

109TH CONGRESS
2^D SESSION

S. 3850

AN ACT

To improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

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 Act may be cited as the “Credit Rating Agency
5 Reform Act of 2006”.

1 SEC. 2. FINDINGS.

2 Upon the basis of facts disclosed by the record and
3 report of the Securities and Exchange Commission made
4 pursuant to section 702 of the Sarbanes-Oxley Act of
5 2002 (116 Stat. 797), hearings before the Committee on
6 Banking, Housing, and Urban Affairs of the Senate and
7 the Committee on Financial Services of the House of Rep-
8 resentatives during the 108th and 109th Congresses, com-
9 ment letters to the concept releases and proposed rules
10 of the Commission, and facts otherwise disclosed and
11 ascertained, Congress finds that credit rating agencies are
12 of national importance, in that, among other things—

13 (1) their ratings, publications, writings, anal-
14 yses, and reports are furnished and distributed, and
15 their contracts, subscription agreements, and other
16 arrangements with clients are negotiated and per-
17 formed, by the use of the mails and other means and
18 instrumentalities of interstate commerce;

19 (2) their ratings, publications, writings, anal-
20 yses, and reports customarily relate to the purchase
21 and sale of securities traded on securities exchanges
22 and in interstate over-the-counter markets, securities
23 issued by companies engaged in business in inter-
24 state commerce, and securities issued by national
25 banks and member banks of the Federal Reserve
26 System;

1 (3) the foregoing transactions occur in such vol-
2 ume as substantially to affect interstate commerce,
3 the securities markets, the national banking system,
4 and the national economy;

5 (4) the oversight of such credit rating agencies
6 serves the compelling interest of investor protection;

7 (5) the 2 largest credit rating agencies serve
8 the vast majority of the market, and additional com-
9 petition is in the public interest; and

10 (6) the Commission has indicated that it needs
11 statutory authority to oversee the credit rating in-
12 dustry.

13 **SEC. 3. DEFINITIONS.**

14 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
15 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a)) is amended by adding at the end the following new
17 paragraphs:

18 “(60) CREDIT RATING.—The term ‘credit rat-
19 ing’ means an assessment of the creditworthiness of
20 an obligor as an entity or with respect to specific se-
21 curities or money market instruments.

22 “(61) CREDIT RATING AGENCY.—The term
23 ‘credit rating agency’ means any person—

24 “(A) engaged in the business of issuing
25 credit ratings on the Internet or through an-

1 other readily accessible means, for free or for a
2 reasonable fee, but does not include a commer-
3 cial credit reporting company;

4 “(B) employing either a quantitative or
5 qualitative model, or both, to determine credit
6 ratings; and

7 “(C) receiving fees from either issuers, in-
8 vestors, or other market participants, or a com-
9 bination thereof.

10 “(62) **NATIONALLY RECOGNIZED STATISTICAL**
11 **RATING ORGANIZATION.**—The term ‘nationally rec-
12 ognized statistical rating organization’ means a cred-
13 it rating agency that—

14 “(A) has been in business as a credit rat-
15 ing agency for at least the 3 consecutive years
16 immediately preceding the date of its applica-
17 tion for registration under section 15E;

18 “(B) issues credit ratings certified by
19 qualified institutional buyers, in accordance
20 with section 15E(a)(1)(B)(ix), with respect to—

21 “(i) financial institutions, brokers, or
22 dealers;

23 “(ii) insurance companies;

24 “(iii) corporate issuers;

1 “(iv) issuers of asset-backed securities
2 (as that term is defined in section 1101(c)
3 of part 229 of title 17, Code of Federal
4 Regulations, as in effect on the date of en-
5 actment of this paragraph);

6 “(v) issuers of government securities,
7 municipal securities, or securities issued by
8 a foreign government; or

9 “(vi) a combination of one or more
10 categories of obligors described in any of
11 clauses (i) through (v); and

12 “(C) is registered under section 15E.

13 “(63) PERSON ASSOCIATED WITH A NATION-
14 ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-
15 TION.—The term ‘person associated with’ a nation-
16 ally recognized statistical rating organization means
17 any partner, officer, director, or branch manager of
18 a nationally recognized statistical rating organiza-
19 tion (or any person occupying a similar status or
20 performing similar functions), any person directly or
21 indirectly controlling, controlled by, or under com-
22 mon control with a nationally recognized statistical
23 rating organization, or any employee of a nationally
24 recognized statistical rating organization.

