Clearing Member continues to meet the minimum regulatory capital requirements. Clearing Members will be monitored for compliance with eligibility requirements as well as for material events, such as regulatory actions or changes in executive management. The monitoring activities will be accomplished through a series of surveillance elements, including monitoring of regulatory websites and business news for information that impact a Clearing Member's business relationship with NYPC. In addition, financial data from regulatory filings and member supplied information will be analyzed to evaluate the ongoing financial condition, performance and the Clearing Member's compliance with regulatory requirements.⁴¹

In addition, the Clearinghouse will (i) discuss with the Clearing Member any material changes in financial information that have occurred since the previous filings, (ii) review any footnotes to the financial reports for any unusual items or regulatory or legal actions that may constitute a statutory disqualification and bring them to the attention of the Clearinghouse legal department, (iii) review the report of the Clearing Member's independent auditor to ensure that the statements fairly present, in all material respects, the financial position of the Clearing Member in accordance with generally accepted accounting principles and that no material weaknesses have been identified or qualified opinions have been granted and (iv) review the report of the Clearing Member's independent auditor on internal controls to ensure that the Clearing Member's practices and procedures are adequate and meet the standards of the Clearinghouse and any other applicable regulator. The Clearinghouse may, in its discretion,

³⁹ A copy of the NYPC Market & Credit Risk Procedures ("Risk Procedures") is attached hereto as Exhibit X.

⁴⁰ Rule 306.

⁴¹ The specific credit risk procedures to be followed by the Clearinghouse are set forth in the Risk Procedures, attached hereto as Exhibit X.

prescribe additional capital requirements with respect to any Clearing Member to safeguard the financial integrity of the Clearinghouse.⁴²

Clearing Members are required to notify the Clearinghouse upon the occurrence of certain material events set forth in the Rules, including a Default (as described below) with respect to the Clearing Member or, if applicable, its Cross-Margining Affiliate, the inability of the Clearing Member to meet its obligations to the Clearinghouse, significant reductions in the Clearing Member's capital, a failure to maintain sufficient funds in any customer segregated funds account, any merger or other business combination or change in control, any damage, failure or inadequacy of its systems or facilities, suspensions or withdrawals from self-regulatory organizations, the failure to perform any material contract or obligation or the insolvency of any guarantor.⁴³ The Clearinghouse will, where appropriate, take steps to ensure that the Commission is notified of the occurrence of such an event.

If the Clearinghouse has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in such manner as the Clearinghouse shall determine, with adequate assurances that the Clearing Member shall not violate any of the Rules.⁴⁴

The Clearinghouse may impose limitations, conditions and restrictions upon a Clearing Member or terminate the status of the Clearing Member upon, among other events, the occurrence of a Default or a Termination Event⁴⁵ or a determination by the Clearinghouse that the financial or operational condition of a Clearing Member or one of its affiliates is such that to allow that Clearing Member to continue to operate as a Clearing Member would adversely affect the Clearinghouse or the financial markets (whether or not the Clearing Member continues to meet the minimum financial requirements).⁴⁶

The Clearinghouse will monitor Clearing Member positions and payment obligations throughout the trading day as part of its monitoring processes. This will include the review of hourly snapshots of Clearing Member positions and a determination of potential exposures, which information will be made available to Clearing Members throughout the day. The Risk Procedures set forth the specific processes to be followed by the Clearinghouse to monitor

⁴² Rule 305.

⁴³ Rule 308.

⁴⁴ Rule 309.

⁴⁵ A "Termination Event" includes, among other things, the failure of the Clearing Member to maintain compliance with membership eligibility requirements, the failure to meet the Clearinghouse's financial requirements and a breach by the Clearing Member of the Rules.

⁴⁶ Rule 310.

Clearing Members' accounts, the accumulation of positions by Clearing Members and other market participants and Original Margin and Variation Margin requirements.

C. Monitoring of Financial Resources

The Clearinghouse will ensure that it has sufficient financial resources to operate its clearing system for its Clearing Members in accordance with the Core Principles. Information relating to the financial resources available to the Clearinghouse in the event of a Clearing Member default will be posted on the Clearinghouse's website from time to time and provided to the Commission upon request.

1. Guaranty Fund

On a daily basis, the Clearinghouse will compare the Guaranty Fund requirements of each Clearing Member to its deposits in the Guaranty Fund. On at least a quarterly basis, each Clearing Member will be required to deposit additional resources into the Guaranty Fund if the Clearing Member's deposit is less than the amount it is required to maintain on deposit with the Clearinghouse. In addition, if at any time, a Clearing Member's deposit falls below 75% of the required amount, the Clearing Member will be required to deposit additional resources into the Guaranty Fund promptly upon demand by the Clearinghouse.

The Guaranty Fund will be stress tested on a monthly basis. The stress tests will be selected by calculating the aggregate interest rate move across different terms over the past 10 years, with the largest 50 results being used to identify the days to be used in the stress test and to calculate the assumed profit or loss ("P&L") on a given portfolio. The calculated P&L will then be compared to Guaranty Fund requirements. The Clearinghouse will re-evaluate its stress testing models, parameters and scenarios no less frequently than annually.

In the event that stress tests identify a potential deficiency, Clearinghouse management would bring the matter to the attention of the Board of Directors, which would increase affected Clearing Members' Guaranty Fund requirements or take such other action as may be appropriate in the circumstances.

2. Margin

Each Clearing Member will be required to deposit Original Margin with the Clearinghouse twice each business day in connection with contracts cleared by the Clearinghouse that remain open. In addition, Clearing Members will be required to make Variation Margin payments to the Clearinghouse on the basis of the mark-to-market of open positions twice each business day.

Original Margin requirements will be calculated using a full valuation historic simulation Value at Risk methodology (“VaR methodology”).⁴⁷ The VaR methodology is intended to predict the maximum loss at the 99% confidence level in any given portfolio over a specified timeframe and confidence interval. This prediction is accomplished by using historical information from the past 250 business days for futures positions and the past 252 business days for cash securities positions, including prices, spreads, and market variables, such as Treasury zero-coupon yield curves and London Interbank Offered Rate (LIBOR) curves. This information is used to calculate a P&L for each instrument in a given portfolio in the event of such an adverse market move, taking into account the specific characteristics of such instrument. P&Ls will be calculated for futures contracts using a one-day time horizon. (The P&L for cash Treasury and other interest rate securities that are cleared by FICC will be calculated using a three-day horizon.) The individual P&Ls for each instrument in a portfolio are then aggregated so that a VaR estimate for the entire portfolio can be estimated. Because a P&L is calculated for each instrument individually within a portfolio, correlations within a portfolio will be reflected in the final VaR estimate.

The VaR estimate will be calculated in all cases to a 99% confidence level. The Clearinghouse intends to back test its VaR estimates monthly at a summary level and quarterly at a more detailed level to ensure that previous calculations accurately reflected actual market risk and to ensure that its 99% confidence level remains accurate.

VaR calculations and additional Original Margin calls will be made each morning and again on an intra-day basis whenever a Clearing Member’s existing Original Margin deposits are insufficient. The Clearinghouse also will monitor the concentration of positions maintained by Clearing Members. The Clearinghouse retains the ability to apply increased Original Margin requirements should a Clearing Member hold a concentrated position in a particular product or if the Clearinghouse deems the assessment of increased margin necessary based on existing market conditions or on the results of regularly performed stress tests. This will serve to protect the Clearinghouse from the increased risk in the event of a default by a Clearing Member with a concentrated position and create a disincentive for Clearing Members to hold concentrated positions or to engage in behavior in violation of the Rules.

