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BY TELECOPY AND FEDERAL EXPRESS

The Honorable Christopher J. Dodd, Chairman
Subcommittee on Securities
United States Senate Committee on Banking,
Housing and Urban Affairs
SR-444 Russell Senate Office Building
Washington, D.C. 20510-0702

Dear Chris:

On behalf of The Golden Sachs Group, L.P. ("Goldman") and its subsidiaries, including J. Aron & Company ("Aron"), I am pleased to respond to your request for our views regarding Title III of S. 207, the Futures Trading Practices Act, as reported by the Senate Committee on Agriculture, Nutrition and Forestry.

Goldman and its affiliates offer a full range of investment banking services on a global basis to corporations, governments and other investors. Goldman, Sachs & Co. and related companies are registered broker-dealers and futures commission merchants, and are members of the major futures and securities exchanges domestically and overseas. Goldman affiliates are major market makers and block traders in equity and fixed income securities and use futures and options extensively for their own account as well as for their clients. Aron is a significant dealer in the international markets for precious metals, foreign exchange, coffee, grain, crude oil and petroleum products. In connection with these activities, Aron actively participates in the futures, options, forward and cash markets.

In addition, as both principals and as financial advisors to institutional clients, Goldman entities have played an important role in developing and executing many of the financial products that are covered by Title III. Goldman and certain of its affiliates have acted as issuer or underwriter of billions of dollars of hybrid securities issued in the U.S. or foreign capital markets. These include hybrid securities with rates of return linked to various commodities and indices, securities with detachable warrants on foreign currencies or other commodities and commodity swaps and other commodity transactions in the forward and options markets. These types of financial products serve critical capital formation needs and hedging and achieve important risk management goals.

The global financial, futures and commodities markets have become increasingly interdependent and competitive. In this environment, hybrid securities, swap agreements and off-exchange commodity transactions play a crucial role in the conduct of the financial affairs of the institutions we advise, as well as in the management of our own finances. Accordingly, it is critical that the regulatory scheme for these instruments develops in a way that does not stifle the existing markets and that does not place U.S. firms at a competitive disadvantage with their foreign counterparts. U.S. investors and those seeking access to our capital markets will best be served by a framework that encourages the development of useful new hedging techniques and innovative capital markets products.

There are positive elements contained in Title III of S. 207 as reported by the Senate Committee. Nonetheless, we are concerned that portions of the regulatory structure contemplated by the bill do not provide the optimum degree of necessary flexibility. Our specific comments are set forth below.

1. Hybrid Securities

Section 303 of S. 207 would amend the Commodity Exchange Act (the "CEA" or the "Act") to provide that if the option or futures component of a hybrid security accounts for less than 50 percent of the overall value, or expected change in the value, respectively, of that security, the security will not be subject to CFTC jurisdiction. We are pleased that this provision modifies the current regulatory treatment of hybrid securities insofar as it reduces the number of standards that such an instrument must meet in order to qualify for an exclusion from CFTC jurisdiction. It also increases the maximum permissible commodity components of instruments that are eligible for the exclusion.

However, in our view, S. 207 does not go far enough. Under the CEA, the offer and sale of hybrid securities that do not qualify for the new statutory exclusion will continue to be effectively prohibited. Securities with a commodity component that equals or exceeds 50 percent of the value of the security will continue to be prohibited in this country despite the fact that they can be, and are now being, issued and sold under the securities laws of other countries. Moreover, the CEA will continue to permit the issuance of debt securities with detachable warrants on foreign currencies while effectively prohibiting the issuance of similar securities linked to warrants on, for example, gold or oil. This leads to an arbitrary and unduly restrictive result despite the fact that, to our knowledge, no material regulatory problems have arisen in connection with the offer and sale of such hybrid securities in the numerous jurisdictions in which they are permitted.

Under current interpretation of the CEA, the limits placed on hybrid securities have stifled domestic innovation and, with it, our international competitiveness. The changes contemplated by S. 207 will allow only a marginal increase in the market for these instruments. S. 207 will continue to deny U.S. investors access to the risk management and other benefits that flow from purchases of such securities. Issuers also will continue to be denied full access to the U.S. capital markets. We, therefore, strongly urge review of the regulatory approach to hybrid securities embodied in S. 207 and development of a more balanced approach that will protect the public interest without sacrificing competition and innovation.

2. Off-Exchange Commodity Transactions

Section 302 of S. 207 would authorize the Commodity Futures Trading Commission (the "CFTC") to exempt off-exchange commodity transactions that meet certain criteria from the general requirement of the CEA that futures contracts be traded on exchanges. While the scope of this exemptive authority is somewhat limited, its enactment would represent a material advance over existing law, which does not vest the CFTC with any similar authority. The current lack of exemptive authority for off-exchange futures transactions, coupled with the existing uncertainty regarding the precise line of demarcation between forward contracts and futures contracts, has created certain problems for U.S. participants in a number of important international commodity markets, including the Brent crude oil market. The bill's new exemptive authority can be used to alleviate problems of this type. Indeed, the Senate Agriculture Committee's Report on S. 207 specifically encourages the CFTC to review the situation in the Brent market and other off-exchange commodity markets to determine whether the grant of exemptive relief would be appropriate. We view this as a very positive development.

3. Swap Agreements

Section 302 of the bill excludes certain swap agreements from regulation under the CEA and directs the CFTC to exempt other swap agreements that meet various criteria from regulation under the Act. We have a number of concerns regarding these provisions. First, we question the bill's apparent assumption that most or all swap agreements are subject to CFTC jurisdiction. Second, the currently proposed exemptive authority is not broad enough to encompass significant components of the existing swap markets. Third, the bill may interfere with the development of collateral and netting arrangements that are desirable to reduce counterparty credit risks and, by extension, systemic risks in the financial markets. We understand that representatives of the CFTC, the Federal Reserve, the Treasury Department and the swap industry currently are discussing these and other issues, and we are hopeful that these discussions will produce a proposal that all concerned parties can support.

I hope that the foregoing is responsive to your inquiry. If we can provide you with any additional information concerning these matters, please do not hesitate to contact me.

Very truly yours,

Robert E. Rubin