

[DISCUSSION DRAFT]

(SEPT. 25, 2009)

111TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KANJORSKI (for himself, Ms. KILROY, and Ms. KOSMAS) introduced the following bill; which was referred to the Committee on

A BILL

To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This title may be cited as the “Accountability and
5 Transparency in Rating Agencies Act”.

1 **SEC. 2. ENHANCED REGULATION OF NATIONALLY RECOG-**
2 **NIZED STATISTICAL RATING ORGANIZA-**
3 **TIONS.**

4 Section 15E of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o-7) is amended—

6 (1) in subsection (c)—

7 (A) in the second sentence of paragraph
8 (2), by inserting “including the requirements of
9 this section,” after “Notwithstanding any other
10 provision of law,”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(3) REVIEW OF INTERNAL PROCESSES FOR
14 DETERMINING CREDIT RATINGS.—

15 “(A) IN GENERAL.—The Commission shall
16 review credit ratings issued by, and the policies,
17 procedures, and methodologies employed by,
18 each nationally recognized statistical rating or-
19 ganization to ensure that—

20 “(i) the nationally recognized statis-
21 tical rating organization has established
22 and documented a system of internal con-
23 trols, due diligence and implementation of
24 methodologies for determining credit rat-
25 ings, taking into consideration such factors
26 as the Commission may prescribe by rule;

1 “(ii) the nationally recognized statis-
2 tical rating organization adheres to such
3 system; and

4 “(iii) the public disclosures of the na-
5 tionally recognized statistical rating orga-
6 nization required under this section about
7 its ratings, methodologies, and procedures
8 are consistent with such system.

9 “(B) MANNER AND FREQUENCY.—The
10 Commission shall conduct reviews required by
11 this paragraph no less frequently than annually
12 in a manner to be determined by the Commis-
13 sion.

14 “(4) PROVISION OF INFORMATION TO THE COM-
15 MISSION.—Each nationally recognized statistical rat-
16 ing organization shall make available and maintain
17 such records and information, for such a period of
18 time, as the Commission may prescribe, by rule, as
19 necessary for the Commission to conduct the reviews
20 under paragraph (3).”

21 (2) in subsection (d)—

22 (A) in the heading, by inserting “FINE,”
23 after “CENSURE,”;

1 (B) by inserting “fine in accordance with
2 section 21B(a),” after “censure,” each place it
3 appears;

4 (C) in paragraph (4), by striking “or” at
5 the end;

6 (D) in paragraph (5), by striking the pe-
7 riod at the end; and

8 (E) by adding at the end the following:

9 “(6) has failed reasonably to supervise another
10 person who has committed a violation described in
11 paragraph (1) or (2), except that no person shall be
12 deemed to have failed reasonably to supervise any
13 other person under this paragraph, if—

14 “(A) there have been established proce-
15 dures, and a system for applying such proce-
16 dures, which would reasonably be expected to
17 prevent and detect, insofar as practicable, any
18 such violation by such other person, and

19 “(B) such person has reasonably dis-
20 charged the duties and obligations incumbent
21 upon him or her; or

22 “(7) fails to conduct sufficient surveillance to
23 ensure that credit ratings remain current and reli-
24 able, as applicable.”;

25 (3) in subsection (e)—

1 (A) by striking paragraph (1); and
2 (B) in paragraph (2), by striking “(2)
3 COMMISSION AUTHORITY.—” and moving the
4 text of such paragraph to follow the heading of
5 subsection (e);

6 (4) by amending subsection (h) to read as fol-
7 lows:

8 “(h) MANAGEMENT OF CONFLICTS OF INTEREST.—
9 “(1) BOARD OF DIRECTORS.—

10 “(A) IN GENERAL.—Each nationally recog-
11 nized statistical rating organization or its par-
12 ent entity shall have a board of directors.

13 “(B) INDEPENDENT DIRECTORS.—At least
14 $\frac{1}{3}$ of such board, but no less than 2 of the
15 members of the board of directors, shall be
16 independent directors. In order to be considered
17 independent for purposes of this subsection, a
18 director of a nationally recognized statistical
19 rating organization may not, other than in his
20 or her capacity as a member of the board of di-
21 rectors or any committee thereof—

22 “(i) accept any consulting, advisory,
23 or other compensatory fee from the nation-
24 ally recognized statistical rating organiza-
25 tion; or

1 “(ii) be an affiliated person of the na-
2 tionally recognized statistical rating orga-
3 nization or any affiliate thereof.

4 “(C) COMPENSATION AND TERM.—The
5 compensation of the independent directors shall
6 not be linked to the business performance of the
7 nationally recognized statistical rating organiza-
8 tion and shall be arranged so as to ensure the
9 independence of their judgment. The term of
10 office of the independent directors shall be for
11 a pre-agreed fixed period not exceeding 5 years
12 and shall not be renewable.

13 “(D) DUTIES.—In addition to the overall
14 responsibility of the board of directors, the
15 board shall oversee—

16 “(i) the development, maintenance,
17 and enforcement of policies, procedures,
18 and methodologies for determining credit
19 ratings, including quantitative and quali-
20 tative models used in the rating process;

21 “(ii) the development, maintenance,
22 and enforcement of policies and procedures
23 to address, manage, and disclose any con-
24 flicts of interest;

1 “(iii) the effectiveness of the internal
2 control system with respect to policies, pro-
3 cedures, and methodologies for determining
4 credit ratings, including quantitative and
5 qualitative models used in the rating pro-
6 cess; and

7 “(iv) the compensation and promotion
8 policies and practices of the nationally rec-
9 ognized statistical rating organization.

