

111TH CONGRESS
1ST SESSION

H. R. 3890

To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2009

Mr. KANJORSKI (for himself, Mr. CAPUANO, Ms. KILROY, Mr. CLEAVER, and Ms. KOSMAS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating organizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This title may be cited as the “Accountability and
5 Transparency in Rating Agencies Act”.

1 **SEC. 2. ENHANCED REGULATION OF NATIONALLY RECOG-**
2 **NIZED STATISTICAL RATING ORGANIZA-**
3 **TIONS.**

4 Section 15E of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o–7) is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)(A), by striking “fur-
8 nish to” and inserting “file with”;

9 (B) in paragraph (2)(A), by striking “fur-
10 nished to” and inserting “filed with”; and

11 (C) in paragraph (2)(B)(i)(II), by striking
12 “furnished to” and inserting “filed with”;

13 (2) in subsection (b)—

14 (A) in paragraph (1)(A), by striking “fur-
15 nished” and inserting “filed” and by striking
16 “furnishing” and inserting “filing”;

17 (B) in paragraph (1)(B), by striking “fur-
18 nishing” and inserting “filing”; and

19 (C) in the first sentence of paragraph (2),
20 by striking “furnish to” and inserting “file
21 with”;

22 (3) in subsection (c)—

23 (A) paragraph (2)—

24 (i) in the second sentence by inserting
25 “including the requirements of this sec-

1 tion,” after “Notwithstanding any other
2 provision of law,”; and

3 (ii) by inserting before the period at
4 the end of the last sentence “, provided
5 that this paragraph does not afford a de-
6 fense against any action or proceeding
7 brought by the Commission to enforce the
8 antifraud provision of the securities laws”;
9 and

10 (B) by adding at the end the following new
11 paragraph:

12 “(3) REVIEW OF INTERNAL PROCESSES FOR
13 DETERMINING CREDIT RATINGS.—

14 “(A) IN GENERAL.—The Commission shall
15 review credit ratings issued by, and the policies,
16 procedures, and methodologies employed by,
17 each nationally recognized statistical rating or-
18 ganization to ensure that—

19 “(i) the nationally recognized statis-
20 tical rating organization has established
21 and documented a system of internal con-
22 trols, due diligence and implementation of
23 methodologies for determining credit rat-
24 ings, taking into consideration such factors
25 as the Commission may prescribe by rule;

1 “(ii) the nationally recognized statis-
2 tical rating organization adheres to such
3 system; and

4 “(iii) the public disclosures of the na-
5 tionally recognized statistical rating orga-
6 nization required under this section about
7 its ratings, methodologies, and procedures
8 are consistent with such system.

9 “(B) MANNER AND FREQUENCY.—The
10 Commission shall conduct reviews required by
11 this paragraph no less frequently than annually
12 in a manner to be determined by the Commis-
13 sion.

14 “(4) PROVISION OF INFORMATION TO THE COM-
15 MISSION.—Each nationally recognized statistical rat-
16 ing organization shall make available and maintain
17 such records and information, for such a period of
18 time, as the Commission may prescribe, by rule, as
19 necessary for the Commission to conduct the reviews
20 under paragraph (3).”;

21 (4) in subsection (d)—

22 (A) in the heading, by inserting “FINE,”
23 after “CENSURE,”;

24 (B) by striking “shall censure” and all
25 that follows through “revocation” and inserting

1 the following: “shall censure, fine in accordance
2 with section 21B(a), place limitations on the ac-
3 tivities, functions, or operations of, suspend for
4 a period not exceeding 12 months, or revoke the
5 registration of any nationally recognized statis-
6 tical rating organization (or with respect to any
7 person who is associated, who is seeking to be-
8 come associated, or, at the time of the alleged
9 misconduct, who was associated or was seeking
10 to become associated with a nationally recog-
11 nized statistical rating organization, the Com-
12 mission, by order, shall censure, fine in accord-
13 ance with section 21B(a), place limitations on
14 the activities or functions of such person, sus-
15 pend for a period not exceeding 12 months, or
16 bar such person from being associated with a
17 nationally recognized statistical rating organiza-
18 tion), if the Commission finds, on the record
19 after notice and opportunity for hearing, that
20 such censure, fine, placing of limitations, bar,
21 suspension, or revocation”;

22 (C) in paragraph (2), by striking “fur-
23 nished to” and inserting “filed with”;

24 (D) in paragraph (4)—

1 (i) by striking “furnish” and inserting
2 “file”; and

3 (ii) by striking “or” at the end;

