



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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July 29, 2003

The Honorable Pete V. Domenici
Chairman
Committee on Energy & Natural Resources
SD-364
Washington, DC 20510

The Honorable Jeff Bingaman
Ranking Minority Member
Committee on Energy & Natural Resources
SD-312
Washington, DC 20510

RE: S. 14, the Energy Policy Act of 2003

Dear Chairman Domenici and Ranking Member Bingaman:

The North American Securities Administrators Association (NASAA)¹ is writing to express its concern over proposed language in the Domenici substitute to Title XI, (the electricity title) of S. 14, the Energy Policy Act of 2003.

Proposed Sections 1171 and 1173 would require that “any request by any Federal, State or foreign government, department, agency or political subdivision” to a “board of trade, exchange, or market” involving transactions in commodities “within the exclusive jurisdiction” of the Commodity Futures Trading Commission (CFTC) “shall be directed” to the CFTC.

This prohibition on federal and state information gathering directly from a board of trade, exchange or market would place unnecessary burdens on state securities regulators when they investigate violations of laws regulating foreign exchange products, energy products and financial instruments. Over the years, state securities regulators have handled many of the foreign exchange cases under authority contained in the Model Code and state securities laws.

This language would prohibit state securities regulators from directly seeking information from a CFTC regulated entity. State securities regulators do not have regulatory jurisdiction over a CFTC regulated entity, but we must retain our authority to subpoena documents from all relevant sources as part of our enforcement cases. For example, a

¹ The oldest international 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 investor protection and efficient capital formation.

registered representative of a securities firm could illegally take investor funds and trade in commodities, and our members might have to subpoena a futures exchange for trading records or other information.

The CFTC and the states have a history of coordinating efforts and working successfully toward our mutual goal of protecting investors by recognizing potentially fraudulent activity and bringing it to the attention of the public. However, mandating that regulators go through the CFTC for information could be burdensome, time-consuming and inhibit our ability to investigate wrongdoing in a timely and efficient manner. It may also place the CFTC in a difficult position of deciding whether to send a state's subpoena to one of the exchanges it regulates.

With the fallout from Enron and a variety of financial scandals still in the news, now is the time to strengthen, not weaken, our complementary system of state and federal securities regulation. There seems to be no justification for limiting the ability of state securities regulators to gather information directly from a futures exchange.

We urge you to strike Sections 1171 and 1173 from the Domenici substitute. Please do not hesitate to contact me if I may be of further assistance to you.

Sincerely,



Christine A. Bruenn
NASAA President
Maine Securities Administrator

cc: Senator Norm Coleman
Senator Dianne Feinstein
Senator Carl Levin
Senator Richard Lugar