STATEMENT FOR THE RECORD

ON BEHALF OF

AMERICAN BENEFITS COUNCIL

IN CONNECTION WITH THE JUNE 24, 2008 HEARING OF THE

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

ON

ENDING EXCESSIVE SPECULATION IN COMMODITY MARKETS: LEGISLATIVE OPTIONS

Submitted July 9, 2008

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In connection with the hearing held on June 24, 2008, on Ending Excessive Speculation in Commodity Markets: Legislative Options, the American Benefits Council appreciates the opportunity to provide this statement on an issue of significant importance to employer pension plan sponsors and the millions of working Americans, retirees, and their families who rely on employer-sponsored pension plans for their retirement security.

The American Benefits Council (the "Council") is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The effects of record food and energy prices are being felt acutely by American consumers. The Council certainly understands the Committee's desire to address this issue and to evaluate the factors behind the recent price increases as well as potential policy responses. The Council is greatly concerned, however, about the prospect of legislation that would prohibit pension plans from investing in certain types of assets.

Tens of millions of American workers and retirees rely on the voluntary employer-sponsored pension system as a critical element of their retirement security. In seeking to address the current financial challenges faced by American families, it is important that any contemplated policy changes not undermine Americans' retirement security.

The Employee Retirement Income Security Act of 1974 ("ERISA"), the primary law that regulates the investment of pension assets, imposes rigorous fiduciary responsibilities on the persons who manage pension investments, *i.e.*, plan fiduciaries. ERISA requires that a plan's fiduciary act prudently, diversify plan investments so as to minimize the risk of large losses, and act solely in the interest of the plan's participants and beneficiaries. Notably, ERISA does not generally require or prohibit specific types of investments.[1] Violation of these ERISA obligations subjects fiduciaries to a range of civil and criminal penalties.

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[1] The sole area in which ERISA directly regulates pension investments is with respect to investments in employer securities. This area is unique in that there is a potential for excessive concentration of investment risk and conflicts of interest.

In order to meet these rigorous fiduciary responsibilities, it is vital that pension plans have the ability to invest in accordance with modern portfolio theory and pursue the best investment strategies available. The investment marketplace is constantly evolving and pension plans need to be able to adapt accordingly without being limited by a prohibition on, or mandate of, certain investments.

Today, private pension plans invest in a wide range of different asset classes, including U.S. and international fixed income, U.S. and international equities, private equity, emerging markets, real estate and natural resources. In addition, plan fiduciaries use a wide variety of investment tools and strategies to mitigate risk and increase returns. The Department of Labor, the federal agency with oversight responsibility for pension investments, has consistently blessed new and evolving investment strategies and asset classes, so long as the investments are prudent and for the exclusive benefit of participants and beneficiaries.[2] While commodities are not currently a particularly significant component of the assets held by pension plans, commodities can be part of a prudent, well-diversified investment portfolio as they provide a hedge against inflation and can help minimize volatility.

It should also be noted that pension plans are long-term investors rather than speculators. Plan fiduciaries pursue disciplined strategies for minimizing risk and enhancing returns so that they can fulfill the long-term retirement promises they make to employees.

Specific restrictions on certain investments, such as commodities, would limit a plan fiduciary from prudently investing, diversifying assets, and generally acting in the sole interest of the plan's participants. The Council also fears that legislation prohibiting certain pension investments could ultimately put the benefits of employees at risk. Congress has, in the past, considered legislation, often motivated by non-pension social or political goals, that would limit plans from investing in specific asset types and, similarly, legislation that would require plans to invest in certain asset types. However, Congress has consistently rejected legislation that would allow other social or political concerns, no matter how worthy, to trump the retirement security of millions of Americans and their families. The Department of Labor has even interpreted "the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives" when confronted with whether pension plans may pursue social goals when considering economically targeted investments.[3]

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[2] *See*, *e.g.,* Department of Labor Information Letter to Eugene Ludwig, Comptroller of the Currency (Mar. 21, 1997) (permissibility of investing pension assets in derivatives).
[3] 29 C.F.R. § 2509.94-2.

Prohibiting the use of commodities in pension plans would make it difficult for plan fiduciaries to adequately diversify investments to hedge against market volatility and inflation and could, consequently, put at risk the retirement benefits of many of the very consumers such prohibitions are intended to help. The Council is concerned that moving forward with such restrictions would also establish a troubling precedent for the role of government in pension investment decisions. We urge the Committee to refrain from such counterproductive steps.

Thank you for your consideration of our views on these important matters.