



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan  
Director

CFTC Letter No. 14-55  
No-Action  
April 24, 2014  
Division of Clearing and Risk

Lynn Martin  
Chief Executive Officer  
New York Portfolio Clearing, LLC  
570 Washington Blvd.  
Jersey City, NJ 07310

Re: No-Action Relief with Regard to Commission Regulations 1.20(g)(4), 39.11(e)(2), and 39.19(c)(1)

Dear Ms. Martin:

This letter responds to your letter dated January 29, 2014 (“Letter”) to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against New York Portfolio Clearing, LLC (“NYPC”) if NYPC does not: (1) obtain new acknowledgment letters from its depositories in the form established in Appendix B to Commission Regulation (“Regulation”) 1.20 pursuant to Regulation 1.20(g)(4);<sup>1</sup> (2) maintain liquid financial assets equal to at least six months’ operating costs after April 30, 2014 pursuant to Regulation 39.11(e)(2);<sup>2</sup> or (3) implement changes to the formatting and content of reports NYPC submits to the Commission pursuant to Regulation 39.19(c)(1)<sup>3</sup> and that Division staff have requested on or after June 24, 2013.

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<sup>1</sup> 17 C.F.R. § 1.20(g)(4).

<sup>2</sup> 17 C.F.R. § 39.11(e)(2).

<sup>3</sup> 17 C.F.R. § 39.19(c)(1). Although NYPC requests relief from its daily reporting requirements pursuant to Regulation 39.19(c)(1), the request relates more specifically to supplemental information that Division staff have asked NYPC to submit on a daily basis. *See* Regulation 39.19(a), 17 C.F.R. § 39.19(a) (providing that the Commission may require derivatives clearing organizations to submit information in addition to the information explicitly set forth in Regulation 39.19); and Regulation 39.19(b), 17 C.F.R. § 39.19(b) (requiring derivatives clearing organizations to provide information in the format and manner specified by the Commission).

### Statement of Facts

Based upon NYPC's representations to the Division, including the representations contained in the Letter, the Division understands the relevant facts to be as follows:

NYPC, which is jointly owned by NYSE Euronext ("NYSE") and The Depository Trust & Clearing Corporation ("DTCC"), has been registered with the Commission as a derivatives clearing organization ("DCO") since January 31, 2011. On November 13, 2013, IntercontinentalExchange Group, Inc. ("ICE") acquired NYSE. On November 29, 2013, ICE and DTCC announced their plan to transition the clearing of interest rate futures contracts listed on NYSE Liffe U.S. and cleared by NYPC to ICE Clear Europe (the "Migration"), and to wind down NYPC's operations. The Migration is scheduled to take place in early June 2014.

Based on a budget for the 2014 fiscal year that assumes that NYPC will incur costs at a rate consistent with "steady state" operation – meaning, at a rate that is not reduced to account for the fact that NYPC will cease operations in the months ahead – NYPC currently maintains sufficient cash on hand to cover its operating costs through October 31, 2014.

On March 11, 2014, NYPC filed with the Commission a request for an order vacating its registration as a DCO ("Vacation Request"), effective ten business days after it completes the Migration.

### Discussion of Request for No-Action Relief and Applicable Legal Requirements

NYPC requests relief from its obligation to obtain new depository acknowledgment letters in the specific form required by Regulation 1.20(g)(4) and set forth in the accompanying Appendix B. DCOs must obtain these new acknowledgment letters no later than July 12, 2014.<sup>4</sup> In the Vacation Request, NYPC requested that the vacation of its DCO registration be effective ten business days following the completion of the Migration, which is scheduled to occur in early June 2014. As a result, NYPC's DCO registration will likely have been vacated prior to the date by which DCOs are required to obtain revised acknowledgment letters. In the event that NYPC's DCO registration has not been vacated by then, however, and to allow NYPC to devote its resources and concentrate its efforts on winding down its business, the Division is granting NYPC time-limited relief from obtaining new acknowledgment letters that conform to the Appendix B template.

NYPC also requests relief from its obligation pursuant to Regulation 39.11(e)(2) to maintain "unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) equal to at least six months' operating costs" after April 30, 2014. Given that NYPC maintains and has allocated resources sufficient to cover its operating costs through October 31, 2014, it does not need any relief from this obligation if it adheres to its current schedule for the Migration.

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<sup>4</sup> See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68,578 (Nov. 14, 2013) (providing 180 days from the January 13, 2014 effective date of the relevant regulations for DCOs to obtain new acknowledgment letters in the required form).

NYPC's request is based on its understanding that its calculation of six months of operating expenses must assume continuing "steady state" operations over the entire six-month period. The Division, however, does not interpret Regulation 39.11(e)(2) as requiring that NYPC assume steady state operations in calculating its operating resources requirements. Rather, NYPC, like other DCOs, is expected to base its calculations on its actual anticipated operating costs. Given that NYPC will not have reportable operational expenses once the anticipated vacation of its DCO registration is completed (well in advance of October 31, 2014), the funds that it has already allocated should be sufficient to meet its obligations under Regulation 39.11(e)(2). As a result, this aspect of NYPC's request does not require no-action relief.

Finally, NYPC seeks relief from its obligation to implement changes to the formatting and content of its daily reports (submitted pursuant to Regulation 39.19(c)(1)), as requested by Commission staff. This relates to requests by staff of the Division's Risk Surveillance Branch for daily submission of additional information relating to clearing member accounts, in a particular format. NYPC represents that complying with the Division's requests will require dedication of project planning and systems development and implementation resources that NYPC would otherwise devote to its impending cessation of operations. Given that NYPC is winding down its operations and soon will have its DCO registration vacated, the Division agrees that NYPC need not devote resources to modifying its daily reporting program as requested by Division staff. NYPC must, however, continue to submit daily reports in compliance with Regulation 39.19(c)(1).

#### Grant of No-Action Relief

Based on the facts presented and NYPC's representations to the Division, including those contained in the Letter, the Division will not recommend that the Commission take enforcement action against NYPC for (1) failing to obtain new depository acknowledgment letters in the specific form established in Regulation 1.20(g)(4) and the accompanying Appendix B; or (2) failing to provide its Regulation 39.19(c)(1) daily reports in the specific format and manner, and with additional information, as requested by Division staff, subject to the following conditions:

1. Acknowledgment Letters: NYPC shall maintain acknowledgment letters from all depositories holding customer funds received by NYPC in accordance with Regulation 1.20(b), as that provision was in effect prior to January 13, 2014.
2. Daily Reporting: NYPC shall continue to submit to the Commission daily reports in the same format and with the same content as are currently submitted, including all information expressly required by Regulation 39.19(c)(1), until after it completes the Migration.
3. Limited Duration: The no-action relief shall expire on August 31, 2014.

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this

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position is based on NYPC's representations to the Division, including the representations contained in the Letter, any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact me at (202) 418-5188 or Theodore Polley, Special Counsel, at (312) 596-0551.

Sincerely,

Ananda Radhakrishnan  
Director