



OFFICE OF  
THE CHAIRMAN

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

April 18, 1978

The Honorable Patrick J. Leahy  
United States Senate  
Washington, D. C. 20510

Dear Senator Leahy:

In connection with the full Committee markup of S. 2391 tomorrow, consideration has been given to a proposed amendment that would clarify the Securities and Exchange Commission's jurisdiction over futures contracts on those securities required to be registered under the Securities Act of 1933. That proposed amendment would, of course, preserve the jurisdiction of the Commodity Futures Trading Commission over all futures contracts on tangible commodities and unregistered securities.

At a meeting today with the staff of the Agriculture Committee, the Chairman of the Commodity Futures Trading Commission suggested two alternatives to the proposed amendment included in S. 2391 for resolution by the full Committee. The first alternative closely follows the proposed amendment as set forth in S. 2391, except that the definition of the term "security" would not include an evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, or investment contract. This deletion was apparently suggested to ensure that the scope of the Commission's jurisdiction over futures contracts on registered securities would be carefully limited by definite boundaries. The second alternative proposed by the CFTC was a legislative ban on CFTC designation of any contract market for trading of any futures contracts on securities. This alternative was suggested as a method of preventing any further intrusion of the CFTC into the securities area subject to the Commission's jurisdiction. At the conclusion of this meeting, the Commission was asked to advise the members of the Agriculture Committee of its views on the two alternatives suggested by the CFTC.

In our view, the proposal to ban all futures trading involving securities raises serious regulatory concerns. Our Commission has traditionally disfavored outright bans on legitimate business activity. The CFTC's first alternative — to divest this Commission of jurisdiction over futures contracts on evidences of indebtedness, certificates of interest or participations in profit-sharing agreements and investment

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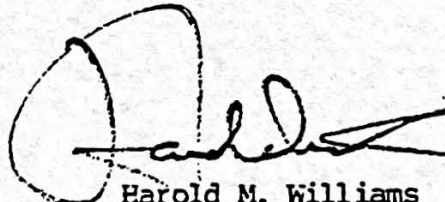
contracts, or any right to subscribe or purchase any of the above securities — also raises regulatory concerns. Nevertheless, given the importance of resolving the question of jurisdiction over futures contracts on securities in an appropriate manner, this Commission believes that this first alternative suggested by the CFTC is an acceptable, though not ideal, approach.

For your convenience, we enclose a copy of the first alternative, originally suggested by the CFTC and now accepted by the Commission.

Your consideration of the Commission's views with regard to this matter will be very much appreciated. If I or the Commission's staff can provide additional information or be of assistance in any way, please do not hesitate to call on me, or have your staff contact our chief Congressional liaison, Andrew Rothman, at 376-8093.

With best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Harold M. Williams', with a long horizontal line extending to the right.

Harold M. Williams  
Chairman

Enclosure

## Alternative I

Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. §2) is amended as follows:

(1) By inserting before the colon in the third sentence of the paragraph (1) of the following: "but shall not include any note, stock, treasury stock, bond, debenture, collateral trust certificate, preorganization certificate or subscription, voting-trust certificate, fractional undivided interest in oil, gas, or other mineral rights or any certificate of interest of participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing, or any index of value or interest in a pool composed of any of the foregoing, which is not exempt from the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. §77e) in effect on January 1, 1978.

(2) By inserting after the third sentence of paragraph (1) the following new sentence: "Any contract of sale or any agreement for future delivery of any security excluded from the definition of 'commodity' by the immediately preceding sentence; any contract of sale or agreement for future delivery based on any index described in the immediately preceding sentence; or any contract of sale or agreement for future delivery of any pool interest described in the immediately preceding sentence shall be deemed a security for the purposes of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940."