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March 17, 2014

Mr. Thomas J. Butler, Director  
The Office of Credit Ratings  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

RE: **STATEMENT OF COMPLAINT: Alleging Assignment, Publication and Distribution of Factually Inaccurate, False and Misleading Sovereign Credit Rating Classifications by the Three Primary Nationally Recognized Statistical Rating Organizations Referencing the Republic of China on Taiwan.**

Dear Mr. Butler,

A Statement of Complaint is hereby made against Standard and Poor's Ratings Services, Moody's Investors Service and Fitch Ratings, each of which is designated as a nationally recognized statistical rating organization ("NRSRO"). Standard and Poor's Ratings Services and Moody's Investors Service together constitute an industry duopoly which reportedly controls approximately 80% of the industry, and which together with Fitch Ratings (collectively referenced herein as "the Three Primary NRSROs") is constituted as an industry oligopoly reportedly controlling in excess of 95% of the industry.<sup>1</sup>

The Complaint alleges that the Three Primary NRSROs have engaged, and continue to engage, in certain wrongful actions in contravention of the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203), and which actions are profit-motivated and which constitute an abuse of the 'issuer-pay' revenue model.

The prevailing sovereign credit rating classifications which are assigned, published and distributed by the Three Primary NRSROs for the Republic of China on Taiwan lack basis in fact (i.e., lack integrity) and are inconsistent with the definitions for each classification as published by the Three Primary NRSROs, and are therefore evidently a product of sales and marketing considerations.

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<sup>1</sup> Source: "Senate Panel Backs Expansion of Credit-Rating Competition," by James Tyson, Bloomberg News (August 3, 2006). The article cites reference to calculations derived from company filings. See also, "Flawed Credit Ratings Reap Profits as Regulators Fail" by David Evans and Caroline Salas, Bloomberg News (April 29, 2009), describing regulatory enforcement failure and stating that according to the United States Securities and Exchange Commission, Standard & Poor's, Moody's and Fitch control 98% of the market for debt ratings in the U.S.

## Background

- Complainant

The Statement of Complaint is made by Sovereign Advisers, Inc., an Arizona Corporation, and the duly appointed Trustee of the Starwood Trust (“the Trust”), a revocable grantor Trust organized under the laws of the State of Arizona. The Trust is organized for the purpose of consolidating and representing the claims of holders of the various series of China’s pre-1949 defaulted full faith and credit sovereign obligations, e.g., “The Chinese Government Five Per Cent Reorganisation Gold Loan of 1913” and “The Imperial Chinese Government Five Per Cent Hukuang Railways Sinking Fund Gold Loan of 1911” (collectively referenced herein as “the subject bonds”). Although these full faith and credit obligations have previously matured, no repayment has been made and the obligations remain valid, outstanding, and unpaid. The subject bonds were offered and sold internationally to foreign buyers and various series of the subject bonds are actively listed on the NYSE Euronext securities exchange in Paris and are assigned International Securities Identification Numbers (“ISINs”).<sup>2</sup>

### Exhibit 1

#### **Specimen International Securities Identification Numbers (ISINs) of Pre-1949 Defaulted Full Faith and Credit Chinese Government Bonds Listed and Quoted on the NYSE Euronext Securities Exchange**

<b>Debt Contract Title</b>	<b>Contract Identifier</b>	<b>ISIN</b>	<b>Trading Code</b>
Gouvernement Imperial de Chine Emprunt Chinoise 5% Or 1903 (Pien Lo) (Kaifeng Honanfu) (Fr. 500)	CHINE 5% 1903	CN0001265163	CN0001265163
5% (4.5%) Anglo French 1908 (£100)	CHINE 4,50% 1908	CN0001265205	CN0001265205
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	CHINE 5 1911 100L	CN0001265320	CN0001265320
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	CHINE 5% 1911 100	QS0018235794	QS0018235794
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£20)	CHINE 5% 1911 20	QS0018235802	QS0018235802
	CHINE 5% 1911 UNIT	QS0018235786	QS0018235786
The Chinese Government 5% Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	XC0004573405	XC0004573405
The Chinese Government 5% Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	QS0018236107	QS0018236107
Republique Chinoise 5% Gold Bond 1925 (French Boxer Indemnity)	CHINE 5% 1925	CN0001265502	CN0001265502
	CHINE LUNG HAI EST	QS0018235844	QS0018235844
Lung-Tsing-U-Hai Railway 5% (£20)	CHINE5%13 LUNG HAI	CN0001265361	CN0001265361