10 “(2) DESIGNATION OF COMPLIANCE OFFI-
11 CER.—

12 “(A) IN GENERAL.—Each nationally recog-
13 nized statistical rating organization shall des-
14 ignate an individual to serve as a compliance of-
15 ficer.

16 “(B) DUTIES.—The compliance officer
17 shall—

18 “(i) report directly to the board of the
19 nationally recognized statistical rating or-
20 ganization;

21 “(ii) review compliance with policies
22 and procedures to manage conflicts of in-
23 terest and assess the risk that the compli-
24 ance (or lack of such compliance) may

1 compromise the integrity of the credit rat-
2 ing process;

3 “ (iii) review compliance with internal
4 controls with respect to the procedures and
5 methodologies for determining credit rat-
6 ings, including quantitative and qualitative
7 models used in the rating process, and as-
8 sess the risk that such compliance with the
9 internal controls (or lack of such compli-
10 ance) may compromise the integrity and
11 quality of the credit rating process;

12 “ (iv) in consultation with the board of
13 the nationally recognized statistical rating
14 organization, resolve any conflicts of inter-
15 est that may arise;

16 “ (v) be responsible for administering
17 the policies and procedures required to be
18 established pursuant to this section;

19 “ (vi) ensure compliance with securi-
20 ties laws and the rules and regulations
21 issued thereunder, including rules pre-
22 scribed by the Commission pursuant to
23 this section; and

24 “ (vii) shall establish procedures for—

1 “(I) the receipt, retention, and
2 treatment of complaints regarding
3 credit ratings, models, methodologies,
4 and compliance with the securities
5 laws and the policies and procedures
6 required under this section;

7 “(II) the receipt, retention, and
8 treatment of confidential, anonymous
9 complaints by employees, issuers, and
10 investors; and

11 “(III) the remediation of non-
12 compliance issues found during com-
13 pliance office reviews, the reviews re-
14 quired under paragraph (7), internal
15 or external audit findings, self-re-
16 ported errors, or through validated
17 complaints.

18 “(D) LIMITATIONS.—The compliance offi-
19 cer shall not, while serving in that capacity—

20 “(i) perform credit ratings;

21 “(ii) participate in the development of
22 rating methodologies or models;

23 “(iii) perform marketing or sales
24 functions; or

1 “(iv) participate in establishing com-
2 pensation levels, other than for employees
3 working for the compliance officer.

4 “(E) ANNUAL REPORTS REQUIRED.—The
5 compliance officer shall annually prepare and
6 sign a report on the compliance of the nation-
7 ally recognized statistical rating organization
8 with the securities laws and such organization’s
9 internal policies and procedures, including its
10 code of ethics and conflict of interest policies, in
11 accordance with rules prescribed by the Com-
12 mission. Such compliance report shall accom-
13 pany the financial reports of the nationally rec-
14 ognized statistical rating organization that are
15 required to be furnished to the Commission
16 pursuant to this section and shall include a cer-
17 tification that, under penalty of law, the report
18 is accurate and complete.

19 “(3) ORGANIZATION POLICIES AND PROCE-
20 DURES.—Each nationally recognized statistical rat-
21 ing organization shall establish, maintain, and en-
22 force written policies and procedures reasonably de-
23 signed, taking into consideration the nature of the
24 business of the nationally recognized statistical rat-
25 ing organization and affiliated persons and affiliated

1 companies thereof, to address, manage, and disclose
2 any conflicts of interest that can arise from such
3 business.

4 “(4) GOVERNANCE IMPROVEMENTS AT NATION-
5 ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-
6 TION.—Each nationally recognized statistical rating
7 organization shall establish governance procedures to
8 manage conflicts of interest, consistent with the pub-
9 lic interest and for the protection of investors, in ac-
10 cordance with rules issued by the Commission pursu-
11 ant to paragraph (5).

12 “(5) COMMISSION RULES.—The Commission
13 shall issue rules to prohibit, or require the manage-
14 ment and disclosure of, any conflicts of interest re-
15 lating to the issuance of credit ratings by a nation-
16 ally recognized statistical rating organization, includ-
17 ing—

18 “(A) conflicts of interest relating to the
19 manner in which a nationally recognized statis-
20 tical rating organization is compensated by the
21 obligor, or any affiliate of the obligor, for
22 issuing credit ratings or providing related serv-
23 ices;

24 “(B) conflicts of interest relating to the
25 provision of consulting, advisory, or other serv-

1 ices by a nationally recognized statistical rating
2 organization, or any person associated with
3 such nationally recognized statistical rating or-
4 ganization, to the obligor, or any affiliate of the
5 obligor;

6 “(C) disclosure of business relationships,
7 ownership interests, affiliations of nationally
8 recognized statistical rating organization board
9 members with obligors, or any other financial or
10 personal interests between a nationally recog-
11 nized statistical rating organization, or any per-
12 son associated with such nationally recognized
13 statistical rating organization, and the obligor,
14 or any affiliate of the obligor;

15 “(D) disclosure of any affiliation of a na-
16 tionally recognized statistical rating organiza-
17 tion, or any person associated with such nation-
18 ally recognized statistical rating organization,
19 with any person who underwrites securities,
20 money market instruments, or other instru-
21 ments that are the subject of a credit rating;

22 “(E) a requirement that each nationally
23 recognized statistical rating organization dis-
24 close on such organization’s website a consoli-

1 dated report at the end of each fiscal year that
2 shows—

3 “(i) the percent of net revenue earned
4 by the nationally recognized statistical rat-
5 ing organization or an affiliate of a nation-
6 ally recognized statistical rating organiza-
7 tion, or any person associated with a na-
8 tionally recognized statistical rating orga-
9 nization, to the extent determined appro-
10 priate by the Commission, for that fiscal
11 year for providing services and products
12 other than credit rating services to each
13 person who paid for a credit rating; and

14 “(ii) the relative standing of each
15 such person in terms of the amount of net
16 revenue earned by the nationally recog-
17 nized statistical rating organization attrib-
18 utable to each such person and classified
19 by the highest 5, 10, 25, and 50 percent-
20 iles and lowest 50 and 25 percentiles.

