



## Federal Action Urged To End Energy Crisis

With more blackouts and even higher prices forecast for the summer months, the federal government must act now to deal with the growing problems that electricity deregulation is causing, according to CFA and Consumers Union (CU).

"The electricity crisis now gripping California and other western states is not an isolated problem, but rather one that is affecting millions of consumers all across the nation," said CFA Research Director Mark Cooper.

"While federal policy makers sit on their hands and do nothing, the disastrous consequences of electricity deregulation are spreading across the country," he said.

CFA and Consumers Union wrote to President Bush in February urging him to change course and intervene aggressively to protect consumers.

Specifically, they urged the president to take action immediately through the Department of Energy and the Federal Energy Regulatory Commission (FERC) to guarantee that all bottleneck transmission routes are open in order to ensure that enough power will flow to the West Coast.

They also argued that FERC should suspend the market-based rates charged by electricity sellers, citing the high prices charged by some sellers in highly concentrated markets.

"The price gouging that results when distribution utilities try to keep the lights on under crisis conditions ... encourages dominant sellers to keep markets tight by withholding supply or taking their plants off line," they wrote.

### FERC Errors Helped Create Crisis

CFA and CU charged FERC with making critical mistakes in restructuring interstate electricity markets, by failing to create an adequate transmission system to support the movement of power between states and by allowing sellers to charge market-based rates when the lack of market competition helped foster "abusive and anti-competitive behavior by elec-

tricity suppliers."

"We have been warning policy makers for years that the electricity market is not suited for deregulation, and the failure to move cautiously is costing consumers billions," Cooper said. "Without vigorous federal policies to open the transmission network and prevent the abuse of tight markets, consumers will pay billions more in unjustified over-charges."

In calling for federal action, CFA and CU noted that the problems in California are not unique, but instead are caused by the same factors found in any deregulated electricity market.

### Federal and State Action Needed

The groups proposed a number of actions on both the federal and state level to address the crisis, including:

- halting deregulation in states that have not yet begun to deregulate or have not completed the process until an affirmative finding of the absence of market power is made by responsible antitrust authorities;
- adopting aggressive policies at both the federal and state level to discipline abuse of market power; and
- setting uniform caps on wholesale

prices throughout particular interstate markets to protect consumers from wild price swings and to prevent energy suppliers from forum shopping and pursuing beggar thy neighbor behaviors.

The letter to President Bush and a news release describing that letter are available on the CU website at [www.consumerunion.org/telecom/bushdc201.htm](http://www.consumerunion.org/telecom/bushdc201.htm) and [/prbushdc201.htm](http://prbushdc201.htm) respectively.

The complete news release describing problems with deregulation and federal and state actions needed to address the crisis is also available on the CU website at [www.consumersunion.org/telecom/crisisdc201.htm](http://www.consumersunion.org/telecom/crisisdc201.htm).

## FDA's GM Food Proposals Offer Few Gains

A new Food and Drug Administration proposal, released in January, to strengthen oversight of genetically modified foods offers "little meaningful change," according to Carol Tucker Foreman, Director of CFA's Food Policy Institute.

The FDA action came just one week after the CFA Foundation released a report detailing serious weaknesses in U.S. oversight of genetically modified foods.

That report concluded that the U.S. system for regulating such foods "includes huge loopholes that allow manufacturers to market these products to consumers with little government oversight and free the Food and Drug Administration from blame if these foods are later found to be unsafe."

"FDA allows manufacturers complete freedom to assert a new product is 'substantially equivalent' to an existing food and thus avoid any additional safety testing before they are sold to the public," said Tucker Foreman, who oversaw the writing of the report.

"Not surprisingly, all of the products now on the market were declared by their manufacturer to be substantially equivalent and safe," she added.

The result is too few health and environmental safety checks and too much information concealed from the public about the genetically modified products, according to the report.

### Proposal Retains Current System's Key Flaw

That fundamental flaw would persist under the new FDA proposal, which would require only that food companies notify the agency 120 days before marketing a genetically altered food and pro-

vide scientific evidence that the product is safe.

Under the proposal, a company would decide what data to submit to FDA. FDA would review the data and send the company a response indicating, not that FDA has found the product to be safe, but merely that it has no further questions.

