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EXECUTIVE DIRECTOR  
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The Honorable Jake Garn  
United States Senate  
Washington, D.C. 20510

Dear Senator Garn:

The American Bankers Association ("ABA") wishes to express its strong concerns with the Futures Trading Practices Act (S. 207), as reported by the Senate Agriculture Committee. In particular, the ABA is extremely concerned about the detrimental impact that Section 302 covering exemptive authority and Section 303 governing hybrid commodity instruments may have on the development of new financial products. In large part, these Sections seek to extend the jurisdiction under the Commodity Exchange Act ("CEA") of the Commodity Futures Trading Commission ("CFTC") over certain financial products. In our view, no need exists for the CFTC to regulate certain types of swap agreements, deposit accounts and hybrid instruments since they are either subject to regulation by federal and state banking authorities or do not have sufficient indicia of futurity to require CFTC regulation. The ABA is concerned that the manner in which these provisions have been drafted will have potentially wide ranging and undesirable effects on a vast array of existing and new financial products that may be offered outside of future exchanges. For example, as the bill is currently drafted, any financial product, including a deposit account, that does not satisfy all the enumerated prerequisites for exemption would be subject to CFTC jurisdiction. Given this potential for expensive and duplicative regulation by the CFTC of these deposit instruments, banking institutions will be reluctant to develop new and innovative products to suit the financial needs of their customers.

From a policy point of view, extending the jurisdiction of the CEA to require futures exchange trading for swap agreements, deposit accounts and hybrid instruments is both unnecessary and burdensome. Swap agreements are not offered to the public and financial institutions and securities firms, participants in the swap market, are currently subject to federal oversight and protection. Deposit accounts, while offered to the public, are also subject to comprehensive regulation by federal and state banking regulators. Hybrid instruments, to the extent they are

structured as depository instruments, are similarly subject to comprehensive federal and state banking regulation.

Consequently, it is the ABA's position that these instruments, to the extent they are subject to federal or state banking regulator oversight or are not offered to the general public, should be expressly excluded from CFTC jurisdiction. The ABA is confident that any such exclusion could be drafted to ensure that the public interest is adequately protected.

The ABA would note that it would not support in any manner the total elimination of these provisions from the bill. Rather the ABA believes that the CEA should be clarified to exclude bank products currently subject to federal and state regulation from duplicative and potentially inconsistent regulation by the CFTC.

For example, an exclusion could be drafted for deposit accounts by removing current paragraph (d) (2) to Section 302 and, instead, inserting the following language in Section 2 of the CEA:

"This Act shall not apply to any demand deposit, time deposit, or transaction account (as defined in subsections (b) (1), or (c) (1), and (e) respectively, of Section 204.2 of Title 12, Code of Federal Regulations) subject to regulation by an appropriate federal banking agency."

This exclusion would ensure that new product development would not be stifled because duplicative and burdensome regulatory requirements would not be superimposed on existing bank regulation governing deposit accounts. Moreover, concerns that these instruments could escape any federal oversight would be avoided as the exclusion would be predicated on the deposit account being subject to federal or state banking regulation.

We appreciate the opportunity to express our concerns regarding Title III of S. 207. The ABA staff will be pleased to work with you and your staff to address these important issues for the banking industry.

Sincerely,

Edward L. Yingling