''Control(s)'' paragraph in the ''License Requirements'' section to read as follows:

9A991 ''Aircraft,'' n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* *
UN applies to 9A991.a.	See § 746.1(b) for UN controls.

* * * * *

■ 39. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment—Export Control Classification Number (ECCN) 9D018 is amended by revising the UN ''Control(s)'' paragraph in the ''License Requirements'' section to read as follows:

9D018 ''Software'' for the ''use'' of equipment controlled by 9A018.

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* *
UN applies to entire entry.	See § 746.1(b) for UN controls.

* * * * *

■ 40. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment—Export Control Classification Number (ECCN) 9E018 is amended by revising the UN ''Control(s)'' paragraph in the ''License Requirements'' section to read as follows:

9E018 ''Technology'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 9A018.

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* *
UN applies to entire entry.	See § 746.1(b) for UN controls.

* * * * *

Dated: July 13, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–17757 Filed 7–20–12; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–67448; File No. S7–06–12]

Commission Guidance Regarding Definitions of Mortgage Related Security and Small Business Related Security

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; solicitation of comment.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is publishing interpretive guidance with respect to sections 3(a)(41) (the definition of ''mortgage related security'') and 3(a)(53)(A) (the definition of ''small business related security'') of the Securities Exchange Act of 1934 (the ''Exchange Act''), in light of section 939(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). Section 939(e) strikes provisions in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act that reference credit ratings issued by nationally recognized statistical rating organizations (''NRSROs''), and inserts new text that provides that in order to satisfy these definitions a security must meet ''standards of credit-worthiness as established by the Commission.'' Because more time is needed to develop and establish standards of creditworthiness for purposes of these definitions, the Commission is providing a transitional interpretation that will be applicable on and after July 20, 2012, and until such time as final Commission rules establishing new standards of creditworthiness become effective. The Commission also is seeking comment on potential standards of creditworthiness that could be established to replace the use of NRSRO credit ratings in the definitions of the terms ''mortgage related security'' and ''small business related security.''

DATES: *Effective Date:* July 20, 2012.

Comments: Comments should be received on or before August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Randall W. Roy, Assistant Director, at (202) 551–5522; Mark M. Attar, Branch Chief, at (202) 551–5889; Carrie A. O'Brien, Special Counsel, at (202) 551–5640; and Rachel B. Yura, Attorney-Adviser, at (202) 551–5729, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interp.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–06–12 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/interp.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 3(a)(41) of the Exchange Act defines the term ''mortgage related security'' as, among other things, a security that is rated in one of the *two* highest rating categories by at least one NRSRO.[1] Section 3(a)(53)(A) of the Exchange Act defines the term ''small business related security'' as, among other things, a security that is rated in one of the *four* highest rating categories by at least one NRSRO.[2] A ''rating category'' refers to a distinct level in an NRSRO's rating scale represented by a unique symbol, number, or score. For example, a rating scale consisting of AAA, AA, A, BBB, BB, B, CCC, CC, C, and D has ten rating categories, with the AAA and AA categories being the two

[1] *See* 15 U.S.C. 78c(a)(41).

[2] *See* 15 U.S.C. 78c(a)(53)(A).

highest categories and the AAA through BBB categories being the four highest categories. Securities rated in the two highest categories of such a rating scale are sometimes colloquially referred to as ''highly rated'' and securities rated in the four highest categories as ''investment grade.''

Section 939(e) of the Dodd-Frank Act strikes the text in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act that reference NRSRO credit ratings and in its place inserts text providing that a ''mortgage related security'' and a ''small business related security'' means a security that ''meets standards of creditworthiness as established by the Commission.'' [3] The effective date of these amendments to the Exchange Act is July 20, 2012.[4]

The Commission previously discussed and requested comment on section 939(e) of the Dodd-Frank Act and potential standards of creditworthiness that could be used for purposes of the terms ''mortgage related security'' and ''small business related security.'' [5] The Commission is continuing to work on rule proposals to establish standards of creditworthiness to implement section 939(e) of the Dodd-Frank Act. However, as explained below, these definitions are referenced in numerous statutes and regulations—the majority of which are not Commission authorizing statutes or regulations administered by the Commission. Consequently, the new standards of creditworthiness established by the Commission under section 939(e) of the Dodd-Frank Act will impact different types of persons and transactions, including persons and transactions for which the Commission does not have oversight authority. This impact adds a layer of complexity to the process of developing and establishing a standard or standards of creditworthiness for each definition. The considerations involved in undertaking this difficult task include seeking to accommodate, to the extent practicable, the varied uses of the definitions of ''mortgage related security'' and ''small business related security'' in statutes and regulations without lowering protections for investors, disrupting the markets for these securities, increasing risk to financial institutions, or imposing undue burdens and costs to market participants.

Furthermore, as explained below, the Commission and other Federal agencies are continuing their efforts to remove references to credit ratings in regulations they administer as mandated by section 939A of the Dodd-Frank Act.[6] In the case of some proposed amendments under section 939A, commenters—as explained below—have raised concerns that replacing the benchmark of credit ratings with another standard could, among other things, be harmful to investors, increase risk to financial institutions, distort financial markets, and increase burdens and costs.

For these reasons, the Commission needs additional time to analyze and understand the potential impact that could result from the establishment of new standards of creditworthiness in the definitions of the terms ''mortgage related security'' and ''small business related security.'' At the same time, under section 939(e) of the Dodd-Frank Act, the use of NRSRO credit ratings in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act will be stricken from the statutory text on July 20, 2012. Absent further guidance from the Commission, this change could create uncertainty among market participants that rely on these definitions and potentially negatively impact the market for mortgage related securities and small business related securities. In this regard, the Commission does not believe that, in the absence of established standards of creditworthiness by the Commission, Congress intended for the statutory definitions to become unworkable or to create market uncertainty regarding the status or meaning of these definitions. Consequently, the Commission is issuing this transitional interpretation to ensure that the markets can continue to function while the Commission continues its work on rule proposals to establish standards of creditworthiness to implement section 939(e) of the Dodd-Frank Act.

Therefore, until new standards of creditworthiness are established by final rules, the Commission is providing a transitional interpretation that will be applicable beginning on July 20, 2012 with respect to section 3(a)(41) (the definition of ''mortgage related security'') and section 3(a)(53)(A) (the definition of ''small business related security'') of the Exchange Act. Specifically, for purposes of these sections, the Commission interprets the terms ''standards of creditworthiness as established by the Commission'' to mean that on and after July 20, 2012, and until such time as final Commission rules establishing new standards of creditworthiness are effective:

- The standard of creditworthiness for purposes of the definition of the term ''mortgage related security'' in section 3(a)(41) of the Exchange Act is a security that is rated in one of the two highest rating categories by at least one NRSRO; and
- The standard of creditworthiness for purposes of the definition of the term ''small business related security'' in section 3(a)(53)(A) of the Exchange Act is a security that is rated in one of the four highest rating categories by at least one NRSRO.

