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

Joint CFTC-SEC Hearings on Regulatory Harmonization

Submission of Written Statement in Lieu of Oral Testimony of Neal L. Wolkoff ELX Futures, L.P.

Hearings Held on September 2 and 3, 2009

Testimony Submitted to the CFTC and SEC September 14, 2009

I am submitting this written testimony on behalf of ELX Futures, L.P. ("ELX") for consideration by the SEC and CFTC as the agencies review ways to respond to the U.S. Department of the Treasury's request for recommendations to Congress to harmonize securities and futures regulatory structures.

ELX is a fully regulated, electronic futures exchange that opened its doors for operations on July 10, 2009. ELX was founded by 13 global financial institutions. ELX's initial product slate includes the four benchmark U.S. Treasury futures contracts that are mainstay interest-rate futures products at the CME Group. As the CME Group controls approximately 96% of all domestic futures and options volume, and since ELX represents the fourth exchange effort to compete in this same product space in the last eleven years – the other three having failed rapidly after launch – the main focus of this testimony concerns competitive issues. The differences between the securities and futures industries on matters of competition are stark.

This joint hearing is based on the section "Harmonize Futures and Securities Regulation" of the Department of the Treasury's white paper "Financial Regulatory Reform: A New Foundation." After noting the drawbacks to exchange competition from "arbitrary jurisdictional distinctions," the white paper states:

> "Permitting direct competition between exchanges **also** would help ensure that plans to bring OTC derivatives trading onto regulated exchanges or regulated transparent electronic trading systems would promote rather than retard competition." (p. 49)

We believe that exchange competition has generally not been harmed by conflicts between the agencies. To be sure, there have been instances where the CFTC and SEC have not agreed, and those disagreements have resulted in lengthy review periods for product introductions and capital inefficiencies because of portfolio margining disparities. These are not trivial issues, but they are not the core reason behind lack of exchange competitiveness, either.

Exchange competition is furthered where market participants have access to unaffiliated clearinghouses that are not tied to the execution venue, and where identical products can be bought on one market, sold on another and offset, i.e. treated as fungible. Those principles are at the essence of competition at the exchange level.

Prior to becoming CEO of ELX Futures in October 2008, I was Chairman and CEO of the American Stock Exchange beginning in January 2005, after its spin-off from the NASD until its acquisition in October 2008 by NYSE Euronext. Prior to that, I spent over 20 years at the NYMEX in such senior roles as Acting President, Chief Operating Officer, and Senior Vice President for Regulation and Clearing. I started my career as an Honors Program Trial Attorney with the CFTC. My work and educational experience have given me a broad familiarity with the business practices and regulation of both the securities and futures industries. My current role makes me acutely aware of the competitive barriers – as distinct from regular market competition – in the futures industry.

Chairman Gensler has spoken publicly on several occasions of his intention to require OTC transactions that become tradable on exchanges or electronic platforms to be fungible. In the event fungible trading occurs in instruments that previously had traded OTC, then equities, equity and index options, former OTC derivatives that become exchange traded, ,and U.S. Treasury cash contracts will all be traded fungibly. Futures on equity indexes, futures on U.S. Treasuries, and futures on the plain vanilla copycat OTC derivatives – which mirror the terms and conditions of the futures contracts they are based on except for physical delivery – on the other hand will not be fungible.

On September 2, the Financial Times published an on-line editorial that I wrote concerning these same matters of competition among exchanges (http://www.ft.com/cms/s/0/584c7aec-97ae-11de-a927-00144feabdc0.html). In reaction to the publication of the FT opinion piece, I noted comments in response that pointed to issues of risk management and operations that would stand in the way of fungibility in futures. I would like to briefly address these.

Obviously, the securities industry took the simplest action to resolve these issues, which was to centralize clearing in a single entity (one for securities and treasuries, one for options) and keep clearing separate from any trading venue. This path would certainly be a straightforward way to address risk management concerns and operations concerns, and kick-start competition in futures. However, even if competing clearinghouses handled trades, risk management could be centralized, and dealt with by information sharing agreements, or handled in other formal ways. Operational issues are also easily overcome: position adjustments, EFF (Exchange of Futures for Futures) transactions, and mutual offset agreements are all mechanisms that are now being used and which can facilitate the operational needs of firms to move offsetting positions from clearinghouse to clearinghouse. The alternative of non-competitive markets is hardly worth a shoulder shrug or an "it can't be done" reaction when tools are readily available to discuss and put into action for the investors' benefit.

Thank you for your consideration.

Sincerely,

Neal Wolkoff