

House-passed H.R. 4173	Senate-passed H.R. 4173 (S. 3217 as amended)	Notes
<p align="center">TITLE V--CAPITAL MARKETS</p> <p>Subtitle A--Private Fund Investment Advisers Registration Act</p> <p>SEC. 5001. SHORT TITLE.</p> <p>This subtitle may be cited as the 'Private Fund Investment Advisers Registration Act of 2009'.</p>	<p align="center">TITLE IV--REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS</p> <p>SEC. 401. SHORT TITLE.</p> <p><i>This title may be cited as the 'Private Fund Investment Advisers Registration Act of 2010'.</i></p>	
<p>SEC. 5002. DEFINITIONS.</p> <p>Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraphs:</p> <p> (29) PRIVATE FUND- The term 'private fund' means an issuer that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act.</p> <p> (30) FOREIGN PRIVATE FUND ADVISER- The term 'foreign private fund adviser' means an investment adviser who--</p> <p> (A) has no place of business in the United States;</p> <p> (B) during the preceding 12 months has had--</p> <p> (i) in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser; and</p> <p> (ii) aggregate assets under management attributable to clients and investors in the United States in private funds advised by the investment adviser of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and</p> <p> (C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) and has not withdrawn such election.'</p>	<p>SEC. 402. DEFINITIONS.</p> <p><i>(a) Investment Advisers Act of 1940 Definitions- Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:</i></p> <p> (29) <i>The term 'private fund' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act.</i></p> <p> (30) <i>The term 'foreign private adviser' means any investment adviser who--</i></p> <p> (A) <i>has no place of business in the United States;</i></p> <p> (B) <i>has, in total, fewer than 15 clients who are domiciled in or residents of the United States;</i></p> <p> (C) <i>has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and</i></p> <p> (D) <i>neither--</i></p> <p> (i) <i>holds itself out generally to the public in the United States as an investment adviser; nor</i></p> <p> (ii) <i>acts as--</i></p> <p> (I) <i>an investment adviser to any investment company registered under the Investment Company Act of 1940; or</i></p> <p> (II) <i>a company that has elected to be a business development company pursuant to section 54 of the</i></p>	

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	<p><i>Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not withdrawn its election.'</i></p> <p><i>(b) Other Definitions- As used in this title, the terms 'investment adviser' and 'private fund' have the same meanings as in section 202 of the Investment Advisers Act of 1940, as amended by this title.</i></p>	
<p>SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE FUND ADVISERS; LIMITED INTRASTATE EXEMPTION.</p> <p>(a) Exemption- Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended--</p> <p>(1) in paragraph (1), by inserting `, except an investment adviser who acts as an investment adviser to any private fund,' after `any investment adviser';</p> <p>(2) by amending paragraph (3) to read as follows: `3) any investment adviser that is a foreign private fund adviser;';</p> <p>(3) in paragraph (5), by striking `or' at the end;</p> <p>(4) in paragraph (6)--</p> <p>(A) in subparagraph (A), by striking `or';</p> <p>(B) in subparagraph (B), by striking the period at the end and adding `; or'; and</p> <p>(C) by adding at the end the following new subparagraph: `C) a private fund; or'; and</p> <p>(5) by adding at the end the following: `7) any investment adviser who solely advises--</p> <p>`(A) small business investment companies licensed under the Small Business Investment Act of 1958;</p> <p>`(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or</p> <p>`(C) applicants, related to one or more licensed small business investment companies covered in subparagraph (A), that have applied for another license, which application remains pending.'</p> <p>(b) Consideration of Risk- Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)) is amended by adding at the end the following:</p> <p>`3) The Commission shall take into account the relative risk profile of different classes of private funds</p>	<p>SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.</p> <p><i>Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended--</i></p> <p><i>(1) in paragraph (1), by inserting `, other than an investment adviser who acts as an investment adviser to any private fund,' before `all of whose';</i></p> <p><i>(2) by striking paragraph (3) and inserting the following: `3) any investment adviser that is a foreign private adviser;'; and</i></p> <p><i>and</i></p> <p><i>(3) in paragraph (5), by striking `or' at the end;</i></p> <p><i>(4) in paragraph (6), by striking the period at the end and inserting `; or'; and</i></p> <p><i>(5) by adding at the end the following: `7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-54), who solely advises--</i></p> <p><i>`(A) small business investment companies that are licensees under the Small Business Investment Act of 1958;</i></p> <p><i>`(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or</i></p> <p><i>`(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.'</i></p>	

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<p>as it establishes, by rule or regulation, the registration requirements for private funds.'</p>		
	<p>SEC. 409. FAMILY OFFICES.</p> <p><i>(a) In General- Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended by striking `or (G)' and inserting the following: `; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)'. (b) Rulemaking- The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term `family office' shall provide for an exemption that-- (1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and (2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices.</i></p>	
<p>SEC. 5004. COLLECTION OF DATA.</p> <p>Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended-- (1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and (2) by inserting after subsection (a) the following new subsection: ` (b) Records and Reports of Private Funds-- ` (1) IN GENERAL- The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and file with the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk as the Commission determines in consultation with the Board of Governors of the Federal Reserve System. The Commission is authorized to provide or make available to the Board of Governors of the Federal Reserve System and to the Financial Services Oversight Council, those reports or records or the</p>	<p>SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.</p> <p><i>Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended-- (1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and (2) by inserting after subsection (a) the following: ` (b) Records and Reports of Private Funds-- ` (1) IN GENERAL- The Commission may require any investment adviser registered under this title-- ` (A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the `Council'); and ` (B) to provide or make available to the Council those reports or records or the information contained</i></p>	

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<p>information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.</p>	<p><i>therein.</i></p>	
	<p><i>2) TREATMENT OF RECORDS- The records and reports of any private fund to which an investment adviser registered under this title provides investment advice shall be deemed to be the records and reports of the investment adviser.</i></p>	
<p><i>2) REQUIRED INFORMATION- The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser--</i></p> <ul style="list-style-type: none"> <i>1) (A) the amount of assets under management;</i> <i>1) (B) the use of leverage (including off-balance sheet leverage);</i> <i>1) (C) counterparty credit risk exposures;</i> <i>1) (D) trading and investment positions;</i> <i>1) (E) trading practices; and</i> <i>1) (F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.</i> 	<p><i>3) REQUIRED INFORMATION- The records and reports required to be maintained by a private fund and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of--</i></p> <ul style="list-style-type: none"> <i>1) (A) the amount of assets under management and use of leverage;</i> <i>1) (B) counterparty credit risk exposure;</i> <i>1) (C) trading and investment positions;</i> <i>1) (D) valuation policies and practices of the fund;</i> <i>1) (E) types of assets held;</i> <i>1) (F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;</i> <i>1) (G) trading practices; and</i> <i>1) (H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.</i> 	
<p><i>3) OPTIONAL INFORMATION- The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, taking into</i></p>		

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<p>account the public interest and potential to contribute to systemic risk, may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.</p>		
<p>“(4) MAINTENANCE OF RECORDS- An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.</p>	<p><i>“(4) MAINTENANCE OF RECORDS- An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.</i></p>	
	<p><i>“(5) FILING OF RECORDS- The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.</i></p>	
<p>“(5) EXAMINATION OF RECORDS- “(A) PERIODIC AND SPECIAL EXAMINATIONS- All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. “(B) AVAILABILITY OF RECORDS- An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.</p>	<p><i>“(6) EXAMINATION OF RECORDS- “(A) PERIODIC AND SPECIAL EXAMINATIONS- The Commission-- “(i) shall conduct periodic inspections of all records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and “(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk. “(B) AVAILABILITY OF RECORDS- An investment adviser registered under this title shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.</i></p>	
<p>“(6) INFORMATION SHARING- The Commission shall make available to the Board of Governors of the Federal Reserve</p>	<p><i>“(7) INFORMATION SHARING- “(A) IN GENERAL- The Commission shall make</i></p>	

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<p>System and to the Financial Services Oversight Council, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or the Financial Services Oversight Council, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection shall be kept confidential in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).</p> <p>“(7) DISCLOSURES OF CERTAIN PRIVATE FUND INFORMATION- An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.</p>	<p><i>available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.</i></p> <p><i>“(B) CONFIDENTIALITY- The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established by the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.”.</i></p>	
<p>“(8) APPLICABLE PRIVILEGES NOT WAIVED- An investment advisor, and investment advisor to a private fund, a private fund, foreign private fund advisor, a foreign private fund, an advisor to a venture capital fund, a venture capital fund, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by--</p> <p>“(A) the Financial Services Oversight Council;</p> <p>“(B) the Commission;</p> <p>“(C) any Federal financial regulator or State financial regulator, in any capacity; or</p> <p>“(D) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).</p>		
<p>“(9) NON-DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION AND CONFIDENTIALITY OF REPORTS- Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this section 204(b) shall be subject to the same limitations on public disclosure as any facts ascertained during an examination as provided by section 210(b) of this title. The Commission may not compel the private fund to disclose such proprietary information to counterparties and creditors. For purposes of this section, proprietary information shall include sensitive, non-public information</p>	<p><i>“(8) COMMISSION CONFIDENTIALITY OF REPORTS- Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission--</i></p> <p><i>“(A) to withhold information from Congress, upon an agreement of confidentiality; or</i></p> <p><i>“(B) prevent the Commission from complying with--</i></p> <p><i>“(i) a request for information from any other Federal department or agency or any self-</i></p>	

