

Union Calendar No. 406

111TH CONGRESS
2^D SESSION

H. R. 3890

[Report No. 111–685, Part I]

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

DECEMBER 16, 2010

Reported with an amendment, and referred to the Committee on the Judiciary for a period ending not later than December 17, 2010, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 17, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 21, 2009]

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”.*

6 **SEC. 2. ENHANCED REGULATION OF NATIONALLY RECOG-**
 7 **NIZED STATISTICAL RATING ORGANIZA-**
 8 **TIONS.**

9 *Section 15E of the Securities Exchange Act of 1934*
 10 *(15 U.S.C. 78o–7) is amended—*

11 *(1) in subsection (a)—*

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

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

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

18 *(2) in subsection (b)—*

19 *(A) in paragraph (1)(A), by striking “fur-*
 20 *nished” and inserting “filed” and by striking*
 21 *“furnishing” and inserting “filing”;*

22 *(B) in paragraph (1)(B), by striking “fur-*
 23 *nishing” and inserting “filing”; and*

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

4 (3) in subsection (c)—

5 (A) paragraph (2)—

6 (i) in the second sentence by inserting
7 “including the requirements of this section,”
8 after “Notwithstanding any other provision
9 of law,”; and

10 (ii) by inserting before the period at
11 the end of the last sentence “, provided that
12 this paragraph does not afford a defense
13 against any action or proceeding brought by
14 the Commission to enforce the antifraud
15 provision of the securities laws”;

16 (B) by adding at the end the following new
17 paragraph:

18 “(3) REVIEW OF INTERNAL PROCESSES FOR DE-
19 TERMINING CREDIT RATINGS.—

20 “(A) IN GENERAL.—The Commission shall
21 examine credit ratings issued by, and the poli-
22 cies, procedures, and methodologies employed by,
23 each nationally recognized statistical rating or-
24 ganization to review whether—

1 “(i) the nationally recognized statis-
2 tical rating organization has established
3 and documented a system of internal con-
4 trols, due diligence and implementation of
5 methodologies for determining credit rat-
6 ings, taking into consideration such factors
7 as the Commission may prescribe by rule;

8 “(ii) the nationally recognized statis-
9 tical rating organization adheres to such
10 system; and

11 “(iii) the public disclosures of the na-
12 tionally recognized statistical rating organi-
13 zation required under this section about its
14 credit ratings, methodologies, and proce-
15 dures are consistent with such system.

16 “(B) MANNER AND FREQUENCY.—The Com-
17 mission shall conduct reviews required by this
18 paragraph no less frequently than annually in a
19 manner to be determined by the Commission.

20 “(4) PROVISION OF INFORMATION TO THE COM-
21 MISSION.—Each nationally recognized statistical rat-
22 ing organization shall make available and maintain
23 such records and information, for such a period of
24 time, as the Commission may prescribe, by rule, as

1 *necessary for the Commission to conduct the reviews*
2 *under paragraph (3).*

3 “(5) *DISCLOSURES WITH RESPECT TO STRUC-*
4 *TURED SECURITIES.—*

5 “(A) *REGULATIONS REQUIRED.—The rules*
6 *and regulations prescribed by the Commission*
7 *pursuant to this section with respect to nation-*
8 *ally recognized statistical rating organizations*
9 *shall, with respect to the procedures and meth-*
10 *odologies by which any nationally recognized*
11 *statistical rating organization determines credit*
12 *ratings for structured securities—*

13 “(i) *specify the information required to*
14 *be disclosed to such rating organizations by*
15 *the sponsor, issuers, and underwriters of*
16 *such structured securities on the collateral*
17 *underlying such structured securities; and*

18 “(ii) *establish and implement proce-*
19 *dures to collect and disclose information*
20 *about the processes used by such sponsor,*
21 *issuers, and underwriters to assess the accu-*
22 *racy and integrity of their data and fraud*
23 *detection.*

24 “(B) *DEFINITION.—For purposes of this*
25 *paragraph, the Commission shall, by rule or reg-*

1 ulation, define the term ‘structured securities’ as
 2 appropriate in the public interest and for the
 3 protection of investors.

4 “(6) *HISTORICAL DEFAULT RATE DISCLO-*
 5 *SURES.—The rules and regulations prescribed by the*
 6 *Commission pursuant to this section with respect to*
 7 *nationally recognized statistical rating organizations*
 8 *shall require each nationally recognized statistical*
 9 *rating organization to establish and maintain, on a*
 10 *publicly accessible Internet site, a facility to disclose,*
 11 *in a central database, the historical default rates of*
 12 *all classes of financial products rated by such organi-*
 13 *zation.”*

14 (4) in subsection (d)—

15 (A) in the heading, by inserting “*FINE*,”
 16 after “*CENSURE*,”;

17 (B) by striking “shall censure” and all that
 18 follows through “revocation” and inserting the
 19 following: “shall censure, fine in accordance with
 20 section 21B(a), place limitations on the activi-
 21 ties, functions, or operations of, suspend for a
 22 period not exceeding 12 months, or revoke the
 23 registration of any nationally recognized statis-
 24 tical rating organization (or with respect to any
 25 person who is associated, who is seeking to be-

1 *come associated, or, at the time of the alleged*
2 *misconduct, who was associated or was seeking*
3 *to become associated with a nationally recog-*
4 *nized statistical rating organization, the Com-*
5 *mission, by order, shall censure, fine in accord-*
6 *ance with section 21B(a), place limitations on*
7 *the activities or functions of such person, sus-*
8 *pend for a period not exceeding 12 months, or*
9 *bar such person from being associated with a na-*
10 *tionally recognized statistical rating organiza-*
11 *tion), if the Commission finds, on the record*
12 *after notice and opportunity for hearing, that*
13 *such censure, fine, placing of limitations, bar,*
14 *suspension, or revocation”;*

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

17 *(D) in paragraph (4)—*

18 *(i) by striking “furnish” and inserting*
19 *“file”;*

20 *(ii) by striking “or” at the end;*

21 *(E) in paragraph (5), by striking the period*
22 *at the end and inserting a semicolon; and*

23 *(F) by adding at the end the following:*

24 *“(6) has failed reasonably to supervise another*
25 *person who commits a violation of the securities laws,*

1 *the rules or regulations thereunder, or any rules of the*
 2 *Municipal Securities Rulemaking Board if such other*
 3 *person is subject to his or her supervision, except that*
 4 *no person shall be deemed to have failed reasonably*
 5 *to supervise any other person under this paragraph,*
 6 *if—*

7 *“(A) there have been established procedures,*
 8 *and a system for applying such procedures,*
 9 *which would reasonably be expected to prevent*
 10 *and detect, insofar as practicable, any such vio-*
 11 *lation by such other person, and*

