

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. 780-7], 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.”

### § 780-8. 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.

### § 780-9. 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)<sup>1</sup> of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by section 941,<sup>1</sup> 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

<sup>1</sup> See References in Text note below.

on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

- (1) the findings of the study required under subsection (b); and
- (2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

**(d) Rulemaking**

**(1) Rulemaking**

After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

**(2) Rule of construction**

Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

(Pub. L. 111-203, title IX, §939F, July 21, 2010, 124 Stat. 1889.)

**Editorial Notes**

**REFERENCES IN TEXT**

Section 3(a)(77) of the Securities Exchange Act of 1934, referred to in subsec. (a), was redesignated section 3(a)(79) of that Act by Pub. L. 112-106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307, and is classified to section 78c(a)(79) of this title.

Section 941, referred to in subsec. (a), means section 941 of Pub. L. 111-203.

Section 15E of the Securities Exchange Act of 1934, referred to in subsec. (d)(1), is classified to section 780-7 of this title.

H.R. 4173, referred to in subsec. (d)(1), became Pub. L. 111-203. As enacted, section 939D of Pub. L. 111-203 did not add a subsec. (w) to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 780-7) but enacted provisions set out as a note below. For the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, see 156 Cong. Rec. 80 at pp. S4338, S4339 (daily ed. May 25, 2010).

**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.

**GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON  
ALTERNATIVE BUSINESS MODELS**

Pub. L. 111-203, title IX, §939D, July 21, 2010, 124 Stat. 1888, provided that:

“(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

“(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act [July 21, 2010], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.”

[For definition of “nationally recognized statistical rating organization” as used in section 939D of Pub. L. 111-203, set out above, see 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.

**§ 780-10. Registration and regulation of security-based swap dealers and major security-based swap participants**

**(a) Registration**

**(1) Security-based swap dealers**

It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

**(2) Major security-based swap participants**

It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

**(b) Requirements**

**(1) In general**

A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

**(2) Contents**

**(A) In general**

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.