

Calendar No. 590

109TH CONGRESS
2D SESSION**S. 3850****[Report No. 109–326]**

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2006

Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

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-

other readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

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

“(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

“(62) **NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.**—The term ‘nationally recognized statistical rating organization’ means a credit rating agency that—

“(A) has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E;

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

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

“(ii) insurance companies;

“(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-

poses of this title (in this section referred to as the ‘applicant’), shall furnish to 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).

“(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

“(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

“(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

“(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this title (or the rules and regulations hereunder), of material, nonpublic information;

“(iv) the organizational structure of 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); and

24 “(x) any other information and docu-
25 ments concerning the applicant and any

1 person associated with such applicant as
2 the Commission, by rule, may prescribe as
3 necessary or appropriate in the public in-
4 terest or for the protection of investors.

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

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

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

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

18 “(iv) shall state that the qualified in-
19 stitutional buyer—

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

23 “(II) has used the credit ratings
24 of the applicant for at least the 3
25 years immediately preceding the date

1 of the certification in the subject cat-
 2 egory or categories of obligors.

3 “(D) LIMITATION ON LIABILITY OF QUALI-
 4 FIED INSTITUTIONAL BUYERS.—No qualified
 5 institutional buyer shall be liable in any private
 6 right of action for any opinion or statement ex-
 7 pressed in a certification made pursuant to sub-
 8 paragraph (B)(ix).

9 “(2) REVIEW OF APPLICATION.—

10 “(A) INITIAL DETERMINATION.—Not later
 11 than 90 days after the date on which the appli-
 12 cation for registration is furnished to the Com-
 13 mission under paragraph (1) (or within such
 14 longer period as to which the applicant con-
 15 sents) the Commission shall—

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

20 “(ii) institute proceedings to deter-
 21 mine whether registration should be de-
 22 nied.

23 “(B) CONDUCT OF PROCEEDINGS.—

24 “(i) CONTENT.—Proceedings referred
 25 to in subparagraph (A)(ii) shall—

1 “(I) include notice of the grounds
2 for denial under consideration and an
3 opportunity for hearing; and

4 “(II) be concluded not later than
5 120 days after the date on which the
6 application for registration is fur-
7 nished to the Commission under para-
8 graph (1).

9 “(ii) DETERMINATION.—At the con-
10 clusion of such proceedings, the Commis-
11 sion, by order, shall grant or deny such ap-
12 plication for registration.

13 “(iii) EXTENSION AUTHORIZED.—The
14 Commission may extend the time for con-
15 clusion of such proceedings for not longer
16 than 90 days, if it finds good cause for
17 such extension and publishes its reasons
18 for so finding, or for such longer period as
19 to which the applicant consents.

20 “(C) GROUNDS FOR DECISION.—The Com-
21 mission shall grant registration under this sub-
22 section—

23 “(i) if the Commission finds that the
24 requirements of this section are satisfied;
25 and

1 “(ii) unless the Commission finds (in
2 which case the Commission shall deny such
3 registration) that—

4 “(I) the applicant does not have
5 adequate financial and managerial re-
6 sources to consistently produce credit
7 ratings with integrity and to materi-
8 ally comply with the procedures and
9 methodologies disclosed under para-
10 graph (1)(B) and with subsections
11 (g), (h), (i), and (j); or

12 “(II) if the applicant were so reg-
13 istered, its registration would be sub-
14 ject to suspension or revocation under
15 subsection (d).

16 “(3) PUBLIC AVAILABILITY OF INFORMATION.—

17 Subject to section 24, the Commission shall, by rule,
18 require a nationally recognized statistical rating or-
19 ganization, upon the granting of registration under
20 this section, to make the information and documents
21 submitted to the Commission in its completed appli-
22 cation for registration, or in any amendment sub-
23 mitted under paragraph (1) or (2) of subsection (b),
24 publicly available on its website, or through another

1 comparable, readily accessible means, except as pro-
2 vided in clauses (viii) and (ix) of paragraph (1)(B).