<sup>2</sup> According to Amir Zada, Director of Exotix USA Inc., an investment firm specializing in exotic and illiquid emerging market debt, the claim value of comparable defaulted obligations is based upon the level of past due interest and the increase in the price of gold (“Germany Must Face Suit Over Hitler-Era Bond Default,” by William McQuillen, August 10, 2010). Full faith and credit sovereign obligations issued by internationally-recognized dynastic and subsequent pre-1949 governments have no ‘expiration date’ and remain valid obligations which continue to accrue interest, plus default interest from the date of default until fully paid.

- The Republic of China on Taiwan

The Republic of China has consistently maintained that it is responsible for payment of the subject bonds, both acknowledging its responsibility and affirming the validity of the subject bonds, yet deferring repayment until the occurrence of a notional, speculative future event (i.e., reunification with the mainland).<sup>3</sup>

Examples:

» 1928 - Onward: The Nationalist Government serviced payments on the subject bonds until the events of default caused by the Sino-Japanese war.

» August 13, 1947: The Prime Minister of the Nationalist Government issued a proclamation wherein the Nationalist Government affirmed its intent to repay the subject bonds:

“China pledges her honourable intention to repay these external loans the service of which was suspended in the course of the Sino-Japanese war. In no way does the conclusion of new loans in recent years prejudice the security of these pre-war loans or vitiate the rights of holders of such Bonds.”<sup>4</sup>

» October 24, 1973: The Taiwanese Government’s acknowledgement and acceptance of responsibility for repayment of the subject bonds is explicitly stated in the United States Department of State Cable 209591 (October 24, 1973), and stated again in Department of State Cable 248454 (October 18, 1975):

“Since defaulting on payment of Chinese gov’t bonds (which it continues to recognize as valid legal obligation) Taiwan has continued to trade with U.S. without harassment from bondholders (*emphasis added*).”<sup>5</sup>

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<sup>3</sup> Such posture is disingenuous in the extreme as the Republic of China on Taiwan adamantly espouses its right to self-determination and is prepared to resist any incursion of its sovereignty by the armed forces of the Mainland government; see, e.g., “*Taiwan Would Not Survive Month of Attack, NSB Says*,” Taipei Times (March 11, 2014). The Taiwanese Government’s posture blatantly evidences its unwillingness to repay the subject bonds **in a timely manner**.

<sup>4</sup> Statement as reported in the 1984 Annual Report produced by The Council of Foreign Bondholders (United Kingdom).

<sup>5</sup> Cable Subject: US/PRC CLAIMS NEGOTIATIONS. Canonical ID: 1975STATE248454 (REPEAT OF 1973STATE209591). Date: October 18, 1975 (Date of 1973STATE209591 is October 24, 1973). From: Henry A. Kissinger, United States Secretary of State. To: USLO Peking. Original Classification: ‘Secret’ (declassified July 06, 2006).

» September 18, 1992: Implementation of Article 63 by Order of the Executive Yuan:

“The following debts shall not be repaid prior to national unification:

1. Outstanding foreign currency bonds issued in the Mainland prior to 1949 and the short-term Gold Bonds of 1949.”<sup>6</sup>

» January 29, 1999: The Judicial Yuan, the highest judicial body of the Republic of China on Taiwan, issued Judicial Yuan Interpretation No. 475, an interpretation of Article 63 of the Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area:

Issue: “Article 63, Paragraph 3, of the Act Governing Relations between People of the Taiwan Area and Mainland Area provides that the payment of all the national bonds issued before 1949 should be **deferred** until national reunification. Does the provision of said Article violate Article 23 of the Constitution, thus infringing upon bond holders’ property rights protected by the Constitution? (emphasis added)”

Holding: “[...]. Apparently, it would be against the principle of equality if the current government were to pay those debts **immediately** because this would put a heavy burden on the people in the Taiwan area.[...]. (emphasis added)”<sup>7</sup>

» February 9, 2010: Letter received by Phillips Moeller & Conway PLLC from the Office of the National Treasury, Ministry of Finance, Republic of China on Taiwan, in response to Demand for payment of the subject bonds:

“[...] Therefore, according to decisions which were made in the first session of the Legislative Yuan of our country on November 2, 1951, foreign currency bonds of the government should wait until after regaining the Mainland and [then] once more clear up [the accounts] and legalize [them]; this is set forth in Article 63 of the “Regulations on the Relationships between the People in the Taiwan Area and the Mainland Area (*sic*). [...] Therefore, credits and indebtedness for this case should wait until after national unification; the rectifying and settling [of this matter] can then proceed.”<sup>8</sup>

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<sup>6</sup> See Article 63, Chapter III, Civil Matters, Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area, promulgated by Presidential Order (July 31, 1992) and implemented by Order of the Executive Yuan (September 18, 1992), amended by Presidential Order (October 29, 2003) and implemented by Order of the Executive Yuan (March 1, 2004), as translated and published by the Mainland Affairs Council of the Executive Yuan.

<sup>7</sup> Judicial Yuan Interpretation No. 475 (January 29, 1999), translated by Dr. Tze-Shiou Chien, Associate Research Fellow, The Sun Yat-Sen Institute for the Social Sciences and Philosophy, Academia Sinica (Taiwan) and published on the Judicial Yuan website at: [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=475](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=475)

<sup>8</sup> Letter dated February 9, 2010 addressed to Phillips Moeller & Conway PLLC, from the Office of the National Treasury, Ministry of Finance, Republic of China on Taiwan, in response to the Demand for payment of the subject bonds on behalf of the Starwood Trust.

As noted above, the Republic of China on Taiwan recently espoused deferral of repayment of the subject bonds in 1992 and again in 1999, and then most recently on February 9, 2010 (via letter of response to Demand for payment) and again on September 8, 2010 (via the sworn statement of the former Grand Justice and Vice President of the Judicial Yuan). By such actions and according to the rating classification definitions published by the Three Primary NRSROs, the Taiwanese Government's acknowledgement and affirmation of both the validity of the subject bonds and the Taiwanese Government's responsibility for honoring the repayment of the subject bonds, the Republic of China engages in a pattern of 'selective default,' whereby it makes timely payment to certain classes of creditors while simultaneously deferring repayment to another class of creditors, i.e., the holders of the subject bonds. Such actions are rendered meaningless by the assignment, publication and distribution of false sovereign credit rating classifications by the Three Primary NRSROs which enables the Republic of China on Taiwan to enjoy access to capital free from a default penalty, thereby destroying the incentive of the Republic of China on Taiwan to repay the subject bonds as evidenced by the facts comprising the immediate instance.

» September 8, 2010: Declaration by the former Grand Justice and Vice President of the Republic of China Judicial Yuan and former Minister of Justice of the Republic of China on Taiwan in regard to the Taiwanese Government's acknowledgement and acceptance of responsibility for repayment of the subject bonds:

"The Intent of this Act in regards to pre 1950 Chinese bonds was to reaffirm their existence as defaulted foreign debt obligations of the Republic of China owed in the United States and elsewhere and to defer their resolution until national reunification (*emphasis added*)."<sup>9</sup>

- Declaration by Cheng Chun-Mo, former Grand Justice and Vice President of the Republic of China Judicial Yuan (1999 – 2006) and former Minister of Justice of the Republic of China (1998 -1999)

- The Three Primary NRSROs Comprising an International Credit Rating Industry Oligopoly

As established by the factual record, the Republic of China on Taiwan has explicitly affirmed its responsibility for repayment of the subject bonds and has deferred such repayment.<sup>10</sup> Stated

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<sup>9</sup> Signed statement sworn as true and accurate under the penalty of perjury by Cheng Chun-Mo at Washington D.C., September 8, 2010. The Judicial Yuan is the Republic of China's highest judicial organ tasked with interpreting the Constitution of the Republic of China.

