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

October 4, 2010

Richard A. Shilts,
Acting Director, Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st, N.W.
Washington, D.C. 20581

Re: ELX Futures, L.P./Exchange of Futures for Futures Rule

Dear Mr. Shilts:

ELX Futures, L.P. ("ELX"), submits this response to the letter from Kathleen Cronin of the CME Group, Inc. ("CME") on behalf of CME's subsidiary Chicago Board of Trade ("CBOT") to you, dated September 13, 2010 (the "CBOT Letter"), regarding ELX Rule IV-15 (the "EFF Rule"), which has been approved by the Commission and which authorizes the execution of Exchanges of Futures for Futures ("EFFs") on ELX. ELX and the CBOT have previously submitted various letters to the Commission regarding this matter; the CBOT Letter was filed in response to questions and requests for information made by the Commission and the Division of Market Oversight ("DMO") to the CBOT, dated August 13, 2010. Despite the fact that the CBOT Letter covers some 29 single-spaced pages, plus an extensive appendix, it adds no new information or arguments to the debate. To the contrary, the CBOT Letter simply restates and elaborates on the same misleading assertions and distortions included in the CBOT's prior letters with respect to the EFF Rule. The Commission should reject the CBOT's latest submission and should take prompt action to require the CBOT to permit the execution of EFFs by market participants.

Because the CBOT Letter adds nothing new to the Commission's consideration of the issues related to the EFF Rule, we do not believe it is necessary to respond to each point raised in that Letter. Instead, we will focus only on the most significant misstatements made by the CBOT about the EFF transaction. First, the CBOT argues, as it has in the past, that EFFs should be prohibited because they constitute "wash trades" that "negate market risk." This is simply not true, as the CBOT well knows and understands. A wash trade, as reflected in the precedents cited in the CBOT Letter, is one in which a party appears to take a *bona fide* market position, and expose itself to market risk, while in fact creating only the appearance of trading and offsetting the original trade in a way that *avoids* taking any market risk. One of the principal decisions cited by the CBOT, therefore, states that "[t]he central characteristic of a wash sale is the intent to avoid making a bona fide transaction or taking a bona fide market position." CBOT Letter, p. 9, citing In re Citadel Trading Co. of Chicago, Ltd. (CFTC, May 12, 1986). That is not the case with EFFs. An EFF involves a transaction in which a party establishes a *bona fide* position in a futures contract for the purpose of obtaining, not avoiding, the market exposure incurred by virtue of that position. The fact that the EFF involves a transfer of that position to another exchange in no way affects the status of the position as one that creates, not negates, *bona fide* market risk. For this reason, among others, the Commission – the federal agency with the authority and the responsibility to interpret and apply the CEA – has determined that EFFs are not wash trades. The CBOT cannot then usurp the Commission's authority by determining not to allow EFFs because it believes – contrary to the express views of its regulator – that they are wash trades. Of course, as evidenced by practices on its affiliated exchanges, the CBOT and its parent company do not actually believe that EFFs are illegal wash trades, but are simply using this argument as a convenient smokescreen for their anti-competitive conduct.

Second, the CBOT argues that EFFs are "non-competitive trades," and are prohibited on this basis as well. Again, the CBOT well knows that there are a variety of non-competitive trades that are permissible, and completely legal, on every exchange, including the CBOT and its affiliated exchanges. These include exchanges of futures for physicals, exchanges of futures for swaps, exchanges for risk, block trades and others. By characterizing EFFs as non-competitive trades, CBOT is attempting to conflate the term "wash trades" with the term "non-competitive trades" and bootstrap its contention that EFFs are "non-competitive" into an argument that they are wash trades. This distortion should not be countenanced. A wash trade might be non-competitive, but not all non-competitive trades are necessarily wash trades. More to the point, a non-competitive trade is not necessarily illegal and the Commission, as well as the CBOT's own affiliates, have found that EFFs are permissible under the CEA.

CBOT's contention that the Dodd-Frank Bill has changed the statutory landscape is also misleading. The section of the Dodd-Frank amendment cited by the CBOT to support this argument has been in the Act under standards for contract market designation for many years, 7 USC §7 (b)(3). Moving the provision from one section governing contract markets to another is not a substantive amendment.

Third, CBOT fails to respond to the Commission's request that CBOT provide a detailed explanation for the assertion that "permitting EFFs would enable ELX to free ride on CBOT's investments in exchange facilities" or "clearing facilities." This is not surprising, because permitting EFFs would not involve ELX's use of any CBOT facilities. To the extent that CBOT customers would use their facilities to either enter or exit positions on ELX, they would do so in the context of their relationships with CBOT, having nothing to do with ELX, and CBOT would be compensated as part of such transactions.

