



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 23, 1988

The Honorable George Bush
President
United States Senate
S-212 Capitol Building
Washington, D.C. 20510

Dear Mr. President:

The Securities and Exchange Commission is pleased to transmit the enclosed legislative provisions prepared by the Commission in response to concerns raised by the October, 1987 market break.

The legislative proposals provide for (1) emergency authority for the Commission; (2) large trader reporting; (3) reporting of information concerning financial or operational risks within holding company systems; and (4) enhanced authority for the Commission and the Commodity Futures Trading Commission to facilitate development of an integrated clearance and settlement system.

As previously indicated in testimony before Congress on the market break, the Commission believes that enactment of the enclosed proposals is necessary to increase investor confidence in the stability and resiliency of the United States securities markets. The Commission unanimously endorsed the enclosed legislative proposals and urges their prompt enactment.

The emergency authority provision would amend Section 12 of the Exchange Act to provide the Commission with authority to take emergency action without procedural delay in response to a major market disturbance.

The large trader reporting provision would amend Section 17 of the Exchange Act to provide the Commission with authority to adopt reporting rules relating to large securities transactions and certain transactions in the futures markets that are related to transactions in the securities markets.

The holding company risk assessment provision would expressly authorize the Commission to require certain entities registered with the Commission, including brokers and dealers, to

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report information relating to their associated persons that may have a material impact on the financial or operational condition of the registered entity.

The clearance and settlement proposal provides for amendments to the Exchange Act and to the Commodity Exchange Act which would add certain findings to those Acts concerning the need for an enhanced clearing system, and which would direct the Commission and the Commodity Futures Trading Commission to facilitate the establishment of linked, coordinated, or centralized facilities for clearance and settlement. This proposal is being transmitted to members of the Senate Committee on Agriculture, Nutrition, and Forestry and to members of the House Committee on Agriculture.

These materials are also being transmitted simultaneously to the other members of the Presidential Working Group on Financial Markets, who have previously received, but have not formally discussed, earlier public drafts of the proposed legislation.

The views expressed here and in the enclosed materials are those of the Commission and do not necessarily express the views of the President. These materials are being submitted simultaneously to the Office of Management and Budget. We will inform you of any advice received from OMB concerning the relationship of these materials to the program of the administration.

Questions concerning the proposed legislation may be directed to Nina Gross, Director of Legislative Affairs (272-2500).

Sincerely yours,



David S. Ruder
Chairman

cc: James C. Murr
Office of Management and Budget

Enclosures

- A. Text of Proposed Statutory Provisions
- B. Section-by-Section Analysis

Emergency Authority/Trading Halts

This section would authorize the Commission, by order, to take temporary emergency action with respect to any matter subject to regulation under the Exchange Act. The Commission's authority to take summary action under this section would extend to all matters subject to regulation under the Exchange Act by the Commission, and the securities self-regulatory organizations, including, but not limited to, the ability to alter, supplement, suspend, or impose requirements or restrictions with respect to hours of trading, position limits, and clearance and settlement. Thus, the Commission's emergency authority could be used to relax or to impose more stringent requirements or restrictions in an emergency. However, under current law, the Commission would not have the authority to relax or restrict initial levels of margin for transactions in any security other than options.

Prior to taking temporary emergency action, the Commission would be required to make only those findings required by this section, and would not be required to make findings or observe procedures prescribed by any other provisions of the Exchange Act. To ensure that the Commission would be able to take emergency action without procedural delay, the section would expressly exempt the Commission, in exercising its emergency authority, from the agency rulemaking requirements prescribed by the Administrative Procedure Act, and from the requirements prescribed by Exchange Act Section 19(c) for abrogating, adding to, or deleting from the rules of a self-regulatory organization.

Emergency actions ordered by the Commission under this section would remain in effect for the time specified by the Commission. The Commission would be authorized to extend the effectiveness of emergency actions, but in no event would any action taken in response to a particular emergency remain in effect for more than ten business days, including extensions. This limitation would not apply with respect to actions taken in response to any other emergency that might occur during the ten business day period. While many of the measures authorized under this section would be necessary only for very short periods, perhaps hours or minutes, other matters, such as those relating to hours of business and clearance and settlement, might be required for longer periods, up to ten days, in order to be effective.

