

**From:** Klebes, Jennifer <klebes@cboe.com>  
**Sent:** Monday, September 20, 2010 6:00 PM  
**To:** rule-comments@sec.gov; dfdefinitions <dfdefinitions@CFTC.gov>  
**Cc:** Brodsky, Bill <Brodsky@cboe.com>  
**Subject:** Definitions in Dodd Frank Act; File Nos. S7-16-10  
**Attach:** 09-20-10 Comment Letter to SEC-CFTC Dodd Frank Definitions.pdf

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Attached, please find Chicago Board Options Exchange, Incorporated's comment letter to File Nos. S7-16-10.

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September 20, 2010

**Via Electronic Mail**

Ms. Elizabeth M. Murphy  
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Securities and Exchange Commission  
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Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
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Washington, D.C. 20581  
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**Re: Definitions in Dodd-Frank Act; File No. S7-16-10**

Dear Ms. Murphy and Mr. Stawick:

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") adopts sweeping changes to how the markets in the United States for over-the-counter ("OTC") derivatives, and the participants in those markets, will be regulated. The Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") jointly have published a notice in the Federal Register requesting comments on the definitions of certain key terms that are defined in the Act. Chicago Board Options Exchange, Incorporated ("CBOE") appreciates this opportunity to provide its views on that subject.

CBOE operates the nation's largest securities options exchange under SEC jurisdiction. In addition, CBOE's affiliate CBOE Futures Exchange, LLC operates a futures market under CFTC jurisdiction. Accordingly, our comments are based on our experience in operating markets for exchange-traded derivatives for both options and futures, under the separate regulatory schemes overseen by the SEC and the CFTC, respectively.

We recognize that each agency will have to conduct dozens of rulemaking proceedings, some separately and some jointly with the other agency, in order to implement the Act by the statutory deadline established by Congress. We also recognize that many of those rulemaking proceedings will depend, in large part, on how certain key terms used in the Act are defined and

interpreted. This proceeding thus will lay the foundation for other rulemaking proceedings in the coming months. Accordingly, CBOE's comments will address certain broad themes and purposes of the Act, and we urge the SEC and CFTC to define and interpret the statutory definitions in a manner that is consistent with these broad themes and purposes. We expect to comment on the specific rules ultimately proposed by the agencies in this area, but felt it important and helpful to convey our thoughts on how the SEC and CFTC should approach the rulemakings so that the rules ultimately proposed reflect the critical policy judgments embodied in the Act.

### **Benefits of Central Clearing and Exchange Trading**

One of the most important elements of the financial reform legislation is the requirement that OTC derivatives, with some exceptions, must be cleared through a regulated central counterparty. The Act requires clearing of all "swaps" and "security-based swaps" that the CFTC or SEC determine should be cleared. Swaps that are cleared must be traded either on a registered exchange (a designated contract market in the case of swaps or a national securities exchange in the case of security-based swaps) or on a facility called a "swap execution facility."

These legislative mandates are supported by strong public policy considerations. Centralized clearing of swaps greatly reduces the risk of a counterparty default. Exchange trading, by displaying pre- and post-trade price information, offers greater transparency than that offered by OTC markets. Such transparency, in turn, leads to better and more credible price discovery and provides an environment for increased liquidity. Transparent exchange prices and firm quotes provide price validation and references for valuation, thus enhancing the ability of market participants to obtain prices for valuation purposes. Exchange trading also provides an efficient infrastructure for processing orders and trades. In addition, because exchange trading takes place in a transparent environment, it is easier to surveil and to regulate – thus deterring rule violations and making it easier to detect and punish those who violate the rules.

The definitions in the Act should be refined and interpreted in a way that maximizes the benefits of central clearing and exchange trading. In particular, the definitions of "swap" and "security-based swap" should be construed broadly so that derivatives transactions in the U.S., subject only to the exclusions expressly specified in the Act, are brought under regulatory oversight by the CFTC and SEC in accordance with the regulatory framework established by the Act. Customization of derivatives should not be allowed to become a "loophole" to escape regulatory oversight.

### **Need for Regulatory Coordination and Parity of Treatment**

In general, the Act allocates regulatory jurisdiction over derivatives between the CFTC and the SEC based on the nature of the instrument or commodity underlying the derivative. In some cases, the CFTC has jurisdiction over classes of derivatives that are closely related to derivatives that are under SEC jurisdiction. For example, equity swaps and credit default swaps that are based on a single issuer or a narrow-based index fall under SEC jurisdiction, while the CFTC has jurisdiction over equity swaps and credit default swaps based on a broad-based index.

CBOE believes that the regulation of derivatives should be based on the following fundamental principles: (1) the regulation should be appropriate for the nature and characteristics (including level of risk) of a particular class of derivatives, and (2) the regulation of comparable derivatives should be consistent, regardless of the market where the derivatives are traded or which agency has jurisdiction over such derivatives. These principles can be illustrated with some examples. As discussed above, centralized clearing of swaps greatly reduces the risk of a counterparty default. It is thus appropriate, as recognized in the Act, for capital and margin requirements to be set at higher levels for uncleared swaps (as opposed to cleared swaps) in recognition of the greater risk associated with holding swaps that are not centrally cleared. On the other hand, for equity swaps and credit default swaps that are centrally cleared, the capital and margin requirements should be consistent regardless of whether the swaps are traded under CFTC regulation or SEC regulation (except to the extent that the characteristics of different swaps justify different regulatory treatment). The CFTC and SEC should cooperate to ensure consistent regulatory treatment and to avoid regulatory arbitrage or the creation of regulatory disparities between markets under their respective jurisdictions. Thus it is important that the definitions do not result in bifurcated regulatory approaches to comparable instruments merely due to regulatory categorization.

The same principles should apply with respect to swap transactions that are executed on a new type of trading platform known as a swap execution facility. There should be a level playing field between swap execution facilities and traditional exchanges, and there should be no regulatory disparities that would give market participants an incentive to execute swap transactions on a swap execution facility as opposed to a traditional exchange.

We realize that the rules needed to establish a regulatory framework for implementing the provisions of the Act will be discussed in future rulemaking proceedings. However, we thought that it would be helpful to present our views on certain fundamental principles of regulation at this early stage so that the SEC and CFTC will be aware of them when drafting future rules and regulations. We appreciate this opportunity to present our views and we stand ready to assist both agencies in this important endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Brody". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.