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<p>regarding the investment adviser's investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the Commission determines to be proprietary. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or to prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.'</p>	<p><i>regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or</i></p> <p><i>ˆ(ii) an order of a court of the United States in an action brought by the United States or the Commission.</i></p> <p><i>ˆ(9) OTHER RECIPIENTS CONFIDENTIALITY- Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).</i></p> <p><i>ˆ(10) PUBLIC INFORMATION EXCEPTION-</i></p> <p><i>ˆ(A) IN GENERAL- The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 210(b) of this title.</i></p> <p><i>ˆ(B) PROPRIETARY INFORMATION- For purposes of this paragraph, proprietary information includes--</i></p> <p><i>ˆ(i) sensitive, non-public information regarding the investment or trading strategies of the investment adviser;</i></p> <p><i>ˆ(ii) analytical or research methodologies;</i></p> <p><i>ˆ(iii) trading data;</i></p> <p><i>ˆ(iv) computer hardware or software containing intellectual property; and</i></p> <p><i>ˆ(v) any additional information that the Commission determines to be proprietary.</i></p>	
	<p><i>ˆ(11) ANNUAL REPORT TO CONGRESS- The Commission</i></p>	

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	<p><i>shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.'</i></p>	
<p>SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.</p> <p>Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).</p>	<p>SEC. 405. DISCLOSURE PROVISION ELIMINATED.</p> <p><i>Section 210(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10(c)) is amended by inserting before the period at the end the following: `or for purposes of assessment of potential systemic risk'.</i></p>	
<p>SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.</p> <p>Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following new subsection: `l) Exemption of and Reporting by Venture Capital Fund Advisers- The Commission shall identify and define the term `venture capital fund' and shall provide an adviser to such a fund an exemption from the registration requirements under this section (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.'</p>	<p>SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.</p> <p><i>Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following: `l) Exemption of Venture Capital Fund Advisers- No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules to define the term `venture capital fund' for purposes of this subsection.'</i></p>	
<p>SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.</p> <p>Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), as amended by section 5006, is further amended by adding at the end the following new subsections: `m) Exemption of and Reporting by Certain Private Fund Advisers- `1) IN GENERAL- The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000. `2) REPORTING- The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate</p>		

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<p>in the public interest or for the protection of investors.</p> <p>(n) Registration and Examination of Mid-sized Private Fund Advisers- In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.'</p>		
	<p>SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRIVATE EQUITY FUND ADVISERS.</p> <p><i>Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following:</i></p> <p><i>(m) Exemption of and Reporting by Private Equity Fund Advisers-</i></p> <p><i>(1) IN GENERAL- Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund or funds.</i></p> <p><i>(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION- Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules--</i></p> <p><i>(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission taking into account fund size, governance, investment strategy, risk, and other factors, as the Commission determines necessary and appropriate in the public interest and for the protection of investors;</i></p> <p><i>and</i></p> <p><i>(B) to define the term 'private equity fund' for purposes of this subsection.'</i></p>	
<p>SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.</p> <p>Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended--</p> <p>(1) by amending subsection (a) to read as follows:</p> <p>(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers</p>	<p>SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.</p> <p><i>Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended--</i></p> <p><i>(1) in subsection (a), by inserting before the period at the end of the first sentence the following: ', including rules and regulations defining technical, trade, and other terms used in this title, except that the Commission may not define the term</i></p>	

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<p>conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may--</p> <p>(1) classify persons and matters within its jurisdiction based upon, but not limited to--</p> <ul style="list-style-type: none"> (A) size; (B) scope; (C) business model; (D) compensation scheme; or (E) potential to create or increase systemic risk; <p>(2) prescribe different requirements for different classes of persons or matters; and</p> <p>(3) ascribe different meanings to terms (including the term 'client', except the Commission shall not ascribe a meaning to the term 'client' that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser) used in different sections of this title as the Commission determines necessary to effect the purposes of this title.'; and</p> <p>(2) by adding at the end the following new subsection:</p> <p>(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(l), 203(m), and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).'</p>	<p>'client' for purposes of paragraphs (1) and (2) of section 206 to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser'; and</p> <p>(2) by adding at the end the following:</p> <p>(e) Disclosure Rules on Private Funds- The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under this title and the Commodity Exchange Act (7 U.S.C. 1a et seq.).'</p>	
<p>SEC. 5009. GAO STUDY.</p> <p>(a) Study Required- The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirements and ongoing reporting requirements under this subtitle and the amendments made by this subtitle.</p> <p>(b) Report to the Congress- Not later than the end of the 2-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a).</p>		

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<p>SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.</p> <p>(a) Effective Date- This subtitle, and the amendments made by this subtitle, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this title.</p> <p>(b) Transition Period- The Securities and Exchange Commission shall prescribe rules and regulations to the extent necessary to permit an investment adviser who will be required to register with the Securities and Exchange Commission by reason of this subtitle with the option of registering with the Securities and Exchange Commission before the date described under subsection (a).</p>	<p>SEC. 416. TRANSITION PERIOD.</p> <p><i>Except as otherwise provided in this title, this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission.</i></p>	
<p>SEC. 5011. QUALIFIED CLIENT STANDARD.</p> <p>Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following: `With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after the date of the enactment of the Private Fund Investment Advisers Registration Act of 2009, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000.'.</p>		
	<p>SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.</p> <p><i>Section 203A(a)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a(a)(1)) is amended--</i></p> <p><i>(1) in subparagraph (A)--</i></p> <p><i>(A) by striking `25,000,000' and inserting `100,000,000'; and</i></p> <p><i>(B) by striking `or' at the end;</i></p> <p><i>(2) in subparagraph (B), by striking the period at the end and inserting `; or'; and</i></p> <p><i>(3) by adding at the end the following:</i></p> <p><i>(C) is an adviser to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn its election.'.</i></p>	

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	<p>SEC. 411. CUSTODY OF CLIENT ASSETS.</p> <p><i>The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:</i></p> <p>SEC. 223. CUSTODY OF CLIENT ACCOUNTS.</p> <p><i>‘An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.’</i></p>	
	<p>SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.</p> <p><i>(a) In General- The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.</i></p> <p><i>(b) Review and Adjustment-</i></p> <p><i>(1) INITIAL REVIEW AND ADJUSTMENT-</i></p> <p><i>(A) INITIAL REVIEW- The Commission may undertake a review of the definition of the term ‘accredited investor’, as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.</i></p> <p><i>(B) ADJUSTMENT OR MODIFICATION- Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ‘accredited investor’, excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to</i></p>	

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	<p><i>natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.</i></p> <p>(2) SUBSEQUENT REVIEWS AND ADJUSTMENT-</p> <p>(A) SUBSEQUENT REVIEWS- <i>Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.</i></p> <p>(B) ADJUSTMENT OR MODIFICATION- <i>Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.</i></p>	
	<p>SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.</p> <p><i>The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 3 years after the date of enactment of this Act.</i></p>	
	<p>SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.</p> <p><i>The Comptroller General of the United States shall--</i></p> <p>(1) <i>conduct a study of the feasibility of forming a self-regulatory</i></p>	

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	<p><i>organization to oversee private funds; and</i></p> <p><i>(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 1 year after the date of enactment of this Act.</i></p>	
	<p>SEC. 415. COMMISSION STUDY AND REPORT ON SHORT SELLING.</p> <p><i>(a) Study- The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of--</i></p> <p style="padding-left: 40px;"><i>(1) the failure to deliver shares sold short; or</i></p> <p style="padding-left: 40px;"><i>(2) delivery of shares on the fourth day following the short sale transaction.</i></p> <p><i>(b) Report- The Division of Risk, Strategy, and Financial Innovation shall submit a report, together with any recommendations for market improvements, including consideration of real time reporting of short sale positions, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study conducted under subsection (a), not later than 2 years after the date of enactment of this Act.</i></p>	
<p>Subtitle B--Accountability and Transparency in Rating Agencies Act</p> <p>SEC. 6001. SHORT TITLE.</p> <p>This subtitle may be cited as the 'Accountability and Transparency in Rating Agencies Act of 2009'.</p>	<p>TITLE IX--INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES</p> <p>Subtitle C--Improvements to the Regulation of Credit Rating Agencies</p>	
	<p>SEC. 931. FINDINGS.</p> <p><i>Congress finds the following:</i></p> <p style="padding-left: 40px;"><i>(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</i></p>	

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	<p><i>national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p>	
<p>SEC. 6002. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.</p> <p>(a) In General- Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended--</p>		
<p>(1) in subsection (a)--</p> <p>(A) by amending paragraph (1)(A) to read as follows: `A) IN GENERAL- Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the `applicant'), and shall file with</p>		

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<p>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).'</p> <p>(B) in paragraph (2)(A), by striking `furnished to' and inserting `filed with';</p> <p>(C) in paragraph (2)(B)(i)(II), by striking `furnished to' and inserting `filed with'; and</p> <p>(D) by adding at the end of paragraph (1) the following:</p> <p>`(F) EXEMPTIONS- The registration requirement in subparagraph (A) shall not apply to--</p> <p style="padding-left: 2em;">(i) a credit rating agency if the credit rating agency--</p> <p style="padding-left: 4em;">(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and</p> <p style="padding-left: 4em;">(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or</p> <p style="padding-left: 2em;">(ii) such other persons as the Commission may designate by rules and regulations or order when in the public interest and for the protection of investors.'</p> <p>(2) in subsection (b)--</p> <p>(A) in paragraph (1)(A), by striking `furnished' and inserting `filed' and by striking `furnishing' and inserting `filing';</p> <p>(B) in paragraph (1)(B), by striking `furnishing' and inserting `filing'; and</p> <p>(C) in the first sentence of paragraph (2), by striking `furnish to' and inserting `file with';</p>		
<p>(3) in subsection (c)--</p> <p>(A) paragraph (2)--</p> <p style="padding-left: 2em;">(i) in the second sentence by inserting `including the requirements of this section,' after `Notwithstanding any other provision of law,'; and</p> <p style="padding-left: 2em;">(ii) by inserting before the period at the end of</p>	<p>SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND TRANSPARENCY OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.</p> <p><i>Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended--</i></p> <p style="padding-left: 2em;"><i>(1) in subsection (c)--</i></p>	