In exercising its emergency powers, the Commission would be authorized summarily to suspend all trading in any or all securities (other than exempted securities) on any exchange or otherwise. However, the Commission's trading suspension

authority is expressly limited in three respects. First, the Commission would be authorized to suspend trading for a maximum of twenty-four hours. Second, although the Commission would be authorized to extend a suspension of trading for not more than two additional twenty-four hour periods, specific approval of the President would be required for such extension. Third, the section provides that the President may terminate any suspension of trading or other summary action by the Commission under this section. It should also be noted that, by the terms of the section, only members of a national securities exchange, brokers, and dealers are expressly subject to orders issued by the Commission.

The section defines "emergency" to mean a major market disturbance characterized by, or constituting a substantial threat of sudden and excessive fluctuations of securities prices generally that threaten fair and orderly markets, or a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities. While the characterization of circumstances as an emergency would depend on the particular facts, the authority provided by this section is not intended to be used to prevent or limit market downturns or fluctuations in securities prices generally, other than those that threaten fair and orderly markets. It is intended to permit the Commission to act, through actions directed to specific problems, in response to extraordinary situations in which there is a major disturbance in the securities markets, like the October 1987 market break, or imminent danger of such a disturbance.

Emergency action taken by the Commission under this section would be subject to judicial review in the United States Courts of Appeals as provided in Section 25(a) of the Exchange Act, based on an examination of all information before the Commission at the time such action was taken, subject to the assertion of any applicable privilege by the Commission. The reviewing court would be prohibited from entering a stay, writ of mandamus or similar relief unless the courts finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Thus, a court reviewing emergency action taken by the Commission would be permitted to act only after the Commission had an opportunity to explain the basis for its action.

Emergency Authority/Trading Halts

Amend Section 12 of the Exchange Act by adding subsection (m) as follows:

(12) (m) (1) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for the protection of investors to maintain or restore fair and orderly securities markets (other than markets in exempted securities) or to ensure prompt and accurate clearance and settlement of transactions in securities (other than exempted securities). An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended, Provided, however, That in no event shall the Commission's action continue in effect for more than ten business days, including extensions. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of

section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

- (m) (2) In the exercise of its emergency powers pursuant to paragraph (1) of this subsection, the Commission is authorized to suspend summarily all trading in any or all securities (other than exempted securities) on any national securities exchange or otherwise for such period specified by the Commission, or until such time as the Commission authorizes the resumption of trading, but not for more than 24 hours, Provided, however, That the Commission, with the approval of the President, may determine to extend such suspension for not more than two additional twenty-four hour periods.
- (m) (3) The President may direct that emergency action taken by the Commission under paragraphs (1) or (2) of this subsection shall not continue in effect.
- (m) (4) For the purpose of this subsection, the term "emergency" shall mean a major market disturbance characterized by, or constituting (i) a substantial threat of sudden and excessive fluctuations of securities prices generally that threaten fair and orderly

markets, or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities.

(m) (5) No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order entered by the Commission under this subsection unless such order has been stayed, modified or set aside as provided in paragraph (6) of this subsection.

(m) (6) Any action taken by the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such action was taken. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Large Trader Reporting

Amend Section 13 of the Securities Exchange Act of 1934, by adding subsection (h) as follows:

13(h)(1) For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value, and related transactions in equity index futures and options on such futures, every person who, for his own account or an account for which he exercises investment discretion, effects

(A) transactions for the purchase or sale of any publicly traded securities or options, or

(B) transactions in contracts of sale (or options on such contracts) for future delivery of a group or index of publicly traded securities (or any interest therein or based on the value thereof) that are related to transactions in publicly traded securities or options,

by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange or board of trade,

during any twenty-four hour period in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, shall file reports regarding such transactions with the Commission, or any self-regulatory organization as the Commission shall designate by rule, regulation or order to receive such reports. Reports required under this subsection shall be filed at such times, and include such information with respect to any transaction or series of transactions subject to this subsection, as the Commission, by rule, regulation, or order may prescribe.

