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ACLI, CRT, ICI, ICMA, IIF, LICONY, PFNYC, and SIFMA Oppose New York Legislature Bill on Sovereign Debt

The American Council of Life Insurers (ACLI), The Credit Roundtable (CRT), the Investment Company Institute (ICI), the International Capital Market Association (ICMA), the Institute of International Finance (IIF), the Life Insurance Council of New York (LICONY), the Partnership for New York City (PFNYC), and the Securities Industry and Financial Markets Association (SIFMA) strongly oppose the Sovereign Debt Stability Act (S.5542-A / A. 2970-A) recently amended in New York State. If passed by the New York legislature and signed into law, this bill would have negative, wide-ranging, and unintended consequences for global markets. Further, it would harm the developing economies it aims to help, in pursuit of fixing a specific problem that has already been addressed.

In an attempt to streamline the resolution of certain debt restructurings and avoid litigation, this bill would retroactively strip existing contractual investor provisions from sovereign debt issued under New York law, undermining years of work by the U.S. Treasury Department, the International Monetary Fund (IMF), and market participants to build a robust international framework for sovereign debt. That debt is held by a wide range of investors, including long-term investors like pension funds, mutual funds, and insurance companies that invest on behalf of all kinds of investors. It would also undermine New York’s hard-won status as the largest financial center in the world, and the primary jurisdiction governing sovereign debt.

This bill would also hurt developing and middle-income countries by adding a substantial risk premium to their cost of borrowing. Financing costs in New York for these countries would rise to reflect the significant legal uncertainties created by this bill. Higher debt service costs would absorb scarce fiscal capacity that could be better spent on health, education, or infrastructure. This bill would make it more difficult for these economies to access the private capital they need to grow and prosper.

We urge New York legislators to pause consideration of this bill, given these far-reaching unintended consequences. The sovereign bond market is the largest securities market in the world and the risk to disrupting the efficient functioning of that market with hasty legislative changes is too great not to be considered in greater depth, no matter how well-intentioned. Such sweeping legislative changes are deserving of multi-lateral consultation, including hearing from international institutions, global policymakers, the investment community, and the affected countries themselves.

Content of the Proposed Bill

The proposed bill amends the New York Debtor and Creditor Law by adding a new Article 8 affecting sovereign and "subnational" debt. The bill allows eligible debtor states a right to choose between two new sovereign restructuring options. Each of these options is problematic on its own, and only compounded by the legislation allowing the debtor to choose which regime to use, and potentially change that selection in the middle of the restructuring process. The legislation also forces debtor countries to use this untested legal infrastructure, by requiring that debtors cannot waive their rights under these regimes beforehand.

Under the first option, Section 232, an independent monitor appointed by the Governor of New York will be assigned to reconcile the debt claims, specify proposed treatment, and certify that if the plan becomes effective the debtor state's debt will become sustainable. The bill would retroactively strip existing collective action clauses from sovereign debt, clauses that have been refined over the past twenty years with leadership from the Treasury Department and the IMF. Section 232 provides no framework for how the New York legal process would be coordinated with international institutions, such as the IMF and the Paris Club, that play key roles in the sovereign debt restructurings. Furthermore, the bill expressly denies bondholders the right to submit reorganization proposals of their own, which undermines any pretense of collaborative engagement on debt resolution.

Under the second option, Section 230, investors who hold foreign sovereign debt are compelled to take mandatory reductions on their debt instruments, limiting their recovery to an ambiguous burden-sharing standard. The reality is that comparing debt treatments offered by different creditors in a restructuring is an extremely complex and technical topic. Discussions on comparability of treatment are best handled within the existing institutional infrastructure, by experts in international institutions such as the IMF and Paris Club.

Unintended Consequences

Investors would face the risk that their capital could become hostage to a protracted legal process to define appropriate recovery values, in the event a foreign country seeks to restructure its New York-issued sovereign debt. These investors will understandably demand higher interest rates and security due to the new risks under New York law. Should this bill go through in current form, market prices for sovereign bonds would drop, leading to unnecessary losses for pension funds, mutual funds, insurance companies, and retirement savings accounts that invest in sovereign debt. In many cases, these losses will be borne by Main Street investors investing for retirement, education, and other important investment goals.

This in turn will disrupt the market for corporate bonds, as emerging market companies' borrowing costs are often tied to that of their governments. Our analysis suggests borrowing costs for emerging market sovereigns could rise meaningfully if this law passes in its current form. We also believe the impact on borrowing costs would be regressive, with the poorest countries experiencing the highest increase in borrowing costs. Developing countries that are already struggling with higher interest rates and tighter global financial conditions could be pushed towards debt distress.

