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New York, NY 10005  
212 656 2060

James E. Buck  
Senior Vice President  
and Secretary

**NYSE**

New York  
Stock Exchange, Inc.

October 9, 1998

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**COMMENT**

98-19  
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Re: Over-the-Counter Derivatives Concept Release

Dear Ms. Webb:

The New York Stock Exchange, Inc. (NYSE) is pleased to comment on the Commission's concept release on OTC derivatives. We wish to comment on only one issue – the legal status of equity swaps.

The NYSE is concerned about the legal status of equity swaps based on single stocks or a narrow-based index of stocks because these products are so closely linked to our own market. The United States stock market is unique in the world because of its enormous size<sup>1</sup> and its high level of individual participation.<sup>2</sup> Individuals and institutions are willing to participate in the U.S. securities market because they believe in the integrity of the market, which derives from strong U.S. regulatory protections.

We have consistently pointed out that equity swaps should be subjected to an appropriate securities regulatory scheme. Equity options, the functional equivalent of equity swaps, have always been subject to the securities laws, whether traded on-exchange or over-the-counter. Only by making clear that equity swaps are subject to the securities laws can Congress and regulators assure

<sup>1</sup> Total U.S. market capitalization exceeded \$12 trillion at the end of 1997. Stocks listed on the NYSE accounted for 9.4 trillion of this amount as of December 31, 1997. NYSE 1997 Fact Book at 101.

<sup>2</sup> See Shareownership 1995, Preface by Richard A. Grasso, NYSE Chairman and Chief Executive Officer, at 2.

that such products will not be used to circumvent the insider trading, fraud, and manipulation prohibitions of those laws. It is also important that the proper margin, capital, and sales practice standards apply to these instruments, and that they be integrated into the surveillance systems applicable to equities and all other equity-based derivatives.

In the concept release, the Commission asks what steps it could take to promote greater legal certainty in the swap market. We believe that the Commission can best promote legal certainty with regard to equity swaps by supporting legislation excluding these products from the CEA and clarifying that these products are securities within the jurisdiction of the Securities and Exchange Commission. CFTC support of such legislation would be an important step toward ending the years of controversy that have surrounded the legal status of these products. It would also seal off any possible regulatory black hole and ensure that the equity swaps market develops to meet the legitimate risk management needs of investors, not for regulatory arbitrage.

We appreciate the opportunity to comment on this concept release. If you have any questions or would like to discuss any issues further, please contact Susan Milligan at (202) 347-4300.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. E. Buck". The signature is written in a cursive style with a large, looping initial "J".