4 (E) in paragraph (5), by striking the pe-
5 riod at the end; and

6 (F) by adding at the end the following:

7 “(6) has failed reasonably to supervise another
8 person who commits a violation of the securities laws
9 or any rules of the Municipal Securities Rulemaking
10 Board if such other person is subject to his or her
11 supervision, except that no person shall be deemed
12 to have failed reasonably to supervise any other per-
13 son under this paragraph, if—

14 “(A) there have been established proce-
15 dures, and a system for applying such proce-
16 dures, which would reasonably be expected to
17 prevent and detect, insofar as practicable, any
18 such violation by such other person; and

19 “(B) such person has reasonably dis-
20 charged the duties and obligations incumbent
21 upon him or her by reason of such procedures
22 and system without reasonable cause to believe
23 that such procedures and system were not being
24 complied with; or

1 “(7) fails to conduct sufficient surveillance to
2 ensure that credit ratings remain current and reli-
3 able, as applicable.”;

4 (5) in subsection (e)—

5 (A) by striking paragraph (1); and

6 (B) in paragraph (2), by striking “(2)
7 COMMISSION AUTHORITY.—” and moving the
8 text of such paragraph to follow the heading of
9 subsection (e);

10 (6) by amending subsection (h) to read as fol-
11 lows:

12 “(h) CORPORATE GOVERNANCE, ORGANIZATION, AND
13 MANAGEMENT OF CONFLICTS OF INTEREST.—

14 “(1) BOARD OF DIRECTORS.—

15 “(A) IN GENERAL.—Each nationally recog-
16 nized statistical rating organization or its par-
17 ent entity shall have a board of directors.

18 “(B) INDEPENDENT DIRECTORS.—At least
19 $\frac{1}{3}$ of such board, but no less than 2 of the
20 members of the board of directors, shall be
21 independent directors. In order to be considered
22 independent for purposes of this subsection, a
23 director of a nationally recognized statistical
24 rating organization may not, other than in his

1 or her capacity as a member of the board of di-
2 rectors or any committee thereof—

3 “(i) accept any consulting, advisory,
4 or other compensatory fee from the nation-
5 ally recognized statistical rating organiza-
6 tion; or

7 “(ii) be a person associated with the
8 nationally recognized statistical rating or-
9 ganization or with any affiliated company
10 thereof.

11 “(C) COMPENSATION AND TERM.—The
12 compensation of the independent directors shall
13 not be linked to the business performance of the
14 nationally recognized statistical rating organiza-
15 tion and shall be arranged so as to ensure the
16 independence of their judgment. The term of
17 office of the independent directors shall be for
18 a pre-agreed fixed period not exceeding 5 years
19 and shall not be renewable.

20 “(D) DUTIES.—In addition to the overall
21 responsibility of the board of directors, the
22 board shall oversee—

23 “(i) the establishment, maintenance,
24 and enforcement of policies and procedures
25 for determining credit ratings;

1 “(ii) the establishment, maintenance,
2 and enforcement of policies and procedures
3 to address, manage, and disclose any con-
4 flicts of interest;

5 “(iii) the effectiveness of the internal
6 control system with respect to policies and
7 procedures for determining credit ratings;
8 and

9 “(iv) the compensation and promotion
10 policies and practices of the nationally rec-
11 ognized statistical rating organization.

12 “(2) ORGANIZATION POLICIES AND PROCE-
13 DURES.—Each nationally recognized statistical rat-
14 ing organization shall establish, maintain, and en-
15 force written policies and procedures reasonably de-
16 signed, taking into consideration the nature of the
17 business of the nationally recognized statistical rat-
18 ing organization and affiliated persons and affiliated
19 companies thereof, to address, manage, and disclose
20 any conflicts of interest that can arise from such
21 business.

22 “(3) COMMISSION RULES.—The Commission
23 shall issue rules to prohibit, or require the manage-
24 ment and disclosure of, any conflicts of interest re-
25 lating to the issuance of credit ratings by a nation-

1 ally recognized statistical rating organization, includ-
2 ing—

3 “(A) conflicts of interest relating to the
4 manner in which a nationally recognized statis-
5 tical rating organization is compensated by the
6 obligor, or any affiliate of the obligor, for
7 issuing credit ratings or providing related serv-
8 ices;

9 “(B) conflicts of interest relating to the
10 provision of consulting, advisory, or other serv-
11 ices by a nationally recognized statistical rating
12 organization, or any person associated with
13 such nationally recognized statistical rating or-
14 ganization, to the obligor, or any affiliate of the
15 obligor;