21 “(F) rules providing for the establishment
22 of a system of payment for each nationally rec-
23 ognized statistical rating organization that re-
24 quires that payments are structured to ensure
25 that the nationally recognized statistical rating

1 organization conducts accurate and reliable sur-
2 veillance of ratings over time, as applicable, and
3 that incentives for reliable ratings are in place;

4 “(G) a requirement that, in each credit
5 rating report issued to the public, a nationally
6 recognized statistical rating organization dis-
7 close the type and number of ratings it has pro-
8 vided to the obligor or affiliates of the obligor,
9 including the fees it has billed for the credit
10 rating and aggregate amount of fees in the pre-
11 ceeding 2 years that it has billed to the par-
12 ticular obligor or its affiliates; and

13 “(H) any other potential conflict of inter-
14 est, as the Commission determines necessary or
15 appropriate in the public interest or for the pro-
16 tection of investors.

17 “(7) LOOK-BACK REQUIREMENT.—

18 “(A) REVIEW BY THE NATIONALLY RECOG-
19 NIZED STATISTICAL RATING ORGANIZATION.—
20 Each nationally recognized statistical rating or-
21 ganization shall establish policies and proce-
22 dures to ensure that, in any case in which an
23 employee of an obligor or an issuer or under-
24 writer of a security or money market instru-
25 ment was employed by a nationally recognized

1 statistical rating organization and participated
2 in any capacity in determining credit ratings for
3 the obligor or the securities or money market
4 instruments of the issuer during the 1-year pe-
5 riod preceding the date of the issuance of the
6 credit rating, the nationally recognized statis-
7 tical rating organization shall—

8 “(i) conduct a review to determine
9 whether any conflicts of interest of the em-
10 ployee influenced the credit rating; and

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

14 “(B) REVIEW BY COMMISSION.—

15 “(i) IN GENERAL.—The Commission
16 shall conduct periodic reviews of the poli-
17 cies described in subparagraph (A) and the
18 implementation of the policies at each na-
19 tionally recognized statistical rating orga-
20 nization to ensure they are appropriately
21 designed and implemented to most effec-
22 tively eliminate conflicts of interest.

23 “(i) TIMING OF REVIEWS.—The Com-
24 mission shall review and make available to
25 the public the code of ethics and conflict of

1 interest policy of each nationally recog-
2 nized statistical rating organization —

3 “(I) not less frequently than an-
4 nually; and

5 “(II) whenever such policies are
6 materially modified or amended.”;

7 (5) in subsection (k)—

8 (A) by striking “, on a confidential basis,”;

9 (B) by striking “Each nationally” and in-
10 sserting the following:

11 “(1) IN GENERAL.—Each nationally”; and

12 (C) by adding at the end the following new
13 paragraph:

14 “(2) EXCEPTION.—The Commission may treat
15 as confidential any item furnished to the Commis-
16 sion under paragraph (1), the publication of which
17 the Commission determines may have a harmful ef-
18 fect on a nationally recognized statistical rating or-
19 ganization.”;

20 (6) by amending subsection (m) to read as fol-
21 lows:

22 █ “(m) ACCOUNTABILITY.—With respect to state-
23 ments made by a nationally recognized statistical rating
24 organization, the enforcement and penalty provisions of
25 this title shall apply to such organization in the same man-

1 ner and to the same extent as such provisions apply to
2 a registered public accounting firm or a securities analyst
3 under the Federal securities laws for statements made by
4 them, and such statements shall not be deemed forward-
5 looking statements for purposes of section 21E.”;】

6 (7) by amending subsection (p) to read as fol-
7 lows:

8 “(p) ESTABLISHMENT OF SEC OFFICE.—The Com-
9 mission shall establish an office that administers the rules
10 of the Commission with respect to the practices of nation-
11 ally recognized statistical rating organizations in deter-
12 mining ratings, in the public interest and for the protec-
13 tion of investors, and to ensure that credit ratings issued
14 by such registrants are accurate and not unduly influenced
15 by conflicts of interest.”; and

16 (8) by adding after subsection (p) the following
17 new subsections:

18 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

19 “(1) RULEMAKING REQUIRED.—The Commis-
20 sion shall, by rule, require each nationally recognized
21 statistical rating organization to publicly disclose in-
22 formation on initial ratings and subsequent changes
23 to such ratings for the purpose of providing a gauge
24 of the performance of ratings and allowing investors

1 to compare performance of ratings by different na-
2 tionally recognized statistical rating organizations.

3 “(2) CONTENT.—The rules of the Commission
4 under this subsection shall require, at a minimum,
5 disclosures that—

6 “(A) are comparable among nationally rec-
7 ognized statistical rating organizations, so that
8 investors can compare rating performance
9 across rating organizations;

10 “(B) are clear and informative for a wide
11 range of investor sophistication;

12 “(C) include performance information over
13 a range of years and for a variety of classes of
14 credit ratings, as determined by the Commis-
15 sion; and

16 “(D) are published and made freely avail-
17 able by the nationally recognized statistical rat-
18 ing organization, on an easily accessible portion
19 of its website and in written form when re-
20 quested by investors.