The FDA proposal "assumes there will be no human error and no human greed in a company's action," she said. "But FDA exists to protect the public against the natural inclination of a company to believe only the best about its products."

"We count on FDA to examine products, require testing, and make an affirmative determination that a new product does not present a risk to human health," she said. "FDA's proposal is an abdication of its responsibility to protect the safety of the food supply."

Tucker Foreman also criticized the proposal for failing to provide for public hearings and other opportunities to formally question the data or challenge the company's safety assurance before the product is on the market and for failing to require product labeling.

### Mandatory Labeling Advocated

"There appears to be an emerging worldwide consensus that GM foods should be labeled to allow consumers to choose whether to purchase them," Tucker Foreman said. Under the FDA proposal, however, "if a company wants to hide a material fact, the presence of genetically modified protein, it can do so," she said.

This is particularly unacceptable, she said, since the FDA has not established a process that assures there will be no safety

issues with genetically modified foods.

"The result of the FDA's action is simple," she said. "Consumers are told public agencies are looking at these products when in fact they are not. They believe these products are safe when in fact there is no assurance of that beyond the opinion of the manufacturer. This is a regulatory system that does not regulate."

Finally, Tucker Foreman noted that the "hands off" approach taken by FDA "virtually guarantees continued trade disputes with the European Union, which has elected to regulate these new foods more vigorously."

Congressional action is needed, she said. Like existing laws in the European Union and Brazil, legislation should replace the existing patchwork regulatory scheme with something that focuses specifically upon genetically modified organisms.

Such an approach was recommended in the CFAF study and by the recent EU/US Consultative Forum on Biotechnology.

"Breeding Distrust: An Assessment and Recommendations for Improving the Regulation of Plant Derived Genetically Modified Foods" was written for CFAF primarily by Professor Thomas O. McGarity of the University of Texas School of Law under a grant from the Rockefeller Foundation.

The complete news release on the report is available on the CFA website at [www.consumerfed.org/gmfoods.pdf](http://www.consumerfed.org/gmfoods.pdf). The 24-page executive summary of the report is also available on the website at [www.consumerfed.org/gmsummary.pdf](http://www.consumerfed.org/gmsummary.pdf).

To obtain a copy of the complete, 258-page report, send \$7 prepaid to CFA, GM Foods Report, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

### Highlights from the 2000 Legislative Wrap-up are on page 3.

A fuller version of the wrap-up – including more detailed descriptions of important consumer legislation, additional items not included here, and a list of pro-consumer bills introduced in the 106th Congress but never acted on – is available on the CFA website at [www.consumerfed.org/legwrap2000.pdf](http://www.consumerfed.org/legwrap2000.pdf).



## Congress Puts Bankruptcy Bill on Fast Track

Having failed to pass bankruptcy legislation last year because of a post-session presidential veto, supporters of the anti-consumer measure have put it on the fast track in 2001.

"Fast track for bankruptcy means bad news for consumers who are starting to feel the effects of an economic slowdown," said CFA Legislative Director Travis Plunkett. "By erecting harsh new bankruptcy barriers, this bill would add insult to injury for Americans who have been laid off and may be forced into bankruptcy."

Senate Majority Leader Trent Lott (R-MS) tried to rush a bill identical to last year's conference report to the Senate floor for a vote in early February.

However, key Senate Democrats, including Sen. Patrick Leahy (D-VT), insisted on being given a chance to amend the bill to make it more equitable for consumers. House Democrats have also indicated their interest in adding consumer protections and industry accountability to the bill.

They face an uphill battle.

Republican congressional leaders have made it clear that they will resist all

efforts to add pro-consumer amendments to the bill.

Some, including Rep. Bob Barr (R-GA), have said they may even try to remove the modest pro-consumer provisions won by the administration and congressional Democrats in negotiations last year.

The wild card in all this is the Bush Administration. President Bush's chief economic adviser Lawrence Lindsey made a statement in early February that, though generally favorable to the bill, was far from a ringing endorsement of the legislation in its current form.

"This is a very difficult subject," Lindsey is reported to have said. "While the president might not agree with every word or every provision, on balance it's probably a favorable bill."

Acting on the hope that this statement offered an opening to fix certain problems with the bill, CFA Executive Director Stephen Brobeck wrote to the White House requesting an opportunity to meet to discuss the measure.

Meanwhile, Congress was forging ahead. Both the House and Senate Judiciary Committees held hearings in early February.

