MOTION TO STRIKE
INVESTMENT COMPANY ACT EXEMPTION

Mr. Chairman, I have an amendment at the Desk to strike Section 136 from the House offer.

Section 136 provides that any company that was, as of December 31, 2001, an affiliate of a holding company (as defined in PUHCA), and held investment securities (as defined under the Investment Company Act of 1940) of one or more companies engaged directly or indirectly in the electric or gas utility business, or other permitted business activities, shall be exempt from regulation as an Investment Company.

Under this provision, any such company could operate as a mutual fund or other type of investment company and be totally exempted from SEC oversight and regulation!

Back in January, Representative Dingell and I wrote the SEC to ask about the impact of a similar proposal and they reported that "there may be hundreds of unregulated investment companies that would result from enactment" of this language and that it "would be impossible to determine the exact number of unregulated investment companies" it could potentially create. The SEC provided me with 5 boxes of documents containing information about the potentially hundreds of companies that could exploit this loophole.

Now, we are told that this is only a special-interest provision that is aimed at benefiting a single company, a Kansas-based company called Westar Energy, a utility holding formerly known as Western Resources that decided several years ago to diversify into the burglar alarm business. Now this company reportedly claims that they need an exemption from the Investment Company Act because of their holdings. But I see no reason why we should give it to them. If this company has a legitimate case to make as to why they are only incidentally or temporarily an investment company, or why they should be exempted from the Act, why aren't they successfully making that case to the SEC?

The SEC has the authority to address any legitimate issue this company may have, either by finding that Westar Energy does not meet the definition of an Investment Company under Section 3 of the '40 Act, or by using its exemptive authority under Section 6 of the Act to exempt them from the Act's application. If the company has a legitimate case to make, they should make it to Harvey Pitt and the SEC staff. They should be wasting our time seeking a legislative fix. The fact that they are doing so raises some alarm bells for me as to what their real motivations might be.

I would like to remind my colleagues that we went down this path before of considering legislative exemptions from the 40 Act and pressuring the SEC to grant administrative exemptions. In 1996, Enron came to Congress when we were working on the National Securities Markets

Improvement Act, and they sought an exemption from the Investment Company Act. Mr. Dingell and I resisted this provision, and it was not added to the final bill – though the Majority insisted on report language encouraging the SEC to favorably consider on Enron's request.

The following year, in 1997, Enron sought and obtained an exemption from the SEC from the Investment Company Act of 1940, which it exploited to engage in activities that would have been prohibited if it had been regulated as an Investment Company.

The proposed '40 Act exemption in Section 136 is significantly broader than the exemption granted Enron back in 1997 and literally hundreds of unregulated investment companies could be created if this provision became law. Why should we permit this to happen? Have my colleagues learned nothing from the lessons of Enron? Is that what we want to tell our constituents and the public after all the hearings that we had on Enron – that we are going to let it all happen again.

Let's not repeat the mistakes of the past. Let's delete this special interest provision of the bill.

I urge adoption of the amendment.