21 “(r) CREDIT RATINGS METHODOLOGIES.—

22 “(1) IN GENERAL.—The Commission shall pre-
23 scribe rules, in the public interest and for the pro-
24 tection of investors, with respect to the procedures
25 and methodologies used by nationally recognized sta-

1 tistical rating organizations that require each na-
2 tionally recognized statistical rating organization
3 to—

4 “(A) ensure that credit ratings are deter-
5 mined using procedures and methodologies, in-
6 cluding qualitative and quantitative models,
7 that are approved by the board of the nationally
8 recognized statistical rating organization and
9 are determined in accordance with the policies
10 and procedures of the nationally recognized sta-
11 tistical rating organization for developing and
12 modifying credit rating procedures and meth-
13 odologies;

14 “(B) ensure that when major changes to
15 credit rating procedures and methodologies, in-
16 cluding to qualitative and quantitative models,
17 are made, that the changes are applied consist-
18 ently to all credit ratings to which the changed
19 procedures and methodologies apply and, to the
20 extent the changes are made to credit rating
21 surveillance procedures and methodologies, they
22 are applied to current credit ratings within a
23 time period to be determined by the Commis-
24 sion by rule, and that the reason for the change
25 is publicly disclosed;

1 “(C) notify investors and issuers of the
2 version of a procedure or methodology, includ-
3 ing a qualitative or quantitative model, used
4 with respect to a particular credit rating;

5 “(D) notify investors and issuers when a
6 change is made to a procedure or methodology,
7 including to a qualitative or quantitative model,
8 or an error is identified in a procedure or meth-
9 odology that may result in credit rating actions,
10 and the likelihood of the change resulting in
11 current credit ratings being subject to rating
12 actions; and

13 “(E) adopt and use rating symbols that
14 distinguish among structured products, non-
15 structured products, corporate offerings, munic-
16 ipal offerings, and such other products that the
17 Commission deems appropriate or necessary in
18 the public interest and for the protection of in-
19 vestors.

20 “(2) RATING CLARITY AND CONSISTENCY.—

21 “(A) COMMISSION OBLIGATION.—Subject
22 to subparagraphs (B) and (C), the Commission
23 shall require each nationally recognized statis-
24 tical rating organization that is registered
25 under this section to establish, maintain, and

1 enforce written policies and procedures reason-
2 ably designed—

3 “(i) to establish and maintain credit
4 ratings with respect to securities and
5 money market instruments designed to as-
6 sess the risk that investors in securities
7 and money market instruments may not
8 receive payment in accordance with the
9 terms of issuance of such securities and in-
10 struments;

11 “(ii) to define clearly any rating sym-
12 bol used by that organization; and

13 “(iii) to apply such rating symbol in a
14 consistent manner for all types of securi-
15 ties and money market instruments.

16 “(B) ADDITIONAL CREDIT FACTORS.—
17 Nothing in subparagraph (A)—

18 “(i) prohibits a nationally recognized
19 statistical rating organization from using
20 additional credit factors that are docu-
21 mented and disclosed by the organization
22 and that have a demonstrated impact on
23 the risk an investor in a security or money
24 market instrument will not receive repay-

1 ment in accordance with the terms of
2 issuance;

3 “(ii) prohibits a nationally recognized
4 statistical rating organization from consid-
5 ering credit factors that are unique to mu-
6 nicipal securities that are not backed by
7 the issuer’s full faith and credit in its as-
8 sessment of the risk an investor in a secu-
9 rity or money market instrument will not
10 receive repayment in accordance with the
11 terms of issuance; or

12 “(iii) prohibits a nationally recognized
13 statistical rating organization from using
14 an additional symbol with respect to the
15 ratings described in subparagraph (A)(i)
16 for the purpose of distinguishing the rat-
17 ings of a certain type of security or money
18 market instrument from ratings of any
19 other types of securities or money market
20 instruments.

21 “(C) COMPLEMENTARY RATINGS.—The
22 Commission shall not impose any requirement
23 under subparagraph (A) that prevents nation-
24 ally recognized statistical rating organizations
25 from establishing ratings that are complemen-

1 tary to the ratings described in subparagraph
2 (A)(i) and that are created to measure a dis-
3 crete aspect of the security’s or instrument’s
4 risk.

5 “(s) TRANSPARENCY OF CREDIT RATING METH-
6 ODOLOGIES AND INFORMATION REVIEWED.—

7 “(1) IN GENERAL.—The Commission shall es-
8 tablish a form, to accompany each rating issued by
9 a nationally recognized statistical rating organiza-
10 tion and that can be made public and used to better
11 understand credit ratings issued by the nationally
12 recognized statistical rating organization, for the
13 disclosure of information about—

14 “(A) assumptions underlying credit rating
15 procedures and methodologies;

16 “(B) the data that was relied on to deter-
17 mine the credit rating; and

18 “(C) where applicable, how the nationally
19 recognized statistical rating organization used
20 servicer or remittance reports, and with what
21 frequency, to conduct surveillance of the credit
22 rating.

23 “(2) FORMAT.—The Commission shall ensure
24 that the form established under paragraph (1)—

1 “(A) is designed in a user-friendly and
2 helpful manner for investors to understand the
3 information contained in the report; and

4 “(B) requires the nationally recognized
5 statistical rating organization to provide the ap-
6 propriate content, as required by paragraph (3),
7 in a manner that is directly comparable across
8 securities, for example, number, rating, or
9 index, as appropriate, and in distinct forms for
10 structured and traditional corporate issues.