The Clearinghouse needs to measure the risk of combined portfolios of futures and cash positions, and believes that its VaR methodology provides a more accurate estimation of portfolio risk than the Standard Portfolio Analysis of Risk (“SPAN”) system that is commonly used to measure the risk associated with outright futures and options on futures positions. The Clearinghouse recognizes, however, that it is standard practice in the futures industry to calculate and monitor margin requirements using SPAN. The Clearinghouse, therefore, intends to make available SPAN-formatted calculations of customer initial margin requirements to Clearing Members and their customers using SPAN. Because the output of the SPAN methodology relies

⁴⁷ A description of the VaR model, including data sources for inputs used in the model, is included as Exhibit Y.

in large part on the input parameters used, the Clearinghouse will be able to tailor the input parameters (such as the underlying price scan range and the volatility scan range) and the additional fixed variables (such as the inter-month spread charge, inter-commodity credit and spot month charge) to produce a result that corresponds to Clearing Members' Original Margin requirements that have been calculated using the VaR methodology. The SPAN arrays that will be provided by the Clearinghouse will be exclusively for the convenience of Clearing Members and their customers and will not affect the actual obligations of Clearing Members to the Clearinghouse.

D. Risk Monitoring

The Clearinghouse will review and assess Clearinghouse and Clearing Member risk at the predetermined intervals pursuant to the functions set forth in detail in the Risk Procedures.⁴⁸

V. SETTLEMENT PROCEDURES

A. Daily Settlement Procedures

The submission of the details of a transaction by or on behalf of a Clearing Member will constitute a request by the Clearing Member to the Clearinghouse for clearance of the contracts. Except with respect to transfer trades and trades made pursuant to exchanges of futures for physicals (basis trades), exchanges of futures for swaps and similar transactions, the Clearinghouse will, through the process of novation, be substituted as, and assume the position of, seller to the Clearing Member buyer and buyer to the Clearing Member seller of the contracts upon the Clearinghouse's receipt and acknowledgment of a matched transaction. With regard to transfer trades and trades made pursuant to exchanges of futures for physicals, exchanges of futures for swaps or similar transactions, the Clearinghouse will be substituted at the time payment of the Original Margin and Variation Margin due for such trades is made by or for both Clearing Members.⁴⁹

The Clearinghouse will value open positions held by Clearing Members and the sufficiency of Clearing Members' Margin deposits at least twice per day. Clearing Members will be required to provide additional Variation Margin on the basis of the mark-to-market of open positions. All such Variation Margin payments will be made through the Clearinghouse's Settlement Banks. Payments of Variation Margin will be made through Settlement Banks in federal funds through the National Settlement Service ("NSS"), a multilateral funds settlement

⁴⁸ The Enterprise Risk Management Appendix to the DTCC MSA, which sets forth the risk management services that will be provided to the Clearinghouse with respect to risk management, is attached hereto as Exhibit J.

⁴⁹ Rule 401. If the Clearinghouse does not accept a contract for clearing, the Clearinghouse will incur no liability with respect to such contract. The Clearinghouse will promptly notify each Clearing Member that is party to a transaction if such transaction is not accepted for clearing.

service owned and operated by the Federal Reserve Banks.⁵⁰ All payments made through NSS are final and irrevocable.

The settlement price for each contract will be determined in the first instance in accordance with the rules of the Exchange. In the case of manifest error or where the Clearinghouse believes that such settlement price does not reasonably reflect the value or price of the contract, the Clearinghouse will use its best efforts to consult with the Exchange but will determine the official settlement price.⁵¹

The standard daily settlement cycle will be as follows (all times are Eastern Time):

- 7:00 a.m.: Deadline for distribution of Clearinghouse reports of Variation Margin and Original Margin requirements.
- 9:30 a.m.: Deadline for receipt of Original Margin payments from Clearing Members' Clearing Banks.
- 10:00 a.m.: Deadline for receipt of Variation Margin payments from Clearing Members' Settlement Banks and payment of Variation Margin payments to Clearing Members' Settlement Banks.
- 12:00 pm.: Calculation of intra-day Original Margin and Variation Margin requirements.
- 2:00 p.m.: Notice to Clearing Members and Settlement Banks of (i) intra-day Variation Margin requirements and (ii) Original Margin requirements for all positions.
- 2:45 p.m.: Deadline for receipt of Original Margin payments from Clearing Members' Clearing Banks.
- 3:15 p.m.: Deadline for payment and collection of intra-day Variation Margin.
- 5:00 p.m.: Settlement price determinations made in accordance with the Rules. Clearinghouse reports of Original Margin and Variation Margin requirements provided overnight to Clearing Members and Settlement Banks.

B. Contract Settlement

As central counterparty, the Clearinghouse is responsible for the performance of all contracts until the receipt by FICC of settlement instructions for physically settled contracts or, for cash settled contracts, final settlement.

⁵⁰ Rule 403.

⁵¹ Rule 404.

Deliveries for physically settled contracts will be effected through FICC in accordance with its rules. After trading ceases on the last day of trading for a contract that is cash-settled, any open positions will be settled in cash at the settlement price determined for such contract on the last day of trading in such contract.

C. Reporting and Recordkeeping

At the end of each business day, the Clearinghouse will provide each Clearing Member a statement setting forth, separately for proprietary and customer accounts, the Clearing Member's Original Margin requirements, Original Margin on deposit and Variation Margin amounts owed to or owing from the Clearinghouse. This information, and other documents and records created in the course of the Clearinghouse's conduct of business as a DCO, including records reflecting the flow of funds associated with each payment or receipt of Original Margin or Variation Margin, will be maintained by the Clearinghouse in compliance with applicable Commission Regulations.

VI. TREATMENT OF FUNDS

A. Settlement Banks

Transfers of Variation Margin will be effected through financial institutions approved by the Clearinghouse as Settlement Banks. A bank or trust company that has direct access to a relevant Federal Reserve Bank and the NSS may act as a Settlement Bank upon approval by the Clearinghouse.⁵² Each Clearing Member is required to appoint a Settlement Bank for the payment and receipt of Variation Margin.⁵³ A prospective Settlement Bank must agree to abide by the Rules applicable to Settlement Banks, must make available for inspection by the Clearinghouse its books and records relating to the Clearinghouse's settlement process and must agree to provide to the Clearinghouse such financial and other information as may be specified by the Clearinghouse from time to time.⁵⁴

B. Clearing Banks

All Original Margin deposits will be held at financial institutions approved by the Clearinghouse as Clearing Banks. Maintenance of funds at the Clearing Banks is intended to ensure the safe custody and availability of such funds.

⁵² Rule 403(c).

⁵³ Rule 302(a)(7). The form of Appointment of Settlement Bank is attached hereto as Exhibit Z.

⁵⁴ Rule 403(d)(1), (3) and (6).

Clearing Members are required to establish relationships with a Clearing Bank for payment of all Original Margin to the Clearinghouse.⁵⁵ Clearing Members are not permitted to use any Clearing Bank except those designated by the Clearinghouse.

