Statement of

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Before the

Subcommittee on Telecommunications and Finance

of the

House Committee on Energy and Commerce

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Mr. Chairman, I welcome this opportunity to appear before this Committee to present the views of the Commodity Futures Trading Commission (CFTC) regarding futures regulation and jurisdictional issues. These are critical matters. As we consider the policy choices before us, we must keep in mind the goals of efficiency and international competitiveness for all United States markets.

Under the existing regulatory framework, the U.S. has the most liquid, most innovative and largest futures markets in the world. That framework has allowed futures markets to successfully adapt to economic change and will continue to do so. In 1960, 3.9 million futures contracts were traded in the United States. By 1980, that number had grown over 20 fold -- to 92 million contracts. During those 20 years, futures exchanges created new contracts in response to rapidly changing economic conditions that came with floating exchange rates, rising interest rates and an increasingly global marketplace. By 1989, over 267 million contracts were traded, most recently reflecting growth in financial futures markets.

Today, futures markets are successfully used by producers, merchandisers, commercial institutions, institutional investors, fund managers and many others to manage the risk associated with changing cash market prices. United States futures markets serve as models for other countries developing agricultural, energy and financial futures and options products, just as the CFTC serves as a model for other countries developing futures market regulatory systems. Changes in these markets and systems should be made only if fully justified.

Let me turn to the issue before us today -- two recent legislative proposals that would either redraw or eliminate the jurisdictional lines between the CFTC and the Securities and Exchange Commission (SEC). The Commodity Futures Trading Commission opposes any change in jurisdiction, including a shift of jurisdiction for stock index futures or a merger of the SEC and the CFTC. A change in CFTC jurisdiction will not solve any of the real issues our financial markets face today. Furthermore, the Commission is concerned that our reauthorization legislation, which includes needed market reforms, is being held up in the Senate because of this continuing and unnecessary jurisdictional battle.

Certainly, important issues confront our financial markets and regulators. These include the long-term decline of United States prominence in world equity markets, the long-term decline in retail securities brokerage business, infrequent episodes of large stock price movements, and intermarket concerns, such as circuit breakers and systemic risk in clearing, settlement, and payments. These issues do not exist because of the jurisdictional boundaries between the CFTC and the SEC -- and they will not be resolved by a change in jurisdiction.

The proven way to deal successfully with intermarket issues is through coordination among the financial regulators, not by consolidating regulatory power in one agency through jurisdictional change. Coordination assures that the expertise of the various regulators can be integrated to address problems so as to reduce the prospect for disruption in the financial markets. In this regard, the CFTC has worked with other agencies and the President's Working Group on Financial Markets to address clearing and settlement issues. We have coordinated with the SEC in approving two intermarket cross-margining programs. Cross-margining permits persons who trade in related markets to post margins based on their combined risk exposure in both markets. We also fostered development of an information-sharing system in which all futures clearing organizations participate and in which all securities clearing organizations could, and we believe should, participate to provide a basis for risk assessment across markets.

Mr. Chairman, in order to address completely the legislative proposals before us, I would like to submit for the record my prepared statement of March 29, 1990, furnished to the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs, as well as my prepared statement for today's hearing.

The Commission's March 29 testimony presents facts that refute the claims that certain problems and deficiencies exist in the current regulatory system and that reducing the CFTC's jurisdiction by increasing that of the SEC would somehow solve these supposed problems. I will explore some of these claims, as well as others, today in discussing the legislative proposals presented by the Treasury Department.

## The Treasury Proposals

The proposed changes flow from a single fact which was "discovered" in the wake of the 1987 stock market crash -- that the stock market and the stock index futures markets are inextricably linked. Proponents of change then make the leap that because these linked markets responded to the same underlying forces of supply and demand they must be regulated in a similar way by one regulator, because they are "one" market. The single fact that these markets are linked, however, does not mean that cash and futures markets serve a single purpose, should be regulated in the same way, or by the same regulator. Nor does it mean that the separate components can operate safely or successfully under the same rules. Each futures market, including stock index futures, serves a different purpose from its underlying cash market.