3 “(b) UPDATE OF REGISTRATION.—

4 “(1) UPDATE.—Each nationally recognized sta-
5 tistical rating organization shall promptly amend its
6 application for registration under this section if any
7 information or document provided therein becomes
8 materially inaccurate, except that a nationally recog-
9 nized statistical rating organization is not required
10 to amend—

11 “(A) the information required to be fur-
12 nished under subsection (a)(1)(B)(i) by fur-
13 nishing information under this paragraph, but
14 shall amend such information in the annual
15 submission of the organization under paragraph
16 (2) of this subsection; or

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

20 “(2) CERTIFICATION.—Not later than 90 days
21 after the end of each calendar year, each nationally
22 recognized statistical rating organization shall fur-
23 nish to the Commission an amendment to its reg-
24 istration, in such form as the Commission, by rule,

1 may prescribe as necessary or appropriate in the
2 public interest or for the protection of investors—

3 “(A) certifying that the information and
4 documents in the application for registration of
5 such nationally recognized statistical rating or-
6 ganization (other than the certifications re-
7 quired under subsection (a)(1)(B)(ix)) continue
8 to be accurate; and

9 “(B) listing any material change that oc-
10 curred to such information or documents during
11 the previous calendar year.

12 “(c) ACCOUNTABILITY FOR RATINGS PROCE-
13 DURES.—

14 “(1) AUTHORITY.—The Commission shall have
15 the authority to enforce the provisions of this section
16 in accordance with this title with respect to any na-
17 tionally recognized statistical rating organization, if
18 such nationally recognized statistical rating organi-
19 zation issues credit ratings in material contravention
20 of those procedures relating to such nationally recog-
21 nized statistical rating organization, including proce-
22 dures relating to the prevention of misuse of non-
23 public information and conflicts of interest, that
24 such nationally recognized statistical rating organi-
25 zation—

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

3 “(B) makes and disseminates in reports
4 pursuant to section 17(a) or the rules and regu-
5 lations thereunder.

6 “(2) LIMITATION.—The rules and regulations
7 that the Commission may prescribe pursuant to this
8 title, as they apply to nationally recognized statis-
9 tical rating organizations, shall be narrowly tailored
10 to meet the requirements of this title applicable to
11 nationally recognized statistical rating organizations,
12 and shall not purport to regulate the substance of
13 credit ratings or the procedures and methodologies
14 by which such nationally recognized statistical rating
15 organizations determine credit ratings.

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

1 nationally recognized statistical rating organization, or
2 any person associated with such an organization, whether
3 prior to or subsequent to becoming so associated—

4 “(1) has committed or omitted any act, or is
5 subject to an order or finding, enumerated in sub-
6 paragraph (A), (D), (E), (H), or (G) of section
7 15(b)(4), has been convicted of any offense specified
8 in section 15(b)(4)(B), or is enjoined from any ac-
9 tion, conduct, or practice specified in subparagraph
10 (C) of section 15(b)(4), during the 10-year period
11 preceding the date of commencement of the pro-
12 ceedings under this subsection, or at any time there-
13 after;

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

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

21 “(B) a substantially equivalent crime by a
22 foreign court of competent jurisdiction;

23 “(3) is subject to any order of the Commission
24 barring or suspending the right of the person to be

1 associated with a nationally recognized statistical
2 rating organization;

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

5 “(5) fails to maintain adequate financial and
6 managerial resources to consistently produce credit
7 ratings with integrity.

8 “(e) TERMINATION OF REGISTRATION.—

9 “(1) VOLUNTARY WITHDRAWAL.—A nationally
10 recognized statistical rating organization may, upon
11 such terms and conditions as the Commission may
12 establish as necessary in the public interest or for
13 the protection of investors, withdraw from registra-
14 tion by furnishing a written notice of withdrawal to
15 the Commission.

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

24 “(f) REPRESENTATIONS.—

1 “(1) BAN ON REPRESENTATIONS OF SPONSOR-
 2 SHIP BY UNITED STATES OR AGENCY THEREOF.—It
 3 shall be unlawful for any nationally recognized sta-
 4 tistical rating organization to represent or imply in
 5 any manner whatsoever that such nationally recog-
 6 nized statistical rating organization has been des-
 7 ignated, sponsored, recommended, or approved, or
 8 that the abilities or qualifications thereof have in
 9 any respect been passed upon, by the United States
 10 or any agency, officer, or employee thereof.

11 “(2) BAN ON REPRESENTATION AS NRSRO OF
 12 UNREGISTERED CREDIT RATING AGENCIES.—It shall
 13 be unlawful for any credit rating agency that is not
 14 registered under this section as a nationally recog-
 15 nized statistical rating organization to state that
 16 such credit rating agency is a nationally recognized
 17 statistical rating organization registered under this
 18 title.