11 “(3) CONTENT.—Each nationally recognized
12 statistical rating organization shall include on the
13 form established under this subsection, along with
14 its ratings—

15 “(A) the main assumptions included in
16 constructing procedures and methodologies, in-
17 cluding qualitative and quantitative models and
18 assumptions about the correlation of defaults
19 across obligors used in rating certain structured
20 products;

21 “(B) the potential shortcomings of the
22 credit ratings, and the types of risks excluded
23 from the credit ratings that the registrant is
24 not commenting on, such as liquidity, market,
25 and other risks;

1 “(C) information on the certainty of the
2 rating, including information on the reliability,
3 accuracy, and quality of the data relied on in
4 determining the ultimate credit rating and a
5 statement on the extent to which key data in-
6 puts for the credit rating were reliable or lim-
7 ited, including any limits on the reach of histor-
8 ical data, limits in accessibility to certain docu-
9 ments or other forms of information that would
10 have better informed the credit rating, and the
11 completeness of certain information considered;

12 “(D) whether and to what extent third
13 party due diligence services have been utilized,
14 and a description of the information that such
15 third party reviewed in conducting due diligence
16 services;

17 “(E) a description of relevant data about
18 any obligor, issuer, security, or money market
19 instrument that was used and relied on for the
20 purpose of determining the credit rating;

21 “(F) a statement containing an overall as-
22 sessment of the quality of information available
23 and considered in producing a rating for a secu-
24 rity in relation to the quality of information

1 available to the nationally recognized statistical
2 rating organization in rating similar issuances;

3 “(G) an explanation or measure of the po-
4 tential volatility for the rating, including any
5 factors that might lead to a change in the rat-
6 ing, and the extent of the change that might be
7 anticipated under different conditions; and

8 “(H) information on the content of the
9 rating, including—

10 “(i) the expected default probability;

11 and

12 “(ii) the loss given default;

13 “(I) information on the sensitivity of the
14 rating to assumptions made by the nationally
15 recognized statistical rating organization; and

16 “(J) additional information as may be re-
17 quired by the Commission.

18 “(5) DUE DILIGENCE SERVICES.—

19 “(A) CERTIFICATION REQUIRED.—In any
20 case in which third-party due diligence services
21 are employed by a nationally recognized statis-
22 tical rating organization or an issuer or under-
23 writer in connection with the issuance of a cred-
24 it rating, the firm providing the due diligence
25 services shall provide to the nationally recog-

1 nized statistical rating organization written cer-
2 tification of such due diligence, which shall be
3 subject to review by the Commission, and the
4 issuer or underwriter shall provide any reports
5 issued by the provider of such due diligence
6 services to the nationally recognized statistical
7 rating organization.

8 “(B) FORMAT AND CONTENT.—The na-
9 tionally recognized statistical rating organiza-
10 tions shall establish the appropriate format and
11 content for written certifications required under
12 subparagraph (A) to ensure that providers of
13 due diligence services have conducted a thor-
14 ough review of data, documentation, and other
15 relevant information necessary for the nation-
16 ally recognized statistical rating organization to
17 provide an reliable rating.

18 “(C) DISCLOSURE OF CERTIFICATION.—
19 The Commission shall adopt rules requiring a
20 nationally recognized statistical rating organiza-
21 tion at the time it produces a rating to disclose
22 the certification described in subparagraph (A)
23 to the public in a manner that may permit the
24 public to determine the adequacy and level of
25 due diligence services provided by a third party.

1 “(t) PROHIBITED ACTIVITIES.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), beginning 180 days from the date of en-
4 actment of the Accountability, Reliability, and
5 Transparency in Rating Agencies Act, it shall be un-
6 lawful for—

7 “(A) a nationally recognized statistical rat-
8 ing organization, or an affiliate of a nationally
9 recognized statistical rating organization, or
10 any person associated with a nationally recog-
11 nized statistical rating organization, to the ex-
12 tent determined appropriate by the Commis-
13 sion, that provides a rating for an issuer, un-
14 derwriter, or placement agent of a security to
15 provide to that issuer, underwriter, or place-
16 ment agent, any non-rating service that pre-
17 ceded the retention of the nationally recognized
18 statistical rating organization by the issuer, un-
19 derwriter, or placement agent to provide a rat-
20 ing for the security in question or any assist-
21 ance provided after such point for which addi-
22 tional compensation is paid directly or indi-
23 rectly, including—

24 “(i) risk management advisory serv-
25 ices;

1 “(ii) advice or consultation relating to
2 any merger of the issuer;

3 “(iii) ancillary assistance, advice, or
4 consulting services unrelated to any spe-
5 cific credit rating issuance; and

6 “(iv) such further activities or services
7 as the Commission may determine as nec-
8 essary or appropriate in the public interest
9 or for the protection of investors; and

10 “(B) a nationally recognized statistical rat-
11 ing organization to perform any credit rating of
12 any security or money market instrument that
13 is issued or underwritten by any issuer, broker,
14 dealer, investment adviser, investment company,
15 government securities broker, government secu-
16 rities dealer, or any person controlling, con-
17 trolled by, or under common control with any of
18 the foregoing that has, within the preceding 1
19 year, hired any individual who was, within such
20 1-year period, previously employed by such na-
21 tionally recognized statistical rating organiza-
22 tion as an analyst and such employee remains
23 employed by such entity.