Postal worker Charles Trapp testified at the House hearing on how the bill would have hurt his family, which was forced into Chapter 7 bankruptcy when bills from his daughter's severe illness reached overwhelming levels.

"Despite what you may have heard from lobbyists, this bill would have negatively affected my family if it had been law at the time we filed," Trapp said.

Trapp said, for example, that his wife's salary from the previous six months would have made them ineligible for Chapter 7 bankruptcy under the bill's means test, even though she had been forced to quit her job to supervise her daughter's care.

Expenses that were necessary for their daughter's care, such as a van to get her around in her wheelchair, would probably not have fit the "one-size-fits-all" expenses that families are allowed," he said.

"If the bill had been law, we would have had to hire lawyers and go to bankruptcy court to defend ourselves," he added. "If just one or two creditors objected, we might have felt compelled to agree to pay their bills as a reaffirmation, instead of

hiring a lawyer to defend ourselves. If we couldn't afford a lawyer for the additional work or pay off these creditors, our bankruptcy would have been dismissed."

The legislation also threatens their future ability to retain their home, Trapp said.

Currently, he said, "we know that no matter how bad things get, we can't declare [chapter 7] bankruptcy for another six years. But we also know that if we get too deep into debt, we could file for chapter 13 and at least save our house."

"If this bill passes, we could not do that ... [n]o matter what our reason is ... If it means we lose our van or our house or Annelise's wheelchair, under this bill, that's just too bad for us," he said.

"Our situation ... is by no means an isolated case," Trapp said. "There are thousands of families in situations similar to ours all across the United States."

The House Judiciary Committee scheduled its mark-up before the Presidents Day recess, and the Senate committee was expected to hold its mark-up immediately after.

## Little Progress Five Years After Telecom Act

Five years after Congress passed the Telecommunications Act, promising more choices and lower prices for everything from cable television to local phone service, consumers have little to celebrate, according to a report released in February by CFA and Consumers Union (CU).

Instead, a handful of huge companies continue to monopolize the cable TV and local telephone industries; cable rates have risen nearly three times as fast as inflation; and most of the local phone service market still belongs to the regional Bell monopolies, which, thanks to a series of mergers, have shrunk from seven companies in 1996 to just four today.

The new report, "Lessons from the 1996

Telecommunications Act," concludes that the law's failure stems predominantly from the predictable decision by the major providers of cable and local phone service to merge rather than compete.

"The biggest players have refused to open their markets, refused to negotiate in good faith, litigated every nook and cranny of the law, and avoided head-to-head competition like the plague," said CFA Research Director Mark Cooper, author of the report.

Faced with the monopolies' foot dragging, the Federal Communications Commission (FCC) lacked adequate authority over cable monopolies and the backbone to force the local phone monopolies to open their markets, he said.

"The problem has not been too much FCC action, but too little," said Gene Kimmelman, Co-Director of CU's Washington, D.C. office.

"If consumers are ever to see the promised benefits of competition in communications markets, policymakers in Washington and the states must begin to be genuinely pro-competitive and worry less about being pro-business," Cooper added.

That means policymakers must:

- step in to stop abusive cable TV pricing practices and open up new avenues for cable competition;
- implement an obligation to provide non-discriminatory access to high-speed Internet networks;

• enforce ownership limits that promote diversity and rivalry and block further consolidation that undermines potential competition; and

• press the market opening principles of New York and Texas across the country in order to promote meaningful competition among providers of local phone service.

The report is available on the Consumers Union website at [www.consumersunion.org/telecom/lessondc201.htm](http://www.consumersunion.org/telecom/lessondc201.htm).

## CFAF Distributes ETS Brochure

The Consumer Federation of America Foundation has produced a new brochure and website on second-hand tobacco smoke and its effects on children.

Funded by the Environmental Protection Agency (EPA), the brochure, "Take the Pledge for Your Kids - Protect Them From the Adverse Effects of Secondhand Smoke," is currently being distributed through the Washington, D.C. Department of Health to community clinics, licensed in-home day care providers, pediatricians, and D.C. hospitals.

The brochure describes the dangers to children of secondhand smoke, including: more fre-

quent bronchitis, pneumonia, and ear infections; more frequent and more severe asthma attacks; and links to Sudden Infant Death Syndrome and behavioral and cognitive problems.

