

We appreciate Senator Reid's positive work to exclude metals from the pending amendment, but continue to oppose the Feinstein or Levin amendments which unnecessarily increases regulation of the OTC energy derivatives.

Attached are additional talking points generated by us and our partners in the financial community. Thank you for your interest.

Sincerely,

JACK GERARD.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. TOM DASCHLE,
Democratic Leader, U.S. Senate,
Washington, DC.

THE HONORABLE BILL FRIST AND THE HONORABLE TOM DASCHLE: We urge you to oppose any financial derivatives, energy derivatives, metals derivatives and energy trading market provisions contained in S. 509 that may be offered as amendments by Senator Feinstein to H.R. 6, the Energy Policy Act of 2003.

The provisions of S. 509 (introduced by Senator Feinstein in March and referred to the Senate Agriculture Committee) include, in addition to other problematic provisions, language that would expand FERC jurisdiction, creating uncertainty and unnecessary jurisdictional confusion between the FERC and CFTC for financial and energy derivatives transactions. The amendment also contains specific provisions to expand FERC jurisdiction over "other financial transactions." In addition to creating legal uncertainty within the OTC derivatives markets, this provision would potentially call into question the CFTC's exclusive jurisdiction over futures and options on futures.

Provisions contained in S. 509 are similar to the Feinstein amendment, which was offered to last year's Senate energy bill. The amendment was defeated in a cloture motion on April 10, 2002. In addition, key financial regulators have also opposed these types of provisions. The Chairman of the Board of Governors of the Federal Reserve, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, collectively known as the President's Working Group on Financial Markets (PWG), all opposed earlier versions of the proposed legislation.

We ask that you preserve the legal activity achieved with passage of the Commodity Futures Modernization Act of 2000 and oppose any amendments relating to financial derivatives and the energy trading markets.

Sincerely,

American Bankers Association, ABA Securities Association, Association for Financial Professionals, The Bond Market Association, Emerging Markets Trade Association, Financial Services Roundtable, The Foreign Exchange Committee, Futures Industry Association, International Swaps and Derivatives Association, Managed Funds Association, National Mining Association, Securities Industry Association.

1. WHAT ARE DERIVATIVES?

The term "derivatives" refers to a wide array of privately negotiated over-the-counter ("OTC") and exchange traded transactions. Over the last decade, OTC derivatives transactions have grown to include not only interest rate and currency swaps, but also interest rate caps, collars and floors, swap options, commodity price swaps, equity swaps, credit derivatives, weather derivatives and other financial derivative products.

2. WHAT IS THE OVER-THE-COUNTER MARKET?

The OTC market is the principals' market whereby business is transacted directly between the buyer and seller. There is no middleman, exchange or clearinghouse involved. The OTC market now sees most of the derivative activity, and dwarfs the exchanges.

3. WHY DO COMPANIES USE DERIVATIVES?

Companies use derivatives to manage risk and enhance profit potential. Derivatives have been around since the 1970s and generally have been regarded as efficient tools that lend stability to business operations. Corporations typically use them to reduce risk from swings in currency values or interest rate movements.

4. ARE DERIVATIVES IMPORTANT TO THE MINING INDUSTRY?

Since 1974, when the Commodity Exchange Act (CEA) was enacted by Congress, derivatives have become very important to the metals mining industry as a method to protect against market volatility. Many of these products did not exist when the Act was first adopted. These derivatives play a key role in the metals hedging programs that gold producers have used in periods of declining gold prices to sell their production forward. Miners of other metals commodities also use derivatives to manage the risk of fluctuating prices. Since their creation, these metals derivatives products have always been sold over-the-counter, mainly because the transactions occur between or among large institutions and high worth companies and the products can be customized for the particular needs of the parties.

5. HOW HAVE DERIVATIVES BENEFITED MARKET PARTICIPANTS?

The growth of the derivatives market has been of considerable benefit to users individually. In the gold sector, central banks have been able to earn income on gold holdings, while gold fabricators have been able to insulate themselves from the impact of fluctuations in the price of gold on their inventory holdings. Hedging has enabled producers to develop new mines using project finance.

