

(Pub. L. 111-203, title IX, §938, July 21, 2010, 124 Stat. 1885.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§ 780-9. Study and rulemaking on assigned credit ratings

(a) Definition

In this section, the term “structured finance product” means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(77)], as added by section 941,¹ and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) Study

The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) Report and recommendation

Not later than 24 months after July 21, 2010, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(1) the findings of the study required under subsection (b); and

(2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

(d) Rulemaking

(1) Rulemaking

After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) Rule of construction

Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

(Pub. L. 111-203, title IX, §939F, July 21, 2010, 124 Stat. 1889.)

REFERENCES IN TEXT

Section 941, referred to in subsec. (a), means section 941 of Pub. L. 111-203.

Section 15E of the Securities Exchange Act of 1934, referred to in subsec. (d)(1), is classified to section 780-7 of this title.

H.R. 4173, referred to in subsec. (d)(1), became Pub. L. 111-203. As enacted, section 939D of Pub. L. 111-203 did not add a subsec. (w) to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 780-7) but enacted provisions set out as a note below. For the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, see 156 Cong. Rec. 80 at pp. S4338, S4339 (daily ed. May 25, 2010).

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS

Pub. L. 111-203, title IX, §939D, July 21, 2010, 124 Stat. 1888, provided that:

¹ See References in Text note below.

“(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

“(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act [July 21, 2010], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.”

[For definition of ‘nationally recognized statistical rating organization’ as used in section 939D of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§ 78o-10. Registration and regulation of security-based swap dealers and major security-based swap participants

(a) Registration

(1) Security-based swap dealers

It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) Major security-based swap participants

It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applica-

ble to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

(5) Transition

Not later than 1 year after July 21, 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) Dual registration

(1) Security-based swap dealer

Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

(2) Major security-based swap participant

Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) Rulemaking

(1) In general

The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Security-based swap dealers and major security-based swap participants that are banks

Each registered security-based swap dealer and major security-based swap participant