12 *“(B) such person has reasonably discharged*
 13 *the duties and obligations incumbent upon him*
 14 *or her by reason of such procedures and system*
 15 *without reasonable cause to believe that such pro-*
 16 *cedures and system were not being complied*
 17 *with; or*

18 *“(7) fails to conduct sufficient surveillance to en-*
 19 *sure that credit ratings remain current and reliable,*
 20 *as applicable.”;*

21 *(5) in subsection (e)—*

22 *(A) by striking paragraph (1); and*

23 *(B) in paragraph (2), by striking “(2)*
 24 *COMMISSION AUTHORITY.—” and moving the*

1 *text of such paragraph to follow the heading of*
 2 *subsection (e);*

3 *(6) by amending subsection (h) to read as fol-*
 4 *lows:*

5 “(h) *CORPORATE GOVERNANCE, ORGANIZATION, AND*
 6 *MANAGEMENT OF CONFLICTS OF INTEREST.—*

7 “(1) *BOARD OF DIRECTORS.—*

8 “(A) *IN GENERAL.—Each nationally recog-*
 9 *nized statistical rating organization or its ulti-*
 10 *mate holding company shall have a board of di-*
 11 *rectors.*

12 “(B) *INDEPENDENT DIRECTORS.—At least*
 13 *$\frac{1}{3}$ of such board, but no less than 2 of the mem-*
 14 *bers of the board of directors, shall be inde-*
 15 *pendent directors. In order to be considered inde-*
 16 *pendent for purposes of this subsection, a direc-*
 17 *tor of a nationally recognized statistical rating*
 18 *organization may not, other than in his or her*
 19 *capacity as a member of the board of directors*
 20 *or any committee thereof—*

21 “(i) *accept any consulting, advisory, or*
 22 *other compensatory fee from the nationally*
 23 *recognized statistical rating organization;*
 24 *or*

1 “(ii) be a person associated with the
2 nationally recognized statistical rating or-
3 ganization or with any affiliated company
4 thereof.

5 “(C) *COMPENSATION AND TERM.*—The com-
6 pensation of the independent directors shall not
7 be linked to the business performance of the na-
8 tionally recognized statistical rating organiza-
9 tion and shall be arranged so as to ensure the
10 independence of their judgment. The term of of-
11 fice of the independent directors shall be for a
12 pre-agreed fixed period not exceeding 5 years
13 and shall not be renewable.

14 “(D) *DUTIES.*—In addition to the overall
15 responsibility of the board of directors, the board
16 shall oversee—

17 “(i) the establishment, maintenance,
18 and enforcement of policies and procedures
19 for determining credit ratings;

20 “(ii) the establishment, maintenance,
21 and enforcement of policies and procedures
22 to address, manage, and disclose any con-
23 flicts of interest;

24 “(iii) the effectiveness of the internal
25 control system with respect to policies and

1 *procedures for determining credit ratings;*
2 *and*

3 “(iv) *the compensation and promotion*
4 *policies and practices of the nationally rec-*
5 *ognized statistical rating organization.*

6 “(2) *ORGANIZATION POLICIES AND PROCE-*
7 *DURES.—Each nationally recognized statistical rat-*
8 *ing organization shall establish, maintain, and en-*
9 *force written policies and procedures reasonably de-*
10 *signed, taking into consideration the nature of the*
11 *business of the nationally recognized statistical rating*
12 *organization and affiliated persons and affiliated*
13 *companies thereof, to address, manage, and disclose*
14 *any conflicts of interest that can arise from such busi-*
15 *ness.*

16 “(3) *COMMISSION RULES.—The Commission*
17 *shall issue rules to prohibit, or require the manage-*
18 *ment and disclosure of, any conflicts of interest relat-*
19 *ing to the issuance of credit ratings by a nationally*
20 *recognized statistical rating organization, including*
21 *rules regarding—*

22 “(A) *conflicts of interest relating to the*
23 *manner in which a nationally recognized statis-*
24 *tical rating organization is compensated by the*

1 *obligor, or any affiliate of the obligor, for issuing*
2 *credit ratings or providing related services;*

3 *“(B) conflicts of interest relating to business*
4 *relationships, ownership interests, and affili-*
5 *ations of nationally recognized statistical rating*
6 *organization board members with obligors, or*
7 *any other financial or personal interests between*
8 *a nationally recognized statistical rating organi-*
9 *zation, or any person associated with such na-*
10 *tionally recognized statistical rating organiza-*
11 *tion, and the obligor, or any affiliate of the obli-*
12 *gor;*

13 *“(C) conflicts of interest relating to any af-*
14 *filiation of a nationally recognized statistical*
15 *rating organization, or any person associated*
16 *with such nationally recognized statistical rating*
17 *organization, with any person who underwrites*
18 *securities, money market instruments, or other*
19 *instruments that are the subject of a credit rat-*
20 *ing;*

21 *“(D) a requirement that each nationally*
22 *recognized statistical rating organization disclose*
23 *on such organization’s website a consolidated re-*
24 *port at the end of each fiscal year that shows—*

1 “(i) the percent of net revenue earned
2 by the nationally recognized statistical rat-
3 ing organization or an affiliate of a nation-
4 ally recognized statistical rating organiza-
5 tion, or any person associated with a na-
6 tionally recognized statistical rating organi-
7 zation, to the extent determined appropriate
8 by the Commission, for that fiscal year for
9 providing services and products other than
10 credit rating services to each person who
11 paid for a credit rating; and

12 “(ii) the relative standing of each per-
13 son who paid for a credit rating that was
14 outstanding as of the end of the fiscal year
15 in terms of the amount of net revenue
16 earned by the nationally recognized statis-
17 tical rating organization attributable to
18 each such person and classified by the high-
19 est 5, 10, 25, and 50 percentiles and lowest
20 50 and 25 percentiles;

21 “(E) the establishment of a system of pay-
22 ment for credit ratings issued by each nationally
23 recognized statistical rating organization that
24 requires that payments are structured in a man-
25 ner designed to ensure that the nationally recog-

1 *nized statistical rating organization conducts ac-*
2 *curate and reliable surveillance of credit ratings*
3 *over time, as applicable, and that incentives for*
4 *reliable credit ratings are in place;*

5 *“(F) a requirement that a nationally recog-*
6 *nized statistical rating organization disclose*
7 *with the publication of a credit rating the type*
8 *and number of credit ratings it has provided to*
9 *the person being rated or affiliates of such per-*
10 *son, the fees it has billed for the credit rating,*
11 *and the aggregate amount of net revenue earned*
12 *by the nationally recognized statistical rating or-*
13 *ganization in the preceding 2 fiscal years attrib-*
14 *utable to the person being rated and its affiliates;*
15 *and*

