



NASAA

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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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August 2, 2005

The Honorable Saxby Chambliss  
Chairman  
Senate Agriculture, Nutrition and  
Forestry Committee  
SR-328A  
Washington, DC 20510

The Honorable Tom Harkin  
Ranking Member  
Senate Agriculture, Nutrition and  
Forestry Committee  
SR-328A  
Washington, DC 20510

RE: The Commodity Exchange Reauthorization Act of 2005

Dear Chairman Chambliss and Ranking Member Harkin:

On behalf of the North American Securities Administrators Association (NASAA)<sup>1</sup>, we thank you for including language in S. 1566, The Commodity Exchange Reauthorization Act of 2005, which helps to address the problem of fraudulent activity by unscrupulous persons selling off-exchange futures contracts to retail customers.

State securities regulators are close to the investing public and thus:

- Identify new investment scams quickly;
- Bring a large number of enforcement cases covering a wide variety of investment-related violations; and
- Work closely with criminal prosecutors at the state, federal and local level to punish securities law violators.

Our members have a strong interest in federal law as it relates to commodities. The Commodity Exchange Act (“CEA”) gives states jurisdiction over a number of commodities-related violations. For example, states may bring injunctive actions in federal court to enforce any provision of the CEA, and they also may enforce state laws with respect to fraudulent or off-

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<sup>1</sup> 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, the U.S. Virgin Islands, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

exchange activity in the commodities area.<sup>2</sup> States have a long history of working cooperatively with the Commodity Futures Trading Commission (CFTC) on these types of cases.

As a result of the *Zelener* decision in the 7<sup>th</sup> Circuit Court of Appeals, NASAA is particularly concerned that fraudsters can avoid CFTC jurisdiction – and state jurisdiction as well – by disguising futures contracts offered to retail customers as spot contracts. State securities regulators believe that the CFTC’s authority over forex futures contracts, however they may be cloaked, should be clearly established for the benefit of the investing public.

Thank you very much for considering our view on this matter. We stand ready to work with you to restore the jurisdiction of the CFTC to its traditional, pre-*Zelener* state in order to prevent further fraud and abuse. Please do not hesitate to contact us or NASAA’s Director of Policy, Deborah Fischione House, if we may provide you with additional information.

Sincerely,



Franklin L. Widmann  
NASAA President  
Chief, New Jersey Bureau of Securities



Patricia D. Struck  
NASAA President-elect  
Wisconsin Securities Administrator

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<sup>2</sup> Section 6d(1)-(6) of the CEA authorizes states securities administrators to file actions in U.S. District Courts to enforce any provision of the CEA or the regulations issued thereunder. 7 U.S.C. § 13a-2(1)-(6). This section also authorizes state securities administrators to investigate such violations using investigative powers conferred by state law, including the power to subpoena documents and witnesses. 7 U.S.C. § 13a-2(5). Section 6d(8) of the CEA authorizes state officials to enforce the antifraud provisions of the CEA against most categories of registrant in state court, as well as federal court. 7 U.S.C. § 13a-2(8). Section 6d(7) of the CEA authorizes state officials to enforce the “general civil or criminal antifraud statutes” of the state, in state court. 7 U.S.C. § 13a-2(7). Section 12 of the CEA allows the application of any state statute or regulation to futures transactions that are not conducted on or subject to the rules of “a registered entity or exempt board of trade.” 7 U.S.C. § 16(e)(1)(B)(i) and (ii). This section also allows the application of any state statute or regulation to any person required to be registered under the CEA who fails to obtain such registration. 7 U.S.C. § 16(e)(1)(C).