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April 26, 2010

Gary Gensler,  
Chairman,  
Commodity Futures Trading Commission,  
Three Lafayette Center,  
1155 21st, N.W.,  
Washington, D.C. 20581.

Re: ELX Futures, L.P./Exchange of Futures for Futures Rule

Dear Chairman Gensler:

On behalf of ELX Futures, L.P. ("ELX"), I am writing to follow up on our prior letters to you, and our recent discussions with you and members of the staff of the Commission, regarding ELX Rule IV-15 (the "EFF Rule"), which authorizes the execution of Exchanges of Futures for Futures ("EFFs") on ELX. We have very much appreciated the time that you and the staff devoted to meeting with us and considering this issue, as well as the Commission's actions to date on this subject. Despite the fact that the Commission has approved the EFF Rule, and concluded that it complies with the Commodity Exchange Act ("CEA") and the Core Principles under the Commission's rules, and notwithstanding that the Commission has written a letter to the CME Group, Inc. ("CME Group") stating that its obstruction of the EFF Rule is without foundation, the CME Group nevertheless continues to block implementation of that Rule, solely for anti-competitive reasons. The purpose of this letter is respectfully to request that the Commission take appropriate further action to effectuate the Commission's approval of the EFF Rule and to permit ELX to implement the Rule in accordance with that approval.

As you know, the EFF mechanism, which has been used by other exchanges, including exchange subsidiaries of CME Group, is an important tool by which market participants are able to manage their positions and margin funds in an efficient and cost-effective manner. For this reason, ELX developed the EFF Rule and submitted it to the Commission for approval. The Commission affirmatively approved the EFF Rule, in October, 2009, reflecting the Commission's determination that the EFF Rule, and transactions executed under that Rule, would not violate the CEA or the Core Principles. On October 19, 2009, five days following the Commission's approval, the Chicago Board of Trade ("CBOT"), a subsidiary of CME Group, which also owns the

Chicago Mercantile Exchange (“CME”) and the New York Mercantile Exchange (“NYMEX”), issued an Advisory Notice (the “Advisory”) entitled “Prohibition of Exchange of Futures for Futures (EFF) Transactions.” In the Advisory, the CBOT stated that CBOT rules do not permit the execution of EFFs and implied that EFFs could not be permitted because they violate the CEA and CFTC rules. In other contexts, the CME Group stated more explicitly that “trades designed to move Treasury futures positions out of CME’s clearinghouse and into a competitor’s would violate the Commodity Exchange Act.” “CME Says Moving Futures Trades Prohibited by Law,” Dow Jones Market Talk, November 5, 2009. The CME Group spokesman was further quoted in that article as saying “Essentially, it becomes a wash trade by definition of the CEA, so we couldn’t accept it.”

The Advisory and other statements by the CME Group were intended to, and did, have a significant chilling effect that has prevented market participants from executing a single EFF into or out of ELX since the approval of the EFF Rule. Indeed, no rational market participant would execute an EFF involving ELX when it has been advised that it may face enforcement action from CME Group, the dominant exchange in the marketplace. As a result, CME Group has thus far been able to use its overwhelming market power to deny a small, newly organized competitor – and market participants – the use of an effective and desirable tool to manage positions and margin in an efficient manner.

The Commission’s staff subsequently issued a letter to the CBOT, dated January 22, 2010, stating that the Advisory was “inaccurate to the extent that it construes the CEA to mandate a prohibition on the use of EFFs,” and directed the CBOT to “further justify” the Advisory. Letter to Kathleen M. Cronin, Esq. from Richard A. Shilts and Ananda Radhakrishnan, dated January 22, 2010. Remarkably, CME Group then issued a press release, indicating that its position regarding enforcement action against parties effecting EFFs remained valid and was not affected by the staff’s letter. Notwithstanding express direction from the Commission’s staff to the contrary, therefore, as well as the Commission’s approval of and conclusions on the EFF Rule, CME Group has persisted in its obstruction of the EFF Rule.

CME Group’s defiance of the Commission and its staff is clearly based solely on its efforts to stifle a nascent competitor, a fact that is revealed both by the nature of CME Group’s opposition to the EFF Rule and its support for similar types of transactions in its own markets. CME Group contended initially that EFFs constitute wash trades that are prohibited under the CEA and that it therefore could not permit the transactions to be effected on its exchanges. However, the Commission, which is the agency charged with responsibility for interpreting and applying the CEA, has determined that EFFs do not constitute wash sales, both in its approval of the EFF Rule

and in its letter to the CBOT. For some reason, CME Group apparently believes that it alone is responsible for interpreting the CEA and that it is not bound by the interpretations of the independent federal agency charged with that responsibility by statute. In any event, CME Group can no longer rely on its contention that EFFs constitute wash trades as a basis for blocking implementation of the EFF Rule, and it is therefore obvious that its continued obstruction is based solely on competitive grounds.