16 *“(G) any other potential conflict of interest,*
17 *as the Commission determines necessary or ap-*
18 *propriate in the public interest or for the protec-*
19 *tion of investors.*

20 *“(4) LOOK-BACK REQUIREMENT.—*

21 *“(A) REVIEW BY THE NATIONALLY RECOG-*
22 *NIZED STATISTICAL RATING ORGANIZATION.—*
23 *Each nationally recognized statistical rating or-*
24 *ganization shall establish, maintain, and enforce*
25 *policies and procedures reasonably designed to*

1 *ensure that, in any case in which an employee*
2 *of a person subject to a credit rating of the na-*
3 *tionally recognized statistical rating organiza-*
4 *tion or the issuer, underwriter, or sponsor of a*
5 *security or money market instrument subject to*
6 *a credit rating of the nationally recognized sta-*
7 *tistical rating organization was employed by the*
8 *nationally recognized statistical rating organiza-*
9 *tion and participated in any capacity in deter-*
10 *mining credit ratings for the person or the secu-*
11 *rities or money market instruments during the*
12 *1-year period preceding the date an action was*
13 *taken with respect to the credit rating, the na-*
14 *tionally recognized statistical rating organiza-*
15 *tion shall—*

16 “(i) *conduct a review to determine*
17 *whether any conflicts of interest of the em-*
18 *ployee influenced the credit rating; and*

19 “(ii) *take action to revise the rating if*
20 *appropriate, in accordance with such rules*
21 *as the Commission shall prescribe.*

22 “(B) *REVIEW BY COMMISSION.—*

23 “(i) *IN GENERAL.—The Commission*
24 *shall conduct periodic reviews of the policies*
25 *described in subparagraph (A) and the im-*

1 *plementation of the policies at each nation-*
 2 *ally recognized statistical rating organiza-*
 3 *tion to ensure they are reasonably designed*
 4 *and implemented to most effectively elimi-*
 5 *nate conflicts of interest.*

6 “(ii) *TIMING OF REVIEWS.—The Com-*
 7 *mission shall review the code of ethics and*
 8 *conflict of interest policy of each nationally*
 9 *recognized statistical rating organization—*

10 *“(I) not less frequently than an-*
 11 *nually; and*

12 *“(II) whenever such policies are*
 13 *materially modified or amended.*

14 “(5) *REPORT TO COMMISSION ON CERTAIN EM-*
 15 *PLOYMENT TRANSITIONS.—*

16 “(A) *REPORT REQUIRED.—Each nationally*
 17 *recognized statistical rating organization shall*
 18 *report to the Commission any case such organi-*
 19 *zation knows or can reasonably be expected to*
 20 *know where a person associated with such orga-*
 21 *nization within the previous 5 years obtains em-*
 22 *ployment with any obligor, issuer, underwriter,*
 23 *or sponsor of a security or money market instru-*
 24 *ment for which the organization issued a credit*

1 *rating during the 12-month period prior to such*
 2 *employment, if such employee—*

3 “(i) *was a senior officer of such orga-*
 4 *nization;*

5 “(ii) *participated in any capacity in*
 6 *determining credit ratings for such obligor,*
 7 *issuer, underwriter, or sponsor; or*

8 “(iii) *supervised an employee described*
 9 *in clause (ii).*

10 “(B) *PUBLIC DISCLOSURE.—Upon receiving*
 11 *such a report, the Commission shall make such*
 12 *information publicly available.”;*

13 *(7) by amending subsection (j) to read as follows:*

14 “(j) *DESIGNATION OF COMPLIANCE OFFICER.—*

15 “(1) *IN GENERAL.—Each nationally recognized*
 16 *statistical rating organization shall designate an in-*
 17 *dividual to serve as a compliance officer.*

18 “(2) *DUTIES.—The compliance officer shall—*

19 “(A) *report directly to the board of the na-*
 20 *tionally recognized statistical rating organiza-*
 21 *tion;*

22 “(B) *review compliance with policies and*
 23 *procedures to manage conflicts of interest and*
 24 *assess the risk that the compliance (or lack of*

1 *such compliance) may compromise the integrity*
2 *of the credit rating process;*

3 *“(C) review compliance with the internal*
4 *control system with respect to the procedures and*
5 *methodologies for determining credit ratings, in-*
6 *cluding qualitative methodologies and quan-*
7 *titative inputs used in the rating process, and*
8 *assess the risk that such internal control system*
9 *is reasonably designed to ensure the integrity*
10 *and quality of the credit rating process;*

11 *“(D) in consultation with the board of the*
12 *nationally recognized statistical rating organiza-*
13 *tion, resolve any conflicts of interest that may*
14 *arise;*

15 *“(E) be responsible for administering the*
16 *policies and procedures required to be established*
17 *pursuant to this section;*

18 *“(F) ensure compliance with securities laws*
19 *and the rules and regulations issued thereunder,*
20 *including rules prescribed by the Commission*
21 *pursuant to this section; and*

22 *“(G) establish procedures—*

23 *“(i) for the receipt, retention, and*
24 *treatment of complaints regarding credit*
25 *ratings, models, methodologies, and compli-*

1 *ance with the securities laws and the poli-*
2 *cies and procedures required under this sec-*
3 *tion;*

4 *“(ii) for the receipt, retention, and*
5 *treatment of confidential, anonymous com-*
6 *plaints by employees, obligors, issuers, and*
7 *investors;*

8 *“(iii) for the remediation of non-com-*
9 *pliance issues found during compliance of-*
10 *fice reviews, the reviews required under*
11 *paragraph (7), internal or external audit*
12 *findings, self-reported errors, or through*
13 *validated complaints; and*

14 *“(iv) designed so that ratings that the*
15 *nationally recognized statistical rating or-*
16 *ganization disseminates reflect consider-*
17 *ation of all information in a manner gen-*
18 *erally consistent with the nationally recog-*
19 *nized statistical rating organization’s pub-*
20 *lished rating methodology, including infor-*
21 *mation which is provided, received, or oth-*
22 *erwise obtained from obligor, issuer and*
23 *non-issuer sources, such as investors, the*
24 *media, and other interested or informed*
25 *parties.*

1 “(3) *LIMITATIONS.—The compliance officer shall*
2 *not, while serving in that capacity—*

3 “(A) *determine credit ratings;*

4 “(B) *participate in the establishment of the*
5 *procedures and methodologies or the qualitative*
6 *methodologies and quantitative inputs used to*
7 *determine credit ratings;*

8 “(C) *perform marketing or sales functions;*

9 *or*

10 “(D) *participate in establishing compensa-*
11 *tion levels, other than for employees working for*
12 *the compliance officer.*

