

February 9, 2009

**VIA ELECTRONIC MAIL**

David Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581  
[secretary@cftc.gov](mailto:secretary@cftc.gov)

Re: Application of ELX Futures, L.P. for Designation as a Contract Market

Dear Mr. Stawick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Application of ELX Futures, L.P. ("ELX") for Designation as a Contract Market ("DCM").

CME Group was formed by the merger of Chicago Mercantile Exchange Holdings Inc. and CBOT Holdings Inc. in 2007, and subsequently merged with NYMEX Holdings, Inc. in 2008. CME Group is the parent of four DCMs: (1) the Chicago Mercantile Exchange ("CME"); (2) the Chicago Board of Trade ("CBOT"); (3) the New York Mercantile Exchange ("NYMEX"); and (4) the Commodity Exchange ("COMEX"). CME is also among the largest Derivatives Clearing Organizations in the world. CME Group serves the risk management needs of customers around the globe. As an international marketplace, CME Group brings buyers and sellers together on the CME Globex® electronic trading platform and on trading floors in Chicago and New York. CME Group offers the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, emissions, agricultural commodities, metals, and alternative investment products such as weather and real estate.

We would like to comment on two aspects of ELX's application.

First, proposed ELX Rule IV-16, which addresses block trades, provides in part as follows:

In determining the minimum size threshold, the Exchange shall take into consideration (to the extent available) the size distribution of transactions in the [relevant] Contract, the size distribution of transactions in the related cash or over-the-counter markets, and all other information relevant to transaction size in the relevant Contract.

ELX does not appear to require any consideration of the sizes of transactions on other DCMs that have liquid markets in substantially identical contracts when setting its own minimum block trade sizes. On January 5, 2009, CME Group filed a comment letter with respect to the Commodity Futures Trading Commission's ("Commission") Proposed Rules for Trading Off the Centralized Market at 73 FR 54097

(Sept. 18, 2008), and specifically addressed this issue. In that comment letter, we stated our belief that, in order to receive safe harbor treatment under the Commission's proposed acceptable practices for compliance with Core Principle 9 ("Execution of Transactions"), any DCM listing a particular contract should set its minimum block trade size at the level that would constitute an appropriate minimum size for block trades in the most liquid substantially identical contract that is trading on any centralized DCM market. As we stated in our comment letter, if a DCM were permitted to set a minimum size for block trades in a contract that it is newly listing, without considering available information about trading activity in a substantially identical liquid market on another DCM, it could impair the usefulness of the price discovery information being provided by the previously listing DCM by setting its own threshold too low.

ELX's Compliance Chart, filed as part of its application for contract market designation, states with respect to Core Principle 9, that "[t]he block trading procedures reflected in Rule IV-16 are designed to ensure that block trading will not compromise the integrity of prices or price discovery in the relevant market." However, we are concerned that unless ELX takes into consideration the sizes of transactions in substantially identical futures markets on other DCMs, the integrity of prices and price discovery in such substantially identical futures markets may be compromised.<sup>1</sup>

Second, ELX Rule IV-11, which addresses position accountability, indicates that the specific position accountability levels are specified in a chart in Chapter IX. No such chart is contained in the version of ELX's rulebook that was posted on the CFTC's website for public comment. We believe that the position accountability levels for ELX's Treasury futures contracts should be the same as the position accountability levels for the substantially identical contracts traded on the Chicago Board of Trade. This is consistent with the position taken by the Commission in its December 12, 2008 Federal Register Release concerning Significant Price Discovery Contracts ("SPDCs") in Exempt Commercial Markets ("ECMs").<sup>2</sup>

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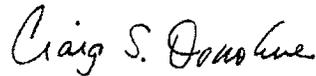
<sup>1</sup> On January 21, 2009, the Futures Industry Association ("FIA") filed a Supplemental Statement to its comment letter on the Commission's Proposed Rules for Trading Off the Centralized Market. In that statement, the FIA argued that the CFTC's adoption of CME Group's position in this regard would inhibit competition by precluding a DCM "... from attempting to attract market participants and liquidity to its new market by establishing a lower block trading threshold. ..." We believe competition is vital to innovation and growth in our industry. However, we do not believe that the Commission should facilitate an enhanced ability for some market participants to compete by promoting regulatory arbitrage between established liquid markets and nascent and less liquid markets, or by sacrificing market integrity and the proper functioning of price discovery mechanisms. There are many effective ways in which DCMs can compete, for example, with respect to product design, technology enhancements, pricing policies, and quality of services, while maintaining appropriate regulatory standards that serve the public versus competitors' interests. In spite of FIA's Statement, we urge the Commission to not ignore the distinction between fostering competition and fostering the interests of particular competitors.

<sup>2</sup> In that context, the Commission stated that "[i]f a SPDC is economically equivalent to another SPDC or to a contract traded on a DCM or DTEF, then the ECM should set the non-spot individual month position accountability level and all-months-combined position accountability level at the same level as those specified for the economically-equivalent contract." 73 FR 75888, 75895-75896.

Mr. David Stawick  
February 9, 2009  
Page 3

CME Group appreciates the opportunity to comment on ELX's application for designation as a contract market. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or [Craig.Donohue@cmegroup.com](mailto:Craig.Donohue@cmegroup.com); Richard Lamm, Managing Director, Chief Regulatory Counsel, at (312) 930-2041 or [Richard.Lamm@cmegroup.com](mailto:Richard.Lamm@cmegroup.com); or Anne Polaski, Associate Director and Regulatory Counsel, at (312) 338-2679 or [Anne.Polaski@cmegroup.com](mailto:Anne.Polaski@cmegroup.com).

Sincerely,



Craig S. Donohue

cc: Acting Chairman Michael Dunn  
Commissioner Walter Lukken  
Commissioner Bart Chilton  
Commissioner Jill E. Sommers