passed, as amended, on May 5, 1999. Therefore, in view of this language and in the interest of expeditiously moving H.R. 4541 forward, the Judiciary Committee will agree to waive its right to a sequential referral of this legislation. By agreeing not to exercise its jurisdiction, the Judiciary Committee does not waive its jurisdictional interest in this bill or similar legislation. This agreement is based on the understanding that the Judiciary Committee's jurisdiction will be protected through the appointment of conferees should H.R. 4541 or a similar bill go to conference. Further, I request that a copy of this letter be included in the Congressional Record as part of the floor debate on this bill.

I appreciate your consideration of our interest in this bill and look forward to working with you to secure passage.

Sincerely yours,

HENRY J. HYDE,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, September 6, 2000.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR HENRY: This letter responds to your correspondence, dated September 6, 2000, concerning H.R. 4541, the Commodity Futures Modernization and Financial Contract Netting Improvement Act of 2000, which the Committee on Banking and Financial Services ordered to be reported on July 27, 2000.

I agree that the bill, as reported, contains matter within the Judiciary Committee's jurisdiction and I appreciate your Committee's willingness to waive its right to a sequential referral of H.R. 4541 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter will be included in the Congressional Record during consideration of H.R. 4541.

Sincerely,

JAMES A. LEACH,
Chairman.

COMMODITY FUTURES MODERNIZATION ACT OF 2000

SPEECH OF

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. MARKEY. Mr. Speaker, I rise in support of the motion to suspend the rules and pass the bill, H.R. 4541.

I reluctantly intend to vote for this bill today, despite the fact that I have some very serious concerns about both the process that has brought this bill to the floor and some of its provisions.

Let me speak first to the process. In the Commerce Committee, Democratic members worked cooperatively with the Republican majority to craft a bipartisan bill that addressed investor protection, market integrity, and competitive parity issues raised by the original Agriculture Committee version of the bill. As a result, we passed our bill with unanimous bipartisan support. Following that action, we stood ready to work with members of the Banking and Agriculture Committees to reconcile our three different versions of the bll and prepare it for House floor action. But after just a few bipartisan staff meetings, the Democratic staff was told that Democrats would henceforth be excluded from all future meetings, and that the Republican majority leader was going to take the lead in drafting the bill. What's more, we were also told the chairman of the Senate Banking Committee was invited into those negotiations—despite the fact that this bill comes within the Agriculture Committee's jurisdiction over in the Senate and the Senate has not even passed a CEA bill. In fact, the Senate Agriculture Committee decided not to include the swaps provisions sought by the chairman of the Senate Banking Committee when the committee reported S. 2697, because these proposals were viewed as so controversial.

We then went through a period of several weeks in which the Republican majority staff caucused behind closed doors. The product that resulted from those negotiations was so seriously flawed that it was opposed by Treasury, the SEC, the CFTC, the New York Stock Exchange, the NASDAQ, and all of the Nation's stock and options exchanges, the entire mutual fund industry, and even some of the commodities exchanges. Democrats, the administration, the CFTC, and the SEC suggested a number of changes to fix the many flaws in this language, and over the last several days many of them have been accepted. That is a good thing. But I would say to the majority, if you had simply continued to work with us and to allow our staffs to meet with your staffs, we could have resolved our differences over this bill weeks ago. We shouldn't have had to communicate our concerns through e-mails and third parties. We really should be allowing our staffs to meet and talk to each other.

Having said that, let me turn to the substance of this bill. There are two principal areas I want to focus on—legal certainty and single stock futures.

With regard to legal certainly, I frankly think this whole issue is overblown. Congress added provisions to the Futures Trading Practices Act of 1992 that give the CFTC the authority to exempt over-the-counter swaps and other derivatives from the Commodities Exchange Act—without having to even determine whether such products were futures. I served as a conferee when we worked out this language, and it was strongly supported by the financial services industry.

Now we are told we need to fix the ''fix'' we made to the law back then. But, I would note that when former CFTC Chair Brooksley Born opened up the issue of whether these exclusions should be modified, she was quickly crushed. The other financial regulators immediately condemned her for even raising the issue and the Congress quickly attached a rider to an appropriations bill to block her from moving forward. The swaps industry was never in any real danger of having contracts invalidated on the basis of the courts declaring them to be illegal futures. They were only in danger of having the CFTC ''think'' about whether to narrow or change their exemptions. But the CFTC was barred from doing even that!

