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News Release

Remarks before the

Law and Compliance Division
of the
Futures Industry Association

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*The views expressed herein are those of Commissioner Schapiro and do not necessarily represent those of the Commission, other Commissioners or the staff.

Remarks of Commissioner Mary L. Schapiro
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Good afternoon. It's a pleasure to again be among friends and perhaps, although I hope not, some former friends. I told Steve Keltz that what I wanted to discuss today was enforcement - related issues. The SEC has a comprehensive legislative request pending in that area and we have just concluded a major settlement with Michael Milken. In addition there are more subtle changes in the SEC's enforcement program that I thought would be of interest to you - as an intellectual matter, if not directly within your areas of practice. And, the message about enforcement trends goes beyond the SEC and the CFTC and really is apparent across the broader spectrum of regulated industries. These are matters about which we as taxpayers and citizens can be concerned. They go to the heart of the ability of the federal government to adequately punish and deter corporate and white collar offenses against a host of victims: banks, savings and loans, and the environment as well as commodities and securities firms and investors. The debate about enforcement at the SEC and I'm sure at the CFTC, as well, is taking place in the context of

two major scandals. The first of these, the S&L conflagration is the greatest financial fraud and regulatory failure since the modern federal government, and the alphabet soup agencies such as the sec were created. There are estimates that the total taxpayer cost to close insolvent thrifts, payoff depositors, and run the bureaucracy necessary to dispose of thrift assets will top $200 billion over the next ten years.

The second of these great scandals is the still unfolding expose of Wall Street excesses in the takeover boom of the 1980's. While the cases against Dennis Levine, Ivan Boesky, Michael Milken and Drexel are often referred to as an insider trading scandal, the ramifications of these cases may extend beyond insider trading. Newspaper reports have made direct charges of a causal link between the collapse of various S&Ls and abuses in the sale of various types of bonds, including junk bonds, by investment banking firms. The enormity of the S&L implosion, and the public fascination with the Wall Street and LaSalle Street investigations, has kept attention focussed on the issue of corporate and white collar wrongdoing, as have the bankruptcy of Drexel Burnham Lambert, and Exxon's recent indictment. As a result, I believe we may be at, or approaching, one of those points where a new consensus is reached, fundamental attitudes towards a public policy issue shift, and government seeks to respond with new initiatives that reflect, and re-enforce the new consensus. Those initiatives, at the SEC at least, are taking

the form of harsher settlement terms, including an insistence on prejudgmemt interest in disgorgement orders and longer suspensions and bars for industry professionals, increasing dramatically the size of the enforcement division over the next few years and seeking from the Congress the authority to assess civil monetary penalties and impose cease and desist orders. In any event, when I told Steve that this was the subject I'd like to discuss, his eyes glazed over and he predicted, perhaps correctly, that everyone would be bored to tears. Well, rather than run the risk that you all get up and walk out I searched for another topic. The time-consuming, mind-numbing topic of the day seems to be jurisdiction and while I'm not sure I can summon the strength to talk about it yet again, I will say a few words on that subject, if only to clarify the position I've taken publicly, which all sides of this debate seem comfortable in citing.

Let me start by saying that I am not the catalyst for change of the present jurisdictional structure. Anyone who has been around the CFTC for any period of time knows that virtually from the agency's creation in 1974, questions of jurisdiction have been posed and debated and litigated. One minute they seem to be resolved and the next minute, they are reborn. In ten years of practicing in this area, I have seen few issues, perhaps only audit trail and dual trading, that come close to inspiring as much passion and divisiveness. And certainly, there are few more

arcane issues that the press has so thoroughly reported.

I consider myself a bit actor in this passion play, yet even I have given a radio and two television interviews and six or seven newspaper and magazine interviews. The intensity with which this issue is followed is evidenced by the fact that the remarks on this subject of one commissioner at one agency can be viewed as news.

The debate today, has taken on a new character, largely because its terms have been framed by the active involvement of the Secretary of the Treasury. In at least two speeches in the month of March, Secretary Brady warned that the fragmentation of the US regulatory structure was hurting our competitiveness and innovation and contributing to excessive volatility. Without advocating one particular solution, he said, "what is important is that we get something done and get it done now".

In testimony before the Senate Banking Committee's subcommittee on Securities later on in March, Undersecretary of the Treasury, Robert Glauber said : "Instead of attempting to limit the use of futures, we need to find better ways to integrate them into the 'one market' so that they do not destabilize the system. A more integrated regulatory framework, I believe," Mr. Glauber continued , "will help avoid major disruptions and help make our financial system more stable, efficient, and competitive".

Undersecretary Glauber then set forth three possible solutions: merger of the SEC and CFTC, unification of regulation of all financial products and their derivatives or unified regulation of

stock-related products. Treasury took the position that the minimum change that is needed is to unify the regulation of stocks, stock options,and stock index futures under the SEC. In addition, consolidation of margin authority in a single regulator was proposed,as well as, amendment of the exclusivity provision of the CEA. He ended his testimony with this warning: "Indeed, we believe that any more limited approach will only delay the resolution of intermarket problems that must be addressed. If this minimum approach cannot be accomplished soon, it seems very likely that we would be forced to adopt a complete merger approach at a later time in response to new major market disruptions."

