

**From:** secretary <secretary@CFTC.gov>  
**Sent:** Friday, October 22, 2010 1:39 PM  
**To:** PortfolioMargining <PortfolioMargining@CFTC.gov>  
**Subject:** FW: Portfolio Margining Prepublication Comment  
**Attach:** Portfolio Margining Prepublication Comment102210Final.pdf

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**From:** Wolkoff, Neal [mailto:nwolkoff@elxfutures.com]  
**Sent:** Friday, October 22, 2010 12:06 PM  
**To:** Gensler, Gary; Dunn, Michael; Chilton, Bart; Sommers, Jill; O'Malia, Scott  
**Cc:** secretary; Shilts, Richard A.; Radhakrishnan, Ananda; Berkovitz, Dan M  
**Subject:** Portfolio Margining Prepublication Comment

Dear Chairman Gensler and Commissioners:

Attached please find a prepublication comment letter on behalf of ELX Futures, L.P. concerning portfolio margining involving cleared swaps and regulated futures and options on futures.

As per the letter, I am available to answer questions or provide any additional information.

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Gary Gensler, Chairman and  
Commissioners Dunn, Chilton, Sommers and O'Malia  
Commodity Futures Trading Commission  
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October 22, 2010

**Re : Pre-publication Comment On Portfolio Margining**

Dear Chairman Gensler and Commissioners:

ELX Futures, L.P. ("ELX") is pleased to submit these comments prior to formal publication of proposed rules concerning the upcoming rulemaking on portfolio margining procedures, [http://cftc.gov/LawRegulation/DoddFrankAct/OTC\\_22\\_PortfolioMargining.html](http://cftc.gov/LawRegulation/DoddFrankAct/OTC_22_PortfolioMargining.html). While ELX believes that portfolio margining among securities, cash interest rate instruments, futures and swaps invites significant capital savings and efficiencies, and encourages use of the public markets, we are also cognizant of the potential that portfolio margining can have to limit competition between execution venues that own and control their own clearinghouses and those execution venues that do not own or control a clearinghouse. ELX, as you know, clears trades executed on our platform through an independent clearinghouse.

Following a series of mergers, more than 96% of regulated futures and options on futures are traded and/or cleared through a single entity, the CME Group ("CME"). CME permits the clearing of off-exchange swaps most prominently in energy and precious metals contracts. All such trades are executed outside of an exchange platform and are converted to futures for clearing purposes, and as such they enjoy the benefits of cross-margining in a single pool with associated futures contracts that are largely executed on an exchange platform, be it electronic or on the trading floor. The CME has, however, taken a hostile view of interest rate instruments that are executed other than on its own platform from receiving portfolio margining benefits of clearing alongside DCM-executed interest rate futures and options. Similarly, CME does not allow for the transfer of positions through block trades, EFF transactions, or otherwise.

If futures positions at CME could be transferred to an independent DCO then swap transactions cleared at an independent DCO could receive the benefit of cross margining. Futures trades or positions transferred from the CME's captive DCO to an independent DCO could then provide a cross-margining benefit. Without position transferability into and out of CME's DCO, swap transactions could not receive the benefit of cross margining against futures and options trades cleared there unless the swaps are also cleared there. Providing cross margining benefits for swaps that clear at CME, and withholding or denying those benefits for swaps that are cleared elsewhere, overwhelmingly would favor the dominant exchange and its captive DCO, and deter competition.

With the freedom to transfer regulated positions, CME could not use cross margining benefits offered by its captive clearinghouse to further enhance its market power in futures and options on futures. Nor could it gain undue power over the clearing of swap transactions because of the benefits its captive DCO would uniquely have to offer swaps positions by virtue of CME's futures monopoly.

In our view, any action by the Commission to permit and foster portfolio margining should be taken with a view toward promoting competition among execution and clearing alternatives, and choice by market participants, and should not allow one market participant to use its monopoly power to stifle competition. Specifically, the Commission should ensure that any such action not only be of general applicability but that it also accommodate other market mechanisms that market participants might seek to employ, such as EFPs or EFFs and that it include safeguards to prevent portfolio margining systems being used to prevent competitors from offering such other mechanisms. In addition, any action by the Commission on this issue should be by rulemaking of general applicability and not by individual order or exemption.

In this regard, in the context of swap clearing, the Commission recently amended its bankruptcy rules, 17 CFR Part 190 Account Class, to provide for a separate, independent segregation of the margin related to cleared swaps from the segregated 4d account holding positions and margin associated with regulated futures and options contracts. <http://cftc.gov/LawRegulation/FederalRegister/FinalRules/2010/2010-7742.html>. In the final rules, the Commission retained the right to issue so-called 4d orders to permit the commingling of swap positions and related funds in the same account holding positions and funds of futures and options on futures. However, the guidance accompanying the final rules states unambiguously that "...in the absence of an appropriate order, the Commission does not intend to permit positions in the futures account class and positions in the separate account class for cleared OTC derivatives to be margined as a single portfolio." <http://cftc.gov/LawRegulation/FederalRegister/FinalRules/2010/2010-7742.html>

In the case of futures and options traded on a monopoly exchange, which are held by FCMs in a 4d account, if portfolio margining is authorized between 4d instruments and

swaps in related asset classes, then monopoly power in execution and clearing of futures and options would become unassailable, likely rendered permanent, and further remove the dominant exchange from the threat of competition given its many structural advantages. Ironically, the benefits of monopoly power in futures and options would be made stronger by a regulatory regime called “open access,” which is intended to strengthen competition in the actively traded OTC derivatives market.

In order to protect against one exchange/clearinghouse from gaining further monopoly power as a result of a new statutory scheme – something not intended by the Dodd Frank Act -- and which is in the power of the Commission to avoid through its discretionary 4d exemption powers, we strongly recommend that the Commission should not adopt a portfolio margining regime unless it adequately protects the ability of other exchanges and DCOs to adopt different market mechanisms for position transfers. Thus, such a dominant market as CME would not be able to cement its dominance against competition in the futures and options markets by offering portfolio margining benefits for futures and related swaps without accommodating its clients and market competition.

By providing for transferability of futures and options positions related to cleared swaps, the Commission would assure the benefits of open access for swap execution, but without the concurrent and unnecessary benefit to any organization that already enjoys monopoly power in its core futures and options on futures products.

Thank you for considering these views. We hope that our comments assist in your development of proposed rules and we look forward to commenting further after the proposed rules are issued. We would of course be pleased to discuss these issues further with the Commission or its staff. We very much appreciate your consideration of and attention to this important matter.

\*\*\*\*\*

Wolkoff Letter for ELX Futures, L.P.

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October 22, 2010

Sincerely,

A handwritten signature in cursive script, appearing to read "Neil Wolkoff".

cc: Mr. David Stawick  
(Secretary)

Mr. Richard Shilts  
(Acting Director, Division of Market Oversight)

Mr. Ananda K. Radhakrishnan  
(Director, Division of Clearing and Intermediary Oversight)

Mr. Dan Berkovitz  
(General Counsel)