6. HOW WOULD A COMPANY USE DERIVATIVES TO HEDGE THEIR MINE PRODUCTION?

A hedging program will typically include a mix of over-the-counter derivative products, including "Forward Sales" and "Spot Deferred Contracts." For example, in a spot deferred contract a bullion dealer borrows gold from a central bank, and sells it into the spot market at a price of \$350 per ounce. The proceeds are placed on deposit and earn interest of 4%. A fee of 1% is paid by the bullion dealer to the central bank. The interest difference of 3.0% is called "contango." The mining company receives the original proceeds from the spot sale (\$350) plus the five years of accrued interest (\$56) for a total amount of \$406 per ounce.

TALKING POINTS FOR FEINSTEIN AMENDMENT TO SENATE ENERGY BILL

Senator Feinstein is offering an amendment to the comprehensive energy bill which is now being considered on the Senate floor. This amendment would subject OTC energy derivatives to comprehensive, exchange-type regulation including capital requirements.

Although Senator Feinstein has made some changes to her original legislation as introduced, these are not significant and do not address the concerns we have raised with you and others.

The legislation still contains inappropriate layers of regulation, including capital requirements for electronic exchanges that only bring parties together and have no role in any resulting transactions. This amount of regulation sends the business offshore.

The legislation creates legal uncertainty by giving the CFTC vastly expanded and undefined jurisdiction over all types of commodities transactions, not just futures contracts. The clarity of CFTC jurisdiction, and accompanying legal certainty that transactions will not be deemed illegal and voidable, created by the CFMA enacted in 2000 is destroyed.

Legal uncertainty is compounded by the fact that FERC now has a role that is supposedly dependent on whether energy is actually delivered. However, the decision whether to deliver energy may be made years after the transaction is entered into, leaving the parties uncertain during the life of the contract which agency has jurisdiction.

Message: Oppose the Feinstein Amendment. If action needs to be taken, it should be done in a thoughtful, deliberate manner through the Committee process, not as a floor amendment.

Mr. ENZI. I yield the floor.

EXECUTIVE SESSION

NOMINATION OF RICHARD C. WESLEY TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Executive Calendar No. 220, which the clerk will report.

The assistant legislative clerk read the nomination of Richard C. Wesley, of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield myself time.

As the two distinguished Senators from New York are in the Chamber, I will yield my time to them adding only this: This is a nominee to one of the most important courts in the country. It is actually my circuit. It is a Republican nominee, nominated by a Republican President. I predict that the nominee is going to go through easily because, contrary to the normal procedure on some of these nominees, the White House has sent up somebody who can unite us, not divide us. Usually they send nominees who divide us and not unite us. This is an example of what happens when a nominee to a powerful court is sent up who will unite us and not divide us.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from New York.

Mr. SCHUMER. Mr. President, I join my colleague from Vermont and my colleague from New York in supporting the nomination of Judge Wesley.

I rise in enthusiastic support of Richard Wesley's nomination to the Second Circuit Court of Appeals.

Like most of the nominees we see, Judge Wesley has a top-flight legal mind and experience. He graduated from SUNY-Albany summa cum laude

and from Cornell Law School. He worked in private practice for several years, worked as a staffer to the minority leader of the New York State Assembly, and from 1983 to 1987, represented the 136th District in the assembly.

That was just after I left the assembly, so I never had the privilege of actually serving with him, but my former colleagues in the assembly, many of whom disagreed on policy with Judge Wesley, all have spoken very highly of both his capabilities and his integrity.

Judge Wesley has served on the State trial court in New York, the intermediate appellate court, and for the past 6 years on New York's highest court, the court of appeals. He has the distinction of being appointed to the bench by both Governor Cuomo and Governor Pataki. Clearly there is a serious history of bipartisan support.

His nomination has been examined by his good friend and my friend Congressman REYNOLDS, as well as by Bill Paxon. They have known him for a very long time and vouch for him as well. I do not think Judge Wesley would have gotten where he did without the push from TOM REYNOLDS, and I think we all appreciate it because we are adding a qualified person to the bench.

There is no question Judge Wesley is well-qualified, but as my colleagues know, legal excellence is only one of the three criteria I use when evaluating judicial nominees. I also look at diversity and moderation.

Judge Wesley is the third Second Circuit judge we have considered under the Bush administration.

Judge Barrington Parker, who we confirmed in 2001, is African-American, and Judge Reena Raggi, who we confirmed in 2002, is a woman. So we are doing quite well on diversity when it comes to recent nominations to that court.

