(2) restricting a securities analyst from participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

(d) Definitions

In this section—

(1) the term ''securities analyst'' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of ''securities analyst''; and

(2) the term ''research report'' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

(June 6, 1934, ch. 404, title I, § 15D, as added Pub. L. 107–204, title V, § 501(a), July 30, 2002, 116 Stat. 791; amended Pub. L. 112–106, title I, § 105(b), Apr. 5, 2012, 126 Stat. 311.)

Editorial Notes

AMENDMENTS

2012—Subsecs. (c), (d). Pub. L. 112–106 added subsec. (c) and redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

POST OFFERING COMMUNICATIONS

Pub. L. 112–106, title I, § 105(d), Apr. 5, 2012, 126 Stat. 311, provided that: ''Neither the [Securities and Exchange] Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*–3] may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

''(1) within any prescribed period of time following the initial public offering date of the emerging growth company; or

''(2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.''

COMMISSION AUTHORITY

Pub. L. 107–204, title V, § 501(c), July 30, 2002, 116 Stat. 793, provided that: ''The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*–6], as added by this section, as is necessary for the protection of investors and in the public interest.''

§ 78*o*–7. Registration of nationally recognized statistical rating organizations

(a) Registration procedures

(1) Application for registration

(A) In general

A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this chapter (in this section referred to as the ''applicant''), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

(B) Required information

An application for registration under this section shall contain information regarding—

(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this chapter (or the rules and regulations hereunder), of material, nonpublic information;

(iv) the organizational structure of the applicant;

(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

(vii) the categories described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title with respect to which the applicant intends to apply for registration under this section;

(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title, written certifications described in subparagraph (C), except as provided in subparagraph (D); and

(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(C) Written certifications

Written certifications required by subparagraph (B)(ix)—

(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title;

(iii) shall include not fewer than 2 certifications for each such category of obligor; and

(iv) shall state that the qualified institutional buyer—

(I) meets the definition of a qualified institutional buyer under section 78c(a)(64) of this title; and

(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

(D) Exemption from certification requirement

A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

(E) Limitation on liability of qualified institutional buyers

No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

(2) Review of application

(A) Initial determination

Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 78c(a)(62)(B) of this title; or

(ii) institute proceedings to determine whether registration should be denied.

(B) Conduct of proceedings

(i) Content

Proceedings referred to in subparagraph (A)(ii) shall—

(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

(ii) Determination

At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

(iii) Extension authorized

The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(C) Grounds for decision

The Commission shall grant registration under this subsection—

(i) if the Commission finds that the requirements of this section are satisfied; and

(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

(3) Public availability of information

Subject to section 78x of this title, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

(b) Update of registration

(1) Update

Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

(A) the information required to be filed under subsection (a)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by filing information under this paragraph.

(2) Certification

Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) certifying that the information and documents in the application for registra-

tion of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

(B) listing any material change that occurred to such information or documents during the previous calendar year.

(c) Accountability for ratings procedures

(1) Authority

The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this chapter with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and conflicts of interest, that such nationally recognized statistical rating organization—

(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

(B) makes and disseminates in reports pursuant to section 78q(a) of this title or the rules and regulations thereunder.

(2) Limitation

The rules and regulations that the Commission may prescribe pursuant to this chapter, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this chapter applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of this section, or any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.

(3) Internal controls over processes for determining credit ratings

(A) In general

Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

(B) Attestation requirement

The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and

(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.

(d) Censure, denial, or suspension of registration; notice and hearing

(1) In general

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, bar or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 78*o*(b)(4) of this title, has been convicted of any offense specified in section 78*o*(b)(4)(B) of this title, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 78*o*(b)(4) of this title, during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

(B) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

(i) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 78*o*(b)(4)(B) of this title; or

(ii) a substantially equivalent crime by a foreign court of competent jurisdiction;

(C) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

(D) fails to file the certifications required under subsection (b)(2);

(E) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity;[1]

(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

(2) Suspension or revocation for particular class of securities

(A) In general

The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

(B) Considerations

In making any determination under subparagraph (A), the Commission shall consider—

(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities; and

(ii) such other factors as the Commission may determine.

(e) Termination of registration

(1) Voluntary withdrawal

A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

(2) Commission authority

In addition to any other authority of the Commission under this chapter, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

(f) Representations

(1) Ban on representations of sponsorship by United States or agency thereof

It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the United States or any agency, officer, or employee thereof.

