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Chicago Board of Trade

Bernard W. Dan
President and
Chief Executive Officer

May 30, 2007

Eileen Donovan
Acting Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

OFFICE OF THE SECRETARIAT

2007 MAY 31 PM 1:43

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C.F.T.C.

Re: OCC Clearing Credit Default Options

Dear Ms. Donovan:

Thank you for the opportunity to comment on the above referenced proposal. While we express no view on the merits of the exemption, we would like to comment on one aspect of the Commission's analysis.

The proposed finding that Credit Default Options and Credit Default Basket Options are "novel instruments" should be repudiated or clarified.

In relying on legislative history to support the view that the Commission can grant an exemption under section 4(c) without determining that it has jurisdiction over the product in question, the Commission is proposing to find that Credit Default Options and Credit Default Basket Options are "novel instruments." 72 Fed. Reg. at 27092. They are not.

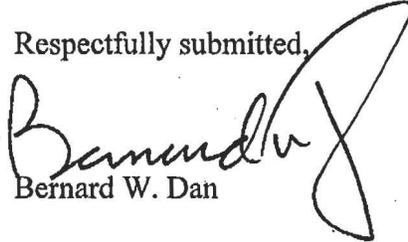
"Novelty" is a term fraught with meaning under the patent and other laws. Because the Commission could be treated by courts and patent examiners as having some expertise in these matters, this finding could have significant and unintended negative consequences, including the deterrence of the very kind of innovation the Commission is seeking to promote as well as the proliferation of wasteful litigation. The cost of correcting this misstatement and the confusion that could result from it in the litigation or patent examination context could be unlimited, and far outweighs the benefit, if any, that some might see in making such a finding at all.

Binary options, credit default swaps, baskets and any combination thereof are well-known in the art, obvious and not novel. Whether or not the Commission decides to grant an exemption in this case, this finding should be repudiated explicitly. Alternatively, it should be made clear that the finding is not based on the judgment of any person having ordinary skill in the art of designing, offering or trading financial instruments and should not be relied on in any matter relating to patent or intellectual property law.

Eileen Donovan
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Thank you for the opportunity to express our views in this matter.

Respectfully submitted,


Bernard W. Dan