

**From:** Hammar, Julian

**To:** Eastman, James L.; King, Elizabeth K.

**Cc:** Arbit, Terry ; Shilts, Richard A. ; Leahy, Thomas M., Jr. ; Moser, James T ; Fekrat, Bruce

**Sent:** Mon May 04 17:11:05 2009

**Subject:** CBOE proposal to list options on the S&P 500 Dividend Index

James Eastman

Chief Counsel and Associate Director

Elizabeth King

Associate Director

Division of Trading and Markets

Securities and Exchange Commission

Jim and Elizabeth,

I am writing with regard to the Chicago Board Options Exchange's (CBOE's) proposal to list options on the S&P 500 Dividend Index, recently published in the Federal Register. 74 Fed. Reg. 15528 (April 6, 2009); Exchange Act Release No. 34-59667. The S&P 500 Dividend Index (Index) represents the accumulated ex-dividend amounts of all companies included in the S&P 500 Index over a specified quarterly accrual period. CFTC staff has a number of concerns with respect to this proposal. These concerns include:

- 1) Whether the Index is an index of securities—traditionally a securities index is based on the weighted average of constituent stock prices; here, as noted above, the Index is based on accrued dividend amounts, and staff believes that this “index” may be more akin to an event contract rather than a securities index.
- 2) The proposal states that CBOE will list strike prices derived from an S&P 500 Dividend Index Futures Contract; however, no such futures contract exists.
- 3) The proposal states with regard to surveillance that CBOE will have access to information regarding trading in the underlying securities—however, because the Index represents accrued dividends, which are determined by the boards of directors of the constituent companies, CFTC staff is concerned about how CBOE intends to conduct surveillance for manipulation.

Eurex Deutschland (Eurex) recently listed a futures contract on a similar index based on dividends, the Dow Jones Euro STOXX 50 Index Dividend, for which Eurex has requested no-action relief from the CFTC's Office of General Counsel to offer and sell the contract in the U.S. Some of the above concerns apply to this contract as well.

CFTC staff believes that it would be appropriate to discuss the CBOE and Eurex products, which appear to be novel derivatives products, and these concerns pursuant to the Memorandum of Understanding entered into between the CFTC and SEC, before the SEC takes action on the CBOE's proposal.

Please let us know when would be an appropriate time for a call to discuss the CBOE and Eurex products. Thank you.

Sincerely,

Julian E. Hammar  
Assistant General Counsel  
Commodity Futures Trading Commission