

# Calendar No. 590

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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.

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## 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

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## 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-

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); 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-

1 ing organization shall establish, maintain, and en-  
2 force written policies and procedures reasonably de-  
3 signed, taking into consideration the nature of the  
4 business of such nationally recognized statistical rat-  
5 ing organization and affiliated persons and affiliated  
6 companies thereof, to address and manage any con-  
7 flicts of interest that can arise from such business.

8 “(2) COMMISSION AUTHORITY.—The Commis-  
9 sion shall issue final rules in accordance with sub-  
10 section (n) to prohibit, or require the management  
11 and disclosure of, any conflicts of interest relating to  
12 the issuance of credit ratings by a nationally recog-  
13 nized statistical rating organization, including, with-  
14 out limitation, conflicts of interest relating to—

15 “(A) the manner in which a nationally rec-  
16 ognized statistical rating organization is com-  
17 pensated by the obligor, or any affiliate of the  
18 obligor, for issuing credit ratings or providing  
19 related services;

20 “(B) the provision of consulting, advisory,  
21 or other services by a nationally recognized sta-  
22 tistical rating organization, or any person asso-  
23 ciated with such nationally recognized statistical  
24 rating organization, to the obligor, or any affil-  
25 iate 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

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3850**

[Report No. 109-326]

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## **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.

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SEPTEMBER 6, 2006

Read twice and placed on the calendar.