24 “(2) EXEMPTION AUTHORITY.—The Commis-
25 sion may, on a case by case basis, exempt any per-

1 son, issuer, underwriter, placement agent, or nation-
2 ally recognized statistical rating organization from
3 the prohibition in subsection (t), to the extent that
4 such exemption is necessary or appropriate in the
5 public interest and is consistent with the protection
6 of investors, and subject to review by the Commis-
7 sion.”.

8 **[SEC. 3. COLLECTIVE LIABILITY FOR CREDIT RATINGS.]**

9 Section 15E of the Securities Exchange Act of 1934
10 (15 U.S.C. 78o-7) is further amended by adding at the
11 end the following:】

12 **【“(u) COLLECTIVE LIABILITY FOR CREDIT RAT-**
13 **INGS.—】**

14 **【“(1) SHARING OF INFORMATION REQUIRE-**
15 **MENT.—**Each nationally recognized statistical rating
16 organization shall provide to every other nationally
17 recognized statistical rating organization a copy of
18 any information that, in whole or in part, formed
19 the basis for a credit rating, a revision of a credit
20 rating, issued by such organization. Such informa-
21 tion shall be provided not later than ____ week after
22 such credit rating is issued, or in the case of a re-
23 vised credit rating, such revision.】

24 **【“(2) OBLIGATION WITH REGARD TO INFORMA-**
25 **TION.—**Each nationally recognized statistical rating

1 organization that receives information from any
2 other nationally recognized statistical rating organi-
3 zation shall review such information [and shall
4 make every effort to verify its accuracy].]

5 [“(3) JOINT LIABILITY.—If, in any action
6 against a nationally recognized statistical rating or-
7 ganization related to a credit rating issued by such
8 organization that results in a monetary judgment for
9 the plaintiff against such organization, the plaintiff
10 is unable to recover the full amount of such judg-
11 ment from such organization, all nationally recog-
12 nized statistical rating organizations shall be jointly
13 liable for the amount of such judgment, and the
14 plaintiff may collect any outstanding amount from
15 any other nationally recognized statistical rating or-
16 ganization.”.]

17 **[SEC. 4. STANDARDS FOR PRIVATE ACTIONS.]**

18 [(a) IN GENERAL.—Section 21D(b)(2) of the Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is
20 amended by inserting before the period at the end of the
21 following: “, except that in the case of an action brought
22 under this title for money damages against a nationally
23 recognized statistical rating organization, it shall be suffi-
24 cient, for purposes of pleading any required state of mind
25 for purposes of such action, that the complaint shall state

1 with particularity facts giving rise to a strong inference
2 that the nationally recognized statistical rating organiza-
3 tion knowingly or recklessly failed either to conduct a rea-
4 sonable investigation of the rated security with respect to
5 the factual elements relied upon by its own methodology
6 for evaluating credit risk, or to review any due diligence
7 reports received either directly or indirectly.”.]

8 **[(b) PLEADING STANDARD.—**Section 15E(m) (as
9 amended by section 2) is further amended by adding at
10 the and the following new sentence: “In any private right
11 of action commenced against a nationally recognized sta-
12 tistical rating organization under this title, the same
13 pleading standards with respect to knowledge and reck-
14 lessness shall apply to the nationally recognized statistical
15 rating organization as would apply to any issuer or under-
16 writer in a private right of action against such issuer or
17 underwriter.”.]

18 **[(c) RULE OF CONSTRUCTION.—**Nothing in this Act
19 or the amendments made by this Act shall be construed
20 as effecting or altering the requirements of the Private
21 Securities Litigation Reform Act of 1995.]

22 **SEC. 5. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

23 The Securities and Exchange Commission shall adopt
24 rules under authority of the Securities Act of 1933 (15
25 U.S.C. 77a, et seq.) to require issuers to disclose prelimi-

1 nary credit ratings received from nationally recognized
2 statistical rating agencies on structured products and all
3 forms of corporate debt.

4 **SEC. 6. TIMELINE FOR REGULATIONS.**

5 Unless otherwise specified in this Act, the Securities
6 and Exchange Commission shall adopt rules and regula-
7 tions, as required by the amendments made by this Act,
8 not later than 365 days after the date of enactment.

9 **[SEC. 7. REMOVAL OF STATUTORY REFERENCES TO CRED-**
10 **IT RATINGS.]**

11 **[(a) CHAPTER 6 OF TITLE 23.—Chapter 6 of title**
12 **23, United States Code, is amended—]**

13 **[(1) in section 601(a), by striking paragraph**
14 **(3) and paragraph (10) and redesignating suc-**
15 **ceeding paragraphs accordingly;]**

16 **[(2) in section 602(b)(2), by amending sub-**
17 **paragraph (B) to read as follows:]**

18 **[“(B) [Repealed]”];]**

19 **[(3) in section 603(a)(3)—]**

20 **[(A) by striking “and each rating agency**
21 **providing a preliminary rating opinion letter**
22 **under section 602 (b)(2)(B)”]; and]**

23 **[(B) by striking “, taking into account**
24 **such letter”];]**

1 [(4) in section 603(a), by striking paragraph
2 (4);]

3 [(5) in section 603(b)(2), by striking “ or, if
4 the secured loan does not receive an investment
5 grade rating, the amount of the senior project obli-
6 gations”;

7 [(6) in section 604(a)(3)—]

8 [(A) by striking “and each rating agency
9 providing a preliminary rating opinion letter
10 under section 602 (b)(2)(B)”;

11 and]
12 [(B) by striking “, taking into account
13 such letter”;

14 (4);]

15 [(8) by striking section 604(a)(4); and]

16 [(9) in section 610(g)(2), by striking “main-
17 tains on a continuing basis an investment grade rat-
18 ing on its debt, or”.]