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<p>the last sentence ` , provided that this paragraph does not afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provision of the securities laws';</p> <p>(B) by adding at the end the following new paragraph: ` (3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS-</p> <p>` (A) IN GENERAL- The Commission shall examine credit ratings issued by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization to review whether--</p> <p>` (i) the nationally recognized statistical rating organization has established and documented a system of internal controls, due diligence and implementation of methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule;</p> <p>` (ii) the nationally recognized statistical rating organization adheres to such system; and</p> <p>` (iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its credit ratings, methodologies, and procedures are consistent with such system.</p> <p>` (B) MANNER AND FREQUENCY- The Commission shall conduct reviews required by this paragraph no less frequently than annually in a manner to be determined by the Commission.</p> <p>` (4) PROVISION OF INFORMATION TO THE COMMISSION- Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under paragraph (3).</p>	<p>(A) in paragraph (2)--</p> <p>(i) in the second sentence, by inserting `any other provision of this section, or' after `Notwithstanding'; and</p> <p>(ii) by inserting after the period at the end the following: `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.'; and</p> <p>(B) by adding at the end the following: ` (3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS-</p> <p>` (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.</p>	
<p>` (5) DISCLOSURES WITH RESPECT TO STRUCTURED SECURITIES-</p> <p>` (A) REGULATIONS REQUIRED- The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized</p>		

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<p>statistical rating organizations shall, with respect to disclosure of the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings for structured securities--</p> <p> (i) specify the information required to be disclosed to such rating organizations by the sponsor, issuers, and underwriters of such structured securities on the collateral underlying such structured securities; and</p> <p> (ii) establish and implement procedures to collect and disclose information about the processes used by such sponsor, issuers, and underwriters to assess the accuracy and integrity of their data and fraud detection.</p> <p> (B) DEFINITION- For purposes of this paragraph, the Commission shall, by rule or regulation, define the term 'structured securities' as appropriate in the public interest and for the protection of investors.</p>		
<p> (6) HISTORICAL DEFAULT RATE DISCLOSURES- The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall require each nationally recognized statistical rating organization to establish and maintain, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by such organization.';</p>		
<p>(4) in subsection (d)--</p> <p> (A) in the heading, by inserting 'Fine,' after 'Censure,';</p> <p> (B) by striking 'shall censure' and all that follows through 'revocation' and inserting the following: 'shall censure, fine in accordance with section 21B(a), 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, who is seeking to become associated, 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, fine in accordance with section 21B(a), place limitations on the activities or functions of such person,</p>		

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<p>suspend for a period not exceeding 12 months, 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, fine, placing of limitations, bar, suspension, or revocation';</p> <p>(C) in paragraph (2), by striking `furnished to' and inserting `filed with';</p> <p>(D) in paragraph (4)--</p> <p style="padding-left: 40px;">(i) by striking `furnish' and inserting `file'; and</p> <p style="padding-left: 40px;">(ii) by striking `or' at the end;</p> <p>(E) in paragraph (5), by striking the period at the end and inserting a semicolon; and</p>		
	<p><i>“(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></p> <p style="padding-left: 40px;"><i>“(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);</i></p> <p style="padding-left: 40px;"><i>“(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and</i></p> <p style="padding-left: 40px;"><i>“(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.”;</i></p> <p><i>(2) in subsection (d)--</i></p> <p style="padding-left: 40px;"><i>(A) in the subsection heading, by inserting `Fine,' after `Censure,';</i></p> <p style="padding-left: 40px;"><i>(B) by inserting `fine,' after `censure,' each place that term appears;</i></p> <p style="padding-left: 40px;"><i>(C) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;</i></p> <p style="padding-left: 40px;"><i>(D) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;</i></p> <p style="padding-left: 40px;"><i>(E) in the matter preceding subparagraph (A), as so</i></p>	

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	<p style="text-align: center;"><i>redesignated, by striking 'The Commission' and inserting the following:</i></p> <p>(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES-</p> <p>(A) IN GENERAL- <i>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.</i></p> <p>(B) CONSIDERATIONS- <i>In making any determination under subparagraph (A), the Commission shall consider--</i></p> <p style="padding-left: 40px;"><i>(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</i></p> <p style="padding-left: 40px;"><i>(ii) such other factors as the Commission may determine.';</i></p>	
<p style="text-align: center;">(F) by adding at the end the following:`</p> <p>(6) has failed reasonably to supervise another person who commits a violation of the securities laws, the rules or regulations there under, or any rules of the Municipal Securities Rulemaking Board if such other person is subject to his or her supervision, except that no person shall be deemed to have failed reasonably to supervise any other person under this paragraph, if--</p> <p style="padding-left: 20px;">(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person; and</p> <p style="padding-left: 20px;">(B) such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were</p>	<p>SEC. 932. <i>(adding matter preceding subparagraph (A) of 15 U.S.C. 78o-7(d) as redesignated)</i></p> <p>(1) IN GENERAL- <i>The Commission';</i></p> <p style="padding-left: 20px;"><i>(F) in subparagraph (D), as so redesignated, by striking `or' at the end;</i></p> <p style="padding-left: 20px;"><i>(G) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and</i></p> <p style="padding-left: 20px;"><i>(H) by adding at the end the following:</i></p> <p style="padding-left: 40px;"><i>(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.</i></p>	

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<p>not being complied with; or `(7) fails to conduct sufficient surveillance to ensure that credit ratings remain current, as applicable.';</p>		
<p>(5) in subsection (e), by striking paragraph (1) and inserting the following new paragraph (1): `(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, provided that such nationally recognized statistical rating organization certifies that it received less than \$250,000,000 during its last full fiscal year in net revenue for providing credit ratings on securities and money market instruments issued in the United States.'; (6) by amending subsection (h) to read as follows:</p>		
<p> `(h) Corporate Governance, Organization, and Management of Conflicts of Interest- `(1) BOARD OF DIRECTORS- `(A) IN GENERAL- Each nationally recognized statistical rating organization shall have a board of directors. `(B) INDEPENDENT DIRECTORS- At least 1/3 of such board, but no less than 2 of the members of the board of directors, shall be independent directors. In order to be considered independent for purposes of this subsection, a director of a nationally recognized statistical rating organization 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. `(C) COMPENSATION AND TERM- The compensation of the independent directors 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</p>	<p>SEC. 932. (adding 15 U.S.C. 78o-7(t))</p> <p> `(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 1/2 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</p>	

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<p>judgment. The term of office of the independent directors shall be for a pre-agreed fixed period not exceeding 5 years and shall not be renewable.</p> <p>`(D) DUTIES- In addition to the overall responsibility of the board of directors, the board shall oversee--</p> <ul style="list-style-type: none"> `(i) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings; `(ii) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest; `(iii) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and `(iv) the compensation and promotion policies and practices of the nationally recognized statistical rating organization. 	<p><i>nationally recognized statistical rating organization or with any affiliated company thereof; and</i></p> <p><i>`(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.</i></p> <p><i>`(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 pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.</i></p> <p><i>`(3) DUTIES OF BOARD OF DIRECTORS- In addition to the overall responsibilities of the board of directors, the board shall oversee--</i></p> <ul style="list-style-type: none"> <i>`(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;</i> <i>`(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;</i> <i>`(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and</i> <i>`(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.</i> <p><i>`(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--</i></p> <ul style="list-style-type: none"> <i>`(A) at least 1/2 of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and</i> <i>`(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating</i> 	

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	<p style="text-align: center;"><i>organization.</i></p> <p><i>“(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 includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.”</i></p>	
<p><i>“(2) 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 the nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.</i></p>		
<p><i>“(3) COMMISSION RULES- The Commission shall issue rules 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 rules regarding--</i></p> <p style="padding-left: 20px;"><i>“(A) conflicts of interest relating to 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;</i></p> <p style="padding-left: 20px;"><i>“(B) conflicts of interest relating to business relationships, ownership interests, and affiliations of nationally recognized statistical rating organization board members with obligors, 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;</i></p> <p style="padding-left: 20px;"><i>“(C) conflicts of interest relating to any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person who underwrites securities, money market instruments, or other instruments that are the subject of a credit rating;</i></p>	<p><i>SEC. 932.</i> <i>(adding to indicated subsections of 15 U.S.C. 78o-7(t)).</i></p> <p><i>(3) in subsection (h), by adding at the end the following:</i></p> <p><i>“(3) SEPARATION OF RATINGS FROM SALES AND MARKETING-</i></p> <p style="padding-left: 20px;"><i>“(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.</i></p> <p style="padding-left: 20px;"><i>“(B) CONTENTS OF RULES- The rules issued under subparagraph (A) shall provide for--</i></p> <p style="padding-left: 40px;"><i>“(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</i></p> <p style="padding-left: 40px;"><i>“(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></p> <p style="padding-left: 60px;"><i>“(I) the nationally recognized</i></p>	

