

CREDIT RATING AGENCY REFORM

(as of January 1, 2010)

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

The Wall Street Reform and Consumer Protection Act of 2009, passed by the House on December 11, 2009		Senate Discussion Draft released by Senator Dodd on November 10, 2009	
Liability	<ul style="list-style-type: none"> - Subject to Section 11 liability for use of credit ratings in registration statements - Revocation of Regulation FD exemption - Revocation of "expert" exemption under Rule 436(g) - CRAs not covered by forward-looking safe harbor 		<ul style="list-style-type: none"> - Subject to Section 11 liability for use of credit ratings in registration statements - Duty to report issuer violations of law to appropriate authorities
Disclosure	<ul style="list-style-type: none"> - Conflicts of interest - Qualitative and quantitative methodologies and assumptions used - Prior rating errors made - Other information required by SEC 		<ul style="list-style-type: none"> - Qualitative and quantitative methodologies and assumptions used - Prior rating errors made - Third party reports and credible information received from independent sources - Other information required by SEC
Prohibited Activities	<ul style="list-style-type: none"> - If providing ratings, CRAs cannot provide: <ul style="list-style-type: none"> - Risk management services; - Advice or consultation relating to mergers, sales or disposition of assets, or not related to a securities issuance; - Any other activity according to SEC rules 		<ul style="list-style-type: none"> - SEC to adopt rules separating rating activities from sales and marketing activities
Conflict of Interest	<ul style="list-style-type: none"> - Reduce conflict of interest concerns by maintaining a website disclosing fees earned, number of issuances rated and issuer standings for current year and two prior years 		<ul style="list-style-type: none"> - Compliance officers cannot participate in determining ratings or methodologies, or participate in sales activities or setting of compensation levels for certain employees - Maintain CRA records of ratings over time on CRA website for investors to review
Oversight	<ul style="list-style-type: none"> - SEC to set rules, review due diligence and methodologies used - CRAs must have Board of Directors with at least 1/3 (minimum of two) members being independent for policy and procedure oversight - CRAs that earned less than \$250 million in comp in last full fiscal year may deregister as NRSRO 		<ul style="list-style-type: none"> - SEC to set rules - Annual internal control reports submitted to SEC - SEC may suspend CRA's right to rate certain types of securities
Other	<ul style="list-style-type: none"> - Due diligence reports prepared by third parties for issuers must be certified and provided to CRAs - SEC may propose additional rules relating to ratings of structured products 		<ul style="list-style-type: none"> - Due diligence reports prepared by third parties for issuers must be certified and provided to CRAs - CRA analysts must pass exams and continue education - SEC study of independence and alternative models