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By Electronic Filing

November 4, 2009

Mr. David A. Stawick
Secretary to the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

2009 NOV 5 AM 8 56
OFFICE OF THE SECRETARIAT
C.F.T.C.

Re: Supplement to Letter to the Commission Dated October 20, 2009 to stay the effectiveness of CME Group's self-certified Rule Interpretation concerning EFF Transactions

Dear Mr. Stawick:

ELX Futures, L.P. ("ELX") respectfully submits this supplemental material in connection with ELX's letter dated October 20, 2009 to the Secretary of the Commodity Futures Trading Commission (the "Commission") to stay the self-certified Advisory Notice filed by the CME Group ("CME") and dated October 19, 2009 (CBOT RA0907-1) (the "Rule Interpretation"). The request for the stay is predicated on the certification accompanying the Rule Interpretation being a "false certification," which is a basis for the Commission to stay, or reject, the CME's Rule Interpretation, and reassert the primacy of the Commission's rule approval process.

Among other claims, the Rule Interpretation states:

Additionally, a prearranged, matched pair of ... trades that are executed for the purpose of moving a futures position from one clearing house to another are both contingent and transitory trades and, under CBOT rules, may not be employed to create or liquidate a futures position.

As previously pointed out, by calling the EFF a "prearranged trade," the Rule Interpretation is giving supremacy to the CME's view of what constitutes a violation of

commodity law above the Commission's determination in the rule approval process.¹ The Commission's rule approval after due consideration determined that the EFF transaction did not violate the Act and, as a result, ELX and its users were entitled to the legal certainty of the rule having been approved with finality. CME's usurpation of regulatory authority from the Commission must be resolved in favor of the Commission to preserve the legal certainty of Commission actions, including rule approvals, from subsequent attacks by regulated entities.

Further, in ELX's letter of October 20, ELX points out that the CME routinely accepts what it refers to as "transitory" trades, i.e. trades that the CME claims are in violation of various rules and regulations, including as we noted in its CBOT division.

Accompanying this letter we provide the Commission with additional information that ELX was not aware of on October 20. This concerns the existence of an electronic marketplace on a major electronic platform that offers trades termed "EFS" between NYMEX and ICE crude oil futures contracts. These futures against futures transactions involve "matched pair[s] of... trades that are executed for the purpose of moving a futures position from one clearing house to another [and] are both contingent and transitory trades..."(see the Rule Interpretation).

Copies of screen shots are attached as evidence. The futures against futures trades between exchanges are offered as part of a menu of Clearport services, which is a major offering of CME. CME, of course, clears these trades, and its marketing department heavily markets the Clearport services. In addition, its compliance department conducts audits to determine the bona fides of EFRP trades. We are not seeking to undo, or sanction the electronic service, but merely point out the hypocrisy and lack of regulatory purpose in allowing transitory trades in all of CME's markets, and allowing the equivalent of EFF trades both inter-market (NYMEX-ICE) and intra-market (NYMEX e-minis vs. NYMEX standard sized physically settled contracts), while concurrently espousing regulatory concerns, and threatening regulatory sanctions against firms, from the same trades when they pose a possible source of competition to CME.

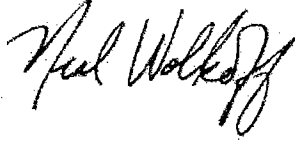
It is clear that as long as the beneficiary of the rules is CME and not ELX, CME views the practices of transitory trades and EFFs as permissible, but if the beneficiary is a competitor, like ELX, the practices are said to be abhorrent. The Act's Core Principle 18 (Anti-Trust Considerations) should not permit a Self-Regulatory Organization ("SRO") to exercise rule enforcement powers for any reason other than protection of investors and the public at large.²

¹ The terms "transitory" and "prearranged" trades are not specifically mentioned in the Act, but the terms "wash trade," "fictitious trade," §4c(a), 7 USC §6c(a) and the Act requires a "competitive, open and efficient market," §5d(9), 7 USC §7(d)(9). Prearranged and transitory trades derive their illegitimacy through non-compliance with the foregoing sections of the Commodity Exchange Act, the "Act." The Commission's rule approval after due consideration determined that the EFF transaction did not violate the Act.

² Section 3(b) of the Act, 7USC § 5(b) – PROTECTION OF THE PUBLIC INTEREST, states: It is the purpose of this Act to serve the public interests...through a series a system of effective self-regulation of trading facilities...under the oversight of the Commission.

Thank you for your consideration. Please don't hesitate to call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Wolkoff". The signature is written in a cursive, slightly slanted style.

Neal L. Wolkoff

cc: Chairman Gary Gensler
Commissioners Dunn, Sommers, Chilton and O'Malia
Dan Berkovitz
Steven Schoenfeld
Eric Juvenas
Tim Karpoff
Richard Shilts
Riva Adriance

Attachments: Prior Filing of October 20, 2009; screen shots; CBOT RA0907-1

ENERGY - WTI Nymex vs Ice



09/22/09

Basis Swap RE, EFS Comp, NBP - HK, INS Nymex vs Ice, Nil Swaps, PenLD Comp, Prompt NG, WTI Nymex vs Ice

Flag	Description	Bid Amt	Bid	Offer	Offer Amt	LTP	Description	Flag	Bid Amt	Bid	Offer	Offer Amt	LTP
✓	--NMX WTI TAS Blocks--						CLH2 vs ENH2 Mar12	✓					
✓	NMX WTI TAS Dec09						CLJ2 vs ENJ2 Apr12	✓					
✓	--WTI NMX vs ICE--						CLK2 vs ENK2 May12	✓					
✓	CLZ9 vs ENZ9 Dec09						CLM2 vs ENM2 Jun12	✓					
✓	CLF0 vs ENF0 Jan10						CLN2 vs ENN2 Jul12	✓					
✓	CLG0 vs ENG0 Feb10						CLO1 vs ENO1 Aug12	✓					
✓	CLH0 vs ENH0 Mar10						CLU2 vs ENU2 Sep12	✓					
✓	CLJ0 vs ENJ0 Apr10						CLV2 vs ENV2 Oct12	✓					
✓	CLK0 vs ENK0 May10						CLX2 vs ENX2 Nov12	✓					
✓	CLM0 vs ENM0 Jun10						CLZ2 vs ENZ2 Dec12	✓					
✓	CLN0 vs ENN0 Jul10						CLF3 vs ENF3 Jan13	✓					
✓	CLQ0 vs ENQ0 Aug10						CLG3 vs ENG3 Feb13	✓					
✓	CLU0 vs ENU0 Sep10						CLJ3 vs ENJ3 Apr13	✓					
✓	CLV0 vs ENV0 Oct10						CLK3 vs ENK3 May13	✓					
✓	CLX0 vs ENX0 Nov10						CLZ3 vs ENZ3 Dec13	✓					
✓	CLZ0 vs ENZ0 Dec10						CLZ4 vs ENZ4 Dec14	✓					
✓	CLF1 vs ENF1 Jan11						CLZ5 vs ENZ5 Dec15	✓					
✓	CLG1 vs ENG1 Feb11						CLZ6 vs ENZ6 Dec16	✓					
✓	CLH1 vs ENH1 Mar11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLJ1 vs ENJ1 Apr11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLK1 vs ENK1 May11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLM1 vs ENM1 Jun11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLN1 vs ENN1 Jul11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLQ1 vs ENQ1 Aug11						WTI Nymex vs Ice Dec09 vs	✓					
✓	CLU1 vs ENU1 Sep11						WTI Nymex vs Ice Jan10 vs	✓					
✓	CLV1 vs ENV1 Oct11						WTI Nymex vs Ice Jan10 vs	✓					
✓	CLX1 vs ENX1 Nov11						WTI Nymex vs Ice Feb10 vs	✓					
✓	CLZ1 vs ENZ1 Dec11						WTI Nymex vs Ice Dec10 vs	✓					
✓	CLF2 vs ENF2 Jan12						WTI Nymex vs Ice Dec10 vs	✓					
✓	CLG2 vs ENG2 Feb12						WTI Nymex vs Ice Dec11 vs	✓					

Futures Contract Description

Notes

The ICE Futures West Texas Intermediate (WTI) Light Sweet Crude Oil futures contract, launched on February 3 2006. This contract is cash settled against the prevailing market price for US light sweet crude. Price is equal to the penultimate settlement price of WTI crude

25) View All Notes

Contract Specifications

Name WTI CRUDE FUTURE Dec09
 26) Ticker ENZ9 Comdty
 27) Exchange ICE-Intercontinental Exchange

Trading Hours

Exchange Local
 01:00-23:00 21:00-19:00

Contract Size 1,000 barrels

Value of 1.0 pt \$ 1,000

Tick Size 0.01

Tick Value \$ 10

28) Price **78.91** USD/bbl

Contract Value \$ 78,910 @ 10:37:13

Margin Limits

Speculator Hedger

Initial 4,140

Secondary

Cycle	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Up Limit										250.00		146.77
Down Limit										5.00		46.15

Price Range

Up Limit 250.00 Life High 146.77
 Down Limit 5.00 Life Low 46.15

Related Dates

Cash Settled

First Trade Tue Feb 21, 2006

Last Trade Thu Nov 19, 2009

Valuation Date Thu Nov 19, 2009

1) Future **WTI CRUDE FUTURE Dec09**

Australia 61 2 9777 8600 Brazil 5511 3048 4500 Europe 44 20 7330 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000
 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000
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 SN 898172 29-Oct-2009 10:47:36

MARKET REGULATION ADVISORY NOTICE

Exchange	CBOT
Subject	Prohibition of Exchange of Futures for Futures (EFF) Transactions
Rule References	Rule 538
Advisory Date	October 19, 2009
Advisory Number	CBOT RA0907-1

This Market Regulation Advisory Notice addresses inaccurate information that has circulated recently regarding CBOT rules governing Exchange for Related Position transactions.

CBOT Rule 538 ("Exchange for Related Positions") permits specified types of privately negotiated transactions in which a futures or options contract is exchanged for an economically equivalent quantity of a cash commodity or OTC derivatives instrument. These transactions are broadly referred to as EFRP transactions and the permissible types of EFRP transactions are detailed in the rule, which states, in part:

The following transactions shall be permitted by arrangement between parties in accordance with the requirements of this rule:

Exchange for Physical ("EFP") – A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding cash position.

Exchange for Risk ("EFR") – A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding OTC swap or other OTC instrument.

Exchange of Options for Options ("EOO") – A privately negotiated and simultaneous exchange of an Exchange option position for a corresponding OTC option position or other OTC instrument with similar characteristics.

CBOT rules do not permit the execution of Exchange of Futures for Futures (EFF) transactions. The CBOT, as a designated contract market, establishes its rules in accordance with the requirements of the Commodity Exchange Act and CFTC regulations. A futures contract clearly does not qualify as a "corresponding OTC swap or other OTC instrument," and CBOT rules do not and have never permitted a futures contract to be used as the related position component of an EFR transaction.

CME Group issued a comprehensive Market Regulation Advisory Notice regarding EFRP transactions executed on CME, CBOT, NYMEX and COMEX on October 2, 2009. That notice can be found at the following link:

http://www.cmegroup.com/rulebook/files/CME_Group_RA0910-5.pdf

As reflected in the notice, CBOT also does not permit contingent or transitory EFRPs.

Additionally, a prearranged, matched pair of block trades that are executed for the purpose of moving a futures position from one clearing house to another are both contingent and transitory trades and, under CBOT rules, may not be employed to create or liquidate a futures position.

CBOT will continue to enforce its rules and member firms are strongly encouraged to ensure that all employees, as well as customers on whose behalf firms clear EFRPs, are fully informed of the requirements of Rule 538 and the interpretations in the associated Market Regulation Advisory Notices.

Questions regarding this Advisory Notice may be directed to the following individuals in Market Regulation:

Dean Payton, Managing Director, 312.435.3658

Joe Hawrysz, Director, 312.341.7750

Robert Sniegowski, Associate Director, 312.341.5991

For media inquiries concerning this Advisory Notice, please contact CME Group Corporate Communications at 312.930.3434 or news@cmegroup.com.