C. Treatment of Funds

All Margin deposits will be held at a Settlement Bank or a Clearing Bank in accounts established by the Clearinghouse. The Clearinghouse will obtain a customer segregation acknowledgement letter in accordance with Commission Regulation 1.20 from each such bank, including acknowledgments by the bank that it was informed by the Clearinghouse that funds in the customer segregated account are held pursuant to the Act for the benefit of customers, are being held in accordance with the provisions of the Act and Commission Regulations and that the bank will not look to the funds in such account to satisfy any obligations of a Clearing Member or the Clearinghouse to such bank.⁵⁶

The Clearinghouse will invest funds only in instruments with significant liquidity and little or no risk to principal or with entities that provide limited credit exposure to the Clearinghouse, in each case pursuant to its Investment Policy. Customer segregated funds will be invested in a manner consistent with the requirements of Commission Regulation 1.25.⁵⁷

VII. DEFAULT PROCEDURES

A. Clearing Member Default

The Clearinghouse has established rules, policies and procedures designed to assure efficient, fair and safe management of events when Clearing Members become insolvent or default on their obligations to the Clearinghouse.

A Clearing Member will be in "Default" if such Clearing Member or, as applicable, its Cross-Margining Affiliate: (i) fails to satisfy any of its obligations to the Clearinghouse; (ii) fails to deliver funds or securities within the time established therefor by the Clearinghouse or FICC, as applicable, and in such case, FICC ceases to act on behalf of the Clearing Member, or, as applicable, its Cross-Margining Affiliate; (iii) is expelled or suspended from any self-regulatory organization; (iv) fails to meet the capital or other financial requirements of the Clearinghouse or, if applicable, FICC; (v) is insolvent (as defined in the Rules); (vi) holds a short position in a futures contract and does not tender a delivery notice on or before the time specified by the rules of the Exchange (as defined in the Rules) on the last day on which such notices are permitted to be tendered or fails to make delivery by the time specified in the rules of the Exchange; (vii)

⁵⁵ Rule 302(a)(7).

⁵⁶ Rule 410.

⁵⁷ The Clearinghouse's Investment Policy is attached hereto as Exhibit M.

holds a long position in a futures contract and does not accept delivery or does not make full payment when due as specified in the rules of the Exchange.

Upon a Default, the Clearing Member's Margin and the Clearing Member's Guaranty Fund deposits and any other assets held by, pledged to or otherwise available to the Clearinghouse, including any parent guaranty or cross-ownership guaranty, will be applied by the Clearinghouse to discharge the obligations of such Clearing Member to the Clearinghouse (including any amounts owed by the Clearinghouse to FICC under the Cross-Margining Agreement, and costs and expenses associated with the liquidation, transfer or management of contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by the Clearinghouse on such Clearing Member). In addition, the Clearinghouse may cause all contracts of the defaulting Clearing Member to be closed, offset or transferred to any other Clearing Member. If a Clearing Member that is in Default is a party to a cross-margining arrangement, the Clearing Member's positions and margin deposits and the positions and margin deposits of its Cross-Margining Affiliate, if applicable, will be considered assets of the Clearing Member available to the Clearinghouse to the extent provided in the Cross-Margining Agreement.⁵⁸

B. Clearinghouse Satisfaction of Obligations

If the deposits and proceeds described above are insufficient to satisfy all of the defaulting Clearing Member's obligations to the Clearinghouse, the defaulting Clearing Member will continue to be liable to the Clearinghouse. In such an event, the amount of the deficiency, exclusive of any fees, assessments and fines that may have been imposed by the Clearinghouse, will be met from the following sources of funds, with each such source to be completely exhausted before the next following source is applied:

- (1) 25% of the Retained Earnings of the Clearinghouse;
- (2) the Guaranty Fund deposits of all Clearing Members (other than a Clearing Member that is in Default), in direct proportion to the total Guaranty Fund deposits of each Clearing Member (other than a Clearing Member that is in Default);
- (3) cash operating surplus of the Clearinghouse for the current year in excess of amounts necessary for normal operations remaining after the deduction required by paragraph (1);
- (4) the NYSE Guaranty; and

⁵⁸ Rule 503(a).

(5) assessments levied by the Clearinghouse upon all the Clearing Members (other than the Clearing Member that is in Default) as provided in the Rules.⁵⁹

C. Cross-Margining

The cross-margin account of a Clearing Member may be liquidated by the Clearinghouse at the request of FICC whether or not the Clearinghouse suspends such Clearing Member. Upon the suspension of a Joint Clearing Member, or upon receiving notice from FICC of its suspension of a Joint Clearing Member or its Cross-Margining Affiliate, the Clearinghouse will have the right to liquidate the positions in the cross-margin account, convert to cash the margin therefor, and dispose of the proceeds thereof, all in accordance with the terms of the Cross-Margining Agreement between the Clearinghouse and FICC.⁶⁰

In the event that the Clearinghouse becomes obligated to make a payment to FICC under the Cross-Margining Agreement, the Clearing Member shall thereupon immediately be obligated, whether or not the Clearinghouse has then made payment to FICC, to pay to the Clearinghouse the amount of such payment.⁶¹

The Clearinghouse may apply any cross-margin payment received by the Clearinghouse on account of a defaulting Clearing Member: (i) to the unpaid obligations of such defaulting Clearing Member to the Clearinghouse and (ii) to reduce the assessments made or that otherwise would be made against other Clearing Members. The Clearinghouse may retain any cross-guaranty payment received by the Clearinghouse and not apply such payment to reduce any assessments against other Clearing Members until the Clearinghouse determines that the Clearinghouse is no longer liable for any repayment to FICC under the Cross-Margining Agreement.⁶²

D. Cross-Guaranty Agreement

If the Clearinghouse has made a payment to another clearinghouse under a cross-guaranty agreement on behalf of a Clearing Member that is in default to such other clearinghouse, the Clearing Member shall be obligated to the Clearinghouse for the amount of such payment (less the amount of any repayment received by the Clearinghouse in respect thereof). The Clearinghouse may (i) apply any cross-guaranty payment received by the Clearinghouse on account of a defaulting Clearing Member: (A) to the unpaid obligations of such defaulting Clearing Member to the Clearinghouse and (B) to reduce the assessments made or that otherwise would be made against other Clearing Members; or (ii) retain any cross-guaranty payment

⁵⁹ Rule 503(b).

⁶⁰ Rule 411(c).

⁶¹ Rule 411(d)(1).

⁶² Rule 411(d)(2).

received by the Clearinghouse and not apply such payment to reduce any assessments against other Clearing Members until the Clearinghouse determines that the Clearinghouse is no longer liable for any repayment to the other parties to the cross-guaranty agreement.⁶³

VIII. ENFORCEMENT OF RULES; DISPUTE RESOLUTION

A. Rule Enforcement

The Clearinghouse will put in place adequate arrangements to monitor and enforce compliance with the Rules and will have the authority and ability to discipline, limit and suspend a Clearing Member for violations of the Rules.

If the Clearinghouse has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in to such manner as the Clearinghouse shall determine, with adequate assurances that the Clearing Member will not violate any of the Rules.⁶⁴ In addition, the Clearinghouse may fine, censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of the Rules or its agreements with the Clearinghouse and will provide prompt notice of any such sanctions to the Commission.⁶⁵ In addition, the Board of Directors or the Risk Committee may summarily suspend any Clearing Member if the Clearing Member or its Cross-Margining Affiliate, if applicable, is in Default as described above.

