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ACLI, The Credit Roundtable, ICI, IIF, and LICONY Oppose New York Legislature Bills on Sovereign Debt

Proposed legislation would have unintended consequences for emerging economies, investors and state of New York

WASHINGTON, DC, May 22, 2023 – The American Council of Life Insurers (ACLI), The Credit Roundtable, the Investment Company Institute (ICI), the International Capital Market Association (ICMA), the Institute of International Finance (IIF) and the Life Insurance Council of New York (LICONY) strongly oppose New York State Senate Bill S4747 and Assembly Bill A2970. Both bills compel investors who hold foreign sovereign debt to take mandatory reductions on their debt instruments, limiting their recovery to an ambiguous burden-sharing standard. The bills apply not just prospectively, but also retroactively – stripping existing contractual investor protections. Pension funds and retail investors in mutual funds (including those in New York) will see the face value of foreign bonds materially reduced, and in some cases, potentially wiped out entirely.

It is essential the New York Legislature pause consideration of these bills to hear from all relevant stakeholders and fully understand the global implications at stake. We cannot emphasize enough the dangers these bills pose to the very governments the bills seek to help.

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 before agreeing to subject themselves to New York law. That 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 these laws pass in their 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 tighter global financial conditions could be pushed towards debt distress.

These bills 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 New York governing 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 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 bills 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.

Finally, these bills try to fix a problem that appears to be largely solved. 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.

And 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 and Ecuador in 2020 (and more recently in 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 has declined to 1.2 years on average from 2014–2020 after the introduction of enhanced collective action clauses.

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 these bills are more appropriately discussed and debated in international forums, like the G20 Global Sovereign Debt Roundtable and similar initiatives where relevant stakeholders are represented.

It is essential that the Legislature slow down consideration of these bills and not rush them 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 Institute of International Finance (IIF): *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.*