19 [(b) EMPLOYEE RETIREMENT INCOME SECURITY
20 ACT OF 1974.—The Employee Retirement Income Secu-
21 rity Act of 1974 (29 U.S.C. 1001 et seq.) is amended—
22]

23 [(1) in section 303(h)(2)(D)(i), by striking “on
24 investment grade corporate bonds with varying ma-
25 turities and that are in the top 3 quality levels avail-

1 able” and inserting “on corporate bonds with vary-
2 ing maturities”];

3 [(2) in section 4006(a)(3)(E)(iv), by striking
4 “on investment grade corporate bonds with varying
5 maturities and in the top 3 quality levels” and in-
6 serting “on corporate bonds with varying matu-
7 rities”; and]

8 [(3) by amending section 4041(b)(5)(B) to
9 read as follows:]

10 [“(B) LIMITATION.—Subparagraph (A)
11 shall not apply to any transaction or series of
12 transactions unless the employer maintaining
13 the plan after the transaction or series of trans-
14 actions employs at least 20 percent of the em-
15 ployees located in the United States who were
16 employed by such employer immediately before
17 the transaction or series of transactions.”.]

18 [(c) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
20 amended—]

21 [(1) in section 28, by striking subsections (d)
22 and (e) (and redesignating succeeding subsections
23 accordingly); and]

24 [(2) in section 7(b)(1)(E), by striking “credit
25 rating entities, and”.]

1 **[(d) FEDERAL HOUSING ENTERPRISES FINANCIAL**
2 **SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319**
3 **of the Federal Housing Enterprises Financial Safety and**
4 **Soundness Act of 1992 (12 U.S.C. 4519) is amended by**
5 **striking “that is a nationally recognized statistical rating**
6 **organization, as such term is defined in section 3(a) of**
7 **the Securities Exchange Act of 1934,”.]**

8 **[(e) HIGHER EDUCATION ACT OF 1965.—Section**
9 **439 of the Higher Education Act of 1965 (20 U.S.C.**
10 **1087–2) is amended—]**

11 **[(1) by striking subsection (d)(5); and]**

12 **[(2) in subsection (r), by striking paragraph**
13 **(11) and inserting the following:]**

14 **["(11) [Repealed]".]**

15 **[(f) INTERNAL REVENUE CODE OF 1986.—Section**
16 **430(h)(2)(D)(i) of the Internal Revenue Code of 1986 is**
17 **amended by striking “on investment grade corporate**
18 **bonds with varying maturities and that are in the top 3**
19 **quality levels available” and inserting “on corporate bonds**
20 **with varying maturities”.]**

21 **[(g) INVESTMENT ADVISERS ACT OF 1940.—The In-**
22 **vestment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.)**
23 **is amended—]**

24 **[(1) in section 202(a)—]**

1 **[(A) in paragraph (11), by striking “(F)**
2 **any nationally recognized statistical rating or-**
3 **ganization, as that term is defined in section**
4 **3(a)(62) of the Securities Exchange Act of**
5 **1934, unless such organization engages in**
6 **issuing recommendations as to purchasing, sell-**
7 **ing, or holding securities or in managing assets,**
8 **consisting in whole or in part of securities, on**
9 **behalf of others; or (G)” and inserting “or**
10 **(F)”;** and**]**

11 **[(B) by striking paragraph (28); and]**

12 **[(2) in section 203(e), by striking “credit rat-**
13 **ing agency,” each place it appears.]**

14 **[(h) INVESTMENT COMPANY ACT OF 1940.—The In-**
15 **vestment Company Act of 1940 (15 U.S.C. 80a-1 et seq.)**
16 **is amended—]**

17 **[(1) in section 2(a), by striking paragraph**
18 **(53);]**

19 **[(2) in section 6(a)(5)(A)—]**

20 **[(A) in clause (ii), by adding “and” at the**
21 **end;]**

22 **[(B) in clause (iii), by striking “; and”**
23 **and inserting a period; and]**

24 **[(C) by striking clause (iv); and]**

1 【(3) in section 9(a), by striking “credit rating
2 agency,” each place it appears.】

3 【(i) LAUNCHING OUR COMMUNITIES’ ACCESS TO
4 LOCAL TELEVISION ACT OF 2000.—Section
5 1004(d)(2)(D) of the Launching Our Communities’ Ac-
6 cess to Local Television Act of 2000 (47 U.S.C.
7 1103(d)(2)(D)) is amended—】

8 【(1) in clause (i)(II), by striking “, if the
9 Board determines that such nonprofit corporation
10 has one or more issues of outstanding long-term
11 debt that is rated within the highest three rating
12 categories of a nationally recognized statistical rat-
13 ing organization”; and】

14 【(2) by striking clause (ii) (and redesignating
15 succeeding clauses accordingly).】

16 【(j) REVISED STATUTES.—Section 5136A of title
17 LXII of the Revised Statutes of the United States (12
18 U.S.C. 24a) is amended—】

19 【(1) in subsection (a)(2)(E), by striking “appli-
20 cable rating or other”;】

21 【(2) in the heading for subsection (a)(3) by
22 striking “Rating or comparable requirement” and
23 inserting “Requirement”;】

24 【(3) by amending subsection (a)(3)(A) to read
25 as follows:】

1 **[(A) IN GENERAL.—A national bank**
2 meets the requirements of this paragraph if the
3 bank is 1 of the second 50 largest insured
4 banks and meets such criteria as the Secretary
5 of the Treasury and the Board of Governors of
6 the Federal Reserve System may jointly estab-
7 lish by regulation.”;]

8 **[(4) in the heading for subsection (f), by strik-**
9 ing “maintain public rating or”; and]

10 **[(5) in subsection (f)(1), by striking “applica-**
11 ble rating or other”.]