- (h) (2) For purposes of this section, the term "publicly traded securities or options" shall mean any equity securities, including options on individual equity securities, and options on a group or index of such securities, listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated inter-dealer quotation system.
- (h) (3) The Commission may prescribe rules governing the manner in which transactions and accounts shall be aggregated for the purpose of paragraph (1) of this subsection.
- (h) (4) Two or more persons acting as a partnership, limited partnership, syndicate, or other group, for the purpose of effecting transactions described in

paragraph (1) of this subsection, shall be deemed a "person" for purposes of this subsection.

(h) (5) Notwithstanding the provisions of the Freedom of Information Act, 5 U.S.C. 552, or of any other law, the Commission shall not be compelled to disclose any information required to be reported under this subsection; Provided, however, That nothing in this subsection shall prevent the Commission from complying with a request for information from a duly authorized committee or subcommittee of the Congress or complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(h) (6) The Commission, by rule, regulation or order, may exempt any person or classes of persons or any transaction or classes of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

Large Trader Reporting

This section is modeled after the large trader reporting authority of the Commodity Futures Trading Commission and is designed to assist the Commission in its surveillance of the U.S. securities markets by providing it with broad authority to adopt reporting rules for the purpose of monitoring the impact on the securities markets of large transactions in publicly traded securities involving a substantial volume or a large fair market value or exercise value, and related transactions in equity index futures and options on such futures. The section only applies to transactions effected using the U.S. jurisdictional means. The Commission is authorized to adopt rules requiring any person effecting such large transactions for its own account, or for an account for which it exercises investment discretion, to file reports with the Commission or with a self-regulatory organization designated by the Commission. The Commission could use information contained in these reports for surveillance, enforcement, and other appropriate regulatory purposes.

The section applies to large transactions, or series of transactions, in "publicly traded securities or options," and related transactions in futures on such securities and options thereon. The term "publicly traded securities or options" is defined in the section to mean any equity security, including options on individual equity securities, and options on an index or group of equity securities, listed, or admitted to unlisted trading privileges on a national securities exchange, or quoted in an automated inter-dealer quotation system.

The Commission would also be authorized to adopt rules prescribing the manner in which transactions and accounts would be aggregated for the purposes of this section. Two or more persons acting as a partnership, limited partnership, syndicate or other group, including joint trading accounts, for the purpose of trading, acquiring, holding, or disposing of securities would be considered a "person." The section would permit the Commission, by rule, regulation or order, to exempt any person, transactions, or classes of persons or transactions, either conditionally or upon specified terms and conditions or for stated periods of time, from the operation of this section and the rules and regulations thereunder.

In adopting rules pursuant to its authority under this section, the Commission would take into account whether other means of obtaining the relevant information are available. In this connection, the Commission would consult with the CFTC in order to avoid duplicative reporting whenever practical. With respect to foreign persons or accounts, the Commission would continue its current program of negotiating memoranda of

understanding with foreign governments and would seek to include within such agreements the exchange of trading information for investigatory purposes. The Commission generally would not seek to use its authority under this section to obtain information concerning foreign persons or accounts under the jurisdiction of a foreign government if the Commission has entered into an agreement for sharing investigatory information with that government.

The Commission could not be compelled to disclose publicly any information required to be reported under this section for which disclosure might otherwise be required pursuant to the Freedom of Information Act, 5 U.S.C. 552. However, the Commission is not authorized under this section to withhold information from Congress or a court of the United States in an action commenced by the United States or the Commission.

