

## **\*\* House Offer \*\***

**Title: Title IX, Subtitle C**

**Matter: Improvements to the Regulation of Credit Rating Agencies**

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The House proposes the following amendments to the Base text:

- 1. Add House provision** to strike references to ‘furnish’ and replace with ‘file’ (and their derivations) in existing statute. Information that is “furnished” to the SEC is subject to a lower standard of accuracy and liability than information that is “filed” with the SEC (e.g. liability for misleading statements only attaches to those who ‘file’ documents with the SEC. (House bill § 6002, page 1219, lines 3-10, etc.)
- 2. Add House provisions** concerning conflicts of interest. Provisions include an explicit prohibition of an NRSRO advising the issuer and rating that issuer’s securities, a look-back requirement at the ratings of an analyst that switches jobs, and public notification of a job change by an analyst. (House bill pages 1231-1234 and page 1251)
- 3. Strike and replace Senate provision** for state of mind in private actions of ‘knowing and reckless’. **Replace with House provision** that states a gross negligence requirement for cases brought against NRSROs in violating the anti-fraud provisions of the securities laws and that standard is to be applied to NRSROs in the same manner as it is applied to other defendants in the same lawsuits under the securities laws. Statements made by NRSROs shall not be deemed forward-looking statements. An investor in a rated security can recover damages if the process of determining ratings is deemed grossly negligent and a substantial factor in the economic loss of the investor. (Strike Senate bill § 933, page 1171 and replace with House bill § 6003, page 1252).
- 4. Strike and replace Senate provision** that creates an SRO under the SEC that would assign responsibility for initial ratings of structured securities to a “qualified” NRSRO. **Replace with House provision** that commissions an SEC study to evaluate conflicts of interest, the metrics applied to determine the ‘accuracy’ of ratings, the use of an independent utility that assigns ratings for structured finance, and ability of an SRO-type entity to set appropriate fees to compensate and provide incentives for accurate ratings. The SEC will have 1 year to conduct the study. The SEC will present to Congress recommendations for either regulatory or statutory changes that the SEC believes should be made to implement the findings. (Senate bill § 939D, page 1184 and replace with House bill § 6003, page 1252)
- 5. Add House provision** that eliminates the credit rating agency exemption from the Fair Disclosure rule when working with issuers. Reg FD mandates the full disclosure of material non-public information. (House bill § 6007, page 1254)
- 6. Add House provision** that provides for a review of the reliance on ratings in the rules and regulations of the covered agencies and mandates a modification of their rules and regulations within one year. The provision also includes a GAO study of other Federal agencies’ reliance on ratings and recommendations to reduce the use of ratings in rule and regulation. (House bill § 6010, page 1260)
- 7. Add House provision** that eliminates the NRSRO exemption from expert liability under Section 11 of the securities laws (Rule 436(g)). (House bill § 6012, page 1264)