

————— **FINANCIAL POLICY FORUM** —————  
**DERIVATIVES STUDY CENTER**

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October 22, 2003

Dear Senator Feinstein:

I am writing regarding the Energy Market Oversight legislation being offered as an amendment to the FY 2004 Agricultural Appropriations bill. This important legislation will assure that over-the-counter derivatives markets in "exempt" commodities such as energy will be covered by federal prohibitions on fraud and manipulation. It will also help to create energy derivatives markets that are more transparent and thus more efficient. In doing so, this legislation will bring OTC energy derivatives out of the shadows and into the same light of financial disclosure. It will subject these derivatives to some of the same regulations that apply to securities, banking, exchange-traded futures and options and other sectors of U.S. financial markets.

This regulatory assistance comes at a critical time. According to the Federal Energy Regulatory Commission's Director of the Office of Market Oversight, "energy markets are in severe financial distress." Along with the decline in credit quality in these markets, the loss of confidence and trust has led to a ruin in the liquidity and depth of these markets. This legislation will go a long way to address this problem.

Derivatives are highly leveraged financial transactions, allowing investors to potentially take a large position in the market without committing an equivalent amount of capital. Moreover, derivatives traded in over-the-counter markets are devoid of the transparency that characterizes exchange-traded derivatives such as futures, and this lack of transparency introduces a greater potential for abuse through fraud and manipulation.

Derivatives are often combined into highly complex structured transactions that are difficult – even for seasoned securities traders and finance professionals – to understand and price in the market. Enron used such over-the-counter derivatives extensively in order to hide the nature of their activities from investors. The failure of Enron and the demise of other energy derivatives dealers has had a devastating impact on the level of trust in energy markets.

This legislation would help ensure that over-the-counter derivatives markets operate with proper federal oversight which will make the markets more stable and transparent. It is appropriate to place this oversight authority with the Commodity Futures Trading Commission, which, as the principal federal regulator of derivatives transactions since its founding in 1975, will provide oversight, surveillance and enforcement of anti-fraud and anti-manipulation laws. The CFTC has the experience to handle these complex financial transactions and to develop the best rules to implement these protections.

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At a time when these energy markets are deeply distressed and the investing public looks skeptically at derivatives trading and firms engaged in derivatives trading, we should take decisive steps to ensure that the public is protected from Enron-like abuses and that derivatives are properly regulated so as to make energy markets more efficient. This amendment is just such a step, and the authors of the legislation deserve appreciation for their work in the public interest. .

Thank you for introducing this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'RD', with a large, sweeping flourish above the letters.

Randall Dodd  
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