Risk Assessment for Holding Company Systems

Amend Section 17 of the Securities Exchange Act of 1934, by adding subsection (h) as follows:

17(h) (1) For the purpose of monitoring the financial and operational condition of persons subject to this section, and to provide greater protection for investors, every person who is (A) a registered broker or dealer, or (B) a government securities broker, or government securities dealer, for which the Commission is the appropriate regulatory agency, shall make such reports as the Commission, by rule, regulation or order prescribes concerning any aspect of the financial or operational condition of its associated persons, other than a natural person, that the Commission determines is reasonably likely to have a material impact on the financial or operational condition of such registered broker or dealer, government securities broker, government securities dealer, or municipal securities dealer. Reports prescribed by the Commission under this section may include, but shall not be limited to, information concerning assets, liabilities,

contingent liabilities, material contracts, loan commitments, trading or investment positions, lines of credit, letters of credit, and financial guarantees.

(h) (2) No information shall be required of any person subject to paragraph (1) of this subsection regarding any associated person that: is a financial institution as defined in Section 3(a)(46) of this title; a bank holding company, as defined in 12 U.S.C. 1841(a); a savings and loan holding company, as defined in 12 U.S.C. 1730a(a)(D); an insurance company, as defined in 15 U.S.C. 77b(13); or a futures commission merchant or introducing broker as defined in 7 U.S.C. 2; so long as information substantially similar to that required to be included in reports under paragraph (1) of this subsection is available to a supervisory agency as defined in 12 U.S.C. 3401(6), a state insurance commission or similar state agency, or the Commodity Futures Trading Commission.

(h) (3) The Commission, by rule, regulation or order, may exempt any person or classes of persons, or any transaction or classes of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the provisions of this subsection, and the rules and regulations thereunder.

In granting such exemptions, the Commission shall consider, among other factors, the primary business of any associated person, the nature and extent of domestic or foreign regulation of the associated person's activities and, with respect to the person required to report pursuant to this subsection and its associated persons, on a consolidated basis, the proportion of assets devoted to, and revenues derived from, activities in the U.S. financial markets.

(h) (4) Notwithstanding the provisions of the Freedom of Information Act, 5 U.S.C. 552, or of any other law, the Commission shall not be compelled to disclose any information required to be reported under this subsection; Provided, however, That nothing in this subsection shall prevent the Commission from complying with a request for information from a duly authorized committee or subcommittee of the Congress or complying with an order of a court of the United States in an action commenced by the United States or the Commission.

Risk Assessment For Holding Company Systems

This section would enhance the Commission's ability to monitor the financial and operational condition of brokers and dealers, and government securities brokers, government securities dealers, and municipal securities brokers or dealers for which the Commission is the appropriate regulatory agency, by clarifying the Commission's authority to require reports regarding the activities of associated persons that have the potential materially to affect the financial or operational condition of such entities. The section would permit the Commission to adopt rules requiring information concerning, among other things, assets, liabilities, contingent liabilities, material contracts, loan commitments, trading or investment positions, lines of credit, letters of credit, and financial guarantees.

The section would not require information to be provided concerning the activities of any natural person. In addition, information would not be required relating to certain classes of regulated entities. Specifically, information regarding the activities of banks, savings and loan associations, bank holding companies, savings and loan holding companies, insurance companies, futures commission merchants and introducing brokers would not need to be provided directly to the Commission, so long as similar information is available to a supervisory agency as defined in 12 U.S.C. 3401(6), a state insurance commission or similar state agency, or the Commodity Futures Trading Commission.

In addition to enumerating classes of entities for whom information need not be provided directly to the Commission, the section permits the Commission to provide exemptions from the reporting requirements either conditionally or upon specified terms and conditions or for stated periods. Among other things, this provision would allow the Commission to exclude from the reporting requirement any information regarding diversified holding companies and international financial organizations that do not devote a significant portion of their consolidated assets to activities in the U.S. financial markets. The section also notes that in granting exemptions, the Commission shall consider the primary business of any associated person, and the nature and extent of domestic or foreign regulation of the associated person's activities. Thus, for example, the Commission may wish to exclude small broker-dealers from the reporting requirements, or not to require information concerning holding companies or their affiliates who are primarily engaged in non-financial activities, such as merchandising, or major foreign banks whose subsidiaries or affiliates include a U.S. broker-dealer.