19 “(3) STATEMENT OF REGISTRATION UNDER SE-
 20 CURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No
 21 provision of paragraph (1) shall be construed to pro-
 22 hibit a statement that a nationally recognized statis-
 23 tical rating organization is a nationally recognized
 24 statistical rating organization under this title, if

1 such statement is true in fact and if the effect of
2 such registration is not misrepresented.

3 “(g) PREVENTION OF MISUSE OF NONPUBLIC IN-
4 FORMATION.—

5 “(1) ORGANIZATION POLICIES AND PROCE-
6 DURES.—Each nationally recognized statistical rat-
7 ing organization shall establish, maintain, and en-
8 force written policies and procedures reasonably de-
9 signed, taking into consideration the nature of the
10 business of such nationally recognized statistical rat-
11 ing organization, to prevent the misuse in violation
12 of this title, or the rules or regulations hereunder,
13 of material, nonpublic information by such nationally
14 recognized statistical rating organization or any per-
15 son associated with such nationally recognized statis-
16 tical rating organization.

17 “(2) COMMISSION AUTHORITY.—The Commis-
18 sion shall issue final rules in accordance with sub-
19 section (n) to require specific policies or procedures
20 that are reasonably designed to prevent misuse in
21 violation of this title (or the rules or regulations
22 hereunder) of material, nonpublic information.

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

24 “(1) ORGANIZATION POLICIES AND PROCE-
25 DURES.—Each nationally recognized statistical rat-

ing organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

“(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) 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, without limitation, conflicts of interest relating to—

“(A) 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;

“(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

1 “(C) business relationships, ownership in-
2 terests, or any other financial or personal inter-
3 ests between a nationally recognized statistical
4 rating organization, or any person associated
5 with such nationally recognized statistical rat-
6 ing organization, and the obligor, or any affil-
7 iate of the obligor;

8 “(D) any affiliation of a nationally recog-
9 nized statistical rating organization, or any per-
10 son associated with such nationally recognized
11 statistical rating organization, with any person
12 that underwrites the securities or money market
13 instruments that are the subject of a credit rat-
14 ing; and

15 “(E) any other potential conflict of inter-
16 est, as the Commission deems necessary or ap-
17 propriate in the public interest or for the pro-
18 tection of investors.

19 “(i) PROHIBITED CONDUCT.—

20 “(1) PROHIBITED ACTS AND PRACTICES.—The
21 Commission shall issue final rules in accordance
22 with subsection (n) to prohibit any act or practice
23 relating to the issuance of credit ratings by a nation-
24 ally recognized statistical rating organization that

1 the Commission determines to be unfair, coercive, or
2 abusive, including any act or practice relating to—

3 “(A) conditioning or threatening to condi-
4 tion the issuance of a credit rating on the pur-
5 chase by the obligor or an affiliate thereof of
6 other services or products, including pre-credit
7 rating assessment products, of the nationally
8 recognized statistical rating organization or any
9 person associated with such nationally recog-
10 nized statistical rating organization;

11 “(B) lowering or threatening to lower a
12 credit rating on, or refusing to rate, securities
13 or money market instruments issued by an
14 asset pool or as part of any asset-backed or
15 mortgage-backed securities transaction, unless a
16 portion of the assets within such pool or part
17 of such transaction, as applicable, also is rated
18 by the nationally recognized statistical rating
19 organization; or

20 “(C) modifying or threatening to modify a
21 credit rating or otherwise departing from its
22 adopted systematic procedures and methodolo-
23 gies in determining credit ratings, based on
24 whether the obligor, or an affiliate of the obli-
25 gor, purchases or will purchase the credit rating

1 or any other service or product of the nationally
2 recognized statistical rating organization or any
3 person associated with such organization.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 paragraph (1), or in any rules or regulations adopt-
6 ed thereunder, may be construed to modify, impair,
7 or supersede the operation of any of the antitrust
8 laws (as defined in the first section of the Clayton
9 Act, except that such term includes section 5 of the
10 Federal Trade Commission Act, to the extent that
11 such section 5 applies to unfair methods of competi-
12 tion).

13 “(j) DESIGNATION OF COMPLIANCE OFFICER.—Each
14 nationally recognized statistical rating organization shall
15 designate an individual responsible for administering the
16 policies and procedures that are required to be established
17 pursuant to subsections (g) and (h), and for ensuring com-
18 pliance with the securities laws and the rules and regula-
19 tions thereunder, including those promulgated by the
20 Commission pursuant to this section.