Indeed, in 1974 Congress recognized this fact and separated agricultural futures regulation from agricultural cash market regulation. When Congress established the CFTC as an independent agency, it recognized not only the functional differences between the cash and futures markets, but also the potential conflicts of interest that could arise. As the General Accounting Office observed at the time:

> A potential conflict of duties and responsibilities might exist if the Commission were located within the Department of Agriculture, and chaired, on a permanent basis, by the Secretary of Agriculture, who is charged by law to influence and maintain the prices of many of the commodities traded in the futures markets. (H.R. Rep. No. 93-975 at 60).

The perceived policy goal of the USDA for stable or higher agricultural cash commodity prices is similar to the SEC's interest in stable or higher stock prices. However, the futures regulator must be insulated from any price bias in order to maintain price neutrality. A fair and open hedging market must be price neutral. Futures regulation cannot favor longs over the shorts. Unlike the SEC, the CFTC does not have an uptick rule for short selling. Nor does the CFTC have a rule permitting traders to prevent or retard only falling prices as does the SEC for "stabilizing" market prices of new stock issues. In fact, the CFTC can take emergency action when prices do not reflect the forces of supply and demand, regardless of whether prices are rising or falling.

Granting Futures Margin Authority to the SEC

We have heard claims that margins on stock index futures are too low and are inconsistent with stock market margins. As a result, it is claimed that market volatility is increased and market declines are exacerbated. There is no credible evidence to support this contention. Futures margins are good faith deposits -- performance bonds -- set and required by exchanges and brokers to insure that buyers and sellers of futures contracts meet their respective financial obligations. Stock margins are not a performance bond but rather are a downpayment that limits the maximum credit that can be extended. Futures margins are used for different purposes than stock margins and are collected more frequently. Given the differences in the margining systems for equities and futures, we do not believe that existing margin levels are inconsistent.

The Working Group on Financial Markets in its Interim Report in May 1988 concluded that margins for stock index futures provided an adequate level of protection to the financial system. The Working Group also stated that stock margins must be significantly higher than futures margins to provide the same level of protection.[1/]

Moreover, government is simply not as well-equipped as the private sector to monitor margins constantly and adjust margins quickly -- which sometimes must be done on a daily basis. In a single year--1987--the Chicago Board of Trade changed futures margin levels over 200 times. I find it difficult to believe that the CFTC or the SEC could meet these demands. I note that the securities margin requirement has not been adjusted in the last 16 years.

If margin authority were given to the SEC, what would be the outcome? Chairman Breeden has suggested a "national speed limit" or minimum margin of perhaps 20 percent for stock index futures to be more in line with securities margin. To call for such an inflexible standard fails to recognize the fundamental differences between the futures and securities markets and the role of margins in each. A "speed limit" would not return the stock market to the staid and stable horse and buggy era. But it would mean a loss of U.S. business because it would drive futures from the U.S. highways to foreign byways. Foreign exchanges would receive an artificial cost advantage by the U.S. Government

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1/ Interim report of the Working Group on Financial Markets, May 1988: 5-7.

setting margins too high and would quickly lure domestic traders abroad where speed limits are based on economics.[2/]

Shifting Regulation of Stock Index Futures to the SEC

The only reason to shift stock index futures jurisdiction would be to change the rules governing stock index futures. But changing rules would introduce problems of dual regulation of futures exchanges and increased costs to both government and market users. And, for the smaller futures exchanges it could mean cost increases which prevent continued operation of some markets. It could place futures in a hostile regulatory environment that could undermine their use as efficient hedging tools and could ban legitimate trading practices that now exist. Restricting the use of futures -- by imposing higher margins, or limiting index arbitrage, both advocated by the SEC -- impairs market liquidity, performance, and efficiency. Most importantly, it increases the costs of risk management and thus the costs of using the securities markets.