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<p>(D) a requirement that each nationally recognized statistical rating organization disclose on such organization's website a consolidated report at the end of each fiscal year that shows--</p> <p>(i) the percent of net revenue earned by the nationally recognized statistical rating organization or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, for that fiscal year for providing services and products other than credit rating services to each person who paid for a credit rating; and</p> <p>(ii) the relative standing of each person who paid for a credit rating that was outstanding as of the end of the fiscal year in terms of the amount of net revenue earned by the nationally recognized statistical rating organization attributable to each such person and classified by the highest 5, 10, 25, and 50 percentiles and lowest 50 and 25 percentiles;</p> <p>(E) the establishment of a system of payment for credit ratings issued by each nationally recognized statistical rating organization that requires that payments are structured in a manner designed to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of credit ratings over time, as applicable, and that incentives for reliable credit ratings are in place;</p> <p>(F) a requirement that a nationally recognized statistical rating organization disclose with the publication of a credit rating the type and number of credit ratings it has provided to the person being rated or affiliates of such person, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and</p> <p>(G) any other potential conflict of interest, as the Commission determines necessary or appropriate in the</p>	<p><i>statistical rating organization has committed a violation of a rule issued under this subsection; and</i></p> <p><i>(II) the violation of a rule issued under this subsection affected a rating.';</i></p> <p>(4) in subsection (j)--</p> <p>(A) by striking 'Each' and inserting the following:</p> <p>(1) IN GENERAL- Each'; and</p> <p>(B) by adding at the end the following:</p> <p>(2) LIMITATIONS-</p> <p>(A) IN GENERAL- Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity--</p> <p>(i) perform credit ratings;</p> <p>(ii) participate in the development of ratings methodologies or models;</p> <p>(iii) perform marketing or sales functions; or</p> <p>(iv) participate in establishing compensation levels, other than for employees working for that individual.</p> <p>(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.</p> <p>(3) OTHER DUTIES- Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of--</p> <p>(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and</p> <p>(B) confidential, anonymous complaints by employees or users of credit ratings.</p>	

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public interest or for the protection of investors.		
<p> `(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 </p>		

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<p style="text-align: center;">materially modified or amended.</p> <p> `(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.'; (7) by amending subsection (j) to read as follows: `(j) Designation of Compliance Officer- `(1) IN GENERAL- Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer. `(2) DUTIES- The compliance officer shall-- `(A) report directly to the board of the nationally recognized statistical rating organization; `(B) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of such compliance) may compromise the integrity of the credit rating process; `(C) review compliance with the internal control system with respect to the procedures and methodologies for determining credit ratings, including qualitative methodologies and quantitative inputs used in the rating process, and assess the risk that such internal control system is reasonably designed to ensure the integrity and quality of the credit rating process; `(D) in consultation with the board of the nationally </p>		

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<p>recognized statistical rating organization, resolve any conflicts of interest that may arise;</p> <p>\(E) be responsible for administering the policies and procedures required to be established pursuant to this section;</p> <p>\(F) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and</p> <p>\(G) establish procedures--</p> <ul style="list-style-type: none"> \(i) for the receipt, retention, and treatment of complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures required under this section; \(ii) for the receipt, retention, and treatment of confidential, anonymous complaints by employees, obligors, issuers, and investors; \(iii) for the remediation of non-compliance issues found during compliance office reviews, the reviews required under paragraph (7), internal or external audit findings, self-reported errors, or through validated complaints; and \(iv) designed so that ratings that the nationally recognized statistical rating organization disseminates reflect consideration of all information in a manner generally consistent with the nationally recognized statistical rating organization's published rating methodology, including information which is provided, received, or otherwise obtained from obligor, issuer and non-issuer sources, such as investors, the media, and other interested or informed parties. 		
<p>\(3) LIMITATIONS- The compliance officer shall not, while serving in that capacity--</p> <ul style="list-style-type: none"> \(A) determine credit ratings; \(B) participate in the establishment of the procedures and methodologies or the qualitative methodologies and quantitative inputs used to determine credit ratings; \(C) perform marketing or sales functions; or 		

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<p>(D) participate in establishing compensation levels, other than for employees working for the compliance officer.</p>		
<p>(4) ANNUAL REPORTS REQUIRED- The compliance officer shall annually prepare and sign a report on the compliance of the nationally recognized statistical rating organization with the securities laws and such organization's internal policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the nationally recognized statistical rating organization that are required to be filed with the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.</p>	<p>(4) ANNUAL REPORTS REQUIRED-</p> <p>(A) ANNUAL REPORTS REQUIRED- <i>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></p> <p style="padding-left: 40px;"><i>(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</i></p> <p style="padding-left: 40px;"><i>(ii) a certification that the report is accurate and complete.</i></p> <p>(B) SUBMISSION OF REPORTS TO THE COMMISSION- <i>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.'; and</i></p> <p>(5) <i>by striking subsection (p) and inserting the following:</i></p> <p>(p) <i>Regulation of Nationally Recognized Statistical Rating Organizations-</i></p>	
<p>(5) COMPENSATION- The compensation of the compliance officer 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 the officer's judgment.';</p> <p>(8) in subsection (k)--</p> <p style="padding-left: 40px;">(A) by striking ', on a confidential basis,';</p> <p style="padding-left: 40px;">(B) by striking 'furnish to' and inserting 'file with';</p> <p style="padding-left: 40px;">(C) by striking 'Each nationally' and inserting the following:</p> <p>(1) IN GENERAL- Each nationally'; and</p> <p style="padding-left: 40px;">(D) by adding at the end the following new paragraph:</p> <p>(2) EXCEPTION- The Commission may treat as confidential any information provided by a nationally recognized statistical rating organization under this section consistent with applicable</p>		

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<p>Federal laws or Commission rules.'; (9) in subsection (l)(2)(A)(i), by striking 'furnished' and inserting 'filed'; (10) by amending subsection (p) to read as follows:</p>		
<p>(p) Establishment of SEC Office- (1) IN GENERAL- The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations. (2) STAFFING- The office of the Commission established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section.</p>	<p>SEC. 932. (adding 15 U.S.C. 78o-7(p)).</p> <p>(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.</p> <p>(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.</p> <p>(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;</p>	

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	<p> <i> `(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. </i> </p> <p> <i> `(C) INSPECTION REPORTS- The Commission shall make available to the public, in an easily understandable format, an annual report summarizing- </i> </p> <p> <i> - `(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. </i> </p>	
<p> <i> `(3) RULEMAKING AUTHORITY- The Commission shall-- `(A) establish, by rule, fines and other penalties for any </i> </p>	<p> <i> `(4) RULEMAKING AUTHORITY- The Commission shall-- `(A) establish, by rule, fines, and other penalties </i> </p>	

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<p>nationally recognized statistical rating organization that violates the applicable requirements of this title; and `(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations.'; and (11) by adding after subsection (p) the following new subsections: `(q) Transparency of Ratings Performance- `(1) RULEMAKING REQUIRED- The Commission shall, by rule, require each nationally recognized statistical rating organization to publicly disclose information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the performance of ratings and allowing investors to compare 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, so that investors can compare rating performance across rating organizations; `(B) are clear and informative for a wide range of investor sophistication; `(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission; `(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by investors; and `(E) 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.</p>	<p><i>applicable to any nationally recognized statistical rating organization that violates the requirements of this subsection and the rules thereunder; and `(B) issue such rules as may be necessary to carry out this subsection.</i> `(q) Transparency of Ratings Performance- `(1) RULEMAKING REQUIRED- <i>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.</i> `(2) CONTENT- <i>The rules of the Commission under this subsection shall require, at a minimum, disclosures that--</i> `(A) <i>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;</i> `(B) <i>are clear and informative for investors who use or might use credit ratings;</i> `(C) <i>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;</i> `(D) <i>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; and</i> `(E) <i>are appropriate to the business model of a nationally recognized statistical rating organization.</i></p>	
<p>`(r) Credit Ratings Methodologies- `(1) IN GENERAL- The Commission shall prescribe rules, in the public interest and for the protection of investors, that require each nationally recognized statistical rating organization to establish, maintain, and enforce written procedures and</p>	<p>SEC. 932. `(r) <i>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</i></p>	

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<p>methodologies and an internal control system with respect to such procedures and methodologies that are reasonably designed to--</p> <p> (A) ensure that credit ratings are determined using procedures and methodologies, including qualitative methodologies and quantitative inputs that are determined in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;</p> <p> (B) ensure that when major changes to credit rating procedures and methodologies, including to qualitative methodologies and quantitative inputs, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;</p> <p> (C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating; and</p> <p> (D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in current credit ratings being subject to rating actions.</p>	<p><i>quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization--</i></p> <p> (1) <i>to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are--</i></p> <p> (A) <i>approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior credit officer of the nationally recognized statistical rating organization; and</i></p> <p> (B) <i>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;</i></p> <p> (2) <i>to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that--</i></p> <p> (A) <i>the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;</i></p> <p> (B) <i>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</i></p> <p> (C) <i>the nationally recognized statistical rating organization publicly discloses the reason for the change; and</i></p> <p> (3) <i>to notify users of credit ratings--</i></p> <p> (A) <i>of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;</i></p> <p> (B) <i>when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;</i></p> <p> (C) <i>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</i></p> <p> (D) <i>of the likelihood of a material change described in subparagraph (B) resulting in a change in current</i></p>	