[1] So in original. The word ''or'' probably should appear.

(2) Ban on representation as NRSRO of unregistered credit rating agencies

It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this chapter.

(3) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

(g) Prevention of misuse of nonpublic information

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this chapter, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations hereunder) of material, nonpublic information.

(h) Management of conflicts of interest

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized

statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(3) Separation of ratings from sales and marketing

(A) Rules required

The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

(B) Contents of rules

The rules issued under subparagraph (A) shall provide for—

(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

(II) the violation of a rule issued under this subsection affected a rating.

(4) Look-back requirement

(A) Review by the nationally recognized statistical rating organization

Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

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

(B) Review by Commission

(i) In general

The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

(ii) Timing of reviews

The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

(I) not less frequently than annually; and

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

(5) Report to Commission on certain employment transitions

(A) Report required

Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

(i) was a senior officer of such organization;

(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

(iii) supervised an employee described in clause (ii).

(B) Public disclosure

Upon receiving such a report, the Commission shall make such information publicly available.

(i) Prohibited conduct

(1) Prohibited acts and practices

The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

(2) Rule of construction

Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in section 12 of this title, except that such term includes section 45 of this title, to the extent that such section 45 applies to unfair methods of competition).

(j) Designation of compliance officer

(1) In general

Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(2) Limitations

(A) In general

Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

(i) perform credit ratings;

(ii) participate in the development of ratings methodologies or models;

(iii) perform marketing or sales functions; or

(iv) participate in establishing compensation levels, other than for employees working for that individual.

(B) Exception

The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

(3) Other duties

Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

(B) confidential, anonymous complaints by employees or users of credit ratings.

(4) Compensation

The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.

(5) Annual reports required

(A) Annual reports required

Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

(ii) a certification that the report is accurate and complete.

(B) Submission of reports to the Commission

Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.

(k) Statements of financial condition

Each nationally recognized statistical rating organization shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

***(l)* Sole method of registration**

(1) In general

On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

(2) Prohibition on reliance on no-action relief

On and after the effective date of this section—

(A) an entity that, before that date, received advice, approval, or a no-action letter

from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3–1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

(i) during Commission consideration of the application, if such entity has filed an application for registration under this section; and

(ii) on and after the date of approval of its application for registration under this section; and

(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

(3) Notice to other agencies

Not later than 30 days after September 29, 2006, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term ''nationally recognized statistical rating organization'' (as that term is used under Commission rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on September 29, 2006).

(m) Accountability

(1) In general

The enforcement and penalty provisions of this chapter shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 78u–5 of this title.

(2) Rulemaking

The Commission shall issue such rules as may be necessary to carry out this subsection.

(n) Regulations

(1) New provisions

Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

(A) shall be issued by the Commission in final form, not later than 270 days after September 29, 2006; and

(B) shall become effective not later than 270 days after September 29, 2006.

(2) Review of existing regulations

Not later than 270 days after September 29, 2006, the Commission shall—

(A) review its existing rules and regulations which employ the term ''nationally recognized statistical rating organization'' or ''NRSRO''; and

(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(*o*) NRSROs subject to Commission authority

(1) In general

No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

(2) Limitation

Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

(p) Regulation of nationally recognized statistical rating organizations

(1) Establishment of Office of Credit Ratings

(A) Office established

The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the ''Office'') to administer the rules of the Commission—

(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

(B) Director of the Office

The head of the Office shall be the Director, who shall report to the Chairman.

(2) Staffing

The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

(3) Commission examinations

(A) Annual examinations required

The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

(B) Conduct of examinations

Each examination under subparagraph (A) shall include a review of—

(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

(v) the governance of the nationally recognized statistical rating organization;

(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

(vii) the processing of complaints by the nationally recognized statistical rating organization; and

(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

(C) Inspection reports

The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

(iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

(4) Rulemaking authority

The Commission shall—

(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and

(B) issue such rules as may be necessary to carry out this section.