What we are doing in this bill is saying—O.K.—we are going to take OTC swaps between ''eligible contract participants'' out of the CEA. They are excluded from the act.

Now, I don't have any problem with that. If the swaps dealers feel more comfortable with a statutory exclusion for sophisticated counterparties instead of CFTC exemptive authority, and the Agriculture Committee is willing to agree to an exclusion that makes sense, that's fine with me. However, I am not willing to allow ''legal certainty'' to become a guise for sweeping exemptions from the antifraud or market manipulation provisions of the securities laws. That is simply not acceptable.

While some earlier drafts of this bill would have done precisely that, the bill we are considering today does not. That is a good thing, and that is why I am willing to support the legal certainty language today. However, I do have some concerns about how we have defined ''eligible contract participant''—that is, the sophisticated institutions that will be allowed to play in the swaps market with little or no regulation.

The bill before us today lowers the threshold for who will is an ''eligible contract participant'' far below what the Commerce Committee had allowed. I fear that this could create a potential regulatory gap for retail swap participants that ultimately must be addressed.

The term ''eligible contract participant'' now includes some individuals and entities, who should be treated as retail investors—those who own and invest on a discretionary basis less than $50 million in investments. These are less sophisticated institutions and individuals, and they are more vulnerable to fraud or abusive sales practices in connection with these very complex financial instruments. If Banker's Trust can fool Procter and Gamble and Gibson Greetings about the value of their swaps what chance does a small municipal treasurer or a small business user of one of these products have?

For example, under one part of this definition, an individual with total assets in excess of only $5 million who uses a swap to manage certain risks is an ''eligible contract participant'' for that swap. I think that threshold is simply too low.

I don't believe that removal of these retail swap participants from the protections of the CEA makes sense, unless the bill makes clear that other regulatory protections will apply.

To this end, the Commerce Committee version of H.R. 4541 would have required that certain individuals or entities who own and invest on a discretionary basis less than $50 million in investments, and who otherwise would meet the definition of ''eligible contract participant,'' would not be ''eligible contract participants'' unless the counterparty for their transaction was a regulated entity, such as a broker-dealer or a bank. That helps assure that they are not doing business with some totally fly-by-night entity, but with someone who is subject to some level of federal oversight and supervision. It is not a guarantee that the investor still won't be ripped off. But it helps make it less likely.

The bill we are considering today weakens this requirement. The Commerce provision only applies to governmental entities as opposed to individual investors; the threshold for application of the provision to such entities is lowered to $25 million; and the list of permissible counterparties to the swap is expanded to include some unregulated entities.

I believe the original Commerce Committee investor protection provision should be fully restored. Moreover, the bill should clarify explicitly that counterparties who may enter into transactions with retail ''eligible contract participants'' are subject for such transactions to the antifraud authority of their primary regulators.

I also have some concerns with the breadth of the exemption in section 106 of this bill, and its potential anticompetitive and anticonsumer effects. There may be less anticompetitive ways to address an energy swaps exemption in a way that provides for fair competition and adequate consumer protections in this market. Such a result would be in the public interest. What is currently in the bill is not, and I would hope that it could be fixed as this bill moves forward.

Let met now turn to the provisions of this bill that would allow the trading of stock futures. These new products would trade on exchanges and compete directly with stocks and stock options.

Now, I have serious reservations about the impact of single stock futures on our securities markets. In all likelihood, these products are going to be used principally by day traders and other speculators. Now, there is nothing inherently wrong with speculation. It can be an important source of liquidity in the financial markets. But one of the purposes of the federal securities laws has traditionally been to control excessive speculation and excessive and artificial volatility in the markets, and to limit the potential for markets to be manipulated or used to carry out insider trading or other fraudulent schemes.

I am concerned about the prospect for single stock futures to contribute to speculation, volatility, market manipulation, insider trading, and other frauds. That is why it is so important for the Congress to make sure that if these products are permitted, that they are regulated as securities and are subject to the same types of antifraud and sales practice rules that are otherwise applied to other securities. I think that this bill, if the SEC and the CFTC properly administer it, can do that.

First, with respect to excessive speculation, the current bill provides that the margin treatment of stock futures must be consistent with the margin treatment for comparable exchange-traded options. This ensures that (1) stock futures margin levels will not be set at dangerously low levels and (2) stock futures will not have unfair competitive advantage visa-vis stock options.