1 “(64) QUALIFIED INSTITUTIONAL BUYER.—The
 2 term ‘qualified institutional buyer’ has the meaning
 3 given such term in section 230.144A(a) of title 17,
 4 Code of Federal Regulations, or any successor there-
 5 to.”.

6 (b) APPLICABLE DEFINITIONS.—As used in this
 7 Act—

8 (1) the term “Commission” means the Securi-
 9 ties and Exchange Commission; and

10 (2) the term “nationally recognized statistical
 11 rating organization” has the same meaning as in
 12 section 3(a)(62) of the Securities Exchange Act of
 13 1934, as added by this Act.

14 **SEC. 4. REGISTRATION OF NATIONALLY RECOGNIZED STA-**
 15 **TISTICAL RATING ORGANIZATIONS.**

16 (a) AMENDMENT.—The Securities Exchange Act of
 17 1934 is amended by inserting after section 15D (15
 18 U.S.C. 78o–6) the following new section:

19 **“SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED**
 20 **STATISTICAL RATING ORGANIZATIONS.**

21 “(a) REGISTRATION PROCEDURES.—

22 “(1) APPLICATION FOR REGISTRATION.—

23 “(A) IN GENERAL.—A credit rating agency
 24 that elects to be treated as a nationally recog-
 25 nized statistical rating organization for pur-

1 poses of this title (in this section referred to as
2 the ‘applicant’), shall furnish to the Commis-
3 sion an application for registration, in such
4 form as the Commission shall require, by rule
5 or regulation issued in accordance with sub-
6 section (n), and containing the information de-
7 scribed in subparagraph (B).

8 “(B) REQUIRED INFORMATION.—An appli-
9 cation for registration under this section shall
10 contain information regarding—

11 “(i) credit ratings performance meas-
12 urement statistics over short-term, mid-
13 term, and long-term periods (as applicable)
14 of the applicant;

15 “(ii) the procedures and methodolo-
16 gies that the applicant uses in determining
17 credit ratings;

18 “(iii) policies or procedures adopted
19 and implemented by the applicant to pre-
20 vent the misuse, in violation of this title
21 (or the rules and regulations hereunder),
22 of material, nonpublic information;

23 “(iv) the organizational structure of
24 the applicant;

1 “(v) whether or not the applicant has
2 in effect a code of ethics, and if not, the
3 reasons therefor;

4 “(vi) any conflict of interest relating
5 to the issuance of credit ratings by the ap-
6 plicant;

7 “(vii) the categories described in any
8 of clauses (i) through (v) of section
9 3(a)(62)(B) with respect to which the ap-
10 plicant intends to apply for registration
11 under this section;

12 “(viii) on a confidential basis, a list of
13 the 20 largest issuers and subscribers that
14 use the credit rating services of the appli-
15 cant, by amount of net revenues received
16 therefrom in the fiscal year immediately
17 preceding the date of submission of the ap-
18 plication;

19 “(ix) on a confidential basis, as to
20 each applicable category of obligor de-
21 scribed in any of clauses (i) through (v) of
22 section 3(a)(62)(B), written certifications
23 described in subparagraph (C), except as
24 provided in subparagraph (D); and

1 “(x) any other information and docu-
2 ments concerning the applicant and any
3 person associated with such applicant as
4 the Commission, by rule, may prescribe as
5 necessary or appropriate in the public in-
6 terest or for the protection of investors.

7 “(C) WRITTEN CERTIFICATIONS.—Written
8 certifications required by subparagraph
9 (B)(ix)—

10 “(i) shall be provided from not fewer
11 than 10 qualified institutional buyers, none
12 of which is affiliated with the applicant;

13 “(ii) may address more than one cat-
14 egory of obligors described in any of
15 clauses (i) through (v) of section
16 3(a)(62)(B);

17 “(iii) shall include not fewer than 2
18 certifications for each such category of ob-
19 ligor; and

20 “(iv) shall state that the qualified in-
21 stitutional buyer—

22 “(I) meets the definition of a
23 qualified institutional buyer under
24 section 3(a)(64); and

1 “(II) has used the credit ratings
2 of the applicant for at least the 3
3 years immediately preceding the date
4 of the certification in the subject cat-
5 egory or categories of obligors.