The Commission is not interpreting any other provisions of sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act herein.

II. Background

A. Use of the Definitions of These Securities

1. Mortgage Related Security

Congress defined the term ''mortgage related security'' in section 3(a)(41) of the Exchange Act as part of the Secondary Mortgage Market Enhancement Act of 1984 (''SMMEA'').[7] SMMEA was intended to encourage private sector participation in the secondary mortgage market by, among other things, relaxing certain regulatory requirements for ''private-label issuers'' [8] to sell mortgage-backed securities.[9] For example, SMMEA: (1) Pre-Empted certain state investment laws to permit state regulated institutions to invest in private-label mortgage-backed securities to the same

[3] *See* Public Law 111–203 § 939(e).

[4] *See* Public Law 111–203 § 939(g).

[5] *See Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* Exchange Act Release No. 64352 (Apr. 27, 2011), 76 FR 26550 (May 6, 2011).

[6] *See* Public Law 111–203 § 939a.

[7] Public Law 98–440, § 101, 98 Stat. 1689 (1984).

[8] Most mortgage-backed securities are issued or guaranteed by the Government National Mortgage Association (''Ginnie Mae''), a U.S. government agency, or the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''), U.S. government-sponsored enterprises. These securities are commonly referred to as ''agency'' mortgage-backed securities. Ginnie Mae, backed by the full faith and credit of the U.S. government, guarantees that investors receive timely payments. Fannie Mae and Freddie Mac also provide certain guarantees and, while not backed by the full faith and credit of the U.S. government, have special authority to borrow from the U.S. Treasury. Some private institutions, such as brokerage firms, banks, and homebuilders, also securitize mortgages, known as ''private-label'' mortgage-backed securities.

[9] The legislation was aimed at encouraging participation in the secondary mortgage market by investment banks, investment entities, mortgage bankers, private mortgage insurance companies, pension funds and other investors, depositary institutions, and federal credit unions. *See* Kenneth G. Lore & Cameron L. Cowan, Mortgage-Backed Securities; Developments and Trends in the Secondary Market 2–39 (2001), at 1–14. *See also* Edward L. Pittman, *Economic and Regulatory Developments Affecting Mortgage Related Securities,* 64 Notre Dame L. Rev. 497, 499 (1989).

extent as agency securities;[10] (2) granted authority for certain depository institutions to invest in these securities;[11] and (3) required states to exempt private-label mortgage-backed securities from state registration to the same extent as agency securities, unless the state specifically deemed otherwise.[12] A security that qualifies as a mortgage related security under section 3(a)(41) of the Exchange Act receives the benefits intended by SMMEA.[13]

Currently, section 3(a)(41) of the Exchange Act defines the term ''mortgage related security'' as a ''security that is rated in one of the two highest rating categories by at least one [NRSRO]'' and that: (1) Represents ownership of one or more promissory notes, or interests therein, which notes are directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home or one or more parcels of real estate upon which is located one or more commercial structures and were originated by a savings or banking institution or other similar institution approved for insurance by the Secretary of the U.S. Department of Housing and Urban Development; or (2) is secured by one or more promissory notes, or interests therein, and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes, or interests therein, meeting such requirements.[14]

Table 1 identifies examples of Federal statutes and regulations that refer to the term ''mortgage related security'' as defined under the Exchange Act and indicates the type of entity that is subject to the statute or regulation.

TABLE 1

Citation	Entities subject to requirement
11 U.S.C. 101(47)	Participants in bankruptcy proceedings.
12 U.S.C. 24	National banking associations.
12 U.S.C. 1464	Federal savings associations.
12 U.S.C. 1757	Federal credit unions.
12 U.S.C. 1787	Federal credit unions.
12 U.S.C. 1821	Depository institutions insured by the Federal Deposit Insurance Corporation.
12 U.S.C. 4520	Fannie Mae and any affiliate thereof or Freddie Mac and any affiliate thereof.
12 U.S.C. 4617	Fannie Mae and any affiliate thereof or Freddie Mac and any affiliate thereof.
15 U.S.C. 77r–1	Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State.
15 U.S.C. 78g	Broker-dealers.
15 U.S.C. 78k	Broker-dealers.
12 CFR 1.2	National banks, District of Columbia banks, and federal branches of foreign banks, State banks that are members of the Federal Reserve System and foreign branches of national banks.
12 CFR Part 3, Appendix A	National banking associations.
12 CFR Part 208, Appendix A	State banks that are members of the Federal Reserve System.
12 CFR Part 225, Appendix A	Bank holding companies.
12 CFR Part 325, Appendix A	Depository institutions insured by the Federal Deposit Insurance Corporation.
12 CFR 567.1	Savings associations.
12 CFR 567.6	Savings associations.
12 CFR 703.2	Federal credit unions.
12 CFR 703.16(d)	Federal credit unions.
12 CFR 704, Appendix C	Corporate credit unions.
12 CFR Part 1750, Appendix A to Subpart B.	Fannie Mae and any affiliate thereof and Freddie Mac and any affiliate thereof.
17 CFR 230.424	Persons filing a prospectus or prospectus supplement relating to an offering of mortgage related securities on a delayed basis.
17 CFR 240.15c3–1	Broker-dealers.

Numerous State laws also contain references to the definition of the term ''mortgage related security'' in section 3(a)(41) of the Exchange Act.[15] The entities subject to these laws include insurance companies, banks, and trusts.[16]

2. Small Business Related Security

Congress defined the term ''small business related security'' in section 3(a)(53)(A) as part of the Riegle Community Development and Regulatory Improvement Act of 1994 (the ''CDRI'').[17] Among other things, the CDRI removed limitations on purchases of certain small business-related securities by national banks.[18] The CDRI was designed to increase small business access to capital by removing impediments in existing law to the securitizations of small business loans.[19] The CDRI created a framework for small business related securities

[10] *See* 15 U.S.C. 77r–1.

[11] *See* 12 U.S.C. 1464(c)(1), 12 U.S.C. 1757, and 12 U.S.C. 24.

[12] *See* 15 U.S.C. 77d. For further discussion of SMMEA, *see also Protecting Investors: A Half Century of Investment Company Regulation,* Division of Investment Management (May 1992).

[13] *See* Pittman, p. 514.

