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REMARKS CONCERNING THE
HARMONIZATION OF FUTURES AND SECURITIES REGULATION

JOINT PUBLIC MEETING OF THE CFTC AND SEC

September 2, 2009

Thank you Chairperson Schapiro, Chairman Gensler and SEC and CFTC Commissioners.

I am William J. Brodsky, Chairman and CEO of the Chicago Board Options Exchange. I am also the current chairman of the World Federation of Exchanges, which includes 50 of the world's largest regulated exchanges. For the past 35 years, I have served in leadership roles at major U.S. stock, futures and options exchanges, including 11 years as CEO of the Chicago Mercantile Exchange and 12 years in my current role at CBOE.

CBOE strongly supports the Administration's call for the CFTC and the SEC to work towards harmonizing their statutes and regulations. I commend both agencies for acting promptly on this recommendation, and I am honored to share CBOE's perspective with you today.

As outlined by the Reform Proposal, the differing missions of the SEC and CFTC, and the separate statutes under which they operate, lead to inconsistencies in the regulation of futures and comparable securities products. These inconsistencies have implications for investor protection, for tax revenues and for the competitive position of the U.S. in a global marketplace.

Differing Approaches to Regulation

The philosophies that guide and inform the approaches of the SEC and the CFTC are fundamentally different. CFTC's "principles-based" approach gives exchanges considerable discretion in determining how they operate. In contrast, the SEC's "rules-based" approach requires exchanges to comply with numerous specific and prescriptive regulations. This disparity imposes severe competitive disadvantages on securities exchanges and inhibits innovation in the securities markets. The SEC's rules-based approach leads to substantial and unnecessary delays in introducing new products and in making operational changes. Consistent with the Administration's recommendation, we strongly recommend that the SEC shift closer to a principles-based approach.

Resolution of Jurisdictional Disputes

We have experienced interminable delays in bringing new products to market as a result of disputes over which agency has jurisdiction. These delays, while acutely vexing to CBOE, adversely impact our entire economy in the form of lost taxes revenues and lost ground to international competitors.

For example, the introduction of what is now a very actively traded product – the Gold ETF option -- was placed on hold for 3 1/2 years because the two agencies could not agree on jurisdiction. In another instance, an option on a credit default product was placed on hold for 7 months, while Eurex (Europe's largest derivatives exchange) was able to introduce a similar product within weeks of announcing it.

There needs to be a quick and decisive mechanism to end jurisdictional disputes over a new product. We recommend that the Treasury Department, which is well versed in the relevant issues, be used as a tiebreaker to resolve jurisdictional disputes, at least until we have more a more definitive mechanism in place.

Margins

The two agencies also handle margin levels for similar products very differently. These differences result primarily in lower margin levels and more lenient treatment of margins for futures and, therefore, a cost advantage over options. This disparity creates regulatory arbitrage and unequal competition. Margin levels should reflect the relative risks of the products, not the jurisdictional silo in which they happen to reside. We recommend,

therefore, that all equity derivatives margins be subject to the same standards and process of oversight.

Customer Protection and Market Integrity

There are several areas where the securities laws are more vigorous than the futures laws in promoting customer protection and market integrity, including stronger prohibitions against insider trading and heightened suitability requirements. There is no legitimate policy reason for this disparity. In order to better safeguard investors, we recommend that futures regulations be strengthened along the lines of securities laws.

Conclusion

We applaud the spirit in which this forum is being conducted. CBOE operates separate stock, options and futures exchanges under jurisdiction of each of your agencies. We comprehend the enormous complexity of the task ahead of you. On behalf of CBOE, I stand ready to work with both of your agencies and staffs in the most constructive way possible. Thank you again for the opportunity to testify at this important hearing. I would be happy to answer any questions you may have.