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October 12, 1998

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

COMMENT

Re: Over-the-Counter Derivatives Concept Release

Dear Ms. Webb:

On behalf of both Goldman, Sachs & Co. and Morgan Stanley Dean Witter as well as their affiliates (collectively, the "Firms"), we are pleased to comment on the Commission's Concept Release on Over-the-Counter Derivatives ("OTC"), 63 Fed. Reg. 26,114 (May 12, 1998) (the "Concept Release"). The Firms are concerned that the issuance of the Concept Release, and any actions taken by the CFTC to implement the types of regulation contemplated by the Concept Release, will serve only to foster uncertainty with respect to the enforceability and legal status of a wide variety of important financial transactions. This uncertainty in turn will undermine U.S. financial markets, force such markets to operate outside the United States and deprive U.S. entities of the benefits of participation in such markets, to the detriment of the U.S. financial markets and its economy. We therefore support, rather than any further unilateral action by the Commission, a study of the issues raised in the Concept Release by the President's Working Group on Financial Markets and by the U.S. Congress in the context of the upcoming CFTC reauthorization.

Background

The Firms are full service investment banks and are registered with the Commission as futures commission merchants, commodity trading advisors and commodity pool operators and with the Securities and Exchange Commission as broker-dealers and investment advisers. The Firms offer a wide variety of financial services on a global basis to corporate and governmental issuers and to institutional investors, including a full range of swap transactions and hybrid instruments. The Firms were active participants in the Commissions's development of exemptions for swap transactions and hybrid instruments. In addition, the Firms are among the largest currency dealers in the world. As financial advisers to issuers of debt and equity securities, the Firms have helped design and execute financing transactions involving many new hybrid products with returns tied to securities, currencies, indices and commodities. The Firms also trade financial futures and options for their own account. The Firms provide a complete range of trading, hedging and advisory services for producers, refiners and consumers worldwide in markets for crude oil, petroleum products, natural gas, power and selected precious and base metals and develop investment products for investors seeking to invest in commodities.

The Firms appreciate the opportunity to comment on the Commission's Concept Release. In this letter, the Firms focus their concern on the potential for regulation contemplated by the Concept Release and do not address many of the other issues raised in the Concept Release. They stand ready to provide any further assistance which may be helpful to the Commission in its consideration of these issues.

<u>Jurisdiction</u>

Many types of over-the-counter derivatives do not constitute futures contracts or commodity options that are within the jurisdiction of the Commodity Exchange Act ("CEA") and the CFTC. In order to provide greater legal certainty on this issues, however, Congress granted the CFTC exemptive authority with respect to over-the-counter derivatives (as well as other instruments), through the adoption of the Futures Trading Practices Act of 1992:

> In granting exemptive authority to the Commission under new section 4(c), the Conferees recognize the need to create legal certainty for a number of existing categories of instruments which trade today outside the forum of a designated contract market. These instruments may contain some features similar to those of regulated exchange-traded products but are sufficiently different in their

> purpose, function, design, or other characteristics that, as a matter of policy, traditional futures regulation and the limitation to the floor of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce.

H.R. Rep. 978, 102d Cong., 2d Sess. 80 (1992).

Congress created this exemptive authority for the purpose of avoiding regulation by the CFTC of privately negotiated derivatives contracts not offered to the general public, not to authorize the CFTC to develop a broad regulatory scheme for such transactions or professional intermediaries who deal in them. In fact, Congress expressly directed the CFTC to use its authority to exempt -- not regulate -- the over-the-counter derivatives market: "In this respect, the Conferees expect and strongly encourage the Commission to use its new exemptive powers promptly upon enactment of the legislation in four areas where significant concerns of legal uncertainty have arisen: (1) hybrids, (2) swaps, (3) forwards, and (4) bank deposits and accounts". Id. at 81. Congress also made it clear that, in exercising its exemptive authority, the CFTC was not required to make any determination as to whether such instruments are futures contracts or commodity options. Thus, the Concept Release, which assumes that the CFTC has regulatory oversight responsibility for these transactions, is plainly inconsistent with the clear mandate of Congress and the terms of §4(c) exemption authority.

