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May 29, 2007

Received CFTC  
Records Section

05/30/07

Via Electronic Mail

Ms. Eileen A. Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**COMMENT**

Re: Commodity Futures Trading Commission ("CFTC") Notice of Proposed Order and Request for Comment Regarding OCC Filing on Credit Default Products

Dear Ms. Donovan:

This letter is submitted by Chicago Board Options Exchange, Incorporated ("CBOE"), in response to the CFTC's Notice of Proposed Order and Request for Comment ("Notice"), regarding certain credit default products to be listed by CBOE and cleared through The Options Clearing Corporation ("OCC") as securities.<sup>1</sup> The specific security products to be listed by CBOE and cleared through OCC are Credit Default Options ("CDOs") and Credit Default Basket Options ("CDBOs").

CBOE has submitted rule filings to the Securities and Exchange Commission ("SEC") in CBOE's capacity as a national securities exchange in order to list the CDOs and CDBOs as securities on CBOE. Similarly, OCC, in its capacity as a securities clearing agency, has submitted rule filings to the SEC to clear these products as securities through OCC. As set forth in the Notice, OCC has also requested CFTC approval of the rules and rule amendments that would enable OCC to clear the CDOs and CDBOs as securities in its capacity as a securities clearing agency.<sup>2</sup>

<sup>1</sup> See Proposal to Exempt the Trading and Clearing of Certain Credit Default Products Traded on the Chicago Board Options Exchange and Cleared Through The Options Clearing Corporation, 72 FR 27091 (May 14, 2007).

<sup>2</sup> OCC is unique in that it is currently the only clearing agency that is dually registered as an SEC-regulated securities clearing agency and a CFTC-regulated derivatives clearing organization. Given its dual registration status, OCC has submitted the rule changes relating to CDOs and CDBOs to both the SEC and CFTC, even though the rule changes relate solely to securities products.

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Consistent with CBOE's previous comment letters to the CFTC in response to proposals by the Chicago Mercantile Exchange to list certain credit default products of this kind, we believe that the CDOs and CDBOs proposed to be traded by CBOE are securities under the Securities Act of 1933 and the Securities Exchange Act of 1934, and are not subject to the Commodity Exchange Act ("CEA"). As such, the CDOs and CDBOs will be appropriately and fully regulated as securities by the SEC.

Pursuant to Section 4(c) of the CEA, the CFTC can issue an exemptive order permitting CDOs and CDBOs to trade on CBOE and be cleared by OCC as securities without reaching the issue of whether the CDOs and CDBOs are or are not subject to the CEA.<sup>3</sup> In the context of these particular products and in this particular circumstance, CBOE has no objection to an exemptive order as proposed in the Notice since it does not address this issue. In this regard we agree, recognizing that the CFTC may issue an exemptive order without implicating the jurisdictional nature of CDOs and CDBOs.

CBOE appreciates the opportunity to submit this letter. Should you require any further information, please do not hesitate to contact the undersigned.

Sincerely,



Joanne Moffie-Silver

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<sup>3</sup> See Notice at 72 FR 27092. "In proposing this exemption the CFTC need not and does not - find that CDOs and CDBOs are (or are not) subject to the CEA. During the legislative process leading to the enactment of Section 4(c) of the CEA, the House-Senate Conference Committee noted that: The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument or transactions for which an exemption is sought is subject to the Act..." (quoting H.R. Rep. 102-978, 1992 U.S.C.A.N. 3179, 3214-15).