



Jenny L. Klebes
Senior Attorney
Legal Division

t: (312) 786-7466
f: (312) 786-7919
klebes@cboe.com

May 19, 2009

Via Electronic Submission

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-CBOE-2009-022¹ (S&P 500 Dividend Index Options)
Response to CFTC Comment Letter

Dear Ms. Murphy:

We are writing in reference to the above-captioned rule filing and in response to a comment letter submitted by the Commodity Futures Trading Commission ("CFTC").² The filing proposes to amend certain of Chicago Board Options Exchange, Incorporated's ("CBOE" or "Exchange") rules to provide for the listing and trading of options that overlie the S&P 500 Dividend Index. The S&P 500 Dividend Index is a broad-based security index that reflects the cumulative price changes of S&P 500 Index component securities due to ordinary cash dividend payments over a specified accrual period (*e.g.*, quarterly). As proposed, the options will be cash-settled and have European-style exercise. The CFTC has three comments about the proposed product, which CBOE responds to below.

The S&P 500 Dividend Index is a Broad-Based Security Index

The CFTC asks whether the S&P 500 Dividend Index is an index of securities or is "more akin to an event contract." The S&P 500 Dividend Index is an index of securities and CBOE strongly disagrees with the suggestion the proposed product is "more akin to an event contract." The S&P 500 Dividend Index is based on the weighted average of S&P 500 Index constituent stock price changes on ex-dividend days. Although dividend declarations cause the stock price changes, that does not transform the price changes into "events." Indeed, a stock's price is an amalgam of multiple factors, one of which is its dividend. Measuring a stock's price change based on this factor is an appropriate methodology to calculate the change in value of securities.

¹ See Securities Exchange Act Release No. 59667 (March 31, 2009), 74 FR 15528 (April 6, 2009).

² See email from Julian E. Hammar, Assistant General Counsel, CFTC, to James Eastman, Chief Counsel and Associate Director and Elizabeth King, Associate Director, Division of Trading and Markets, Securities and Exchange Commission (May 4, 2009).

The S&P 500 Dividend Index is calculated using the same set of component securities, same shares outstanding, same capitalization weighting methodology and same index divisor that is used to calculate the S&P 500 Index. Moreover, as noted above, the S&P 500 Dividend Index measures stock price changes of S&P 500 Index component securities on their respective ex-dividend dates.³ Considering these factors, the proposed options are clearly based on a security "including any interest therein or based on the value thereof" as defined under §2(a)(1) of the Securities Act of 1933 and §3(a)(10) of Securities Exchange Act of 1934. CBOE's proposed options are on a security index that is calculated in an analogous manner as the S&P 500 Index and which reflect the amount by which the S&P 500 Index is reduced due to the ordinary cash dividends paid by component securities. Accordingly, the S&P 500 Dividend Index is a broad-based security index.⁴ For clarification, a detailed explanation of how the S&P 500 Dividend Index is calculated follows below.

How is the S&P 500 Dividend Index calculated?

(1) Standard & Poor's ("S&P") calculates a "dividend value" for each stock trading ex-dividend on any day during a given accrual period (*e.g.*, quarterly). The dividend value, the stock price change equal to the per share dividend amount multiplied by the float-adjusted shares outstanding,⁵ represents the amount by which the market capitalization for a stock drops strictly as a result of its dividend payment.

For example, on May 6, 2009, IBM traded ex-dividend by \$0.55 per share. S&P calculated IBM's dividend value to be \$738 million (\$0.55 times IBM's float adjusted shares outstanding, 1.34 billion shares).

(2) On each day during a given accrual period (*e.g.*, quarterly), S&P adds the individual dividend values and divides the total by the S&P 500 Index divisor, thereby expressing the daily aggregate dividend value in terms of S&P 500 Index points.

On May 6, 2009, eleven S&P 500 components traded ex-dividend by amounts ranging from \$0.03 to \$0.55 per share. The individual dividend values calculated by S&P totaled nearly \$2.8 billion. Based on the prevailing S&P 500 Index divisor (8,691.338 million), the aggregate dividend value was equivalent to 0.318 S&P 500 Index points.

³ On an ex-dividend date, the listing exchange will adjust the previous day's closing price of a dividend paying stock by the amount of the dividend. As a result, the net price change of a stock on the ex-dividend date is the difference between the current market price of the stock and its adjusted price. For example, XYZ is paying a \$1 dividend, and XYZ closes at \$51 on the night before the ex-dividend date. The listing exchange adjusts the closing price to \$50, so that if XYZ opens at \$50 on the ex-dividend date, the net change in stock price will be \$0.00.