Legal Uncertainty

The CFTC's issuance of the Concept Release apparently reflects a conclusion on its part that certain types of over-the-counter derivatives do in fact constitute futures contracts or commodity options; otherwise the Commission would have no jurisdiction over such instruments and no authority to propose the comprehensive regulatory regime contemplated by the Concept Release. If so, the Concept Release would mark the first time that the CFTC - or any agency or court - had reached such a conclusion and would undermine the intent of Congress in granting the CFTC exemptive authority in 1992.

This shift is likely to foster the type of legal uncertainty that Congress and the CFTC sought to eliminate through the adoption of exemptive authority and exemptive regulations. For example, a conclusion that swaps are futures could jeopardize the status of certain types of swaps that might not be eligible for the exemption afforded by Part 35 of the CFTC's rules. Moreover, the CFTC's questioning of the applicability of the swaps exemption to transactions widely believed to be within its scope could result in challenges to swaps transactions on enforceability grounds.

These results, we believe, will force many financial institutions to conduct their over-the-counter derivatives businesses and operations outside the United States, which will cause precisely the result Congress was attempting to avoid by granting the CFTC exemptive authority in 1992. Moreover, the legal uncertainty created by the adoption of the proposals set forth in the Concept Release could make financial institutions reluctant or unwilling to enter into derivatives transactions with U.S. counterparties. This development could have significant adverse consequences for the U.S. economy by making it more costly or even impossible for U.S.-based businesses to engage in necessary hedging and risk management activities.

Market Experience

The Concept Release states that the Commission's broad-ranging review of the OTC market is justified by two observations: first, that the market has seen rapid and substantial growth and, second, that market participants are endangered by losses suffered in the OTC market. The market's continuing growth and development of new products, however, endorse Congress' efforts in 1992 and the CFTC's efforts in 1993 to provide a stable yet flexible OTC marketplace. This growth does not provide a basis for new regulation without identifying issues or problems in need of attention. In addition, the loss situations identified by the Commission in no way warrant any sweeping changes to the regulatory regime.

The Concept Release cites a "number of large, well publicized financial losses over the last few years."* The losses cited, however, generally involved other financial products, such as mortgage-backed securities and structured notes, in addition to OTC derivatives. The GAO Report, upon which the CFTC relies, noted that individual loss events in these products were larger than

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* General Accounting Office, GAO/GGD-98-5, "OTC Derivatives: Additional Oversight Could Reduce Costly Sales Practice Disputes" (1997) (the "GAO Report") and "Commodities Regulation: Fraud, Manipulation & Other Claims", Jerry W. Markham, Securities Law Series, Vol. 13B, Concept Release #21, June 1998 at §27.05 nn 2-22.1.

those sustained in the OTC market.* Significantly, the GAO Report concluded that the level of losses identified did not justify additional regulatory action with respect to OTC derivatives.

Moreover, losses in OTC transactions are sometimes an expected and routine part of hedging operations. Thus, the better measure of actual losses are losses associated with sales practice complaints. Excluding one dealer responsible for half of the complaints made by end-users, the GAO found that only 9 instances of losses associated with end-users' complaints occurred over the course of 10 years.** In sum, the GAO's conclusion that "sales practice concerns were not widespread" is consistent with Chairman Greenspan's testimony before Congress that in proportion to the size of the market the amount of losses is not large.***

Studies by regulators and academics have demonstrated that, rather than presenting a threat to the health and stability of the nation's financial system, derivatives have been a stabilizing factor. Derivatives allow business and governments to take only the risks they are prepared to assume in light of their experience and financial strength.**** In its effort to prevent

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* GAO Report at 10.

** Out of 360 end-user losses that involved OTC derivatives, mortgage-backed securities and structured notes between April 1987 and March 1997, end-users had sales practice concerns in only 18 OTC transactions, half of which were with one dealer.

*** See Transcript of oral proceedings from hearings on H.R. 4062 before the U.S. House of Representatives Committee on Banking and Financial Services, July 24, 1998 (in response to questioning from Rep. Hinchey (D-NY)). See also Testimony of Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System before the U.S. House of Representatives Committee on Banking and Financial Services, July 24, 1998, at 5 (stating that despite expected derivatives losses from declines in underlying asset prices, the Federal Reserve Board opposed "inappropriate regulation" of the OTC markets).

