

Credit Rating Developments

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Credit Ratings After Dodd-Frank

- Repeal of Rule 436(g)
- Removal of exemption from Regulation FD
- Removal of credit ratings from rules
- SEC oversight of credit rating agencies
 - Liability reforms
 - Required disclosures
 - Prohibited activities
 - Governance
 - Conflicts of interest

Repeal of Rule 436(g)

- Prior to repeal, Rule 436(g) exempted NRSROs from the requirement to provide a consent if ratings were included in a Securities Act registration statement or prospectus
- Following the repeal, the SEC Staff provided interpretive guidance on situations where consents of credit rating agencies would not be required, such as when:
 - Ratings are included in FWP's that comply with Securities Act Rule 433 and in term sheets or press releases that comply with Securities Act Rule 134
 - Disclosure-related rating information is included in periodic reports (for example, disclosure relating to a change in a credit rating, liquidity of the issuer, or the terms of agreements that refer to credit ratings)
 - Information is included or incorporated by reference in a registration statement on Form S-3 or F-3 that was declared effective prior to July 22, 2010
- Separate relief was provided for issuers of asset-backed securities

Removal from Regulation FD

- On September 29, 2010, the SEC adopted final rules amending Regulation FD to eliminate an exemption for credit rating agencies
- The amendments to Regulation FD were made pursuant to Section 939B, and became effective on October 4, 2010
- As a practical matter, there was little impact on communications between issuers and credit rating agencies, because most credit rating agencies are already outside of the scope of Regulation FD because they are no longer considered investment advisers

Removal of Ratings

- Section 939A of the Dodd-Frank Act directs all federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings.
- The agencies are also required under the Dodd-Frank Act to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-worthiness.

Removal of Ratings

- The SEC has proposed amendments to the eligibility requirements for registration statements on Form S-3 and Form F-3, as well as other amendments to rule and form requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 to remove any reference to credit ratings issued by NRSROs (similar to amendments proposed in 2008)
- The SEC has proposed to revise General Instruction I.B.2. of Form S-3 and Form F-3 to provide that an offering of non-convertible securities is eligible to be registered on Form S-3 or Form F-3 if the issuer has issued at least \$1 billion of non-convertible securities in transactions registered under the Securities Act, other than equity securities, for cash during the past three years (as measured from a date within 60 days of the filing of the registration statement) and satisfies the other relevant requirements of Form S-3 or Form F-3, as applicable.

SEC Oversight

- Planned SEC rulemaking for April – July 2011 to address substantive oversight provisions of Section 932, 936 and 938.
 - Required disclosures
 - Prohibited activities
 - Governance
 - Conflicts of interest
- The SEC's Office of Credit Ratings has not been created and staffed due to budgetary considerations.