

MEMO# 18983

June 29, 2005

LEGISLATION RELATING TO CREDIT RATING AGENCIES; ICI LETTER

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18983] June 29, 2005 TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 14-05 SEC RULES COMMITTEE No. 41-05 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 24-05 FIXED-INCOME ADVISORY COMMITTEE No. 16-05 UNIT INVESTMENT TRUST COMMITTEE No. 10-05 RE: LEGISLATION RELATING TO CREDIT RATING AGENCIES; ICI LETTER Rep. Michael G. Fitzpatrick (R-PA) has introduced a bill, the "Credit Rating Agency Duopoly Relief Act of 2005," intended to increase competition among credit rating agencies. The most significant aspects of the bill are summarized below and a copy of the bill is attached. The bill amends the Securities Exchange Act of 1934 by adding two new definitions, "statistical rating organization" and "nationally registered statistical rating organization" or "NRSRO" (instead of the current "nationally recognized statistical rating organization"). Under the bill, a statistical rating organization is defined as an entity (1) the primary business of which, for at least the most recent three consecutive years, has been the issuance of publicly available ratings, and (2) that employs either a quantitative or qualitative model, or both, to determine its publicly available ratings. The term "nationally registered statistical rating organization" is defined as a statistical rating organization registered or required to register pursuant to new Section 15E of the Exchange Act. The bill would require a credit rating agency meeting the definition of a statistical rating organization to register with the SEC. In addition, it would require the SEC to adopt a disclosure form for statistical rating organizations that would include disclosure relating to conflicts of interest the statistical rating organization faces and the management of those conflicts; the procedures and methodologies the statistical rating organization uses in determining ratings; statistics of ratings performance over short and long-term periods; and procedures in place to prevent the misuse of non-public information. The bill also directs the SEC to adopt certain recordkeeping and reporting requirements appropriate for a statistical rating organization. Finally, the bill would require a statistical rating organization currently registered under the Investment Advisers Act of 1940 to withdraw from this registration and replaces the term "nationally recognized statistical rating organization" with the term "nationally registered statistical rating organization" in the federal securities laws, including the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Today, the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing to examine legislative solutions relating to rating agencies. The Institute submitted a letter to Subcommittee Chairman Baker and Ranking Member Kanjorski commending the Subcommittee for holding the hearing and expressing the importance of an efficient credit rating process to investors and to the U.S. securities markets as a whole. A copy of the

letter is attached. Ari Burstein Associate Counsel Attachment (in .pdf format)

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