6 “(D) EXEMPTION FROM CERTIFICATION
7 REQUIREMENT.—A written certification under
8 subparagraph (B)(ix) is not required with re-
9 spect to any credit rating agency which has re-
10 ceived, or been the subject of, a no-action letter
11 from the staff of the Commission prior to Au-
12 gust 2, 2006, stating that such staff would not
13 recommend enforcement action against any
14 broker or dealer that considers credit ratings
15 issued by such credit rating agency to be rat-
16 ings from a nationally recognized statistical rat-
17 ing organization.

18 “(E) LIMITATION ON LIABILITY OF QUALI-
19 FIED INSTITUTIONAL BUYERS.—No qualified
20 institutional buyer shall be liable in any private
21 right of action for any opinion or statement ex-
22 pressed in a certification made pursuant to sub-
23 paragraph (B)(ix).

24 “(2) REVIEW OF APPLICATION.—

1 “(A) INITIAL DETERMINATION.—Not later
2 than 90 days after the date on which the appli-
3 cation for registration is furnished to the Com-
4 mission under paragraph (1) (or within such
5 longer period as to which the applicant con-
6 sents) the Commission shall—

7 “(i) by order, grant such registration
8 for ratings in the subject category or cat-
9 egories of obligors, as described in clauses
10 (i) through (v) of section 3(a)(62)(B); or

11 “(ii) institute proceedings to deter-
12 mine whether registration should be de-
13 nied.

14 “(B) CONDUCT OF PROCEEDINGS.—

15 “(i) CONTENT.—Proceedings referred
16 to in subparagraph (A)(ii) shall—

17 “(I) include notice of the grounds
18 for denial under consideration and an
19 opportunity for hearing; and

20 “(II) be concluded not later than
21 120 days after the date on which the
22 application for registration is fur-
23 nished to the Commission under para-
24 graph (1).

1 “(ii) DETERMINATION.—At the con-
2 clusion of such proceedings, the Commis-
3 sion, by order, shall grant or deny such ap-
4 plication for registration.

5 “(iii) EXTENSION AUTHORIZED.—The
6 Commission may extend the time for con-
7 clusion of such proceedings for not longer
8 than 90 days, if it finds good cause for
9 such extension and publishes its reasons
10 for so finding, or for such longer period as
11 to which the applicant consents.

12 “(C) GROUNDS FOR DECISION.—The Com-
13 mission shall grant registration under this
14 subsection—

15 “(i) if the Commission finds that the
16 requirements of this section are satisfied;
17 and

18 “(ii) unless the Commission finds (in
19 which case the Commission shall deny such
20 registration) that—

21 “(I) the applicant does not have
22 adequate financial and managerial re-
23 sources to consistently produce credit
24 ratings with integrity and to materi-
25 ally comply with the procedures and

1 methodologies disclosed under para-
2 graph (1)(B) and with subsections
3 (g), (h), (i), and (j); or

4 “(II) if the applicant were so reg-
5 istered, its registration would be sub-
6 ject to suspension or revocation under
7 subsection (d).

8 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
9 Subject to section 24, the Commission shall, by rule,
10 require a nationally recognized statistical rating or-
11 ganization, upon the granting of registration under
12 this section, to make the information and documents
13 submitted to the Commission in its completed appli-
14 cation for registration, or in any amendment sub-
15 mitted under paragraph (1) or (2) of subsection (b),
16 publicly available on its website, or through another
17 comparable, readily accessible means, except as pro-
18 vided in clauses (viii) and (ix) of paragraph (1)(B).

19 “(b) UPDATE OF REGISTRATION.—

20 “(1) UPDATE.—Each nationally recognized sta-
21 tistical rating organization shall promptly amend its
22 application for registration under this section if any
23 information or document provided therein becomes
24 materially inaccurate, except that a nationally recog-

1 nized statistical rating organization is not required
2 to amend—

3 “(A) the information required to be fur-
4 nished under subsection (a)(1)(B)(i) by fur-
5 nishing information under this paragraph, but
6 shall amend such information in the annual
7 submission of the organization under paragraph
8 (2) of this subsection; or

9 “(B) the certifications required to be pro-
10 vided under subsection (a)(1)(B)(ix) by fur-
11 nishing information under this paragraph.

12 “(2) CERTIFICATION.—Not later than 90 days
13 after the end of each calendar year, each nationally
14 recognized statistical rating organization shall fur-
15 nish to the Commission an amendment to its reg-
16 istration, in such form as the Commission, by rule,
17 may prescribe as necessary or appropriate in the
18 public interest or for the protection of investors—

19 “(A) certifying that the information and
20 documents in the application for registration of
21 such nationally recognized statistical rating or-
22 ganization (other than the certifications re-
23 quired under subsection (a)(1)(B)(ix)) continue
24 to be accurate; and

1 “(B) listing any material change that oc-
2 curred to such information or documents during
3 the previous calendar year.