The Commission could not be compelled to disclose publicly any information required to be reported under this section for which disclosure might otherwise be required pursuant to the Freedom of Information Act, 5 U.S.C. 552. However, the Commission is not authorized under this section to withhold information from Congress or a court of the United States in an action commenced by the United States or the Commission.

Coordinated Clearing

Amend Section 17A of the Securities Exchange Act of 1934, by adding subparagraph (a)(1)(E) as follows:

- (E)(i) The clearance and settlement systems for transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options are integrally related.
- (ii) The absence of links or coordination among clearing facilities for transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options may impose unnecessary costs and add unnecessary liquidity demands to the nation's financial systems.

Amend Section 17A(a)(2) of the Securities Exchange Act of 1934 as follows:

- (2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title:
 - (i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities); and
 - (ii) to facilitate the establishment of linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities.

securities options, contracts of sale for future delivery and options thereon, and commodity options in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (a)(2)(A)(ii) of this Section, the Commission shall consult with the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System.

(B) The Securities and Exchange Commission and the Commodity Futures Trading Commission, in consultation with the Board of Governors of the Federal Reserve System, shall examine progress toward establishing linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and shall submit to Congress, not later than two years from the date of enactment of this provision, a report detailing and evaluating such progress.

Amend Section 17A of the Securities Exchange Act of 1934, by adding subsection (f) as follows:

- (f) In order to promote prompt and accurate clearance and settlement of securities transactions, notwithstanding any provision of state law, the Commission is authorized to adopt rules concerning the transfer of certificated or uncertificated securities or limited interests (including security interests) therein (but is not authorized to adopt rules concerning the transfer of securities or limited interests (including security interests) therein with respect to government securities issued pursuant to Chapter 31 of Title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve Banks); Provided, however, That the Commission finds that, in the absence of such rules, the safe and efficient operation of the national system for clearance and settlement of securities transactions is substantially impeded. In exercising its authority under this subsection, the Commission shall consult with the United States Department of the Treasury.

Amend the Commodity Exchange Act, by adding Section 5c as follows:

- (1) The Congress finds that --
- (A) Commodity clearing organizations play a vital role in the functioning of contract markets and in ensuring

the financial integrity of the marketplace in which transactions are executed.

- (B) The clearance and settlement systems for securities, securities options, contracts of sale for future delivery and options thereon, and commodity options are integrally related.
 - (C) The absence of links or coordination among clearing facilities for contracts of sale for future delivery and options thereon, commodity options, securities, and securities options may impose unnecessary costs and add unnecessary liquidity demands to the nation's financial systems.
- (2) The Commission is directed, therefore, having due regard for the public interest and maintenance of fair competition among contract markets, commodities and futures clearing organizations, members thereof, and futures commission merchants, to use its authority under this title to facilitate the establishment of linked, coordinated, or centralized facilities for clearance and settlement of contracts of sale for future delivery and options thereon, commodity options, securities, and securities options, in accordance with the findings set forth in paragraph (1). In carrying out its responsibilities set forth in this paragraph, the Commission shall consult with the

Securities and Exchange Commission and the Board of Governors of the Federal Reserve System.

- (3) The Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors of the Federal Reserve System, shall examine progress toward establishing linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and shall submit to Congress, not later than two years from the date of enactment of this provision, a report detailing and evaluating such progress.

Coordinated Clearing

A. Securities Exchange Act Amendments

These provisions would amend Section 17A(a)(1) of the Exchange Act to add congressional findings concerning the need for linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options to the findings already contained in Section 17A(a)(1) of the Exchange Act. The findings recognize that clearing systems for securities, securities options, contracts of sale for future delivery and options thereon, and commodity options (collectively, "cleared products") affect the nation's financial systems. The clearing procedures employed for any cleared product potentially can affect, through settlement default or lack of coordination with other clearing systems, other cleared products, clearing systems, and financial systems.