[14] *See* 15 U.S.C. 78c(a)(41).

[15] *See, e.g.,* ALA. CODE §§ 10A–10–1.10 and 11–81–21; ARIZ. REV. STAT. ANN. § 44–1843; ARK. CODE ANN. § 23–42–503; COLO. REV. STAT. ANN. § 11–59.5–101; CONN. GEN. STAT. §§ 36a–459a and 38a–905; DC CODE §§ 31–1372.03 and 31–1372.04; HAW. REV. STAT. § 412:10–502; KAN. STAT. ANN. § 40–2a25; LA. REV. STAT. ANN. 6:611; ME. REV. STAT. 10, § 969–A; ME. REV. STAT. 30–A, § 4722; MD. CODE ANN., INS § 9–229.1; MICH. COMP. LAWS § 500.901; MISS. CODE ANN. § 81–27–5.101; MO. ANN. STAT. § 362.170; N.H. REV. STAT. ANN §§ 392:25 and 392–B:20; N.J. STAT. ANN. § 17:9–41; N.Y. MUN. HOME RULE LAW § 10; N.Y. INS. LAW §§ 1401, 1404, and 1409; N.C. GEN. STAT. ANN. § 53–342; OHIO REV. CODE ANN. §§ 3907.141 and 3925.081; OKLA. STAT. ANN. 6, § 806; OKLA. STAT. ANN. 71, § 1–201; 7 PA. CONS. STAT. ANN. §§ 315 and 502; S.C. CODE ANN. §§ 38–12–220, 38–12–230, 38–12–430, and 38–12–440; TEX. FIN. CODE ANN. §§ 34.101, 184.101, and 443.004; and UTAH CODE ANN. § 61–1–11.

[16] *Id.*

[17] Public Law 103–325, § 202, 108 Stat. 2198 (1994).

[18] *See* Conf. Rep. on H.R. 3474, 140 Cong. Rec. H6685, H6690 (Aug. 2, 1994).

[19] *Id. See also* Remarks of Sen. Domenici, Vol. 140 Cong. Record, p. S11039 (Aug. 2, 1994).

similar to the SMMEA framework for mortgage related securities with the goal of stimulating the flow of funds to small businesses.

Currently, section 3(a)(53)(A) defines the term ''small business related security'' as ''a security that is rated in one of the four highest rating categories by at least one [NRSRO]'' and that either: (1) Represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution or other similar institution which is supervised and examined by federal or state authority or certain other regulated types of issuers; or (2) is secured by an interest in one or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases of the type described in the preceding clause.[20]

Table 2 identifies examples of Federal statutes and regulations that use the term ''small business related security'' and indicates the type of entity that is subject to the statute or regulation.

TABLE 2

Citation	Entities subject to requirement
12 U.S.C. 24	National banking associations.
12 U.S.C. 1464	Federal savings associations.
12 U.S.C. 1757	Federal credit unions.
15 U.S.C. 77r–1	Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State.
15 U.S.C. 78g	Broker-dealers.
15 U.S.C. 78k	Broker-dealers.
12 CFR 1.2	National banks, District of Columbia banks, and federal branches of foreign banks, State banks that are members of the Federal Reserve System and foreign branches of national banks.
12 CFR 1.3	National banking associations.
12 CFR 703.2	Federal credit unions.
12 CFR 703.16	Federal credit unions.
12 CFR 704.2	Corporate credit unions.
12 CFR 704.5	Corporate credit unions.

Several State laws also contain references to the definition of the term ''small business related security'' in section 3(a)(53)(A) of the Exchange Act.[21] Banks and trust companies are subject to these laws.[22]

3. Use of the Definitions by the Commission and Other Agencies

As identified in the tables set forth above, rules administered by the Commission and other Federal agencies reference the terms ''mortgage related security'' and ''small business related security,'' as those terms are defined in Exchange Act Sections 3(a)(41) and 3(a)(53)(A), respectively. Since the Dodd-Frank Act was adopted, several Federal agencies have proposed to continue to rely on the Exchange Act definitions of these terms. For example, the Office of the Comptroller of the Currency (the ''OCC'') proposed to retain rule provisions applicable to national banks that reference the statutory definitions of the terms ''mortgage related security'' and ''small business related security'' in the Exchange Act.[23] Similarly, the National Credit Union Administration (the ''NCUA'') also proposed to continue to reference the Exchange Act definitions of the terms ''mortgage related security'' and ''small business related security'' in its rules.[24] However, the NCUA stated in its proposal that in the time period before the Commission moves to specify ''standards of creditworthiness'' for mortgage related securities and small business related securities, a Federal credit union is prohibited from purchasing such security unless the Federal credit union has specific evidence that the Commission considers that security to meet the requirements of section 3(a)(41) or section 3(a)(53)(A), as applicable.[25]

B. Regulatory Initiatives To Remove References to Credit Ratings

1. Introduction

The use of NRSRO credit ratings in statutes and regulations has been criticized as fostering undue reliance by investors on credit ratings.[26] In addition, concerns have been raised that using NRSRO credit ratings in statutes and regulations impedes competition in the credit rating industry by giving NRSROs an unfair advantage over credit rating agencies that do not operate as NRSROs because entities subject to the statutes and regulations, or seeking favorable treatment under the statutes and regulations, must use NRSRO credit ratings.[27]

The Commission has for many years studied the issue of using NRSRO credit ratings in its rules and is engaged in an extensive rulemaking initiative to remove references to NRSRO credit ratings from its rules that commenced

[20] *See* 15 U.S.C. 78c(a)(53)(A).

[21] *See, e.g.,* LA. REV. STAT. ANN. § 6:611; MISS. CODE. ANN. 81–27–5.101; TEX. FIN. CODE ANN. § 34.101; and TEX. FIN. CODE ANN. § 184.101.

[22] *Id.*

[23] *See Alternatives to the Use of External Credit Ratings in the Regulations of the OCC,* 76 FR 73526, 73529 (Nov. 29, 2011), Docket OCC–2011–0019.

[24] *See Removing References to Credit Ratings in Regulations; Proposing Alternatives to the Use of Credit Ratings,* 76 FR 11164, 11166 (Mar. 1, 2011).