Our experience with the Second Circuit on excellence and diversity is similar to our experience with the President's nominations to the other circuit courts. By and large, he has done a good job bringing us well-qualified nominees who are not exclusively white males.

It is on that third prong, moderation, where we have had some problems. I am pleased to say that Judge Wesley fits quite well with Judge Parker and Judge Raggi as being well within the mainstream.

I would like to read what Judge Wesley said about his own judicial philosophy:

I consider myself a conservative in nature, pragmatic at the same time, with a fair appreciation of judicial restraint. I have always restricted myself to what I understand to be the plain language of the statute and not gone beyond that [because] public policy is made by the legislature.

That is an honest and candid assessment of how Judge Wesley judges.

It is not just words. We have had nominees who have come before us and

said that, but this is what he has done because he has a record. He has had 16 years on the bench to back it up. We know Judge Wesley has certain positions in which he personally believes. He has an ideology. That is clear from several of the votes he took in the assembly. For instance, in the assembly he voted the pro-life point of view. That is different from mine. And, of course, I do not have a litmus test. Most of us do not.

What is abundantly clear from his record on the bench is that he can check his personal beliefs at the door and judge fairly and honestly.

Unlike, some of the nominees we have seen, including Bill Pryor, the Fifth Circuit nominee whose contentious hearing is going on in the Judiciary Committee as we speak, there is nothing controversial about Judge Wesley.

He is best known for his thoughtful, scholarly approach that unites judges behind unanimous opinions.

He is truly a uniter, not a divider. He is a judge, not an activist. He will be a credit to New York, to the Second Circuit, and to the Senate when we confirm him.

It would be my wish that this would be the character of the President's nominees. I ask unanimous consent that an editorial from Judge Wesley's hometown paper, the Rochester D&C, Democrat and Chronicle, be printed in the RECORD. It says: "Bipartisan Support?" And then it says:

If only more judicial nominees would go as smoothly as this one.

Well, I wish that would happen.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rochester D&C, June 4, 2003]

BIPARTISAN SUPPORT?

If only more judicial nominations would go as smoothly as this one.

In an era in which partisan bickering over judicial nominations has become almost routine, it's significant that New York Appeals Court Judge Richard Wesley has bipartisan backing for his nomination to a federal court.

For the sake of the nation's judiciary, hope that Wesley's easy confirmation hearing before the Senate Judiciary Committee last week will become a model for handling presidential nominations to federal judgeships. Wesley, a resident of Livonia in Livingston County, is now virtually assured of winning confirmation by the Senate Judiciary Committee and the full Senate when they vote on the nomination.

Wesley's smooth sailing had a lot to do with the strong support he had from Sens. Charles Schumer and Hillary Clinton, both Democrats, and Republican Rep. Tom Reynolds, who represents parts of this region. Wesley, appointed to state courts by former Democratic Gov. Mario Cuomo and Republican Gov. Pataki, is a GOP conservative, who Schumer described as having "moderate views."

Maybe if the Bush administration selected more judges of Wesley's caliber there'd be less of the antagonism that typically surrounds too many judicial nominations.

Mr. SCHUMER. It will happen if the President truly consults with us and

nominates judges in the mold of Judge Wesley, clearly conservative but also clearly within the mainstream. It would be my hope that we would not have 51 votes for many of the nominees but 100 for most all of the nominees, or close to it. If this President should decide to treat the nominees and the rest of the country the way he is treating nominees in the Second Circuit, that is what would happen. That is my hope. That is my prayer.

I urge every one of my colleagues to vote for this fine addition to the bench. We are all proud of him in New York State, and he will make a great addition to the Second Circuit.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I rise to join my colleague from New York in expressing my very strong support for the nomination of New York State Court of Appeals Judge Richard C. Wesley to the United States Court of Appeals for the Second Circuit.

A few weeks ago, I was honored to testify before the Judiciary Committee in support of this nominee because I believe then, as I do today, that he will make a fine addition to the Second Circuit and will serve that court with distinction. I was also pleased to see supporting Judge Wesley's nomination, his mother Beatrice, "Betty" Wesley and his children Sarah and Matthew. They and his wife Kathryn are all very proud of him, and have every reason to be so proud.

