

CREDIT RATING AGENCY REFORM

(as of March 15, 2010)

The Credit Rating Agency Reform Act passed in 2006 requires credit rating agencies (CRAs) to register with the SEC and submit reports. However, the recent financial crisis further eroded investor confidence in CRA ratings and demonstrated that more needs to be done to address conflict of interest and disclosure concerns. Recently proposed amendments to SEC rules attempt to address these issues and recent legislation goes even further.

	The Wall Street Reform and Consumer Protection Act of 2009, passed by the House on December 11, 2009	Senate Discussion Draft released by Senator Dodd on November 10, 2009	Senate Draft Bill: Restoring American Financial Stability Act, released by Senator Dodd on March 15, 2010
Liability	<ul style="list-style-type: none"> - Subject to Section 11 liability for use of credit ratings in registration statements - Revocation of Regulation FD exemption - Revocation of “expert” exemption under Rule 436(g) - CRAs not covered by forward-looking safe harbor 	<ul style="list-style-type: none"> - Subject to Section 11 liability for use of credit ratings in registration statements - Duty to report issuer violations of law to appropriate authorities 	<ul style="list-style-type: none"> - Subject to Section 11 liability for use of credit ratings in registration statements - Duty to report violations of law to appropriate authorities - Statements made by CRAs are not forward-looking statements for purposes of safe harbor - Enforcement and penalty provisions of the Exchange Act apply to CRA statements - Modifies “state of mind” requirement for private securities fraud actions against CRAs for money damages
Disclosure	<ul style="list-style-type: none"> - Conflicts of interest - Qualitative and quantitative methodologies and assumptions used - Prior rating errors made - Other information required by SEC 	<ul style="list-style-type: none"> - Qualitative and quantitative methodologies and assumptions used - Prior rating errors made - Third party reports and credible information received from independent sources - Other information required by SEC 	<ul style="list-style-type: none"> - Qualitative and quantitative methodologies and assumptions used - Prior ratings errors made - Third party reports and credible information received from independent sources - SEC to issue rules requiring CRAs to disclose information on initial ratings and subsequent changes; disclosures to be comparable across CRAs - SEC must require each CRA to accompany publication of each rating with a prescribed form that details, among other things, ratings methodologies
Prohibited Activities	<ul style="list-style-type: none"> - If providing ratings, CRAs cannot provide: <ul style="list-style-type: none"> - Risk management services; - Advice or consultation relating to mergers, sales or disposition of assets, or not related to a securities issuance; 	<ul style="list-style-type: none"> - SEC to adopt rules separating rating activities from sales and marketing activities 	<ul style="list-style-type: none"> - SEC to promulgate rules separating rating activities from sales and marketing activities - SEC may impose fines, including fines for failure to supervise - Each CRA must establish internal controls and procedures - CRAs must submit an annual report to the SEC,

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	- Any other activity according to SEC rules		including a certification regarding internal controls and procedures
Conflict of Interest	<ul style="list-style-type: none"> - Reduce conflict of interest concerns by maintaining a website disclosing fees earned, number of issuances rated and issuer standings for current year and two prior years 	<ul style="list-style-type: none"> - Compliance officers cannot participate in determining ratings or methodologies, or participate in sales activities or setting of compensation levels for certain employees - Maintain CRA records of ratings over time on CRA website for investors to review 	<ul style="list-style-type: none"> - Compliance officers cannot participate in determining ratings or methodologies, or in sales activities or setting of compensation levels for certain employees - Compliance report required annually - CRA must maintain record of ratings over time and publish on website for investors to review - SEC to promulgate additional regulations; SEC may suspend or revoke a CRA's registration for violations
Oversight	<ul style="list-style-type: none"> - SEC to set rules, review due diligence and methodologies used - CRAs must have Board of Directors with at least 1/3 (minimum of two) members being independent for policy and procedure oversight - CRAs that earned less than \$250 million in comp in last full fiscal year may deregister as NRSRO 	<ul style="list-style-type: none"> - SEC to set rules - Annual internal control reports submitted to SEC - SEC may suspend CRA's right to rate certain types of securities 	<ul style="list-style-type: none"> - Establishes SEC Office of Credit Ratings; director of Office reports to SEC Chairman - Establishes fines, penalties for CRAs; administers SEC rules applicable to CRAs - SEC to conduct annual exam of each CRA; SEC to report on CRA exams
Other	<ul style="list-style-type: none"> - Due diligence reports prepared by third parties for issuers must be certified and provided to CRAs - SEC may propose additional rules relating to ratings of structured products 	<ul style="list-style-type: none"> - Due diligence reports prepared by third parties for issuers must be certified and provided to CRAs - CRA analysts must pass exams and continue education - SEC study of independence and alternative models 	<ul style="list-style-type: none"> - Due diligence reports prepared by third parties for issuers must be certified and provided to CRAs - SEC to conduct a study and promulgate rules regarding requisite standards, experience and qualifications for CRA analysts - SEC must issue rules regarding ratings procedures and methodologies - SEC rules must require that CRAs establish, maintain and enforce policies and procedures that define and disclose the meaning of any ratings symbol - SEC to conduct a study regarding independence of CRAs - Additional studies required to be conducted, including studies regarding alternative business models; reliance on ratings within various markets; reliance on ratings by various federal agencies