It encourages parents and care givers to take a pledge not to permit smoking in the home, the car, or when children are present.

The brochure includes a postage-free return pledge form. The pledge can also be taken online at the CFA website: [www.consumerfed.org/ets](http://www.consumerfed.org/ets).

Individuals interested in receiving a print copy of the brochure should send a self-addressed, stamped envelope to CFA Foundation, Secondhand Smoke Brochure, at 1424 16th St. N.W., Suite 604, Washington, D.C. 20036.

To requests bulk copies, call or email Mel Hall-Crawford at 202-387-6121 or [melhc@consumerfed.org](mailto:melhc@consumerfed.org).

### Consumer Agency News, Continued from Page 4

ters before the Commission outside the context of a formal adjudication. "Because much of the agency's work happens in this context, this amendment will broaden the agency's ability to assure that actions taken or not taken in this non-formal adjudication arena are subject to sanction should prohibited conduct occur," Fise wrote.

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CFA submitted comments in December in support of a ban by CPSC on certain portable bed rails. "Such a rule is necessary to address fatalities due to entrapment of children between portable bed rails and beds or between the rods or bars of the portable bed rail itself," Fise wrote. Commission action is needed "in light of the industry's failure to develop provisions in a voluntary safety standard to eliminate the entrapment risk," she added.



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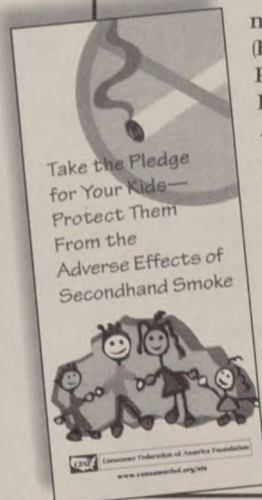
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## 2000 Legislative Wrap-up

### Financial Services

**Bankruptcy Overhaul** – Congress passed anti-consumer legislation (H.R. 2415) that would have severely restricted the ability of financially strapped consumers to make a fresh start in bankruptcy. President Clinton vetoed the measure after the session had ended. (See related article, page 2.)

**Disaster Insurance** – Anti-consumer disaster insurance legislation (S. 1361) was introduced in the Senate. Hearings were held before the Senate Commerce Committee, but no further action was taken either on this bill or on its House counterpart (H.R. 21).

**Mutual Fund After-Tax Performance Disclosure** – The House gave overwhelming approval to legislation (H.R. 1089) to improve mutual fund performance disclosure by requiring disclosure of standardized after-tax performance numbers. Although the issue was not acted on in the Senate, the legislation spurred the Securities and Exchange Commission to issue rules. (See related article, page 4.)

### Health Care

**Managed Care Reform** – Despite a flurry of renewed activity in 2000, Congress still failed to pass pro-consumer managed care reform legislation. Attempts by some Senate Democrats to pass the stronger House bill failed.

**Health Care Antitrust Exemption** – The House approved anti-consumer legislation (H.R. 1304) to grant self-employed physicians, pharmacists, and other health care professionals immunity from laws that prohibit anti-competitive practices, such as price-fixing. The bill was never taken up in the Senate.

**Medicare Prescription Drug Benefit** – Democrats and Republicans offered competing plans to include prescription drug coverage for Medicare patients. In June, Republican leaders rammed their version (H.R. 4680) through the House without an opportunity for amendments. Efforts to pass the more pro-consumer Democratic version (H.R. 4607, S. 3107) failed in both the House and Senate.

**Medical Information Privacy** – Although broad medical record privacy bills were introduced in both the House and Senate (H.R. 1057, S. 574), Congress allowed its self-imposed three-year deadline for passing such legislation to expire. As a result, the issue passed to the Department of Health and Human Services (HHS), which issued rules just before the new administration took office.

**Poison Control Center Enhancement** – Congress passed and the president signed legislation (S. 632, P.L. 106-174) authorizing \$25 million a year for five years to provide grants to regional poison control centers and to educate the public about poisoning prevention.

**Health Research Giveaways** – The House adopted an amendment (H.R. 626) to the Labor, HHS appropriations bill that would have required pharmaceutical companies that obtained exclusive rights to sell products developed from federal research to first enter into a reasonable pricing agreement. A similar amendment was defeated in the Senate, and the provision was not included in the final bill.

