



Via Facsimile

October 27, 2009

The Honorable Barney Frank
Chairman, House Committee on Financial
Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member, House Committee on
Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul E. Kanjorski
Chairman, Subcommittee on Capital
Markets, Insurance, and Government
Sponsored Enterprises
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Scott Garrett
Ranking Member, Subcommittee on
Capital Markets, Insurance, and
Government Sponsored Enterprises
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank, Subcommittee Chairman Kanjorski, Ranking Member Bachus and Subcommittee Ranking Member Garrett:

I am writing on behalf of the Council of Institutional Investors (“Council”), a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion. Member funds are major shareowners with a duty to protect the retirement assets of millions of American workers.

As a leading voice for long-term, patient capital, the Council welcomes the Committee on Financial Services’ (“Committee”) pending mark-up of the “Accountability and Transparency in Rating Agencies Act” (“Act”). As indicated in our letter of October 22, 2009, “we are pleased to provide our general support for the discussion draft given its adherence to our basic principles” for effective regulatory reform of credit rating agencies.¹

¹ Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to The Honorable Barney Frank, Chairman, Committee on Financial Services, United States House of Representatives et al. 1 (Oct. 22, 2009), available at [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/CII%20Letter%20on%20Credit%20Rating%20Agency%20Reform%2010-22-09%20\(FINAL\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/CII%20Letter%20on%20Credit%20Rating%20Agency%20Reform%2010-22-09%20(FINAL).pdf) (Noting that any legislative reform of credit rating agencies should advance the following basic principles: (1) Securities and Exchange Commission oversight authority should be enhanced; (2) internal controls and governance should be strengthened; (3) Transparency and disclosures should be expanded; (3) Standards of accountability should be raised; and (4) Reliance on ratings should be reduced.)

It has recently come to our attention that Representative Jackie Speier plans to offer the following amendment at today's Committee mark-up of the Act:

SEC. 6. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this Act, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

The purpose of this letter is to express our support for Representative Speier's above amendment.

Rating agencies, particularly the three dominant Nationally Recognized Statistical Rating Organizations ("NRSROs"), have long enjoyed vast access to management and material non-public information. Specifically, the exemption from Regulation Full Disclosure ("Regulation FD") provided to NRSROs that issue public ratings permits the rating agencies to receive inside information from issuers that is not shared with the public or other rating agencies. The three largest NRSROs argue that their exemption from Regulation FD allows them to alert the public more quickly and clearly through rating upgrades, downgrades and watches.

We believe this exemption is no longer warranted. As argued in the Council's white paper, *Rethinking Regulation of Credit Rating Agencies: An Intuition Investor Perspective*, the dominate rating agencies' role in the financial crisis, their failure to accurately assess and alert investors to the risks of many structured products, demonstrates that this exemption no longer serves as an investor protection.² In order to properly understand and analyze a security, as well as to evaluate the process and considerations an NRSRO considered in determining a rating, market participants must have equal access to information.³ Moreover, providing select rating agencies unfettered access to non-public information further cements the competitive advantage of those few organizations that have continued to dominate the industry. Greater competition within the industry would provide investors with a wider range of views on the risk profiles of securities.

² Frank Partnoy, *Rethinking Regulation of Credit Rating Agencies: An Institutional Investor Perspective* 13 (Apr. 2009), <http://www.cii.org/UserFiles/file/resource%20center/publications/CRAWhitePaper04-14-09.pdf>.

³ Letter from Laurel Leitner, Analyst, Council of Institutional Investors, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission 2-3 (Mar. 25, 2009), <http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/03-25-09%20comment%20letter%20to%20SEC%20on%20NRSROs%20FINAL.pdf>.

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We again very much appreciate your leadership in pursuing this important pro-investor legislation and offer our general support for its prompt passage. If you have any questions, please feel free to contact me at (202) 261-7081 or jeff@cii.org, or Council senior analyst Laurel Leitner at (202) 261-7086 or laurel@cii.org.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive style with a large, stylized "J" and "M".

Jeff Mahoney
General Counsel

CC: The Honorable Jackie Speier