



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

January 22, 2010

Kathleen M. Cronin, Esq.
General Counsel and Corporate Secretary
Chicago Mercantile Exchange, Inc.
The Board of Trade of the City of Chicago, Inc.
New York Mercantile Exchange, Inc.
Commodity Exchange, Inc.
20 South Wacker Drive
Chicago, Illinois 60606

Re: The Board of Trade of the City of Chicago, Inc.
Market Regulation Advisory Notice RA0907-1

Dear Ms. Cronin:

The Chicago Board of Trade's ("CBOT") self-certified Market Regulation Advisory Notice RA0907-1, issued on October 19, 2009, states that CBOT rules do not permit the execution of Exchange of Futures for Futures trades ("EFFs") and that CBOT does not permit contingent or transitory Exchanges for Related Positions ("EFRPs").¹ The Advisory Notice was issued subsequent to the Commission's approval of an EFF rule submitted by ELX Futures L.P. ("ELX").² That rule permits market participants to privately negotiate two discrete but integrally related transactions that result in establishing futures positions on ELX while concurrently liquidating futures positions on another designated contract market ("DCM") that lists identical contracts or, conversely, establishing positions on another DCM to replace identical positions liquidated on ELX.

The Advisory Notice identifies EFFs as impermissible under CBOT Rule 538. The Advisory Notice also points out that the Rule allows parties to privately negotiate a number of EFRP transactions with similar financial outcomes. Specifically, CBOT Rule 538 permits parties to privately negotiate Exchange for Physical ("EFP") transactions, Exchange for Risk

¹ CBOT Market Regulation Advisory Notice RA0907-1 (October 19, 2009) – Rule 538; Subject – Prohibition of Exchange of Futures for Futures (EFF) Transactions.

² Letter dated October 5, 2009, from David Stawick, Secretary of the Commission, to Neal Wolkoff, Chief Executive Officer, ELX Futures L.P., with notification of the Commission's approval of ELX Rule IV-5(a)(iv) and (v).

("EFR") transactions, and Exchange of Options for Options ("EOO") transactions. The fact that CBOT allows some transactions as EFRPs while prohibiting others prompted the Division of Market Oversight to request that CBOT, pursuant to Commission Regulations 38.5(b) and 38.5(c), respond in writing to several specific questions and concerns.³ By submission dated November 16, 2009, CBOT responded to the Division of Market Oversight's inquiries.⁴

Commission staff has carefully considered the relevant CBOT rules, as well as the Advisory and CBOT's November 16 submission. By letter dated January 21, 2010, Staff has advised CBOT of its conclusion that CBOT has mischaracterized the requirements of the CEA with respect to (i) the characterization of EFF trades and of matched block trades that are executed to enable inter-exchange transfers of futures positions as *per se* wash or fictitious trades in violation of the CEA; and (ii) the characterization of such matched block trades as impermissible contingent and transitory trades. Staff further noted that CBOT's interpretation of its rules respecting EFFs and matched block trades cannot be justified by the Commission's regulatory precedents. A copy of that letter is enclosed.

In light of these conclusions, and pursuant to Commission Regulations 38.5(b) and 38.5(c), Staff requests that CBOT provide a written statement, together with supporting data, information and documents that:

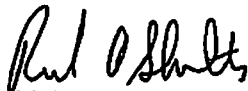
1. Provide a rationale (legal and economic) for not allowing EFFs while allowing EFPs, EFRs and EEOs;
2. Demonstrate how the Advisory Notice and Rule 538 comply with Core Principle 18 (Antitrust Considerations);
3. Respond to the assertion in ELX's October 20, 2009 letter that CBOT's self certification of the Advisory Notice amounts to a "false certification" as that term is used in Commission Regulation 40.6(b);
4. Respond to the assertion in the ELX letter that CME Group designated contracts have "in a number of markets, and for many years, accepted transitory trades"; and
5. Address why, despite the statement in CME Group Market Advisory Notice RA0901-5 that the four CME Group exchanges are adopting harmonized rule language with respect to Rule 538, the CBOT Advisory Notice prohibits EFFs while EFFs are permitted on COMEX.

³ Letter dated October 30, 2009 from David P. Van Wagner, Chief Counsel, to Kathleen Cronin, General Counsel and Corporate Secretary for the CME Group, Inc.

⁴ Letter from Kathleen Cronin to Steven Schoenfeld, Director of CFTC's Division of Market Oversight, dated November 16, 2009.

Please send your written statements within two weeks from the date of this letter to Richard A. Shilts, Acting Director, Division of Market Regulation, at the address above.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Shilts".

**Richard A. Shilts
Acting Director**

enclosure