The bill provides that the margin requirements for security future products shall be consistent with the margin requirements for comparable option contracts traded on a securities exchange registered under section 6(a) of the Exchange Act of 1934.

A provision in the bill directs that initial and maintenance margin levels for a security future product shall not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of the Exchange Act of 1934. In that provision, the term lowest is used to clarify that in the potential case where margin levels are different across the options exchanges, security future product margin levels can be based off the margin levels of the options exchange that has the lowest margin levels among all the options exchanges. It does not permit security future product margin levels to be based on option maintenance margin levels. If this provision were to be applied today, the required initial margin level for security future products would be 20 percent, which is the uniform initial margin level for short at-the-money equity options traded on U.S. options exchanges.

Second, with respect to market volatility, the bill subjects single stock futures to the same rules that cover other securities, including circuit breakers and market emergency requirements.

Third, with respect to fraud and manipulation, the bill subjects single stock futures to the same type of rules that are in place for all other securities. These include the prohibitions against manipulation, controlling person liability for aiding and abetting, and liability for insider trading.

Fourth, among the bill's most important provisions are those requiring the National Futures Association to adopt sales practice and advertising rules comparable to those of the National Association of Securities Dealers. Under the bill, the NEA will submit rule changes related to sale practices to the SEC for the Commission's review. Because investors can use single stock futures as a substitute for the underlying stock, they will expect and should receive the same types of protections they receive for their stock purchases. It is significant that in its new role, the NFA will be subject to SEC oversight as a limited purpose national securities association. The SEC is very familiar with the sales practice rules necessary to protect investors. I expect the NFA to work closely with the SEC to ensure such protections apply to all investors in security futures products regardless of the type of intermediary—broker-dealer or futures commission merchant—that offers the product.

Fifth, the bill applies important consumer and investor protections found in the Investment Company Act of 1940 to pools of single stock futures. This ensures that investors in pools of single stock futures will enjoy the same protections as other investors in other funds that invest in securities.

In addition to these provisions, the bill also addresses a number of other important matters. It allows for coordinated clearance and settlement of single stock futures. It assures that securities futures are subject to the same transaction fees applicable to other securities. It requires decimal trading. And it provides Treasury with the authority to write rules to assure tax parity, so that single stock futures do not have tax advantages over stock options.

In addition to these provisions, the bill represents a substantial change from the status quo in which the SEC and the CFTC have shared responsibility for ensuring that all futures contracts on securities indexes meet requirements designed to ensure, among other things, that they are not readily susceptible to manipulation.

This bill gives the CFTC the sole responsibility for ensuring that index futures contracts within their exclusive jurisdiction meet the standards set forth in this bill. Most important among these requirements is that a future on a security index not be readily susceptible to manipulation. Because the futures contract potentially could be used to manipulate the market for the securities underlying an index, it is critical that the CFTC be vigilant in this responsibility. Relying solely on the market trading the product to assess whether it meets the statutory requirements is not enough.

In particular, the CFTC should consider the depth and liquidity of the secondary market, as well as the market capitalization, of those securities underlying an index futures contract. Perhaps even more importantly, the CFTC should require that a market that wants to offer futures on securities indexes to U.S. investors—whether it is a U.S. or foreign market—have a surveillance sharing agreement with the market or markets that trade securities underlying the futures contract. The CFTC should require that these surveillance agreements authorize the exchange of information between the markets about trades, the clearing of those trades, and the identification of specific customers. This information should also be available to the regulators of those markets.

Finally, if a foreign market or regulator is unable or unwilling to share information with U.S. law enforcement agencies when needed, they should not be granted the privilege of selling their futures contracts to our citizens.

There is one other important matter that I had hoped would be satisfactorily resolved today, but unfortunately, it has not. Last night, the Republican staff deleted language that appeared in earlier drafts that would have amended section 15(i)(6)(A) of the Securities Exchange Act of 1934 to clarify that single-stock futures, futures based on narrow stock indices, and options on such futures contracts (''security futures products'') are not ''new hybrid products''. I believe that this deleted language should have been reinserted into the legislation.

Let me explain why. Currently, a new hybrid product is defined as a product that was not regulated as a security prior to November 12, 1999, and that is not an identified banking product under section 206 of the Gramm-Leach-Bliley act. Unless an amendment to the definition is made, security futures products potentially would fall within this definition.