(q) Transparency of ratings performance

(1) Rulemaking required

The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

(2) Content

The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

(r) Credit ratings methodologies

The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

(3) to notify users of credit ratings—

(A) of the version of a procedure or methodology, including the qualitative method-

ology or quantitative inputs, used with respect to a particular credit rating;

(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

(s) Transparency of credit rating methodologies and information reviewed

(1) Form for disclosures

The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

(A) information relating to—

(i) the assumptions underlying the credit rating procedures and methodologies;

(ii) the data that was relied on to determine the credit rating; and

(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

(2) Format

The form developed under paragraph (1) shall—

(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

(3) Content of form

(A) Qualitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

(i) the credit ratings produced by the nationally recognized statistical rating organization;

(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;

(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

(iv) information on the uncertainty of the credit rating, including—

(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

(aa) any limits on the scope of historical data; and

(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

(ix) such additional information as the Commission may require.

(B) Quantitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

(i) an explanation or measure of the potential volatility of the credit rating, including—

(I) any factors that might lead to a change in the credit ratings; and

(II) the magnitude of the change that a user can expect under different market conditions;

(ii) information on the content of the rating, including—

(I) the historical performance of the rating; and

(II) the expected probability of default and the expected loss in the event of default;

(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating; [2]

(iv) such additional information as may be required by the Commission.

(4) Due diligence services for asset-backed securities

(A) Findings

The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

(B) Certification required

In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate, written certification, as provided in subparagraph (C).

(C) Format and content

The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

(D) Disclosure of certification

The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

(t) Corporate governance, organization, and management of conflicts of interest

(1) Board of directors

Each nationally recognized statistical rating organization shall have a board of directors.

(2) Independent directors

(A) In general

At least ½ of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

(B) Independence determination

In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

(C) Compensation and term

The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a preagreed fixed period, not to exceed 5 years, and shall not be renewable.

(3) Duties of board of directors

In addition to the overall responsibilities of the board of directors, the board shall oversee—

(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

(4) Treatment of NRSRO subsidiaries

If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

(A) at least ½ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

(5) Exception authority

If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that

[2] So in original. The word ''and'' probably should appear.

includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.

(u) Duty to report tips alleging material violations of law

(1) Duty to report

Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

(2) Rule of construction

Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).

(v) Information from sources other than the issuer

In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.

(w) Data standards for information required to be submitted or published under this section

(1) Requirement

The Commission shall, by rule, adopt data standards for all collections of information required to be submitted or published by a nationally recognized statistical rating organization under this section.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 6, 1934, ch. 404, title I, §15E, as added Pub. L. 109–291, §4(a), Sept. 29, 2006, 120 Stat. 1329; amended Pub. L. 111–203, title IX, §§932(a), 933(a), 934, 935, July 21, 2010, 124 Stat. 1872, 1883, 1884; Pub. L. 117–263, div. E, title LVIII, §5821(c), Dec. 23, 2022, 136 Stat. 3425.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (B)(iii), (c), (e)(2), (f)(2), (3), (g), and (m)(1), was in the original ''this title''. See References in Text note set out under section 78a of this title.

The Securities Exchange Act of 1934, referred to in subsec. (f)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2022—Subsec. (w). Pub. L. 117–263 added subsec. (w).

2010—Subsec. (b)(1)(A). Pub. L. 111–203, §932(a)(1)(A), substituted ''filed'' for ''furnished'' and ''filing'' for ''furnishing''.

Subsec. (b)(1)(B). Pub. L. 111–203, §932(a)(1)(B), substituted ''filing'' for ''furnishing''.

Subsec. (b)(2). Pub. L. 111–203, §932(a)(1)(C), substituted ''file with'' for ''furnish to'' in introductory provisions.

Subsec. (c)(2). Pub. L. 111–203, §932(a)(2)(A), inserted ''any other provision of this section, or'' after ''Notwithstanding'' and inserted at end ''Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.''

Subsec. (c)(3). Pub. L. 111–203, §932(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 111–203, §932(a)(3), designated existing provisions as par. (1), inserted heading, inserted '', or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization,'' before ''if the Commission finds'' and ''bar'' before ''or revocation is necessary'', redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1) and former subpars. (A) and (B) of par. (2) as cls. (i) and (ii), respectively, of subpar. (B), in subpar. (B), substituted ''filed with'' for ''furnished to'' in introductory provisions, in subpar. (D), substituted ''file'' for ''furnish'', and added subpar. (F) and par. (2).

Subsec. (h)(3) to (5). Pub. L. 111–203, §932(a)(4), added pars. (3) to (5).

Subsec. (j). Pub. L. 111–203, §932(a)(5), designated existing provisions as par. (1), inserted heading, and added pars. (2) to (5).