<sup>10</sup> By its act of acknowledgement of responsibility for repayment of the debt and its promise to repay the debt at some undetermined future date, the Republic of China on Taiwan has created a "new debt" on the foundation of its earlier debt. See: "Though he that acknowledges a debt doth not thereby promise payment, yet it is evidence to a jury of a promise, which creates a new debt though upon an old foundation" (Hyleing v. Hastings, 1 Ld. Ray. 421;

otherwise, the Taiwanese Government selectively chooses to pay certain creditors and selectively defers repayment to other creditors, which by the agencies' own published rating criteria is 'selective default.' A comparative examination of both the criteria and the definitions of the credit rating classifications as published by the Three Primary NRSROs reveals that the truthful and factually accurate rating classifications are those that reflect the Taiwanese Government's posture of selective default.

The prevailing sovereign rating classifications are intentionally deceptive and function to conceal the Taiwanese Government's posture of selective default, and thereby exclude the Taiwanese Government's "willingness to pay" metric in contravention of the Three Primary NRSROs' published rating criteria.

Such actions are explained by the sovereign ceiling convention in which a factually conforming sovereign credit rating which reflects the Taiwanese Government's posture of selective default would constrain the ability of domestic corporations to issue bonded debt, thereby constraining the demand for credit rating services and limiting the potential profits which the Three Primary NRSROs might otherwise obtain.

Conversely, the assignment, publication and distribution of an artificial sovereign credit rating classification which conceals the Taiwanese Government's posture of selective default functions to create a much larger universe of corporate issuers expanding the market for credit ratings and enables the Three Primary NRSROs to maximize revenue and profit.<sup>11</sup>

Such actions are the product of a profit motive and constitute an abuse of the issuer-pay revenue model, whereby the CRAs seek to assign a demonstrably fictitious sovereign rating classification as an artifice in order to then exploit the potential for generating additional ratings revenue in order to maximize their profits.

Based upon an examination of the extant facts comprising the immediate instance, we contend that the actions of the Three Primary NRSROs are wrongful and that the failure to ensure the assignment, publication and distribution of fair, accurate, and truthful rating classifications unambiguously demonstrates a profit-motivated abuse of the 'issuer-pay' business model employed by the Three Primary NRSROs. We contend that such actions represent a material contravention of the Dodd-Frank Wall Street Reform and Consumer Protection Act and further evidence the application of a reckless standard of care.

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Williams v. Gun, Fortescue, 177, 181, quoting from a decision of Lord Holt). The immediate instance is distinguished in that the Republic of China on Taiwan has explicitly promised to repay the subject bonds at a future date. In the immediate instance, the Republic of China on Taiwan selectively pays certain general obligation creditors and selectively defers payment to the defaulted bondholder class of creditors.

<sup>11</sup> See, e.g., the conference sponsored and promoted in Shanghai by Moody's Investors Service entitled, "China Sovereign Rating: Overview of International Bond Market Opportunities for Chinese Issuers" (October 13, 2005).

## Exhibit 2

### **Factually Inaccurate and Deceptive Sovereign Credit Rating Classifications Assigned, Published and Distributed for the Republic of China on Taiwan by the Three Primary NRSROs in Contravention of the Dodd-Frank Wall Street Reform and Consumer Protection Act**

**Standard & Poor's Ratings Services:** Prevailing Long-Term Foreign Currency Rating ("Issuer Credit Rating"): **AA-**

Definition: 'AA'—Very strong capacity to meet financial commitments.

Note: Ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories.