**** See, e.g., Testimony of Dr. Robert J. Mackay, Vice President, National Economic Research Associates, before the U.S. House of Representatives Committee on Banking and Financial Services, July 16, 1998, at 2-3 (stating that "derivatives provide substantial benefits to end users, dealers, and the U.S. economy" through "lower funding costs and more diversified funding sources," improving the quality of and diversity of credit risk and facilitating U.S. corporations' access to international markets); Report of the Commodity Futures Trading Commission, OTC Derivative Markets and their Regulation, October 1993, at 8 (noting that OTC derivatives provide "increasingly novel and flexible tools for the efficient allocation and management of risks"); Report of the House (continued...)

losses without sufficient attention to the risk of adversely affecting markets, the CFTC may protect some firms from making poor financial decisions while preventing many more from prudent risk management.*

Chairperson Born has stated that the Concept Release is not the next step in a regulatory process and that the CFTC "has no idea whether it is going to issue new proposed regulations."** The Concept Release also states that the CFTC "has no preconceived result in mind."*** Several recent actions by the CFTC, however, suggest to us that the Concept Release serves as the next step towards expansive regulation of the OTC market by the CFTC. These actions include the CFTC's shift on the status of OTC derivatives in its comment letter on the SEC's "Broker-Dealer Lite" proposal,**** the conditions imposed in the adopting release for the pilot program permitting agricultural trade options and the introductory comments of the Concept Release.***** Chairperson

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****(...continued)
Banking Committee Minority Staff, Financial Derivatives, November, 1993, at 3 (explaining that derivatives "allow end users, such as banks and corporations, to...manage interest rate risks, currency risks, liquidity, and geographic market considerations....").

* <u>See e.g.</u>, Statement of Charles W. Smithson, Managing Director, Financial Products CIBC World Markets, to the U.S. House of Representatives Committee on Banking and Financial Services, July 16, 1998 at 3 ("The overwhelming evidence is that end-users are using derivatives to reduce the risk of their business...Derivatives permit parties to transfer risks they do not wish to face, thereby freeing them up to focus on their core business more effectively."); Testimony of First Tennessee National Corporation by Susan S. Bies, Executive Vice President, Risk Management, before the U.S. House of Representatives Committee on Banking and Financial Services, July 16, 1998 at 4 ("[A]s an end-user...over-the-counter derivatives are our primary interest rate risk management tool.")

** <u>See</u> Transcript of oral proceedings in hearing on H.R. 4062 before the U.S. Senate Committee on Agriculture, Nutrition and Forestry, July 24, 1998.

*** Concept Release at 26114.

**** <u>See</u> Letter from Jean A. Webb, Secretary, Commodity Futures Trading Commission, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, February 26, 1998, (explaining that "OTC products include ... swaps (many of which constitute futures or options)").

***** <u>See</u> Concept Release at 26115 (citing dramatic increases in the volume of the OTC derivatives market, the participation of "new end-users of varying levels of sophistication," increasingly standardized products and proposals for "centralized execution and clearing"). These examples seem carefully chosen to provide a justification for CFTC regulation of the OTC (continued...)

Born's representations are further undermined by statements made recently by I. Michael Greenberger, Director of Trading and Markets at the CFTC. Mr. Greenberger, in discussing the OTC dealers' reaction to the Concept Release, said "Frankly, I wish we could get our proposed rules out because I think that they would . . . be widely applauded."* In light of the absence of evidence of the dangers presented by the OTC market and the effectiveness of the current practices of market participants, many of whom are banks or broker-dealers subject to regulatory oversight, this rush to regulate is premature, unnecessary and dangerous to the health and stability of these markets.

<u>Regulatory Regime</u>

Originally, Congress designed the legislation on which the CEA is based to protect public users of futures contracts based on agricultural commodities from speculation, market manipulation and fraud. In 1974, Congress amended the CEA primarily by establishing the CFTC and expanding the jurisdiction of laws regarding commodity futures and options by extending the definition of a "commodity" from a specific list of agricultural commodities to include "all other goods and articles, except onions, . . . and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."**

Congress has long recognized, however, that certain financial market activities need not and should not be subject to regulation under the CEA. For example, the Treasury Amendment excluded from the CEA off-exchange derivative transactions "in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments."*** Elsewhere, the CEA provided for the exclusion from its jurisdiction of SEC-regulated options on securities.**** Moreover, as discussed above, when Congress later addressed the evolution of the financial

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*****(...continued)
market.