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	<i>credit ratings.</i>	
<p>^(2) SYMBOLS- The Commission may prescribe rules that require nationally recognized statistical rating organizations to establish credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors, provided such rules do not prevent public pension funds or other State regulated entities from investing in rated products.</p>		
<p>^(3) RATING CLARITY AND CONSISTENCY-</p> <p>^(A) COMMISSION OBLIGATION- Subject to subparagraphs (B) and (C), the Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures reasonably designed--</p> <p>^(i) with respect to credit ratings of securities and money market instruments, to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of such securities and instruments;</p> <p>^(ii) to define clearly any credit rating symbol used by that organization; and</p> <p>^(iii) to apply such credit rating symbol in a consistent manner for all types of securities and money market instruments.</p> <p>^(B) ADDITIONAL CREDIT FACTORS- Nothing in subparagraph (A)--</p> <p>^(i) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance;</p> <p>^(ii) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities; or</p> <p>^(iii) prohibits a nationally recognized statistical rating organization from using an</p>		

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<p>additional symbol with respect to the ratings described in subparagraph (A)(i) for the purpose of distinguishing the ratings of a certain type of security or money market instrument from ratings of any other types of securities or money market instruments.</p> <p>“(C) COMPLEMENTARY RATINGS- The Commission shall not impose any requirement under subparagraph (A) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in subparagraph (A)(i) and that are created to measure a discrete aspect of the security's or instrument's risk.</p>		
<p>“(s) Transparency of Credit Rating Methodologies and Information Reviewed-</p> <p>“(1) IN GENERAL- The Commission shall require, by rule, a nationally recognized statistical rating organization to include with the publication of each credit rating regardless of whether the credit rating is made readily accessible for free or a reasonable fee a form that discloses information about the assumptions underlying the procedures and methodologies used, and the data relied on, to determine the credit rating in the format prescribed in paragraph (2) and containing the information described in paragraph (3).</p> <p>“(2) FORMAT- The Commission shall prescribe a form for use under paragraph (1) that--</p> <p>“(A) is designed in a user-friendly and helpful manner for investors to understand the information contained in the report;</p> <p>“(B) requires the nationally recognized statistical rating organization to provide the content, as required by paragraph (3), in a manner that is directly comparable across securities; and</p> <p>“(C) the nationally recognized statistical rating organization certifies the information on the form as true and accurate.</p> <p>“(3) CONTENT- The Commission shall prescribe a form that requires a nationally recognized statistical rating organization to disclose--</p> <p>“(A) the main assumptions included in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions</p>	<p>“(s) Transparency of Credit Rating Methodologies and Information Reviewed-</p> <p>“(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--</p> <p>“(A) information relating to--</p> <p>“(i) the assumptions underlying the credit rating procedures and methodologies;</p> <p>“(ii) the data that was relied on to determine the credit rating; and</p> <p>“(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</p> <p>“(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.</p> <p>“(2) FORMAT- The form developed under paragraph (1) shall--</p> <p>“(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;</p> <p>“(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</p> <p>“(C) be made readily available to users of credit</p>	

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<p>about the correlation of defaults across underlying assets used in rating certain structured products;</p> <p>`(B) the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the nationally recognized statistical rating organization is not commenting on, such as liquidity, market, and other risks;</p> <p>`(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;</p> <p>`(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;</p> <p>`(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;</p> <p>`(F) a statement containing an overall assessment of the quality of information available and considered in producing a credit rating for a security in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;</p> <p>`(G) an explanation or measure of the potential volatility for the credit rating, including any factors that might lead to a change in the credit rating, and the extent of the change that might be anticipated under different conditions;</p> <p>`(H) information on the content of the credit rating, including--</p> <ul style="list-style-type: none"> `(i) the expected default probability; and `(ii) the loss given default; <p>`(I) information on the sensitivity of the rating to assumptions made by the nationally recognized</p>	<p><i>ratings, in electronic or paper form, as the Commission may, by rule, determine.</i></p> <p><i>`(3) CONTENT OF FORM-</i></p> <p><i>`(A) QUALITATIVE CONTENT- Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)--</i></p> <ul style="list-style-type: none"> <i>`(i) the credit ratings produced by the nationally recognized statistical rating organization;</i> <i>`(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 obligors used in rating structured products;</i> <i>`(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;</i> <i>`(iv) information on the uncertainty of the credit rating, including--</i> <ul style="list-style-type: none"> <i>`(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and</i> <i>`(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including--</i> <p><i>`(aa) any limits on the scope of historical data; and</i></p> <p><i>`(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;</i></p> <p><i>`(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</i></p>	

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<p>statistical rating organization, including--</p> <ul style="list-style-type: none"> `(i) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if such assumptions were proven false or inaccurate; and `(ii) an analysis, using concrete examples, on how each of the 5 assumptions identified under clause (i) impacts a rating; <p>`(J) where 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</p> <p>`(K) such additional information as may be required by the Commission.</p>	<p><i>that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;</i></p> <ul style="list-style-type: none"> <i>`(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;</i> <i>`(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;</i> <i>`(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and</i> <i>`(ix) such additional information as the Commission may require.</i> <p><i>`(B) QUANTITATIVE CONTENT- Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection--</i></p> <ul style="list-style-type: none"> <i>`(i) an explanation or measure of the potential volatility of the credit rating, including--</i> <ul style="list-style-type: none"> <i>`(I) any factors that might lead to a change in the credit ratings; and</i> <i>`(II) the magnitude of the change that a user can expect under different market conditions;</i> <i>`(ii) information on the content of the rating, including--</i> <ul style="list-style-type: none"> <i>`(I) the historical performance of the rating; and</i> <i>`(II) the expected probability of default and the expected loss in the event of default;</i> <i>`(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization; and</i> <i>`(iv) such additional information as may be required by the Commission.</i> 	

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<p>^(4) DUE DILIGENCE SERVICES-</p> <p>^(A) CERTIFICATION REQUIRED- In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization or an issuer, underwriter, or sponsor in connection with the issuance of a credit rating, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization written certification of such due diligence, which shall be subject to review by the Commission, and the issuer, underwriter, or sponsor shall provide any reports issued by the provider of such due diligence services to the nationally recognized statistical rating organization.</p> <p>^(B) FORMAT AND CONTENT- The Commission shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services certify that they have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide a reliable rating.</p> <p>^(C) DISCLOSURE OF CERTIFICATION- The Commission shall adopt rules requiring a nationally recognized statistical rating organization to disclose to persons who have access to the credit ratings of the nationally recognized statistical rating organization regardless of whether they are made readily accessible for free or a reasonable fee the certification described in subparagraph (A) with the publication of the applicable credit rating in a manner that may permit the persons to determine the adequacy and level of due diligence services provided by the third party.</p>	<p>^(B) CERTIFICATION REQUIRED- <i>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).</i></p> <p>^(C) FORMAT AND CONTENT- <i>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.</i></p> <p>^(D) DISCLOSURE OF CERTIFICATION- <i>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.</i></p>	
<p>^(t) Prohibited Activities- Beginning 180 days from the date of enactment of the Accountability, Reliability, and Transparency in Rating Agencies Act, it shall be unlawful for a nationally recognized statistical rating organization, or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, that provides a credit rating for an issuer, underwriter, or placement agent of a security to provide any non-rating service to that issuer, underwriter, or placement agent in determining a credit rating, including--</p>		

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<p> `(1) risk management advisory services; `(2) advice or consultation relating to any merger, sales, or disposition of assets of the issuer; `(3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance; and `(4) such further activities or services as the Commission may determine as necessary or appropriate in the public interest or for the protection of investors.' (b) Conforming Amendment- Section 3(a)(62) of the Securities Exchange Act of 1934 is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively </p>		
<p>SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.</p> <p>(a) In General- Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended by inserting before the period at the end of the following: `, and in the case of an action brought under this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient for purposes of pleading any required state of mind for purposes of such action that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization was grossly negligent in violating the securities laws'.</p> <p>(b) Pleading Standard- Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) amended to read as follows: `(m) Application of Enforcement Provisions; Pleading Standard in Private Rights of Action- Statements made by nationally recognized statistical rating organizations shall not be deemed forward looking statements for purposes of section 21E. In any private right of action commenced against a nationally recognized statistical rating organization under the securities laws, the same pleading standards with respect to gross negligence shall apply to the nationally recognized statistical rating organization as would apply to any other person in the same private right of action against such person.'</p> <p>(c) Requirements for Liability- Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4) is amended-- (1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and (2) by inserting after subsection (b) the following: `(c) Requirements for Liability- A purchaser of a security given a rating by a nationally recognized statistical rating organization shall have the right to recover for damages if the process of determining the credit rating was--</p>	<p>SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.</p> <p>(a) <i>Accountability- Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is amended to read as follows:</i> `(m) <i>Accountability-</i> `(1) <i>IN GENERAL- The enforcement and penalty provisions of this title 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 21E.</i> `(2) <i>RULEMAKING- The Commission shall issue such rules as may be necessary to carry out this subsection.'</i></p> <p>(b) <i>State of Mind- Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended--</i> (1) <i>by striking 'In any' and inserting the following:</i> `<i>(A) IN GENERAL- Except as provided in subparagraph (B), in any'; and</i> (2) <i>by adding at the end the following:</i> `<i>(B) EXCEPTION- In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed-</i> - `<i>(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology</i></p>	

