



Via Facsimile

April 29, 2010

The Honorable Robert Menendez
United States Senate
Washington, DC 20510

Dear Senator Menendez:

I am writing on behalf of the Council of Institutional Investors ("Council"), a non profit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion. Member funds are major long-term investors with a duty to protect the retirement savings of millions of American workers across the country. Significantly affected by the financial crisis, Council members have a deep, abiding interest in strong regulatory reform.

It is our understanding that you plan to offer an amendment to the *Restoring American Financial Stability Act of 2010* that would require companies that are designated as systemically risky to provide additional disclosures about their off-balance sheet activities in their quarterly and annual filings with the United States Securities and Exchange Commission ("SEC").¹ Those disclosures would include, among other items, an average daily leverage ratio to provide greater transparency around any potential balance sheet "window dressing" at quarter or year end.

We share your concern about the need to increase the level of transparency of off-balance sheet activities. Our views on this issue are informed by the recommendations of the Investor's Working Group ("IWG"). A blue ribbon panel of industry and market experts, the IWG is an independent, nonpartisan commission sponsored by the CFA Institute and the Council to provide an investor perspective on ways to improve the regulation of U.S. financial markets.

¹ We note that the Council of institutional Investors has consistently supported the view that the interests of investors are best served if the responsibility to promulgate accounting standards resides with independent private sector organizations. See e.g., Council of Institutional Investors, *Independence of Accounting and Auditing Standard Setters* (Apr. 28, 2010), <http://www.cii.org/UserFiles/file/council%20policies/Policies%20on%20Accounting%20and%20Auditing%205-7-09.pdf>. Thus, we have, and will continue to, vigorously oppose efforts by the United States Congress or government agencies to override the technical decisions and judgments of independent accounting standard setters. As indicated, it is our understanding that this proposed amendment directs the United States Securities and Exchange Commission to enhance their required disclosures of off-balance sheet transactions for certain issuers and does not, in any way, override the technical decisions or judgments of independent accounting standard setters.

After months of deliberations, the findings and specific recommendations of the IWG were published in its July 2009 report *U.S. Financial Regulatory Reform: The Investors' Perspective* ("IWG Report").² Following its issuance, the IWG Report was reviewed and subsequently endorsed by the Council board and membership.³

Among its various findings, the IWG concluded that shareowners often lack crucial information about the true risk of companies they invest in because of the opacity of off-balance sheet transactions, particularly when those transactions involve securitized products.⁴ As a result, the IWG Report included the following recommendation:

Sponsors should fully disclose their maximum potential loss arising from their continuing exposure to off-balance-sheet asset-backed securities. Sponsoring companies with off-balance-sheet exposure to ABS that they sponsored and/or are servicing should be required to provide full disclosure about how these exposures could affect shareowners if the firm returns the related assets and liabilities to their balance sheets. More transparent disclosure would permit investors to better understand the amount and type of loans that sponsors are originating and the amount of leverage they could create. The disclosure would also provide investors with information about ongoing changes in loan quality and underwriting standards and the potential risks those changes may create in the future. In particular, such disclosure also should describe how those actions could affect the sponsoring firm's capital and liquidity positions, earnings and future business prospects if the firm repurchases the loans onto its balance sheet.⁵

We appreciate your interest in the Council's views on this important issue. Please feel to contact me at (202) 261-7081 or jeff@cii.org if you should have any questions or comments regarding this letter.

Sincerely,



Jeff Mahoney
General Counsel

CC: The Honorable Christopher J. Dodd, Chairman, Committee on Banking, Housing, and Urban Affairs
The Honorable Richard C. Shelby, Ranking Member, Committee on Banking, Housing, and Urban Affairs

² Investors' Working Group, *U.S. Financial Regulatory Reform: The Investors' Perspective* 1-27 (July 2009), [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20(July%202009).pdf) [Hereinafter IWG Report].

³ Council of Institutional Investors, Investors' Working Group, <http://www.cii.org/iwgInfo> (Apr. 29, 2010).

⁴ IWG Report, *supra* note 2, at 13.

⁵ *Id.* at 14.