4 “(c) ACCOUNTABILITY FOR RATINGS PROCE-
5 DURES.—

6 “(1) AUTHORITY.—The Commission shall have
7 exclusive authority to enforce the provisions of this
8 section in accordance with this title with respect to
9 any nationally recognized statistical rating organiza-
10 tion, if such nationally recognized statistical rating
11 organization issues credit ratings in material con-
12 travention of those procedures relating to such na-
13 tionally recognized statistical rating organization, in-
14 cluding procedures relating to the prevention of mis-
15 use of nonpublic information and conflicts of inter-
16 est, that such nationally recognized statistical rating
17 organization—

18 “(A) includes in its application for reg-
19 istration under subsection (a)(1)(B)(ii); or

20 “(B) makes and disseminates in reports
21 pursuant to section 17(a) or the rules and regu-
22 lations thereunder.

23 “(2) LIMITATION.—The rules and regulations
24 that the Commission may prescribe pursuant to this
25 title, as they apply to nationally recognized statis-

1 tical rating organizations, shall be narrowly tailored
2 to meet the requirements of this title applicable to
3 nationally recognized statistical rating organizations.
4 Notwithstanding any other provision of law, neither
5 the Commission nor any State (or political subdivi-
6 sion thereof) may regulate the substance of credit
7 ratings or the procedures and methodologies by
8 which any nationally recognized statistical rating or-
9 ganization determines credit ratings.

10 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
11 ISTRATION; NOTICE AND HEARING.—The Commission, by
12 order, shall censure, place limitations on the activities,
13 functions, or operations of, suspend for a period not ex-
14 ceeding 12 months, or revoke the registration of any na-
15 tionally recognized statistical rating organization if the
16 Commission finds, on the record after notice and oppor-
17 tunity for hearing, that such censure, placing of limita-
18 tions, suspension, or revocation is necessary for the protec-
19 tion of investors and in the public interest and that such
20 nationally recognized statistical rating organization, or
21 any person associated with such an organization, whether
22 prior to or subsequent to becoming so associated—

23 “(1) has committed or omitted any act, or is
24 subject to an order or finding, enumerated in sub-
25 paragraph (A), (D), (E), (H), or (G) of section

1 15(b)(4), has been convicted of any offense specified
2 in section 15(b)(4)(B), or is enjoined from any ac-
3 tion, conduct, or practice specified in subparagraph
4 (C) of section 15(b)(4), during the 10-year period
5 preceding the date of commencement of the pro-
6 ceedings under this subsection, or at any time there-
7 after;

8 “(2) has been convicted during the 10-year pe-
9 riod preceding the date on which an application for
10 registration is furnished to the Commission under
11 this section, or at any time thereafter, of—

12 “(A) any crime that is punishable by im-
13 prisonment for 1 or more years, and that is not
14 described in section 15(b)(4)(B); or

15 “(B) a substantially equivalent crime by a
16 foreign court of competent jurisdiction;

17 “(3) is subject to any order of the Commission
18 barring or suspending the right of the person to be
19 associated with a nationally recognized statistical
20 rating organization;

21 “(4) fails to furnish the certifications required
22 under subsection (b)(2); or

23 “(5) fails to maintain adequate financial and
24 managerial resources to consistently produce credit
25 ratings with integrity.

1 “(e) TERMINATION OF REGISTRATION.—

2 “(1) VOLUNTARY WITHDRAWAL.—A nationally
3 recognized statistical rating organization may, upon
4 such terms and conditions as the Commission may
5 establish as necessary in the public interest or for
6 the protection of investors, withdraw from registra-
7 tion by furnishing a written notice of withdrawal to
8 the Commission.

9 “(2) COMMISSION AUTHORITY.—In addition to
10 any other authority of the Commission under this
11 title, if the Commission finds that a nationally rec-
12 ognized statistical rating organization is no longer in
13 existence or has ceased to do business as a credit
14 rating agency, the Commission, by order, shall can-
15 cel the registration under this section of such na-
16 tionally recognized statistical rating organization.