[25] *Id.*

[26] *Id.; see also* H.R. Rep. No. 111–517, Joint Explanatory Statement of the Committee of Conference, Title IX, Subtitle C ''Improvement to the Regulation of Credit Rating Agencies,'' at 871–72 (Conf. Rep.) (Jun. 29, 2010) (noting that ''[t]o reduce reliance on ratings, the report amends several statutes to remove references to credit ratings, credit rating agencies and NRSROs'') and *Principles for Reducing Reliance on CRA Ratings,* Financial Stability Board (Oct. 2010) (''The 'hard wiring' of CRA ratings in standards and regulations contributes significantly to market reliance on ratings. This in turn is a cause of the 'cliff effects' of the sort experienced during the recent crisis, through which CRA rating downgrades can amplify procyclicality and cause systemic disruptions. It can be also one cause of herding in market behaviour, if regulations effectively require or incentivise large numbers of market participants to act in similar fashion. But, more widely, official sector uses of ratings that encourage reliance on CRA ratings have reduced banks', institutional investors' and other market participants' own capacity for credit risk assessment in an undesirable way.'').

[27] *See, e.g., Introduction of the Consumer Protection and Regulatory Enhancement Act,* 155 Cong. Rec. E1965, E1965–67 (Jul. 23, 2009) (statement of Rep. Bachus).

prior to enactment of the Dodd-Frank Act. The development of alternatives to NRSRO credit ratings raises complex issues as indicated by comments received by the Commission and other Federal agencies.

2. Regulatory Initiatives

In 1975, the Commission adopted the term ''nationally recognized statistical rating organization'' as part of amendments to the ''net capital rule'' for broker-dealers (Rule 15c3–1).[28] The Commission's initial regulatory use of the term was intended to provide a method for determining net capital charges on different grades of debt securities under Rule 15c3–1.[29] The Commission eventually inserted references to NRSRO credit ratings in other rules under the Securities Act of 1933 (the ''Securities Act''), the Exchange Act, and the Investment Company Act of 1940 (the ''Investment Company Act'').[30] In addition, credit ratings by NRSROs have been used as benchmarks in Federal and State legislation, rules administered by other Federal agencies, and foreign regulatory schemes.[31]

Concerns about the use of NRSRO credit ratings in statutes and regulations have prompted the Commission to study whether this use should be eliminated and whether there are practical alternatives to NRSRO credit ratings that could be used as benchmarks in regulations. For example, in 1994, the Commission published a concept release soliciting comment on whether references to NRSRO credit ratings should be eliminated from its rules.[32] Commenters generally supported the continued use of NRSRO credit ratings.[33] As summarized by the Commission, one commenter noted that the use of NRSRO credit ratings provides an objective, simple standard.[34] Some commenters suggested that internal models could be used for purposes of determining net capital charges under the Commission's broker-dealer net capital rule.[35]

In 2003, the Commission again sought comment on whether to eliminate the use of NRSRO credit ratings from Commission rules, and, if so, what alternative benchmarks could be used to meet the Commission's regulatory objectives.[36] Commenters raised concerns about alternatives to credit ratings, highlighting the challenge of replacing credit ratings, though some commenters stated that alternatives such as internally developed credit ratings could be used.[37]

In July 2008, the Commission proposed amendments to remove references to NRSRO credit ratings from its rules under the Securities Act, Exchange Act, and Investment Company Act.[38] Commenters again raised concerns about alternatives to credit ratings.[39] In October 2009, the Commission adopted several of the proposed amendments and re-opened for comment the remaining amendments.[40] Commenters to the October 2009 re-proposal continued to raise concerns about alternatives to NRSRO credit ratings.[41]

The Dodd-Frank Act—enacted in 2010—includes section 939A.[42] This section requires Federal agencies to ''review any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.'' [43] Once the agency has completed that review, the statute

[28] *See Adoption of Uniform Net Capital Rule and an Alternative Net Capital Requirement for Certain Brokers and Dealers,* Exchange Act Release No. 11497 (Jun. 26, 1975), 40 FR 29795 (Jul. 16, 1975), and 17 CFR 240.15c3–1. The net capital rule prescribes minimum net capital requirements for broker-dealers and it uses NRSRO credit ratings to determine the amount of the charge to capital (''haircut'') a broker-dealer must apply to certain types of debt instruments. *See* 17 CFR 240.15c3–1.

[29] *See* 17 CFR 240.15c3–1.

[30] *See, e.g., Report on Review of Reliance on Credit Ratings: As Required by Section 939A(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Commission Staff (Jul. 2011).

[31] *See, e.g., Report to Congress on Credit Ratings,* Board of Governors of the Federal Reserve System (Jul. 2011); *References to Credit Ratings in FDIC Regulations,* Federal Deposit Insurance Corporation (Jul. 2011); and *Stocktaking on the use of credit ratings,* the Joint Forum (Jun. 2009).

[32] *See Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 34616 (Aug. 31, 1994), 59 FR 46314 (Sep. 7, 1994).

[33] *See Capital Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934,* Exchange Act Release No. 39457 (Dec. 17, 1997), 62 FR 68018 (Dec. 30, 1997).

[34] *Id.*

[35] *Id.*

[36] *See Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws,* Exchange Act Release No. 47972 (Jun. 4, 2003), 68 FR 35258 (Jun. 12, 2003). *See also Report of the Role and Function of Credit Rating Agencies in the Operations of the Securities Markets as Required by Section 702(b) of the Sarbanes-Oxley Act of 2002,* Commission (Jan. 2003).

[37] The comment letters are available on the Commission's Internet Web site at the following address: *http://www.sec.gov/rules/concept/s71203.shtml. See, e.g.,* letter dated Jul. 28, 2003 from Gregory V. Serio, Superintendent, New York Insurance Department, Chair, NAIC Rating Agency Working Group, National Association of Insurance Commissioners (stating that replacing NRSRO credit ratings ''could be costly and complicated''); letter dated Jul. 25, 2003 from Steven C. Nelson, Director of Taxable Money Market Research, Fidelity Investments Money Management, Inc. (stating that replacing NRSRO credit ratings in Rule 2a–7 under the Investment Company Act (''Rule 2a–7'') ''would not provide sufficient protection for investors'' in money market funds and ''could lead to significant risk inequality across money market funds''); letter dated Jul. 24, 2003 from Charles M. Nathan, Chair, Committee on Securities Regulation and Nicolas Grabar, Committee on Securities Regulation, Association of the Bar of the City of New York (stating that with respect to replacing NRSRO credit ratings in Rule 2a–7 that a ''change to a more subjective standard could disrupt the market in unpredictable and undesirable ways.''); and letter dated Jul. 28, 2003 from Raymond W. McDaniel, Moody's Investors Service (suggesting internally generated credit ratings as an alternative).

[38] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 58070 (Jul. 1, 2008), 73 FR 40088 (Jul. 11, 2008).