* "Swaps Rules Inevitable, CFTC Official Says," Bloomberg Forum, August 5, 1998. Mr. Greenberger also said that "... at most the question is going to be who is going to do the regulation." <u>Id.</u>

** 7 U.S.C. §1(a)(3).

*** <u>See</u> <u>id.</u> at §2(a)(i)(A)(ii).

**** <u>See</u> <u>id.</u> at §2(a)(i)(B).

markets to include swaps and other over-the-counter derivatives, it sought to have the Commission exempt these instruments from the CEA.

The users of derivatives generally are sophisticated institutions and not the farmers and members of the general public for whom the consumer protection provisions of the CEA were designed. Moreover, OTC markets provide customized services tailored to users' specific needs. This pattern contrasts sharply with trading in standardized futures contracts whose important terms are mandated by Section 4(a) of the CEA. Further, the CEA's focus on preventing manipulation of exchange markets because of their important price discovery function has no applicability to privately negotiated OTC derivatives which are not used to set the price of underlying commodities. Thus, the manner in which the CEA seeks to achieve its objectives of protecting futures markets and traders of futures contracts is ill-suited to respond to the requirements of the OTC market.

The CFTC's approach of regulating brokers serving merely as middlemen seeking to match up market participants is incompatible with the OTC market's structure of dealer-principals serving as counterparties on opposite sides of a position with different derivatives users. In policing a dealer-market, market practice and competitive concerns are more effective at ensuring compliance with good business practices than regulation. The OTC market has greatly developed since a few banks were the only dealers offering OTC products, with dealers' success determined by users' perception of dealers' creditworthiness, forthright sales practices and responsiveness. A dealer's concern for its creditworthiness and reputation is a matter of self-interest, not solely virtue, since counterparties will not do business with dealers whose sales practices, risk management, liquidity controls or other prudential measures they deem inadequate.

Market Practices

In the past, the largest losses relating to derivatives were caused by evasion of internal controls and fraud, which are best and adequately addressed *ex post facto* by private litigation and financial regulators' and state and local authorities' existing anti-fraud enforcement authority. Losses suffered by Orange County, for example, were largely the result of the fraud and malfeasance of its comptroller. Similarly, Gibson Greetings, Inc. recouped most of its losses from its dealer-counterparty.* Lessons learned in these cases were applied to strengthen the market generally. Since 1994, OTC losses, whether related to questionable sales practices or not, have diminished significantly. While derivatives unquestionably require experienced personnel, no regulatory regime can ensure that individuals will not circumvent internal controls and policies designed to limit their firms' exposure whether such controls are imposed by regulation or self-interest.

Furthermore, self-imposed industry codes of conduct, practices and principles enhance the incentives to avoid malfeasance provided by the risk of private litigation. Of particular note in the voluntary oversight of OTC derivatives is the Derivatives Policy Group (DPG) formed in March 1995 at the suggestion of SEC Chairman Arthur Levitt. The Firms were active participants in the formation and operation of the DPG.

The DPG framework committed participating firms which use proprietary quantitative models to systematically evaluate risks associated with OTC derivatives, to periodically submit evaluation reports to the SEC and CFTC and to adopt external audit and verification processes to enhance the firms' internal controls.

Hence, the OTC markets are exemplars of self-regulatory oversight by market participants as demonstrated by the development of numerous industry-led standards and codes of conduct.** We do not believe, therefore, that additional regulatory burdens should be imposed on dealers under the Commodity Exchange Act.

When rare anomalies are observed, the overseeing government agencies can and have intervened in the OTC market. On

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* See Testimony of John C Coffee, Jr., Columbia University Law School, before the U.S. House of Representatives Committee on Banking and Financial Services, July 16, 1998 at 18, n. 49 (noting that the dealer settled "on highly favorable terms" to Gibson Greetings).

** See, e.g., Global Derivatives Study Group of the Group of Thirty, Derivatives: Practices and Principles (July 1993); Federal Reserve Bank of New York, Principles and Practices for Wholesale Financial Market Transactions (August 1995); Derivatives Policy Group, Framework for Voluntary Oversight (March 1955); Risk Standards Working Group, Risk Standards for Institutional Investment Managers and Institutional Investors (November 1996); Comptroller of the Currency, Risk Management of Financial Derivatives (January 1997); Basle Committee on Banking Supervision, Management Guidelines for Derivatives (July 1994); and Treasury Management Association, Voluntary Principles and Practices Guidelines for End-Users of Derivatives (October 1995).