16 “(C) disclosure of conflicts of interests re-
17 lating to business relationships, ownership in-
18 terests, and affiliations of nationally recognized
19 statistical rating organization board members
20 with obligors, or any other financial or personal
21 interests between a nationally recognized statis-
22 tical rating organization, or any person associ-
23 ated with such nationally recognized statistical
24 rating organization, and the obligor, or any af-
25 filiate of the obligor;

1 “(D) disclosure of conflicts of interests re-
2 relating to any affiliation of a nationally recog-
3 nized statistical rating organization, or any per-
4 son associated with such nationally recognized
5 statistical rating organization, with any person
6 who underwrites securities, money market in-
7 struments, or other instruments that are the
8 subject of a credit rating;

9 “(E) a requirement that each nationally
10 recognized statistical rating organization dis-
11 close on such organization’s website a consoli-
12 dated report at the end of each fiscal year that
13 shows—

14 “(i) the percent of net revenue earned
15 by the nationally recognized statistical rat-
16 ing organization or an affiliate of a nation-
17 ally recognized statistical rating organiza-
18 tion, or any person associated with a na-
19 tionally recognized statistical rating orga-
20 nization, to the extent determined appro-
21 priate by the Commission, for that fiscal
22 year for providing services and products
23 other than credit rating services to each
24 person who paid for a credit rating; and

1 “(ii) the relative standing of each per-
2 son who paid for a credit rating that was
3 outstanding as of the end of the fiscal year
4 in terms of the amount of net revenue
5 earned by the nationally recognized statis-
6 tical rating organization attributable to
7 each such person and classified by the
8 highest 5, 10, 25, and 50 percentiles and
9 lowest 50 and 25 percentiles;

10 “(F) rules providing for the establishment
11 of a system of payment for each nationally rec-
12 ognized statistical rating organization that re-
13 quires that payments are structured in a man-
14 ner designed to ensure that the nationally rec-
15 ognized statistical rating organization conducts
16 accurate and reliable surveillance of ratings
17 over time, as applicable, and that incentives for
18 reliable ratings are in place;

19 “(G) a requirement that a nationally rec-
20 ognized statistical rating organization disclose
21 with the publication of a credit rating the type
22 and number of credit ratings it has provided to
23 the person being rated or affiliates of such per-
24 son, the fees it has billed for the credit rating,
25 and the aggregate amount of net revenue

1 earned by the nationally recognized statistical
2 rating in the preceding 2 fiscal years attrib-
3 utable to the person being rated and its affili-
4 ates; and

5 “(H) any other potential conflict of inter-
6 est, as the Commission determines necessary or
7 appropriate in the public interest or for the pro-
8 tection of investors.

9 “(4) LOOK-BACK REQUIREMENT.—

10 “(A) REVIEW BY THE NATIONALLY RECOG-
11 NIZED STATISTICAL RATING ORGANIZATION.—

12 Each nationally recognized statistical rating or-
13 ganization shall establish, maintain, and enforce
14 policies and procedures reasonably designed to
15 ensure that, in any case in which an employee
16 of a person subject to a credit rating of the na-
17 tionally recognized statistical rating organiza-
18 tion or the issuer, underwriter, or sponsor of a
19 security or money market instrument subject to
20 a credit rating of the nationally recognized sta-
21 tistical rating organization was employed by the
22 nationally recognized statistical rating organiza-
23 tion and participated in any capacity in deter-
24 mining credit ratings for the person or the se-
25 curities or money market instruments during

1 the 1-year period preceding the date an action
2 was taken with respect to the credit rating, the
3 nationally recognized statistical rating organiza-
4 tion shall—

5 “(i) conduct a review to determine
6 whether any conflicts of interest of the em-
7 ployee influenced the credit rating; and

8 “(ii) take action to revise the rating if
9 appropriate, in accordance with such rules
10 as the Commission shall prescribe.

11 “(B) REVIEW BY COMMISSION.—

12 “(i) IN GENERAL.—The Commission
13 shall conduct periodic reviews of the poli-
14 cies described in subparagraph (A) and the
15 implementation of the policies at each na-
16 tionally recognized statistical rating orga-
17 nization to ensure they are reasonably de-
18 signed and implemented to most effectively
19 eliminate conflicts of interest.

20 “(ii) TIMING OF REVIEWS.—The Com-
21 mission shall review the code of ethics and
22 conflict of interest policy of each nationally
23 recognized statistical rating organization—

24 “(I) not less frequently than an-
25 nually; and

1 “(II) whenever such policies are
2 materially modified or amended.