[39] The comment letters are available on the Commission's Internet Web site at the following addresses: *http://www.sec.gov/comments/s7-18-08/s71808.shtml* (Securities Act rules); *http://www.sec.gov/comments/s7-19-08/s71908.shtml* (Investment Company Act rules); and *http://www.sec.gov/comments/s7-17-08/s71708.shtml* (Exchange Act rules). *See, e.g.,* letter dated Sep. 5, 2008 from Jeffrey T. Brown, Senior Vice President, Charles Schwab & Co., Inc. (stating that replacing NRSRO credit ratings ''may be destabilizing and inject risk and uncertainty into the operations of broker-dealers, investment advisers and money market mutual funds.''); letter dated Sep. 4, 2008 from Deborah A. Cunningham, Chief Investment Officer, Federated Investors and Boyce I. Greer, President, Fixed Income & Asset Allocation, Fidelity, on behalf of the Securities Industry and Financial Markets Association (stating that replacing NRSRO credit ratings would ''be to the detriment of all investors''); letter dated Sep. 10, 2008 from Ronald W. Forbes and Rodney D. Johnson, The Independent Directors of The BlackRock Liquidity Funds (stating that replacing NRSRO credit ratings would ''impose significant and unrealistic new burdens on money market fund boards''); letter dated Sep. 12, 2008 from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, and Vicki O. Tucker, Chair, Committee on Securitization and Structured Finance, Business Law Section, American Bar Association (stating that replacing NRSRO credit ratings would ''eliminate all objective indicia of credit quality and will provide greater opportunity for abuse.'').

[40] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 60789 (Oct. 5, 2009), 74 FR 52358 (Oct. 9, 2009) (adopting release). In the adopting release, the Commission amended Exchange Act Rule 3a1–1 (17 CFR 240.3a1–1), Exchange Act Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS (17 CFR 242.300, 242.301(b)(5) and 242.301(b)(6)), Form ATS–R (17 CFR 249.638) and Form PILOT (17 CFR 249.821). The Commission also adopted amendments to Rules 5b–3 and 10f–3 under the Investment Company Act (17 CFR 270.5b–3 and 17 CFR 270.10f–3). *See also References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 60790 (Oct. 5, 2009), 74 FR 52374 (Oct. 9, 2009) (re-opening comment for net capital rule purposes and various Exchange Act rules).

[41] The comment letters are available on the Commission's Internet Web site at the following address: *http://www.sec.gov/comments/s7-17-08/s71708.shtml. See, e.g.,* letter dated Dec. 9, 2009 from Steven G. Tepper, Arnold & Porter LLP, letter dated Dec. 8, 2009 from Sean C. Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association, and letter dated Dec. 8, 2009 from Karrie McMillan, General Counsel, Investment Company Institute (stating that the removal of ratings from Commission rules would result in ''serious unintended consequences.'').

[42] *See* Public Law 111–203 § 939A.

[43] *See* Public Law 111–203 § 939A(a)(1)–(2).

provides that the agency ''remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of creditworthiness'' as the agency determines to be appropriate.[44]

In response to section 939A of the Dodd-Frank Act, the Commission proposed amendments in 2011 to remove references to NRSRO credit ratings in its rules and forms under the Securities Act, the Exchange Act, and the Investment Company Act. In particular, in February 2011, the Commission proposed to remove references to credit ratings in rules and forms promulgated under the Securities Act and the Exchange Act related to offerings of securities or issuer disclosure.[45] In March 2011, the Commission proposed amending certain rules and forms under the Investment Company Act, including Rule 2a–7 governing the operations of money market funds.[46] Further, in April 2011, the Commission proposed to amend additional rules and one form under the Exchange Act applicable to broker-dealer financial responsibility, distributions of securities, and confirmations of transactions.[47] In that same release, the Commission also requested comment on potential standards of creditworthiness for purposes of Exchange Act sections 3(a)(41) and 3(a)(53)(A), in order to consider how to implement section 939(e) of the Dodd-Frank Act.[48] Commenters to the various Commission proposals identified above continued to raise concerns about alternatives to NRSRO credit ratings.[49] Other Federal agencies have proposed and, in some cases, adopted amendments to regulations that they administer that contain references to NRSRO credit ratings.[50] Commenters have raised a number of concerns with respect to these proposals.[51]

As noted above, in its April 2011 proposal to amend rules under the Exchange Act, the Commission sought comment on potential standards of creditworthiness for purposes of sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act.[52] One specific alternative that the Commission discussed and requested comment on was whether a more subjective standard of creditworthiness—modeled on the ''minimal amount of credit risk'' standard proposed with respect to the broker-dealer net capital rule—would be a practical and workable standard of creditworthiness for purposes of the definition of ''mortgage related security'' in section 3(a)(41) of the Exchange Act and ''small business related security'' in section 3(a)(53)(A) of the Exchange Act.[53] Four comment letters addressed this general request for comment.[54] One commenter suggested that using the same standard of creditworthiness as proposed for the net capital rule would be too subjective and that a more objective standard is needed.[55] According to this commenter, a standard that is too subjective could create uncertainty in the markets, which in turn would reduce liquidity and ''limit buyside demand, distribution and secondary trading, thereby further harming the ability of non-Agency securitization to fund mortgage credit.'' [56] Another commenter stated that using the single standard proposed for the net capital rule—the ''minimal amount of credit risk'' standard—may not work given that the definition of ''mortgage related security'' refers to a security that is rated in the two highest categories by an NRSRO and the definition of ''small business related security'' refers to a security that is rated in the four highest categories.[57] The commenter suggested potential alternative standards based on the characteristics of assets underlying the securities.[58] A third commenter acknowledged the ''challenge facing the Commission here is an especially important one, since the alternative standards of credit-worthiness ultimately adopted will undoubtedly

[44] *See* Public Law 111–203 § 939A(b); *see also Report on Review of Reliance on Credit Ratings: As Required by Section 939A(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Commission Staff (Jul. 2011).

[45] *See Security Ratings,* Securities Act Release No. 9186 (Feb. 9, 2011), 76 FR 8961 (Feb. 16, 2011). *See also Security Ratings,* Securities Act Release No. 9245 (Jul. 27, 2011), 76 FR 46603 (Aug. 3, 2011) (adopting amendments to Rules 134 (17 CFR 230.134), 138 (17 CFR 230.138), 139 (17 CFR 230.139), 168 (17 CFR 230.168), Form S–3 (17 CFR 239.13), Form S–4 (17 CFR 239.25), Form F–3 (17 CFR 239.33), and Form F–4 (17 CFR 230. 34) under the Securities Act, rescinded Form F–9 (17 CFR 239.39) and adopted amendments to the Securities Act and Exchange Act forms and rules that referred to Form F–9 to eliminate those references, and amended Schedule 14A (17 CFR 240.14a–101) under the Exchange Act).

