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ELX Futures

Neal L. Wolkoff
Chief Executive Officer
ELX Futures L.P.
www.elxfutures.com

T. 212 294 8056
F. 212 294 8058

110 East 59th Street
New York, NY 10022
nwolkoff@elxfutures.com

By e-Mail and Mail

September 14, 2009

Mr. David A. Stawick
Secretary to the Commission
Commodity Futures Trading Commission
Three Lafayette centre
1155 21st Street, N.W.
Washington, D.C. 20581
secretary@cftc.gov

COMMENT

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C.F.T.C.
OFFICE OF THE SECRETARIAT

Re: Account Class, 17 CFR Part 190, 74 FR 40794. 09-009

Dear Mr. Stawick:

ELX Futures, L.P. ("ELX Futures") is submitting this comment letter in connection to the above-referenced Proposed Rule. ELX Futures is registered with the Commodity Futures Trading Commission ("CFTC") as a Designated Contract Market ("DCM"), and does not own or control a Designated Clearing Organization ("DCO") as part of our operations. Rather, ELX Futures relies on a third party, independent DCO to provide clearing services. We are concerned that the lack of specificity in the Proposed Rules combined with our lack of control over the clearing of trades poses unknown risks or burdens.

At issue is the following section from the Proposed Rule:

However, consistent with the intentions specified in the Proposing Release,\24\ the Commission proposes to limit "cleared OTC derivatives" to only those positions in "cleared-only contracts" that (along with the money, securities, and/or other property margining, guaranteeing, or securing such positions) are required to have been (i) segregated in accordance with a rule, regulation, or order issued by the Commission, or (ii) held in a separate account for "cleared-only contracts" in accordance with the rules or bylaws of a DCO. The Commission does not intend to specify substantive requirements

for the treatment of cleared OTC derivatives (and the money, securities, and/or other property margining, guaranteeing, or securing such derivatives). Rather, the Commission proposes to define "cleared OTC derivatives" in such a manner as to specify the sources from which such substantive requirements may originate. Moreover, by including contracts that "are required to be segregated * * * or to be held in a separate account" for "cleared-only contracts," the Commission seeks to avoid the need to engage in fact-intensive post-bankruptcy inquiries regarding compliance with such requirements.

We ask for clear guidance to the clearing of OTC derivatives should we become a listing venue for cleared products or an exchange venue for the trading of products which formerly were traded as OTC derivatives.

Our questions, on which we ask for greater clarity, are as follows:

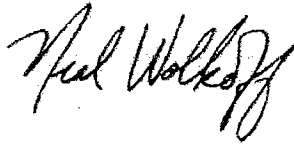
- whether the DCO will be permitted to cross margin the new account class envisioned by the Proposed Rules against related products in different account classes. For instance, will cleared OTC interest rate derivatives in the new account class be permitted or prohibited from being cross margined with U.S. Treasury futures contracts or Eurodollar futures contracts in a separate segregated account class?
- What constitutes a "cleared only" contract? If an OTC derivative is offered for exchange trading (thus losing the moniker OTC derivative) but fails to trade, or trades fewer than 100 contracts per day, is it considered cleared only?
- How much time will a contract be given to reach a liquidity threshold before being deemed "cleared only" and required to be placed in a new account class?
- Will 4d exemptions still be granted after the new account class is created?
- What will be the status of previously granted 4d exemptions, and will they be grandfathered or required to be transferred into the new account status?

Based on the information in the Proposed Rule ELX Futures is not now in a position to determine the answers to these questions to best evaluate the potential impact of the Proposed rules. Thus, when the Proposal states that, "The amendments are not expected

to have an effect on efficiency or competition," we are concerned and unsure that the statement is correct without understanding the Proposal with greater clarity.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Wolkeff". The signature is written in a cursive style with a large, sweeping initial "N".