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2/ For a thorough discussion of margins and the consequences of higher stock index futures margins, see the Report on the Regulation of Futures Margins, submitted by the Honorable Stephen L. Neal, Chairman, Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance and Urban Affairs, August 1988.

o The Costs to Market Users

Shifting regulation of stock index futures to the SEC would disrupt the most efficient and successful futures markets in the world. Market users who trade now with confidence and assurance in a familiar market system and under established rules would face a transition period fraught with regulatory uncertainty. How would the SEC regulate these products? What rules would change, be added or be eliminated? This uncertainty will impose costs, as market participants seek more certain trading environments to manage risk. Our futures markets could become less liquid and efficient. Ultimately they could be replaced by overseas markets which would be perceived as less subject to regulatory uncertainty. What the United States does not need at this time is to yield any competitive edge to foreign markets.

o The Costs to the Exchanges and Clearinghouses

Stock index, precious metals and agricultural futures contracts trade side by side on the floors of the same exchanges, by the same traders and under the same rules. All transactions are cleared and settled in the same way. Imposing regulations by two agencies on the same exchange with two sets of rules governing the same trading floor and the same members engaged in the same activity would be highly inefficient if not an invitation to regulatory chaos. Two sets of rules for the same exchange clearing houses would also cause regulatory overlap and confusion. Moreover, a jurisdictional shift would not obviate--and in fact could increase--the need for continued coordination between the agencies. Some of the possible consequences of two regulatory systems as they would apply to exchanges and clearing houses are:

- <u>conflicting floor trading standards and recordkeeping requirements</u>: members of futures exchanges could be subject to different and likely conflicting floor trading standards and recordkeeping requirements for products regulated on the same floor by the CFTC and SEC;

- <u>duplicative and conflicting audits</u>: exchange compliance staffs could be subject to duplicative and potentially conflicting audits of exchange rule enforcement programs;

- <u>duplicative and burdensome rule submissions</u>: futures exchanges could be burdened with filing duplicative rules with the CFTC and SEC, to account for differences in regulatory requirements in those submissions, and to coordinate approval and implementation;

- <u>coordinate emergency actions and review</u>: exchange emergency actions of general applicability would have to be coordinated with two regulators who both would review the actions;

- <u>different standards for trade and clearing records</u>: futures exchanges and their clearinghouses could be subject to two different standards governing the creation of trade and clearing records and exchange maintenance of those processes generally.

o The Costs to the CFTC

Just as for the regulation of securities, the regulation of futures trading requires the long-term, dedicated effort of an experienced professional staff, which I am proud to say we have at the CFTC. Our team of economists, lawyers, accountants and futures trading specialists is highly competent and motivated. Like the industry they help regulate, they are highly specialized and their expertise cuts across all commodity groups. Splitting off stock index futures from the CFTC's jurisdiction could result in a loss of experienced CFTC personnel. This would damage agency morale and harm the effective oversight of the other futures markets that remain within our jurisdiction. It would be no easy task to replace these people. As with any championship team, there are certain players who are the franchise and without whom the team loses its identity. At the CFTC we are fortunate to have a critical mass of experienced personnel whose departure would damage the agency and adversely affect our ability to monitor the markets.

Enhancing Enforcement Authority over Intermarket Frontrunning.

There is no concrete evidence that intermarket frontrunning or any other intermarket trading abuse poses a significant threat to market integrity. There is absolutely no evidence that the existing regulatory structure is incapable of dealing with any trading abuses that do exist. Any potential abuses are already being addressed through coordinated monitoring and enforcement efforts within the existing regulatory structure.[3/]

Prior to the October 19, 1987, market crash, all four futures exchanges that trade equity index contracts considered intermarket frontrunning to be a violation of their rules. Following the market crash, the Commission encouraged the four futures exchanges that trade stock indexes to formalize their policies concerning frontrunning. By September 1, 1989, all four exchanges had put in place rules or interpretations on intermarket frontrunning. Notably, to date, the New York Stock

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3/ The CFTC has always vigorously enforced the law. In the past year we have endorsed provisions to enhance our enforcement powers contained in both pending CFTC reauthorization bills, H.R. 2869 and S. 1729.