3 “(5) REPORT TO COMMISSION ON CERTAIN EM-
4 PLOYMENT TRANSITIONS.—

5 “(A) REPORT REQUIRED.—Each nationally
6 recognized statistical rating organization shall
7 report to the Commission any case such organi-
8 zation knows or can reasonably be expected to
9 know where a former employee of such organi-
10 zation obtains employment with any issuer, un-
11 derwriter, or sponsor of a security or money
12 market instrument for which the organization
13 issued a credit rating during the 12-month pe-
14 riod prior to such employment, if such em-
15 ployee—

16 “(i) was an officer of such organiza-
17 tion;

18 “(ii) participated in any capacity in
19 determining credit ratings for such issuer,
20 underwriter, or sponsor; or

21 “(iii) supervised an employee de-
22 scribed un subparagraph (B).

23 “(B) PUBLIC DISCLOSURE.—Upon receiv-
24 ing such a report, the Commission shall make
25 such information publicly available.”;

1 (7) by amending subsection (j) to read as fol-
2 lows:

3 “(j) DESIGNATION OF COMPLIANCE OFFICER.—

4 “(1) IN GENERAL.—Each nationally recognized
5 statistical rating organization shall designate an in-
6 dividual to serve as a compliance officer.

7 “(2) DUTIES.—The compliance officer shall—

8 “(A) report directly to the board of the na-
9 tionally recognized statistical rating organiza-
10 tion;

11 “(B) review compliance with policies and
12 procedures to manage conflicts of interest and
13 assess the risk that the compliance (or lack of
14 such compliance) may compromise the integrity
15 of the credit rating process;

16 “(C) review compliance with internal con-
17 trols with respect to the procedures and meth-
18 odologies for determining credit ratings, includ-
19 ing quantitative models and qualitative inputs
20 used in the rating process, and assess the risk
21 that such compliance with the internal controls
22 (or lack of such compliance) may compromise
23 the integrity and quality of the credit rating
24 process;

1 “(D) in consultation with the board of the
2 nationally recognized statistical rating organiza-
3 tion, resolve any conflicts of interest that may
4 arise;

5 “(E) be responsible for administering the
6 policies and procedures required to be estab-
7 lished pursuant to this section;

8 “(F) ensure compliance with securities
9 laws and the rules and regulations issued there-
10 under, including rules prescribed by the Com-
11 mission pursuant to this section; and

12 “(G) shall establish procedures—

13 “(i) for the receipt, retention, and
14 treatment of complaints regarding credit
15 ratings, models, methodologies, and com-
16 pliance with the securities laws and the
17 policies and procedures required under this
18 section;

19 “(ii) for the receipt, retention, and
20 treatment of confidential, anonymous com-
21 plaints by employees, issuers, and inves-
22 tors;

23 “(iii) for the remediation of non-com-
24 pliance issues found during compliance of-
25 fice reviews, the reviews required under

1 paragraph (7), internal or external audit
2 findings, self-reported errors, or through
3 validated complaints; and

4 “(iv) designed so that ratings that the
5 nationally recognized statistical rating or-
6 ganization disseminates reflect consider-
7 ation of all information that comes to the
8 attention of and is believed by the nation-
9 ally recognized statistical rating organiza-
10 tion to be relevant, in a manner generally
11 consistent with the nationally recognized
12 statistical rating organization’s published
13 rating methodology, including information
14 which is provided, received, or otherwise
15 obtained from issuer and non-issuer
16 sources, such as investors, the media, and
17 other interested or informed parties.

18 “(3) LIMITATIONS.—The compliance officer
19 shall not, while serving in that capacity—

20 “(A) determine credit ratings;

21 “(B) participate in the establishment of
22 the procedures and methodologies or the quan-
23 titative models and qualitative inputs used to
24 determine credit ratings;

1 “(C) perform marketing or sales functions;

2 or

3 “(D) participate in establishing compensa-
4 tion levels, other than for employees working
5 for the compliance officer.

