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Foreword

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SYMPOSIUM

FOREWORD: DERIVATIVES & RISK MANAGEMENT SYMPOSIUM

*Professor Alan N. Rechtschaffen, Chairperson**

FORDHAM University School of Law and the Fordham Institute on Law and Financial Services were pleased to sponsor a symposium on Derivatives & Risk Management. The program faculty includes top regulators and attorneys.¹ These discussions encourage a free exchange of ideas about regulation and derivatives market participation. The presence of the regulators on the Symposium's faculty indicates the direction of derivatives regulation and global market oversight—the regulators are listening to the voices of the market participants.

The derivatives market may be the largest financial market in the world. Contracts representing trillions of dollars in trade on futures exchanges and in the over-the-counter market. Derivatives are contracts which fluctuate based on the value of an interest rate, index, asset, or other investment. The functional purpose of derivatives is to shift risk from one counter party to another. Because of the broad definition of what constitutes a derivatives contracts, it is difficult to determine who has jurisdiction over certain transactions. In addition, American regulators are aware that increasing regulation encourages market participants to take business offshore.

Some regulators believe that increasing supervision is necessary. Municipal mismanagement, corporate indiscretions, and rogue traders have targeted the derivatives and risk management market place. The dearth of case law creates uncertainty as to the nature of the relationships of those involved in regulating, creating, and utilizing derivatives. Three years after huge losses from derivatives caused fear of systemic failures, attorneys and regulators continue to debate whether to regulate, and how much regulation is needed.

* Professor Alan N. Rechtschaffen conceived of The Derivatives & Risk Management Symposium and originated the course of study at Fordham University School of Law.

1. Symposium faculty includes: Hon. Susan M. Phillips, Member, Board of Governors of the Federal Reserve System; Hon. Brooksley Born, Chairperson, Commodity Futures Trading Commission; Secretary Roger Anderson, Deputy Assistant Secretary, United States Department of the Treasury; Colleen P. Mahoney, Deputy Director Division of Enforcement Securities and Exchange Commission; John M. "Neel" Foster, Board Member, Financial Accounting Standards Board; Ira Lee "Ike" Sorkin, Former Administrator, S.E.C., Former Deputy Chief, United States Attorney's Office, Partner, Squadron Ellenoff; Saul S. Cohen, Partner, Proskauer Rose LLP; Aaron Rubinstein, Partner, Kaye, Scholer, Fierman, Hays, & Handler, LLP.

The Fordham University School of Law Derivative & Risk Management Symposium sheds new light on derivatives regulation. Market participants address the future of financial protocols while regulators focus on the future of monitoring global capitalism. The goal of the symposium is to turn dissonance and debate into harmonious accomplishment.

A number of regulators at the symposium addressed the controversy between the Federal Reserve and the Financial Accounting Standards Board ("FASB") over disclosing losses associated with derivatives. Federal Reserve Board Chairman Allan Greenspan indicates concerns over systemic risk that greater transparency might cause.

The addresses of the participants memorialized by *The Fordham Law Review* indicates the state of the debate over derivatives and disclosure. Governor Susan M. Phillips, Member of the Board of Governors of the Federal Reserve System, and Brooksley Born, Chairperson of the Commodity Futures Trade Commission ("CFTC"), gave the keynote addresses during the proceedings. Both regulators discussed how regulatory constructs might best serve the needs of a global free market.

The Symposium is an historic event in the evolution of market regulation, study,² and practice. Students of the law and of the practices of our free markets worked together to navigate the derivatives and risk management industry toward an era of greater efficiency. The Symposium planted the seed for new regulation while preserving market integrity and customer protection. The following notes give the reader insight into the future of the emerging law of Derivatives and Risk Management.

2. Fordham Law School is one of the first schools in the country to offer a course on the laws governing Derivatives & Risk Management.