

Corporate & Financial Weekly Digest

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SEC Publishes Final Rule Removing Rating Agency Exemption from Regulation FD

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On September 29, the Securities and Exchange Commission adopted an amendment, effective upon publication in the *Federal Register*, to remove the specific exemption from Regulation FD for issuer disclosures made to nationally recognized statistical rating organizations and credit rating agencies, as required by Section 939B of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Under Rule 100(b)(2)(iii) of Regulation FD as in effect prior to the SEC's final rule, the issuer or person acting on its behalf need not publicly disclose the material nonpublic information if the disclosure of such information is made to a credit rating agency that makes its credit ratings publicly available, or is made pursuant to Rule 17g-5(a)(3) to a nationally recognized statistical rating organization.

Regulation FD was adopted to address the problem of selective disclosure made to those who would reasonably be expected to trade securities on the basis of the information or provide others with advice about securities trading, by requiring that when an issuer, or any person acting on its behalf, discloses material nonpublic information to certain enumerated persons (including brokers, dealers, investment advisers, institutional investment managers, investment companies and certain persons associated with the foregoing and holders of the issuer's securities), the information must also be publicly disclosed.

Following the removal of the Regulation FD exemption for rating agencies, if a rating agency is determined to be one of the enumerated persons covered by Regulation FD, or if a rating agency is deemed to be acting on behalf of the issuer and the rating agency discloses material nonpublic information to one of the enumerated persons covered by Regulation FD, then the obligations of Regulation FD could apply to information disclosed by the issuer to the rating agency, unless the rating agency expressly agrees to maintain the disclosed information in confidence as set forth in Rule 100(b)(2)(ii) of Regulation FD.

Click [here](#) for the complete text of the SEC's adopting release.