6 “(4) ANNUAL REPORTS REQUIRED.—The com-
7 pliance officer shall annually prepare and sign a re-
8 port on the compliance of the nationally recognized
9 statistical rating organization with the securities
10 laws and such organization’s internal policies and
11 procedures, including its code of ethics and conflict
12 of interest policies, in accordance with rules pre-
13 scribed by the Commission. Such compliance report
14 shall accompany the financial reports of the nation-
15 ally recognized statistical rating organization that
16 are required to be filed with the Commission pursu-
17 ant to this section and shall include a certification
18 that, under penalty of law, the report is accurate
19 and complete.”;

20 (8) in subsection (k)—

21 (A) by striking “, on a confidential basis,”;

22 (B) by striking “Each nationally” and in-
23 serting the following:

24 “(1) IN GENERAL.—Each nationally”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(2) EXCEPTION.—The Commission may treat
4 as confidential any item filed with the Commission
5 under paragraph (1), the publication of which the
6 Commission determines may have a harmful effect
7 on a nationally recognized statistical rating organi-
8 zation.”;

9 (9) in subsection (l)(2)(A)(i), by striking “fur-
10 nished” and inserting “filed”;

11 (10) by amending subsection (p) to read as fol-
12 lows:

13 “(p) ESTABLISHMENT OF SEC OFFICE.—The Com-
14 mission shall establish an office that administers the rules
15 of the Commission with respect to the practices of nation-
16 ally recognized statistical rating organizations in deter-
17 mining ratings, in the public interest and for the protec-
18 tion of investors, including rules designed to ensure that
19 credit ratings issued by such registrants are accurate and
20 not unduly influenced by conflicts of interest.”; and

21 (11) by adding after subsection (p) the fol-
22 lowing new subsections:

23 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

24 “(1) RULEMAKING REQUIRED.—The Commis-
25 sion shall, by rule, require each nationally recognized

1 statistical rating organization to publicly disclose in-
2 formation on initial ratings and subsequent changes
3 to such ratings for the purpose of providing a gauge
4 of the performance of ratings and allowing investors
5 to compare performance of ratings by different na-
6 tionally recognized statistical rating organizations.

7 “(2) CONTENT.—The rules of the Commission
8 under this subsection shall require, at a minimum,
9 disclosures that—

10 “(A) are comparable among nationally rec-
11 ognized statistical rating organizations, so that
12 investors can compare rating performance
13 across rating organizations;

14 “(B) are clear and informative for a wide
15 range of investor sophistication;

16 “(C) include performance information over
17 a range of years and for a variety of classes of
18 credit ratings, as determined by the Commis-
19 sion; and

20 “(D) are published and made freely avail-
21 able by the nationally recognized statistical rat-
22 ing organization, on an easily accessible portion
23 of its website and in written form when re-
24 quested by investors.

25 “(r) CREDIT RATINGS METHODOLOGIES.—

1 “(1) IN GENERAL.—The Commission shall pre-
2 scribe rules, in the public interest and for the pro-
3 tection of investors, that require each nationally rec-
4 ognized statistical rating organization to establish,
5 maintain, and enforce written procedures and meth-
6 odologies that are reasonably designed to—

7 “(A) ensure that credit ratings are deter-
8 mined using procedures and methodologies, in-
9 cluding quantitative models and qualitative in-
10 puts that are determined in accordance with the
11 policies and procedures of the nationally recog-
12 nized statistical rating organization for devel-
13 oping and modifying credit rating procedures
14 and methodologies;

15 “(B) ensure that when major changes to
16 credit rating procedures and methodologies, in-
17 cluding to quantitative models and qualitative
18 inputs, are made, that the changes are applied
19 consistently to all credit ratings to which the
20 changed procedures and methodologies apply
21 and, to the extent the changes are made to
22 credit rating surveillance procedures and meth-
23 odologies, they are applied to current credit rat-
24 ings within a time period to be determined by

1 the Commission by rule, and that the reason for
2 the change is publicly disclosed;

3 “(C) notify persons who have access to the
4 credit ratings of the nationally recognized sta-
5 tistical rating organization, regardless of wheth-
6 er they are made readily accessible for free or
7 a reasonable fee, of the version of a procedure
8 or methodology, including quantitative models
9 and qualitative inputs, used with respect to a
10 particular credit rating;

11 “(D) notify persons who have access to the
12 credit ratings of the nationally recognized sta-
13 tistical rating organization, regardless of wheth-
14 er they are made readily accessible for free or
15 a reasonable fee, when a change is made to a
16 procedure or methodology, including to quan-
17 titative models and qualitative inputs, or an
18 error is identified in a procedure or method-
19 ology that may result in credit rating actions,
20 and the likelihood of the change resulting in
21 current credit ratings being subject to rating
22 actions; and

23 “(E) use credit rating symbols that distin-
24 guish credit ratings for structured products
25 from credit ratings for other products that the

