



U.S. COMMODITY FUTURES TRADING COMMISSION

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June 16, 2011

Kathleen M. Cronin, Esq.
General Counsel and Corporate Secretary
CME Group, Inc.
20 South Wacker Drive
Chicago, Illinois 60606

Re: Chicago Board of Trade Rules and Interpretations Prohibiting the Exchange of Futures for Futures

Dear Ms. Cronin:

This letter concerns the Chicago Board of Trade's ("CBOT") self-certified Market Regulation Advisory Notice RA0907-1 ("Advisory Notice").¹ In that notice, CBOT stated that its rules do not permit the execution of (i) Exchange of Futures for Futures transactions; or (ii) what it characterized as "contingent and transitory trades," including matched pairs of block trades used to transfer positions from one exchange to another. The Advisory Notice was issued subsequent to the Commission's approval of a rule submitted by ELX Futures L.P. ("ELX") authorizing traders to carry out EFF trades.² In subsequent submissions to Commission staff, CBOT justified its interpretation on the basis that: (i) EFF transactions constitute wash and fictitious trading under the Commodity Exchange Act ("CEA"); (ii) its refusal to permit EFF

¹ CBOT Market Regulation Advisory Notice RA0907-1 (October 19, 2009)—Rule 538; Subject—Prohibition of Exchange of Futures for Futures (EFF) Transactions. On October 29, 2009, CBOT separately self-certified its amendments to Rule 534 (Wash Trades Prohibited) and a related advisory clarifying certain aspects of the prohibition on wash trading (together with Market Advisory Notice RA0907-1, "Advisory"). The Advisory stated that the only prearranged trades permitted on the exchange are block trades made pursuant to CBOT Rule 526 and three types of Exchange for Related Positions ("EFRP"): Exchange for Physical ("EFP"), Exchange for Risk ("EFR"), and Exchange for Options for Options ("EEO").

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). As more fully described in that letter, EFFs are designed to facilitate, via the execution of trades off the centralized market, the movement of traders' position from one exchange to another.

transactions is mandated by Core Principle 9³; and (iii) its actions comport with Core Principle 18⁴ and with antitrust jurisprudence.

In a January 22, 2010 letter to CBOT, Commission staff advised the exchange that neither the CEA nor Commission jurisprudence supported CBOT's position regarding its interpretation of wash and fictitious trading.⁵ The staff also requested that CBOT provide further justification for its Advisory Notice. In response, CBOT restated its justifications for disallowing the execution of EFF trades.⁶ Subsequently, in an August 13, 2010 letter to CBOT, the Commission informed the exchange that it fully supported the staff's analysis and findings, including with respect to CBOT's wash and fictitious trade claims.⁷ The Commission directed staff separately to analyze the Core Principle 18 issues raised in connection with this matter.

In accordance with the Commission's directive, the staff requested that CBOT provide a written statement, together with supporting data, information and documents addressing various issues raised by their prohibition of EFFs.⁸ Following the transmittal of the August 13th staff letter to CBOT, CBOT⁹ and ELX¹⁰ both submitted letters addressing the legality of CBOT's Advisory Notice, specifically addressing whether it was necessary or appropriate to achieve the purposes of the CEA and whether it was anticompetitive in violation of Core Principle 18.

³ 7 USC § 7(d)(9).

⁴ 7 USC § 7(d)(18).

⁵ See Letter dated January 22, 2010 from the Commission's Division of Market Oversight and Division of Clearing and Intermediary Oversight to Kathleen M. Cronin, General Counsel, CME Group.

⁶ See Letter dated February 8, 2010 from Kathleen M. Cronin, General Counsel, CME Group, to Richard A. Shilts, Director, Division of Market Oversight.

⁷ See Letter dated August 13, 2010 from David Stawick, Secretary of the Commission to Kathleen M. Cronin, General Counsel, CME Group. In the same letter the Commission also advised CBOT that "neither Regulation 1.38 nor Core Principle 9 compels a DCM to prohibit or mandate off-centralized market trades" like EFFs.

⁸ See letter dated August 13, 2010 from Richard A. Shilts, Director, Division of Market Oversight, to Kathleen M. Cronin, General Counsel, CME Group. The staff request was made pursuant to Commission regulation 38.5. Regulation 38.5 provides that, upon request by the Commission, a DCM must demonstrate that it is in compliance with one or more designation criteria or core principles as specified in the request.

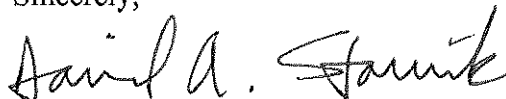
⁹ See Letter dated September 13, 2010 from Kathleen M. Cronin, General Counsel, The Board of Trade of the City of Chicago, Inc., to Richard A. Shilts, Director, Division of Market Oversight.

¹⁰ See Letter dated October 4, 2010 from Neal Wolkoff, Chief Executive Officer, ELX Futures L.P. to Richard A. Shilts, Director, Division of Market Oversight.

Based on the written submissions of CBOT and ELX and other relevant information available to the Commission, the Commission cannot conclude that CBOT's Advisory Notice violates Core Principle 18. On the specific materials presented, the Commission does not find an unreasonable restraint of trade or a material anticompetitive burden on trading on the contract market to be present. The Commission notes that its findings are based on the specific facts presented. It is possible that in the future, under a different set of facts and circumstances, the Commission could conclude that an exchange's prohibition of EFFs does not comport with Core Principle 18.

Separately, as noted above, the Commission in its August 13, 2010 letter advised CBOT that its regulatory precedent does not support that exchange's assertions that EFF trades are unlawful wash or fictitious trades. Consistent with that letter, CBOT may not characterize the EFF trades and matched block trades that are executed to enable inter-exchange transfers of futures positions as wash or fictitious trades in violation of the CEA.

Sincerely,

A handwritten signature in black ink that reads "David A. Stawick". The signature is written in a cursive style with a large, prominent "D" and "S".

David Stawick
Secretary of the Commission