CBOT's argument that compulsory EFFs would allow rivals to free ride on CBOT's efforts to develop new contracts might make sense if the creation of such contracts generated protectable intellectual property or otherwise amounted to significant product innovation. But they do not, and CBOT acknowledges as much in its submission. (CBOT Letter, p. 17.) CBOT's position amounts to an unjustifiable request that the Commission excuse its anti-competitive rule because it provides a shield from competition that intellectual property law fails to provide.

CBOT primarily argues that EFFs will allow ELX to free ride on CBOT's "pool of liquidity" and "open interest." But permitting EFFs that will allow market participants to move more efficiently between products offered by ELX and CBOT and the competing platforms offered by the competing markets does not raise any free rider issue at all. To the extent that CBOT provides a better trading platform, better execution, and better services to its customers, those customers will not be lured away by competition from ELX – regardless of whether EFFs are available. But if ELX offers a more attractive and competitive market that results in customers moving between the markets, lowering barriers to permit such movements will enhance not harm competition. Moreover, such customer movement does not involve free riding at all -- ELX has listed its own contracts and has developed the terms and trading conditions for those contracts. The EFF Rule does nothing more than permit market participants trading those contracts, if they wish to do so, to transfer their open positions to another exchange that lists similar or identical contracts. Indeed, it is the customers that own the open interest in any event, not the exchanges, and the EFF Rule merely permits the owners of the open interest to hold it in the venue of their choosing. The positions then become open positions on that other exchange and cannot be characterized as ELX improperly taking the other exchange's liquidity. Accordingly, the EFF Rule will operate only to enhance overall market liquidity, to the benefit of all market participants, and will encourage and promote competition among competing markets.

Fourth, while the CBOT Letter contends that EFFs executed pursuant to the ELX Rule are illegal wash trades it fails to consider that substantially similar trades are executed on its affiliated exchange, the New York Mercantile Exchange ("NYMEX") and are permissible. NYMEX has a long history of using EFFs, and transactions called by other names, but having substantially the same purpose. While the CBOT Letter discusses the earliest such use involving the International Petroleum Exchange ("IPE") and NYMEX Brent contracts, subsequent examples have included the e-mini natural gas and crude oil contract EFF Rules allowing them to be converted to the larger physically delivered contracts, and a history of allowing brokered transitory EFP and EFS transactions to facilitate position transfers between the Intercontinental Exchange and NYMEX. While there may be limited distinctions between the original NYMEX EFF Rule and the ELX EFF rule, none of these distinctions are relevant to the CBOT's wash trade analysis. In addition to the other CME transactions which mirror the purpose of the EFF, other CME markets allow transitory EFRP transactions to establish or offset positions in foreign exchange futures, agriculture futures, precious metals futures, and hundreds of untraded, cleared only energy "futures" processed through the Clearport service. Ms. Cronin's statement to Chairman Gensler that "all matched, prearranged transactions designed to negate market risk are prohibited by the CEA" ignores all these other examples under the CME roof that similarly meet her description of unlawful transactions. Her assertion is simply untrue and was already correctly found to be without merit by two CFTC Division heads and the full Commission. Therefore, the CBOT cannot claim that EFFs executed on ELX are illegal without reaching the same conclusion with respect to the NYMEX transactions, and the many others it countenances. Of course, CBOT does not reach that conclusion simply because it knows that the ELX EFFs are not illegal; its actual, and completely transparent, goal is to stifle competition by claiming that EFFs are illegal when it is convenient for it to make that claim. The arbitrary contrast between the CBOT's views on the EFF Rule and its views on the NYMEX EFF rules and transitory EFRPs in other markets ultimately reveal its true anticompetitive intent and objectives.

The CBOT Letter fails to address, as the Commission and DMO requested, why its reasons for opposing the EFF transaction do not violate Core Principle 18. Indeed, the CBOT Letter makes clear that its reasons are driven by an anti-competitive motivation. CME's views on wash trades, which appear to apply exclusively to ELX's trades, but not CME's, have been discredited by the Commission. Proffering a legal argument that our regulator has already twice dismissed in connection with this very issue, illuminates the anti-competitive motivation which is at the heart of CME's anti-EFF posture. CME's untrue claims of free-riding articulate how the EFF could harm the CME, but CME makes no real effort to address how the EFF does anything but benefit customers and the marketplace. Again and again the CBOT Letter reflects a concern for the CME's own business issues. However, by arguing to protect its revenue base, rather than acting for the best interests of the market, the CBOT Letter fully supports a finding of anti-competitive intent, especially for an exchange with a market share above 90%.

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.

Sincerely,

Neal Wolkoff

cc: Mr. David Stawick
(Secretary)

Mr. Gary Gensler
(Chairman)

Mr. Michael Dunn
(Commissioner)

Mr. Bart Chilton
(Commissioner)

Ms. Jill Sommers
(Commissioner)

Mr. Scott O'Malia
(Commissioner)

Mr. Dan Berkovitz
(General Counsel)