⁴ S&P 500 Dividend Index options are similar to other products previously approved by the Commission that measure changes affecting the price of a security. *See e.g.*, Securities Exchange Act Release Nos. 34-26938 (June 22, 1989), 54 FR 26285 (June 22, 1989) (SR-CBOE-87-30) (approval order relating to options on Treasury Measures) and 34-58171 (July 16, 2008), 73 FR 42841 (July 23, 2008) (SR-CBOE-2008-31) (approval order for CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options).

⁵ "Float-Adjusted" shares reflect only the shares available to investors, excluding shares held by a control group, founding family, another corporation, or government.

Symbol	Name	Ex-Dividend Amt. (5/6/09)	Float Adjusted Shares (millions)	Dividend Value (\$ millions)	S&P 500 Index Points
IBM	Intl Business Machines	\$ 0.55	1,342	\$ 738	0.085
BA	Boeing Co	\$ 0.42	726	\$ 305	0.035
AEP	American Electric Power	\$ 0.41	466	\$ 191	0.022
FII	Federated Investors	\$ 0.24	89	\$ 21	0.002
EQT	EQT Corporation	\$ 0.22	131	\$ 29	0.003
PFE	Pfizer Inc	\$ 0.16	6,745	\$ 1,079	0.124
HCBK	Hudson City Bancorp	\$ 0.15	522	\$ 78	0.009
CMS	CMS Energy Corp	\$ 0.125	227	\$ 28	0.003
SCHW	Schwab, Charles Corp	\$ 0.06	937	\$ 56	0.006
WFC	Well's Fargo & Co	\$ 0.05	4,238	\$ 212	0.024
AA	Alcoa Inc	\$ 0.03	950	\$ 29	0.003
TOTAL				\$ 2,767	0.318

(3) The level of the S&P 500 Dividend Index on any given day is the sum of the daily aggregate dividend values (in S&P 500 Index points) from the beginning of the current accrual period to the present date. S&P calculates the index once per day.

On May 6, 2009, the sum of daily dividend values (in S&P 500 Index points) from March 23, 2009 (the beginning of the March/June accrual period) was 2.199; the level of the S&P 500 Dividend Index, rounded to the nearest penny, was reported as 2.20.

Anticipated Futures on the S&P 500 Dividend Index

The CFTC's second comment is that no S&P 500 Dividend Index futures contract currently exists to serve as the basis for setting strike prices on the proposed product. In its filing for this product, CBOE proposed to use the related S&P 500 Dividend Index futures price as a proxy for the forward index level as a measure for setting strikes. CBOE understood that a futures contract on the S&P 500 Dividend Index was forthcoming and scheduled for launch around the same time as CBOE was preparing to launch CBOE's product.⁶ However, since no futures contract is currently trading, CBOE has submitted a partial amendment to its filing to remove all references to the "related S&P 500 Dividend Index futures contract," and has proposed to use the calculated forward value of the S&P 500 Dividend Index as the measure for setting strikes.

Market Surveillance

The CFTC's third comment involves how CBOE will conduct surveillance for market manipulation for the proposed product. CBOE is confident that it has adequate tools in place to surveil for market manipulation. CBOE and its Department of Market Regulation are regulated and overseen by the SEC, which in turn has knowledge of and access to CBOE's specific surveillance procedures. In fact, as stated in the filing, CBOE will use the same surveillance procedures currently utilized for each of CBOE's other index options to monitor trading in S&P 500 Dividend Index options.⁷ In addition, as a member of the Intermarket Surveillance Group ("ISG") the Exchange is able to obtain information from the exchanges listing the issuers in the S&P 500 Dividend Index pertaining to specific issuers and from the exchanges and FINRA the necessary information pertaining to trading in the stocks comprising the

⁶ CBOE has no objection to futures contracts being listed on the S&P 500 Dividend Index since that index is a broad-based security index.

⁷ The large option positions report is one example of such surveillance procedure.

index. CBOE's access to information from the ISG and tools such our large options positions reports should prove more than sufficient for surveillance of market manipulation, particularly given that the very broad composition of the S&P 500 Dividend Index would render manipulation of options on the index to be an extremely difficult task.

* * * * *

We feel this letter sufficiently responds to the CFTC's comments on CBOE's proposal to list and trade S&P 500 Dividend Index options. Please call me with any questions regarding this letter or the proposal at (312) 786-7466.

Very truly yours,



Jenny L. Klebes

cc: James Eastman (SEC)
Elizabeth King (SEC)
Joanne Moffic-Silver (CBOE)