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COMMODITY FUTURES
TRADING COMMISSION
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Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

Dear Ms. Webb:

Salomon Smith Barney appreciates the opportunity to comment on the CFTC's Concept Release on Over-the-Counter Derivatives.

The Concept Release is based on the implicit premise that the CFTC is authorized to regulate swaps and hybrids, and accordingly assumes that swaps and hybrids are "futures" or "commodity options," the two types of financial instrument that the Commodity Exchange Act entrusts to the jurisdiction of the CFTC. We believe that this fundamental underlying premise is erroneous. Swaps and hybrids differ from futures and commodity options in many ways. They are not standardized, do not carry a right of off-set, and generally do not serve as the principal source of price information regarding the underlying risk. Congress has never determined or even suggested that swaps and hybrids should be regulated by the CFTC under the CEA. Congress did authorize and instruct the CFTC to exempt these products from regulation, but carefully disclaimed any intention to imply that they would otherwise constitute futures or commodity options. This disclaimer was essential because, without further action by Congress, any determination that swaps and hybrids are futures would imperil their enforceability, as the CEA prohibits futures not entered into on a registered board of trade. Thus unilateral action by the CFTC to regulate swaps and hybrids is not only unauthorized, it is dangerous to the markets Congress sought to preserve and protect.

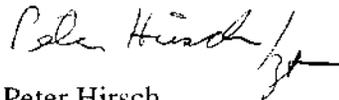
The CFTC explains the timing of its initiative by citing the rapid growth of OTC derivatives markets, and a series of purported "losses" cited by the General Accounting Office. Rapid growth of a market, however, is a demonstration of its economic utility, and not a justification for government intervention. The information on "losses" compiled by the GAO is based on press reports of earnings adjustments or lawsuits filed in which "derivatives" were cited as the cause. A close look at the underlying events shows, however, that many of these instances involved mortgage-backed securities, not swaps or hybrids, or regulated derivatives instruments, or were primarily attributable to

failures of risk management that are the responsibility of the contracting party, subject (in the case of dealers) to the oversight of the dealers' primary supervisor (not the CFTC). In any event, the question of "losses" in swaps is a metaphysical question: the entire purpose of a swap is to transfer risk, so that if markets move one party will inevitably "lose" what the other party "gains." Parties enter into swaps because they believe, based on their expectations for future changes in the value of the underlying risk, that these "losses" won't occur or that if they do they will be off-set by gains in other parts of their overall portfolio.

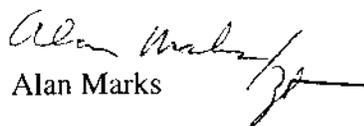
We recommend that the CFTC withdraw the Concept Release and defer to the judgment of Congress, operating with the considered input of all financial market regulators and market participants, as to whether additional regulation of OTC derivatives is warranted, and if so the form it should take. Instead, the CFTC should seek legislative authority to extend its exemptive authority to those swaps tied to the prices of non-exempt securities, so that the legal certainty currently afforded most swaps can be realized by this important and useful segment of the market.

We would be happy to discuss these issues further with the CFTC and its staff. Please address any comments or questions regarding this letter to the undersigned or to our colleague, Zachary Snow.

Very truly yours,



Peter Hirsch



Alan Marks