Exchange is the only securities or options exchange that has an intermarket frontrunning "circular" (an official policy statement with the effect of a rule) in effect which specifically addresses futures trading in the context of intermarket frontrunning.

Intermarket frontrunning has been described as trading in one market -- for example the stock market (or futures market) -- while in possession of material non-public information about orders or trades in another market -- the futures market (or stock market). Futures exchanges actively monitor trading patterns for intermarket frontrunning and share that information continuously and as needed with securities exchanges.

The futures exchanges and the CFTC have discussed intermarket trading abuses with securities exchanges through the Intermarket Surveillance Group. As a result, the Chicago Mercantile Exchange and the New York Stock Exchange issued joint circulars and, on March 12, 1990, began sharing information daily to monitor for potential abuses. The Chicago Board of Trade (CBT) and the NYSE have negotiated a similar arrangement which has been signed by the CBT and is expected to be signed by the NYSE very soon. Sharing market data allows the exchanges to perform regular, computer-assisted surveillance for intermarket frontrunning. Specifically, the Chicago Mercantile Exchange, Chicago Board of Trade, and New York Stock Exchange are studying various days of trading during the summer and fall of 1989 for possible intermarket frontrunning abuses.

Furthermore, the enforcement divisions of the CFTC and SEC have an ongoing cooperative relationship for sharing information and, indeed, have filed joint enforcement actions in other areas. We see no reason why this relationship will not continue regarding intermarket frontrunning and other types of intermarket abuses. As always, we at the CFTC stand ready to cooperate on a daily basis and provide whatever assistance or information may be requested to achieve effective law enforcement across markets.

It is difficult to imagine that a shift in jurisdiction will facilitate the detection of intermarket abuse and enforcement of existing law. The SEC currently has full access to CFTC data and both agencies have full power to discipline market manipulators. There have been joint efforts when appropriate without inhibiting independent action as needed. Even so, neither the Commission, the SEC, nor any futures exchange or securities exchange has brought intermarket frontrunning charges related to stock index futures trading. Nor have any formal charges ever been brought alleging price manipulation in the futures or securities markets as a result of index-related intermarket frontrunning. All that is required is the willingness to continue to cooperate.

Modify the CFTC's Exclusive Jurisdiction

We have also heard that changes are needed because the CFTC's exclusive jurisdiction bars innovation and drives new products to foreign markets. Let's put this misconception to rest once and for all. The CFTC's exclusive jurisdiction is no more a problem than it is a problem for the Treasury to be the sole federal regulator of the Government's debt financing or the SEC to be the sole federal regulator of the issuance of stocks and bonds.

Exclusive jurisdiction was enacted in 1974 to assure that all futures trading is regulated by a single regulator, regardless of the underlying commodity. Previously, federal law regulated only futures trading in agricultural commodities. In 1974 Congress wanted to extend the law to cover all futures contracts then being traded, such as those in sugar, precious metals and foreign currencies, and to cover all new contracts that might be introduced, such as interest rate futures. Congress also understood that, regardless of the commodity, all futures contracts have the same basic characteristics and purposes and should continue to be regulated under the same basic set of rules. To accomplish these goals, Congress expanded the definition of commodity in the law and gave the CFTC sole regulatory jurisdiction over all futures trading.

Eliminating this exclusive jurisdiction could result in regulatory chaos by allowing futures, which all have the same economic purpose, to be regulated under multiple and different regulatory systems. It would invite the states or other Federal regulators to impose rules, sometimes even conflicting rules, that could undermine the efficiency of futures markets as international hedging and price discovery instruments. This would lead to precisely the type of regulatory fragmentation about which some Treasury officials complain.