Section 15(i) of the 1934 act provides that the Securities and Exchange Commission must consult with the Federal Reserve Board before commencing a rulemaking concerning the imposition of broker-dealer registration requirements with respect to new hybrid products. Section 15(i) also empowers the Federal Reserve Board to challenge such a rulemaking in court.

This provision was never intended to apply to situations where the Congress has decided by law to expand the definition of securities. What we are doing today in this bill is establishing a comprehensive regulatory system for the regulation of security futures products. Under this system, it is clear that intermediaries that trade securities futures products must register with the SEC as broker-dealers, although it allows futures market intermediaries that are regulated by the CFTC to register on a streamlined basis.

H.R. 4541 rests on a system of joint regulation. That means that both the SEC and the CFTC are assigned specific tasks designed to maintain fair and orderly markets for these security futures products.

Amending the language on page 170 to exclude securities regulation of security futures only because they are sold by banks would create an anomalous result. A bank selling securities futures could register with the CFTC as a futures commission merchant but, unlike other entities, it might not have to notice register with the SEC. Effectively, half of the regulatory framework that the SEC and CFTC negotiated over with the Congress for many months would disappear. There is no public interest to be served in eliminating SEC oversight over issues such as insider trading frauds, market manipulation, and customer

sales practice rules just because a bank traded the security.

The role of the Federal Reserve Board with respect to new hybrid products would be at odds with the regulatory structure for security futures products under H.R. 4541. There is no reason to undermine the structure of H.R. 4541 by giving the Federal Reserve Board a role in the regulation of broker-dealers that trade securities futures products.

If this provision remains in the bill, I believe that in order to comply with the intent of Congress, as expressed in title II of this bill, the SEC would have to proceed by rule to require all bank Futures Commission Merchants seeking to sell single stock futures to, at minimum, notice register with the SEC. In addition, the CFTC would have to bar bank futures commission merchants from selling the product unless they have notice registered with the SEC. This is a convoluted way of dealing with a drafting problem that we could and should fix right now, but it is the only way to prevent gaping loopholes from opening up that could harm investors.

Because there has been an effort over the last several days to address some of the concerns that Democrats have had about tax parity, swaps language in section 107 of the bill, mutual fund language, and numerous other important provisions, I am reluctantly going to vote for this bill today. It is not the bill I would have crafted. It still contains some serious flaws. But it is a much better bill than the bill that passed out of the Agriculture Committee.

However, I must also say that if, when this bill goes over to the other body, some of the outrageous and anticonsumer provisions that were deleted from the House bill in recent days are to be restored, or other equally objectionable new provisions are added, I will fight hard to defeat this bill. And so, I would suggest to the financial services industry and to the administration, if you really want to get this bill done this year, you need to forcefully resist anticonsumer or anticompetitive changes to the legal certainty language, the tax parity language, the single stock futures language, and instead strengthen the consumer and market integrity and competitive provisions of the bill in the manner I have just described.

I look forward to working with Members on the other side of the aisle and in the other body to achieve that goal. And I hope that we can have more of a direct dialog on this bill as it moves forward than we have had over the last few weeks.

CONGRATULATING RICHARD JOHNSON OF WOODSTOCK, CONNECTICUT ON WINNING THE BRONZE MEDAL IN ARCHERY AT THE 2000 SUMMER OLYMPICS

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. GEJDENSON. Mr. Speaker, today I join the residents of Woodstock, Connecticut in congratulating Richard ''Butch'' Johnson for his continued success in the sport of archery. During the 2000 Summer Olympics in Sydney, Australia, Mr. Johnson won the bronze medal in team archery. This follows his gold medal performance in the 1996 Olympic games.

Over the past year, Mr. Johnson has built a tremendous record of achievement. He won the National Target Championship, the National Indoor Championship and the Gold Cup. He was the runner up in the U.S. Open. During the Pan Am Games in 1999, Mr. Johnson won the bronze medal in individual competition and a gold medal as part of the U.S. archery team. His performance in the Olympics is a crowning moment in a year of many victories.

Mr. Johnson is clearly one of the best archers in America and the world. He is an incredible competitor and a great ambassador for his community, the State of Connecticut and our nation. I am proud to join with his neighbors and friends in Woodstock in celebrating his Olympic bronze medal performance. We wish him much success in the years to come.