17 “(f) REPRESENTATIONS.—

18 “(1) BAN ON REPRESENTATIONS OF SPONSOR-
19 SHIP BY UNITED STATES OR AGENCY THEREOF.—It
20 shall be unlawful for any nationally recognized sta-
21 tistical rating organization to represent or imply in
22 any manner whatsoever that such nationally recog-
23 nized statistical rating organization has been des-
24 ignated, sponsored, recommended, or approved, or
25 that the abilities or qualifications thereof have in

1 any respect been passed upon, by the United States
2 or any agency, officer, or employee thereof.

3 “(2) BAN ON REPRESENTATION AS NRSRO OF
4 UNREGISTERED CREDIT RATING AGENCIES.—It shall
5 be unlawful for any credit rating agency that is not
6 registered under this section as a nationally recog-
7 nized statistical rating organization to state that
8 such credit rating agency is a nationally recognized
9 statistical rating organization registered under this
10 title.

11 “(3) STATEMENT OF REGISTRATION UNDER SE-
12 CURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No
13 provision of paragraph (1) shall be construed to pro-
14 hibit a statement that a nationally recognized statis-
15 tical rating organization is a nationally recognized
16 statistical rating organization under this title, if
17 such statement is true in fact and if the effect of
18 such registration is not misrepresented.

19 “(g) PREVENTION OF MISUSE OF NONPUBLIC IN-
20 FORMATION.—

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

1 business of such nationally recognized statistical rat-
2 ing organization, to prevent the misuse in violation
3 of this title, or the rules or regulations hereunder,
4 of material, nonpublic information by such nationally
5 recognized statistical rating organization or any per-
6 son associated with such nationally recognized statis-
7 tical rating organization.

8 “(2) COMMISSION AUTHORITY.—The Commis-
9 sion shall issue final rules in accordance with sub-
10 section (n) to require specific policies or procedures
11 that are reasonably designed to prevent misuse in
12 violation of this title (or the rules or regulations
13 hereunder) of material, nonpublic information.

14 “(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

15 “(1) ORGANIZATION POLICIES AND PROCE-
16 DURES.—Each nationally recognized statistical rat-
17 ing organization shall establish, maintain, and en-
18 force written policies and procedures reasonably de-
19 signed, taking into consideration the nature of the
20 business of such nationally recognized statistical rat-
21 ing organization and affiliated persons and affiliated
22 companies thereof, to address and manage any con-
23 flicts of interest that can arise from such business.

24 “(2) COMMISSION AUTHORITY.—The Commis-
25 sion shall issue final rules in accordance with sub-

1 section (n) to prohibit, or require the management
2 and disclosure of, any conflicts of interest relating to
3 the issuance of credit ratings by a nationally recog-
4 nized statistical rating organization, including, with-
5 out limitation, conflicts of interest relating to—

6 “(A) the manner in which a nationally rec-
7 ognized statistical rating organization is com-
8 pensated by the obligor, or any affiliate of the
9 obligor, for issuing credit ratings or providing
10 related services;

11 “(B) the provision of consulting, advisory,
12 or other services by a nationally recognized sta-
13 tistical rating organization, or any person asso-
14 ciated with such nationally recognized statistical
15 rating organization, to the obligor, or any affil-
16 iate of the obligor;

17 “(C) business relationships, ownership in-
18 terests, or any other financial or personal inter-
19 ests between a nationally recognized statistical
20 rating organization, or any person associated
21 with such nationally recognized statistical rat-
22 ing organization, and the obligor, or any affil-
23 iate of the obligor;

24 “(D) any affiliation of a nationally recog-
25 nized statistical rating organization, or any per-

1 son associated with such nationally recognized
2 statistical rating organization, with any person
3 that underwrites the securities or money market
4 instruments that are the subject of a credit rat-
5 ing; and

6 “(E) any other potential conflict of inter-
7 est, as the Commission deems necessary or ap-
8 propriate in the public interest or for the pro-
9 tection of investors.

