



December 3, 2013

The Honorable John Boehner
Speaker of the House
United States House of Representatives
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
United States House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Dear Mr. Speaker and Minority Leader Pelosi:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of corporate, union, and public pension funds, foundations, and endowments, with combined assets that exceed \$3 trillion.¹ Most member funds are major shareowners with a duty to protect the retirement assets of millions of American workers. Significantly affected by the financial crisis, Council member funds have a strong interest in meaningful regulatory reform.

The purpose of this letter is to share with you the Council's views on The Small Business Capital Access and Job Preservation Act (H.R. 1105) that the House of Representatives is scheduled to consider in open session tomorrow, December 4, 2013. Our views are in part informed by the findings of the Investors' Working Group (IWG).² The IWG was an independent nonpartisan commission of industry experts sponsored in 2009 by the CFA Institute and the Council to provide an investor perspective on ways to improve U.S. financial system regulation. As you may be aware, many of the IWG's findings and recommendations were adopted by the 111th Congress during the development of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The Council opposes the Small Business Capital Access and Job Preservation Act. We strongly believe that all private equity advisors available to U.S. investors should be subject to oversight and registration with the Securities and Exchange Commission (SEC)³, and we concur with SEC Chairman White's letter to the House Financial Services Committee leadership in that "our markets would not be well-served" by such a decrease in the SEC's authority.⁴

Private equity funds play a significant role in the economy as a source of capital, as an investment vehicle, and as a growing job provider. However, prior to the Dodd-Frank Act many private equity fund advisors operated unchecked—exempt from regulation, compliance examinations, disclosure requirements, and unencumbered by leverage limits.

¹ For more information about the Council of Institutional Investors (Council) and its members, please visit the Council's website at <http://www.cii.org>.

² IWG Investors' Working Group, *U.S. Financial Regulatory Reform: The Investors' Perspective* (July 2009), http://www.cii.org/files/issues_and_advocacy/dodd-frank_act/07_01_09_iwg_report.pdf [Following its issuance, the IWG Report was reviewed and subsequently endorsed by the Council board and membership. For more information about the Investors' Working Group, please visit the Council's website at <http://www.cii.org/content.asp?contentid=141>.]

³ *Id.* at 16.

⁴ Matousek, Abby; Rosenstock, Jason; ML Strategies LL, *Financial Services and Regulatory Update*, (June 2013), <http://www.mlstrategies.com/articles/financial-6-24-13.pdf>.



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By requiring private equity fund advisors to register with the SEC and abide by disclosure requirements, the Dodd-Frank Act adds a meaningful layer of protection for investors. Registration ensures that investors have access to basic information about the adviser's compensation, disciplinary history, and investment strategies; it safeguards against the possibility for an advisor's conflict of interest; it ensures that advisers establish formal compliance programs and act in the best interests of their clients; and it allows the SEC to collect data and examine advisers for compliance weaknesses and potential fraud. By eliminating the registration and reporting requirements on private fund advisors, H.R. 1105 would deny investors in private equity funds these important protections, and it would restrict the SEC from garnering regulatory information critical for assessing systemic risk in a comprehensive manner.

Furthermore, H.R. 1105 does not define what constitutes a "private equity fund," but instead requires the SEC to develop specific parameters for an otherwise ambiguous asset class within a mere six months of passage. We believe it may be imprudent to exempt a broad asset class without first understanding the boundaries of such an exemption, especially considering the notion widely held by many industry experts that "there is no fundamental legal distinction between private equity funds, hedge funds and venture capital funds...there is no telling how broad or narrow [the SEC's] definition will be."⁵

Finally, we note that the Dodd-Frank Act also creates a special exemption from SEC registration for venture capital funds under \$150 million. H.R. 1105 attempts to create a similar exemption for private equity funds, yet the Bill fails to include size limits akin to those in place for venture capital funds. It is similarly imprudent to exempt large private equity funds from the protections typically afforded to investors via SEC registration.

Thank you for considering our members' views in connection with this critical financial regulatory issue. We look forward to continuing to work with you to restore confidence in our economy by improving the transparency and oversight of the U.S. financial system.

If you have any questions, or would like additional information regarding our views please feel free to contact me at (202) 261-7088 or jordan.lofaro@cii.org. Additionally, General Counsel Jeff Mahoney is available at (202) 261-7081 or jeff@cii.org.

Sincerely,

Jordan Lofaro
Council of Institutional Investors

⁵ Abshure, Heath. President of the North American Securities Administrators Association, Inc. quoting House Financial Services Committee Hearing entitled "Legislative Proposals to Relieve the Red Tape Burden" (June, 2013) <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Letter-on-H.R.-1105-06-18-2013.pdf>