New York Clearing Corporation

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August 17, 2000

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Attention: Office of the Secretariat

Re: Clearing Organizations Reinvention – Proposed New Part 39

Ladies and Gentlemen:

New York Clearing Corporation ("NYCC") hereby submits the following comments on the Commission's proposal to adopt a new Part 39 of its Rules (the "Proposed Rules"), as published in 65 Fed. Reg. 39027 (June 22, 2000).

The Commission's Proposed New Regulatory Framework represents a major step forward in relieving the futures industry from onerous and unnecessary regulatory burdens. For the most part, it will enable the industry to compete more effectively with OTC and foreign markets, which are regulated far less or not at all.

However, it is anomalous that, while the proposed Framework generally reduces the level of regulation for multilateral transaction execution facilities and intermediaries, it greatly increases the level of regulation for clearing organizations. Part 39 of the Proposed Rules would create a whole new body of regulations, without any indication as to why they are

would create a whole new body of regulations, without any indication as to why they are necessary or desirable. Futures clearing organizations have operated successfully for roughly a century with remarkably few problems and no serious losses to the trading public. Therefore, adopting a whole new body of rules is actually a step backward, and we respectfully urge the Commission to withdraw and not adopt Part 39.

If the Commission nevertheless proceeds with Part 39, we respectfully submit the following comments:

1. NYCC clears all futures and options transactions effected on or subject to the rules of exchanges owned or controlled by the Board of Trade of the City of New York, including the Coffee, Sugar & Cocoa Exchange, the New York Cotton Exchange, the Citrus Associates of the New York Cotton Exchange, the New York Futures Exchange and the Cantor Financial Futures Exchange. Futures and options on most of the principal commodities traded on those exchanges (coffee, sugar and cocoa) are also traded on foreign exchanges, so that we and our affiliated exchanges are in direct competition with those foreign exchanges and their clearing organizations for market users. Furthermore, to the extent that futures and options on different commodities can be said to compete with each other, we are potentially in indirect competition with those foreign exchanges and their clearing organizations as well.

Section 39.2(b)(4) of the Proposed Rules would permit transactions effected pursuant to Parts 35 and 36 of the Commission's Rules to be cleared by foreign clearing organizations, provided that (i) they are "subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing

organizations [in the United States]," and (ii) they are subject to "appropriate and adequate information-sharing arrangements."

Mere comparability to the Commission's standards for recognition of U.S. clearing organizations may not be adequate to assure a level playing field between U.S. clearing organizations and our foreign competitors. U.S. users of foreign clearing organizations should have all the legal protections afforded to them on U.S. clearing organizations and not just Commission-prescribed standards. These would include, among other things, protections available under U.S. bankruptcy and insolvency laws.

Furthermore, if certain requirements under the home laws of a foreign clearing organization are less onerous than U.S. laws (including Commission standards and regulations), U.S. clearing organization clearing similar products should be permitted to elect to comply with those less-onerous requirements. Among other things, this would mean that, for example, if customer margin deposits with foreign clearing organizations could be accepted in foreign currencies and/or could be held in foreign banks, the same should be true of margins held by U.S. clearing organizations clearing similar products.

2. Proposed Section 39.3(c) sets forth 14 core principles, which a recognized clearing organization ("RCO") would be required to meet and adhere to. The principles are stated in broad generalities, most of which are unexceptionable as written. It will not be possible to comment effectively on Section 39.3(c) until the details are known as to how the Commission will interpret and apply the principles to specific situations. Having said that, we respectfully point out the following:

(a) Paragraph (2) would require every RCO to have "defined criteria" for instruments it will accept for clearing. This is not practicable. The determination of what instruments are acceptable must be made on a case-by-case basis, considering all relevant circumstances.

(b) Paragraph (5) would require each RCO to have "[a]dequate standards and procedures designed to protect and ensure the safety of client funds." The primary obligation of a clearing organization is to protect the financial integrity of the clearing system. In doing so, the clearing organization must comply with whatever laws or regulations Congress or the Commission may adopt for the protection of client funds and therefore must have in place such procedures as are necessary to comply with those laws and regulations. However, RCOs should not be expected to develop "standards" for protection of client funds. In the first place, clearing organizations simply provide processing and fiduciary services for clearing members. They do not deal with or even know individual clients. It has never been their mission, and they are generally not equipped, to play a customer protection role. That has generally been the responsibility of exchanges and the NFA. In the second place, if each RCO is required to set "standards" for the protection of client funds, there is a very real risk that RCOs will adopt differing or even inconsistent standards, which could lead to confusion and possible inefficiencies. Therefore, we respectfully suggest that paragraph (5) be reworded to read along the following lines:

> Adequate procedures designed to comply with legal requirements imposed for the protection and safety of client funds.

(c) Paragraph (7) would require RCOs to have arrangements and resources for rule compliance and for "resolution of disputes." If the quoted phrase is intended to refer only to

disputes arising in the compliance context, then the proposal is simply an extension of having proper compliance procedures. But if it is intended to require RCOs to have procedures for resolving civil disputes between members (e.g., arbitration), then the proposal would impose a new burden on RCOs, which would be unnecessary because such procedures are already provided by futures exchanges, the NFA and other organizations, such as the American Arbitration Association.

(d) Paragraph (9) would require each RCO to have fitness standards for "owners or operators with greater than ten percent interest or an affiliate of such an owner..." This requirement would be impractical or even impossible to comply with in the case of an RCO which is a subsidiary or division of an exchange or other entity, or which issues shares to the public. This core principle should be deleted

We would be pleased to discuss these comments further with any member of the Commission or its staff on request.

Respectfully submitted,

George F. Haase Jr.
President

cc: Honorable William J. Rainer
Honorable Barbara Pedersen Holum
Honorable David D. Spears
Honorable James E. Newsome
Honorable Thomas J. Erikson