



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
Chairperson

March 19, 1998

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The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
United States House of Representatives
Washington, D. C. 20515

Dear Representative Dingell:

As Chairperson of the Commodity Futures Trading Commission (the "Commission"), I am writing with reference to the House Republican leadership's Proposed Substitute for H.R. 10, the "Financial Services Act of 1998."

During 1997 the Commission followed the consideration of H.R. 10 by the House Banking Committee and the House Commerce Committee. Staff members from both Committees have responded to the Commission's inquiries and have repeatedly assured Commission staff that H.R. 10 is not intended to have any impact on the Commodity Exchange Act ("CEA") or the Commission's jurisdiction thereunder. The Proposed Substitute changes several provisions of last year's versions of H.R. 10 significantly, leading the Commission to conclude that, without the inclusion of a simple savings clause for the CEA, H.R. 10 could create legal uncertainty and a likelihood of unnecessary litigation over alleged ambiguities in the Proposed Substitute.

The Proposed Substitute, for the first time, designates many Commission regulated products as "traditional banking products" (Section 206 at p. II-26). The Commission is concerned that this change could create a misconception that banks dealing in the defined derivatives might need only to comply with Federal banking laws and not the CEA. This misconception might compromise the Commission's ability as the expert regulator of these products to determine how they properly should be regulated irrespective of who sells them.

A second concern is that the careful delineation of the respective jurisdictions of the Commission and the Securities and Exchange Commission codified in the CEA (the Shad-Johnson Accord) could be obfuscated by this provision of the Proposed Substitute. The provision might be misconstrued to suggest that instruments within the Commission's exclusive jurisdiction under the Accord are securities under the Federal securities laws and thus regulated by the SEC.

To address these and other possible ambiguities in the Proposed Substitute, the Commission suggests that the following savings clause be added to each title of the Proposed Substitute (or as a general provision embracing the entire bill):

Nothing in this Act, nor any amendment made by this Act, shall supersede, affect or otherwise limit the scope and applicability of the Commodity Exchange Act; nor shall anything in this Act or any amendment made by this Act supersede, affect or otherwise limit the jurisdiction at anytime conferred on the Commodity Futures Trading Commission under the Commodity Exchange Act.

The Commission believes that this savings clause would accurately reflect and clarify Congress' intent in enacting financial services reform legislation.

An identical letter is being sent to Speaker Newt Gingrich, Republican Conference Chairman John A. Boehner, Chairman Robert F. Smith, Chairman Thomas J. Bliley, Jr., Chairman Jim Leach, Subcommittee Chairman Thomas W. Ewing, Subcommittee Chairman Michael G. Oxley, Minority Leader Richard A. Gephardt and Ranking Minority Members: Representative John J. LaFalce, Representative Charles W. Stenholm and Representative Gary A. Condit.

The Commission stands ready to work with the members of the House of Representatives in connection with this important legislation.

Sincerely yours,



Brooksley Born
Chairperson

**AMENDMENT OFFERED BY MR. DINGELL
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE OFFERED BY MR. LEACH**

(Page & line nos. refer to the Proposed Substitute for H.R. 10)

Page II-5, line 4, before the semicolon insert the following: “, and does not receive brokerage commissions or other similar remuneration based on effecting transactions in securities, other than the cost incurred by the bank in connection with executing securities transactions in a trustee capacity”.

Page II-7, line 18, before the semicolon insert the following: “, and does not receive brokerage commissions or other similar remuneration based on effecting transactions in securities, other than the cost incurred by the bank in connection with executing securities transactions under this division (aa)”.

Page II-8, after line 9, insert the following:

1	“(CC) the bank does
2	not receive brokerage com-
3	missions or other similar re-
4	muneration based on
5	effecting transactions in se-

1 securities, other than the cost
2 incurred by the bank in con-
3 nection with executing secu-
4 rities transactions under this
5 division (bb); or

Page II-9, beginning on line 8, strike “plus the cost” and all that follows through line 12 and insert the following: “, and does not receive brokerage commissions or other similar remuneration based on effecting transactions in securities, other than the cost incurred by the bank in connection with executing securities transactions under this division (cc)”.

Page II-13, line 14, strike “traditional” and insert “exempted”.

Page II-18, line 14, strike “traditional” and insert “exempted”.

Page II-25, line 6, strike “TRADITIONAL” and insert “EXEMPTED”.

Page II-25, line 11, strike “traditional” and insert “exempted”.

Page II-26, line 11, insert before the semicolon the following: "for the protection of investors".

Page II-26, beginning on line 18, strike clauses (ii) and (iii) through line 25, and insert the following:

- 1 (ii) interest rates, except interest rate
- 2 derivative instruments (I) that are based
- 3 on a security or a group or index of securi-
- 4 ties (other than government securities or a
- 5 group or index of government securities);
- 6 (II) that provide for the delivery of one or
- 7 more securities (other than government se-
- 8 curities); or (III) that trade on a national
- 9 securities exchange; or
- 10 (iii) commodities, other rates, indices,
- 11 or other assets, except derivative instru-
- 12 ments (I) that are securities or that are
- 13 based on a group or index of securities
- 14 (other than government securities or a
- 15 group or index of government securities);
- 16 (II) that provide for the delivery of one or
- 17 more securities (other than government se-
- 18 curities); or (III) that trade on a national
- 19 securities exchange.

Page II-27, line 16, strike “and”; on line 17, redesignate subparagraph (C) as subparagraph (E); and after line 16, insert the following new subparagraphs:

- 1 “(C) the term “security” has the meaning
- 2 provided in section 3(a)(10) of such Act;
- 3 “(D) the term ‘government securities’ has
- 4 the meaning provided in section 3(a)(42) of
- 5 such Act, and, for purposes of this subsection,
- 6 commercial paper, bankers acceptances, and
- 7 commercial bills shall be treated in the same
- 8 manner as government securities; and

Page II-29, line 7, strike “a traditional” and insert “an exempted”.

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TO THE AMENDMENT IN THE NATURE OF A
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(Page & line nos. refer to the Proposed Substitute for H.R. 10)

Page I-29, beginning on line 4, strike “paragraphs (2) and (3) and subject to section 18(c) of the Securities Act of 1933” and insert “paragraphs (2), (3), and (4)”.

Page I-29, line 7, strike “restrict” and insert “significantly interfere with the ability of”.

Page I-29, beginning on line 11, strike “or any other provision of Federal law”.

Page I-30, line 18, insert “relating to, or enacted or issued for the purpose of regulating, the business of insurance (not relating to cross marketing or any other insurance sales and solicitation activities subject to paragraph (2))” before “which are applicable”.

Page I-30, beginning on line 19, strike “insurance underwriting activities of”.

Page I-30, beginning on line 22, strike “an insurance underwriter which is” and insert “those entities which are”.

Page I-31, line 2, insert “or subsection (a)” before the period.

Page I-31, after line 2, insert the following new paragraph:

1 (4) Paragraphs (1) and (2) shall not be con-
2 strued as affecting the jurisdiction of the securities
3 commission (or any agency or office performing like
4 functions) of any State, under the laws of such
5 State, to investigate and bring enforcement actions,
6 consistent with section 18(c) of the Securities Act of
7 1933, with respect to fraud or deceit or unlawful
8 conduct by any person, in connection with securities
9 or securities transactions.