Given the strong and outspoken position of the Treasury Department on this subject, it is entirely reasonable to expect action to change the jurisdictional boundaries at least along these "minimal" lines.

Hence, it became incumbent upon me, as well as everyone else with the authority to influence or effect a change, to carefully think through the options and draw reasoned conclusions about the best course of action. My experience as a regulator -- both at the CFTC and at the SEC -- give me a very keen appreciation for the day to day impact of jurisdictional confusion and conflict on the internal operations and external relations of the two agencies. My work with FIA members similarly provided a specific understanding of the position many of you find yourselves in -- even within your own firms -- as a result of the jurisdictional

split. The opinion I have formed is the product of this ten years work and the perspective of having viewed the problem from three vantage points. It is not simply an imperative of turf or ideology.

In light of the choices laid out by the Treasury, I have said that my preferred alternative would be merger of the agencies. My reasons have been reported with varying degrees of accuracy in the press, but I'd like to review them briefly.

If there is to be a change in jurisdiction, I prefer merger to the piecemeal transfer of products from the CFTC to the SEC. Merger, as opposed to the transfer of only one product, can result in economies for brokerage firms and should not increase costs for exchanges. Merger enables the expeditious resolution of intermarket issues. Merger enables the new agency to speak with one voice internationally, and to bring the maximum amount of leverage to bear in international negotiations. Merger would release both the futures and securities industry from the current climate of uncertainty that dominates and hampers the development and introduction of new products. Merger more nearly ensures that the scheme of regulation that recognizes futures as unique instruments will survive.

What I feel most strongly about in the whole debate are two issues: Exclusivity and margin. I don't know whether index participations were good products, but honestly, I don't really care if they were or not. What I care about is that they never got to really be tested in the marketplace. And I care about

creative people having the opportunity to introduce new products and the American public having the opportunity to trade them or not trade them as they see fit. I detest the idea that we have a system in which new products are first subject to the test of litigation before the test of the marketplace and where regulators must waste precious time and tax dollars taking sides.

As for margin: I know this is heresy, but I believe that there should be some greater federal oversight of futures margins. In the first instance I believe the exchanges are the appropriate place to set margin levels. However, margin levels are too fundamental to the financial integrity of the entire stock, futures and options clearance and settlement system for that process to occur without any federal oversight at all, short of declaring a market emergency.

I would be pleased to see the Fed take on the responsibility of vetoing levels that it determined were too low.

After all is said and done, what can we expect from the jurisdictional debate? My answer has to be "not much" this year. There are less than 50 legislative days left. That's a woefully short time to effect a change as momentous as this.

What I expect will happen is that the Treasury, based on its testimony in March, may present a bill to the Congress some time during this session. I don't think it should surprise anyone if such a bill addresses the issue of federal oversight of stock index futures margin levels and the exclusivity provisions of the

Commodity Exchange Act. I also expect that such a bill will attempt to accomplish a jurisdictional change of a more fundamental nature. There, I suppose that the real issue for the draftsmen will be whether, for example, in transferring jurisdiction over stock index futures to the SEC, they are to be treated as securities or as futures. I believe the prevailing view on the Securities and Exchange Commission would be to treat them as futures. And that is an approach that I think other agencies would also find appealing.

There is of course jurisdictional legislation already pending on the Hill - Congressmen Glickman and Eckhart have introduced a bill to establish a Markets and Trading Commission in order to combine the functions of the CFTC and the SEC into a single independent regulatory agency. Senator Gorton has also introduced a bill which would transfer jurisdiction over stock index futures to the SEC. Of course, one of the interesting less well known facts about this process is that while we struggle with the jurisdictional debate, other critically important legislation is being held up: the SEC's Remedies Bill, the CFTC Reauthorization, the Market Reform Bill and others. That is not in my opinion, government at its most effective.

Very honestly, I do not mean to minimize in any way the importance of these issues of jurisdiction nor to imply that the strength with which each side holds its views are not genuine and based on an honest belief about what is best for the marketplace. But I do believe there are many, many other important other

issues to which we need to individually and jointly devote our time. As I look around this room I see a lot of very smart people who are veterans of the jurisdictional war and I wonder if you don't feel as I do, that it has perhaps not been the best use of our time over the past fifteen years.

It is my greatest hope that the process does not destroy us all; that we can learn to work together better, regardless of how this particular episode of the on-going drama is concluded. We have the best futures and securities markets in the world. But that is not our god-given right, it is because we have worked hard and creatively to respond to the needs of American business to raise capital, and to American investors' desire to participate in this nation's economic growth and to the needs of a wide range of industry to hedge their risks and freely and efficiently discover prices. We flirt with the loss of everything we have achieved when we fight among ourselves. The loser in a never-ending battle between our two industries and our two regulators, is quite frankly the American public. We stand to lose to foreign competition the benefits we now reap from having the deepest, most liquid and efficient markets in the world. The potential loss of our financial preeminence presents a challenge that I truly believe is worthy of our tackling together. It is incumbent upon us all to always bear in mind that the stakes are very much higher than our parochial interests might indicate.

Thank you.