10 “(i) PROHIBITED CONDUCT.—

11 “(1) PROHIBITED ACTS AND PRACTICES.—The
12 Commission shall issue final rules in accordance
13 with subsection (n) to prohibit any act or practice
14 relating to the issuance of credit ratings by a nation-
15 ally recognized statistical rating organization that
16 the Commission determines to be unfair, coercive, or
17 abusive, including any act or practice relating to—

18 “(A) conditioning or threatening to condi-
19 tion the issuance of a credit rating on the pur-
20 chase by the obligor or an affiliate thereof of
21 other services or products, including pre-credit
22 rating assessment products, of the nationally
23 recognized statistical rating organization or any
24 person associated with such nationally recog-
25 nized statistical rating organization;

1 “(B) lowering or threatening to lower a
2 credit rating on, or refusing to rate, securities
3 or money market instruments issued by an
4 asset pool or as part of any asset-backed or
5 mortgage-backed securities transaction, unless a
6 portion of the assets within such pool or part
7 of such transaction, as applicable, also is rated
8 by the nationally recognized statistical rating
9 organization; or

10 “(C) modifying or threatening to modify a
11 credit rating or otherwise departing from its
12 adopted systematic procedures and methodolo-
13 gies in determining credit ratings, based on
14 whether the obligor, or an affiliate of the obli-
15 gor, purchases or will purchase the credit rating
16 or any other service or product of the nationally
17 recognized statistical rating organization or any
18 person associated with such organization.

19 “(2) RULE OF CONSTRUCTION.—Nothing in
20 paragraph (1), or in any rules or regulations adopt-
21 ed thereunder, may be construed to modify, impair,
22 or supersede the operation of any of the antitrust
23 laws (as defined in the first section of the Clayton
24 Act, except that such term includes section 5 of the
25 Federal Trade Commission Act, to the extent that

1 such section 5 applies to unfair methods of competi-
2 tion).

3 “(j) DESIGNATION OF COMPLIANCE OFFICER.—Each
4 nationally recognized statistical rating organization shall
5 designate an individual responsible for administering the
6 policies and procedures that are required to be established
7 pursuant to subsections (g) and (h), and for ensuring com-
8 pliance with the securities laws and the rules and regula-
9 tions thereunder, including those promulgated by the
10 Commission pursuant to this section.

11 “(k) STATEMENTS OF FINANCIAL CONDITION.—
12 Each nationally recognized statistical rating organization
13 shall, on a confidential basis, furnish to the Commission,
14 at intervals determined by the Commission, such financial
15 statements, certified (if required by the rules or regula-
16 tions of the Commission) by an independent public ac-
17 countant, and information concerning its financial condi-
18 tion, as the Commission, by rule, may prescribe as nec-
19 essary or appropriate in the public interest or for the pro-
20 tection of investors.

21 “(l) SOLE METHOD OF REGISTRATION.—

22 “(1) IN GENERAL.—On and after the effective
23 date of this section, a credit rating agency may only
24 be registered as a nationally recognized statistical

1 rating organization for any purpose in accordance
2 with this section.

3 “(2) PROHIBITION ON RELIANCE ON NO-ACTION
4 RELIEF.—On and after the effective date of this
5 section—

6 “(A) an entity that, before that date, re-
7 ceived advice, approval, or a no-action letter
8 from the Commission or staff thereof to be
9 treated as a nationally recognized statistical
10 rating organization pursuant to the Commission
11 rule at section 240.15c3–1 of title 17, Code of
12 Federal Regulations, may represent itself or act
13 as a nationally recognized statistical rating or-
14 ganization only—

15 “(i) during Commission consideration
16 of the application, if such entity has fur-
17 nished an application for registration
18 under this section; and

19 “(ii) on and after the date of approval
20 of its application for registration under
21 this section; and

22 “(B) the advice, approval, or no-action let-
23 ter described in subparagraph (A) shall be void.

24 “(3) NOTICE TO OTHER AGENCIES.—Not later
25 than 30 days after the date of enactment of this sec-

1 tion, the Commission shall give notice of the actions
2 undertaken pursuant to this section to each Federal
3 agency which employs in its rules and regulations
4 the term ‘nationally recognized statistical rating or-
5 ganization’ (as that term is used under Commission
6 rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on
7 the date of enactment of this section).

8 “(m) RULES OF CONSTRUCTION.—

9 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR
10 DEFENSES.—Registration under and compliance
11 with this section does not constitute a waiver of, or
12 otherwise diminish, any right, privilege, or defense
13 that a nationally recognized statistical rating organi-
14 zation may otherwise have under any provision of
15 State or Federal law, including any rule, regulation,
16 or order thereunder.

17 “(2) NO PRIVATE RIGHT OF ACTION.—Nothing
18 in this section may be construed as creating any pri-
19 vate right of action, and no report furnished by a
20 nationally recognized statistical rating organization
21 in accordance with this section or section 17 shall
22 create a private right of action under section 18 or
23 any other provision of law.

