THE OPTIONS CLEARING CORPORATION
ONE N. WACKER DRIVE, SUITE 500, CHICAGO, ILLINOIS 60606

WILLIAM H. NAVIN
EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY
TEL 312.322.1817 FAX 312.322.1836
WNAVIN@THEOCC.COM

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COMMENT

May 25, 2007

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

Re: Proposal to exempt the trading and clearing of certain credit default products traded on the Chicago Board Options Exchange and cleared by The Options Clearing Corporation

Dear Ms. Donovan:

The Options Clearing Corporation ("OCC") is submitting this letter in response to the request for comments issued by the Commodity Futures Trading Commission (the "CFTC") in its Notice of Proposed Order and Request for Comment ("Notice") regarding credit default options ("CDOs") and credit default basket options ("CDBOs") to be listed by the Chicago Board Options Exchange ("CBOE") and cleared by OCC.[1]

OCC is a securities clearing agency registered as such under Section 17A of the Securities Exchange Act of 1934 (the "Exchange Act") as well as a derivatives clearing organization registered under Section 5b of the Commodity Exchange Act (the "CEA"). As such, OCC has the ability to clear securities options subject to the jurisdiction of the Securities and Exchange Commission (the "SEC"), commodity futures and commodity options subject to the CFTC's jurisdiction under the CEA, and security futures contracts subject to the joint jurisdiction of the CFTC and the SEC. OCC has submitted rule filings to both the SEC and the CFTC proposing to clear, in its capacity as a securities clearing agency, CDOs and CDBOs traded on CBOE as securities. As referenced in the Notice, OCC has requested CFTC approval of its filing under Section 5c(c) of the CEA and CFTC Regulations 39.4(a) and 40.5 thereunder.

[1] 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).

It is OCC's understanding that the CFTC is proposing to issue the exemption described in the Notice as a predicate to issuing the requested approval under Section 5c(c). In so doing, as stated in the Notice, "the CFTC need not – and does not - find that CDOs and CDBOs are (or are not) subject to the CEA." The CFTC went on to quote from the legislative history of Section 4(c) stating:

> 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.C.A.N. 3179, 3214-15).

Section 4(c)(2)(B) of the CEA provides that the CFTC shall not grant an exemption unless it determines that the agreements, contracts or transactions subject to the exemption will be entered into solely between "appropriate persons" and that the exemption will not have a material adverse effect on the ability of the CFTC or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.[2] The CFTC has specifically requested comment on whether these conditions will be fulfilled if the proposed exemption is issued. For the reasons set forth below, OCC believes that it is quite clear that the conditions will be met.

Section 4(c)(3) defines the term "appropriate persons" to include, in addition to certain specified categories of persons, "such other persons that the CFTC determines to be appropriate in light of ... the applicability of appropriate regulatory protections." The CFTC noted that CBOE and OCC, as well as their members who will intermediate transactions in CDOs and CDBOs, "are subject to extensive and detailed regulation by the SEC under the [Exchange Act]." Under that regulatory regime, CBOE and other national securities exchanges impose special suitability standards for options customers. For example, CBOE Rule 9.9 provides that a member who recommends to a customer the purchase or sale (writing) of any option contract shall have reasonable grounds for believing that the recommendation is not unsuitable for the customer on the basis of the information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by the member. The rule also provides that a member shall not recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a

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[2] Section 4(c)(2) of the CEA, 7 U.S.C. §6(c)(2), provides in full that:

> The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that--
> (A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and
> (B) the agreement, contract, or transaction—
> (i) will be entered into solely between appropriate persons; and
> (ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract. Provisions relating to procedures for approval of customer accounts for options trading and for the writing of uncovered options add additional protections. See, for example, CBOE Rules 9.7 and 9.15. In light of these specific provisions and the overall regulatory framework of the federal securities laws, there is ample basis for finding that CDO and CDBO transactions will be entered into only by appropriate persons.

OCC appreciates the opportunity to make its view known to the CFTC. Please do not hesitate to contact the undersigned if you wish to discuss any aspect of this matter with us.

Sincerely,

William Navin /mmp

William H. Navin

cc: Ananda K. Radhakrishnan
John C. Lawton
Robert B. Wasserman
Division of Clearing
and Intermediary Oversight