



Via Facsimile

December 7, 2009

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

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

The Honorable Collin C. Peterson  
Chairman  
Committee on Agriculture  
United States House of Representatives  
Washington, DC 20515

The Honorable Frank D. Lucas  
Ranking Member  
Committee on Agriculture  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Frank, Ranking Member Bachus, Chairman Peterson and Ranking Member Lucas:

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 wishes to reiterate our strong opposition to any further weakening of the provisions of the *The Wall Street Reform and Consumer Protection Act of 2009* (“Act”) regarding the regulation of the over-the-counter derivatives markets.<sup>1</sup> We do not support any amendments that would add loopholes or exceptions to the Act’s requirements. More specifically, and as but one example, we oppose any exceptions from the Act’s definition of “Major Swap Participant.”<sup>2</sup>

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<sup>1</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to The Honorable Barney Frank, Chairman, House Committee on Financial Services 1-2 (Nov. 13, 2009), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/November%2013%202009%20CII%20OTC%20letter%20doc%20\(final\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/November%2013%202009%20CII%20OTC%20letter%20doc%20(final).pdf).

<sup>2</sup> H.R. 4173, 111<sup>th</sup> Cong. §3101 (2009), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4173:>.

More broadly, as we explained in our November 13<sup>th</sup> letter to you on this topic:

The Council shares the concerns that you have heard from many other parties about the “exception” to the Act for end users of OTC derivatives. In our view, that exception leaves a gaping hole in the regulation of derivatives that will likely be exploited by self-interested parties to the detriment of investors and the capital markets. We, therefore, respectfully request that as you contemplate amendments to strengthen the Act, you consider the following two important improvements to Act’s provisions:

1. **All OTC derivative transactions that can be cleared centrally should be required to be brought to a clearinghouse.** The Act narrowly limits the clearing requirement to transactions between swap dealers or major swap participants. Thus, a large volume of OTC derivative transactions that can be cleared will not be cleared because, as is often the case, one of the parties to the transaction is a not a swap dealer or a major swap participant, but a hedge fund, investment fund, or other financial or nonfinancial firm. This deficiency leaves the entire financial system unnecessarily exposed to systemic risks that could otherwise be reduced if the Act simply requires that all clearable transactions be required to cleared centrally.
2. **All standardized OTC derivative contracts that can be exchange traded should be required to be traded on a regulated exchange.** While there might be some valid arguments as to why certain OTC derivative transactions should be exempt from the clearing requirements under the Act, we are unaware of any valid arguments for exempting standardized OTC derivative contracts from exchange trading. The transparency provided by exchange trading not only lowers systemic risks, but, importantly, enhances the price discovery function of the markets. The result should be lower costs for pension funds leaving more assets available to better provide for the retirement security of millions of U.S. workers.<sup>3</sup>

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<sup>3</sup> Letter from Jeff Mahoney, *supra* note 1, at 1-2. (footnotes omitted).

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Thank you for consideration of the views of investors on this important element of U.S. Financial Regulatory Reform. We look forward to continuing to work with you to further improve the transparency and stability of the derivatives market. If you have any questions, please feel free to contact me at (202) 261-7081 or [jeff@cii.org](mailto:jeff@cii.org), or Council analyst Jonathan Urick at (202) 261-7096 or [jonathan@cii.org](mailto:jonathan@cii.org).

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney  
General Counsel