December 5, 1994, the Federal Reserve Bank of New York issued a letter to Bankers Trust detailing suitability and disclosure standards in Bankers Trust's future leveraged derivative transactions, mandating transparency standards, and discussing marketing, sales management, training, credit administration, affiliate transactions and firewalls. In issuing the Bankers Trust letter, the NY Fed emphasized that all "banking institutions engaged in derivative activities . . . should maintain effective policies and practices relating to client selection, marketing and sales practices, and pricing and valuation."*

In short, the OTC derivatives market currently "self-regulates" under a combination of self-imposed but institutionalized best practices for those dealers not directly regulated and broad and effective internal and governmental oversight of regulated banks and broker-dealers.

Discussions of the OTC market rarely fail to mention the market's rapid growth and fluid nature. The market's growth in the absence of regulation, however, dictates against adding new regulation rather than suggesting that more regulation is needed. One reason OTC market participants oppose the regulatory scheme foreshadowed in the Concept Release is that it would render rigid and inflexible a market whose success has come from its flexibility and immediate responsiveness to changing circumstances and users' demands. The marketplace definition of best practices in the OTC market continues to evolve such that codifying current practices would damage, not facilitate, the market's development. Regulators of today are no better able to predict the next ten to fifteen years than they were in 1974, when the seeds for the jurisdictional and regulatory problems we face now were sown. Rather than trying to address the contours of the market at one moment or another, a more flexible system that recognizes the efficacy of the discipline imposed by the self-interest of participants in the OTC market is required to permit the market to develop efficiently. The goal of regulators should be to continue to encourage private sector development of best practices like the DPG framework, not to preempt them by the imposition of a regulatory regime that freezes in time rigid standards of oversight of these fluid, evolving markets.

<u>Long-Term Capital Management</u>

* Press Release of the Federal Reserve Bank, December 5, 1994.

Contrary to the recent testimony of Chairperson Born,* the events surrounding Long-Term Capital Management ("LTCM") do not provide any basis for CFTC regulation of OTC derivatives. The losses and risks created by LTCM are an issue of credit risk management in complex market conditions and do not identify problems or concerns with OTC derivatives. Excessive leverage, primarily in the form of debt financing rather than OTC derivatives, is a concern directed to the hedge fund's strategy and not the nature of its investments. In looking at the issue of increased regulation it is critical to recognize: (1) the best approach to oversight of LTCM is through its creditors, virtually all of which were either subject to bank or securities regulatory oversight or were affiliates that had adopted voluntary internal control procedures like DPG;** (2) regulation of hedge funds directly likely will be futile as they will just relocate offshore;*** and (3) to the extent that LTCM was structured as a CFTC commodity pool operator and commodity trading advisor, the CFTC did oversee their activities. With respect to the last issue, we understood that the CFTC did review LTCM's exchange traded futures and options positions and was assured that it was fully margined and was not disrupting the markets.

Indeed, the events surrounding LTCM highlight the concerns that the Firms have regarding the Concept Release. As we have stated, the Concept Release, and the adoption of any of the regulations contemplated in the Concept Release, will exacerbate the legal uncertainty surrounding OTC derivatives. Calling into question the enforceability of OTC transactions in equity and

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* See Testimony of Brooksley Born, Chairperson, Commodity Futures Trading Commission, before the U.S. House of Representatives Committee on Banking and Financial Services, October 1, 1998.

** See Testimony of Richard R. Lindsey, Director, Division of Market Regulation, U.S. Securities and Exchange Commission, before the U.S. House of Representatives Committee on Banking and Financial Services, October 1, 1998, at 3 ("[I]n August, we surveyed major broker-dealers known to have credit exposure to large hedge funds.... [N]o individual broker-dealer had exposure to LTCM that jeopardized the broker-dealer's required regulatory capital or its financial stability")

*** See Statement by Chairman Greenspan before the U.S. House of Representatives Committee on Banking and Financial Services, October 1, 1998, at 10 ("Any direct U.S. regulations restricting [hedge funds'] flexibility will doubtless induce the more aggressive funds to emigrate from under our jurisdiction. The best we can do in my judgment is...[r]egulate them indirectly through the regulation of the sources of their funds.").

emerging markets derivatives that were a significant part of LTCM's portfolio would only add to market instability, not reduce it.