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<p> `(1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and `(2) a substantial factor in the economic loss suffered by the investor. No action shall be maintained to enforce any liability created under this subsection unless brought within 2 years after the discovery of the facts constituting the violation and within 3 years after the initial issuance of the rating.' </p>	<p> <i>for evaluating credit risk; or `(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.'</i> </p>	
<p>SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.</p> <p>The Securities and Exchange Commission shall adopt rules under authority of the Securities Act of 1933 (15 U.S.C. 77a et seq.) to require issuers to disclose preliminary credit ratings received from nationally recognized statistical rating agencies on structured products and all forms of corporate debt.</p>		
<p>SEC. 6005. CHANGE TO DESIGNATION.</p> <p>The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking `nationally recognized statistical rating' each place it appears and inserting `nationally registered statistical rating'.</p>		
<p>SEC. 6006. TIMELINE FOR REGULATIONS.</p> <p>Unless otherwise specified in this subtitle, the Securities and Exchange Commission shall adopt rules and regulations, as required by the amendments made by this subtitle, not later than 365 days after the date of enactment.</p>		
<p>SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.</p> <p>Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 CFR 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 CFR 243.100(b)(2)(iii)).</p>		
<p>SEC. 6008. ADVISORY BOARD.</p> <p>(a) Establishment- Not later than 90 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall establish an advisory board to be known as the Credit Ratings Agency Advisory Board (in this section referred to as `the Board').</p> <p>(b) Appointment and Terms of Service- The Board shall consist of 7</p>		

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<p>members appointed by the Commission, no more than 2 of whom may be former employees of a credit rating agency. Members of the Board shall be prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the role that credit ratings play to a broad range of investors. Terms of service shall be staggered as determined by the Commission.</p> <p>(c) Duties- The Board shall--</p> <p>(1) advise the Commission concerning the rules and regulations required by the amendments made by this subtitle;</p> <p>(2) ensure that the Commission properly and fully executes its oversight functions and responsibilities with the respect to nationally recognized statistical rating organizations and individual participants; and</p> <p>(3) issue an annual report to Congress detailing its work and recommending any additional Congressional actions necessary to aid the Commission and such additional reports from time to time as appropriate when it feels that the Commission is not properly executing its oversight functions.</p>		
	<p>SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.</p> <p><i>Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7), as amended by this Act, is amended by adding at the end the following:</i></p> <p><i>“(w) Initial Credit Rating Assignments-</i></p> <p><i>“(1) DEFINITIONS- In this subsection the following definitions shall apply:</i></p> <p><i>“(A) BOARD- The term ‘Board’ means the Credit Rating Agency Board established under paragraph (2).</i></p> <p><i>“(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION- The term ‘qualified nationally recognized statistical rating organization’, with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Board determines, under paragraph (3)(B), to be qualified to issue initial credit ratings with respect to such category.</i></p> <p><i>“(C) REGULATIONS-</i></p> <p><i>“(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS-</i></p> <p><i>“(I) IN GENERAL- The term ‘category of structured finance products’--</i></p>	

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	<p><i>“(aa) shall include any asset backed security and any structured product based on an asset-backed security; and</i></p> <p><i>“(bb) shall be further defined and expanded by the Commission, by rule, as necessary.</i></p> <p style="text-align: center;"><i>“(II) CONSIDERATIONS- In issuing the regulations required under subclause (I), the Commission shall consider--</i></p> <p><i>“(aa) the types of issuers that issue structured finance products;</i></p> <p><i>“(bb) the types of investors who purchase structured finance products;</i></p> <p><i>“(cc) the different categories of structured finance products according to--</i></p> <p><i>“(AA) the types of capital flow and legal structure used;</i></p> <p><i>“(BB) the types of underlying products used; and</i></p> <p><i>“(CC) the types of terms used in debt securities;</i></p> <p><i>“(dd) the different values of debt securities; and</i></p> <p><i>“(ee) the different numbers of units of debt securities that are issued together.</i></p> <p style="text-align: center;"><i>“(ii) REASONABLE FEE- The Board shall issue regulations to define the term ‘reasonable fee’.</i></p> <p style="text-align: center;"><i>“(2) CREDIT RATING AGENCY BOARD-</i></p> <p style="text-align: center;"><i>“(A) IN GENERAL- Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall--</i></p> <p style="text-align: center;"><i>“(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;</i></p> <p style="text-align: center;"><i>“(ii) subject to subparagraph (C), select the initial members of the Board; and</i></p> <p style="text-align: center;"><i>“(iii) establish a schedule to ensure that the</i></p>	

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	<p><i>Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.</i></p> <p><i>“(B) SCHEDULE- The schedule established under subparagraph (A)(iii) shall prescribe when--</i></p> <ul style="list-style-type: none"> <i>“(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;</i> <i>“(ii) the Commission will issue rules and regulations under this section;</i> <i>“(iii) the Board may issue rules under this subsection; and</i> <i>“(iv) the Board will--</i> <ul style="list-style-type: none"> <i>“(I) begin accepting applications to select qualified national recognized statistical rating organizations; and</i> <i>“(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.</i> <p><i>“(C) MEMBERSHIP-</i></p> <ul style="list-style-type: none"> <i>“(i) IN GENERAL- The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.</i> <i>“(ii) SPECIFICATIONS- Of the members initially selected to serve on the Board--</i> <ul style="list-style-type: none"> <i>“(I) not less than a majority of the members shall be representatives of the investor industry who do not represent issuers;</i> <i>“(II) not less than 1 member should be a representative of the issuer industry;</i> <i>“(III) not less than 1 member should be a representative of the credit rating agency industry; and</i> <i>“(IV) not less than 1 member should be an independent member.</i> <i>“(iii) TERMS- Initial members shall be</i> 	

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	<p>appointed by the Commission for a term of 4 years.</p> <p>“(iv) NOMINATION AND ELECTION OF MEMBERS-</p> <p>“(I) IN GENERAL- Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.</p> <p>“(II) MODIFICATIONS OF THE BOARD- Prior to the expiration of the terms of office of the initial members, the Commission--</p> <p>“(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and</p> <p>“(bb) shall retain the composition of members described in clause (ii).</p> <p>“(v) RESPONSIBILITIES OF MEMBERS- Members shall perform, at a minimum, the duties described in this subsection.</p> <p>“(vi) RULEMAKING AUTHORITY- The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.</p> <p>“(D) OTHER AUTHORITIES OF THE BOARD- The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.</p> <p>“(E) REGULATION- The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.</p> <p>“(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION-</p>	

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	<p><i>“(A) APPLICATION-</i></p> <p><i>“(i) IN GENERAL- A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured finance products.</i></p> <p><i>“(ii) CONTENTS- An application submitted under clause (i) shall contain--</i></p> <p><i>“(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;</i></p> <p><i>“(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and</i></p> <p><i>“(III) any additional information the Board may require.</i></p> <p><i>“(iii) REJECTION OF APPLICATIONS- The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.</i></p> <p><i>“(B) SELECTION- The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).</i></p> <p><i>“(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION- An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified</i></p>	

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	<p><i>nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations.</i></p> <p><i>“(4) REQUESTING AN INITIAL CREDIT RATING- An issuer that seeks an initial credit rating for a structured finance product--</i></p> <p><i>“(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and</i></p> <p><i>“(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.</i></p> <p><i>“(5) ASSIGNMENT OF RATING DUTIES-</i></p> <p><i>“(A) IN GENERAL- For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.</i></p> <p><i>“(B) METHOD OF SELECTION-</i></p> <p><i>“(i) IN GENERAL- The Board shall--</i></p> <p><i>“(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and</i></p> <p><i>“(II) prescribe and publish the selection method to be used under subparagraph (A).</i></p> <p><i>“(ii) CONSIDERATION- In evaluating a selection method described in clause (i)(I), the Board shall consider--</i></p> <p><i>“(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;</i></p> <p><i>“(II) evaluations conducted under</i></p>	

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	<p>paragraph (7);</p> <p>“(III) formal feedback from institutional investors; and</p> <p>“(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.</p> <p>“(iii) PROHIBITION- The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.</p> <p>“(iv) ADJUSTMENT OF PROCESS- The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).</p> <p>“(C) RIGHT OF REFUSAL-</p> <p>“(i) REFUSAL- A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by--</p> <p>“(I) notifying the Board of such refusal; and</p> <p>“(II) submitting to the Board a written explanation of the refusal.</p> <p>“(ii) SELECTION- Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).</p> <p>“(iii) INSPECTION REPORTS- The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).</p> <p>“(6) DISCLAIMER REQUIRED- Each initial credit rating issued under this subsection shall include, in writing, the following disclaimer: “This initial rating has not been evaluated, approved, or certified by the Government of the United States or</p>	

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	<p>by a Federal agency.'.</p> <p>“(7) EVALUATION OF PERFORMANCE-</p> <p>“(A) IN GENERAL- The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.</p> <p>“(B) CONSIDERATIONS- The Board, in conducting an evaluation under subparagraph (A), shall consider--</p> <p>“(i) the results of the annual examination conducted under subsection (p)(3);</p> <p>“(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including--</p> <p>“(I) how the rated instruments perform;</p> <p>“(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and</p> <p>“(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and</p> <p>“(iii) any additional factors the Board determines to be relevant.</p> <p>“(C) REQUEST FOR REEVALUATION- Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.</p> <p>“(D) DISCLOSURE- The Board shall make the evaluations conducted under this paragraph available to Congress.</p> <p>“(8) RATING FEES CHARGED TO ISSUERS-</p> <p>“(A) LIMITED TO REASONABLE FEES- A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided</p>	

