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*Miles -
What are
we doing
about
this?*

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

March 24, 1983

RECEIVED

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OFFICE OF THE COMMISSIONER

Honorable Philip McBride Johnson
Chairman
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, D.C. 20581

Honorable John S. R. Shad
Chairman
Securities and Exchange
Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Chairman Johnson and Chairman Shad:

We have been informed that the Chicago Mercantile Exchange (the "CME") recently submitted a proposal to trade options on Deutsche mark "physicals" to the Commodity Futures Trading Commission (the "CFTC"). We also are aware that the Philadelphia Stock Exchange ("PHLX") is presently trading options on Deutsche mark physicals, as well as several other foreign currencies, pursuant to the regulatory oversight of the Securities and Exchange Commission (the "SEC"). We understand that PHLX submitted its application to trade options on foreign currencies to the SEC more than two years ago and that this application was approved after careful study by the SEC staff and after a number of modifications were made to enhance the protections afforded to customers. It appears that the Deutsche mark options the CME proposes to trade will be substantially identical to the Deutsche mark options PHLX is presently trading.

We recognize, of course, that the SEC/CFTC Jurisdictional Accord, as enacted into law by the Congress, contemplates that the SEC will have jurisdiction to regulate foreign currency options traded on the securities exchanges and that the CFTC will have jurisdiction to regulate foreign currency options traded on the commodities exchanges. However, when Congress allowed this bifurcated regulatory approach to go forward, it did so on the understanding that the CFTC and SEC would make every effort to remove the disparities that would otherwise exist with respect to the manner in which foreign currency options trading is

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regulated. Indeed, Chairman Johnson specifically assured this Committee, during hearings last April, that he had "agreed to conduct further discussions" on the disparities that exist between the regulatory frameworks applicable to commodities trading and securities trading. Since these disparities are nowhere more apparent than in the case of options on foreign currency "physicals," we believe the time to begin these discussions clearly is at hand.

We are concerned that, unless such discussions are instituted, regulatory disparities may play an unduly important role in the decision to utilize a particular foreign currency options market. This may occur because the regulatory requirements that are applicable to the foreign currency options traded on the Philadelphia Stock Exchange are significantly different from the requirements that would be applicable to any options on foreign currency "physicals" traded pursuant to the CFTC's current exchange options rules.

For the moment, we do not take a position on whether the regulatory approach employed in the securities markets is invariably superior to the regulatory approach employed with respect to commodity options. However, there seems to be no rational basis for subjecting identical products to regulatory approaches that are significantly different. If, for example, a suitability requirement is deemed to be necessary to protect the participants in PHLX's market, we fail to understand why such a requirement is not deemed to be necessary to protect participants in the CME's proposed market.

We believe that, in adopting the proposals embodied in the Jurisdictional Accord, Congress did not intend to create a system which would encourage brokers and traders to base their foreign currency options investment decisions on the differences between the regulatory requirements imposed by the CFTC and the SEC. Nor did Congress intend to allow some exchanges to enjoy unfair competitive advantages, while forcing other exchanges to bear the burden of unfair competitive disadvantages. Nor did it intend to create a system in which competitors would succeed or fail, not on the basis of their competitive merits, but on the basis of who their regulatory overseer happens to be.

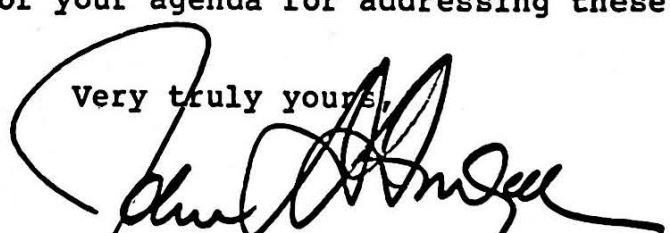
Rather, we believe that, when the Congress ratified the SEC/CFTC Jurisdictional Accord, it did so in the expectation that fair and healthy competition would occur between the commodities and securities exchanges. This expectation was premised, in part, upon assurances that the CFTC and SEC would hold

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discussions with respect to the regulatory disparities question and, in part, upon the recognition that Section 15 of the Commodity Exchange Act directs the CFTC to "endeavor to take the least anticompetitive means" when it pursues its regulatory objectives. Section 15 reflects Congress' deep concern that CFTC actions might unnecessarily dampen competition. In our view, the risk of competitive injury is particularly great when some markets must comply with CFTC regulations while others must comply with regulations imposed by a different regulatory body. In such a situation, the CFTC must exercise special care to assure that its actions do not create unjustifiable competitive burdens.

To fulfill the legal obligations of Section 15 and the spirit of the SEC/CFTC Jurisdictional Accord, we believe the CFTC and SEC must promptly initiate discussions regarding the regulatory disparities that will exist with respect to options on foreign currencies. We believe that delaying action on this front until after identical products are trading under two different regulatory schemes will make it virtually impossible to eliminate these disparities and could, in the process, inflict irreparable competitive injury upon one marketplace or another, thereby depriving the public of the benefits of fair and meaningful competition. We would appreciate being informed of the outcome of those discussions and of your agenda for addressing these issues.

Very truly yours,



JOHN D. DINGELL
Chairman
Committee on Energy and Commerce



TIMOTHY E. WIRTH
Chairman
Subcommittee on Telecommunications,
Consumer Protection, and Finance