We therefore agree with Secretary Rubin that further study of the LTCM matter should be done by the President's Working Group. As with issues addressed in the Concept Release, issues raised by hedge funds, especially as they relate to OTC derivatives, cannot and should not be the subject of unilateral action by the CFTC.

Hybrids and Swaps

One issue raised in the Concept Release is the question of whether the definition of "hybrid instruments" under Part 34 of the Commission's regulations is too complex. As major developers and users of hybrid instruments, we are not aware of any difficulties owing to such purported complexity. Rules and definitions regarding hybrid instruments have been used for over five years without incident by market participants with needs that require precisely tailored, often complex instruments.

Moreover, the Concept Release provides no substantive basis, nor does one exist, to narrow the scope of the definition of "commodity independent" as it is applied to hybrid derivatives. We are aware of no problems that have arisen under the current regulatory scheme in which such instruments are regulated as securities or bank products. Attempts to change the hybrid rules runs the substantial risk of subjecting an entire class of instruments to inappropriate and duplicative regulation.

In asking whether the swaps market should be regulated, the Concept Release relies on old data and misleading citations to suggest a greater urgency and risk of losses by small investors than actually exists. As major swap market participants, the Firms do not believe that swaps have become so standardized or fungible as to violate the Part 35 exemption and are concerned that the Commission, by implying in the Concept Release that they have, has unnecessarily injected legal uncertainty into the market for swaps. Such a misleading characterization of the OTC swaps market is at odds with the Concept Release's suggestion that greater legal certainty from expanded exemptions could stimulate the market's growth. We would welcome a judicious use of the Commission's exemptive authority to increase legal certainty, pursuant to the legislative intent in granting such authority. We strongly oppose, however, extending regulation under the guise of conditional exemptions granted to activities not previously subject to such conditions.

Congressional Action

The issues raised by the Concept Release deserve further study and consideration, particularly with respect to questions of overlapping jurisdiction and the potential for conflicting or duplicative regulatory requirements. This review should occur in a context that does not unnecessarily disturb the legal certainty essential to the continued growth of the OTC market.

While the Concept Release is contrary to the broad consensus that swaps and other off-exchange derivatives are not subject to the Commodity Exchange Act, a general agreement that greater legal certainty is required has emerged. The question dividing the Commission from its fellow regulators is how to go about reforming the regulation of derivatives. Instead of unilateral action by the Commission, we support a study of the OTC market by the President's Working Group in preparation for legislative action by the U.S. Congress in the context of the upcoming CFTC Reauthorization. Congressional review of existing laws and other regulators' proposals affecting the OTC market do not raise doubts about the status of current market operations.

Conclusion

We do not believe that additional regulation of the over-the-counter derivatives markets is warranted. The well-publicized events involving derivatives that have been cited, including the recent events involving LTCM, represent instances in which specific, isolated problems arose that were and will continue to be addressed by private litigation and industry self-policing. The OTC market experienced powerful incentives to correct the problems it faced, including losses and reputational risks that threatened dealers' ability to continue operating. There is no indication – and the CFTC offers no support for the proposition – that CFTC regulation of the derivatives markets will reduce or eliminate the perceived problems that the CFTC has identified. We also do not believe that such regulation will provide public protection benefits that outweigh their likely burden on the financial markets and the U.S. economy. In our view, CFTC regulation will serve only to increase the cost and reduce the efficiency of over-the-counter derivatives transactions and to make such transactions unavailable to certain market participants. Accordingly, instead of unilateral action by the CFTC we support allowing the President's Working

Group and Congress time to develop a consistent response to changes in the marketplace without endangering the market's further development.

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The Firms appreciate the opportunity to comment upon the Concept Release. We of course stand ready to provide any further assistance which may be helpful to the Commission in its consideration of this matter.

Sincerely,

GOLDMAN, SACHS & CO.

Goldman, Sachs & Co.

MORGAN STANLEY DEAN WITTER

Morgan Stanley Dean Witter