



May 5, 2025

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Re: Maine Consumer Data Privacy Act: H.P. 710, L.D. 1088, "An Act to Enact the Maine Consumer Data Privacy Act"; H.P. 799, L.D. 1224, "An Act to Comprehensively Protect Consumer Privacy"; H.P. 1220, L.D. 1822, "An Act to Enact the Maine Consumer Data Privacy Act."

Dear Chairpersons Carney and Kuhn, Ranking Member Poirier, and the other distinguished members of the Judiciary Committee:

National Futures Association (NFA) appreciates the opportunity to provide written testimony on the Maine Legislature's proposed data privacy bills, Bill H.P. 710, "An Act to Enact the Maine Consumer Data Privacy Act"; Bill H.P. 799, "An Act to Comprehensively Protect Consumer Privacy"; and Bill H.P. 1220, "An Act to Enact the Maine Consumer Data Privacy Act."

NFA generally supports increased privacy protections, but for the reasons discussed below, seeks a narrowly tailored exemption to enable it to continue performing its critical role in regulating derivatives markets and protecting investors.

NFA is a not-for-profit, registered futures association (RFA) under the Commodity Exchange Act.¹ NFA is the industrywide self-regulatory organization (SRO) for the derivatives industry, including futures, swaps, and retail off-exchange foreign currency (or forex). Every aspect of NFA's regulatory authority is overseen and monitored by the Commodity Futures Trading Commission (CFTC), the Congressionally authorized commodity derivatives regulator. NFA's responsibilities include registering firms and industry professionals on behalf of the CFTC,² passing rules to ensure fair dealing with customers, examining and investigating Members for compliance with those rules,

¹ See 7 U.S.C. § 21; 17 C.F.R. §§ 170.1 et seq.

² 17 CFR § 3.2(a) (stating that the registration functions of the CFTC shall be performed by NFA).

taking enforcement actions against those Members that violate NFA Rules, administering proficiency examinations for individuals engaged in derivatives activities, and providing a low-cost arbitration forum for members of the investing public to resolve their disputes with NFA Members.

In order for NFA to successfully carry out these regulatory functions, NFA must collect and process data. Importantly, NFA only uses the data it collects for regulatory purposes—data is not collected, shared, or sold for any commercial purpose.

NFA is concerned that the proposed legislation may interfere with NFA's efforts to safeguard financial markets and protect investors in Maine and throughout the nation. For example, the data NFA collects often includes financial account numbers, which H.P. 710 and H.P. 1220 would include in the definition of "sensitive data." However, because NFA regulates thousands of financial firms with millions of financial accounts, NFA cannot possibly obtain separate individual consents from accountholders before commencing a regulatory exam or investigation. Additionally, NFA must maintain the integrity of its investigative files and exam papers. Thus, NFA cannot typically disclose, modify or delete data upon the request of consumers.

Notably, the proposed bills already include exemptions for a closely analogous self-regulatory organization. All three proposed comprehensive data privacy bills under consideration by the Judiciary Committee today would provide a full exemption to the Financial Industry Regulatory Association (FINRA), which is a national securities association and the nationwide SRO for the securities markets. FINRA performs largely identical functions to NFA and is subject to similar federal supervision. While FINRA is the SRO for the nation's securities brokerage industry and operates under the comprehensive oversight of the SEC, NFA is the SRO for the nation's derivatives industry and operates under the comprehensive oversight of the CFTC.

Recognizing NFA and FINRA's analogous roles in safeguarding the financial markets, other states' comprehensive data privacy laws, such as the Delaware Personal Data Privacy Act and the Maryland Online Data Privacy Act of 2024, include entity-level exemptions both for registered futures associations and national securities associations, and do so in the same section.³

For these reasons, we respectfully request that the underlined language below be added to § 9603(3)(B) of the proposed Maine Consumer Data Privacy Act under H.P. 710 and 799, or to § 9604(1)(D) under H.P. 1220. Such language would not risk sweeping too broadly (as NFA is the nation's only RFA), would be consistent with other state comprehensive data privacy laws, and would ensure that NFA could continue to fulfill its role and responsibilities, which include protecting Maine investors.

³ See Del. Code Ann. tit. 6, § 12D-103(b)(4); Md. Code Ann., Com. Law § 14-4703(a)(2).

". . . Exempt entities . . .

A national securities association that is registered under the federal Securities Exchange Act of 1934, 15 United States Code, Section 78a et seq., or a registered futures association so designated pursuant to Section 17 of the Commodity Exchange Act, 17 United States Code, Section 21 et seq., as amended, or any regulations adopted thereunder;"

If you have any questions or there is any further information we may be able to provide, please reach out to Michael Schorsch at mschorsch@nfa.futures.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lucy C. Hynes". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Lucy C. Hynes
Managing Director
Government & Regulatory Affairs
National Futures Association