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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

21 April 1986

The Rt Hon Paul Channon MP
Secretary of State for Trade and Industry
1 Victoria Street
LONDON S W 1

Dear Paul.

FINANCIAL SERVICES BILL : STATUS AND POWERS OF THE
DESIGNATED AGENCY

Thank you for copying to me your letter of 17 April ^{at this} to Nigel Lawson setting out your three proposals for amending the Financial Services Bill. This letter concerns the second and third of your proposals.

As to the third - investigation - I agree with you that the Secretary of State should be able to transfer his powers of investigation in full to the Securities and Investments Board.

I am less happy, however, about your proposal in relation to prosecutions, for these reasons:

- 1) I am doubtful whether the extension of "self-regulation" to include the power to prosecute would command public confidence. The institution of proceedings is essentially a public function and not one to be discharged on a routine basis by a private body. If a self-regulating agency showed a marked reluctance to prosecute, it would be difficult (because the primary responsibility would be clearly seen to be with that body) for other agencies to act without completely undermining confidence in the designated agency as a whole.

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- 2) Considerable importance attaches to consistency of approach and policy in the decision whether to prosecute. The existence of a number of separate prosecuting authorities would make it much more difficult to achieve that consistency. Moreover, the conferring of prosecution powers on the designated agencies would make them responsible both for investigation and prosecution. This is inconsistent with the general policy which underlies the establishment of the Crown Prosecution Service under which the prosecution function is separated from that of investigation. It is unlikely that each agency would have its own "in-house" lawyers and thus would rely on private practitioners who would stand in a solicitor/client relationship to the designated agency.

- 3) If, as the Bill appears presently to contemplate, the Secretary of State has primary responsibility for prosecutions, he would be accountable at least for prosecution policy. He is unlikely to be willing to answer for individual decisions. There would seem to be a risk that accountability would be lost under the present proposals.

For these reasons I would be most reluctant to see the Bill enacted in a form which gave the Secretary of State's power to prosecute to a designated Agency.

I am copying this letter to the Prime Minister, the Lord President, the Lord Chancellor, the Home Secretary, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Lord Advocate, the Chief Whip, Lord Denham, the Minister of State (Privy Council

/Office),

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Office), the Governor of the Bank of England and
Sir Robert Armstrong.

Yours ever
Michael.

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