13 “(4) *ANNUAL REPORTS REQUIRED.—The compli-*
14 *ance officer shall annually prepare and sign a report*
15 *on the compliance of the nationally recognized statis-*
16 *tical rating organization with the securities laws and*
17 *such organization’s internal policies and procedures,*
18 *including its code of ethics and conflict of interest*
19 *policies, in accordance with rules prescribed by the*
20 *Commission. Such compliance report shall accom-*
21 *pany the financial reports of the nationally recog-*
22 *nized statistical rating organization that are required*
23 *to be filed with the Commission pursuant to this sec-*
24 *tion and shall include a certification that, under pen-*
25 *alty of law, the report is accurate and complete.*

1 “(5) *COMPENSATION.*—*The compensation of the*
 2 *compliance officer shall not be linked to the business*
 3 *performance of the nationally recognized statistical*
 4 *rating organization and shall be arranged so as to en-*
 5 *sure the independence of the officer’s judgment.”;*

6 (8) *in subsection (k)*—

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

8 (B) *by striking “furnish to” and inserting*
 9 *“file with”;*

10 (C) *by striking “Each nationally” and in-*
 11 *serting the following:*

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

13 (D) *by adding at the end the following new*
 14 *paragraph:*

15 “(2) *EXCEPTION.*—*The Commission may treat*
 16 *as confidential any information provided by a na-*
 17 *tionally recognized statistical rating organization*
 18 *under this section consistent with applicable Federal*
 19 *laws or Commission rules.”;*

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

22 (10) *by amending subsection (p) to read as fol-*
 23 *lows:*

24 “(p) *ESTABLISHMENT OF SEC OFFICE.*—

1 “(1) *IN GENERAL.*—*The Commission shall estab-*
 2 *lish an office that administers the rules of the Com-*
 3 *mission with respect to the practices of nationally rec-*
 4 *ognized statistical rating organizations.*

5 “(2) *STAFFING.*—*The office of the Commission*
 6 *established under this subsection shall be staffed suffi-*
 7 *ciently to carry out fully the requirements of this sec-*
 8 *tion.*

9 “(3) *RULEMAKING AUTHORITY.*—*The Commis-*
 10 *sion shall—*

11 “(A) *establish, by rule, fines and other pen-*
 12 *alties for any nationally recognized statistical*
 13 *rating organization that violates the applicable*
 14 *requirements of this title; and*

15 “(B) *issue such rules as may be necessary*
 16 *to carry out this section with respect to nation-*
 17 *ally recognized statistical rating organizations.”;*
 18 *and*

19 (11) *by adding after subsection (p) the following*
 20 *new subsections:*

21 “(q) *TRANSPARENCY OF RATINGS PERFORMANCE.*—

22 “(1) *RULEMAKING REQUIRED.*—*The Commission*
 23 *shall, by rule, require each nationally recognized sta-*
 24 *tistical rating organization to publicly disclose infor-*
 25 *mation on initial ratings and subsequent changes to*

1 *such ratings for the purpose of providing a gauge of*
2 *the performance of ratings and allowing investors to*
3 *compare performance of ratings by different nation-*
4 *ally recognized statistical rating organizations.*

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

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

12 *“(B) are clear and informative for a wide*
13 *range of investor sophistication;*

14 *“(C) include performance information over*
15 *a range of years and for a variety of classes of*
16 *credit ratings, as determined by the Commission;*

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

22 *“(E) each nationally recognized statistical*
23 *rating organization include an attestation with*
24 *any credit rating it issues affirming that no*
25 *part of the rating was influenced by any other*

1 *business activities, that the rating was based*
2 *solely on the merits of the instruments being*
3 *rated, and that such rating was an independent*
4 *evaluation of the risks and merits of the instru-*
5 *ment.*

6 “(r) *CREDIT RATINGS METHODOLOGIES.*—

7 “(1) *IN GENERAL.*—*The Commission shall pre-*
8 *scribe rules, in the public interest and for the protec-*
9 *tion of investors, that require each nationally recog-*
10 *nized statistical rating organization to establish,*
11 *maintain, and enforce written procedures and meth-*
12 *odologies and an internal control system with respect*
13 *to such procedures and methodologies that are reason-*
14 *ably designed to—*

15 “(A) *ensure that credit ratings are deter-*
16 *mined using procedures and methodologies, in-*
17 *cluding qualitative methodologies and quan-*
18 *titative inputs that are determined in accordance*
19 *with the policies and procedures of the nation-*
20 *ally recognized statistical rating organization for*
21 *developing and modifying credit rating proce-*
22 *dures and methodologies;*

23 “(B) *ensure that when major changes to*
24 *credit rating procedures and methodologies, in-*
25 *cluding to qualitative methodologies and quan-*

1 *titative inputs, are made, that the changes are*
2 *applied consistently to all credit ratings to which*
3 *the changed procedures and methodologies apply*
4 *and, to the extent the changes are made to credit*
5 *rating surveillance procedures and methodolo-*
6 *gies, they are applied to current credit ratings*
7 *within a time period to be determined by the*
8 *Commission by rule, and that the reason for the*
9 *change is publicly disclosed;*

10 *“(C) notify persons who have access to the*
11 *credit ratings of the nationally recognized statis-*
12 *tical rating organization, regardless of whether*
13 *they are made readily accessible for free or a rea-*
14 *sonable fee, of the procedure or methodology, in-*
15 *cluding qualitative methodologies and quan-*
16 *titative inputs, used with respect to a particular*
17 *credit rating;*

18 *“(D) notify persons who have access to the*
19 *credit ratings of the nationally recognized statis-*
20 *tical rating organization, regardless of whether*
21 *they are made readily accessible for free or a rea-*
22 *sonable fee, when a change is made to a proce-*
23 *dure or methodology, including to qualitative*
24 *methodologies and quantitative inputs, or an*
25 *error is identified in a procedure or methodology*

1 *that may result in credit rating actions, and the*
2 *likelihood of the change resulting in current cred-*
3 *it ratings being subject to rating actions; and*

4 *“(E) use credit rating symbols that distin-*
5 *guish credit ratings for structured products from*
6 *credit ratings for other products that the Com-*
7 *mission determines appropriate or necessary in*
8 *the public interest and for the protection of in-*
9 *vestors.*

10 *“(2) RATING CLARITY AND CONSISTENCY.—*

11 *“(A) COMMISSION OBLIGATION.—Subject to*
12 *subparagraphs (B) and (C), the Commission*
13 *shall require, by rule, each nationally recognized*
14 *statistical rating organization to establish,*
15 *maintain, and enforce written policies and pro-*
16 *cedures reasonably designed—*

17 *“(i) with respect to credit ratings of se-*
18 *curities and money market instruments, to*
19 *assess the risk that investors in securities*
20 *and money market instruments may not re-*
21 *ceive payment in accordance with the terms*
22 *of such securities and instruments;*

23 *“(ii) to define clearly any credit rating*
24 *symbol used by that organization; and*