Source: Standard & Poor's website (visited on March 08, 2014), accessible at: [http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us#def\\_1](http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us#def_1)

**Moody's Investors Service:** Prevailing Long-Term Foreign Currency Rating ("Global Long-Term Rating"): **Aa3**

Definition: Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.

Note: Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category.

Source: Moody's Investors Service website (visited on March 08, 2014), accessible at: [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC\\_79004](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC_79004)

**Fitch Ratings Inc.:** Prevailing Long-Term Foreign Currency Rating ("Issuer Default Rating"): **A+**

Definition: A: High credit quality. 'A' ratings denote expectations of low default risk. The capacity for payment of financial commitments is considered strong. This capacity may, nevertheless, be more vulnerable to adverse business or economic conditions than is the case for higher ratings.

Note: The modifiers "+" or "-" may be appended to a rating to denote relative status within major rating categories. Such suffixes are not added to the 'AAA' Long-Term IDR category, or to Long-Term IDR categories below 'B'.

Source: Fitch Ratings Inc. website (visited on March 08, 2014), accessible at: [https://www.fitchratings.com/creditedesk/public/ratings\\_defintions/index.cfm?rd\\_file=ltr#LTR](https://www.fitchratings.com/creditedesk/public/ratings_defintions/index.cfm?rd_file=ltr#LTR)

### Exhibit 3

#### **Factually Accurate Rating Classifications Which Conform to NRSROs' Published Definitions and Which Do Not Conceal the Issuer's Action of Selective Default and Unwillingness to Make Timely Payment**

**Standard & Poor's Ratings Services:** Truthful and Factually Conforming Long-Term Foreign Currency Rating ("Issuer Credit Rating"): **SD**

Definition (SD and D): An obligor rated 'SD' (selective default) or 'D' is in default on one or more of its financial obligations including rated and unrated financial obligations but excluding hybrid instruments classified as regulatory capital or in non-payment according to terms. An obligor is considered in default unless Standard & Poor's believes that such payments will be made within five business days of the due date in the absence of a stated grace period, or within the earlier of the stated grace period or 30 calendar days. A 'D' rating is assigned when Standard & Poor's believes that the default will be a general default and that the obligor will fail to pay all or substantially all of its obligations as they come due. An 'SD' rating is assigned when Standard & Poor's believes that the obligor has selectively defaulted on a specific issue or class of obligations but it will continue to meet its payment obligations on other issues or classes of obligations in a timely manner. An obligor's rating is lowered to 'D' or 'SD' if it is conducting a distressed exchange offer.

Source: Standard & Poor's website (visited on March 08, 2014), accessible at: [http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us#def\\_1](http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us#def_1)

**Moody's Investors Service:** Truthful and Factually Conforming Long-Term Foreign Currency Rating ("Global Long-Term Rating"): **C**

Definition: Obligations rated C are the lowest rated and are typically in default, With little prospect for recovery of principal or interest

Source: Moody's Investors Service website (visited on March 08, 2014), accessible at: [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC\\_79004](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC_79004)

**Fitch Ratings Inc.:** Truthful and Factually Conforming Long-Term Foreign Currency Rating ("Issuer Default Rating"): **RD**

Definition (RD: Restricted default): 'RD' ratings indicate an issuer that in Fitch Ratings' opinion has experienced an uncured payment default on a bond, loan or other material financial obligation but which has not entered into bankruptcy filings, administration, receivership, liquidation or other formal winding-up procedure, and which has not otherwise ceased operating. This would include: a. the selective payment default on a specific class or currency of debt; b. the uncured expiry of any applicable grace period, cure period or default forbearance period following a payment default on a bank loan, capital markets security or other material financial obligation; c. the extension of multiple waivers or forbearance periods upon a payment default on one or more material financial obligations, either in series or in parallel; or d. execution of a distressed debt exchange on one or more material financial obligations.