### Product Safety

**Product Liability** – The House passed two bills to limit the ability of individuals who are injured by dangerous or defective products to recover damages. The first (H.R. 2366) was aimed at restricting the liability of small companies. The second (H.R. 2005) was designed to limit the liability of durable goods manufacturers. Neither was acted on in the Senate.

**Firearm Safety** – Opponents of gun safety measures prevented the juvenile justice conference committee from even meeting to negotiate for fear that they would agree to provisions in the Senate bill (S. 254) to require background checks for sales at gun shows, to require child safety locks, and to ban the import of high-capacity magazines.

### Food and Nutrition

**Food Safety** – Congress adopted last-minute riders to appropriations bills that seriously diminish several aspects of the meat and poultry inspection system.

**Irradiated Food** – Congress directed the Food and Drug Administration to develop label euphemisms to substitute for current labeling requirements for irradiated food.

**Sugar Subsidies** – Sen. John McCain (R-AZ) once again tried, and failed, to suspend funding for the federal sugar program, which costs consumers up to \$1.9 billion a year in higher food prices.

### Utilities

**Electric Deregulation** – Both the House and Senate failed in their efforts to pass comprehensive legislation to deregulate the electric power industry (H.R. 2944, S. 2098). Neither version would have provided adequate consumer protections.

**Strategic Petroleum Reserves** – Congress passed and the president signed legislation (H.R. 2884, P.L. 106-469) to reauthorize the Strategic Petroleum Reserve and create a home heating oil reserve in the Northeast.

**Internet Access** – In the wake of the proposed merger between AOL and Time Warner, several members of Congress introduced bills to address the issue of open access to the broadband Internet. However, none provided the comprehensive non-discriminatory access policy that is needed, and the bill that gained the most support (H.R. 2420) would have done more harm than good.

### Transportation

**Auto Safety** – In response to the Firestone tire recall, Congress passed and the president signed legislation (H.R. 5164, P.L. 106-414) that requires the automobile industry to share a broad range of information with the government on possible defects in their products. The bill imposes monetary and criminal penalties

for hiding information from regulators, although it includes a "safe harbor" that seriously weakens these provisions. The bill also makes it far too difficult for the public to get access to the information collected. In an important victory for consumers, the bill requires the National Highway Traffic Safety Administration to develop real world roll-over tests for cars and trucks.

**Drunk Driving** – Congress passed and the president signed legislation as part of the transportation appropriations bill that imposes tough sanctions on states that fail to adopt a 0.08 percent blood-alcohol content standard.

### Miscellaneous

**Electronic Signatures** – Congress passed and the president signed electronic signatures legislation (H.R. 1714, S. 761, P.L. 106-229) that, while far from perfect, did include some important consumer protections.

**Privacy** – A variety of bills dealing with different aspects of privacy were introduced in the 106th Congress. Though several received serious consideration – including a fairly narrow measure (H.R. 4857) to protect Social Security numbers and a measure (H.R. 4049) opposed by consumer groups to create a commission to study privacy issues – no broad privacy protections were adopted.

## State Laws Cost New Car Buyers Billions

If anti-competitive state laws were repealed, new car buyers would eventually save at least \$20 billion a year, or an average of \$1,500 per vehicle, according to a CFA study released in February.

Most states restrict competition in auto sales and service in some fashion – 41 today, compared with just two in 1970. And several states have enacted or are considering legislation that is particularly harmful to consumers.

In these states: relevant marketing area (RMA) laws allow dealers to block new seller and repair entrants; other laws require warranty work to be performed by dealers; and still other laws restrict the ability of consumers to purchase cars on the Internet by requiring that new cars be sold by dealers.

"All credible research has found that anti-competitive state laws restricting new car sales not only cost consumers billions of dollars annually right now, but also severely limit the ability of the auto industry to realize Internet-driven efficiency gains in the future," said CFA Research Director Mark Cooper.

Cooper is author of the study, "A Roadblock on the Information Superhighway: Anti-Competitive Restrictions on Automotive Markets."

### Consumers Oppose Restrictions

A related survey conducted for CFA by Opinion Research Corporation International found that consumers both strongly oppose state restrictions on new car sales and strongly desire the ability to purchase new cars through the Internet directly from manufacturers or third parties.

"Consumers who have gotten used to

shopping for many products through the Internet now want a similar ability to purchase new cars online," said CFA Public Information Director Jack Gillis, author of *The Car Book* and other car-related publications.

The study shows how the Internet could dramatically increase efficiencies, and thus lower consumer costs, in the automobile market:

- by making it easier to comparison shop;
- by dramatically improving the quality of marketing and consumer information gathering; and
- by combining the potential for personalized selling with flexible production to dramatically reduce marketing, inventory, and transit times for the delivery of goods.

The study conservatively estimates that these efficiency gains would produce price savings of six percent, or \$1,500, per vehicle, for a total of \$20 billion annually.

The ORCI survey found that 78 percent of respondents oppose laws that require all car sales to go through car dealerships, including 59 percent who strongly oppose such laws.

Consumers recognize that such laws "unjustifiably limit consumer choice" (58 percent) and "tend to raise car prices" (60 percent).

Most are unpersuaded by dealers' argument that such laws "prevent manufacturers from taking advantage of consumers." Only 43 percent of respondents agreed with that statement.

Not surprisingly, then, the vast majority (78 percent) think "consumers should have the ability to purchase cars directly from manufacturers or third parties using the Internet," including 51 percent who hold

this view strongly.

### Concerns About Internet Sales Largely Unwarranted

The report also fails to support dealers' warnings about unintended negative effects of permitting direct sales. "There is little likelihood that the negative consequences invoked by dealers would materialize for several reasons," Cooper said.

"First, increased competition would make it difficult for any party to gain market power. Second, warranties would remain in force. Third, when the most popular dealerships expanded, quality repair and maintenance service would be more available. And, fourth, general consumer protection laws would remain in force," he said.

However, the report does recommend the establishment of new protections, including:

- imposition of reasonable licensing requirements for new sellers of automobiles;
- protections for dealers to ensure that, when manufacturers are allowed to sell vehicles and service directly, they do not discriminate against competing dealers; and
- creation of a new private right of action for dealers to pursue claims of discrimination under contract law.

The complete news release, including more details on report and survey findings, is available on the CFA website at [www.consumerfed.org/fincarpr.pdf](http://www.consumerfed.org/fincarpr.pdf). The report is available at [www.consumerfed.org/internetautosales.pdf](http://www.consumerfed.org/internetautosales.pdf).

To obtain a written copy of the report, send \$10 prepaid to CFA, Internet Auto Sales Report, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.



## Consumer Agency News

### Securities and Exchange Commission

The Securities and Exchange Commission (SEC) approved a rule in January that offers modest progress toward curbing the use of **misleading mutual fund names**. The rule, which does not take effect until July 31, 2002, will require mutual funds with names that imply that they invest in a particular type of security to invest at least 80 percent of their assets in that security. The new standard replaces a 65 percent cutoff that did not have the force of a formal rule. CFA and nine of its member organizations argued for a stronger fund name rule in a petition to the agency on mutual fund portfolio disclosure. That petition, filed with the agency in July, argued for raising the cutoff to 85 percent. It also urged the Commission to provide guidance on the appropriate use of terms commonly used in fund names, such as "growth," "value," and "small-, medium-, and large-cap stocks." However, the SEC has so far refused to apply the rule to terms, such as these, that, in the words of the agency, could have more than one meaning. The rule also provides an overly broad loophole for funds "assuming a temporary defensive position." The SEC has not acted on other aspects of the consumer group petition: to require funds to make more frequent disclosure of their portfolio holdings on the Internet in an easily accessible format.

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The SEC adopted a rule in January requiring standardized **after-tax performance disclosure by mutual funds**. The rules are designed to help investors understand the relative impact of taxes on different funds' performance. CFA wrote in general support of the rule in July, but argued for strengthening amendments, including: requiring fund companies that promote their funds through the use of before-tax performance data in advertisements and sales literature to also report after-tax returns. Although the agency failed to adopt this change, it did require that funds include the after-tax performance numbers in ads if they make "tax-managed" claims for the fund. The SEC also resisted industry pressure to bury the information in the tax section, requiring instead that it be included in the more widely read risk and reward summary.