In addition to these congressional findings, Exchange Act Section 17A(a)(2) would be amended to direct the Securities and Exchange Commission ("SEC") to use its authority under the Exchange Act to facilitate the establishment of linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. This section does not mandate any particular clearance or settlement system structure, although Section 17A(a)(1)(E) contains a finding that the absence of links or coordination among clearing facilities may impose unnecessary costs and liquidity demands on the nation's financial systems. Although centralization of clearance and settlement facilities is included in Section 17A(a)(2) as an option, the factors listed in Section 17A(a)(2)(A), as well as other competitive considerations discussed below, must be considered in conjunction with any regulatory efforts, pursuant to this section, to centralize the clearing facilities of the securities, options and contract markets.

Although this amendment applies to all cleared products, it is expected that the SEC will exercise its authority only in instances where a particular cleared product or clearing system within its jurisdiction demonstrates a significant effect on other cleared products, clearing systems, or the financial system generally. In carrying out this responsibility, the SEC would be directed to consult with the Commodity Futures Trading Commission ("CFTC") and the Board of Governors of the Federal Reserve System ("FRB").

These provisions also would amend Section 17A of the Exchange Act to authorize the SEC to promulgate rules concerning the transfer and pledge of certificated and uncertificated securities. New Section 17A(f) would authorize the SEC to preempt state commercial laws (such as those based on the Uniform

Commercial Code) governing transfer and pledge of securities, but only upon a finding that state commercial laws substantially impede the safe or efficient operation of the national system for clearance and settlement of securities transactions (for example, due to the lack of scope or inconsistent standards of such state laws). The SEC would not be authorized to promulgate rules with respect to government securities issued pursuant to Chapter 31 of Title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve Banks. Because the Department of the Treasury has similar expertise and authority in this area with regard to government securities, the Commission would be required to consult with the Department of the Treasury in exercising its authority under this Section.

The provisions would direct the SEC and the CFTC, in consultation with the FRB, to examine progress toward the establishment of linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options and to submit to Congress within two years from the date of enactment of this amendment a report detailing and evaluating such progress.

B. Commodity Exchange Act Amendments

These provisions would amend the Commodity Exchange Act by adding Section 5c to that Act. Section 5c(1) would set forth certain congressional findings concerning the need for linked or coordinated facilities for clearance and settlement of transactions in contracts of sale for future delivery and options thereon, commodity options, securities, and securities options. Those findings recognize that clearing systems for contracts of sale for future delivery and options thereon, commodity options, securities, and securities options (collectively, "cleared products") affect the nation's financial systems. The clearing procedures employed for any cleared product potentially can affect, through settlement default or lack of coordination with other clearing systems, other cleared products, clearing systems, and financial systems. Section 5c(2) would direct the CFTC to use its authority under the Commodity Exchange Act, in accordance with the findings set forth in Section 5c(1), to facilitate the establishment of linked, coordinated, or centralized facilities for clearance and settlement of transactions in contracts of sale for future delivery and options thereon, commodity options, securities and securities options. Section 5c(2) requires the CFTC to consider, among other factors, the maintenance of fair competition among contract markets. A corresponding provision is not specifically added to the Securities Exchange Act because Sections 11A and 23 of that Act already impose an obligation on the SEC to consider competition among securities markets when using its authority under that Act. In this regard, it is not intended that the enumeration of specific competitive concerns will operate to the exclusion of others. Thus, the maintenance of competition between and among contract markets, securities

markets, clearing organizations, broker-dealers, and futures commission merchants is a proper subject for the CFTC's and the SEC's consideration under these amendments.

Although Section 5c(2) applies to all cleared products (i.e., it includes non-financial contracts of sale for future delivery such as agricultural products), it is expected that the CFTC will exercise its authority only in instances where a particular cleared product or clearing system within its jurisdiction demonstrates a significant effect on other cleared products, clearing systems, and financial systems generally. The scope of the amendment, however, is necessary to recognize that the clearing systems for those products often involve the same money payment systems. Section 5c(2) would direct the CFTC to consult with the SEC and the FRB in carrying out its responsibilities under Section 5c.

The provisions would direct the SEC and the CFTC, in consultation with the FRB, to examine progress toward the establishment of linked, coordinated, or centralized facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options and to submit to Congress within two years from the date of enactment of this amendment a report detailing and evaluating such progress.