Upon such suspension, the Clearinghouse may close out all open positions or transfer such positions to another Clearing Member, liquidate assets held as margin, hedge outstanding positions or take such other actions as may be permitted under the Rules.⁶⁶

B. Dispute Resolution

The Clearinghouse does not intend to provide dispute resolution services to Clearing Members for disputes between Clearing Members or between Clearing Members and customers.

IX. SYSTEM SAFEGUARDS

The Clearinghouse recognizes that the management of counterparty and market risk associated with its role as a central counterparty, maintenance of adequate capacity and security with respect to its automated information technology systems and the establishment, testing,

⁶³ Rule 505.

⁶⁴ Rule 309.

⁶⁵ Rule 603(b).

⁶⁶ Rule 601.

evaluation and modification of, and back-up plans with respect to, such systems are integral to the achievement of its objective of providing secure and efficient clearing services to its Clearing Members. The Clearinghouse will utilize the proven information technology resources of NYSE and FICC.

The Clearinghouse will utilize four data centers to provide primary and backup facilities for its delivery system, Liffe Guardian, and its trade registration and clearing position keeping system, TRS/CPS.

The Liffe Guardian delivery system provided as a managed service by NYSE Liffe U.S. to NYPC is hosted out of two data centers, the primary data center located in Chicago and the backup data center located New York. All system services are duplicated in each data center, each with a failover capability in the event of the loss of a site. In addition, data, connectivity, mechanical and electrical facilities at each location are entirely independent to reduce the effect of the loss of one site. A backup service is available for all external connectivity, either through secondary circuits or a virtual private network.

The TRS/CPS system provided as a managed service by NYSE Liffe U.S. to NYPC is hosted in two data centers in London. All system services are duplicated in each data center, each with a failover capability in the event of the loss of a site. The TRS/CPS applications will run “hot-hot” (*i.e.*, such applications will be active in both centers). In addition, data, connectivity, mechanical and electrical facilities at each location are entirely independent to reduce the effect of the loss of one site. A backup service is available for all external connectivity, either through secondary circuits or a virtual private network.

The two London data centers are located approximately 3.7 miles apart. The two locations must be in relative proximity to one another to ensure that the speed of data transfer between the locations is sufficient to allow the simultaneous operation that is necessary to maintain fully active, synchronized trade registration and clearing processing systems in each data center. The Clearinghouse believes that the locations of the two London data centers provide an optimum compromise between distance and speed of transfer.

Additional information regarding the NYSE data centers and disaster recovery provisions is set forth in Exhibit AA.

NYPC will utilize the Secure Financial Transaction Infrastructure as its core network transport mechanism for NYSE-provided technology. Each network segment is diversely routed and independently provided. This means that the network will survive both physical and electronic failures on any route without reduction in the service experienced by end users.

With respect to FICC technology, DTCC has multiple data center locations, utilizing synchronous data replication between in-region sites and asynchronously replicated copies of in-region production data at out-of-region sites.

All such data centers have emergency monitoring and backup systems and have sufficient capacity to ensure that any data center can function as the sole recovery site within two hours if one or more data centers were to experience an outage. Daily data processing operations and monitoring of emergency systems is conducted continuously from both in-region and out-of-region data centers.

NYPC will utilize the Securely Managed and Reliable Technology (SMART) Network for connectivity to DTCC systems. Each element of SMART is highly secure and engineered with multiple independent levels of redundancy. SMART connects to both in-region and out-of-region data centers.

NYPC will have a formal business continuity plan in place that addresses events posing a significant risk of disrupting operations. NYPC will be utilizing FICC infrastructure to receive its services from both FICC and NYSE. The NYPC business continuity plan, therefore, will be similar to the FICC business continuity plan. Further details of the FICC plan and of the additional content to be included in the NYPC business continuity plan are set forth in Exhibit AA. Business continuity and disaster recovery processes will be regularly validated in real or simulated events. The business continuity plan testing for NYPC will align with that of FICC, with the exception that NYPC will require at least one successful test of its business continuity procedures prior to launch.

NYSE and FICC each has in place robust system safeguards designed to protect the availability, integrity and confidentiality of both its own information assets and those of NYPC. In addition to various physical, logical and administrative safeguards, information security will be reviewed by internal and external audit functions performed by both NYSE and FICC to maintain appropriateness and effectiveness, and independent penetration and vulnerability tests will be carried out to ensure adequacy of the protections against external attack.

X. REPORTING; RECORDKEEPING; PUBLIC INFORMATION; INFORMATION SHARING; ANTITRUST; LEGAL FRAMEWORK

A. Reporting

The Clearinghouse will provide to the Commission on request all information necessary for the Commission to conduct its oversight function of the Clearinghouse under the Act with respect to its activities.

B. Recordkeeping

In accordance with the Act and Commission Regulations, the Clearinghouse will maintain records of all activities related to its business as a DCO in a form and manner set forth in Commission Regulation 1.31 for a period of at least five years.⁶⁷

C. Public Information

The Clearinghouse will provide the Rules to each applicant for Clearing Member status and, as a condition to admission to the Clearinghouse as a Clearing Member, an applicant must certify that it has received, reviewed and agrees to abide by the Rules.

The Clearinghouse will make the Rules publicly available on the Clearinghouse's website. The Clearinghouse also will make publicly available on its website notices to Clearing Members, the terms and conditions of each product cleared by the Clearinghouse, a schedule of the fees charged by the Clearinghouse, information concerning the Clearinghouse's margin setting methodology, information about the Clearinghouse's financial resources and other information relevant to Clearing Members and market participants.

D. Information Sharing

The Clearinghouse will, as appropriate, seek to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with FICC and with other markets or clearing organizations on which contracts (or financial instruments related to the contracts) trade or are cleared. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Clearinghouse may, among other things: (i) provide market surveillance reports to other markets and clearing organizations; (ii) share information and documents concerning current and former Clearing Members with other markets and clearing organizations; (iii) share information and documents concerning ongoing and completed investigations with other markets and clearing organizations; and/or (iv) require its Clearing Members to provide information and documents to the Clearinghouse at the request of other markets or clearing organizations with which the Clearinghouse has an information-sharing agreement or other arrangements or procedures.⁶⁸

E. Antitrust

The Clearinghouse initially will provide clearing services solely for the Exchange for a limited transitional period, but intends to make those services more broadly available to other designated contract markets, including contract markets that desire to participate in the NYPC-FICC cross-margining program.

⁶⁷ Rule 705.

⁶⁸ Rule 706.

Consistent with the requirements of Core Principle N, the Clearinghouse will not adopt any regulation or take any other action that would result in an unreasonable restraint of trade or impose any material anticompetitive burden on trading in the products it clears in its capacity as a DCO. Prior to adopting any new or revised rule, or when taking other actions, the Clearinghouse will consider whether such rule or action is the least anticompetitive way to achieve its objective.

F. Legal Framework

The rights and obligations of the Clearinghouse, Clearing Members and customers of Clearing Members are supported by a well-founded legal framework. Operative provisions of the Rules and the Cross-Margining Agreement are effective under relevant provisions of the Act and Commission Regulations, as well as the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and the Uniform Commercial Code as they apply to derivatives clearing organizations and futures commission merchants in their capacities as “commodity brokers” under the Bankruptcy Code, “clearing organizations” and “members” of a “clearing organization” under FDICIA and “secured creditors” under the Uniform Commercial Code.