1 Commission determines appropriate or nec-
2 essary in the public interest and for the protec-
3 tion of investors.

4 “(2) RATING CLARITY AND CONSISTENCY.—

5 “(A) COMMISSION OBLIGATION.—Subject
6 to subparagraphs (B) and (C), the Commission
7 shall require, by rule, each nationally recognized
8 statistical rating organization to establish,
9 maintain, and enforce written policies and pro-
10 cedures reasonably designed—

11 “(i) with respect to credit ratings of
12 securities and money market instruments,
13 to assess the risk that investors in securi-
14 ties and money market instruments may
15 not receive payment in accordance with the
16 terms of such securities and instruments;

17 “(ii) to define clearly any credit rating
18 symbol used by that organization; and

19 “(iii) to apply such credit rating sym-
20 bol in a consistent manner for all types of
21 securities and money market instruments.

22 “(B) ADDITIONAL CREDIT FACTORS.—

23 Nothing in subparagraph (A)—

24 “(i) prohibits a nationally recognized
25 statistical rating organization from using

1 additional credit factors that are docu-
2 mented and disclosed by the organization
3 and that have a demonstrated impact on
4 the risk an investor in a security or money
5 market instrument will not receive repay-
6 ment in accordance with the terms of
7 issuance;

8 “(ii) prohibits a nationally recognized
9 statistical rating organization from consid-
10 ering credit factors that are unique to mu-
11 nicipal securities that are not backed by
12 the issuer’s full faith and credit in its as-
13 sessment of the risk an investor in a secu-
14 rity or money market instrument will not
15 receive repayment in accordance with the
16 terms of issuance; or

17 “(iii) prohibits a nationally recognized
18 statistical rating organization from using
19 an additional symbol with respect to the
20 ratings described in subparagraph (A)(i)
21 for the purpose of distinguishing the rat-
22 ings of a certain type of security or money
23 market instrument from ratings of any
24 other types of securities or money market
25 instruments.

1 “(C) COMPLEMENTARY RATINGS.—The
2 Commission shall not impose any requirement
3 under subparagraph (A) that prevents nation-
4 ally recognized statistical rating organizations
5 from establishing ratings that are complemen-
6 tary to the ratings described in subparagraph
7 (A)(i) and that are created to measure a dis-
8 crete aspect of the security’s or instrument’s
9 risk.

10 “(s) TRANSPARENCY OF CREDIT RATING METH-
11 ODOLOGIES AND INFORMATION REVIEWED.—

12 “(1) IN GENERAL.—The Commission shall re-
13 quire, by rule, a nationally recognized statistical rat-
14 ing organization to include with the publication of
15 each credit rating regardless of whether the credit
16 rating is made readily accessible for free or a rea-
17 sonable fee a form that discloses information about
18 the assumptions underlying the procedures and
19 methodologies used, and the data relied on, to deter-
20 mine the credit rating in the format prescribed in
21 paragraph (2) and containing the information de-
22 scribed in paragraph (3).

23 “(2) FORMAT.—The Commission shall prescribe
24 a form for use under paragraph (1) that—

1 “(A) is designed in a user-friendly and
2 helpful manner for investors to understand the
3 information contained in the report;

4 “(B) requires the nationally recognized
5 statistical rating organization to provide the
6 content, as required by paragraph (3), in a
7 manner that is directly comparable across secu-
8 rities; and

9 “(C) the nationally recognized statistical
10 rating organization certifies the information on
11 the form as true and accurate.

12 “(3) CONTENT.—The Commission shall pre-
13 scribe a form that requires a nationally recognized
14 statistical rating organization to disclose—

15 “(A) the main assumptions included in
16 constructing procedures and methodologies, in-
17 cluding quantitative models and qualitative in-
18 puts and assumptions about the correlation of
19 defaults across obligors used in rating certain
20 structured products;

21 “(B) the potential shortcomings of the
22 credit ratings, and the types of risks not meas-
23 ured in the credit ratings that the registrant is
24 not commenting on, such as liquidity, market,
25 and other risks;

1 “(C) information on the certainty of the
2 rating, including information on the reliability,
3 accuracy, and quality of the data relied on in
4 determining the ultimate credit rating and a
5 statement on the extent to which key data in-
6 puts for the credit rating were reliable or lim-
7 ited, including any limits on the reach of histor-
8 ical data, limits in accessibility to certain docu-
9 ments or other forms of information that would
10 have better informed the credit rating, and the
11 completeness of certain information considered;