The calls and letters of support I have received about Judge Wesley from a wide variety of distinguished members of the legal profession are a testament to his qualities of high intellect, judicial temperament, caring for the profession and, most importantly, commitment to justice.

Having a significant public service record is not a requirement for serving on our Federal judiciary. But it is very significant to note that Judge Wesley has spent most of his career serving the public trying to make New York a better place for our children and families.

He has had a distinguished academic career, graduating summa cum laude from Cornell University Law School. He did have the experience in private practice and in the legislative body, the New York State assembly. He has served on trial and appellate New York courts.

In addition to performing his professional duties to the highest standards, he has taken an interest and taken the time to become involved in other significant pressing problems. As a trial court judge, Judge Wesley instituted a felony screening program in Monroe County that reduced the delays in processing felony cases by over 60 percent. The program proved so successful that it served as a model for judicial districts across our State.

In 1993, he created the JUST Program, which for a decade has provided

services to court and criminal justice agencies, again in Monroe County, to monitor preplea and presentence defendants and to provide alternatives, where appropriate, to incarceration.

I am also very impressed that Judge Wesley has been a champion for victims of domestic violence. He has been in the forefront for years in providing shelters for victims of domestic violence, primarily women and their children. He has championed their rights in court and he has sought to help provide the resources that would give these victims another chance.

After 7 years on the trial court, he was appointed to the appellate division and then to New York's highest appellate court, the New York State Court of Appeals. Judith Kaye, the Chief Judge of that court, cannot say enough about Judge Wesley's contributions. I am sure he will be greatly missed as he starts his new career on the Second Circuit.

This is a very positive nomination. He will not only make his former colleagues proud and he will certainly make lawyers everywhere proud, but he will especially make Western New York proud because once confirmed, Judge Wesley will be the first Western New Yorker—for those who are not from New York, that includes places such as Rochester, Buffalo, and Jamestown, places on the other end of our very diverse, large State—to be confirmed as an associate judge of the Second Circuit since 1974.

Although it is very clear that Judge Wesley and I do not agree on every policy or legal issue, and I have no way of knowing how Judge Wesley will vote when these important issues come before him, I have every confidence in his professional preparation, in his temperament and demeanor, in his commitment to justice. He may be a conservative Republican, but he is a judge and an American first.

I join my colleague, the ranking member on the Judiciary Committee, in expressing the very strong wish that we could have more nominees like Judge Wesley, someone who comes from a Republican President, who is easily confirmed by a bipartisan majority, preceded by a unanimous vote in the Judiciary Committee. I predict he will be confirmed on this floor unanimously. Why? Because although Judge Wesley is not of my party, he may not be of my judicial philosophy, he already in his judicial career decided cases differently than I would have, had I been sitting on that bench, he is a person whom we always know will put the interests of justice first, and will preside in a totally nonideological, nonpartisan manner. That is what every judge should be doing.

It is certainly the responsibility of the Senate to advise and consent so that our Federal judiciary, which consists of lifetime appointments, will be filled by people of the caliber of Judge Wesley.

I yield the floor.

Mr. HATCH. Mr. President, I am pleased that we are considering the nomination of Richard C. Wesley, who has been nominated by President Bush to serve on the United States Court of Appeals for the Second Circuit. He has an outstanding record of distinguished public service and will be a great addition to the Second Circuit.

Judge Wesley currently serves as an associate judge on the New York Court of Appeals, the State's highest court, having been unanimously confirmed by the State senate in 1997. His 16 years on the trial and appellate bench, plus prior service as a member of the New York State Assembly, has given him the experience and background to make an outstanding Second Circuit Judge.

In addition to his judicial experience, Judge Wesley has had a distinguished legal career. After graduating from Cornell Law School, he began his legal career in 1974 as an associate at the Pittsford, NY, office of Harris, Beach and Wilcox. He achieved a partnership at Welch, Streb, Porter, Meyer & Wesley in Geneseo, NY, in 1977 and in 1979, became assistant counsel to the minority leader of the New York State Assembly in Albany. In 1983, he was elected to the New York Assembly himself, representing his home district in western New York.