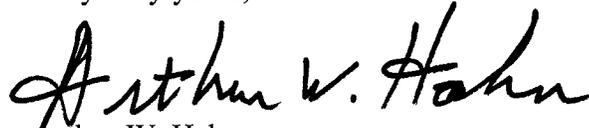
XI. CONCLUSION

Based on the foregoing information and the information contained in the Appendices and Exhibits attached hereto, Applicant believes that it is eligible to establish registration as a DCO and that its proposed activities in that capacity satisfy the applicable Core Principles set forth in Section 5b(c)(2) of the Act.

Applicant respectfully requests that the Commission issue an order granting the Clearinghouse registration as a DCO.

Should you have any questions regarding this Application, please feel free to contact Walter Lukken, the Chief Executive Officer of NYPC, at (212) 855-5250 or the undersigned at (312) 902-5241.

Very truly yours,


Arthur W. Hahn

Enclosures: Exhibits A-AA

cc: Honorable Gary Gensler
Honorable Michael Dunn
Honorable Jill E. Sommers
Honorable Bart Chilton
Honorable Scott D. O'Malia
Ananda Radhakrishan

Walter Lukken
Ira J. Krulik
Joseph F. Benning
Laura Klimpel
Kenneth M. Rosenzweig

Thomas Callahan
Lynn Martin
Karl D. Cooper

Murray C. Pozmanter
Michael C. Bodson
Nikki Poulos
Douglas Landy

Appendix A

**DEMONSTRATION OF COMPLIANCE WITH THE CORE PRINCIPLES
APPLICABLE TO DERIVATIVES CLEARING ORGANIZATIONS***

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>Core Principle A:</p> <p>IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</p>		<p>The application of New York Portfolio Clearing, LLC (the “Clearinghouse”), including the exhibits thereto, demonstrates that the Clearinghouse complies with each of the derivatives clearing organization Core Principles specified in Section 5b(c)(2) of the Commodity Exchange Act (the “Act”).</p>
<p>Core Principle B:</p> <p>FINANCIAL RESOURCES.—</p> <p>(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.</p> <p>(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.— Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—</p> <p>(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and</p> <p>(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as</p>	<p>Application Sections II, IV and VII</p> <p>Cross-Margining Agreement (Exhibit N)</p> <p>NYSE Guaranty (Exhibit R)</p> <p>Rulebook:</p> <p>Rule 307. Parent Company, Cross-Ownership Guarantees</p> <p>Rule 402. Original Margin</p> <p>Rule 403. Variation Margin</p> <p>Rule 411. Cross-Margining</p> <p>Rule 502. Liens Held by Clearinghouse</p> <p>Rule 503. Clearing Member Default; Application of Clearinghouse Resources</p> <p>Rule 504. Guaranty Fund</p> <p>Rule 505. Cross-Guaranty Agreements</p>	<p>The Clearinghouse is jointly and equally owned by NYSE Euronext (“NYSE”) and The Depository Trust Clearing Corporation (“DTCC”). The Clearinghouse has been initially capitalized with working capital of \$22 million; NYSE and DTCC, in their capacity on the Board of Directors, also have each agreed to make additional contributions of working capital in equal proportion sufficient to ensure that the Clearinghouse has cash on hand at all times equal to no less than one year of operating requirements, considered on a rolling basis, up to a total of \$30 million. In addition, the Board of Directors of the Clearinghouse (the “Board”) may require at any time that NYSE and DTCC make additional capital contributions if the Board determines the Clearinghouse requires additional capital to maintain its status as a derivatives clearing organization or to satisfy other regulatory obligations.</p> <p>The initial capitalization will be supplemented by margin requirements imposed on Clearing</p>