Subsec. (k). Pub. L. 111–203, §932(a)(6), substituted ''file with'' for ''furnish to''.

Subsec. (*l*)(2)(A)(i). Pub. L. 111–203, §932(a)(7), substituted ''filed'' for ''furnished''.

Subsec. (m). Pub. L. 111–203, §933(a), amended subsec. (m) generally. Prior to amendment, subsec. (m) provided that registration did not constitute a waiver of rights, privileges, or defenses and that this section could not be construed as creating any private right of action.

Subsecs. (p) to (t). Pub. L. 111–203, §932(a)(8), added subsecs. (p) to (t) and struck out former subsec. (p) which related to applicability date of this section.

Subsec. (u). Pub. L. 111–203, §934, added subsec. (u).

Subsec. (v). Pub. L. 111–203, §935, added subsec. (v).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

REGULATIONS

Pub. L. 111–203, title IX, §937, July 21, 2010, 124 Stat. 1885, provided that: ''Unless otherwise specifically provided in this subtitle [subtitle C (§§931–939H) of title IX of Pub. L. 111–203, enacting sections 78*o*–8 and 78*o*–9 of this title, amending this section and sections 78c, 78u–4, and 80a–6 of this title, sections 24a, 1817, 1831e, and 4519 of Title 12, Banks and Banking, and section 286hh of

Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under this section, sections 78m and 78*o*–9 of this title, and section 24a of Title 12], the [Securities and Exchange] Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act [July 21, 2010].''

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS

Pub. L. 111–203, title IX, § 936, July 21, 2010, 124 Stat. 1884, provided that: ''Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

''(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

''(2) is tested for knowledge of the credit rating process.''

[For definitions of terms used in section 936 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REVIEW OF RELIANCE ON RATINGS

Pub. L. 111–203, title IX, § 939A, July 21, 2010, 124 Stat. 1887, provided that:

''(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle [July 21, 2010], each Federal agency shall, to the extent applicable, review—

''(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

''(2) any references to or requirements in such regulations regarding credit ratings.

''(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

''(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b).''

[For definition of ''security'' as used in section 939A of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS

Pub. L. 111–203, title IX, § 943, July 21, 2010, 124 Stat. 1897, provided that: ''Not later than 180 days after the date of enactment of this Act [July 21, 2010], the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) [now 3(a)(79)] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by this subtitle) that—

''(1) require each national [sic] recognized statistical rating organization to include in any report accompanying a credit rating a description of—

''(A) the representations, warranties, and enforcement mechanisms available to investors; and

''(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

''(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*–11(a)], as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.''

[For definitions of terms used in section 943 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

FINDINGS

Pub. L. 111–203, title IX, § 931, July 21, 2010, 124 Stat. 1872, provided that: ''Congress finds the following:

''(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

''(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical 'gatekeeper' role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

''(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial 'gatekeepers' do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

''(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

''(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.''

[For definitions of terms used in section 931 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 109–291, § 2, Sept. 29, 2006, 120 Stat. 1327, provided that: ''Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204] (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

''(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their

contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

''(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

''(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

''(4) the oversight of such credit rating agencies serves the compelling interest of investor protection;

''(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

''(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry.''

SECURITIES AND EXCHANGE COMMISSION ANNUAL REPORT

Pub. L. 109–291, §6, Sept. 29, 2006, 120 Stat. 1338, provided that: ''The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

''(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*–7], as added by this Act;

''(2) specifies the number of and actions taken on such applications; and

''(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations.''

DEFINITIONS

Pub. L. 109–291, §3(b), Sept. 29, 2006, 120 Stat. 1328, provided that: ''As used in this Act [see Short Title of 2006 Amendment note set out under section 78a of this title]—

''(1) the term 'Commission' means the Securities and Exchange Commission; and

''(2) the term 'nationally recognized statistical rating organization' has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], as added by this Act.''

§ 78*o*–8. Universal ratings symbols

(a) Rulemaking

The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) Rule of construction

Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

(Pub. L. 111–203, title IX, §938, July 21, 2010, 124 Stat. 1885.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§ 78*o*–9. Study and rulemaking on assigned credit ratings

(a) Definition

In this section, the term ''structured finance product'' means an asset-backed security, as defined in section 3(a)(77)[1] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by section 941,[1] and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) Study

The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) Report and recommendation

Not later than 24 months after July 21, 2010, the Commission shall submit to the Committee

[1] See References in Text note below.