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	<p><i>under this section.</i></p> <p><i>ˆ(B) FEES- Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.</i></p> <p><i>ˆ(9) NO PROHIBITION ON ADDITIONAL RATINGS- Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.</i></p> <p><i>ˆ(10) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS-</i></p> <p><i>ˆ(A) IN GENERAL- Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if--</i></p> <p><i>ˆ(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and</i></p> <p><i>ˆ(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.</i></p> <p><i>ˆ(B) RULE OF CONSTRUCTION- For purposes of this section, a credit rating described in subparagraph (A) may not be construed to be an initial credit rating.</i></p> <p><i>ˆ(11) PUBLIC COMMUNICATIONS- Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by--</i></p> <p><i>ˆ(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security;</i></p> <p><i>or</i></p> <p><i>ˆ(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).</i></p> <p><i>ˆ(12) PROHIBITION ON MISREPRESENTATION- With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating</i></p>	

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	<p><i>organization selected under paragraph (5)(A).</i></p> <p><i>“(13) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE- If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.</i></p> <p><i>“(14) CONFLICTS-</i></p> <p><i>“(A) MEMBERS OR EMPLOYEES OF THE BOARD-</i></p> <p><i>“(i) LOAN OF MONEY OR SECURITIES PROHIBITED-</i></p> <p><i>“(I) IN GENERAL- A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.</i></p> <p><i>“(II) EXCEPTION- The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.</i></p> <p><i>“(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION- A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee--</i></p> <p><i>“(I) discloses the negotiations immediately upon initiation of the negotiations; and</i></p> <p><i>“(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is</i></p>	

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	<p style="text-align: center;"><i>accepted.</i></p> <p style="text-align: center;">`<i>(B) CREDIT ANALYSTS-</i></p> <p style="text-align: center;"><i>(i) IN GENERAL- A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.</i></p> <p style="text-align: center;"><i>(ii) EXCEPTION- The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.</i></p> <p style="text-align: center;">`<i>(15) EVALUATION OF CREDIT RATING AGENCY BOARD-</i></p> <p style="text-align: center;"><i>Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of--</i></p> <p style="text-align: center;"><i>(A) the continuation of the Board;</i></p> <p style="text-align: center;"><i>(B) any modification to the procedures of the Board;</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;"><i>(C) modifications to the provisions in this subsection.'</i></p>	
<p>SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.</p> <p>(a) Federal Deposit Insurance Act- The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended--</p> <p style="padding-left: 20px;">(1) in section 28(d)--</p> <p style="padding-left: 40px;">(A) in the subsection heading, by striking `Not of Investment Grade';</p> <p style="padding-left: 40px;">(B) in paragraph (1), by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation';</p> <p style="padding-left: 40px;">(C) in paragraph (2), by striking `not of investment grade';</p> <p style="padding-left: 40px;">(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and</p> <p style="padding-left: 40px;">(E) in paragraph (3) (as so redesignated)--</p> <p style="padding-left: 60px;">(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and</p>	<p>SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.</p> <p>(a) Federal Deposit Insurance Act- The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended--</p> <p style="padding-left: 20px;">(1) in section 7(b)(1)(E)(i), by striking `credit rating entities, and other private economic' and insert `private economic, credit,';</p> <p style="padding-left: 20px;">(2) in section 28(d)--</p> <p style="padding-left: 40px;">(A) in the subsection heading, by striking `Not of Investment Grade';</p> <p style="padding-left: 40px;">(B) in paragraph (1), by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation';</p> <p style="padding-left: 40px;">(C) in paragraph (2), by striking `not of investment grade';</p> <p style="padding-left: 40px;">(D) by striking paragraph (3);</p> <p style="padding-left: 40px;">(E) by redesignating paragraph (4) as paragraph (3);</p> <p style="padding-left: 40px;">and</p>	

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<p>(ii) in subparagraph (B) (as so redesignated), by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation';</p> <p>(2) in section 28(e)--</p> <p>(A) in the subsection heading, by striking `Not of Investment Grade';</p> <p>(B) in paragraph (1), by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation'; and</p> <p>(C) in paragraphs (2) and (3), by striking `not of investment grade' each place that it appears and inserting `that does not meet standards of credit-worthiness established by the Corporation'; and</p> <p>(3) in section 7(b)(1)(E)(i), by striking `credit rating entities, and other private economic' and insert `private economic, credit,'.</p> <p>(b) Federal Housing Enterprises Financial Safety and Soundness Act of 1992- Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended--</p> <p>(1) in the section heading, by striking `by rating organization'; and</p> <p>(2) by striking `that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,'.</p> <p>(c) Investment Company Act of 1940- Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking `is rated investment grade by not less than 1 nationally recognized statistical rating organization'</p> <p>and inserting `meets such standards of credit-worthiness that the Commission shall adopt'.</p> <p>(d) Revised Statutes- Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended--</p> <p>(1) in subsection (a)(2)(E), by striking `any applicable rating' and inserting `standards of credit-worthiness established by the Comptroller of the Currency';</p> <p>(2) in the heading for subsection (a)(3) by striking `Rating or Comparable Requirement' and inserting `Requirement';</p> <p>(3) subsection (a)(3), by amending subparagraph (A) to read as follows:</p>	<p>(F) in paragraph (3), as so redesignated--</p> <p>(i) by striking subparagraph (A);</p> <p>(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and</p> <p>(iii) in subparagraph (B), as so redesignated, by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation'; and</p> <p>(3) in section 28(e)--</p> <p>(A) in the subsection heading, by striking `Not of Investment Grade';</p> <p>(B) in paragraph (1), by striking `not of investment grade' and inserting `that does not meet standards of credit-worthiness as established by the Corporation'; and</p> <p>(C) in paragraphs (2) and (3), by striking `not of investment grade' each place that it appears and inserting `that does not meet standards of credit-worthiness established by the Corporation'.</p> <p>(b) Federal Housing Enterprises Financial Safety and Soundness Act of 1992- Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking `that is a nationally registered statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,'.</p> <p>(c) Investment Company Act of 1940- Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking `is rated investment grade by not less than 1 nationally recognized statistical rating organization' and inserting `meets such standards of credit-worthiness as the Commission shall adopt'.</p> <p>(d) Revised Statutes- Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended--</p> <p>(1) in subsection (a)(2)(E), by striking `any applicable rating' and inserting `standards of credit-worthiness established by the Comptroller of the Currency';</p> <p>(2) in the heading for subsection (a)(3) by striking `Rating or Comparable Requirement' and inserting `Requirement';</p> <p>(3) subsection (a)(3), by amending subparagraph (A) to read as follows:</p> <p style="padding-left: 40px;">`A) IN GENERAL- A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1</p>	

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<p>(A) IN GENERAL- A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.'</p> <p>(4) in the heading for subsection (f), by striking 'Maintain Public Rating or' and inserting 'Meet Standards of Credit-worthiness'; and</p> <p>(5) in subsection (f)(1), by striking 'any applicable rating' and inserting 'standards of credit-worthiness established by the Comptroller of the Currency'.</p> <p>(e) Securities Exchange Act of 1934- Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended--</p> <p>(1) in paragraph (41), by striking 'is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization' and inserting 'meets standards of credit-worthiness as defined by the Commission'; and</p> <p>(2) in paragraph (53)(A), by striking 'is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization' and inserting 'meets standards of credit-worthiness as defined by the Commission'.</p> <p>(f) World Bank Discussions- Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking 'rating' and inserting 'worthiness'.</p> <p>(g) Effective Date- The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this subtitle.</p>	<p><i>issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.'</i></p> <p><i>(4) in the heading for subsection (f), by striking 'Maintain Public Rating or' and inserting 'Meet Standards of Credit-worthiness'; and</i></p> <p><i>(5) in subsection (f)(1), by striking 'any applicable rating' and inserting 'standards of credit-worthiness established by the Comptroller of the Currency'.</i></p> <p><i>(e) Securities Exchange Act of 1934- Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended--</i></p> <p><i>(1) in paragraph (41), by striking 'is rated in one of the two highest rating categories by at least one nationally registered statistical rating organization' and inserting 'meets standards of credit-worthiness as established by the Commission'; and</i></p> <p><i>(2) in paragraph (53)(A), by striking 'is rated in 1 of the 4 highest rating categories by at least 1 nationally registered statistical rating organization' and inserting 'meets standards of credit-worthiness as established by the Commission'.</i></p> <p><i>(f) World Bank Discussions- Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking 'credit rating' and inserting 'credit-worthiness'.</i></p> <p><i>(g) Effective Date- The amendments made by this section shall take effect 2 years after the date of enactment of this Act.</i></p>	
<p>SEC. 6010. REVIEW OF RELIANCE ON RATINGS.</p> <p>(a) Agency Review-</p> <p>(1) REVIEW- Not later than 1 year after the date of the enactment of this subtitle, each Federal agency listed in paragraph (4) shall, to the extent applicable, review--</p> <p>(A) 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</p> <p>(B) any references to or requirements in such regulations regarding credit ratings.</p> <p>(2) MODIFICATIONS REQUIRED- Each such agency shall</p>		