* The Clearinghouse will modify its Rules, procedures and other requirements as necessary to comply with Commission Regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>calculated on a rolling basis).</p>		<p>Members designed to cover potential losses under normal market conditions.</p> <p>The Clearinghouse will maintain a Guaranty Fund consisting of mandatory contributions from Clearing Members. In addition, NYSE has provided a \$50,000,000 guaranty, which will be secured by \$25,000,000 in cash in the first year of the Clearinghouse's operations.</p> <p>The Clearinghouse will have the ability to levy assessments against Clearing Members in the unlikely event that the assets in the Guaranty Fund are not sufficient to cover the obligations of a defaulting Clearing Member.</p> <p>Clearing Members will be required to provide guarantees of their obligations to the Clearinghouse from all owners of 5% or more of the Clearing Member. In addition, a Clearing Member of which 10% or more is owned by a person that also owns 10% or more of another Clearing Member must guarantee the obligations of that other Clearing Member to the Clearinghouse.</p> <p>The Clearinghouse intends to establish a cross-margining arrangement with the Fixed Income Clearing Corporation ("FICC"), which will result in margin requirements for participating Clearing Members being calculated based on the net risk of positions held at the Clearinghouse and at FICC.</p> <p>The Clearinghouse will have access to liquidity from the cash component of Clearing Members' Original Margin and Guaranty Fund deposits. Clearing Members will also deposit U.S. Treasury and other securities with the Clearinghouse in satisfaction of Original Margin and Guaranty Fund requirements. The Clearinghouse expects to have a secured committed credit facility for the lesser of \$50 million and the securities component of its Guaranty Fund deposits and</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
		<p>expects to be able to obtain cash from any remaining securities deposited in the Guaranty Fund as well as from the securities deposited by Clearing Members in satisfaction of Original Margin requirements pursuant to repurchase arrangements with third-party counterparties in the event that it requires additional liquidity.</p>
<p>Core Principle C: PARTICIPANT AND PRODUCT ELIGIBILITY.—</p> <p>(i) IN GENERAL.—Each derivatives clearing organization shall establish:</p> <p>(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and</p> <p>(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.</p> <p>(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.</p> <p>(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall:</p> <p>(I) be objective;</p> <p>(II) be publicly disclosed; and</p> <p>(III) permit fair and open access</p>	<p>Application Sections III and IV.B</p> <p>Membership Applications for Class A and Class B Members (Exhibit T)</p> <p>Rulebook:</p> <p>Chapter 3. Clearing Members</p> <p>Rule 401. Submission of Contracts</p>	<p>The admission standards for Clearing Members will ensure that each Clearing Member has sufficient financial resources and adequate personnel and systems to function as a Clearing Member.</p> <p>A prospective Clearing Member must (i) be engaged in or demonstrate its capacity to engage in the conduct of the business of a Clearing Member; (ii) have received all necessary government approvals (if any); (iii) demonstrate such fiscal integrity as would justify the Clearinghouse’s assumption of the risk inherent in clearing its contracts; (iv) demonstrate financial capitalization commensurate with requirements established by the Clearinghouse; (v) have an established relationship with a Clearinghouse-approved Settlement Bank and a Clearinghouse-approved Clearing Bank; and (vi) maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to the Clearinghouse.</p> <p>In addition, a prospective Class A Member must be a FICC member. A Class B Member must enter into a securities settlement arrangement with one or more FICC members in form and substance acceptable to the Clearinghouse.</p> <p>Any prospective Clearing Member that is organized or established under the laws of a country other than the United States must: (i) maintain a</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
		<p>presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable about the applicant’s business and can assist representatives of the Clearinghouse as necessary, and ensure that the applicant will be able to meet its data submission, settlement and other obligations to the Clearinghouse as a Clearing Member in a timely manner; (ii) represent and certify to the Clearinghouse that it is in compliance with the financial reporting and responsibility standards of its home country and, if it is a regulated entity, that it is regulated in its home country by a financial regulatory authority in the areas of maintenance of relevant books and records, regular inspections and examinations and minimum capital standards, and make such other representations as the Clearinghouse deems necessary; and (iii) upon request by the Clearinghouse, submit an opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to the Clearinghouse.</p> <p>All Clearing Members must maintain minimum regulatory capital in excess of the greater of (i) \$5,000,000 and (ii) any applicable capital requirements imposed by the Commission, another governmental agency or self-regulatory organization.</p> <p>Each Clearing Member must submit to the Clearinghouse: (i) monthly financial statements, on Form 1-FR-FCM, a FOCUS Report or Form G-405 (as applicable), reflecting such Clearing Member’s net capital computation, calculated in accordance with Commission, Securities and Exchange Commission (“SEC”) or Treasury Department regulations applicable thereto; (ii) information relating to capital scheduled to be withdrawn</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
		<p>within 6 months; (iii) information relating to subordinated debt maturing within 6 months; and (iv) with respect to Clearing Members that are registered with the SEC as broker-dealers, information relating to additional capital requirements for excess margin on reverse repurchase agreements. Clearing Members are additionally required to submit audited financial statements to the Clearinghouse that have been certified by an independent public accountant in accordance with regulations of the Commission, SEC or Treasury Department, as applicable. A Clearing Member may be required to provide additional reports in such form and at such times as the Clearinghouse may require, including without limitation, submission of daily or weekly capital computations and segregated funds statements.</p> <p>The Clearinghouse initially intends to clear the U.S. dollar-denominated interest rate futures contracts traded on NYSE Liffe U.S.</p>
<p>Core Principle D: RISK MANAGEMENT.—</p> <p>(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.</p> <p>(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—</p> <p>(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing</p>	<p>Application Sections II and IV</p> <p>Overview of NYPC Back and Stress Testing (Exhibit S)</p> <p>Detailed Margin & Guaranty Fund Methodology for NYPC (Exhibit Y)</p> <p>Rulebook:</p> <p>Rule 207. Emergencies</p> <p>Rule 305. Capital Requirements</p> <p>Rule 306. Financial Reporting Requirements</p> <p>Rule 307. Parent Company, Cross-Ownership Guarantees</p> <p>Rule 308. Notices Required of Clearing Members</p> <p>Rule 309. Adequate Assurances</p> <p>Rule 310. Restrictions on Activity</p> <p>Rule 402. Original Margin</p> <p>Rule 403. Variation Margin</p>	<p>The Risk Committee of the Board and the Chief Risk Officer are responsible for monitoring the Clearinghouse’s risk exposures.</p> <p>The Clearinghouse will monitor its financial resources on an ongoing basis to ensure that they are sufficient to operate in accordance with the Core Principles. The Clearinghouse’s testing of overall financial resources is described in the Clearinghouse’s Overview of Back and Stress Testing.</p> <p>The Clearinghouse will require Clearing Members to deposit Original and Variation Margin in connection with contracts cleared by the Clearinghouse in amounts sufficient to cover potential exposures to the Clearinghouse in normal market conditions. Margin requirements will be calculated and collected twice daily.</p> <p>The Board will evaluate the size</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>organization; and</p> <p>(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.</p> <p>(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—</p> <p>(I) the operations of the derivatives clearing organization would not be disrupted; and</p> <p>(II) non-defaulting members or participants would not be exposed to losses that non-defaulting members or participants cannot anticipate or control.</p> <p>(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.</p> <p>(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—</p> <p>(I) risk-based; and</p> <p>(II) reviewed on a regular basis.</p>		<p>of the Guaranty Fund no less often than quarterly, with the target suggested Guaranty Fund level being set at 1.5 times the amount required to enable the Clearinghouse to cover the losses associated with closing out the positions of the Clearing Member (and its affiliates) to which it has the largest potential exposure in “extreme but plausible” market conditions. The Clearinghouse’s methods of evaluating the Guaranty Fund are described in the Clearinghouse’s Detailed Margin & Guaranty Fund Methodology and Overview of Back and Stress Testing.</p> <p>Clearing Members will be required to provide monthly and audited annual financial reports to allow the Clearinghouse to monitor their financial status.</p>
<p>Core Principle E:</p> <p>SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—</p> <p>(i) complete money settlements on a timely basis (but not less frequently than once each</p>	<p>Application Sections V and VI.A</p> <p>Rulebook:</p> <p>Rule 401. Submission of Contracts</p> <p>Rule 402. Original Margin</p> <p>Rule 403. Variation Margin</p> <p>Rule 404. Settlement Prices</p>	<p>Clearing Members will be required to provide Original Margin on newly opened positions and Variation Margin on the basis of the mark-to-market of open positions at least twice per day. Payments of Variation Margin will be made through the Clearinghouse’s Settlement Banks</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>business day);</p> <p>(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);</p> <p>(iii) ensure that money settlements are final when effected;</p> <p>(iv) maintain an accurate record of the flow of funds associated with each money settlement;</p> <p>(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;</p> <p>(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and</p> <p>(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.</p>	<p>Rule 407. Deliveries</p> <p>Rule 705. Books and Records</p>	<p>in federal funds through the National Settlement Service (“NSS”), a multilateral funds settlement service owned and operated by the Federal Reserve Banks. All payments made through NSS are final and irrevocable.</p> <p>A bank or trust company that has direct access to a relevant Federal Reserve Bank and NSS may act as a Settlement Bank upon approval by the Clearinghouse. A prospective Settlement Bank must agree to abide by the Rules applicable to Settlement Banks, must make available for inspection by the Clearinghouse its books and records relating to the Clearinghouse’s settlement process and must agree to provide to the Clearinghouse such financial and other information as may be specified by the Clearinghouse from time to time.</p> <p>In accordance with the Act and Commission Regulations, the Clearinghouse will maintain records of all activities related to its business as a derivatives clearing organization, including flow of funds records, in a form and manner set forth in Commission Regulation 1.31 for a period of at least five years.</p> <p>Deliveries for physically settled contracts will be effected through FICC in accordance with its rules.</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>Core Principle F:</p> <p>TREATMENT OF FUNDS.—</p> <p>(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.</p> <p>(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.</p> <p>(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.</p>	<p>Application Section VI</p> <p>Investment Policy (Exhibit M)</p> <p>Rulebook:</p> <p>Rule 302. Clearing Member Qualifications</p> <p>Rule 410. Segregated Customer Accounts</p>	<p>Clearing Members will be required to maintain separate accounts for proprietary and customer accounts with Settlement Banks and Clearing Banks approved by the Clearinghouse. Such banks will be required to acknowledge that such funds belong to customers and are being held in accordance with the Act and Commission regulations.</p> <p>The Clearinghouse will invest funds held only in instruments with significant liquidity and little or no risk to principal or with entities that provide limited credit exposure to the Clearinghouse, in each case pursuant to its Investment Policy. The Clearinghouse will invest customer funds only in instruments permitted under Commission Regulation 1.25.</p>