[46] *See References to Credit Ratings in Certain Investment Company Act Rules and Forms,* Securities Act Release No. 9193 (Mar. 3, 2011), 76 FR 12896 (Mar. 9, 2011). In particular, the Commission requested public comment on proposed amendments to rules 2a–7 (17 CFR 270.2a–7) and 5b–3 (17 CFR 270.5b–3) under the Investment Company Act, to Forms N–1A (17 CFR 239.15A and 17 CFR 274.11A), N–2 (17 CFR 239.14 and 17 CFR 274.11a–1) and N–3 (17 CFR 239.17a and 17 CFR 274.11b) under the Investment Company Act and the Securities Act, and Form N–MFP (17 CFR 274.201) under the Investment Company Act.

[47] *See Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* 76 FR 26550. In particular, the Commission requested public comment on proposed amendments to Exchange Act Rule 15c3–1 (17 CFR 240.15c3–1), 15c3–3 (17 CFR 240.15c3–3), 17a–4 (17 CFR 240.17a–4), 101 and 102 of Regulation M (17 CFR 242.101 and 242.102), and 10b–10 (17 CFR 240.10b–10), and one Exchange Act form—Form X–17A–5, Part IIB (17 CFR 249.617)—to remove references to credit ratings and, in certain cases, substitute alternative standards of creditworthiness.

[48] *Id.*

[49] *See* comment letters to the proposals available on the Commission's Internet Web site at the following addresses: (1) *http://www.sec.gov/comments/s7-18-08/s71808.shtml* (letters commenting on *Security Ratings,* 76 FR 8961); (2) *http://sec.gov/comments/s7-07-11/s70711.shtml* (letters commenting on *References to Credit Ratings in Certain Investment Company Act Rules and Forms,* 76 FR 12896); and (3) *http://sec.gov/comments/s7-15-11/s71511.shtml* (letters commenting on *Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* 76 FR 26550). *See, e.g.,* letter dated Apr. 25, 2011 from Dennis M. Kelleher, President & CEO of Better Markets, Inc., commenting on *References to Credit Ratings in Certain Investment Company Act Rules and Forms,* 76 FR 12896 (''In theory, incorporating alternative standards of credit-worthiness into the Commission's rules can be accomplished in one of two ways: Either incorporating by reference some reliable, external measure of credit-worthiness other than credit ratings, or setting forth in the rules the actual standards of credit-worthiness that market participants must apply * * * As a practical matter, a reliable and objective shorthand measure of credit risk, which could be incorporated by reference into the Commission's regulations, is not currently available.'').

[50] *See, e.g., Alternatives to the Use of External Credit Ratings in the Regulations of the OCC,* Department of the Treasury, Office of the Comptroller of the Currency, 76 FR 73526 (Nov. 29, 2011).

[51] *See, e.g.,* comments submitted in response to *Alternatives to the Use of External Credit Ratings in the Regulations of the OCC,* 76 FR 73526, *available at http://www.regulations.gov/#!searchResults;a=OCC;rpp=25;po=0;dktid=OCC-2011-0019.*

[52] *See Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* 76 FR at 26566.

[53] *Id.*

[54] *See* letter dated Jun. 6, 2011 from Chris Barnard (the ''Barnard Letter''); letter dated Jul. 5, 2011 from Dennis M. Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc. (the ''Better Markets Letter''); letter dated Sep. 23, 2011 from Richard A. Dorfman, Managing Director, Head of Securitization, and Christopher B. Killian, Vice President, Securitization Group, Securities Industry and Financial Markets Association (the ''SIFMA Letter''); and letter dated Dec. 20, 2011 from Kurt N. Schacht, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute (the ''CFA Letter'').

[55] *See* the SIFMA Letter.

[56] *Id.*

[57] *See* the CFA Letter.

[58] *Id.* (''With respect to objective measures that could be used to determine whether securities qualify as mortgage-related securities or small business-related securities, we suggest consideration of the following factors: Average loan-to-value for borrowers in secured borrowings; Term to maturity of the security; Regional concentrations of loans within the pools; Loan category concentration of loans within the pools, such as loans secured with either commercial or residential real estate, commercial and industrial loans, or small business credit card loans; Average debt-to-equity ratios for the loan pools supporting small business-related securities; Guarantees for bond guarantors.'').

have an impact on a huge number of investors.'' [59] The commenter supported using the ''minimal amount of credit risk'' standard provided that an appropriate set of factors were incorporated into the test.[60] The fourth commenter supported the ''minimal amount of credit risk'' standard without elaboration.[61]

III. Solicitation of Comment

The Commission solicits comment on section 939(e) of the Dodd-Frank Act and potential standards of creditworthiness that could be used for the definition of the terms ''mortgage related security'' in section 3(a)(41) of the Exchange Act and ''small business related security'' in section 3(a)(53)(A) of the Exchange Act in order to assist the Commission in developing proposed standards of creditworthiness to replace NRSRO credit ratings. The Commission seeks comment from all interested parties, including: (1) Persons that are subject to, or rely on, Federal or State statutes and/or regulations that use these definitions; (2) Federal and State agencies that oversee persons that are subject to, or rely on, Federal or State statutes and/or regulations that use these definitions; (3) Federal and State agencies that administer regulations that use these definitions; (4) persons that participate in the markets for mortgage related securities and/or small business related securities, including issuers, underwriters, investors, and NRSROs; (5) originators of mortgages and/or small business loans that are securitized into mortgage related securities and/or small business related securities; and (6) any other interested persons, including persons that will need to rely on the standards of creditworthiness the Commission establishes to replace the use of NRSRO credit ratings.

The Commission invites commenters to provide their views and recommendations on all aspects of section 939(e) of the Dodd-Frank Act, including identifying approaches for developing new standards and creditworthiness to be used in the definitions and the benefits, costs, and competitive impacts of such approaches. To supplement the April 2011 proposing release and its formal solicitation of comments,[62] the Commission seeks comments on the following questions and topics:

1. To help the Commission obtain relevant market information, commenters are invited to provide data and statistics on the nature of the market for ''mortgage related securities'' as defined in section 3(a)(41) of the Exchange Act, including the size of the market in terms of the number and aggregate principal amount of issuances per year.

2. To help the Commission obtain relevant market information, commenters are invited to provide data and statistics on the nature of the market for ''small business related securities'' as defined in section 3(a)(53)(A) of the Exchange Act, including the size of the market in terms of the number and aggregate principal amount of issuances per year.

