

tions on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) [now 3(a)(79)] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by this subtitle) that—

“(1) require each national [sic] recognized statistical rating organization to include in any report accompanying a credit rating a description of—

“(A) the representations, warranties, and enforcement mechanisms available to investors; and

“(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

“(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934 [15 U.S.C. 780-11(a)], as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.”

[For definitions of terms used in section 943 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

FINDINGS

Pub. L. 111-203, title IX, §931, July 21, 2010, 124 Stat. 1872, provided that: “Congress finds the following:

“(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

“(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical ‘gatekeeper’ role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

“(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial ‘gatekeepers’ do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

“(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

“(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.”

[For definitions of terms used in section 931 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 109-291, §2, Sept. 29, 2006, 120 Stat. 1327, provided that: “Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204] (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the

concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

“(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

“(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

“(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

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

“(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

“(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry.”

SECURITIES AND EXCHANGE COMMISSION ANNUAL REPORT

Pub. L. 109-291, §6, Sept. 29, 2006, 120 Stat. 1338, provided that: “The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

“(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934 [15 U.S.C. 780-7], as added by this Act;

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

“(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations.”

DEFINITIONS

Pub. L. 109-291, §3(b), Sept. 29, 2006, 120 Stat. 1328, provided that: “As used in this Act [see Short Title of 2006 Amendment note set out under section 78a of this title]—

“(1) the term ‘Commission’ means the Securities and Exchange Commission; and

“(2) the term ‘nationally recognized statistical rating organization’ has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], as added by this Act.”

§ 780-8. Universal ratings symbols

(a) Rulemaking

The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) Rule of construction

Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

(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)¹ of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], 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 organiza-

tions 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 3(a)(77) of the Securities Exchange Act of 1934, referred to in subsec. (a), was redesignated section 3(a)(79) of that Act by Pub. L. 112-106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307, and is classified to section 78c(a)(79) of this title.

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).

¹ See References in Text note below.