<p>Core Principle G:</p> <p>DEFAULT RULES AND PROCEDURES.—</p> <p>(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—</p> <p>(I) become insolvent; or</p> <p>(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.</p> <p>(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall:</p> <p>(I) clearly state the default procedures of the derivatives clearing organization;</p> <p>(II) make publicly available the default rules of the derivatives</p>	<p>Application Section VII</p> <p>Cross Margining Agreement (Exhibit N)</p> <p>NYSE Guaranty (Exhibit R)</p> <p>Rulebook.</p> <p>Rule 503. Clearing Member Default; Application of Clearinghouse Resources</p> <p>Rule 504. Guaranty Fund</p> <p>Chapter 6. Suspension; Disciplinary Proceedings</p>	<p>A Clearing Member will be in default if, among other things, it or, if applicable, its Cross-Margining Affiliate fails to meet any of its obligations to the Clearinghouse, it fails to deliver funds or securities within the time established therefor by the Clearinghouse or FICC, as applicable, and, in such case, FICC ceases to act on behalf of the Clearing Member or, as applicable, its Cross-Margining Affiliate, or it is insolvent.</p> <p>Upon a Clearing Member default, the Clearinghouse will use the Clearing Member's Margin and Guaranty Fund deposits as well as any other assets of the Clearing Member held by, pledged to or otherwise available to the Clearinghouse to discharge the obligations of such Clearing Member to the Clearinghouse (including any amounts owed by the Clearinghouse to FICC under the Cross-Margining Agreement). The Clearing Member will</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>clearing organization; and</p> <p>(III) ensure that the derivatives clearing organization may take timely action—</p> <p>(aa) to contain losses and liquidity pressures; and</p> <p>(bb) to continue meeting each obligation of the derivatives clearing organization.</p>		<p>continue to be liable for any deficiency. The Clearinghouse may cause all contracts of the defaulting Clearing Member to be closed, offset or transferred to any other Clearing Member.</p> <p>The amount of any deficiency, exclusive of any fees, assessments and fines imposed by the Clearinghouse, will be met from the following assets in the following order: (1) 25% of the retained earnings of the Clearinghouse; (2) the Guaranty Fund deposits of all non-defaulting Clearing Members; (3) cash operating surplus of the Clearinghouse for the current year in excess of funds necessary for normal operations and after the deduction required by (1); (4) the NYSE Guaranty; and (5) assessments levied against non-defaulting Clearing Members.</p> <p>Upon the suspension of a Clearing Member, or at the request of FICC whether or not the Clearinghouse suspends such Clearing Member, the Clearinghouse will have the right to liquidate the positions in the cross-margin account, convert to cash the Margin and dispose of the proceeds, all in accordance with the terms of the Cross-Margining Agreement.</p>
<p>Core Principle H:</p> <p>RULE ENFORCEMENT.— Each derivatives clearing organization shall—</p> <p>(i) maintain adequate arrangements and resources for—</p> <p>(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and</p> <p>(II) the resolution of disputes;</p> <p>(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a</p>	<p>Application Section VIII</p> <p>Rulebook:</p> <p>Rule 309. Adequate Assurances</p> <p>Rule 310. Restrictions on Activity</p> <p>Chapter 6. Suspension; Disciplinary Proceedings</p>	<p>The Clearinghouse will establish adequate arrangements to monitor and enforce compliance with the Rules of the Clearinghouse. If the Clearinghouse has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in to such manner as the Clearinghouse shall determine, with adequate assurances that the Clearing Member shall not violate any of the Rules. In addition, the Clearinghouse will have the ability to fine, censure, suspend, expel or limit the activities,</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>violation by the member or participant of any rule of the derivatives clearing organization; and</p> <p>(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).</p>		<p>functions or operations of a Clearing Member that is in violation of the Rules of the Clearinghouse or its agreements with the Clearinghouse. The Clearinghouse will provide prompt notice to the Commission of any disciplinary action taken with respect to a Clearing Member.</p> <p>The Board of Directors or the Risk Committee may summarily suspend any Clearing Member if it or its Cross-Margining Affiliate is in default or is in such financial or operating difficulty that the Board of Directors or the Risk Committee determines that suspension is necessary for the protection of the Clearinghouse, other Clearing Members or the general public. Upon such suspension, the Clearinghouse may close out or transfer all open positions of such Clearing Member, liquidate assets of such Clearing Member held as margin, hedge outstanding positions or take such other actions as may be permitted under the Rules.</p>
<p>Core Principle I:</p> <p>SYSTEM SAFEGUARDS.— Each derivatives clearing organization shall—</p> <p>(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;</p> <p>(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—</p> <p>(I) the timely recovery and resumption of operations of the derivatives clearing organization; and</p> <p>(II) the fulfillment of each obligation and responsibility of</p>	<p>Application Section IX</p> <p>Systems Safeguards (Exhibit AA)</p> <p>Rulebook:</p> <p>Rule 207. Emergencies</p>	<p>As further detailed in <u>Exhibit AA</u>, the Clearinghouse will utilize the information technology resources of NYSE and FICC, and the services provided to the Clearinghouse by each of NYSE and FICC will be subject to the respective security policies and procedures thereof.</p> <p>The Clearinghouse will utilize four data centers to provide primary and backup facilities for its delivery system, Liffe Guardian, and its trade registration and clearing position keeping system, TRS/CPS.</p> <p>The Liffe Guardian delivery system provided as a managed service by NYSE Liffe U.S. to NYPC is hosted in two data centers located in Chicago and New York, with all system services duplicated in each data center, each with a failover capability in the event of the loss of a site.</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>the derivatives clearing organization; and</p> <p>(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.</p>		<p>The TRS/CPS system provided as a managed service by NYSE Liffe U.S. to NYPC is hosted in two data centers located in London, which will each simultaneously run all trade registration and clearing processing systems (thereby providing backup in case either data center goes offline).</p> <p>With respect to FICC technology, DTCC has multiple data center locations. All data centers have emergency monitoring and backup systems and have sufficient capacity to ensure that any data center can function as the sole recovery site within two hours if one or more data centers were to experience an outage.</p> <p>The Clearinghouse will have a formal business continuity plan in place that addresses events posing a significant risk of disrupting operations. As the Clearinghouse will be utilizing FICC infrastructure to receive services from NYSE and FICC, the Clearinghouse's business continuity plan will be similar to FICC's. Both FICC's business continuity plan and the additional content comprising the Clearinghouse's business continuity plan are described in <u>Exhibit AA</u>. Business continuity and disaster recovery processes will be regularly validated in real or simulated events.</p>
<p>Core Principle J:</p> <p>REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.</p>	<p>Application Section X.A</p> <p>Rulebook:</p> <p>Rule 705. Books and Records</p>	<p>The Clearinghouse will provide to the Commission, on request, all information necessary for the Commission to conduct its oversight function of the Clearinghouse under the Act with respect to its activities.</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>Core Principle K:</p> <p>RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—</p> <p>(i) in a form and manner that is acceptable to the Commission; and</p> <p>(ii) for a period of not less than 5 years.</p>	<p>Application Section X.B</p> <p>Rulebook:</p> <p>Rule 705. Books and Records</p>	<p>The Clearinghouse will maintain books and records for the time and in the manner specified by the Act, Commission regulations and the Delaware Limited Liability Company Act.</p>
<p>Core Principle L:</p> <p>PUBLIC INFORMATION.—</p> <p>(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.</p> <p>(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.</p> <p>(iii) PUBLIC DISCLOSURE.— Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—</p> <p>(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;</p> <p>(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;</p> <p>(III) the margin-setting</p>	<p>Application Section X.C</p>	<p>As a condition to admission to the Clearinghouse as a Clearing Member, applicants must certify that they have received, reviewed and agreed to the Rules of the Clearinghouse.</p> <p>The Clearinghouse will maintain a website, on which it will publish and make available:</p> <ul style="list-style-type: none"> • The Rules of the Clearinghouse; • Information concerning the size and composition of the Clearinghouse’s financial resources, its risk management policies and procedures, margin methodology and the size and composition of the Guaranty Fund; • Information concerning the contracts cleared by the Clearinghouse; • The Clearinghouse’s fee structure; • Notices to Clearing Members; and • Other information relevant to participation in the activities of the Clearinghouse. <p>The Clearinghouse will receive daily official settlement prices for all contracts cleared from NYSE Liffe U.S. NYSE Liffe U.S. makes available daily the</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;</p> <p>(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and</p> <p>(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.</p>		<p>settlement prices for each contract traded on NYSE Liffe U.S. and cleared by the Clearinghouse. The Clearinghouse will make available daily volume and open interest figures for each contract cleared by the Clearinghouse.</p>
<p>Core Principle M:</p> <p>INFORMATION-SHARING.— Each derivatives clearing organization shall—</p> <p>(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and</p> <p>(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.</p>	<p>Application Section X.D</p> <p>Rulebook:</p> <p>Rule 706. Information-Sharing Agreements</p>	<p>The Clearinghouse will, as appropriate, seek to enter into information-sharing agreements or other arrangements to coordinate surveillance with FICC and other markets or clearing organizations on which contracts are traded or cleared.</p>
<p>Core Principle N:</p> <p>ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—</p> <p>(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or</p> <p>(ii) impose any material anticompetitive burden.</p>	<p>Application Section X.E</p>	<p>The Clearinghouse will not adopt rules or take other actions that result in an unreasonable restraint of trade or impose any material anticompetitive burden on trading in the products it clears in its capacity as a derivatives clearing organization unless such action is appropriate to achieve the purposes of the Act. Prior to adopting any new or revised rule, or when taking other actions, the Clearinghouse will consider, as appropriate, whether such rule or action is the least anticompetitive means of achieving its objective.</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>Core Principle O:</p> <p>GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—</p> <p>(I) to fulfill public interest requirements; and</p> <p>(II) to permit the consideration of the views of owners and participants.</p> <p>(ii) FITNESS STANDARDS.— Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—</p> <p>(I) directors;</p> <p>(II) members of any disciplinary committee;</p> <p>(III) members of the derivatives clearing organization;</p> <p>(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and</p> <p>(V) any party affiliated with any individual or entity described in this clause.</p>	<p>Application Section I.B</p> <p>Code of Ethics and Business Conduct (Exhibit D)</p> <p>NYPC Board Code of Ethics (Exhibit D)</p> <p>Rulebook:</p> <p>Rule 302. Clearing Member Qualifications</p> <p>Rule 303. Duties and Responsibilities of Clearing Members</p> <p>Rule 304. Authorized Representatives</p>	<p>The business and affairs of the Clearinghouse are managed by a Board of Directors acting pursuant to the LLC Agreement of the Clearinghouse. The Board of Directors has delegated certain responsibilities to committees of directors, including the Regulatory Oversight and Audit Committee and the Risk Committee. The day-to-day business and affairs of the Clearinghouse are managed by the principal officers of the Clearinghouse, including the Chief Executive Officer, the Chief Operating Officer, the Chief Risk Officer and the Chief Compliance Officer and Counsel.</p> <p>All employees and consultants of the Clearinghouse are subject to a Code of Ethics that establishes standards of conduct for such individuals. Independent Directors of the Clearinghouse are subject to a Board Code of Ethics that establishes standards of conduct appropriate to independent directors.</p> <p>Pursuant to the Rules, Clearing Members are subject to initial qualification and on-going reporting requirements and compliance obligations.</p>
<p>Core Principle P:</p> <p>CONFLICTS OF INTEREST.— Each derivatives clearing organization shall—</p> <p>(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and</p> <p>(ii) establish a process for resolving conflicts of interest described in clause (i).</p>	<p>Application Section I.B.4</p> <p>Code of Ethics and Business Conduct (Exhibit D)</p> <p>NYPC Board Code of Ethics (Exhibit D)</p> <p>Rulebook:</p> <p>Rule 205. Conflicts of Interest</p>	<p>Employees and consultants of the Clearinghouse are subject to the conflicts of interest policy contained in the Clearinghouse’s Code of Ethics. Independent Directors are subject to the conflicts of interest policy contained in the Board Code of Ethics. Furthermore, members of the Board of Directors, officers, committee members and other individuals authorized to exercise authority on behalf of the Clearinghouse are prohibited under the Rules from participating in deliberations or votes of the Board of Directors, a committee or any panel of the Clearinghouse involving a disciplinary matter in connection with which they have a material conflict of interest.</p>