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

4 “(B) *ADDITIONAL CREDIT FACTORS.*—Noth-
5 ing in subparagraph (A)—

6 “(i) prohibits a nationally recognized
7 statistical rating organization from using
8 additional credit factors that are docu-
9 mented and disclosed by the organization
10 and that have a demonstrated impact on
11 the risk an investor in a security or money
12 market instrument will not receive repay-
13 ment in accordance with the terms of
14 issuance;

15 “(ii) prohibits a nationally recognized
16 statistical rating organization from consid-
17 ering credit factors that are unique to mu-
18 nicipal securities; or

19 “(iii) prohibits a nationally recognized
20 statistical rating organization from using
21 an additional symbol with respect to the
22 ratings described in subparagraph (A)(i) for
23 the purpose of distinguishing the ratings of
24 a certain type of security or money market

1 *instrument from ratings of any other types*
 2 *of securities or money market instruments.*

3 “(C) COMPLEMENTARY RATINGS.—*The*
 4 *Commission shall not impose any requirement*
 5 *under subparagraph (A) that prevents nationally*
 6 *recognized statistical rating organizations from*
 7 *establishing ratings that are complementary to*
 8 *the ratings described in subparagraph (A)(i) and*
 9 *that are created to measure a discrete aspect of*
 10 *the security’s or instrument’s risk.*

11 “(s) *TRANSPARENCY OF CREDIT RATING METHODOLO-*
 12 *GIES AND INFORMATION REVIEWED.—*

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

24 “(2) *FORMAT.—The Commission shall prescribe*
 25 *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 sta-
5 tistical rating organization to provide the con-
6 tent, as required by paragraph (3), in a manner
7 that is directly comparable across securities; and

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

11 “(3) CONTENT.—The Commission shall prescribe
12 a form that requires a nationally recognized statis-
13 tical rating organization to disclose —

14 “(A) the main assumptions included in con-
15 structing procedures and methodologies, includ-
16 ing qualitative methodologies and quantitative
17 inputs and assumptions about the correlation of
18 defaults across underlying assets used in rating
19 certain structured products;

20 “(B) the potential shortcomings of the credit
21 ratings, and the types of risks not measured in
22 the credit ratings that the nationally recognized
23 statistical rating organization is not com-
24 menting on, such as liquidity, market, and other
25 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 inputs
6 for the credit rating were reliable or limited, in-
7 cluding any limits on the reach of historical
8 data, limits in accessibility to certain documents
9 or other forms of information that would have
10 better informed the credit rating, and the com-
11 pleteness 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 statis-

1 tical rating organization in rating similar obli-
2 gors, 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 cred-
9 it 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, in-
16 cluding—

17 “(i) 5 assumptions made in the ratings
18 process that, without accounting for any
19 other factor, would have the greatest impact
20 on a rating if such assumptions were prov-
21 en false or inaccurate; and

22 “(ii) an analysis, using concrete exam-
23 ples, on how each of the 5 assumptions iden-
24 tified under clause (i) impacts a rating.

1 “(J) where applicable, how the nationally
2 recognized statistical rating organization used
3 servicer or remittance reports, and with what
4 frequency, to conduct surveillance of the credit
5 rating; and

6 “(K) such additional information as may
7 be required by the Commission.

8 “(4) DUE DILIGENCE SERVICES.—

9 “(A) CERTIFICATION REQUIRED.—In any
10 case in which third-party due diligence services
11 are employed by a nationally recognized statis-
12 tical rating organization or an issuer, under-
13 writer, or sponsor in connection with the
14 issuance of a credit rating, the firm providing
15 the due diligence services shall provide to the na-
16 tionally recognized statistical rating organiza-
17 tion written certification of such due diligence,
18 which shall be subject to review by the Commis-
19 sion, and the issuer, underwriter, or sponsor
20 shall provide any reports issued by the provider
21 of such due diligence services to the nationally
22 recognized statistical rating organization.

23 “(B) FORMAT AND CONTENT.—The Commis-
24 sion shall establish the appropriate format and
25 content for written certifications required under

1 *subparagraph (A) to ensure that providers of due*
2 *diligence services have conducted a thorough re-*
3 *view of data, documentation, and other relevant*
4 *information necessary for the nationally recog-*
5 *nized statistical rating organization to provide*
6 *an reliable rating.*

7 *“(C) DISCLOSURE OF CERTIFICATION.—The*
8 *Commission shall adopt rules requiring a na-*
9 *tionally recognized statistical rating organiza-*
10 *tion to disclose to persons who have access to the*
11 *credit ratings of the nationally recognized statis-*
12 *tical rating organization regardless of whether*
13 *they are made readily accessible for free or a rea-*
14 *sonable fee the certification described in subpara-*
15 *graph (A) with the publication of the applicable*
16 *credit rating in a manner that may permit the*
17 *persons to determine the adequacy and level of*
18 *due diligence services provided by the third*
19 *party.*

20 *“(t) PROHIBITED ACTIVITIES.—Beginning 180 days*
21 *from the date of enactment of the Accountability, Reli-*
22 *ability, and Transparency in Rating Agencies Act, it shall*
23 *be unlawful for a nationally recognized statistical rating*
24 *organization, or an affiliate of a nationally recognized sta-*
25 *tistical rating organization, or any person associated with*

1 *a nationally recognized statistical rating organization, that*
 2 *provides a credit rating for an issuer, underwriter, or place-*
 3 *ment agent of a security to provide any non-rating service,*
 4 *including—*

5 *“(1) risk management advisory services;*

6 *“(2) advice or consultation relating to any merg-*
 7 *er, sales, or disposition of assets of the issuer;*

8 *“(3) ancillary assistance, advice, or consulting*
 9 *services unrelated to any specific credit rating*
 10 *issuance; and*

11 *“(4) such further activities or services as the*
 12 *Commission may determine as necessary or appro-*
 13 *priate in the public interest or for the protection of*
 14 *investors.”.*

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

16 *(a) IN GENERAL.—Section 21D(b)(2) of the Securities*
 17 *Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended*
 18 *by inserting before the period at the end of the following:*
 19 *“, and in the case of an action brought under this title for*
 20 *money damages against a nationally recognized statistical*
 21 *rating organization, it shall be sufficient for purposes of*
 22 *pleading any required state of mind for purposes of such*
 23 *action that the complaint shall state with particularity*
 24 *facts giving rise to a strong inference that the nationally*

1 *recognized statistical rating organization knowingly or*
 2 *recklessly violated the securities laws”.*

3 (b) *PLEADING STANDARD.*—*Section 15E(m) of the Se-*
 4 *curities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) amend-*
 5 *ed to read as follows:*