Despite CME Group's protestations, its own subsidiary exchanges have long permitted EFFs, as well as related types of permissible non-competitive transactions, to be executed and cleared through their facilities. In fact, NYMEX developed the first EFF in 2002, and has introduced several variations on its original structure in the years since that time. In addition, NYMEX has a long history of allowing block trades to be used to exchange positions between NYMEX and IntercontinentalExchange, Inc. ("ICE"). See, [http://www.nymex.com/notice\\_to\\_member.aspx?id=ntm110&archive=2007](http://www.nymex.com/notice_to_member.aspx?id=ntm110&archive=2007). These trades have a practical effect that is substantially equivalent to that of EFFs, provided that the small minimum block trade requirement is satisfied. CME Group cannot have it both ways – it cannot assert that EFFs and similarly structured transactions are fully permissible and provided for under its Rule 538 when executed on its exchanges while contending that ELX's EFF transaction violates the CEA and Commission regulations when executed through an exchange it considers a competitor. Moreover, both CBOT and CME, as well as NYMEX, permit various types of "exchange for risk" transactions under rules that are sufficient, in their current form, to accommodate the execution of EFFs, without additional rule changes.

All of the types of Exchange for Risk transactions permitted under Rule 538 involve non-competitive executions of futures transactions in a manner that is substantially the same as the execution of EFFs, except that they take place within one exchange rather than between exchanges. We recognize, of course, that there are differences between these types of transactions and EFFs. However, all of these categories, including EFFs, involve non-competitive executions of trades that, but for their permissibility under the CEA and Commission regulations and orders, might otherwise violate the CEA prohibition on non-competitive trades. Here as well, if the conduct related to the execution of these transactions is permissible when applied within an exchange, it cannot become illegal when utilized in transactions effected between exchanges. Indeed, as noted, the Commission has found that such transactions are permissible under the CEA.

The anti-competitive nature of CME Group's conduct is further highlighted by the fact that it is willing to forego the additional revenues that it would earn through the fees it could collect on the execution of EFFs. In so doing, CME Group

evidences one of the key indicia of anti-competitive behavior by a monopolist – taking actions against the monopolist’s short term economic interest in order to undermine a competitor, drive the competitor out of the market, and then earn increased revenues through higher fees and reduced competition.

The anticompetitive conduct of CME Group is clearly in violation of Core Principle 18 for designated contract markets, which states that a contract market must “endeavor to avoid—(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading on the contract market.” The actions of CME Group fail to satisfy this standard and must be rectified. By preventing even a single EFF from being executed, after Commission approval of the EFF Rule and Commission staff’s directive, CME Group has unquestionably engaged in an “unreasonable restraint of trade” and has failed completely – in fact, has not even attempted – to identify any legitimate business purpose for its prohibition on EFFs.

Accordingly, we respectfully request that the Commission take appropriate action to require CME Group and its subsidiary exchange to refrain from threatening or initiating enforcement action in connection with EFFs between these exchanges and ELX and to permit such EFFs to be executed. In particular, we respectfully request that the Commission stay the effectiveness of the Advisory and any statements by the CBOT or CME Group that enforcement action will be taken against market participants executing EFFs. In addition, we respectfully request that the Commission direct CBOT and CME Group, by order or otherwise, to permit the execution of EFFs between ELX and CME Group’s exchanges, in accordance with the EFF Rule that the Commission has approved.

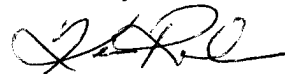
In this regard, we do not believe that it is necessary for the Commission to require CBOT or CME Group to adopt rules with respect to EFFs in order to permit implementation of the EFF Rule. To the contrary, we believe that CME Group rules currently permit such transactions, under Rule 538, which expressly contemplates Exchanges for Related Positions. We note that this rule now encompasses all of the CME Group exchanges, and that CME Group has recently completed a project to harmonize the rules of these exchanges, with a view toward ensuring that rules such as Rule 538 apply equally to all of them. In light of CME Group’s explicit efforts at harmonizing the rules of the various exchanges, it cannot now claim that certain of the rules apply only to specific exchanges and not others. As a result, no new rules or rule changes are necessary and the only action that needs to be taken is for CME Group to cease its anti-competitive conduct and permit market participants to effect EFFs without enforcement action, or the threat of action, by CME Group or any of its subsidiary exchanges.

Gary Gensler  
Chairman  
Commodity Futures Trading Commission

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We would of course be pleased to discuss these issues further with the Commission or its staff and to address the various types of remedial action that are available. We very much appreciate your consideration of this important matter and look forward to our further discussions of the issue.

Sincerely,



Kenneth M. Raisler

cc: Mr. David Stawick  
(Secretary)

Mr. Michael Dunn  
(Commissioner)

Mr. Bart Chilton  
(Commissioner)

Ms. Jill Sommers  
(Commissioner)

Mr. Scott O'Malia  
(Commissioner)

Mr. Dan Berkovitz  
(General Counsel)

Neal Wolkoff  
(ELX Futures, LLC)