

July 30, 2008

The Honorable Nancy Pelosi  
Speaker  
H232 Capitol  
Washington, DC 20515

The Honorable John Boehner  
House Minority Leader  
H204 Capitol  
Washington, DC 20515

Dear Madam Speaker and Minority Leader Boehner:

The Securities Industry and Financial Markets Association opposes H.R. 6604, "The Commodity Markets Transparency and Accountability Act of 2008," which is on the House suspension calendar today.

As proposed, the legislation raises significant scope and policy issues, as well as technical issues that will cause long-term damage to the U.S. financial markets. This legislation will significantly reduce liquidity in the U.S. futures and derivatives markets, and by so doing, may have the unintended consequence of increasing energy commodity prices. By creating legal uncertainty, the bill will also lead to market disruption in the over-the-counter ("OTC") markets. Further, H.R. 6604 will impair the ability of pension plans, university endowments, and charitable foundations to protect their beneficiaries by making it more difficult to hedge various forms of financial risks and shield them from market downturns.

We are especially concerned with the expansive new provisions included in Section 8 of the bill, which create position limits with respect to futures and options in energy and agriculture commodities. By limiting the exemption from position limits for bona fide hedges, Section 8 restricts the ability of U.S. firms to enter into private, individually negotiated contracts to better manage their risks. Moreover, Section 8 would require the Commodity Futures Trading Commission (CFTC), rather than the exchanges, to set position limits and establish hedge exemptions for hundreds of exchange-traded contracts. Asking the CFTC to set position limits for all of these contracts within 60 days provides neither a meaningful opportunity for public comment nor is consistent with the objectives of the Administrative Procedures Act.

Section 14 of the bill also raises significant questions of policy, scope, and construction. This section directs the CFTC to require reporting of over-the-counter (OTC) transactions in agriculture and energy commodities that are "fungible." This section both imposes costly and burdensome new reporting requirements upon market participants, and by introducing new definitions into the Commodity Exchange Act, creates legal uncertainty with respect to OTC contracts. It would make it difficult and more expensive for commercial participants to hedge their risk.

Additionally, SIFMA is concerned with provisions in HR 6604 that could impact the global competitiveness of the U.S. financial markets. Indeed, under H.R. 6604 it may prove easier and less expensive for OTC traders to simply avoid U.S. markets and hedge their risk overseas. Without additional study and comment it is difficult to predict all unintended consequences of the expansive new provisions in this legislation.

Again, SIFMA opposes H.R. 6604, "The Commodity Markets Transparency and Accountability Act of 2008." Thank you in advance for your consideration, and we look forward to a continued dialogue on these critical, outstanding issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott DeFife".

Scott DeFife  
Senior Managing Director  
Government Relations

A handwritten signature in black ink, appearing to read "Richard Hunt".

Richard Hunt  
Senior Managing Director  
Government Relations