Judge Wesley began his judicial career in 1987, when he was elected to the Seventh Judicial District of the Supreme Court of New York. From 1991 to 1994, he served as the supervising judge for the Criminal Courts within the Supreme Court, and in 1994 Governor Cuomo appointed him to the Appellate Division of the Supreme Court in Rochester, where he heard appeals of Supreme Court trial decisions from central and western New York. On December 3, 1996, Governor Pataki nominated Judge Wesley to the New York Court of Appeals. Judge Wesley was confirmed by a unanimous vote of the New York State Senate on January 14, 1997, and has served with distinction on the State's highest court ever since. His 16 years as a judge at both trial and appellate levels, plus prior service as a State assemblyman in New York, have given him the experience and background to make an outstanding Second Circuit judge.

Judge Wesley is a native of Livonia, NY, and has served his community, State, and Nation in a variety of ways. Not only has he served in his professional capacity, but also he believes in community service and has been involved in community service organizations such as the United Church of Livonia, Chances and Changes, a community-based organization in Livingston County that provides safe housing to battered women, and the Myers Foundation, a foundation based in his hometown that helps needy families in the area. Judge Wesley is also active in a number of local youth sports programs and serves as a driver for the Livonia Volunteer Ambulance.

In addition to his public and community service, Judge Wesley has been actively involved in efforts to improve the legal and judicial process. He has been a leader in numerous bar associations and law-related organizations. For example, he serves on the Cornell Law School Advisory Council and the Cornell University Council, and is a Fellow of the New York State Bar Foundation. In January of 1991, Judge Wesley was appointed by the chief administrator of the courts to be the supervising judge of the Criminal Courts in the Seventh Judicial District, and in this capacity developed case management systems that greatly improved the efficiency of the court's criminal docket. These reforms have since served as models for other jurisdictions with heavy criminal caseloads.

Judge Wesley comes to us highly recommended and warmly endorsed by his colleagues and former colleagues on the New York State courts, litigants who know him personally and have practiced in his courtrooms, the president of the New York State Bar Association, community leaders in his hometown of Livonia, NY, Gov. George Pataki, and New York's attorney general, Eliot Spitzer. Let me read a few statements made by some of his many supporters. Jonathan Lippmann, chief administrative judge of the State of New York, writes that Judge Wesley, "has been a model of the wisdom, temperament, craftsmanship, and personal qualities that make for the most outstanding judges." Joseph Bellacosa, dean of the St. John's University Law School and a former colleague on the New York Court of Appeals, writes that Judge Wesley "is intellectually curious and open to fresh ideas and insights of others, respectful of the great strength derived from collegial shared wisdom of others, yet confident and resolute in his personal conviction on values and fundamental principles. He is also a tireless worker and seeker of equal justice for all. He loves being a Judge and is devoted to the fair administration of justice under the rule of law." And Governor Pataki has also written, praising Judge Wesley's excellence as an appellate jurist and specifically noting his "wealth of experience, intellect, integrity and judicial temperament."

The legal bar's wide regard for Judge Wesley is further reflected in his evaluation by the American Bar Association. The ABA evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. The ABA has bestowed upon Judge Wesley its highest rating of Unanimously Well Qualified.

The record is clear that Judge Wesley is worthy of confirmation for this position of high responsibility on the Court of Appeals for the Second Circuit. I strongly support his confirmation and urge my colleagues to do likewise.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. How much time remains?

The PRESIDING OFFICER. Two minutes.

Mr. LEAHY. I thank the Chair.

Today, we vote to confirm Richard Wesley to serve on the United States Court of Appeals for the Second Circuit, the Federal circuit covering Vermont, New York, and Connecticut. With this confirmation we will have filled the sole vacancy on this circuit court. I remember when President Clinton had multiple nominees pending before the Senate for the five simultaneous vacancies that then existed. The entire circuit was declared a judicial emergency by the chief judge, and he had to resort to three-judge panels with only one Second Circuit judge. Republicans were not moving those nominations at that time. All of the Senators from the Second Circuit joined together to work for their confirmation, and we were finally able to confirm them all, including Judge Sonia Sotomayor, after significant efforts. This nomination did not suffer those needless delays. With the support of Senator SCHUMER and Senator CLINTON, this nomination has been considered expeditiously.

