



December 10, 2009

The Honorable Barney Frank, Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Re: Credit Rating Agency Liability Reform

Dear Chairman Frank:

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 representatives of the investor community, we wish to express our deep concern regarding an amendment offered by Rep. Kevin McCarthy to H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009,” that would undermine crucial reforms in the legislation designed to enhance the accountability of nationally recognized statistical rating organizations (NRSROs).¹

As the Investors’ Working Group (IWG) highlighted in its July 2009 report, NRSROs have generally escaped accountability for their shoddy performance and poorly managed conflicts of interest, at least in part, because of their statutory exemption from liability.² While the Council supports the existing provisions of financial regulatory reform legislation that firmly subject NRSROs to high standards of accountability through private rights of action, we also support language advanced by Rep. Mary Jo Kilroy that would eliminate NRSROs’ Rule 436(g) exemption from liability under Section 11 of the Securities Act of 1933. Approved by the House Financial Services Committee, Rep. Kilroy’s provision nullifying Rule 436(g) is an important supplement to other provisions in reform legislation intended to make NRSROs more thoughtful about ratings by strengthening their legal liability.

Rep. McCarthy’s amendment would strip this much-needed change from reform legislation, however, allowing NRSROs’ statutory exemption from liability to persist. It is widely accepted that when credit ratings are used to sell securities, investors rely on NRSROs as experts. Although NRSROs are not liable as experts under Section 11, other professionals offering legal opinions, valuation opinions and audit reports, for example, are in fact liable under the Securities Act. Given the prominent role that NRSROs played in the financial crisis, there is no valid reason why these important financial gatekeepers should continue to be exempt from liability. As a diverse panel of financial experts, the IWG accordingly concluded that Congress should eliminate this exemption.³ **The Council thus strongly urges you to oppose Rep. McCarthy’s amendment.**

¹ Rep. McCarthy’s proposed amendment is available at

http://www.rules.house.gov/111/AmndmentsSubmitted/hr4173/mccarthy168_hr4173.pdf.

² Investors’ Working Group, *U.S. Financial Reform: The Investors’ Perspective* (July 2009) at 20, [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20(July%202009).pdf). More information about the IWG report is available on the Council’s website at <http://www.cii.org/iwglinfo>.

³ *Id.* at 21 (“Congress should eliminate the effective exemption from liability provided to credit rating agencies under Section 11 of the Securities Act of 1933 for ratings paid for by the issuer to offering participants.”).

If you have any questions, please do not hesitate to contact me at (202) 261-7096 or jonathan@cii.org, or Council analyst Laurel Leitner at (202) 261-7086 or laurel@cii.org.

Sincerely,

A handwritten signature in black ink that reads "Jonathan D. Urick". The signature is written in a cursive style with a large, looped initial 'J'.

Jonathan D. Urick
Analyst
Council of Institutional Investors