CORE PRINCIPLE	CLEARINGHOUSE PROPOSAL	CLEARINGHOUSE COMMENTS
<p>Core Principle Q:</p> <p>COMPOSITION OF GOVERNING BOARDS.— Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.</p>	<p>Application Section I.B</p>	<p>The Board of Directors of the Clearinghouse will include three Directors who are independent in accordance with published New York Stock Exchange and Commission requirements for director independence. The Clearinghouse will ensure that one or more of the Independent Directors are market participants or representatives of market participants.</p>
<p>Core Principle R:</p> <p>LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.</p>	<p>Application Section X.F</p>	<p>The rights and obligations of the Clearinghouse, Clearing Members and customers of Clearing Members are supported by a well-founded legal framework. Operative provisions of the Rules and the Cross-Margining Agreement are effective under the Act and Commission Regulations, as well as relevant provisions of the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and the Uniform Commercial Code as they apply to derivatives clearing organizations and futures commission merchants in their capacities as “commodity brokers” under the Bankruptcy Code, “clearing organizations” and “members” of a “clearing organization” under FDICIA and “secured creditors” under the Uniform Commercial Code.</p>

Appendix B

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Certificate of Formation and Certificate of Amendment
Exhibit B	Third Amended and Restated Limited Liability Company Agreement Agreement Among the Members of New York Portfolio Clearing, LLC
Exhibit C	Rules of the Clearinghouse
Exhibit D	Codes of Ethics and Business Conduct Board Code of Ethics
Exhibit E	Prospective Clearing Firms
Exhibit F	Organizational Structure Chart
Exhibit G	Interim Directors
Exhibit H	Committee Charters
Exhibit I	Description of Positions
Exhibit J	Master Services Agreements and Annexes Software License Agreements
Exhibit K	Pro Forma Financial Statements
Exhibit L	Schedule of Haircuts for Eligible Securities
Exhibit M	Investment Policy
Exhibit N	Cross-Margining Agreement
Exhibit O	Parent Guarantees
Exhibit P	Cross-Ownership Guaranty
Exhibit Q	NYPC Liquidity Impact
Exhibit R	NYSE Guaranty Cash Collateral Agreement
Exhibit S	Overview of NYPC Back and Stress Testing
Exhibit T	Membership Application for Clearing Members

Exhibit U	Specifications for Contracts to be Cleared by the Clearinghouse
Exhibit V	Projected Volume and Open Interest for Contracts to be Cleared
Exhibit W	Second Amended and Restated Clearing Services Agreement
Exhibit X	NYPC Market & Credit Risk Procedures
Exhibit Y	Detailed Margin & Guaranty Fund Methodology for NYPC
Exhibit Z	Appointment of Settlement Bank
Exhibit AA	System Safeguards