12 “(D) whether and to what extent third
13 party due diligence services have been utilized,
14 and a description of the information that such
15 third party reviewed in conducting due diligence
16 services;

17 “(E) a description of relevant data about
18 any obligor, issuer, security, or money market
19 instrument that was used and relied on for the
20 purpose of determining the credit rating;

21 “(F) a statement containing an overall as-
22 sessment of the quality of information available
23 and considered in producing a credit rating for
24 a security in relation to the quality of informa-
25 tion available to the nationally recognized sta-

1 tistical rating organization in rating similar ob-
2 ligors, securities, or money market instruments;

3 “(G) an explanation or measure of the po-
4 tential volatility for the credit rating, including
5 any factors that might lead to a change in the
6 credit rating, and the extent of the change that
7 might be anticipated under different conditions;

8 “(H) information on the content of the
9 credit rating, including—

10 “(i) the expected default probability;

11 and

12 “(ii) the loss given default;

13 “(I) information on the sensitivity of the
14 rating to assumptions made by the nationally
15 recognized statistical rating organization;

16 “(J) where applicable, how the nationally
17 recognized statistical rating organization used
18 servicer or remittance reports, and with what
19 frequency, to conduct surveillance of the credit
20 rating; and

21 “(K) such additional information as may
22 be required by the Commission.

23 “(4) DUE DILIGENCE SERVICES.—

24 “(A) CERTIFICATION REQUIRED.—In any
25 case in which third-party due diligence services

1 are employed by a nationally recognized statis-
2 tical rating organization or an issuer or under-
3 writer in connection with the issuance of a cred-
4 it rating, the firm providing the due diligence
5 services shall provide to the nationally recog-
6 nized statistical rating organization written cer-
7 tification of such due diligence, which shall be
8 subject to review by the Commission, and the
9 issuer or underwriter shall provide any reports
10 issued by the provider of such due diligence
11 services to the nationally recognized statistical
12 rating organization.

13 “(B) FORMAT AND CONTENT.—The Com-
14 mission shall establish the appropriate format
15 and content for written certifications required
16 under subparagraph (A) to ensure that pro-
17 viders of due diligence services have conducted
18 a thorough review of data, documentation, and
19 other relevant information necessary for the na-
20 tionally recognized statistical rating organiza-
21 tion to provide an reliable rating.

22 “(C) DISCLOSURE OF CERTIFICATION.—
23 The Commission shall adopt rules requiring a
24 nationally recognized statistical rating organiza-
25 tion to disclose to persons who have access to

1 the credit ratings of the nationally recognized
2 statistical rating organization regardless of
3 whether they are made readily accessible for
4 free or a reasonable fee the certification de-
5 scribed in subparagraph (A) with the publica-
6 tion of the applicable credit rating in a manner
7 that may permit the persons to determine the
8 adequacy and level of due diligence services pro-
9 vided by the third party.

10 “(t) PROHIBITED ACTIVITIES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), beginning 180 days from the date of en-
13 actment of the Accountability, Reliability, and
14 Transparency in Rating Agencies Act, it shall be un-
15 lawful for a nationally recognized statistical rating
16 organization, or an affiliate of a nationally recog-
17 nized statistical rating organization, or any person
18 associated with a nationally recognized statistical
19 rating organization, to the extent determined appro-
20 priate by the Commission, that provides a rating for
21 an issuer, underwriter, or placement agent of a secu-
22 rity to provide to that issuer, underwriter, or place-
23 ment agent, any non-rating service that preceded the
24 retention of the nationally recognized statistical rat-
25 ing organization by the issuer, underwriter, or place-

1 ment agent to provide a rating for the security in
2 question or any assistance provided after such point
3 for which additional compensation is paid directly or
4 indirectly, including—

5 “(A) risk management advisory services;

6 “(B) advice or consultation relating to any
7 merger, sales, or disposition of assets of the
8 issuer;

9 “(C) ancillary assistance, advice, or con-
10 sulting services unrelated to any specific credit
11 rating issuance; and

12 “(D) such further activities or services as
13 the Commission may determine as necessary or
14 appropriate in the public interest or for the pro-
15 tection of investors.

16 “(2) EXEMPTION AUTHORITY.—The Commis-
17 sion may, on a case by case basis, exempt any per-
18 son, issuer, underwriter, placement agent, or nation-
19 ally recognized statistical rating organization from
20 the prohibition in subsection (t), to the extent that
21 such exemption is necessary or appropriate in the
22 public interest and is consistent with the protection
23 of investors, and subject to review by the Commis-
24 sion.”.