As to innovation, exclusive jurisdiction has nothing to do with the definition of a futures contract and its elimination would provide no answer as to which agency or agencies should regulate new products.[4/] What the critics are really complaining about is not exclusive jurisdiction, but the requirement that all futures contracts be traded on exchanges regulated by the CFTC. What is their solution? Have them trade on the securities exchanges or in the over-the-counter market regulated by the SEC? Or have futures contracts trade on futures exchanges regulated by the SEC? It is hard to see how innovation would be enhanced or what other benefits would result from exchanging one regulator for another. And I already have described what some of the costs of such a change would be.

The CFTC has not used its exclusive jurisdiction or the exchange trading requirement as a barrier to innovation. Nor,

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4/ The definitions of both futures and securities are intentionally broad in order to preserve flexibility to address fraud and other unlawful conduct. Indeed, the issue of what constitutes a security has given rise to an enormous amount of litigation for nearly 50 years, far exceeding the relatively few cases concerning futures. As Chairman Breeden has himself acknowledged, issues of statutory interpretation are inherent in any statutory scheme. Testimony before Subcommittee on Securities of the Senate Banking, Housing and Urban Affairs Committee, March 29, 1990, p. 21.

with regard to index participations (IPs), have we sought to impose our regulatory authority on any instrument with "only a bit of futurity." An IP is not some novel form of security and certainly is not used for capital formation. Nor are IPs some form of innovative hybrid. IPs, as they were proposed by the stock exchanges, are not assets at all. They are simply futures contracts which by law must be approved by the CFTC in order to trade.[5/]

The litigation fostered by the IPs issue is not the way to deal with intergovernmental regulatory issues. A better model is to strive to accommodate the desires of an exchange to trade a product, as well as the law and regulatory concerns. That has been the CFTC's traditional approach. The CFTC has defined its mandate and the exchange trading requirements in a pragmatic manner and, consistent with the Commodity Exchange Act, has taken steps to clarify its regulatory interest in innovative products. This has been particularly true in the case of "hybrid" instruments.

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5/ Recently, the Toronto Stock Exchange commenced trading on a different product, the Toronto 35 Index Participation Units (TIPs). The specification for these contracts as provided by the Ontario Securities Commission states that these contracts are units of a trust, the Toronto 35 Index Participation Fund, and are therefore a security.

o Hybrids

Innovation in the financial marketplace has given rise to new "hybrid" products that combine the characteristics and functions of more traditional instruments, such as equity or debt securities, futures and options. These products raise complex intergovernmental regulatory issues, and we have worked extensively with other agencies to avoid litigation, avoid regulatory gaps, and reduce regulatory uncertainty that existed in these markets -- uncertainties which may have impeded further innovation. Specifically, our jurisdictional interpretations and exemptive rules concerning hybrid products, as well as our swaps policy statement, reflect this pragmatic approach.

For example, in January 1989, the Commission issued a Statutory Interpretation which recognized an exclusion from Commission regulation for certain hybrid instruments that combine characteristics of futures contracts or commodity options with debt or depository interests. 54 Fed Reg. 1139 (Jan. 11, 1989), updated and reissued, 55 Fed. Reg. 13582 (April 11, 1990). In July 1989, the Commission issued rules which established an exemption from Commission regulation for certain other types of hybrid transactions that combine limited characteristics of commodity options with debt or depository instruments and are subject to other existing regulatory frameworks. 54 Fed. Reg. 30684 (July 21, 1989). On the same day, the Commission issued a Policy Statement which recognized a safe harbor from Commission regulation for swap transactions meeting certain criteria. 54 Fed. Reg. 30694 (July 21, 1989).

The Commodity Exchange Act and the Federal securities laws have been and are flexible enough to accommodate change. To the extent that market innovation suggests further regulatory flexibility is needed, it can be accomplished within the current framework. A structural overhaul is not required. The existing regulatory structure works and can continue to work if the agencies cooperate in good faith.

**o Other Suggestions for Change**

This is not to say that some barriers may not exist in the present statutory framework. However, these could be remedied through some fine tuning without radically changing jurisdictional assignments. For example, with regard to block trading on the futures markets, we are presently reviewing a rule proposal of the Chicago Mercantile Exchange for a large order execution procedure to see if it can be accommodated within the terms of the existing Commodity Exchange Act.