TRIBUTE TO ART EDGERTON

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Ms. KAPTUR. Mr. Speaker, I wish to pay tribute to an extraordinary man from my district, Mr. Art Edgerton. Art unexpectedly passed from this life on Tuesday, September 26, 2000 in his home in Perrysburg, Ohio. Art exemplified artistry, humanitarianism, and zest in every aspect of his being.

Well known to Northwest Ohioans, Art was a most talented and accomplished musician who made his mark nationwide. Though he began his professional career as a drummer at the tender age of nine, Art's piano playing was legendary and he played with various bands through the early 1950s. Even after settling in Toledo, Ohio and pursuing other employment, Art continued playing the piano, entertaining audiences in his adopted hometown.

In 1957, Art entered into a new career, that of broadcasting. Beginning as a part time disc jockey with the former WTOL radio station, he soon transitioned to a report for both radio and television covering civic affairs. Art broke into this field at a time when his race and his disability made this pursuit very difficult. Still he persevered, enduring prejudice with grace, covering the 1963 March on Washington and, blind since birth, taking notes in Braille. An early colleague best summed up Art's style: ''. . . a very accomplished reporter. He was extremely sensitive at a time when being a black reporter presented him with a lot of obstacles.'' The colleague noted how it was not easy for many people to accept Arts' use of Braille writing as he reported an event, and highlighted ''Art's ability to maintain his composure and to deal fairly with everyone he dealt with, even if they didn't deal fairly with him.'' Even as he continued in his journalism and music careers, Art took on a new challenge in the late 1960's becoming an administrative assistant in the external affairs office of the University of Toledo and later, the Assistant Director for Affirmative Action.

Active in community affairs as well, Art served as Board President of the Ecumenical Communications Commission of Northwest Ohio, Board Member of the Greater Toledo Chapter of the American Red Cross, member of the President's Committee on Employment of the Handicapped, President of the Northwest Ohio Black Media Association, and the National Association of Black Journalists. In 1995 he was inducted into that organization's Regional Hall of Fame. Among all of his awards and accolades, Art was perhaps most proud of receiving the 1967 Handicapped American of the Year Award which was presented to him personally by Vice President Hubert Humphrey. Coming from an unhappy childhood in which his parents could not accept his blindness, his wife explained why this particular award affected him so deeply, ''With his upbringing, how he had to scuffle, he just figured he would never be recognized. The fact that somebody recognized what he done gave him that much more determination to continue and do better.''

Mr. Speaker, Art Edgerton was a friend and a trusted advisor throughout the years I have served in this House. I shall miss deeply, as will our entire community. He made us better through his caring and talents spirit. He always advocated for the rights of people with disabilities. Exceedingly gracious, completely endearing, unfailingly honest, yet with a core of steel, Art Edgerton was a man among men. We offer our profoundest and heartfelt condolences to his wife of 35 years, Della, his sons Edward and Paul, his grandchildren and great-grandchildren. May their memories of this truly great man carry them forward.

IN HONOR OF THE GRAND OPENING OF THE POLISH NATIONAL ALLIANCE'S NEW BUILDING

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. KUCINICH. Mr. Speaker, today I recognize the Polish National Alliance of Council 6, in Garfield Heights, Ohio. The Grand Opening of the Alliance's magnificent new building is on Saturday, October 21, 2000.

The Polish National Alliance is the largest ethnic fraternity in the world. Established in 1880, the PNA was formed to unite the members of the Polish immigrant community in America behind the dual causes of Poland's independence and their own advancement into mainstream American society. In 1885, the Alliance established an insurance program for the benefit of its members. Throughout its nearly 120-year-long heritage, the Alliance has grown to include education benefits for its members, newspapers promoting harmony and the Polish National cause, and has worked to promote Poland's independence. Since World War I, the PNA and its members have given generously to help meet the material and medical needs of Poland's people, as well.

Today, the Alliance has grown enormously in both numbers and influence, with a proud record of serving the insurance needs of more than two million men, women and children since 1880. As one of over nine-hundred local lodge groups, the Polish National Alliance Council 6 has carried on the great tradition and character of the PNA.

I ask that my colleagues join with me to commend the Polish National Alliance for years of service to both the local and national Polish communities, and also the diverse