

October 15, 2009
ELXNTP-Reg-09019

ELX FUTURES RESPONDS TO CME'S STATEMENT ON CFTC APPROVED "EFF" RULE

On October 14th, 2009, the day ELX Futures publicly announced that the CFTC formally approved ELX's Exchange of Futures for Futures "EFF" rule, a CME spokesman was quoted in a Dow Jones story saying that because of a "long-standing policy" CME would treat trades submitted under ELX's CFTC approved EFF rule as a CME rule violation. The spokesman termed the trades "transitory and contingent," and stated that such trades were unacceptable at CME. His response is inaccurate and cannot be accepted as a matter of market policy.

First, EFF trades are not transitory or contingent trades, which is described further below.**

Further, contrary to this statement, CME has openly permitted transitory EFRP trades, as a matter of course. Every trade on the Clearport Service is transitory where the underlying basis for tens of thousands of contracts are OTC transitory energy swaps or cash trades that are then submitted for clearing. Transitory trades are also routinely done in FX, metals, and other energy futures products. In the CME's recently issued Advisory Notice on EFRPs, Question and Answer #9 specifically describe a new type of transitory EFRP for agricultural products.*

The CME is a self-regulatory organization (SRO) and is granted rule enforcement authority to enforce rules in the public interest. Rule enforcement powers cannot be used arbitrarily to protect competitive position or share price. Long-standing policies, even when accurately set forth, do not justify the use of disciplinary sanctions to keep a lawfully approved rule from being used for its intended purpose.

*"The following transaction is permitted provided that it is entered into for the purpose of obtaining inventory financing for an agricultural commodity. A participant may purchase the agricultural commodity and sell the equivalent quantity of futures contracts to a counterparty through the execution of an EFP and may grant to the counterparty the non-transferable right to effect a second EFP on some date certain in the future which will have the effect of reversing the original EFP." (From CME Advisory RA0910-5).

** A contingent trade is where A sells an ELX future to B on the understanding that B will then sell an ELX future back to A. In the case of an EFF, A sells an ELX future to B. B does not sell an ELX contract back to A. Instead, in a different trade, B sells a CME future to A.