12 **[(k) RURAL ELECTRIFICATION ACT OF 1936.—Sec-**
13 tion 313A(b)(3) of the Rural Electrification Act of 1936
14 (7 U.S.C. 940e–1(b)(3)) is amended—]

15 **[(1) in subparagraph (A), by adding “or” after**
16 the semicolon at the end;]

17 **[(2) by striking subparagraph (B); and]**

18 **[(3) by redesignating subparagraph (C) as sub-**
19 paragraph (B).]

20 **[(l) SECURITIES EXCHANGE ACT OF 1934.—The Se-**
21 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
22 is amended—]

23 **[(1) in section 3(a)—]**

24 **[(A) in paragraph (41), by striking “is**
25 rated in one of the two highest rating categories

1 by at least one nationally recognized statistical
2 rating organization, and”];

3 [(B) in paragraph (53)(A), by striking “is
4 rated in 1 of the 4 highest rating categories by
5 at least 1 nationally recognized statistical rat-
6 ing organization, and”];

7 [(2) in section 15(b)(4), by striking “nationally
8 recognized statistical rating organization,” each
9 place it appears;]

10 [(3) in section 17—]

11 [(A) by striking “nationally recognized
12 statistical rating organization,”; and]

13 [(B) by striking “Any report that a na-
14 tionally recognized statistical rating organiza-
15 tion is required by Commission rules under this
16 paragraph to make and disseminate to the
17 Commission shall be deemed furnished to the
18 Commission.”.]

19 [(m) STUDENT LOAN MARKETING ASSOCIATION RE-
20 ORGANIZATION ACT OF 1996.—Section 603(b)(4) Student
21 Loan Marketing Association Reorganization Act of 1996
22 (20 U.S.C. 1155(b)(4)) is amended by striking “which are
23 ranked in the lower investment grade category using a na-
24 tionally recognized credit rating system”.]

1 **[(n) WORLD BANK DISCUSSIONS.—**Section 3(a) of
2 the amendment in the nature of a substitute to the text
3 of H.R. 4645, as ordered reported from the Committee
4 on Banking, Finance, and Urban Affairs of the House of
5 Representatives on September 22, 1988 (as enacted into
6 law by section 555 of Public Law 100-461).**]**

7 **[(o) EFFECTIVE DATE.—**The amendments made by
8 this section shall take effect after the end of the 6-month
9 period beginning on the date of the enactment of this
10 Act.**]**

11 **[SEC. 8. FEDERAL AGENCY REVIEW OF RELIANCE ON RAT-**
12 **INGS.]**

13 **[(a) REVIEW.—**Not later than 1 year after the date
14 of the enactment of this Act, each Federal agency and de-
15 partment shall, to the extent applicable, review—**]**

16 **[(1) any regulation issued by such agency or**
17 department that requires the use of an assessment
18 of the creditworthiness of a security or money mar-
19 ket instrument, and**]**

20 **[(2) its policies and practices with regard to**
21 such ratings,**]**

22 **[to determine if another measure of creditworthiness is**
23 **appropriate in order to reduce the reliance of such agency**
24 **on such ratings, to the extent permitted by law.]**

1 **[(b) REPORT.—**Upon conclusion of the review re-
2 quired under subsection (a), each Federal agency and de-
3 partment shall submit a report to the Congress containing
4 a description of—**]**

5 **[(1)** any modification of any regulation such
6 agency or department made following the review re-
7 quired by subsection (a); and**]**

8 **[(2)** each regulation issued by such agency or
9 department that requires the use of an assessment
10 of the creditworthiness of a security or money mar-
11 ket instrument that such agency or department did
12 not modify pursuant to subsection (a), accompanied
13 by an explanation of why such modification could
14 not be made.**]**

15 **SEC. 9. STUDIES AND REPORTS.**

16 (a) GAO STUDY.—

17 (1) IN GENERAL.—The Comptroller General
18 shall conduct a study of—

19 (A) the implementation of this Act and the
20 amendments made by this Act by the Securities
21 and Exchange Commission;

22 (B) the appropriateness of relying on rat-
23 ings for use in Federal, State, and local securi-
24 ties and banking regulations, including for de-
25 termining capital requirements; and

1 (C) the effect of liability in private actions
2 arising under the Securities Exchange Act of
3 1934; and

4 (D) alternative means for compensating
5 credit rating agencies that would create incen-
6 tives for accurate credit ratings and what, if
7 any, statutory changes would be required to
8 permit or facilitate the use of such alternative
9 means of compensation.

10 (2) REPORT.—Not later than 30 months after
11 the date of enactment of this Act, the Comptroller
12 General shall submit to Congress and the Securities
13 Exchange Commission, a report containing the find-
14 ings under the study required by subsection (a).

15 (b) SEC STUDY.—The Securities and Exchange
16 Commission shall undertake a study on creating a system
17 whereby nationally recognized statistical rating organiza-
18 tions are assigned on a rotating basis to issuers seeking
19 a credit rating. Not later than 1 year after the date of
20 enactment of this Act, the Securities and Exchange Com-
21 mission shall transmit to Congress a report containing the
22 findings of the study.