



SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

The Honorable David L. Boren
United States Senate
440 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Boren:

Thank you for your letter of May 17, 1982, regarding the impact of S. 2109 on the marketability in the United States of futures contracts, to be traded on the London Financial Futures Exchange, on gilt-edged securities issued by the Bank of England. As the enclosed memorandum by the Commission's Office of the General Counsel indicates, the marketing of such instruments was not intended to be made unlawful by the SEC/CFTC Accord. The memorandum also concludes that any uncertainty on this point can be cured by administrative action and indicates that the staff plans to recommend that the Commission take such action promptly.

I hope this information is helpful to you. If we can be of further assistance, please do not hesitate to contact Russell Stevenson, Deputy General Counsel, at 272-2439.

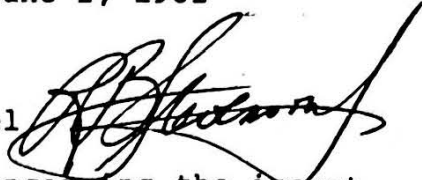
Sincerely,

John S.R. Shad

MEMORANDUM

June 2, 1982

TO: John S.R. Shad

FROM: Office of the General Counsel 

SUBJECT: Response to Senator Boren concerning the impact of the SEC/CFTC Accord on the marketability in the United States of non-domestic futures contracts on foreign securities

By letter dated May 17, 1982, Senator David Boren inquired as to the status under the SEC/CFTC Accord of futures contracts on gilt-edged securities issued by the Bank of England. 1/ Trading in futures contracts is expected to commence on the London International Financial Futures Exchange in the near future. In particular, Senator Boren refers to proposed Section 2(a)(1)(B)(iv) of the Commodity Exchange Act ("CEA"), 2/ which would make it unlawful for any person to offer to enter into, enter into, or confirm the execution of a futures contract on any security other than an exempted security or a qualified securities index or group. 3/ He is concerned that, since the securities in question

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- 1/ Senator Boren's letter indicates that the securities in question are the United Kingdom's equivalent of U.S. Treasury bonds.
- 2/ This amendment, which is designed to implement the SEC/CFTC Accord, is included in S. 2109.
- 3/ In its entirety, Section 2(a)(1)(B)(iv) would state that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 as in

(footnote continued)

are not exempted securities, this provision may make unlawful the sale of these futures contracts in the United States. 4/

For the purposes of the securities laws, securities issued by foreign governments are not exempted securities. 5/ Accordingly, the sale of futures on such instruments would be made unlawful by Section 2(a)(1)(B)(iv) of the CEA. It is our understanding that Senator Boren's letter is correct, however, in saying that it was not the intent of the Accord to ban the trading of futures on such instruments in the United States.

3/ (footnote continued)

effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982); or except as provided in subparagraph (ii) hereof, any group or index or such securities or any interest therein or based on the value thereof."

4/ A similar concern has been raised by the Toronto Stock Exchange with regard to the marketability in the United States of futures contracts on Government of Canada Treasury securities. See letter to Edward F. Greene, General Counsel, SEC, from Richard H. Rowe, Proskauer Rose Goetz & Mendelsohn, Counsel for the Toronto Stock Exchange (April 22, 1982).

5/ The term "exempted security" in Section 3 of the Securities Act and Section 3(a)(12) of the Securities Exchange Act encompasses only obligations issued or guaranteed by the United States, and does not include securities issued by a foreign government. We understand that the Bank of England does not intend to register the securities in question with the Commission for sale in the United States.

In this regard, the Securities Exchange Act defines the term "exempted security" to include such securities "as the Commission may, . . . consistent with the public interest and the protection of investors, either unconditionally or upon specific terms and conditions, . . . exempt. . .". 6/ In our view, exercise of this exemptive authority with respect to a security such as the gilt-edged bonds in question would satisfy proposed Section 2(a)(1)(B)(iv) of the CEA. The staff intends in the near future to recommend that the Commission commence rulemaking proceedings to consider such an exemption, and the nature and scope of any rule which would be necessary to accomplish this objective. It should be noted, however, that such an action by the Commission would not, in itself, authorize futures trading in the instruments covered. Rather, the CFTC would retain authority to regulate trading in such futures contracts under the terms of the CEA. 7/

6/ Section 3(a)(12) of the Securities Exchange Act.

7/ Proposed amendments to Section 4(b) of the CEA would authorize the CFTC, among other things, to adopt rules and regulations prescribing fraud and requiring minimum financial standards, the disclosure of risk and reporting requirements, the keeping of books and records, the safeguarding of customer funds, and requiring the registration of persons engaged in offer or sale of any futures contract traded on a board of trade outside of the United States.