Nor would we be opposed to examining whether the legislative requirement mandating cash settlement of stock index derivative products should be removed to allow for the physical settlement of such products if desired. At the same time, other impediments to innovation could also be removed, such as the ban on futures trading on individual stocks, and the SEC veto over the introduction of stock index futures, which was not part of the original Johnson/Shad Accord.

**o The Transnor Case**

The Commission is still in the process of evaluating the Transnor litigation and its implications. However, I can report on our activities to date.

On April 18, 1990, the United States District Court for the Southern District of New York issued a written decision in Transnor (Bermuda) Ltd. v. BP North America Petroleum et al. The case involves claims by Transnor, a Bermuda corporation, that the defendants, Conoco, Inc., Conoco (U.K.) Ltd., Exxon Corporation, and others violated U.S. antitrust and commodity futures laws in 1986 by acting to depress the market price for North Sea "Brent" grade crude oil.

In Transnor, in refusing to grant summary judgment for the defendants, the court held that 15-Day Brent contracts, which call for the delivery of Brent oil at a later date and are entered into between producers, processors and merchandisers, are futures contracts. The court also held that the trading of 15-day Brent contracts constitutes a U.S. market. We understand that the parties have just reached a settlement of this case.

Since the court decision was issued, the Commission has received numerous inquiries concerning the Brent market and whether or not the Commodity Exchange Act is applicable. In particular, many firms expressed concern that the court's decision could chill commercial activity in this important, worldwide market.

On April 25 the Commission issued an Advisory to notify participants in the Brent oil market that it was considering actions appropriate to maintain United States commercial access to this market. On May 15th the CFTC and the Department of Trade and Industry in the United Kingdom (UK) issued a joint statement recognizing the international nature of the market, the U.K. Code of Conduct which governs traders carrying on business in the U.K., and the fact that Brent market transactions are bilaterally negotiated worldwide.

To date, based upon the representations made to it, the Commission's Off-Exchange Staff Task Force has taken the view that 15-day Brent contracts are not within the Commission's jurisdiction over futures contracts because they are within the category of transactions covered by the so-called forward contract exclusion of the Commodity Exchange Act.[6/]

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6/ In general, that provision has been read to exclude from the term "future delivery" under the Act contracts for the deferred shipment or delivery of commodities between commercial parties capable of making or taking delivery.

H.R. 4477

H.R. 4477, the "Markets and Trading Reorganization and Reform Act of 1990," would merge the CFTC and SEC into a single regulatory entity, the Markets and Trading Commission. We see no benefits to be gained by this proposal and some definite shortcomings.

The authors of the bill admit that the U.S. financial markets are the most innovative and safest in the world, but are concerned that the federal regulatory structure is antiquated.[7/] But H.R. 4477 makes no substantive changes that would alter that part of the financial system regulated by the CFTC and SEC.[8/] H.R. 4477 seems to accomplish nothing except to create a larger, more bureaucratic agency. We fail to see how this would improve the structure of the financial markets, make our markets more competitive or avoid the risk of financial loss.

We understand that some advocates believe that merger will end agency disputes and, as in H.R. 4477, is best accomplished by

7/ Statement of the Honorable Dan Glickman and the Honorable Dennis E. Eckart, March 23, 1990.

8/ The bill is said to preserve the existing jurisdiction of Congressional Committees. While such arrangements are certainly the province of the Congress, since the bill effects an agency merger, it could also result in four rather than two committees in both the House and Senate exercising oversight over subsequent futures and securities legislation. This could at least delay the legislative and appropriations process.

leaving existing regulatory systems intact. But if futures are not to be regulated as securities and no other regulatory changes are intended, then what is to be gained by a merger? Further, this approach does nothing to address jurisdictional disputes. Without the law being significantly changed, third parties can still sue over specific product characterizations regardless of whether there are one or two agencies. For example, suppose the new Markets and Trading Commission does what the SEC did and approves letting IPs trade on stock exchanges. Would that action magically transform IPs from a futures contract into a security? Of course not--the futures exchanges could still challenge the agency's action in court and they would still win.

