CFTC/SEC Dispute

Recent Action on the Hill

- According to Treasury, the Senate Banking Committee staff says that support is building for their position. The Banking Committee staff claims to have 50 votes or nearly 50 votes for their position.

- Yesterday, a new bill was introduced, the Bond-Wirth bill. It is a modification of earlier versions of bills proposed by the SEC. Bond-Wirth will apparently be backed by the Senate Banking Committee.

- Bond-Wirth would essentially give the SEC jurisdiction over index participations; other stock index futures contracts would be put with CFTC; a form of joint SEC/CFTC jurisdiction is established for new hybrid instruments; federally insured deposit accounts with futures or commodities elements would be subject to regulation by the appropriate banking authority; certain swaps contracts would be exempted from CFTC jurisdiction altogether; other futures would remain subject to CFTC regulation.

- It is unclear whether Senate Banking claims to have 50 votes for Bond-Wirth or simply 50 votes to prevent passage of S. 207 (the Ag bill that reflects the Brady-Grahm compromise). Greenspan appears to favor the Senate Banking bill. See the last bullet below.

Summary of Comments Sent by Breeden

- The package contains several letters by prominent players, in and out of government.

- An April 5 letter from Goldman Sachs: (1) praises the reduction in regulation of hybrid instruments but complains that the law leaves many subject hybrids subject to regulation that will allow for only a marginal increase in the marketing of these instruments; (2) criticizes the arbitrariness of the 50% value rule that determines CFTC jurisdiction; (3) expresses hope that technical amendments being proposed by CFTC and Treasury will solve problems affecting the swaps market.

- In a April 5 letter, three former SEC General Counsels (Harvey Pitt, Edward Greene and Daniel Goelzer) criticize the Brady-Grahm jurisdictional compromise, including the 50% test, because it represents a piecemeal approach that fails to address adequately the next generation of financial instruments. They also express concern that CFTC will limit the ability of new hybrids to be marketed on securities exchanges. Finally, they criticize the 50% test for failing to provide sufficient certainty about whether a hybrid instrument will be a future or a security.

- In a March 27 letter, Greenspan attacks the Ag bill, saying the approach taken by the Brady-Grahm compromise will continue to preserve impediments to innovation. He expresses concern about the extension of CFTC jurisdiction to swaps "markets" and innovative forms of deposits accounts, and he argues that the 50% value rule is likely to lead to anomalous results for similarly structured instruments.

- In the same letter, Greenspan advocates legislation that allows the hybrids to trade on markets selected by the parties. Treasury's legislation from last year would have essentially accomplished this goal.

- An April 11 Greenspan letter to Dodd on the Banking Committee (attached) reiterates Fed concerns about the Ag Committee bill. In Greenspan's view, that bill would preserve impediments to innovation in hybrids and risk management products and would not go far enough towards removing the confusion in financial markets that is serving as an impediment to innovation in the swaps "markets." Greenspan points out that the Banking bill would solve many of the problems he has with the Ag bill.