The Senate has already confirmed 129 judges, including 26 circuit court judges, nominated by President Bush. One hundred judicial nominees were confirmed when Democrats acted as the Senate majority for 17 months from the summer of 2001 to adjournment last year. After today, 29 will have been confirmed in the other 12 months in which Republicans have controlled the confirmation process under President Bush. This total of 129 judges confirmed for President Bush is more confirmations than the Republicans allowed President Clinton in all of 1995, 1996, and 1997—the first 3 full years of his last term. In those 3 years, the Republican leadership in the Senate allowed only 111 judicial nominees to be confirmed, which included only 18 circuit court judges. We have already exceeded that total by 15 percent and the circuit court total by 40 percent with 6 months remaining to us this year.

Today's confirmation makes the ninth court of appeals nominee confirmed by the Senate just this year. That means that in the first half of this year, we have exceeded the average of seven per year achieved by Republican leadership from 1995 through the early part of 2001. The Senate has now achieved more in fewer than 6 full months for President Bush than Republicans used to allow the Senate to achieve in a full year with President Clinton. We are moving two to three times faster for this President's nominees, despite the fact that the current appellate court nominees are more controversial, divisive, and less widely supported than President Clinton's appellate court nominees were.

If the Senate did not confirm another judicial nominee all year and simply adjourned today, we would have treated President Bush more fairly and would have acted on more of his judi-

cial nominees than Republicans did for President Clinton in 1995-97. In addition, the vacancies on the Federal courts around the country are significantly lower than the 80 vacancies Republicans left at the end of 1997. We continue well below the 67 vacancy level that Senator HATCH used to call "full employment" for the Federal judiciary.

Indeed we have reduced vacancies to their lowest level in the last 13 years. So while unemployment has continued to climb for Americans to 6.1 percent last month, the Senate has helped lower the vacancy rate in federal courts to an historically low level that we have not witnessed in over a decade. Of course, the Senate is not adjourning for the year and the Judiciary Committee continues to hold hearings for Bush judicial nominees at between two and four times as many as he did for President Clinton's.

For those who are claiming that Democrats are blockading this President's judicial nominees, this is another example of how quickly and easily the Senate can act when we proceed cooperatively with consensus nominees. The Senate's record fairly considered has been outstanding—especially when contrasted with the obstruction of President Clinton's moderate judicial nominees by Republicans between 1996 and 2001.

I hope the White House would note the strong support for this conservative Republican nominee to the Second Circuit. I know my good friends from New York are aware this is a case where the White House actually worked with them and consulted with them on a nominee. That has not been the case of other parts of this country that has brought about divisiveness.

Again I urge, and I have been urging for a little over 2 years, the White House might start a new course, one of seeking to unite and not divide our judicial nominees, to have consultation, not arbitrariness, on judicial nominees.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Richard C. Wesley, of New York, to be United States Circuit Judge for the Second Circuit? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Illinois (Mr. FITZGERALD) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 215 Ex.]

YEAS—96

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Edwards	Murkowski
Biden	Ensign	Murray
Bingaman	Enzi	Nelson (FL)
Bond	Feingold	Nelson (NE)
Boxer	Feinstein	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hutchison	Schumer
Chafee	Inhofe	Sessions
Chambliss	Inouye	Shelby
Clinton	Jeffords	Smith
Cochran	Johnson	Snowe
Coleman	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lincoln	Wyden

NOT VOTING—4

Fitzgerald	Hollings
Graham (FL)	Lieberman

The nomination was confirmed.
The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The Senator from Louisiana.

ORDER OF BUSINESS

Mr. BREAUX. Mr. President, I say to the managers of the Energy bill, I would like to speak for a couple minutes on a subject that is going to be coming up in the Senate next week and in the Senate Finance Committee on tomorrow. The subject is Medicare. I do not want to interfere with anybody who has a pending amendment, but I think this would be an appropriate time to make a few comments on this subject.

The PRESIDING OFFICER. The Senator from Louisiana.

MEDICARE AND PRESCRIPTION DRUGS

Mr. BREAUX. Mr. President, my colleagues, the Senate will begin, this week in the Finance Committee—on Thursday, tomorrow—marking up a historic reform piece of legislation dealing with the subject of Medicare and prescription drugs for our Nation's older Americans. I think it is a historic opportunity for the Senate, in a bipartisan fashion, to come together and produce a product that is something of which we can all be proud.

Many Members of the Senate, when you talk about Medicare, would like the Federal Government to do everything and the private sector to not be