6 “(m) *APPLICATION OF ENFORCEMENT PROVISIONS;*
 7 *PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.*—
 8 *Statements made by nationally recognized statistical rating*
 9 *organizations shall not be deemed forward looking state-*
 10 *ments for purposes of section 21E. In any private right of*
 11 *action commenced against a nationally recognized statis-*
 12 *tical rating organization under this title, the same pleading*
 13 *standards with respect to knowledge and recklessness shall*
 14 *apply to the nationally recognized statistical rating organi-*
 15 *zation as would apply to any other person in the same or*
 16 *a similar private right of action against such person.”.*

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

18 *The Securities and Exchange Commission shall adopt*
 19 *rules under authority of the Securities Act of 1933 (15*
 20 *U.S.C. 77a, et seq.) to require issuers to disclose prelimi-*
 21 *nary credit ratings received from nationally recognized sta-*
 22 *tistical rating agencies on structured products and all forms*
 23 *of corporate debt.*

1 **SEC. 5. CHANGE TO DESIGNATION.**

2 *The Securities Act of 1933 and the Securities Ex-*
3 *change Act of 1934 are each amended by striking “nation-*
4 *ally recognized statistical rating” each place it appears and*
5 *inserting “nationally registered statistical rating”.*

6 **SEC. 6. TIMELINE FOR REGULATIONS.**

7 *Unless otherwise specified in this Act, the Securities*
8 *and Exchange Commission shall adopt rules and regula-*
9 *tions, as required by the amendments made by this Act,*
10 *not later than 365 days after the date of enactment.*

11 **SEC. 7. ELIMINATION OF EXEMPTION FROM FAIR DISCLO-**
12 **SURE RULE.**

13 *Not later than 90 days after the date of enactment of*
14 *this Act, the Securities Exchange Commission shall revise*
15 *Regulation FD (17 C.F.R. 243.100) to remove from such*
16 *regulation the exemption for entities whose primary busi-*
17 *ness is the issuance of credit ratings (17 C.F.R.*
18 *243.100(b)(2)(iii)).*

19 **SEC. 8. ADVISORY BOARD.**

20 (a) *ESTABLISHMENT.*—*Not later than 90 days after*
21 *the date of the enactment of this Act, the Securities and*
22 *Exchange Commission shall establish an advisory board to*
23 *be known as the Credit Ratings Agency Advisory Board (in*
24 *this section referred to as “the Board”).*

25 (b) *APPOINTMENT AND TERMS OF SERVICE.*—*The*
26 *Board shall consist of 7 members appointed by the Commis-*

1 sion, no more than 2 of whom may be former employees
2 of a credit rating agency. Members of the Board shall be
3 prominent individuals of integrity and reputation who
4 have a demonstrated commitment to the interests of inves-
5 tors and the public, and an understanding of the role that
6 credit ratings play to a broad range of investors. Terms
7 of service shall be staggered as determined by the Commis-
8 sion.

9 (c) *DUTIES.*—The Board shall—

10 (1) advise the Commission concerning the rules
11 and regulations required by the amendments made by
12 this Act;

13 (2) insure that the Commission properly and
14 fully executes its oversight functions and responsibil-
15 ities with the respect to nationally recognized statis-
16 tical rating organizations and individual partici-
17 pants; and

18 (3) issue an annual report to Congress detailing
19 its work and recommending any additional Congres-
20 sional actions necessary to aid the Commission and
21 such additional reports from time to time as appro-
22 priate when it feels that the Commission is not prop-
23 erly executing its oversight functions.

1 **SEC. 9. REMOVAL OF STATUTORY REFERENCES TO CREDIT**
 2 **RATINGS.**

3 (a) *FEDERAL DEPOSIT INSURANCE ACT.*—*The Federal*
 4 *Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amend-*
 5 *ed—*

6 (1) *in section 28(d)—*

7 (A) *in the subsection heading, by striking*
 8 *“NOT OF INVESTMENT GRADE”;*

9 (B) *in paragraph (1), by striking “not of*
 10 *investment grade” and inserting “that does not*
 11 *meet standards of credit-worthiness as estab-*
 12 *lished by the Corporation”;*

13 (C) *in paragraph (2), by striking “not of*
 14 *investment grade”;*

15 (D) *by striking paragraph (3) and redesign-*
 16 *ating paragraph (4) as paragraph (3); and*

17 (E) *in paragraph (3) (as so redesignated)—*

18 (i) *by striking subparagraph (A) and*
 19 *redesignating subparagraphs (B) and (C) as*
 20 *subparagraphs (A) and (B), respectively;*
 21 *and*

22 (ii) *in subparagraph (B) (as so redes-*
 23 *ignated), by striking “not of investment*
 24 *grade” and inserting “that does not meet*
 25 *standards of credit-worthiness as established*
 26 *by the Corporation”;*

1 (2) *in section 28(e)—*

2 (A) *in the subsection heading, by striking*
3 *“NOT OF INVESTMENT GRADE”;*

4 (B) *in paragraph (1), by striking “not of*
5 *investment grade” and inserting “that does not*
6 *meet standards of credit-worthiness as estab-*
7 *lished by the Corporation”; and*

8 (C) *in paragraphs (2) and (3), by striking*
9 *“not of investment grade” each place that it ap-*
10 *pears and inserting “that does not meet stand-*
11 *ards of credit-worthiness established by the Cor-*
12 *poration”; and*

13 (3) *in section 7(b)(1)(E)(i), by striking “credit*
14 *rating entities, and other private economic” and in-*
15 *sert “private economic, credit,”.*

16 (b) *FEDERAL HOUSING ENTERPRISES FINANCIAL*
17 *SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of*
18 *the Federal Housing Enterprises Financial Safety and*
19 *Soundness Act of 1992 (12 U.S.C. 4519) is amended—*

20 (1) *in the section heading, by striking “**BY RAT-***
21 ***ING ORGANIZATION**”;* and

22 (2) *by striking “that is a nationally recognized*
23 *statistical rating organization, as such term is de-*
24 *finied in section 3(a) of the Securities Exchange Act*
25 *of 1934,”.*

1 (c) *INVESTMENT COMPANY ACT OF 1940.*—Section
 2 6(a)(5)(A)(iv)(I) *Investment Company Act of 1940* (15
 3 U.S.C. 80a-6(a)(5)(A)(iv)(I)) *is amended by striking “is*
 4 *rated investment grade by not less than 1 nationally recog-*
 5 *nized statistical rating organization” and inserting “meets*
 6 *such standards of credit-worthiness that the Commission*
 7 *shall adopt”.*

8 (d) *REVISED STATUTES.*—Section 5136A of title LXII
 9 of the *Revised Statutes of the United States* (12 U.S.C. 24a)
 10 *is amended—*