24 “(n) REGULATIONS.—

1 “(1) NEW PROVISIONS.—Such rules and regula-
2 tions as are required by this section or are otherwise
3 necessary to carry out this section, including the ap-
4 plication form required under subsection (a)—

5 “(A) shall be issued by the Commission in
6 final form, not later than 270 days after the
7 date of enactment of this section; and

8 “(B) shall become effective not later than
9 270 days after the date of enactment of this
10 section.

11 “(2) REVIEW OF EXISTING REGULATIONS.—Not
12 later than 270 days after the date of enactment of
13 this section, the Commission shall—

14 “(A) review its existing rules and regula-
15 tions which employ the term ‘nationally recog-
16 nized statistical rating organization’ or
17 ‘NRSRO’; and

18 “(B) amend or revise such rules and regula-
19 tions in accordance with the purposes of this
20 section, as the Commission may prescribe as
21 necessary or appropriate in the public interest
22 or for the protection of investors.

23 “(o) NRSROS SUBJECT TO COMMISSION AUTHOR-
24 ITY.—

1 “(1) IN GENERAL.—No provision of the laws of
2 any State or political subdivision thereof requiring
3 the registration, licensing, or qualification as a cred-
4 it rating agency or a nationally recognized statistical
5 rating organization shall apply to any nationally rec-
6 ognized statistical rating organization or person em-
7 ployed by or working under the control of a nation-
8 ally recognized statistical rating organization.

9 “(2) LIMITATION.—Nothing in this subsection
10 prohibits the securities commission (or any agency
11 or office performing like functions) of any State
12 from investigating and bringing an enforcement ac-
13 tion with respect to fraud or deceit against any na-
14 tionally recognized statistical rating organization or
15 person associated with a nationally recognized statis-
16 tical rating organization.

17 “(p) APPLICABILITY.—This section, other than sub-
18 section (n), which shall apply on the date of enactment
19 of this section, shall apply on the earlier of—

20 “(1) the date on which regulations are issued in
21 final form under subsection (n)(1); or

22 “(2) 270 days after the date of enactment of
23 this section.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) SECURITIES EXCHANGE ACT OF 1934.—The
2 Securities Exchange Act of 1934 (15 U.S.C. 78 et
3 seq.) is amended—

4 (A) in section 15(b)(4) (15 U.S.C.
5 78o(b)(4))—

6 (i) in subparagraph (B)(ii), by insert-
7 ing “nationally recognized statistical rating
8 organization,” after “transfer agent,”; and

9 (ii) in subparagraph (C), by inserting
10 “nationally recognized statistical rating or-
11 ganization,” after “transfer agent,”; and

12 (B) in section 21B(a) (15 U.S.C. 78u-
13 2(a)), by inserting “15E,” after “15C,”.

14 (2) INVESTMENT COMPANY ACT OF 1940.—The
15 Investment Company Act of 1940 (15 U.S.C. 80a et
16 seq.) is amended—

17 (A) in section 2(a) (15 U.S.C. 80a-2(a)),
18 by adding at the end the following new para-
19 graph:

20 “(53) The term ‘credit rating agency’ has the
21 same meaning as in section 3 of the Securities Ex-
22 change Act of 1934.”; and

23 (B) in section 9(a) (15 U.S.C. 80a-9(a))—

1 (i) in paragraph (1), by inserting
2 “credit rating agency,” after “transfer
3 agent,”; and

4 (ii) in paragraph (2), by inserting
5 “credit rating agency,” after “transfer
6 agent,”.

7 (3) INVESTMENT ADVISERS ACT OF 1940.—The
8 Investment Advisers Act of 1940 (15 U.S.C. 80b et
9 seq.) is amended—

10 (A) in section 202(a) (15 U.S.C. 80b–
11 2(a)), by adding at the end the following new
12 paragraph:

13 “(28) The term ‘credit rating agency’ has the
14 same meaning as in section 3 of the Securities Ex-
15 change Act of 1934.”;

16 (B) in section 202(a)(11) (15 U.S.C. 80b–
17 2(a)(11)), by striking “or (F)” and inserting
18 the following: “(F) any nationally recognized
19 statistical rating organization, as that term is
20 defined in section 3(a)(62) of the Securities Ex-
21 change Act of 1934, unless such organization
22 engages in issuing recommendations as to pur-
23 chasing, selling, or holding securities or in man-
24 aging assets, consisting in whole or in part of
25 securities, on behalf of others; or (G)”;

1 (C) in section 203(e) (15 U.S.C. 80b–
2 3(e))—

3 (i) in paragraph (2)(B), by inserting
4 “credit rating agency,” after “transfer
5 agent,”; and

6 (ii) in paragraph (4), by inserting
7 “credit rating agency,” after “transfer
8 agent,”.

