



May 13, 2005

Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

CFTC/CESR work program

Gentlemen:

The Board of Trade of the City of New York, Inc. ("NYBOT") is pleased to submit this letter with respect to the proposed work program (the "Work Program") outlined in the CFTC-CESR Communique on a Common Work Program to Facilitate Trans-Atlantic Derivatives Business, issued on March 31, 2005. NYBOT is a CFTC designated contract market that offers futures and options trading in both agricultural and financial products. Transactions effected on NYBOT are cleared by its subsidiary, the New York Clearing Corporation ("NYCC"), which acts as a central counterparty.

The Communique references, as one of the broad themes elicited from the discussions held during the Round – Table conducted on February 10-11, 2005, that

"markets, intermediaries and market users support elimination of inappropriate or unnecessary barriers that could unduly constrain the structure of their global operations or limit their transactional preferences (*i.e.* which markets, products or firms) in the US and the EU."

We believe that one such barrier which should be addressed by the Work Program is the ability of EU firms to become direct members of US clearing corporations.

As a case in point, NYBOT's coffee and sugar futures contracts are not only traded internationally, but are delivered outside of the US. In the case of sugar (which is loaded on boats) delivery is made at seller's election from various international ports, whereas coffee is delivered by warehouse receipts issued by warehouses located in several European cities. Deliveries can only be made through firms that are members of NYCC, referred to as "clearing members". Firms located in EU countries who actively

trade NYBOT products for their own accounts have expressed a desire to become such clearing members of NYCC in order to avoid the cost and inconvenience of establishing an account with a US entity that is a clearing member. However, NYCC has not been able to grant these requests because of the risk that, if the firm were to become insolvent, an administrator or liquidator exercising powers under the jurisdiction in which the firm was organized might be able to disregard the terms of the NYCC default rules and procedures and thereby destabilize the financial security of the clearing house. Such a threat clearly hinders the transacting of transatlantic business and needlessly forces EU firms to either establish relationships with US intermediaries or set up US operations themselves. Thus, while NYCC might be eligible for recognition by EU authorities as a clearing house, it cannot function as such vis-à-vis EU firms that desire to transact directly with it.

There are no obvious policy reasons why a clearinghouse organized overseas, which is authorized to provide services in an EU country, should not be afforded the same protections from insolvency laws as are clearing houses located in the home country. The most efficient way to manifest this protection, —i.e., settlement finality directive or legislation, may be open to discussion but the approach agreed upon should be consistently applied.

If we can be of any assistance in your consideration of this issue please contact the undersigned at (212) 748-4083 or at ahirschfeld@nybot.com.

Very Truly Yours,

Audrey R. Hirschfeld
Senior Vice President & General Counsel
New York Board of Trade