11 (1) *in subsection (a)(2)(E), by striking “any ap-*
 12 *plicable rating” and inserting “standards of credit-*
 13 *worthiness established by the Comptroller of the Cur-*
 14 *rency”;*

15 (2) *in the heading for subsection (a)(3) by strik-*
 16 *ing “RATING OR COMPARABLE REQUIREMENT” and*
 17 *inserting “REQUIREMENT”;*

18 (3) *subsection (a)(3), by amending subparagraph*
 19 *(A) to read as follows:*

20 “(A) *IN GENERAL.*—A national bank meets
 21 *the requirements of this paragraph if the bank is*
 22 *one of the 100 largest insured banks and has not*
 23 *fewer than 1 issue of outstanding debt that meets*
 24 *standards of credit-worthiness or other criteria*
 25 *as the Secretary of the Treasury and the Board*

1 *of Governors of the Federal Reserve System may*
 2 *jointly establish.”.*

3 *(4) in the heading for subsection (f), by striking*
 4 *“MAINTAIN PUBLIC RATING OR” and inserting*
 5 *“MEET STANDARDS OF CREDIT-WORTHINESS”; and*

6 *(5) in subsection (f)(1), by striking “any appli-*
 7 *cable rating” and inserting “standards of credit-wor-*
 8 *thiness established by the Comptroller of the Cur-*
 9 *rency”.*

10 *(e) SECURITIES EXCHANGE ACT OF 1934.—Section*
 11 *3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a))*
 12 *is amended—*

13 *(1) in paragraph (41), by striking “is rated in*
 14 *one of the two highest rating categories by at least one*
 15 *nationally recognized statistical rating organization”*
 16 *and inserting “meets standards of credit-worthiness*
 17 *as defined by the Commission”; and*

18 *(2) in paragraph (53)(A), by striking “is rated*
 19 *in 1 of the 4 highest rating categories by at least 1*
 20 *nationally recognized statistical rating organization”*
 21 *and inserting “meets standards of credit-worthiness*
 22 *as defined by the Commission”.*

23 *(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of*
 24 *the amendment in the nature of a substitute to the text of*
 25 *H.R. 4645, as ordered reported from the Committee on*

1 *Banking, Finance and Urban Affairs on September 22,*
 2 *1988, as enacted into law by section 555 of Public Law*
 3 *100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking*
 4 *“rating” and inserting “worthiness”.*

5 *(g) EFFECTIVE DATE.—The amendments made by this*
 6 *section shall take effect after the end of the 6-month period*
 7 *beginning on the date of the enactment of this Act.*

8 **SEC. 10. REVIEW OF RELIANCE ON RATINGS.**

9 *(a) AGENCY REVIEW.—*

10 *(1) REVIEW.—Not later than 1 year after the*
 11 *date of the enactment of this Act, each Federal agency*
 12 *listed in paragraph (4) shall, to the extent applicable,*
 13 *review—*

14 *(A) any regulation issued by such agency*
 15 *that requires the use of an assessment of the cred-*
 16 *it-worthiness of a security or money market in-*
 17 *strument, and*

18 *(B) any references to or requirements in*
 19 *such regulations regarding credit ratings.*

20 *(2) MODIFICATIONS REQUIRED.—Each such*
 21 *agency shall modify any such regulations identified*
 22 *by the review conducted under paragraph (1) to re-*
 23 *move any reference to or requirement of reliance on*
 24 *credit ratings and to substitute in such regulations*
 25 *such standard of credit-worthiness as each respective*

1 *agency shall determine as appropriate for such regu-*
2 *lations. In making such determination, such agencies*
3 *shall seek to establish, to the extent feasible, uniform*
4 *standards of credit-worthiness for use by each such*
5 *agency, taking into account the entities regulated by*
6 *each such agency and the purposes for which such en-*
7 *tities would rely on such standards of credit-worthi-*
8 *ness.*

9 (3) *REPORT.*—*Upon conclusion of the review re-*
10 *quired under paragraph (1), each Federal agency list-*
11 *ed in paragraph (4) shall transmit a report to Con-*
12 *gress containing a description of any modification of*
13 *any regulation such agency made pursuant to para-*
14 *graph (2).*

15 (4) *APPLICABLE AGENCIES.*—*The agencies re-*
16 *quired to conduct the review and report required by*
17 *this subsection are—*

18 (A) *the Securities and Exchange Commis-*
19 *sion;*

20 (B) *the Federal Deposit Insurance Corpora-*
21 *tion;*

22 (C) *the Office of Thrift Supervision;*

23 (D) *the Office of the Comptroller of the Cur-*
24 *rency;*

1 (E) the Board of Governors of the Federal
2 Reserve;

3 (F) the National Credit Union Administra-
4 tion; and

5 (G) the Federal Housing Finance Agency.

6 (b) GAO REVIEW OF OTHER AGENCIES.—

7 (1) REVIEW.—The Comptroller General shall
8 conduct a comprehensive review of the use of credit
9 ratings by Federal agencies other than those listed in
10 subsection (a)(3), including an analysis of the provi-
11 sions of law or regulation applicable to each such
12 agency that refer to and require the use of credit rat-
13 ings by the agency, and the policies and practices of
14 each agency with respect to credit ratings.

15 (2) REPORT.—Not later than 1 year after the
16 date of the enactment of this Act, the Comptroller
17 General shall transmit to Congress a report on the
18 findings of the study conducted pursuant to para-
19 graph (1), including recommendations for any legisla-
20 tion or rulemaking necessary or appropriate in order
21 for such agencies to reduce their reliance on credit
22 ratings.

1 **SEC. 11. PUBLICATION OF RATING HISTORIES ON THE**
2 **EDGAR SYSTEM.**

3 *Not later than 180 days after the date of the enactment*
4 *of this Act, the Securities and Exchange Commission shall*
5 *revise its rules in section 240.17g-2(a) and (d) of title 17,*
6 *Code of Federal Regulations, to require that the random*
7 *sample of ratings histories of credit ratings required under*
8 *such rules to be disclosed on the website of a nationally rec-*
9 *ognized statistical rating organization also be provided to*
10 *the Commission in a format consistent with publication by*
11 *the Commission on the EDGAR system.*

12 **SEC. 12. EFFECT OF RULE 436(G).**

13 *Rule 436(g), promulgated by the Securities and Ex-*
14 *change Commission under the Securities Act of 1933, shall*
15 *have no force or effect.*

16 **SEC. 13. STUDIES.**

17 *(a) GAO STUDY.—*

18 *(1) IN GENERAL.—The Comptroller General shall*
19 *conduct a study of—*

20 *(A) the implementation of this Act and the*
21 *amendments made by this Act by the Securities*
22 *and Exchange Commission;*

23 *(B) the appropriateness of relying on rat-*
24 *ings for use in Federal, State, and local securi-*
25 *ties and banking regulations, including for deter-*
26 *mining capital requirements; and*

1 (C) the effect of liability in private actions
2 arising under the Securities Exchange Act of
3 1934;

4 (D) alternative means for compensating
5 credit rating agencies that would create incen-
6 tives for accurate credit ratings and what, if
7 any, statutory changes would be required to per-
8 mit or facilitate the use of such alternative
9 means of compensation; and

10 (E) alternative methodologies to assess cred-
11 it risk, including market-based measures.

