

February 23, 2000

The Honorable Thomas Bliley
Chairman
Committee on Commerce
2125 Rayburn HOB
Washington, DC 20515

RE: S. 761 - Third Millennium Electronic Commerce Act
HR 1714 – Electronic Signatures in Global and National Commerce Act

Dear Chairman Bliley:

On behalf of the North American Securities Administrators Association (NASAA)¹, I write to comment on the electronic signature legislation (HR 1714 and S. 761) as you move forward to resolve the differences between the House and Senate versions of the bills.

NASAA supports enactment of legislation that creates legal certainty for the use of electronic signatures but also maintains important investor protections. We believe that if our nation's securities markets are to retain their reputation as being at the vanguard of technological advances, efforts must be made to permit the modernization of securities transactions through electronic signatures and recordkeeping.

In response to a request by Congressman John Dingell, we provided comments on HR 1714, as introduced, and made it clear that records maintained by securities firms must be produced to regulators and made available for their review and examination in an easily readable electronic form. It is also imperative that electronic recordkeeping only be permitted if the technology employed precludes the ability to change or overwrite an electronic file. Furthermore, investors should have ready, online access to their account agreements and statements as a means of detecting unauthorized changes to their accounts.²

The National Conference of Commissioners of Uniform State Laws (NCCUSL) adopted model legislation, the Uniform Electronic Transaction Act (UETA). It represents the first national effort at providing uniform rules to govern transactions in electronic commerce that should serve in every state. Two states have adopted UETA and eleven more have introduced the bill thus far in 2000.

As state securities regulators, we are pleased the Senate bill, S. 761 does not preempt laws in States that adopt UETA. However, we are concerned that HR 1714 could preempt state laws even if states adopt UETA because of language in Section 102(b)(4) that requires that UETA "must not be inconsistent with the provisions of this title." We urge that any preemption of state law be limited in scope and duration.

¹ The oldest organization devoted to investor protection, the North American Securities Administrators' Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots protection and efficient capital formation.

² Letter from NASAA President Peter Hildreth to Congressman John Dingell dated July 12, 1999

HR 1714 contains a separate securities title (Title III) that establishes a federal regime for electronic signatures and records arising in the securities context. The House recognized the importance of preserving the two electronic filing systems currently in place in the securities industry, EDGAR and CRD. These two systems provide important information to the public and federal and state regulators in electronic form. We support Section 301(h)(5) in Title III because it preserves the SEC's flexibility to address changed circumstances in these areas in the future.

Title III also contains an exception that allows the SEC to require manual signatures in connection with transactions in penny and microcap stocks, other securities susceptible to fraud. State securities regulators continue to detect and crack down on microcap brokerages selling dubious stocks over the telephone. Maintaining the authority to require manual signatures in connection with these types of securities is an important protection for investors because sales of such stocks have been strongly associated with persons who tend to violate the securities laws. In addition, the use of high-pressure sales practices are also characteristic of such transactions.

State securities regulators support the use of electronic signatures, electronic record-keeping and other uses of technology in the markets so long as they are accompanied by consumer safeguards. However, we want to ensure the integrity and accessibility of information stored electronically which is critical to the states' efforts to combat fraud through our enforcement programs.

On behalf of NASAA, I look forward to working with the conference to develop a bill that will foster the growth of electronic commerce and at the same time preserve the essential role of state and federal securities regulators. Please feel free to contact me directly at (317) 232-6695 or Deborah Fischione, NASAA's Director of Policy, at (202) 737-0900.

Sincerely,

Bradley W. Skolnik
NASAA President
Indiana Securities Commissioner