

TO: The Comment File
FROM: Jordan O'Regan
RE: Comment on Proposed Conflicts of Interest Rule
DATE: February 8, 2011

On Tuesday, February 8, 2011, Neal Wolkoff and Dan McElduff of ELX, and Nancy Schnabel, Jordan O'Regan, and Alicia Lewis, all CFTC staff members, had a telephone conversation regarding the proposed requirements to mitigate conflicts of interest in Derivatives Clearing Organizations ("DCOs"), Designated Contracts Markets, and Swap Execution Facilities. The discussion focused on the effects the proposed requirements may have on the Options Clearing Corporation ("OCC"), the DCO clearing for ELX.

First, Mr. Wolkoff and Mr. McElduff discussed the manner in which the proposed structural governance requirements (*e.g.*, board and committee composition requirements) were incompatible with current OCC governance arrangements. Specifically, they noted that the former requirements concentrate on maintaining an independent perspective, whereas the latter requirements concentrate on maintaining fair representation. Further, Mr. Wolkoff and Mr. McElduff noted that OCC developed its governance arrangements in consultation with the Securities Exchange Commission ("SEC"), and that the SEC did not extend its proposals regarding mitigation of conflicts of interest to OCC.

Second, Mr. Wolkoff and Mr. McElduff stated that OCC may decide to discontinue clearing futures in order to avoid altering its governance arrangements to conform to the proposed rules. They noted that 99% of OCC clearing operations pertain to options, with only 1% pertaining to futures. Mr. Wolkoff and Mr. McElduff observed that, if OCC decides to discontinue clearing futures, ELX would be forced to find a new horizontally-structured DCO,

which presents ELX with limited alternatives. Even if ELX were to find such DCO, moving from OCC to such DCO would impose costs on ELX members, including costs for purchasing new software.

Finally, Mr. Wolkoff and Mr. McElduff questioned whether the proposed rules would need to be applied uniformly, or whether certain exceptions might be granted for entities like OCC, which are dually-registered with the CFTC and the SEC.

ELX plans to submit a comment letter detailing the aforementioned issues.