The proposed bill would also be a major blow to New York law's position as the gold standard for large, global financing transactions. It is no accident that the majority of external sovereign debt is issued under, and governed by, New York law. Instead, it reflects New York's history of transparent enforcement of financial contracts and trust in the New York courts as neutral arbiters. By acting unilaterally on legislation that is much broader than anything ever considered in other major financial centers, including the United Kingdom, New York will tarnish that hard-won reputation the moment these bills are enacted.

As the proposed bill will raise the cost of borrowing under New York law, foreign states will respond by issuing bonds in other jurisdictions. The bill's proponents hope to change international debt markets, but the much more likely outcome would be capital flight from New York, ultimately leading to lost income tax and other revenue to the state.

Historical Context

The proposed bill tries to fix a specific problem that has largely already been addressed. In response to litigation around Argentina's default a decade ago, the IMF, U.S. Treasury Department, and industry groups such as the International Capital Market Association (ICMA), introduced enhanced collective action clauses (CACs) that facilitate more effectively the resolution of defaults on external sovereign debt through voluntary agreements between creditors and debtors, rather than litigation. Since 2014, more than 80% of international sovereign bonds (in terms of aggregate principal amount) issued in New York have featured such clauses. Enhanced CACs also form part of the updated *Principles for Stable Capital Flows and Fair Debt Restructuring*, a widely referenced set of guidelines developed by a public-private sector working group and supported by the G20 in 2004.

Enhanced CACs, along with other contract-based initiatives, have accomplished their goal of reducing incentives for litigation and holding out. Due in part to enhanced CACs, major restructurings in Argentina, Ecuador, and Ukraine were done through voluntary agreements with investors, with no significant litigation or holdouts. From 1978-2010 the average duration of a sovereign debt restructuring was 3.5 years. This declined to 1.2 years on average from 2014-2020 after the introduction of enhanced collective action clauses and prior to the launch of the G20 Common Framework.

Conclusion

Sovereign debt is a complex global market involving constituents from civil society, business, government, as well as debtor nations themselves. Issues like those addressed by this bill are more appropriately discussed and debated in international forums, like the G20 Global Sovereign Debt Roundtable and similar initiatives where relevant stakeholders are represented.

We believe it is essential that the Legislature pause consideration of the proposed bill and consider carefully the issues we raise here. It is imperative this bill is not rushed to enactment without hearing from all relevant stakeholders.

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About the American Council of Life Insurers: The American Council of Life Insurers (ACLI) advocates on behalf of its 280 member companies whose products and services help 90 million American families achieve financial security. ACLI's members represent 94% of the life insurance industry by assets. Our members are united around a common mission that aligns with the individual companies they represent and the customers that they serve.

About The Credit Roundtable: The Credit Roundtable is an organization comprised of U.S. institutional investors who manage a substantial portion of the US fixed income market and are active as primary investors in sovereign debt. Our constituents manage investments including pension savings for the U.S. market and are collectively responsible for over $5 trillion of fixed income assets.

About the Investment Company Institute: The Investment Company Institute (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Its members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia, and other jurisdictions. Its members manage total assets of $29.9 trillion in the United States, serving more than 100 million investors, and an additional $8.1 trillion in assets outside the United States.

About the International Capital Market Association: ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels, and Hong Kong, serving over 600 members in 66 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

About the Institute of International Finance: The Institute of International Finance (IIF) is the global association of the financial industry, with about 400 members from more than 60 countries. The IIF provides its members with innovative research, unparalleled global advocacy, and access to leading industry events that leverage its influential network. Its mission is to support the financial industry in the prudent management of risks; to develop sound industry practices; and to advocate for regulatory, financial, and economic policies that are in the broad interests of its members and foster global financial stability and sustainable economic growth. IIF members include commercial and investment banks, asset managers, insurance companies, professional services firms, exchanges, sovereign wealth funds, hedge funds, central banks, and development banks. To learn more about IIF, please visit **www.iif.com**, follow us on **Twitter**, **LinkedIn** or **YouTube**, or check out IIF's **podcasts**.

About the Life Insurance Council of New York: The Life Insurance Council of New York (LICONY) is the principal voice of the life insurance industry in New York. LICONY works to create and maintain a legislative and regulatory environment that encourages its members to conduct and grow their life insurance businesses here in New York State. Our strength in representing the life insurance industry operating in New York derives directly from the support, contributions, and leadership of our members. What unites LICONY is the common commitment to building a more efficient, productive, and profitable business environment to better serve both the life insurance industry and its customers.

About the Partnership for New York City: The Partnership for New York City represents the city's business leaders and largest employers. We work with government, labor, and the nonprofit sector to promote economic growth and maintain the city's prominence as a global center of economic opportunity, upward mobility, and innovation. The Partnership Fund for New York City contributes directly to projects that create jobs, improve economically distressed communities, and stimulate new business creation. Visit pfnyc.org to learn more.

About the Securities Industry and Financial Markets Association: SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. We advocate for effective and resilient capital markets. For more information, visit http://www.sifma.org

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