3. With respect to establishing a standard of creditworthiness to be used in the definition of the term ''mortgage related security,'' would any of the proposals or final rules by the Commission and other Federal agencies under section 939A of the Dodd-Frank Act serve as a model to develop a practical and workable new standard of creditworthiness in section 3(a)(41) of the Exchange Act? If so, identify the proposal and explain how it may accommodate the varied uses of the definition of the term ''mortgage related security'' in statutes and regulations as well as how it may impact protections for investors, the market for these securities, risk to the financial system, and burdens and costs to market participants. Are there other approaches that could serve as models for developing a practical and workable new standard of creditworthiness in section 3(a)(41) of the Exchange Act? If so, identify the approach and explain how it would meet the Commission's objective.

4. With respect to establishing a standard of creditworthiness to be used in the definition of ''small business related security,'' would any of the proposals or final rules by the Commission and other Federal agencies under section 939A of the Dodd-Frank Act serve as a model to develop a practical and workable new standard of creditworthiness in section 3(a)(53)(A) of the Exchange Act? If so, identify the proposal and explain how it may accommodate the varied uses of the definition of the term ''small business related security'' in statutes and regulations as well as how it may impact protections for investors, the market for these securities, risk to the financial system, and burdens and costs to market participants. Are there other approaches that could serve as models for developing a practical and workable new standard of creditworthiness in section 3(a)(53)(A) of the Exchange Act? If so, identify the approach and explain how it would meet the Commission's objective.

5. Should the new standards of creditworthiness in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act be modeled on Commission proposals under section 939A of the Dodd-Frank Act that would replace the use of NRSRO credit ratings with definitional standards? For example, as discussed above, the Commission proposed to remove references to NRSRO credit ratings in the net capital rule for purposes of determining whether lower haircuts apply to certain debt instruments.[63] In place of credit ratings, the Commission proposed a new standard of creditworthiness; namely, that the debt instrument has only ''a minimal amount of credit risk'' as determined by the broker-dealer pursuant to written policies and procedures the broker-dealer establishes, maintains, and enforces to assess creditworthiness. Would such a definitional approach be a practical and workable standard of creditworthiness for sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act? In this regard, the Commission seeks comment in response to the following questions:

a. Would there need to be different creditworthiness definitions for the terms ''mortgage related security'' and ''small business related security'' given that the current standard in section 3(a)(41) of the Exchange Act is a security that is rated in one of the *two* highest rating categories by at least one NRSRO and the current standard in section 3(a)(53)(A) of the Exchange Act is a security that is rated in one of the *four* highest rating categories by at least one NRSRO? For example, should the standard of creditworthiness for purposes of the definition of the term ''mortgage related security'' require a more stringent level of creditworthiness than the standard of creditworthiness in the definition of the term ''small business related security''? If so, should the Commission use the ''minimal amount of credit risk'' standard proposed for the net capital rule for a small business related security and a different, more stringent standard of creditworthiness for a mortgage related security?

b. Under the Commission's net capital rule proposal, the broker-dealer holding the security would be required to determine whether the security has a ''minimal amount of credit risk.'' As noted above, the statutes and

[59] *See* the Better Markets Letter.

[60] *Id.*

[61] *See* the Barnard Letter.

[62] *See Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* 76 FR 26550.

[63] *See Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934,* 76 FR at 26552–54.

regulations using the definitions of ''mortgage related security'' and ''small business related security'' implicate a range of market participants. Consequently, who could be responsible for making the determination that a security meets the definitional creditworthiness standard used for purposes of sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act? For example, could the issuer or underwriter represent that the security meets the definitional standard? If so, should the representation be made as of a point in time (*e.g.,* at or before issuance of the security) and/or would it need to be updated throughout the term of the debt security? Alternatively, if the investor in the security is subject to oversight and inspection by a Federal or State agency, could the investor be required to make the determination (subject to review by the agency) as to whether the security meets the definitional standard of creditworthiness in order to obtain favorable treatment under an applicable statute or regulation using the definition of ''mortgage related security'' or ''small business related security''? Could the issuer or underwriter be required to make the representation that the security meets the definitional standard at issuance and, thereafter, the investor be responsible for determining on an on-going basis whether the security continues to meet the definitional standard? Issuers, underwriters, and investors may have incentives to determine that a security meets the definitional standard in order to get favorable treatment under statutes and regulations using the terms ''mortgage related security'' or ''small business related security.'' Given this potential conflict, could a third-party be required to verify that the security meets the definitional standard? If so, what type of entity could perform the verification and who would be responsible for compensating the third-party for this work?

c. The following examples of different possible definitional standards are designed to provide context to assist commenters in responding to the questions above:

Mortgage Related Security

Example 1

For purposes of section 3(a)(41) of the Act (15 U.S.C. 78c(a)(41)), a ''mortgage related security'' means a security that has virtually no credit risk, including virtually no vulnerability to changes in business or economic circumstances.

Example 2

For purposes of section 3(a)(41) of the Act (15 U.S.C. 78c(a)(41)), a ''mortgage related security'' means a security that the issuer or underwriter of the security represents has virtually no credit risk, including virtually no vulnerability to changes in business or economic circumstances.

Example 3

For purposes of section 3(a)(41) of the Act (15 U.S.C. 78c(a)(41)), a ''mortgage related security'' means a security that the issuer or underwriter of the security represents at the time of issuance has virtually no credit risk, including virtually no vulnerability to changes in business or economic circumstances, and thereafter has virtually no credit risk, including virtually no vulnerability to changes in business or economic circumstances.

Example 4

For purposes of section 3(a)(41) of the Act (15 U.S.C. 78c(a)(41)), a ''mortgage related security'' means a security that the issuer or underwriter of the security represents has virtually no credit risk, including virtually no vulnerability to changes in business or economic circumstances. The representation of the issuer or underwriter must be verified by an independent third party that is in the business of performing credit analysis.

Small Business Related Security

Example 1

For purposes of section 3(a)(53)(A) of the Act (15 U.S.C. 78c(a)(53)), a ''small business related security'' means a security that has only a minimal amount of credit risk.

Example 2

For purposes of section 3(a)(53)(A) of the Act (15 U.S.C. 78c(a)(53)), a ''small business related security'' means a security that the issuer or underwriter of the security represents has only a minimal amount of credit risk.

Example 3

For purposes of section 3(a)(53)(A) of the Act (15 U.S.C. 78c(a)(53)), a ''small business related security'' means a security that the issuer or underwriter of the security represents at the time of issuance has only a minimal amount of credit risk and thereafter has only a minimal amount of credit risk.