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<p>modify any such regulations identified by the review conducted under paragraph (1) 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.</p> <p>(3) REPORT- Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).</p> <p>(4) APPLICABLE AGENCIES- The agencies required to conduct the review and report required by this subsection are--</p> <ul style="list-style-type: none"> (A) the Securities and Exchange Commission; (B) the Federal Deposit Insurance Corporation; (C) the Office of Thrift Supervision; (D) the Office of the Comptroller of the Currency; (E) the Board of Governors of the Federal Reserve; (F) the National Credit Union Administration; and (G) the Federal Housing Finance Agency. <p>(b) GAO Review of Other Agencies-</p> <p>(1) REVIEW- The Comptroller General shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(3), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.</p> <p>(2) REPORT- Not later than 18 months after the date of the enactment of this subtitle, the Comptroller General shall transmit to Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.</p>		
<p>SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE EDGAR SYSTEM.</p> <p>Not later than 180 days after the date of the enactment of this subtitle, the</p>		

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<p>Securities and Exchange Commission shall revise its rules in section 240.17g-2(a) and (d) of title 17, Code of Federal Regulations, to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on the website of a nationally recognized statistical rating organization also be provided to the Commission in a format consistent with publication by the Commission on the EDGAR system.</p>		
<p>SEC. 6012. EFFECT OF RULE 436(G).</p> <p>Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.</p>		
	<p>SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.</p> <p><i>Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7), as amended by this subtitle, is amended by adding at the end the following:</i></p> <p><i>“(u) Duty To Report Tips Alleging Material Violations of Law-</i></p> <p><i>“(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.</i></p> <p><i>“(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).”.</i></p>	
	<p>SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.</p> <p><i>Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7), as amended by this subtitle, is amended by adding at the end the following:</i></p> <p><i>“(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, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.”.</i></p>	

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	<p>SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.</p> <p><i>Not later than 1 year after the date of enactment of this Act, 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--</i></p> <p style="padding-left: 40px;"><i>(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and</i></p> <p style="padding-left: 40px;"><i>(2) is tested for knowledge of the credit rating process.</i></p>	
	<p>SEC. 937. TIMING OF REGULATIONS.</p> <p><i>Unless otherwise specifically provided in this subtitle, the 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.</i></p>	
	<p>SEC. 938. UNIVERSAL RATINGS SYMBOLS.</p> <p><i>(a) Rulemaking- The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that--</i></p> <p style="padding-left: 40px;"><i>(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;</i></p> <p style="padding-left: 40px;"><i>(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and</i></p> <p style="padding-left: 40px;"><i>(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.</i></p> <p><i>(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</i></p>	

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	<p><i>money market instruments.</i></p>	
	<p>SEC. 939A. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.</p> <p>(a) <i>Study-</i> The Commission shall conduct a study of--</p> <p>(1) <i>the independence of nationally recognized statistical rating organizations; and</i></p> <p>(2) <i>how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.</i></p> <p>(b) <i>Subjects for Evaluation-</i> In conducting the study under subsection (a), the Commission shall evaluate--</p> <p>(1) <i>the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;</i></p> <p>(2) <i>the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and</i></p> <p>(3) <i>any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.</i></p> <p>(c) <i>Report-</i> Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission 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 improving the integrity of ratings issued by nationally recognized statistical rating organizations.</p>	
	<p>SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.</p> <p>(a) <i>Study-</i> 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.</p>	

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	<p><i>(b) Report- Not later than 1 year after the date of enactment of this Act, 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.</i></p>	
	<p>SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.</p> <p><i>(a) Study- The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for-</i></p> <ul style="list-style-type: none"> <i>(1) establishing independent standards for governing the profession of rating analysts;</i> <i>(2) establishing a code of ethical conduct; and</i> <i>(3) overseeing the profession of rating analysts.</i> <p><i>(b) Report- Not later than 1 year after the date of enactment of this Act, 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).</i></p>	
<p>SEC. 6013. STUDIES.</p> <p>(a) GAO Study-</p> <p>(1) IN GENERAL- The Comptroller General shall conduct a study of--</p> <ul style="list-style-type: none"> (A) the implementation of this subtitle and the amendments made by this subtitle by the Securities and Exchange Commission; (B) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements; 		

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<p>(C) the effect of liability in private actions arising under the Securities Exchange Act of 1934;</p> <p>(D) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation; and</p> <p>(E) alternative methodologies to assess credit risk, including market-based measures.</p> <p>(2) REPORT- Not later than 30 months after the date of enactment of this subtitle, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).</p> <p>(3) ACCESS-</p> <p>(A) IN GENERAL- For purposes of conducting the study described in paragraph (1), the Comptroller General shall have access, upon request and with the consent of the Securities and Exchange Commission, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by each nationally recognized statistical rating organization, and to the officers, directors, employees, independent public accountants, financial advisors, staff and agents and representatives of the organization (as related to the agent's or representative's activities on behalf of the organization) at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records as the Comptroller General deems appropriate.</p> <p>(B) CONFIDENTIALITY- The Comptroller General may not disclose reasonably designated proprietary, trade secret or business confidential information obtained from the organization except that such information shall be disclosed by the Comptroller General--</p> <p>(i) to other Federal Government departments, agencies, and officials for official use upon request;</p> <p>(ii) to committees of Congress upon request;</p> <p>and</p>		

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<p>(iii) to a court in any judicial proceeding under court order.</p> <p>Nothing in this provision shall be construed to limit the requirements imposed by section 1905 of title 18, United States Code.</p>		
<p>(b) SEC Study on Assigning Credit Rating Agencies on a Rotating Basis- The Securities and Exchange Commission shall undertake a study on creating a system whereby nationally recognized statistical rating organizations are assigned on a rotating basis to issuers and obligors seeking a credit rating. Not later than 1 year after the date of enactment of this subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study.</p> <p>(c) SEC Study on Effect of New Requirements on NRSRO Registration- The Securities and Exchange Commission shall conduct a study on the effect of the amendments made by section 2 on credit rating agencies seeking to register as nationally recognized statistical rating organizations, including whether the new requirements in such amendments deter credit rating agencies from registering as nationally recognized statistical rating organizations. Not later than 1 year after the date of enactment of this subtitle, the Commission shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the findings of such study.</p>		
<p>(d) Study of Credit Ratings of Different Classes of Bonds-</p> <p>(1) STUDY- The Securities and Exchange Commission shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine--</p> <p>(A) whether there are fundamental differences in the treatment of different classes of bonds by such rating organizations that cause some classes of bonds to suffer from undue discrimination;</p> <p>(B) if there are such differences, what are the causes of such differences and how can they be alleviated;</p> <p>(C) whether there are factors other than risk of loss that are appropriate for the credit ratings agencies to consider when rating bonds, and do those factors vary across different sectors;</p> <p>(D) the types of financing arrangement used by municipal issuers;</p> <p>(E) the differing legal and regulatory regimes governing disclosures for corporate bonds and municipal bonds;</p>		

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<p>(F) the extent to which retail investors could be disadvantaged by a single ratings scale; and (G) practices, policies, and methodologies by the nationally recognized statistical rating organizations with respect to rating municipal bonds.</p> <p>(2) REPORT- Within 6 months after the date of enactment of this subtitle, the Securities and Exchange Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Development of the Senate. Such report shall include as assessment of each of the issues and subjects described in subparagraphs (A) through (G) of paragraph (1).</p>		
<p>(e) SEC Study on Meaningful Multi-Digit Rating Symbols-</p> <p>(1) STUDY- The Securities and Exchange Commission shall conduct a study on the feasibility and desirability of implementing a standardized rating system whereby ratings symbols contain multiple characters, each representing a range of default probabilities and loss expectations under standardized and increasingly severe levels of market stress. The study shall optimize the definitions of the symbols to maximize their overall usefulness for users of credit ratings.</p> <p>(2) INITIAL EXAMPLE FOR GUIDANCE- An example to provide initial guidance for the study is a ratings symbol consisting of three digits, each of which corresponds to default probabilities under different levels of market stress as follows:</p> <p>(A) The first digit represents the default probability under 'normal' market stress, characterized by normal economic fluctuations in addition to a 5 percent decline in asset value and 2 percent increase in unemployment.</p> <p>(B) The second digit represents the default probability under more severe market stress, characterized a 20 percent decline in asset value and 5 percent increase in unemployment.</p> <p>(C) The third digit represents the default probability under extreme market stress, characterized by a 50 percent decline in asset value and 10 percent increase in unemployment.</p> <p>(3) REPORT- Not later than 1 year after the date of the enactment of this subtitle, the Commission shall transmit to Congress a report of the study conducted pursuant to paragraph (1), including recommendations on whether the system similar to that described in paragraph (2) should be implemented and, if</p>	<p>SEC. 939.</p> <p><i>(1) IN GENERAL- Commission shall undertake a study on the feasibility and desirability of--</i></p> <p><i>(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;</i></p> <p><i>(B) standardizing the market stress conditions under which ratings are evaluated;</i></p> <p><i>(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and</i></p> <p><i>(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.</i></p> <p><i>(2) REPORT- Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.</i></p>	

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so, any necessary legislation required to implement such a system.		
<p>(f) SEC Study on Ratings Standardization-</p> <p>(1) IN GENERAL- The Securities and Exchange Commission shall undertake a study on the feasibility and desirability of--</p> <p>(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;</p> <p>(B) standardizing the market stress conditions under which ratings are evaluated;</p> <p>(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and</p> <p>(D) standardizing credit rating terminology across asset classes, so that named ratings shall correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.</p> <p>(2) REPORT- Not later than 1 year after the date of enactment of this subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study and the recommendations of the Commission.</p>		