



December 10, 2009

The Honorable Nancy Pelosi
The Honorable John Boehner
Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

RE: The Wall Street Reform and Consumer Protection Act of 2009 – HR 4173

Dear Speaker Pelosi and Minority Leader Boehner:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ supports the establishment of new rules to strengthen and address gaps in regulation of financial markets and commends the House for its efforts to craft financial markets regulatory reform legislation. SIFMA supports regulatory reform that will strengthen our financial markets, yet not impair the industry’s ability to support economic growth and job creation through capital formation and credit availability. SIFMA appreciates the thorough and serious manner in which the various House committees have worked to produce this reform package. SIFMA supports many provisions contained in H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009, however we remain concerned that certain provisions will have a negative impact on the operation of the financial markets and the economy. Consequently, SIFMA cannot support H.R. 4173 in its present form.

SIFMA commends the House Financial Services, Agriculture, Judiciary and Energy and Commerce Committees for their hard work over the past year to address weaknesses and gaps in the regulation of our financial markets. SIFMA supports the creation of a single systemic regulator, the creation of a resolution mechanism to resolve systemically important financial firms and putting an end to too big to fail. SIFMA also supports a new, federal fiduciary standard for broker-dealers (BD) and investment advisers (IA) who provide personalized investment advice to their clients. SIFMA supports the use of clearing houses for eligible transactions and reporting through data repositories for all OTC derivatives transaction. SIFMA supports requirements for firms to retain a portion of the risk of loans and asset-backed securities they underwrite related to underlying asset quality. Finally, SIFMA will continue to push for global coordination and harmonization of these and other regulatory reform efforts in the European Union, the G-20, the Basel Committee and other global coordinating committees and councils.

Unfortunately, we continue to believe that the construct of the resolution authority insufficiently addresses the need for legal certainty for investors as it relates to financial institutions at the very least, and possibly the broader credit markets. We continue to assert that key bankruptcy code principles must be melded into the governing principles of resolution authority and remain committed to work with the House to

¹ SIFMA brings together the shared interests of securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

meet that goal. Further the Miller-Moore language now included in the Manager's amendment authorizes the FDIC to impose "haircuts" on certain secured creditors of an institution in resolution and could cause great harm to the day to day functioning of the credit markets. Even as modified from the original committee adoption, if this provision becomes law, we believe it will undermine the credit markets in the United States across all asset classes and establish an unsustainable risk premium on all corporate borrowers, not just financial institutions.

In addition, SIFMA opposes pre-funding a systemic resolution fund for the resolution of systemically important firms. This fund will be \$150 billion in size, three times the size of the FDIC fund at its peak, and could be used to codify the "too-big-to-fail" doctrine the bill seeks to end. The resolution mechanism in the legislation is designed to resolve systemically important firms, not put them into conservatorship. The creation of such a fund will significantly reduce the capital available for lending at the start of this economic recovery and may actually increase systemic risk.

SIFMA also opposes language in the derivatives title which requires the exchange trading of swaps and the inclusion of FX forwards and swaps within the definition of swaps. We continue to have concerns with the breadth of risk retention requirements of the bill, the potential elimination of the pre-dispute arbitration system and limits placed on transactions between affiliates. For these and many other reasons, SIFMA opposes the bill in its current form.

In addition, SIFMA strongly opposes certain amendments:

1. SIFMA opposed the Manager's Amendment because it incorporates the Miller-Moore language into the legislation.
2. SIFMA opposes the Lynch Amendment (#135) which would prohibit any "restricted owner" from beneficial ownership in the aggregate of more than a 20% voting interest in, among other things, a derivatives clearing organization. This amendment is anti-competitive because it would exclude dealers and major swap participants from the market for clearing and execution services. These entities have the business, legal, and operational expertise needed to establish and operate a clearinghouse, and they are the most likely source of investment capital for such an enterprise. The Lynch Amendment would limit competition and undermine the goal of the legislation to encourage and foster increased clearing. It would disadvantage all participants in derivatives markets and should be rejected.
3. SIFMA opposes the Frank Amendment (#66) which would authorize the CFTC, SEC, and bank regulators to impose margin requirements on swaps with end users. There is no reason to require that credit exposure from swaps be treated differently than any other credit exposure. Moreover, requiring end users to post margin would impose a significant new cost on businesses that already are subject to economic stress. The amendment fails to give the regulators any guidance as to when it would be appropriate to impose a margin requirement.
4. SIFMA opposes the Stupak Amendment (#47) which would require all end user swaps that are clearable to be cleared, it would limit the ability of end users to utilize swaps to manage risk in their businesses. Many end users would not meet the requirements of a clearinghouse and, as such, the amendment would prevent them from using clearable swaps to manage risk. To the extent the amendment requires the use of exchanges or swap execution facilities to execute swaps, it would limit end users to standardized transactions that would not meet their risk management needs.

5. SIFMA opposes the Stupak Amendment (#48) which would, among other things, give the CFTC and SEC the authority to prohibit swap transactions they determine would be detrimental to financial markets and market participants. It provides no standards by which the agencies may make that determination and thus grants them open-ended authority to make decisions that could be exercised in a capricious and unwarranted manner. It also would create legal uncertainty about the legal enforceability of swaps entered into after the effective date.

SIFMA supports the Congress's efforts to enact financial regulatory reform and supports the House's efforts to move the process forward. We remain committed to working with the Congress in helping to craft legislation that will establish prudent "rules of the road" to meet our financial markets system while preserving the benefits of capital formation and savings and investments for the benefit of the United States economy.

With kindest personal regards,

A handwritten signature in black ink, appearing to read "Kenneth E. Bentsen, Jr.", with a stylized flourish at the end.

Kenneth E. Bentsen, Jr.
Executive Vice President, Public Policy and Advocacy
SIFMA