Example 4

For purposes of section 3(a)(53)(A) of the Act (15 U.S.C. 78c(a)(53)), a ''small business related security'' means a security that the issuer or underwriter of the security represents has only a minimal amount of credit risk. The representation of the issuer or underwriter must be verified by an independent third party that is in the business of performing credit analysis.

d. Provide additional examples of definitions that could be used as standards of creditworthiness. For any example provided, explain why it would be a practical and workable standard for purposes of the definitions of mortgage related security and small business related security.

6. Rather than using a definitional standard, could the new standards of creditworthiness in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act be based on objective criteria? For example, could the criteria be based on structural characteristics of securities that meet the current definitions of the terms ''mortgage related security'' and ''small business related security'' such as the features, underlying asset pool quality, and the performance of the underlying assets after issuance that are typical of such securities? If so, what characteristics could be used to develop the criteria? In this regard, the Commission seeks comment in response to the following questions:

a. What are the typical features of mortgage related securities that meet the current standard of creditworthiness in section 3(a)(41) of the Exchange Act (*i.e.,* rated in the top two rating categories by at least one NRSRO)?

b. What are the characteristics of the loans underlying mortgage related securities that meet the current standard of creditworthiness in section 3(a)(41) of the Exchange Act (*i.e.,* rated in the top two rating categories by at least one NRSRO)? Would the characteristics of a ''qualified mortgage,'' as that term is defined under the Truth in Lending Act section 129C(b)(2), meet the current standard of creditworthiness in section 3(a)(41)? Could the criteria for a mortgage related security be tied to that definition? Could the criteria be tied to the definition of a ''qualified residential mortgage,'' as is used in section 15G of the Exchange Act? [64] If so, explain how.

c. What is typical of the level of performance of the loans underlying mortgage related securities that meet the current standard of creditworthiness in section 3(a)(41) of the Exchange Act (*i.e.,* rated in the top two rating categories by at least one NRSRO)?

d. What are the typical features of small business related securities that meet the current standard of creditworthiness in section 3(a)(53)(A) of the Exchange Act (*i.e.,* rated in the top four rating categories by at least one NRSRO)?

e. What are the characteristics of the loans underlying small business related securities that meet the current standard of creditworthiness in section 3(a)(53)(A) of the Exchange Act (*i.e.,*

[64] On April 29, 2011, the Commission, together with the Office of Comptroller of the Currency, Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Department of Housing and Urban Development, published a joint notice of public comment to implement the risk retention requirements of Section 15G, including the proposed requirements for a qualified residential mortgage. *See Credit Risk Retention,* Exchange Act Release No. 64148 (Mar. 30, 2011), 76 FR 24090 (Apr. 29, 2011). The proposed definition has been the subject of significant comment.

rated in the top four rating categories by at least one NRSRO)?

f. What is typical of the level of performance of the loans underlying small business related securities that meet the current standard of creditworthiness in section 3(a)(53)(A) of the Exchange Act (*i.e.,* rated in the top four rating categories by at least one NRSRO)?

7. Could the requirements of Regulation AB or the proposed shelf eligibility requirements described below serve, in whole or in part, as a standard for creditworthiness for a mortgage related security? In 2010, the Commission proposed to eliminate the provision for shelf eligibility for mortgage related securities regardless of the form that can be used for registration of the securities.[65] Under the proposal, offerings of mortgage related securities would only be eligible for shelf registration on a delayed basis if, like other asset-backed securities, they meet the proposed criteria for eligibility for shelf registration that would be contained in new proposed Form SF–3. Note that the proposed requirements for shelf eligibility would replace, in part, the requirement that the securities be investment grade rated.[66] Could the standards distinguish between issuers that meet the shelf eligibility requirements and those that do not? If so, why and how should the conditions differ? Could we require that a mortgage related security be required to be registered on existing Form S–3 or, if adopted, Form SF–3? Commentators should be specific in their responses and provide data and statistics, if possible.

IV. Conclusion

For the foregoing reasons, the Commission is providing a transitional interpretation that will be applicable on and after July 20, 2012, and until such time as final Commission rules establishing new standards of creditworthiness are effective. The Commission's interpretation herein does not address any other provisions of the definitions of ''mortgage related security'' or ''small business related security'' in sections 3(a)(41) and 3(a)(53)(A) of the Exchange Act, respectively.

List of Subjects in 17 CFR Part 241

Securities.

Amendment to the Code of Federal Regulations

For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34–67448 to the list of interpretive releases as follows:

Subject	Release No.	Date	Federal Register vol. and page
Commission Guidance Regarding Definitions of Mortgage Related Security and Small Business Related Security.	34–67448	July 17, 2012	75 FR [INSERT FR PAGE NUMBER].

By the Commission.

Dated: July 17, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–17763 Filed 7–20–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2011–0184]

RIN 1218–AC65

Updating OSHA Construction Standards Based on National Consensus Standards; Head Protection; Correction of Direct Final Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Direct final rule; correction.

SUMMARY: OSHA is correcting a direct final rule (DFR) with regard to the construction industry head protection standards to eliminate confusion resulting from a drafting error. OSHA published the DFR on June 22, 2012 (77 FR 37587). OSHA also is publishing a correction to the proposed rule that it published the same day in the **Federal Register** (77 FR 37617).

DATES: This correction to the direct final rule will become effective on September 20, 2012.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

Technical inquiries: Contact Kenneth Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663; email: *stevanus.ken@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA is making the following correction in FR document number 2012–15030, appearing on page 37600 in the **Federal Register** of Friday, June 22, 2012:

§ 1926.100 [Corrected]

On page 37600, correct instruction number 16, to read as follows:

■ 16. Amend § 1926.100 as follows:

■ a. Remove paragraph (c).

■ b. Revise paragraph (b) to read as follows:

1926.100 Head protection.

* * * * *

(b) *Criteria for head protection.* (1) The employer must provide each employee with head protection that meets the specifications contained in any of the following consensus standards:

(i) American National Standards Institute (ANSI) Z89.1–2009, ''American National Standard for Industrial Head Protection,'' incorporated by reference in § 1926.6;

(ii) American National Standards Institute (ANSI) Z89.1–2003, ''American National Standard for Industrial Head

---

[65] *See Asset-Backed Securities,* Securities Act Release No. 9117 (Apr. 7, 2010), 75 FR 23328 (May 3, 2010).

[66] In July 2011, in light of the Dodd-Frank Act and comments received, the Commission re-proposed the shelf eligibility requirements that would replace the investment grade ratings criteria. *See Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment,* Release No. 33–9244 (Jul. 26, 2011), 76 FR 47948 (Aug. 5, 2011).