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Over the objections of institutional and individual investors, the SEC voted in January to approve the National Association of Securities Dealers' SuperMontage proposal. SuperMontage includes a pro-investor proposal to provide more detailed price information for Nasdaq stocks and a more controversial proposal to provide automated execution of trades in the Nasdaq market. CFA had written to the agency twice, in September and December, expressing

strong concerns about the way the automated execution system would be structured. CFA objected to the proposal on the grounds that it encourages practices that the SEC has identified as harmful to investors – internalization and payment for order flow – and allows brokers to discriminate against investor orders entered on independent trading systems, known as ECNs, that charge access fees. Despite some improvements in the final proposal, it "still fails to ensure fair and equitable interaction of orders," CFA Director of Protection Barbara Roper wrote in her December comment letter.

### Federal Trade Commission

The Federal Trade Commission (FTC) approved its first safe harbor under the **Children's Online Privacy Protection Act** in February, for the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus. Safe harbor programs are industry self-regulation guidelines that, if adhered to, are deemed to comply with COPPA. COPPA requires children's website operators to post comprehensive privacy policies on their sites, notify parents about their information practices, and obtain parental consent before collecting personal information from children under the age of 13. CFA was part of a coalition that provided comments on the application to ensure that any safe harbor granted, including the CARU proposal, would provide the full range of protec-

tions intended by COPPA. "We are gratified that the FTC obviously gave serious attention to the issues we raised," said Jean Ann Fox. "The FTC's first COPPA safe harbor decision sets the standard for other applications on file to effectively protect children's privacy online."

### Department of Justice

CFA and Consumers Union (CU) wrote to the Department of Justice in January urging the agency to conduct "a painstaking review" of the proposed **American Airlines and TWA merger**. "This proposed merger clearly violates the merger guidelines and is inconsistent with the intent of the antitrust laws to promote competition in the marketplace," the letter states. The letter – addressed to Douglas Melamed, acting head of the antitrust division, and signed by CFA Research Director Mark Cooper and by Mark Silbergeld, Co-Director of Consumers Union's Washington, D.C. office – is available on the Consumers Union website at [www.consumersunion.org/other/twadc101.htm](http://www.consumersunion.org/other/twadc101.htm).

### Consumer Product Safety Commission

The CPSC is considering standards for **outside attorneys** practicing before the agency. CFA submitted comments in January in strong support of new rules to address the behavior of attorneys on mat-

(Continued on Page 2)

## Antitrust Enforcement Necessary in New Economy

The Microsoft case dealt a serious blow to the theory that monopolies can dominate the new economy without harming consumers, thus clearly demonstrating the need for vigorous antitrust enforcement in these important industries, according to a CFA issue paper released in January.

"It is critical for policy makers to understand that vigorous, head-to-head competition, which is promoted by the antitrust laws, is the key to ensuring not only that consumers receive quality products at the lowest economic cost, but also that new and innovative products flow freely into the market," said CFA Research Director Mark Cooper, author of the paper.

"Antitrust as Consumer Protection in the New Economy: Overview of Lessons from the Microsoft Case," is the first in a series of papers that will examine the role of antitrust enforcement in the computer and communications industries.

"The new economy industries that are the subject of these papers and so critical to continued economic growth are not immune to the abuse of market power, and they should not be immune to the enforcement of the antitrust laws," said CFA Executive Director Stephen Brobeck.

"The court findings of consumer harm resulting from Microsoft's anti-competitive business practices are simply too detailed and well documented to ignore," Cooper said.

These include: short-term price increases as a result of Microsoft's directly overcharging for its operating system and discriminating against specific computer manufacturers; and long-term price increases as a result of its preventing competitors from entering the operating system market.

Consumer transaction costs were raised through Microsoft's efforts to deny consumers competing products in accessible marketing channels. Consumer hardware costs were raised through Microsoft's software design, licensing, and upgrade pricing policies. And consumers were harmed by a variety of techniques used by Microsoft to delay or prevent the development of products by other software companies.

CFA had previously estimated excess costs to consumers between 1996 and 1999 at \$15 billion, but "subsequent court filings by independent economists make that appear to be extremely conservative," Cooper said. "No law enforcement agency can turn its back on such clear violations of law and maintain its credibility. That is why it is so important to pursue the case to its conclusion in a strong remedy that prevents future abuse."

The issue paper is available on the CFA website at [www.consumerfed.org/microsoftoverview.pdf](http://www.consumerfed.org/microsoftoverview.pdf).

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