



**Americans for Financial Reform**  
1825 K St NW, Suite 210, Washington, DC, 20006  
202.263.4533

November 5th, 2010

Mary Schapiro, Chairwoman  
The Securities and Exchange Commission  
Washington, DC 20549

Re: Regulation of Credit Rating Agencies under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Dear Ms. Schapiro:

We write on behalf of Americans for Financial Reform, a coalition of over 250 national, state, and local groups working together to reform the financial industry. Members of our coalition include civil rights, community, and religious organizations, as well as advocacy groups for investors, retirees, and consumers.

We write to encourage the Commission to ensure the enforcement of key Dodd-Frank Wall Street Reform and Consumer Protection Act provisions relating to liability of nationally recognized statistical ratings organizations (“NRSROs”).

Historically, issuers of debt securities have included credit ratings in registration statements, prospectuses, term sheets and press releases to market offerings and raise capital with debt. In the case of registered offerings of some bonds, notably those backed by consumer loans, the law generally requires that issuers include credit ratings from NRSROs in their official documentation such as registration statements and prospectuses.

Before the passage of the Dodd-Frank Act, NRSROs were effectively sheltered from liability for even egregious misconduct. Rule 436(a), promulgated under the Securities Act of 1933 (the “Securities Act”), requires issuers to file consents from experts whose reports were used in registration statements or prospectuses. However, Rule 436(g) specifically excluded NRSROs from the definition of experts—an exemption that precluded private litigants from bringing suit against NRSROs under Section 11 of the Securities Act.

One important achievement of the Dodd-Frank Act was to ensure that NRSROs would be subject to the same standards of liability as other key players in the financial sector. In Section 931 of the Act Congress found that:

Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial “gatekeepers” do, the activities of credit ratings agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, analysts, and investment bankers.

In furtherance of this goal, the Dodd-Frank Act repealed Rule 436(g). Now NRSROs are considered experts for the purposes of Rule 436(a), and consequently may be found liable for misstatements in connection with such registration documents, just as any other expert can be.

Despite the fact that SEC disclosure rules and regulations generally require that a registration statement or prospectus include actual or expected ratings, in response to the repeal of Rule 436(g), the three largest NRSROs refused to consent to the inclusion of ratings information without the opportunity for the ratings agencies to “further review” the companies issuing the subject debt securities. This action effectively shut down the market for asset-backed securities and led to a temporary halt in the issuance of a number of offerings.

In response, on July 22, 2010, the SEC issued a temporary “no-action” letter allowing rating information to be omitted from prospectuses relating to offers of asset-backed securities for six months. While this no-action letter stemmed the immediate crisis that had been precipitated by the NRSROs themselves, it did little to ensure industry compliance with Congress’ intent to hold NRSROs to a higher standard.

AFR urges that the SEC ensure that the NRSRO liability provisions in the Dodd-Frank Act not be circumvented by the further extension of the temporary “no-action” letter. Rather, the Commission should seriously consider alternative measures that will ensure orderly markets while protecting the integrity of the credit ratings through strong liability standards.

Sincerely,

Americans for Financial Reform

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- A New Way Forward
- AARP
- ACORN
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project

- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Seminal
- U.S. Public Interest Research Group
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*Partial list of State and Local Signers*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY

- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG





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Mary Schapiro, Chairwoman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
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Dear Ms. Schapiro,

Recognizing the central role that faulty credit ratings played in the financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act seeks to improve the reliability of credit ratings by improving the regulatory oversight of credit rating agencies. As you implement these requirements, Americans for Financial Reform<sup>1</sup> urges you to help ensure the effectiveness of this strengthened regulatory oversight by appointing a director of the new Office of Credit Ratings who will make credit rating agency reform a top priority.

The ideal candidate to lead the new Office will be someone who knows the industry and is committed to reforming it. One obvious source of such candidates would be industry whistleblowers who have helped draw attention to the conflicts of interest and abusive practices that contributed to rating agency failures. Another possible source would be academics who have studied the industry and documented its weaknesses. Whatever the background of the director, however, it is crucial that he or she see credit rating agency reform as calling for something more than the reduction of reliance on ratings. And, because the individual who leads the new office will also lead the study of alternative business models, that individual must have an open mind with regard to fundamental changes in our approach to assigning and paying for ratings that are needed to restore rating agency independence.

Investors are relying on the Commission to implement the Dodd-Frank Act in a way that delivers on its promise to transform our financial system. Appointing a “safe” candidate who will be viewed as acceptable to the ratings agencies will not get the job done. We therefore urge you to show your commitment to genuine reform by making a bold choice of an industry reformer to head the new credit rating agency oversight office at the SEC.

Sincerely,

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<sup>1</sup>Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists.



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