Source: Fitch Ratings Inc. website (visited on March 08, 2014), accessible at: [https://www.fitchratings.com/creditdesk/public/ratings\\_defintions/index.cfm?rd\\_file=ltr#LTR](https://www.fitchratings.com/creditdesk/public/ratings_defintions/index.cfm?rd_file=ltr#LTR)



As previously noted, the Three Primary NRSROs are incentivized by the issuer-pay revenue model, acting in concert with the sovereign ceiling convention, to produce artificial sovereign ratings in the pursuit of maximum profit, as evidenced in the instance of the factually inaccurate sovereign rating classifications referencing the Republic of China on Taiwan. Such actions, apart from merely disingenuous, have had, and continue to have, the effect of taking of bondholders' rights in property as the Republic of China on Taiwan, by action of the false assignment of an 'investment grade' credit rating, no longer has an incentive to repay the debt.

“If large-scale financing was supplied to Governments in default, the incentive for the debtor to conclude a deal was destroyed.”<sup>12</sup>

- Adam Lerrick, Professor Emeritus of Economics, Carnegie Mellon University

The disingenuous treatment of the Republic of China by the Three Primary NRSROs, through the deliberate assignment, publication and distribution of demonstrably false, deceptive and misleading sovereign credit rating classifications, enables the Taiwanese Government to escape the timely repayment of the subject bonds and yet simultaneously enjoy access to the international financial markets free from a default penalty. The wrongful actions of the Three Primary Credit Rating Agencies as described herein contravene both the spirit and the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Three Primary NRSROs have abjectly failed in discharging the responsibilities inherent to their duty as debt market gatekeepers. We are not suggesting that the Commission mandate the reclassification of the prevailing false and factually inaccurate ratings into those which are truthful and factually conforming, which is expressly prohibited; rather we respectfully request the Commission to enjoin the publication by The Three Primary NRSROs of demonstrably false ratings as described herein, and ensure that the published sovereign credit rating classifications assigned, published and distributed by the Three Primary NRSROs for the Republic of China on Taiwan reflect fair and accurate rating classifications which conform to their published definitions and have a basis in fact.

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<sup>12</sup> “*A Leap of Faith for Sovereign Default: From IMF Judgment Calls to Automatic Incentives*,” by Adam Lerrick, *Cato Journal*, Vol. 25, No. 1 (Winter 2005). Mr. Lerrick was formerly the Friends of Allan H. Meltzer Professor of Economics at Carnegie Mellon University and a Visiting Scholar at the American Enterprise Institute. He served as a senior adviser to the chairman of the International Financial Institution Advisory Commission (known as the “Meltzer Commission”), where he analyzed the workings of the World Bank and reassessed its role in the global economy. Previously, he was an investment banker with Salomon Brothers and Credit Suisse First Boston, and he originated and led the negotiation team of the Argentine Bond Restructuring Agency in the \$100 billion Argentine debt restructuring. A further testament to the critical role of the Three Primary NRSROs (Credit Rating Agencies) in establishing the marketability of debt instruments is the widely recognized industry maxim, “*brokers are selling machines when backed by agency ratings.*”

Exhibit 4

**The ‘Gatekeeper’ Duty of the NRSROs is Explicitly Stated, as Well as the Clear Intent of the Congress, in the Language of H.R. 4173 (at 497):**

**Subtitle C – Improvements to the Regulation of Credit Rating Agencies**

**SEC. 931. FINDINGS.**

Congress finds the following:

(1) Because of the systematic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical “gatekeeper” role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

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

(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.

Mr. Thomas J. Butler, Director  
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In light of the facts presented herein, we are very interested to learn whether the Commission considers the actions of the Three Primary NRSROs in the immediate instance to represent the application of an acceptable standard of care.

Sincerely,

Kevin O'Brien, President  
Sovereign Advisers, Inc.  
Trustee of the Starwood Trust

cc: Mr. Vincente L. Martinez  
Office of Market Intelligence  
Division of Enforcement  
United States Securities and Exchange Commission

Hon. Kevin Brady, Chairman  
United States Congress Joint Economic Committee

Mr. Steven W. Phillips, Esq.  
Phillips Moeller & Conway PLLC