

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 9, 1982

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6156 – Jurisdiction of the Securities and
Exchange Commission
Sponsor – Rep. Wirth (D) Colorado and five others

Last Day for Action

October 16, 1982 – Saturday

Purpose

To clarify the jurisdiction of the Securities and Exchange Commission.

Agency Recommendations

Office of Management and Budget	Approval
Council of Economic Advisers	Approval (Informally)
Securities and Exchange Commission	Approval
Department of Justice	No objection (Informally)
Department of the Treasury	No objection

Discussion

From its creation in 1934, the Securities and Exchange Commission (SEC) has had extensive regulatory authority over trading in securities, as well as securities exchanges and market professionals. Federal securities laws are intended to protect public investors in securities,

ensure the integrity of the market, and maintain the confidence of investors in the capital markets of the United States.

Over the years, a wide variety of investment instruments has been marketed. For this reason, the term “security” -- the instruments that the SEC regulates -- has been broadly defined. For example, stocks, bonds, notes, investment contracts, and any instrument commonly known as a “security” are all considered “securities” under the Federal securities statutes. Options on securities, although not expertly defined to be securities themselves, are commonly regarded as securities and have been regulated by the SEC for a number of years.

When the Commodity Futures Trading Commission (CFTC) was created in 1974, it was given expansive authority over trading in commodity futures, and a potential jurisdictional conflict with the SEC was created. Specifically, if the CFTC’s enabling legislation is read too broadly, it could be interpreted to mean that anything, including securities, that is subject to futures trading is a “commodity” subject to regulation by the CFTC, not the SEC.

The House Committee Report on the enrolled bill indicates that in establishing the CFTC, the Congress did not intend to restrict the authority of the SEC to regulate the trading of options on securities. Nonetheless, there have been a number of legal challenges to the SEC’s authority to regulate this kind of trading. At least initially, the CFTC supported these challenges. Subsequently, however, the CFTC and the SEC agreed on legislation to delineate their respective jurisdictions. To a substantial extent, H.R. 6156 reflects the jurisdictional accord reached between the CFTC and the SEC.

The enrolled bill amends the definition of “security” contained in five Federal securities statutes to include options on securities, options on certificates of deposit, options on securities indices or groups, and, in certain instances, options on foreign currency. The bill confirms Congressional intent that the SEC, not the CFTC, has exclusive jurisdiction to regulate trading in securities options.

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H.R. 6156 passed the House by voice vote and the Senate by a vote of 91-0.

James M. Frey
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Legislative Reference

Enclosures