Moreover, even assuming no changes in regulatory policy, a merger poses other problems. For example, innovation that represents a competitive threat to existing securities products might not see the light of day. As Chairman Greenspan observed in discussing such dramatic changes as merger:

> these solutions [merger, shifting jurisdiction] would concentrate a great deal of regulatory authority over the financial system in a single agency and this has been a concern of Congress for a long time. In addition to the potential management difficulties of a larger organization, there is the risk that bureaucratic inertia in a larger agency could be an impediment to the process of innovation. We should not lose sight of the fact that under the existing system of split jurisdiction over financial instruments, our

> financial markets have been the most innovative in the world, with many of the new products spurred by the introduction of index futures and other futures.[9]

Ironically, a single super agency may not mean regulatory peace in our time. Persons acting in good faith from either the same or different agencies can of course cooperate and coordinate regulatory programs. But a single agency does not guarantee this result. A super agency representing conflicting market interests will have a variety of divisions vying for authority. The contest for power may not vanish, but it could become intramural, paralyzing the decision-making process. Moreover, to the extent the disagreements are concealed from public view, they may become even more intense and divisive. And in any such struggles the cards would be stacked against the much smaller CFTC.

Merger would likely mean that the regulation of some futures products -- agricultural, energy and other physical commodities -- would suffer neglect at best. At the CFTC, futures are our most important product -- regardless of the commodity involved. We doubt this would hold true at a super agency whose budgetary and policy priorities would center upon regulating capital formation and the securities markets. Futures regulation of tangible commodities would likely become a regulatory stepchild in such an environment. Effective oversight and priority

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9/ Statement of Chairman Alan Greenspan before the Securities Subcommittee of the Senate Banking, Housing and Urban Affairs Committee, March 29, 1990: 11.

attention to futures trading could soon disappear if the CFTC were submerged in a super agency, most of whose personnel would have expertise in areas other than the highly specialized nature of futures contracts and the unique economic functions they perform.

In fact, H.R. 4477 relegates futures regulation of agricultural and other physical commodities to a "division" within the new super agency. This is reminiscent of the days when the old Commodity Exchange Authority was a tiny component within USDA and regulated agricultural futures trading from the basement of the Chicago Board of Trade building (which often flooded!). But the public interest in properly functioning futures markets requires more than a return to the 1930s and a regulatory framework that Congress has abandoned. In creating the CFTC, the Senate Agriculture Committee recognized that the unbiased regulation of all commodity futures traded is important and will inevitably suffer if placed within a larger agency with different, indeed conflicting, cash market priorities and traditions. As the Committee reported in 1974 when it approved creation of an independent CFTC with jurisdiction to regulate futures trading in all commodities:

> [W]hile in the past the Commodity Exchange Authority of the USDA has been authorized to regulate only certain agricultural commodities that are produced in the United States, the Committee felt that agricultural products not produced in this country and commodities such as silver and copper, which have no relation to agriculture, could not be effectively regulated within the Department of Agriculture or an agency dominated by the Department of Agriculture. (S. Rep. No. 93-1131 at 21)

What argument would now lead us to believe that an agency mainly concerned with the cash securities market and with no relation to, expertise or priority interest in, agriculture, silver, copper or energy products could effectively regulate futures contracts based on those underlying cash markets?

Conclusion

The case has not been made to disturb the existing jurisdictional assignment between the CFTC and the SEC. Any such change would have severe regulatory costs both for the markets and their customers. Congress should not tear apart a regulatory framework that has produced useful, successful, and competitive futures markets -- certainly not on the basis of unsubstantiated arguments. The quick fixes that do not address real problems will only create greater problems in the future. This jurisdictional change has been addressed and rejected by Congress several times before. It should be rejected again decisively -- and we should all return to our jobs and work together to meet the regulatory challenge of ensuring safety, soundness and protection of customers in a rapidly changing and increasingly global marketplace.