9 (4) HOUSING AND COMMUNITY DEVELOPMENT
10 ACT OF 1992.—Section 1319 of the Housing and
11 Community Development Act of 1992 (12 U.S.C.
12 4519) is amended by striking “effectively” and all
13 that follows through “broker-dealers” and inserting
14 “that is a nationally recognized statistical rating or-
15 ganization, as such term is defined in section 3(a)
16 of the Securities Exchange Act of 1934”.

17 (5) HIGHER EDUCATION ACT OF 1965.—Section
18 439(r)(15)(A) of the Higher Education Act of 1965
19 (20 U.S.C. 1087–2(r)(15)(A)) is amended by strik-
20 ing “means any entity recognized as such by the Se-
21 curities and Exchange Commission” and inserting
22 “means any nationally recognized statistical rating
23 organization, as that term is defined in section 3(a)
24 of the Securities Exchange Act of 1934”.

1 (6) TITLE 23.—Section 181(11) of title 23,
2 United States Code, is amended by striking “identi-
3 fied by the Securities and Exchange Commission as
4 a nationally recognized statistical rating organiza-
5 tion” and inserting “registered with the Securities
6 and Exchange Commission as a nationally recog-
7 nized statistical rating organization, as that term is
8 defined in section 3(a) of the Securities Exchange
9 Act of 1934”.

10 **SEC. 5. ANNUAL AND OTHER REPORTS.**

11 Section 17(a)(1) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78q(a)(1)) is amended—

13 (1) by inserting “nationally recognized statis-
14 tical rating organization,” after “registered transfer
15 agent,”; and

16 (2) by adding at the end the following: “Any re-
17 port that a nationally recognized statistical rating
18 organization is required by Commission rules under
19 this paragraph to make and disseminate to the Com-
20 mission shall be deemed furnished to the Commis-
21 sion.”.

22 **SEC. 6. COMMISSION ANNUAL REPORT.**

23 The Commission shall submit an annual report to the
24 Committee on Banking, Housing, and Urban Affairs of
25 the Senate and the Committee on Financial Services of

1 the House of Representatives that, with respect to the
2 year to which the report relates—

3 (1) identifies applicants for registration under
4 section 15E of the Securities Exchange Act of 1934,
5 as added by this Act;

6 (2) specifies the number of and actions taken
7 on such applications; and

8 (3) specifies the views of the Commission on the
9 state of competition, transparency, and conflicts of
10 interest among nationally recognized statistical rat-
11 ing organizations.

12 **SEC. 7. GAO STUDY AND REPORT REGARDING NATIONALLY**
13 **RECOGNIZED STATISTICAL RATING ORGANI-**
14 **ZATIONS.**

15 (a) **STUDY REQUIRED.**—The Comptroller General of
16 the United States shall conduct a study—

17 (1) to determine the impact of this Act and the
18 amendments made by this Act on—

19 (A) the quality of credit ratings issued by
20 nationally recognized statistical ratings organi-
21 zations;

22 (B) the financial markets;

23 (C) competition among credit rating agen-
24 cies;

1 (D) the incidence of inappropriate conflicts
2 of interest and sales practices by nationally rec-
3 ognized statistical rating organizations;

4 (E) the process for registering as a nation-
5 ally recognized statistical rating organization;
6 and

7 (F) such other matters relevant to the im-
8 plementation of this Act and the amendments
9 made by this Act, as the Comptroller General
10 deems necessary to bring to the attention of the
11 Congress;

12 (2) to identify problems, if any, that have re-
13 sulted from the implementation of this Act and the
14 amendments made by this Act; and

15 (3) to recommend solutions, including any legis-
16 lative or regulatory solutions, to any problems iden-
17 tified under paragraphs (1) and (2).

18 (b) REPORT REQUIRED.—Not earlier than 3 years
19 nor later than 4 years after the date of enactment of this
20 Act, the Comptroller General shall submit a report on the
21 results of the study required by this section to the Com-
22 mittee on Banking, Housing, and Urban Affairs of the

- 1 Senate and the Committee on Financial Services of the
- 2 House of Representatives.

Passed the Senate September 22, 2006.

Attest:

Secretary.

109TH CONGRESS
2^D SESSION

S. 3850

AN ACT

To improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.