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

17 (b) *SEC STUDY ON ASSIGNING CREDIT RATING AGEN-*
18 *CIES ON A ROTATING BASIS.*—The Securities and Exchange
19 Commission shall undertake a study on creating a system
20 whereby nationally recognized statistical rating organiza-
21 tions are assigned on a rotating basis to issuers and obligors
22 seeking a credit rating. Not later than 1 year after the date
23 of enactment of this Act, the Securities and Exchange Com-
24 mission shall transmit to Congress a report containing the
25 findings of the study.

1 (c) *SEC STUDY ON EFFECT OF NEW REQUIREMENTS*
 2 *ON NRSRO REGISTRATION.*—*The Securities and Exchange*
 3 *Commission shall conduct a study on the effect of the*
 4 *amendments made by section 2 on credit rating agencies*
 5 *seeking to register as nationally recognized statistical rat-*
 6 *ing organizations, including whether the new requirements*
 7 *in such amendments deter credit rating agencies from reg-*
 8 *istering as nationally recognized statistical rating organi-*
 9 *zations. Not later than 1 year after the date of enactment*
 10 *of this Act, the Commission shall transmit to the Committee*
 11 *on Financial Services of the House of Representatives and*
 12 *the Committee on Banking, Housing, and Urban Affairs*
 13 *of the Senate a report on the findings of such study.*

14 (d) *STUDY OF CREDIT RATINGS OF DIFFERENT*
 15 *CLASSES OF BONDS.*—

16 (1) *STUDY.*—*The Securities and Exchange Com-*
 17 *mission shall conduct a study of the treatment of dif-*
 18 *ferent classes of bonds (municipal versus corporate)*
 19 *by the nationally recognized statistical rating organi-*
 20 *zations. Such study shall examine—*

21 (A) *whether there are fundamental dif-*
 22 *ferences in the treatment of different classes of*
 23 *bonds by such rating organizations that cause*
 24 *some classes of bonds to suffer from undue dis-*
 25 *crimination;*

1 (B) if there are such differences, what are
2 the causes of such differences and how can they
3 be alleviated;

4 (C) whether there are factors other than risk
5 of loss that are appropriate for the credit ratings
6 agencies to consider when rating bonds, and do
7 those factors vary across different sectors

8 (D) the types of financing arrangement
9 used by municipal issuers

10 (E) the differing legal and regulatory re-
11 gimes governing disclosures for corporate bonds
12 and municipal bonds;

13 (F) the extent to which retail investors
14 could be disadvantaged by a single ratings scale;
15 and

16 (G) practices, policies, and methodologies by
17 the nationally recognized statistical rating orga-
18 nizations with respect to rating municipal
19 bonds.

20 (2) *REPORT.*—Within 6 months after the date of
21 enactment of this Act, the Securities and Exchange
22 Commission shall submit a report on the results of the
23 study required by paragraph (1) to the Committee on
24 Financial Services of the House of Representatives
25 and the Committee on Banking, Housing, and Urban

1 *Development of the Senate. Such report shall include*
 2 *as assessment of each of the issues and subjects de-*
 3 *scribed in subparagraphs (A) through (G) of para-*
 4 *graph (1).*

5 *(e) SEC STUDY ON MEANINGFUL MULTI DIGIT RAT-*
 6 *ING SYMBOLS.—*

7 *(1) STUDY.—The Securities and Exchange Com-*
 8 *mission shall conduct a study on the feasibility and*
 9 *desirability of implementing a standardized rating*
 10 *system whereby ratings symbols contain multiple*
 11 *characters, each representing a range of default prob-*
 12 *abilities and loss expectations under standardized and*
 13 *increasingly severe levels of market stress. The study*
 14 *shall optimize the definitions of the symbols to maxi-*
 15 *mize their overall usefulness for users of credit rat-*
 16 *ings.*

17 *(2) INITIAL EXAMPLE FOR GUIDANCE.—An ex-*
 18 *ample to provide initial guidance for the study is a*
 19 *ratings symbol consisting of three digits, each of*
 20 *which corresponds to default probabilities under dif-*
 21 *ferent levels of market stress as follows:*

22 *(A) The first digit represents the default*
 23 *probability under “normal” market stress, char-*
 24 *acterized by normal economic fluctuations in ad-*

1 *dition to a 5 percent decline in asset value and*
2 *2 percent increase in unemployment.*

3 *(B) The second digit represents the default*
4 *probability under more severe market stress,*
5 *characterized a 20 percent decline in asset value*
6 *and 5 percent increase in unemployment.*

7 *(C) The third digit represents the default*
8 *probability under extreme market stress, charac-*
9 *terized by a 50 percent decline in asset value*
10 *and 10 percent increase in unemployment.*

11 *(3) REPORT.—Not later than 1 year after the*
12 *date of the enactment of this Act, the Commission*
13 *shall transmit to Congress a report of the study con-*
14 *ducted pursuant to paragraph (1), including rec-*
15 *ommendations on whether the system similar to that*
16 *described in paragraph (2) should be implemented*
17 *and, if so, any necessary legislation required to im-*
18 *plement such a system.*

19 *(f) SEC STUDY ON RATINGS STANDARDIZATION.—*

20 *(1) IN GENERAL.—The Securities and Exchange*
21 *Commission shall undertake a study on the feasibility*
22 *and desirability of—*

23 *(A) standardizing credit ratings termi-*
24 *nology, so that all credit rating agencies issue*
25 *credit ratings using identical terms;*

1 (B) standardizing the market stress condi-
2 tions under which ratings are evaluated;

3 (C) requiring a quantitative correspondence
4 between credit ratings and a range of default
5 probabilities and loss expectations under stand-
6 ardized conditions of economic stress; and

7 (D) standardizing credit rating terminology
8 across asset classes, so that named ratings shall
9 correspond to a standard range of default prob-
10 abilities and expected losses independent of asset
11 class and issuing entity.

12 (2) *REPORT.*—Not later than 1 year after the
13 date of enactment of this Act, the Securities and Ex-
14 change Commission shall transmit to Congress a re-
15 port containing the findings of the study and the rec-
16 ommendations of the Commission.

Union Calendar No. 406

11TH CONGRESS
2^D Session

H. R. 3890

[Report No. 111-685, Part I]

A BILL

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

DECEMBER 17, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed