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

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

Re: Core Principles and Other Requirements for Designated Contract Markets; RIN 3038-AD09

Dear Secretary Stawick:

ELX Futures, L.P. ("ELX") is pleased to submit these comments to the Commodity Futures Trading Commission (the "CFTC") with respect to the above-referenced proposed rulemaking (the "Proposal") concerning Core Principles and Other Requirements for Designated Contract Markets, 75 Fed. Reg. 80571 (Dec. 22, 2010).

ELX became a Designated Contract Market ("DCM") on May 22, 2009, and started trading operations on July 10, 2009, initially offering trading in U.S. Treasury futures contracts, and since June 18, 2010 in Eurodollar futures contracts as well. As a DCM, ELX is directly affected by the proposed regulations, and as the new competitor in the interest rate futures space, we have a unique perspective on the implications of the proposed regulations on competition.

§38.502 – Minimum Centralized Market Trading Percentage Requirement

We believe that the 85% threshold, or any fixed minimum level, of competitive transactions in order to satisfy the conditions for a contract to be listed on a DCM threatens the competitiveness of DCMs with SEFs as incubators for new and innovative products and denies access to parties that are capable of managing the risks of relatively illiquid markets, but do not qualify as Eligible Contract Participants. The study cited in the NOPR which shows that most benchmark futures contracts trade more than 85% of their cumulative volume by competitive execution is unfortunately biased by relying on a study of well-established benchmarks. There is no evidence to suggest that new products will naturally attain such a threshold level within a year or two, particularly where the competitive landscape will include SEFs, which have no open and competitive execution

requirement and where initial liquidity could be fragmented amongst multiple boards of trade operating under the different models.

Whether a new product is launched on a DCM as a futures contract, or on a SEF as a swap, may depend much more on the ability of the venue to develop a marketplace for the product than on whether its characteristics are more swap-like or futures-like. The proposed rule creates an unbalanced landscape between SEFs and DCMs which would disadvantage DCMs when comparing contract venues. Even though DCMs are given a period of a year, or perhaps two, to develop a liquid market, the possible disruption to the marketplace should the DCM not fully satisfy the 85% requirement would itself mitigate against initially listing a product on a DCM instead of on a SEF.

We believe that for most contracts, the large majority of futures customers are eligible to transact in SEFs. If there is a disincentive to list a contract on a DCM, because it has an over-broad requirement for competitive execution, the simple answer is to list the new product on a SEF. In addition, if the product is economically related to an established benchmark contract, then in order to avoid the issue of a prohibition on cross-margining there is an incentive for most benchmark products also to be moved to a SEF. Current CFTC bankruptcy rules prohibit cross margining between futures and standardized cleared swaps. By favoring SEFs as the standard vehicle for product listing, the rules as they are proposed would subject the public to price formation that takes place away from fully regulated exchanges and instead occurs on venues where there is no standard for competitive execution. Dodd-Frank was not intended to remove the rationale to list products on DCMs.

We would make the following recommendations in place of the proposed rule:

- A DCM may list or retain a product for trading provided that:
    - **(1)** the product is listed on the exchange's primary electronic trading system to enhance its likelihood of developing liquidity;
    - **(2)** the product is subject to DCM oversight, rules and regulations; and
    - **(3)** any matched trades be submitted pursuant to block trading rules to provide for timely trade and price reporting.

If these standards were adopted, the Commission could then work with the respective DCMs to adjust block levels based upon the individual facts and circumstances of a particular contract. To the extent that a swap contract is standardized, a DCM should be encouraged, not frustrated, from offering that product on its trading platform in an effort to develop a market. In this way, DCMs and SEFs can compete to see which model for a product is embraced by the market. If a product is less standardized and

complex, and/or illiquid, an appropriate decision would be to list it only on a SEF. Benchmark contracts should remain on DCMs whatever their current level of exchange trading, e.g. options on a benchmark contract, because of their impact on the public and the enhanced regulatory environment under which DCMs operate.

§38.503(g) – Block Trades on Futures Contracts

The standard time in which to report a block trade should not be prescribed as 5 minutes for all products. Although 5 minutes is the amount of time that CME generally allows to report a block, it is less than the 15 minute period on ELX, a threshold approved by Commission staff, and which has not created a problem. Prior to the several mergers that have consolidated exchanges in the U.S. there were a variety of reporting times at different markets; however the consolidation of exchanges has limited diversity on the issue. We ask the Commission not to follow the lead of a dominant market just because it is dominant, but to leave discretion to the Commission's staff and the exchanges to propose appropriate standards case by case.

§38.7 – Prohibited Use of Data Collected for Regulatory Purposes

We agree that parties who furnish proprietary data should be assured of their data being held in strict confidence. However, by stating that such data "may not [be] use[d] for business or marketing purposes," the restriction may be interpreted too broadly, and going beyond protecting the confidential nature of the information. The standard for confidential treatment should rest on whether the use and manner of use of such information violates the reasonable expectation of confidentiality on the part of the disclosing firm.

Senior officers of the exchange should have access to the data to understand the markets they are responsible to oversee, even without a "compliance" moniker in their title. An exchange also should be able to consolidate proprietary data in anonymous fashion to explain its markets to industry groups and the public, something which is currently done, without running afoul of this proposed regulation. In addition, an exchange should be able to use its discretion to convey proprietary information for business and marketing purposes back to employees of the firm that supplied the data and is owed the duty of confidentiality. Explaining to a trading desk, for example, how the activity of its firm has changed or could be done more cost effectively should be permissible under §38.7.

§38.151 – Access Requirements

Regarding the requirement for equal fees within any category of market access, we recommend several modifications to the Proposal. Marketing a competitive exchange requires some flexibility in how fees are implemented in order to allow the new market to effectively build a customer base. The exchange is a business and may have a valid business reason to allow a large customer a fee reduction for three or six months that may

not be available to other customers in a similar category in order to have the desired customer participate on your market. Similarly, an exchange may want to sign up participants to a market-maker program without disclosing in advance what it is doing.

We sometimes find it frustrating after announcing a fee for a product only to discover that certain targeted customers have "private" arrangements elsewhere for the same or lower fee. However, not all customers receive the same commission from their FCM, IB, or executing broker, and it is artificial to require exchanges to forego the use of flexibility in pricing tools to build a marketplace. Competition should not be rigidly regulated at the exchange level while other regulated entities doing business with customers are permitted to use competitive pricing.

§38.255 Risk Controls for Trading

The Proposal requires that a DCM have in place effective risk controls including pauses and/or halts to trading. ELX agrees that risk management controls should be established by DCMs. However, it does not agree that automatic halts and pauses should be required because other measures can be used to effectively ensure the viability and accuracy of orders. Halts and pauses can also restrict markets causing unintended negative consequences. In the event of a halt or pause, small firms with limited alternatives outside of DCMs are effectively denied an ability to execute or unwind a hedge when the market is paused or halted.

A DCM should be afforded discretion in determining if automatic pauses or halts are necessary as long as its rules provide the authority to halt markets as an Emergency Action.

§38.8 Boards of Trade Operating Both a Designated Contract Market and a Swap Execution Facility

As the NPRM states, the Dodd-Frank Act establishes that a DCM may list and trade swaps pursuant to its designation as a contract market. It also establishes that a DCM could operate an SEF separately if it meets the provisions of the Dodd-Frank Act including SEF registration requirements and ongoing compliance with SEF core principles as amended by the Dodd-Frank Act and part 37 of the Commission's regulations.

The NPRM has not made clear what criteria would be used to distinguish between a swap and a futures contract that has characteristics of a swap or is commonly referred to as a swap, but that arguably meets the definition of a futures contract. The ambiguity causes uncertainty and perhaps redundant costs for boards of trade that would prefer to follow the DCM model without having to adopt a parallel set of rules and procedures in order to satisfy requirements that may differ depending on which definition applies to a product offered by a board of trade. Compliance with Section 727 of the Dodd-Frank Act

and Proposed § 38.10 of the Commission's rules as it applies to real time reporting is one example where clarity is needed.

§38.605 Direct Access

The NPRM proposes to require a DCM to adopt and enforce rules requiring an FCM to use the systems and controls provided by the DCM. Recognizing that many FCMs already have very sophisticated automated controls outside of those provided by the DCM, the Commission should consider permitting a DCM to allow an FCM to bypass use of the DCM provided controls if it already provides sufficient risk controls that have been tested and deemed to be sufficient by the DCM.

§38.702 Disciplinary Panels

Proposed 38.702 requires a DCM to have a Review panel responsible for determining whether a reasonable basis exists for finding a violation of contract market rules, and for authorizing the issuance of notices of charges against person alleged to have committed violations if the Review Panel believes that he matter should be adjudicated. The Proposal would impose on ELX the need to create processes and procedures and to assign a panel to a process that is carried out already by its Compliance Director who in turn is directly supervised by the Regulatory Oversight Committee. A DCM should be able to obtain a waiver from the Review panel requirement if it has already been designated as a contract market and currently operates under an alternative structure with respect to disciplinary procedures that have sufficient structural controls.

I am ready to answer any questions.

Best regards,