1 **SEC. 3. STANDARDS FOR PRIVATE ACTIONS.**

2 (a) IN GENERAL.—Section 21D(b)(2) of the Securi-
3 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is
4 amended by inserting before the period at the end of the
5 following: “, and in the case of an action brought under
6 this title for money damages against a nationally recog-
7 nized statistical rating organization, it shall be sufficient
8 for purposes of pleading any required state of mind for
9 purposes of such action that the complaint shall state with
10 particularity facts giving rise to a strong inference that
11 the nationally recognized statistical rating organization
12 knowingly or recklessly violated the securities laws.”.

13 (b) PLEADING STANDARD.—Section 15E(m) of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m))
15 amended to read as follows:

16 “(m) APPLICATION OF ENFORCEMENT PROVISIONS;
17 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—
18 Statements made by nationally recognized statistical rat-
19 ing organizations shall not be deemed forward looking
20 statements for purposes of section 21E. In any private
21 right of action commenced against a nationally recognized
22 statistical rating organization under this title, the same
23 pleading standards with respect to knowledge and reck-
24 lessness shall apply to the nationally recognized statistical
25 rating organization as would apply to any other person

1 in the same or a similar private right of action against
2 such person.”.

3 **SEC. 4. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

4 The Securities and Exchange Commission shall adopt
5 rules under authority of the Securities Act of 1933 (15
6 U.S.C. 77a, et seq.) to require issuers to disclose prelimi-
7 nary credit ratings received from nationally recognized
8 statistical rating agencies on structured products and all
9 forms of corporate debt.

10 **SEC. 5. TIMELINE FOR REGULATIONS.**

11 Unless otherwise specified in this Act, the Securities
12 and Exchange Commission shall adopt rules and regula-
13 tions, as required by the amendments made by this Act,
14 not later than 365 days after the date of enactment.

15 **SEC. 6. FEDERAL AGENCY REVIEW OF RELIANCE ON RAT-**
16 **INGS.**

17 (a) REVIEW.—Not later than 1 year after the date
18 of the enactment of this Act, each Federal agency and de-
19 partment shall, to the extent applicable, review—

20 (1) any regulation issued by such agency or de-
21 partment that requires the use of an assessment of
22 the creditworthiness of a security or money market
23 instrument; and

24 (2) its policies and practices with regard to
25 such ratings,

1 to determine if another measure of creditworthiness is ap-
2 propriate in order to reduce the reliance of such agency
3 on such ratings, to the extent permitted by law.

4 (b) REPORT.—Upon conclusion of the review required
5 under subsection (a), each Federal agency and department
6 shall submit a report to the Congress containing a descrip-
7 tion of—

8 (1) any modification of any regulation such
9 agency or department made following the review re-
10 quired by subsection (a); and

11 (2) each regulation issued by such agency or
12 department that requires the use of an assessment
13 of the creditworthiness of a security or money mar-
14 ket instrument that such agency or department did
15 not modify pursuant to subsection (a), accompanied
16 by an explanation of why such modification could
17 not be made.

18 **SEC. 7. STUDIES AND REPORTS.**

19 (a) GAO STUDY.—

20 (1) IN GENERAL.—The Comptroller General
21 shall conduct a study of—

22 (A) the implementation of this Act and the
23 amendments made by this Act by the Securities
24 and Exchange Commission;

1 (B) the appropriateness of relying on rat-
2 ings for use in Federal, State, and local securi-
3 ties and banking regulations, including for de-
4 termining capital requirements;

5 (C) the effect of liability in private actions
6 arising under the Securities Exchange Act of
7 1934; and

8 (D) alternative means for compensating
9 credit rating agencies that would create incen-
10 tives for accurate credit ratings and what, if
11 any, statutory changes would be required to
12 permit or facilitate the use of such alternative
13 means of compensation.

14 (2) REPORT.—Not later than 30 months after
15 the date of enactment of this Act, the Comptroller
16 General shall submit to Congress and the Securities
17 Exchange Commission, a report containing the find-
18 ings under the study required by subsection (a).

19 (b) SEC STUDY.—The Securities and Exchange
20 Commission shall undertake a study on creating a system
21 whereby nationally recognized statistical rating organiza-
22 tions are assigned on a rotating basis to issuers seeking
23 a credit rating. Not later than 1 year after the date of
24 enactment of this Act, the Securities and Exchange Com-

- 1 mission shall transmit to Congress a report containing the
- 2 findings of the study.

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