

CHICAGO MERCANTILE EXCHANGE

Chicago Board of Trade

June 13, 1991

The Honorable Robert R. Glauber
Under Secretary for Finance
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Room 3312
Washington, D.C. 20220

Dear Under Secretary Glauber:

In response to your request, the Chicago Mercantile Exchange and Chicago Board of Trade are pleased to clarify for you our joint position on the provisions of Title III of S. 207. As you know, we have testified publicly in support of the Title III provisions as a package.

That Title III package includes the following concepts: 1) government oversight for stock index futures margin levels; 2) general exemptive authority for the Commodity Futures Trading Commission; 3) special CFTC exemptive authority for those swaps that are not futures contracts; 4) a "predominant purpose" test for jurisdiction over hybrid instruments; and 5) a grandfather provision allowing the Securities and Exchange Commission to approve and regulate certain Index Participation contracts. We strongly supported this Title III package as adopted unanimously by the Senate Committee on Agriculture, Nutrition and Forestry on March 6, 1991. That legislation was recommended to the Committee by the CFTC. Secretary Brady also announced he generally supported those provisions.

Following the Committee markup, however, two types of changes have been made to the Title III package. First, the Treasury and CFTC proposed what were described as technical changes to Title III and, in particular, the swaps provision. The CFTC has indicated that, as a result of these changes, swaps that are, as a matter of law, futures contracts could be totally exempt from the Commodity Exchange Act under that provision. In that case, the so-called "technical" changes to the swaps language would not have been technical. Second, on the Senate floor (and despite the CFTC's

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June 13, 1991

Page Two

opposition), the statutory exemption for deposits was converted to two statutory exclusions--one for deposits and one for loans. We understand the CFTC now is reviewing its position on these Title III provisions for purposes of the Conference and may well oppose them.

In this context, we continue to believe that some provisions of this package as passed by the Senate should be refined by the Conference Committee, or clarified through Conference Committee Report language, to effectuate better the purposes of those provisions as reflected in the bill that was unanimously reported by the Senate Committee. As this process moves along, we look forward to working with you, the CFTC and the members of the Conference Committee on this effort.

Sincerely,

William F. O'Connor
Chairman of the Board
Chicago Board of Trade

John F. Sandner
Chairman of the Board
Chicago Mercantile Exchange