21 “(k) STATEMENTS OF FINANCIAL CONDITION.—
22 Each nationally recognized statistical rating organization
23 shall, on a confidential basis, furnish to the Commission,
24 at intervals determined by the Commission, such financial
25 statements, certified (if required by the rules or regula-

1 tions of the Commission) by an independent public ac-
 2 countant, and information concerning its financial condi-
 3 tion, as the Commission, by rule, may prescribe as nec-
 4 essary or appropriate in the public interest or for the pro-
 5 tection of investors.

6 “(1) SOLE METHOD OF REGISTRATION.—

7 “(1) IN GENERAL.—On and after the effective
 8 date of this section, a credit rating agency may only
 9 be registered as a nationally recognized statistical
 10 rating organization for any purpose in accordance
 11 with this section.

12 “(2) PROHIBITION ON RELIANCE ON NO-ACTION
 13 RELIEF.—On and after the effective date of this sec-
 14 tion—

15 “(A) an entity that, before that date, re-
 16 ceived advice, approval, or a no-action letter
 17 from the Commission or staff thereof to be
 18 treated as a nationally recognized statistical
 19 rating organization pursuant to the Commission
 20 rule at section 240.15c3–1 of title 17, Code of
 21 Federal Regulations, may represent itself or act
 22 as a nationally recognized statistical rating or-
 23 ganization only—

24 “(i) during Commission consideration
 25 of the application, if such entity has fur-

1 nished an application for registration
2 under this section; and

3 “(ii) on and after the date of approval
4 of its application for registration under
5 this section; and

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

8 “(3) NOTICE TO OTHER AGENCIES.—Not later
9 than 30 days after the date of enactment of this sec-
10 tion, the Commission shall give notice of the actions
11 undertaken pursuant to this section to each Federal
12 agency which employs in its rules and regulations
13 the term ‘nationally recognized statistical rating or-
14 ganization’ (as that term is used under Commission
15 rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on
16 the date of enactment of this section).

17 “(m) RULES OF CONSTRUCTION.—

18 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR
19 DEFENSES.—Registration under and compliance
20 with this section does not constitute a waiver of, or
21 otherwise diminish, any right, privilege, or defense
22 that a nationally recognized statistical rating organi-
23 zation may otherwise have under any provision of
24 State or Federal law, including any rule, regulation,
25 or order thereunder.

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

8 “(n) REGULATIONS.—

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

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

16 “(B) shall become effective not later than
 17 270 days after the date of enactment of this
 18 section.

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

22 “(A) review its existing rules and regula-
 23 tions which employ the term ‘nationally recog-
 24 nized statistical rating organization’ or
 25 ‘NRSRO’; and

1 “(B) amend or revise such rules and regu-
 2 lations in accordance with the purposes of this
 3 section, as the Commission may prescribe as
 4 necessary or appropriate in the public interest
 5 or for the protection of investors.

6 “(o) EFFECTIVE DATE.—This section shall become
 7 effective on the earlier of—

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

10 “(2) 270 days after the date of enactment of
 11 this section.”.

12 (b) CONFORMING AMENDMENTS.—

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

16 (A) in section 15(b)(4) (15 U.S.C.
 17 78o(b)(4))—

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

21 (ii) in subparagraph (C), by inserting
 22 “nationally recognized statistical rating or-
 23 ganization,” after “transfer agent,”; and

24 (B) in section 21B(a) (15 U.S.C. 78u-
 25 2(a)), by inserting “15E,” after “15C,”.

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

4 (A) in section 2(a) (15 U.S.C. 80a–2(a)),
 5 by adding at the end the following new para-
 6 graph:

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

10 (B) in section 9(a) (15 U.S.C. 80a–9(a))—

11 (i) in paragraph (1), by inserting
 12 “credit rating agency,” after “transfer
 13 agent,”; and

14 (ii) in paragraph (2), by inserting
 15 “credit rating agency,” after “transfer
 16 agent,”.

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

20 (A) in section 202(a) (15 U.S.C. 80b–
 21 2(a)), by adding at the end the following new
 22 paragraph:

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

1 (B) 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
23 Senate and the Committee on Financial Services of the
24 House of Representatives.

1 **SEC. 8. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 become effective on the date determined under section
4 15E(o) of the Securities Exchange Act of 1934, as added
5 by this Act.

Calendar No. 590

109TH CONGRESS
2^D Session

S. 3850

[Report No. 109-326]

A BILL

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.

SEPTEMBER 6, 2006

Read twice and placed on the calendar